UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAWARIMEDIA LLC, DEBORAH PARKER, JUDY KELLOGG and PAUL ELY,

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.

Case No. 4:20-CV-11246
Hon. Matthew F. Leitman
Mag. J. Michael J. Hluchaniuk

PLAINTIFF SAWARIMEDIA LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION[1]

[1] NOTE: Plaintiffs' counsel conferred in advance with the State's counsel to advise that this Brief addresses a Petition Clause argument that the *pro se* Plaintiffs had not raised. If the Court so desires, Plaintiffs do not object to allowing the State an opportunity to submit a reasonable supplement on this issue.

This case is about Plaintiffs' fundamental right to petition the government for redress, U.S. CONST. amend. I, and the State's well intentioned but unlawful violation of that and other rights. In response to Plaintiff's 10-page *pro se* brief, the State responded with 32 pages that avoid the key issues and invite error – all in an effort to deny at most *two* initiatives a place on the ballot. The correct and constitutional decision is to grant the injunction Plaintiffs seek, which would prevent Defendants from applying certain rules to keep them off the ballot. Because of the fast-paced election season, prompt relief is necessary to have any meaningful redress.

ADDITIONAL BACKGROUND AND FACTS

Plaintiffs filed this lawsuit *pro se* to challenge the constitutionality of the signature requirements and deadlines of Michigan's legislative ballot-initiative process, *see generally* MICH. COMP. LAWS § 168.471, as applied during Governor Whitmer's "Stay-At-Home Orders," defined below. The Plaintiffs assert rights including equal protection, speech, association, ballot access and others. Reasonable briefing limitations prevent a discussion of them all. Further briefing is available upon request. This Reply Brief focuses on certain key rights and principles.

In 2020, Plaintiffs circulated an initiative promoting the kinds of "earned time off credits" that are common in other States for inmates who engage in self-betterment and rehabilitation. The initiative raises timely political issues involving strained State budgets, prison overcrowding and the related danger of COVID-19

facing correctional officers and inmates, among other things.

Such legislative initiatives are rooted in Michigan's constitution. The State quotes the relevant portion of MICH. COMP. LAWS Art. II, § 9, through which the people have reserved their right to petition by initiative. (ECF No. 07, PageID.115.). Under § 471 of Michigan's Election Law, initiative petitions "must be filed with the secretary of state at least 160 days before the election . . . if the legislature rejects or fails to enact the proposed law." MICH. COMP. LAWS § 168.471. Insofar as the state constitution and laws violate the U.S. Constitution, the Secretary of State and Director of Elections are not limited merely to interpreting those laws. They also have relevant gap-filling powers to issue new rules that would provide relief to Plaintiffs.[2]

The parties agree that 340,047 signatures would usually be required during this election cycle, absent this Court's intervention. (*Compare* ECF No. 1 (Compl.),

[2] Secretary Benson "shall promulgate rules" under Michigan's Administrative Procedures Act ("APA"), MICH. COMP. LAWS §§ "24.201 to 24.328, . . . establishing uniform standards for state . . . ballot question petition signatures." MCLS § 168.31(2). She also "shall . . . issue instructions and promulgate rules pursuant to the [APA] for the conduct of elections and registrations in accordance with the laws of this state." MICH. COMP. LAWS § 168.31(1)(a). Similarly, "[t]he director of elections shall be vested with the powers and shall perform the duties of the secretary of state under . . . her supervision, with respect to the supervision and administration of the election laws." MICH. COMP. LAWS § 168.32(1). The APA defines the term "rule," and allows for gap-filling when a law is suspended. " 'Rule' means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, *or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency*." MICH. COMP. LAWS § 24.207.

PageID.6, *with* ECF No. 7 (Defs.' Resp. Br.), PageID.116-117.) The parties also agree that a 180-day limit applies to the validity of signatures. MICH. COMP. LAWS § 168.472a. Thus, the Parties should recognize via simple math that a weekly average of at least 13,224 signatures shows a substantial modicum of support.

Defendants do not contest that during the 9½ weeks after Plaintiffs filed their ballot initiative petition and before the first Stay-At-Home Order entered (i.e., from January 16 to March 23, 2020), Plaintiffs acquired approximately 215,000 valid signatures. (*See* ECF No. 01, PageID.5-6 ¶¶ 22, 2; ECF No. 07, PageID.16-17.) Plaintiffs were apparently averaging over 22,600 signatures per week, despite the cold and unfavorable winter months and despite a 2-week period in March when national and State emergencies strongly squelched petition efforts. In other words, Plaintiffs almost doubled the necessary modicum, and they were on track to obtain more than 200,000 additional signatures during the last 9 weeks between March 23 and May 27, 2020, which would comfortably exceed the minimum amount.

