UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC ESSHAKI, as candidate for United States Congress and in his individual capacity,

Plaintiff,

and

MATT SAVICH, DEANA BEARD, and SHAKIRA L. HAWKINS,

Intervenors-Plaintiffs,

v

GRETCHEN WHITMER, Governor of Michigan, JOCELYN BENSON, Secretary of state of Michigan, and JONATHAN BRATER, Director of the Michigan Bureau of Elections, in their official capacities,

Defendants.

______________________________________/

No. 2:20-cv-10831

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**DEFENDANTS' RESPONSE TO INTERVENING PLAINTIFF HAWKINS' MOTION FOR TRO/PRELIMINARY INJUNCTION**

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## CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether Plaintiff Hawkins' motion for temporary or preliminary injunctive relief should be denied where she has failed to satisfy the requirements for granting such extraordinary relief?

## CONTROLLING OR MOST APPROPRIATE AUTHORITY

*Authority*:

Mich. Comp. Laws § 168.544f

*Anderson v. Celebrezze*, 460 U.S. 780 (1983)
*Burdick v. Takushi*, 504 U.S. 428 (1992)
*Elrod v. Burns,* 427 U.S. 347 (1976)
*Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620 (6th Cir. 2000)
*Libertarian Party of Ky v. Grimes*, 835 F.3d 570 (6th Cir. 2016)
*Maryland v. King*, 133 S. Ct. 1 (2012)
*Ohio Democratic Party v. Husted*, 834 F.3d 620 (6th Cir. 2016)

## INTRODUCTION

Plaintiff Hawkins asks this Court to enjoin the State Defendants from enforcing the limitation that only candidates who filed statements of organization on or by March 10, 2020, are entitled to the 50% signature reduction. For the reasons set forth below, Defendants ask this Court to deny Plaintiff's motion. Alternatively, if the Court determines that Plaintiff is entitled to relief, any injunction should be limited to Plaintiff Hawkins and her specific facts.

## STATEMENT OF FACTS

This Court is familiar with the facts of this case. Defendants thus recount only those facts necessary to address Plaintiff Hawkins' motion.

On April 20, 2020, this Court entered a preliminary injunction that included as part of the relief granted an extension in the filing deadline for nominating petitions and a reduction in the number of signatures required under Mich. Comp. Laws § 168.544f. The Court ordered "that all candidates":

> (i) *who filed a statement of organization under the Federal Election Campaign Act of 1971, 52 U.S.C. §§ 30101 et seq., or established a candidate committee under the Michigan Campaign Finance Law, Mich. Comp. Laws §§ 169.201 et seq., before March 10, 2020; and*
>
> (ii) who are required by a relevant section of the Michigan Election Law, Mich. Comp. Laws §§ 168.1 *et seq*., to file a nominating petition by April 21, 2020, for the purpose of appearing on the August 4, 2020, primary election ballot; and
>
> (iii) who do not have the option under Michigan Election Law to appear on the August 4, 2020, primary election ballot through the payment of a filing fee in lieu of filing a nominating petition;

> Shall be qualified for inclusion on the August 4, 2020 primary election ballot if the candidate submits fifty percent of the number of valid signatures required by Mich. Comp. Laws § 168.544f with the appropriate filing official as provided by Michigan Election Law by 5:00 p.m. on May 8, 2020. No other filing deadline is extended under this Order. [R. 23, Injunction Order, Page ID # 359-360 (emphasis added).]

The Court further ordered Defendant Director of Elections to implement, within 72 hours, a process "providing for an additional optional procedure that allows the collection and submission of ballot petition signatures in digital form by electronic means such as email." (*Id*., Page ID # 360.)

As entered, the Court's order applied to the offices of U.S. Senate, U.S. Congress, Wayne County Community College (WCC) Trustee, all judicial offices (but only for candidates who are not the current incumbent), and any city office where the city charter does not allow the option to file with a fee. The order also applied to candidates within the covered offices who filed nominating petitions prior to the court's issuance of the injunction. In other words, candidates who timely established committees and who filed nominating petitions early and met the minimum signature filing threshold would have until May 8, 2020 to supplement their filings and would be subject to the 50% signature reduction.