Of course, the COVID-19 pandemic interfered. Initially, the State declared an emergency while allowing First Amendment protected activities to proceed. But beginning with Executive Order 2020-21 on March 23, 2020 (Exh. B, PageID.78), the State entered a series of executive orders requiring Michiganders to stay home and avoid almost any contact with non-household members (the "Stay-At-Home Orders" or "Orders"). As the State concedes, the Orders facially do not exempt or

accommodate fundamental rights. (ECF No. 07, PageID.114.) Instead, the State made it a misdemeanor for Michigan residents to leave their homes in order to conduct ordinary activities that usually accompany ballot initiatives. (*E.g.*, Exh. B, PageID.78 ("Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.").) While the State contends that its "FAQ's" offer an exception, that informal guidance suffers fatal flaws discussed below. The Stay-At-Home Orders went into effect on March 24, 2020 and remain in effect.[3]

Meanwhile, the Secretary of State and Director of the Bureau of Elections have enforced the Governor's Orders, while holding strictly to the letter of ordinary laws and regulations governing the people's right to petition for governmental redress, as well as their rights to speech, association and ballot access.

ARGUMENT

1. Additional Applicable Legal Standards

The balancing test and general standards for granting an *ex parte* temporary restraining order or a preliminary injunction are familiar. *See, e.g., Stein v. Thomas*, 222 F. Supp. 3d 539, 542 (E.D. Mich. 2016) (granting TRO in case impacting the

[3] Eked out in roughly 2 or 3-week increments now spanning more than a third of the Plaintiffs' 180-day petition-gathering period, the Orders arguably nullified a variety of fundamental rights, including rights to travel between states, *see Roberts v. Neace*, _ F. Supp. 3d. _, 2020 U.S. Dist. LEXIS 77987 (E.D. Ky. May 4, 2020) (citing numerous Supreme Court cases), to travel within a state, *see Johnson v. City of Cincinnati*, 310 F.3d 484, 496-98 (6th Cir. 2002), *discussed in Cole v. City of Memphis*, 839 F.3d 530, 535 (6th Cir. 2016), and to associate for political purposes.

right to vote). Where, as here, the balance of the harms weighs much more heavily upon Plaintiffs, injunctive relief is appropriate "even where [they] fail[ ] to show a strong or substantial probability of ultimate success" if they "at least show[ ] serious questions going to the merits." *Jones v. Caruso*, 569 F.3d 258, 277 (6th Cir. 2009).

With respect to the factor involving a plaintiff's likelihood of success, the closer the plaintiff is to summary judgment, the more likely she is to succeed.[4] Where, as here, the defendants bear substantive burden of *production* on the merits,[5] movants such as Plaintiffs at least satisfy any burden of *persuasion* they may have

[4] It stands to reason that where a party is entitled to a summary judgment under Federal Rule of Civil Procedure 56, there is not only a serious question or a strong likelihood of success under Rule *65*, but also an actual entitlement to success. It defies logic to say that someone can be entitled to a final judgment without being entitled to preliminary relief to preserve the status quo. While a plaintiff seeking an injunction must do more than create a genuine issue sufficient to *survive* an adverse summary judgment, *see McNeilly v. Terri Lynn Land*, 684 F.3d 611, 615 (6th Cir. 2012) (citing *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000)), the plaintiff need not do so much as to win a favorable summary judgment at the outset. But the more they can do so, the clearer their guarantee of success.

[5] *E.g.*, *Meyer v. Grant*, 486 U.S. 414, 426 (1988) (exacting scrutiny); *Turner Broadcasting Sys. v. FCC*, 512 U.S. 622, 664-65 (1994) (intermediate scrutiny); *J & B Entm't v. City of Jackson*, 152 F.3d 362, 370-71 (5th Cir. 1998) ("under an intermediate scrutiny standard of review, the government bears the burden of justifying (i.e., **both the burden of production and persuasion**) the challenged statute."); *see Hassan v. City of N.Y.*, 804 F.3d 277, 301 (3d Cir. 2015) (" 'heightened scrutiny,' . . . encompasses both 'intermediate scrutiny' and 'strict scrutiny' [and] the City bears the **burden of production and proof** with respect to both."); *see also Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 391 (2000) ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny . . . will vary up or down with the novelty and plausibility of the justification raised."). (All emphases added.)

under Federal Rules 56 and 65 by "'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). While this burden-shifting consideration always impacts the Court's evaluation of this factor, other cases might require more factual background and discovery. This case, however, turns overwhelmingly on the law, while Defendants' admissions complete the facts. In cases like this, there is nothing more to discover before granting an injunction.