On April 21, 2020, the State Defendants filed a notice of appeal to the Sixth Circuit. On April 22, 2020, the State Defendants filed in this Court a limited motion for relief from the injunction under Rule 60(b)(2), and alternatively argued

for a stay pending appeal regarding the 50% signature reduction. (R. 26, Defs Mtn to Stay, *Id.*, Page ID # 365.) On April 25, 2020, the Court issued an order denying Defendants' limited motion for relief from the injunction order, and further denied Defendants' request for a stay pending appeal. (R. 37, Stay Order, Page ID # 575.)

On April 26, 2020, the State Defendants filed an emergency motion for stay pending appeal in the Sixth Circuit, requesting that the Court stay that portion of this Court's order imposing the 50% signature reduction. (20-1336, R. 11, Defs Emrgy Mtn, Page ID # 8, 43.)

Late in the day on May 5, 2020, the Sixth Circuit entered an order granting in part and denying in part the State Defendants' emergency motion for a stay. (20-1336, R. 21-2, Stay Order, Page ID # 1.) Specifically, the Court ordered:

> [W]e GRANT the motion in part and issue the stay as to the portion of the preliminary injunction compelling the State to adopt the district court's revisions of the ballot-access provisions, but we DENY the remainder of the motion and uphold the portion of the injunction that enjoins the State from enforcing the statute's two ballot-access provisions under the present circumstances, unless the State provides some reasonable accommodation to aggrieved candidates. [*Id.*, Page ID # 4.]

"By staying the compulsory part of the injunction but upholding the prohibitive part we are instructing the State to select its own adjustments so as to reduce the burden on ballot access, narrow the restrictions to align with its interest, and thereby render the application of the ballot-access provisions constitutional under the circumstances." (*Id.*, Page ID # 3-4.) The Sixth Circuit noted, however,

that the State Defendants could choose to adopt the same relief this Court ordered. (*Id*., Page ID # 3.)

Early in the day on May 6, 2020, this Court entered an order directing the State Defendants to submit their proposed reasonable accommodation by 5:00 p.m. In compliance with this Court's order and consistent with the Sixth Circuit's order, the State Defendants submitted a proposed amendment to the April 20, 2020, injunction. (R. 38 & 39, Defs Prop Am.) Defendants proposed that the signature reduction be reduced to 30% and that the filing deadline be moved from May 8 to May 11, 2020, to accommodate that change. (*Id*.) Defendants did not propose any additional amendments. The Court permitted the parties and amici to file objections to Defendants' proposed amendment. (*See* R. 40, Finley; R. 42, ACLU; R. 44 Beard.) Plaintiff Hawkins appeared as a declarant in the ACLU's objection to challenge Defendants' proposed continued application of the injunction's March 10, 2020, deadline for having filed a statement of organization in order to qualify for the signature reduction. (R. 42, ACLU, Ex B, Hawkins Dec.)

The Court held a lengthy hearing near the end of the business day on May 7, 2020, during which it expressed strong disagreement with Defendants' proposed 30% reduction and questioned continuing the requirement that candidates have filed statements of organization by March 10. But the Court then determined it would issue no order amending the terms of the April 20 injunction, instead

instructing Defendants from the bench to immediately implement whatever accommodation they determined appropriate.

Given that Defendants had lost two business days during which it could have issued new instructions, and the Court's indication that it found Defendants' proposed reduction unreasonable, Defendants were constrained to adopt the terms of the April 20 injunction order. Thus, the filing deadline elapsed at 5:00 p.m. on May 8, 2020 for candidates seeking to qualify with a 50% reduction in signatures.

Plaintiff Hawkins thereafter filed an emergency motion to intervene in this case in order to challenge Defendants' continuation of the requirement that state candidates file a statement of organization on or by March 10 in order to qualify for the signature reduction and extended filing deadline. (R. 47, Hawkins Mtn to Intrvne., Page ID # 672.) The Court ordered Hawkins to file a supplemental brief in support of her intervention, which she did. (R. 49, Hawkins Supp Brf.) On May 12, 2020, Hawkins filed a motion for temporary or preliminary injunctive relief. (R. 51, Hawkins TRO Mtn.) On May 13, 2020, the Court granted the motion to intervene, (R. 52, Order,) and ordered that responses to the injunction motion be filed by May 15, and noticed a hearing for May 18, (R. 53, Notice.)

## ARGUMENT

### I. Plaintiff's motion for temporary or preliminary injunctive relief should be denied where balancing the requisite factors weighs against granting an injunction.

#### A. Temporary or preliminary injunction factors.

Like a preliminary injunction, a temporary restraining order is an extraordinary remedy "designed to preserve the relative positions of the parties until a trial on the merits can be held." *Cf. Tennessee Scrap Recyclers Ass'n v. Bredesen,* 556 F.3d 442, 447 (6th Cir. 2009). A court considers "four factors when determining whether to grant a temporary restraining order: '(1) whether the movant has a "strong" likelihood of success on the merits; (2) whether the movant would otherwise suffer irreparable injury; (3) whether issuance of [a TRO] would cause substantial harm to others; and (4) whether the public interest would be served by issuance of [a TRO].' " *Kendall Holdings, Ltd. v. Eden Cryogenics LLC,* 630 F. Supp.2d 853, 860 (S.D. Ohio 2008) (quoting *Leary v. Daeschner,* 228 F.3d 729, 736 (6th Cir. 2000)). No one factor is dispositive; rather the court must balance all four factors. *In re De Lorean Motor Co.,* 755 F.2d 1223, 1229 (6th Cir. 1985). The burden of persuasion is on the party seeking the injunctive relief. *Stenberg v. Cheker Oil Co.,* 573 F.2d 921, 925 (6th Cir. 1978).

**B. Plaintiff has not shown a strong likelihood of success on the merits of her claim that the statement of organization requirement is unconstitutional as applied to her.**

The Sixth Circuit has long held that in determining whether to grant an injunction, the movant must show a "strong likelihood of success on the merits." *See e.g. Ohio Republican Party v. Brunner,* 543 F.3d 357, 361 (6th Cir. 2008); *NEOCH v. Blackwell,* 467 F.3d 999, 1009 (6th Cir. 2006); *Summit County Democratic Cent. & Exec Comm. v. Blackwell,* 388 F.3d 547, 550 (6th Cir. 2004).

As the Court is aware, Defendants initially proposed the March 10 statement of organization requirement as a mechanism to preclude "would-be" candidates who might attempt to jump into a race after the original April 21 filing deadline and obtain any relief that was intended to protect bona fide candidates. Indeed, at the time Defendants proposed this limitation it remained a possibility that the Court would completely enjoin the signature requirement. Defendants were also concerned with the administrative effect that a large number of late filings might have on the many subsequent deadlines that attach to holding the August primary. Again, the relevant deadlines for the August primary include:

| Date and Time | Action | Statute |
|---|---|---|
| By 4:00 p.m. on April 21 (extended to 5:00 p.m. on May 8 for eligible candidates) | Candidates for partisan office must file nominating petitions and Affidavit of Identity for the August Primary | MCL 168.133 |

| | | |
|---|---|---|
| April 28 (extended to May 15 with respect to candidates eligible to file on May 8) | Deadline to submit challenges against nominating petitions filed by partisan candidates to filing official | MCL 168.552 |
| June 2 (statutory deadline, the Board is expected to meet May 29) | Board of State Canvassers to complete canvass of petitions filed by candidates for the August Primary; Secretary of State certifies candidates eligible to appear on August primary ballot to county election commissions. | MCL 168.552 |
| June 5 | Approximate date county clerks will begin printing ballots for the August Primary | |
| June 20 | Delivery of military and overseas AV ballots must begin | MCL 168.759a |
| June 20 | Deadline for county clerks to deliver AV ballots for the August Primary to local clerks | MCL 168.714 |
| June 25 | Deadline for AV ballots to be made available to voters | Mich. Const., Art. 2 § 4 |
| By 4:00 pm on July 24 | Write-in candidates file Declaration of Intent form | MCL 168.737a |
| August 4 | State Primary | |