2. <u>The Court Should Grant Injunctive Relief Because Plaintiffs Have Shown a First Amendment Violation, and the Balance of the Harms and Public Interest Weigh Decisively in Their Favor</u>

a. Plaintiffs Easily Demonstrate a Likelihood of Success

i. The State's Argument About Laches is Frivolous

The State devotes 4 pages to a frivolous argument. Plaintiffs filed their case on May 4 to seek exclusively declaratory and injunctive relief from a then-continuing harm. (ECF No. 01, PageID.12-13.) They seek to address the application of signature requirements on a post-Complaint filing deadline of May 27, as well as to address an imminent exclusion from the canvassing process and the ballot, which has not yet happened. It is settled that laches "does not prevent plaintiff[s] from obtaining [such] injunctive relief or post-filing damages." *Nartron Corp. v. STMicroelecs., Inc.*, 305 F.3d 397, 412 (6th Cir. 2002), *quoted in Ohio A. Philip Randolph Inst. v. Smith*, 335 F. Supp. 3d 988, (S.D. Ohio 2018) (Moore, J. Karen Nelson, sitting on 3-judge panel); *see also Concerned Citizens of S. Ohio, Inc. v. Pine Creek*

Conserv. Dist., 429 U.S. 651, 653, 656 (1977) (allowing constitutional challenges to proceed over a dissenting opinion that cited laches in 9-year delay). Even insofar as the doctrine could apply, it would not favor the State here.[6]

ii. The Orders Violate the First Amendment.

Although the key path to relief for Plaintiffs focuses on enjoining the State's joint application of petition quotas and deadlines along with the Orders, a separate point about the Orders alone provides a key baseline in the analysis. The Orders directly burdened the Plaintiff's right to petition and could not pass strict scrutiny.

Unlike the order at issue in *Thompson v. Dewine*, _ F.3d _, 2020 WL 2702483, at *4 (6th Cir. 2020), the Michigan Stay-At-Home Orders do not specifically exempt constitutionally protected conduct. Instead, they criminalize the common approach to petitioning for redress. The State's reliance on informal guidance to suggest that it might tolerate protected activity falls short for at least three reasons. The *Dewine* court identified the most important one:[7] an informal FAQ "is not the same as putting

[6] Despite being *pro se*, Plaintiffs acted relatively swiftly. Meanwhile, the State has had time to fairly respond or change its behavior. It fully researched, briefed, and maintained its unconstitutional approach throughout the *Esshaki* case. By May, the State was ready to quickly answer these Plaintiffs' case when this Court asked. The State suffered no prejudice due to any plaintiff and has only itself to blame for failing to adjust its election process sooner. If they sought relief immediately, they also could not know if the Stay-at-Home Order would present only a short interruption. *Compare Thompson v. Dewine*, _ F.3d _, 2020 WL 2702483, at *4 (6th Cir. 2020) (burden not severe where order lifted before deadline).

[7] The Order also facially demands to be construed broadly. (*Id.*) Further, the FAQ is obscure to the general public. On the official page entitled Frequently Asked

the restriction in the order itself." (PageID.163 (citing *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992); *Sosna v. Iowa*, 419 U.S. 393, 399–400 (1975).)

Because the Orders criminalize conduct when advocating an initiative, the Court's opinion in *Meyer v. Grant*, 486 U.S. 414 (1988), best guides the analysis, while offering a distinction that is even more helpful here. There, the Court held unconstitutional a law that criminalized paying initiative petition-circulators. *See id.* at 416. By reducing the number of circulators, the law not only restricted their individual speech but also made public debate of the issue less likely. *See id.* at 422-23. Moreover, "[t]he First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for doing so." *Id.* at 424. The fact that they could use "other means to disseminate their ideas," could not save a law that "restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication." *Id.* at 424. Focusing on the impact on their advocacy, *id.* at 421, the Court concluded that the law burdened "core political speech," *id.*, where protection "is 'at its zenith' [and] the burden that [the state] must overcome is well-nigh insurmountable," *id.* at 425. The state failed to produce enough evidence to satisfy scrutiny.