As it turned out, of the 151 candidates who filed nominating petitions with the Bureau of Elections (either by April 21 or by May 8), 17 candidates filed less than the statutory minimum number of signatures but met (or exceeded) the 50% requirement. Of the 17 candidates, 16 qualified for the signature reduction and extended deadline. The remaining candidate did not form her candidate committee until April 20 (the day of the injunction) and did not file her statement of

organization until May 12. This last candidate is plainly an example of someone seeking to take advantage of the circumstances.

Like Plaintiff Esshaki, Plaintiff Hawkins timely filed her nominating petition and exceeded the statutory minimum signature threshold; filing 4,283 signatures on April 21, or 283 signatures over the statutory minimum.[1] However, after face review by the Bureau of Elections and as a result of a challenge by another candidate, she only has 3,847 face valid signatures. Plaintiff submitted a supplemental filing of approximately 323 signatures on May 8, which technically she was not permitted to do as a candidate who does not qualify for the reduction and extended filing deadline. Those signatures have not been reviewed for their validity.

Plaintiff asserted that she began collecting signatures in November 2019, which the Bureau of Elections has confirmed after a review of Plaintiff's petition sheets. She collected two dozen signatures in November and December 2019, with the majority of her signatures collected in February 2020 or somewhat later.

Under the Michigan Campaign Finance Act (MCFA), a person may become a candidate in a number of ways, relevant here:

> (1) "Candidate" means an individual who *meets 1 or more* of the following criteria:

[1] See also, August 4, 2020, Primary Candidate listing, https://miboecfr.nictusa.com/election/candlist/2020PRI_CANDLIST.html.

> (a) Files a fee, an affidavit of incumbency, *or a nominating petition for an elective office*.
>
> ***
>
> (c) Receives a *contribution*, makes an *expenditure*, or gives consent for another person to receive a contribution or make an expenditure *with a view to bringing about the individual's nomination or election to an elective office* . . .

Mich. Comp. Laws § 169.203(1) (emphasis added). A person becomes a candidate as soon as he or she meets one of these criteria. For purposes of § 203(1)(c), the term "expenditure" is defined to mean "a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate. . . ." Mich. Comp. Laws § 169.206(1). An " '[i]n-kind contribution or expenditure' means a contribution or expenditure other than money." Mich. Comp. Laws § 169.209(4).

Once a person becomes a candidate, he or she is required to "form" a candidate committee within 10 days. Mich. Comp. Laws § 169.221(1). A person who fails to do so "is subject to a civil fine of not more than $1,000.00." Mich. Comp. Laws § 169.221(13). The person's candidate committee is then required to "file a statement of organization within 10 days after the committee is formed." Mich. Comp. Laws § 169.224(1). A person who fails to timely file a statement of organization "shall pay a late filing fee of $10.00 for each business day the statement remains not filed in violation of this subsection" up to $300.00. Mich.

Comp. Laws § 169.224(1). A person who violates this subsection "by failing to file for more than 30 days after a statement of organization is required to be filed is guilty of a misdemeanor punishable by a fine of not more than $1,000.00." (*Id.*)

Under §§ 221 and 224, candidates have at least 20-days after becoming a candidate to file the candidate committee's statement of organization. During that period, a candidate is expected to establish an official depository and designate a person who is registered to vote in Michigan as the committee's treasurer (a candidate may also serve as the committee treasurer). Mich. Comp. Laws § 169.221.[2]

As noted above, Plaintiff Hawkins began collecting signatures in November 2019. Under the MCFA, she became a candidate if she expended any money at all to make copies of petitions to circulate. Thus, it appears that Hawkins should have created a committee and filed a statement of organization well before March 10, 2020, and certainly before May 6, 2020.[3] Indeed, Plaintiff acknowledged that she "probably committed a technical violation of the" MCFA in failing to do so. (R. 59, Hawkins Supp Brf, Pg ID # 714.) But a violation is a violation, and the penalty

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[2] The Secretary of State's candidate committee guide explains this process, see https://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheStatementOfOrganizationFormingAndRegisteringACandidateCommittee#candef.
[3] Plaintiff's MCFA filing information is available at https://cfrsearch.nictusa.com/committees/519728.

includes a potential combined civil fine of $2,000.[4] Had Hawkins timely and lawfully created her committee and filed her statement of organization, she would be eligible for the signature reduction and delayed filing deadline.

Defendants acknowledge that a fair point was raised during prior hearings that a person may have become a candidate shortly before or even on March 10, but would not have had to file his or her statement of organization for at least 20 days under the MCFA. Mich. Comp. Laws §§ 169.221, 169.224. In other words, the candidate's statement of organization would not have been due for filing until potentially March 30, 2020. But here Plaintiff did not file her statement of organization by that date either.

The other parties to this case and the Court have recognized that the State has an important interest in limiting the extraordinary relief that has been provided in the context of this case to bona fides candidates. And not to relieve individuals seeking to take advantage of the pandemic and the special relief provided as a result of the unique circumstances. From an administrative standpoint the State was (and is) concerned with a potential rush of late candidate filings for the Bureau of Elections and local clerks to process that otherwise would not have occurred. The State Defendants continue to believe that the simplest and least subjective way

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[4] Defendants are aware that candidates sometimes choose not to timely file their statements of organization and risk the imposition of fines under the MCFA for alleged "strategic" reasons. But the reason does not make it any less of a violation.

to advance these interests is to rely on a candidate's committee filing at the Federal Election Commission, at the state Bureau of Elections, or at the county clerk's office. And as far as choosing a date by which to have filed a statement of organization, any date may be perceived as arbitrary by someone to whom it does not advantage. Here, the State Defendants proposed March 10—the day the Governor first declared a state of emergency due to Covid-19—as the date by which bona fides candidates would have filed their statements of organization. By that date, the experiences of other countries and the national and state headlines, including stories about lock-downs and stay-at-home orders, should have spurred candidates to action.

Applying the March 10 filing deadline to Plaintiff Hawkins is not unconstitutional. While Plaintiff has no fundamental right to run for an elective office, *see, e.g.*, *Bullock v. Carter,* 405 U.S. 134, 142-43 (1972) (no "fundamental right to run for elective office"), and "[a] voter has no right to vote for a specific candidate," *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921 (6th Cir. 1998) (citations omitted), candidate qualifications nevertheless implicate "'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.'" *Anderson v. Celebrezze,* 460 U.S. 780, 786-87 (1983) (quoting

*Williams v. Rhodes,* 393 U.S. 23, 30-31 (1968)). These rights are protected by the First and Fourteenth Amendments. *Id.*

To assess candidate eligibility requirements, courts apply the *Anderson-Burdick* analysis from *Anderson* and *Burdick v. Takushi*, 504 U.S. 428 (1992). *Citizens for Legislative Choice*, 144 F.3d at 920. If a state imposes "severe restrictions" on a plaintiff's constitutional right, its regulations survive only if "narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434. But "minimally burdensome and nondiscriminatory" regulations are subject to a "less-searching examination closer to rational basis" and "'the State's important regulatory interests are generally sufficient to justify the restrictions.'" *Ohio Council 8 Am. Fed'n of State v. Husted*, 814 F.3d 329, 335 (6th Cir. 2016) (citing *Green Party of Tenn. v. Hargett (Hargett I)*, 767 F.3d 533, 546 (6th Cir. 2014), and quoting *Burdick*, 504 U.S. at 434). Regulations falling somewhere in between—"i.e., regulations that impose a more-than-minimal but less-than-severe burden—require a 'flexible' analysis, 'weighing the burden on the plaintiffs against the state's asserted interest and chosen means of pursuing it.' " *Ohio Democratic Party*, 834 F.3d at 627 (quoting *Hargett I*, 767 F.3d at 546).