COVID-19 Questions on May 31, 2020, undersigned counsel did not see any item discussing "expressive activities" within the first 20 pages of voluminous questions, and a search in the page's search-bar for "expressive" returned zero results. (https://www.michigan.gov/coronavirus/0,9753,7-406-98810---,00.html.) On the other hand, a search specifically for "First Amendment" did produce results.

Just as in *Meyer*, these Orders criminalize conduct that prevents petitioners from engaging potential supporters in one-on-one political discourse, which for their less-funded, grassroots campaign is clearly the most economical, fundamental and effective method. Worse, the Orders did not merely prevent *some* of Plaintiffs' petition-circulators from advocating in this chosen fashion. They prevented *all* from doing so. The burden on the core right is even more severe than in *Meyer*.

The burden is also more direct in relation to the Petition Clause, rather than the Speech Clause analyzed in *Meyer*.[8] Justices widely agree that people who create, circulate and promote ballot initiatives engage in "core" protected activity.[9] Such citizens directly "petition the Government for a redress of grievances." U.S. CONST. amend. I. "Petitioning the government and participating in the traditional town meeting were precursors of the modern initiative and referendum." *Doe*, 561 U.S. at 223 (Scalia, J., concurring).[10] In fact, "[t]he right to petition is in some sense the source

[8] Although *Meyer* is a speech case, whereas the Order directly burdens fundamental rights under "the Petition Clause, not the Speech Clause," *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011), the analyses of these "cognate rights" are closely related. *Cf. id.* at 388-89 ("Courts should not presume there is always an essential equivalence in the two Clauses or that Speech Clause precedents necessarily and in every case resolve Petition Clause claims.").

[9] The Justices may disagree about other points relating to speech and association, but they agree that circulating an initiative is a quintessential way to petition for redress. If additional briefing would be useful, Plaintiffs can provide it.

[10] "The Petition of Right occupies a place in English constitutional history superseded in importance, perhaps, only by Magna Carta itself and the Declaration of Right of 1689. * * * The following years saw use of mass petitions to address matters

of other fundamental rights, for petitions have provided a vital means for citizens to request recognition of new rights and to assert existing rights against the sovereign." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 397 (2011) (Kennedy, J.).

Insofar as the State now observes that "[t]hese *mechanisms* of direct democracy are not compelled by the Federal Constitution," *Doe*, 561 U.S. at 212 (Sotomayor, J., concurring), that only means the Constitution's negative ban on abridging the right may not create a positive right requiring every State to formalize an initiative process. Once Michigan created a process, Plaintiffs' use of it fell within the "core" of the petition right. While Michigan had leeway to initially tailor a reasonable process, it could not ban otherwise legitimate activity in midstream as the Orders did here. Just as in *Meyer,* the State's reliance on its freedom to impose limitations on a state-created right "is misplaced." 564 U.S. at 424.

Like the state's interest in *Meyer* of preventing fraud and protecting the integrity of the process, Michigan has some interest in protecting public health. But that can also be protected through social distancing, masks, and other hygiene measures. *See also Roberts v. Neace*, 958 F.3d 409, _ [at *8] (6th Cir. 2020). Michigan could also have done what Ohio did; namely, exempt First Amendment advocacy from the

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of public concern." *Guarnieri*, 564 U.S. at 395. Later, in the Colonies, "[p]articipation by ballot and petition not only assured popular control of government, but also attached to each citizen responsibility for the nation's laws, or lack thereof." Higganson, *Note: A Short History of the Right To Petition Government for the Redress of Grievances*, 96 Yale L.J. 142, 162 (1986), *cited in Guarnieri*, 564 U.S. at 394.

Orders. In the 21st Century, narrower and better measures are necessary to address not only the disease, *see* Wendy E. Parmet and Michael S. Sinha, *Covid-19—The Law and Limits of Quarantine*, 382 NEW ENG. J. MED. 15 (Apr. 2020), *available at* https://www.nejm.org/doi/pdf/10.1056/nejmp2004211), but also the legal consequences of taking responsive action.[11] No matter how one construes the Supreme Court's precedents, strict scrutiny applies to the direct and severe burden that the Orders impose on the right to petition. Given the availability of other hygiene measures, the Orders would not even satisfy intermediate scrutiny. Either way, the State has not satisfied its evidentiary burden. The Orders are unconstitutional.