First, it is not entirely clear that the Sixth Circuit stayed this portion of the Court's injunction, as it only stayed the "compulsory" relief, which it described as the extended filing deadline, the signature reduction, and the email signature

gathering option. If the March 10 limitation is not stayed, then Plaintiff is attempting to disturb the terms of a weeks-old injunction that has applied across the board to impacted federal, state, and local candidates. But even if it is stayed, the limitation was all part of the order that the Sixth Circuit reviewed, and the panel expressed no concern with this limitation. Further, the majority opinion very clearly stated that it was the State Defendants' first right to "select its own adjustments so as to reduce the burden on ballot access." (20-1336, R. 21-2, Stay Order, Page ID # 3.) Even under the present circumstances, the State is not required to eliminate the burden and allow any candidate who wants ballot access to have it. Candidates fail to qualify for the ballot in every election for any number of reasons, including the failure to collect sufficient valid signatures, and their failures present no constitutional crisis.

While Plaintiff Hawkins, as someone who timely filed her petition and met the minimum signature threshold at the time of filing, is not necessarily the target of the limitation, the State Defendants proposed that a hard line be drawn with respect to who should benefit from the extraordinary relief provided here. Drawing the line based upon a statutory requirement that applies to all candidates and tethering it to a date that bears a rational relationship to the purpose of the limitation is not arbitrary, unreasonable, or unconstitutional. If Plaintiff, a lawyer and judicial candidate, had simply complied with the law during the four months

she was actively circulating petitions before March 10, she would be eligible for the signature reduction.

The State Defendants have an interest in limiting the number of candidates gaining ballot access under a significantly reduced signature requirement. With respect to signature requirements like Mich. Comp. Laws § 168.544f, the Supreme Court has consistently recognized that states, like Michigan, have an important interest in requiring some preliminary showing of a significant modicum of support before printing the name of a candidate on the ballot; this protects the integrity of the electoral process by regulating the number of candidates on the ballot and avoiding voter confusion. *See Jenness v. Forton*, 403 U.S. 431, 441 (1971); *American Party of Texas v. White*, 415 U.S. 767, 783 (1974); *Munro v. Socialist Workers Party,* 479 U.S. 189, 194 (1986); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997). The Sixth Circuit has likewise recognized that states have "an important interest in ensuring that candidates demonstrate a 'significant modicum of support,' before gaining access to the ballot, primarily in order to avoid voter confusion, ballot overcrowding, and frivolous candidacies." *Libertarian Party of Ky v. Grimes*, 835 F.3d 570, 577 (6th Cir. 2016). Section 544f advances that important interest in Michigan by requiring potential candidates to demonstrate they have a significant modicum of public support for their

candidacies through signature thresholds. And allowing candidates to access the ballot without meeting the requisite thresholds defeats that interest.

Finally, while perhaps not her first choice, Plaintiff could still choose to run as a write-in candidate for the August Primary, which requires no signatures, can be accomplished by mail, and is not due until July 24, 2020. Mich. Comp. Laws § 168.737a. Or she can simply run as a write-in candidate for the November 2020 general election. (*Id.*) Write-in candidacies have been successful in Michigan, for example, Mike Duggan became Mayor of the City of Detroit through a successful write-in primary campaign in 2013.[5] And Winnie Brinks won the Democratic Primary for State Representative in 2012.[6]

Under the circumstances, denying Plaintiff access to the ballot under the reduced signature threshold is not unconstitutional.

### C. Plaintiff has not shown she will suffer irreparable harm absent an injunction.

In considering issuing an injunction, courts must consider whether the plaintiff will suffer irreparable injury without the injunction. *Certified Restoration Dry Cleaning Network v. Tenke Corp.,* 511 F.3d 535, 550 (6th Cir. 2007). "To demonstrate irreparable harm, the plaintiffs must show that . . . they will suffer

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[5] *See,* https://www.michiganradio.org/post/duggan-makes-history-winning-write-campaign-napoleon-rallies-supporters.
[6] *See*, https://calvinchimes.org/2012/11/05/2369/.

actual and imminent harm rather than harm that is speculative or unsubstantiated." *Abney v. Amgen, Inc.,* 443 F.3d 540, 552 (6th Cir. 2006). Harm is irreparable if it cannot be fully compensated by monetary damages. *Overstreet v. Lexington-Fayette Urban County Gov't,* 305 F.3d 566, 578 (6th Cir. 2002). Irreparable harm may also exist where a plaintiff can demonstrate a substantial likelihood of success on the merits of the plaintiff's claim that his or her constitutional right has or will imminently be violated. *Elrod v. Burns,* 427 U.S. 347, 373-74 (1976).

Plaintiff Hawkins asserts that without an injunction "she will suffer the loss of her fundamental right of access to the ballot." (R. 51, Hawkins TRO, Page ID # 756.) But there is no fundamental right to ballot access. Even so, irreparable harm only exists if Plaintiff has demonstrated a likelihood of success on the merits of her constitutional claims, which, as argued above, she has not. And as the Sixth Circuit has held, "a finding that there is simply no likelihood of success on the merits is usually fatal" to a request for injunctive relief. *Gonzales v. Nat'l Bd. of Med. Exam'rs*, 225 F.3d 620, 625 (6th Cir. 2000).

But if the Court disagrees with Defendants and concludes that Plaintiff has shown a substantial likelihood of success on the merits of her claim, the Court should limit its grant of injunctive relief to Plaintiff Hawkins and her specific facts.

### D. The balance of harms weighs in Defendants' favor, and an injunction is contrary to the public interest.

The remaining factors, "harm to the opposing party and weighing the public interest . . . merge when the Government is the opposing party." *Nken v. Holder,* 556 U.S. 418, 435 (2009). Plaintiff challenges the application of the March 10 deadline for having filed a statement of organization in order to qualify for the reduction from the statutory signature requirement. The people of Michigan have a strong interest in having the State's election laws effectuated, including § 544f, to the extent it can be under the circumstances. *See Maryland v. King*, 133 S. Ct. 1, *3 (2012) (C.J. Roberts in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co*., 434 U.S. 1345, 1351 (1977). The State Defendants are also concerned about Plaintiff's request to "change the rules" at this late date. The Bureau of Elections, all local clerks, and all candidates for the August primary have been operating under or following this condition since April 20, 2020. The extended filing deadline elapsed at 5:00 p.m. on May 8, and the deadline for candidates to challenge their competitors' signatures elapses today, May 15. The Board of State Canvassers is expected to meet to certify the August primary ballot on May 29, 2020 (certification must be done by June 2). Between now and May 27—12 days—the Bureau of Elections must complete the canvass of the nominating petitions filed by the 151 candidates, review and resolve any challenges filed by other candidates, and prepare staff reports regarding the

sufficiency of the nominating petitions for disclosure to the public. *See* Mich. Comp. Laws § 168.552(8)-(11). Local clerks will be following a similar process. *See* Mich. Comp. Laws § 168.552(1)-(7).

If the Court eliminates the March 10 filing requirement, it could open the door to other individuals seeking to file late petitions at the state or local level. New filings, which would require canvassing and a challenge period, could and likely would disrupt the already shortened timetable for the canvassing and certification process. For this reason, if the Court determines that Plaintiff Hawkins is entitled to relief, the Court should limit its grant of injunctive relief to Plaintiff Hawkins and her specific facts.

## CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, Defendants Secretary of State Jocelyn Benson, Governor Gretchen Whitmer and Director of Bureau of Elections Jonathan Brater respectfully request that this Honorable Court deny Plaintiff's request for temporary or preliminary injunctive relief.

Respectfully submitted,

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Dated: May 15, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 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.

*s/Heather S. Meingast*
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