Finally, this discussion of petition rights helps to distinguish *Thompson v. Dewine*, while also resolving other questions about that opinion. The opinion is best understood as (1) strictly involving the right to ballot access while declining to address the right to petition; and (2) involving state action that expressly exempted First Amendment activity.[12] The latter construction also resolves *dicta* about rational

[11] In extraordinary circumstances, sometimes one must break the law to do the right thing. Dr. Martin Luther King, Jr., *Letter From a Birmingham Jail* (April 16, 1963). With the intent to protect Michiganders from COVID-19 and sometimes from our own stupidity, Governor Whitmer entered a series of morally wise but unconstitutional Orders. The Supreme Court recognizes, "Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power." *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 528 (1935).

[12] The *Thompson* court also distinguished the Michigan Orders because the Ohio Stay-at-Home Order was lifted and the state thus arguably provided the parties with

basis review, (PageID.161), which is otherwise difficult to harmonize.[13]

iii. The Joint Application of the Orders and the State's Petition Rules Violate the First Amendment.

By choosing to endorse and enforce the Governor's Orders, the Secretary of State and the Director added a requirement to the State's initiative process. Moreover, the State imposed the new rules mid-stream, after citizens already relied upon a preexisting process. The interruption lasted for a longer period in advance of the deadline than in *Esshaki v. Whitmer*, 2020 WL 1910154 (E.D. Mich. Apr. 20, 2020).[14] No matter how one slices it, that joint application *adds to* the already-severe

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an opportunity to exercise their ballot-access rights and undermined their assertion that they were excluded from the ballot. *Id.* at *4.

[13] Had the court acknowledged the fundamental right to petition and had it found that the stay-home order reached that right, strict scrutiny could scarcely have been avoided given how direct the burden would have been. Instead, the stay-home order there arguably carved out and exempted First Amendment-protected activity altogether. Insofar as that order – as construed by the Sixth Circuit – actually refrained from imposing a burden on fundamental rights either facially or in its enforcement, the court might consistently hold that neither form of heightened scrutiny applied. That, in turn, would make sense of the court's otherwise outlier-*dicta* about rational basis review, (PageID.161), which only applies when fundamental rights are not affected. *Compare Burdick v. Takushi*, 504 U.S. 428, 434. Any broader reading of the *dicta* puts a too-quick gloss on how the *Burdick* Court's *descriptive* nods to "reasonable" measures fits into the Court's *prescriptive* jurisprudence in *Anderson-Burdick* and beyond. *Cf. id.* at 434, *cited in* PageID.161.

[14] The Stay-at-Home Order cost the parties in *Esshaki* about a month of normal signature collection. However, the Plaintiffs here were denied over two months from the beginning of the Order until the May 27, 2020 deadline. "So Michigan abruptly prohibited the plaintiffs from procuring signatures during the last month before the deadline, leaving them with only the signatures that they had gathered to that point." *Thompson*, at *3.

and constitutionally unjustified burden the Orders alone imposed. Finally, since the measures here directly burdened an express right in the Petition Clause, they receive even more scrutiny than they did vis-à-vis candidates in *Esshaki* who arguably asserted derivative rights. The severe burden there already warranted strict scrutiny.[15]

In response, Defendants' cite several interests – some compelling, others important. None satisfy their burden at any heightened level of scrutiny. Like the *Meyer* defendants, the State relies on its interest in fraud prevention. But just as in *Meyer,* other state laws proscribing fraud are better tailored and adequate to that end. Risks of fraud and corruption are also lower for ballot initiatives than for candidates. *See Buckley v. Amer. Const. L. Found.*, 525 U.S. 182, 203 (1999). In any event, the State faces only *two* petitions here (*see* ECF No. 07, PageID.133), and it fails to provide any actual evidence of fraud surrounding this election cycle.

Defendants express a concern about orderly elections, "easing administrative burdens on election officials," and the burdens involved in canvassing perhaps "hundreds of thousands of signatures" between May 27 and July 24, 2020. (*See* ECF No.

[15] Here, the same activity – signature gathering – is virtually impossible. That burden on Plaintiffs is more severe than in *Esshaki*, considering how many more signatures are needed to receive ballot access. Plaintiff Essahki needed 1,000 signatures. *See* MCL § 168.544f. Plaintiffs need 340,047, absent this Court's relief. The same restrictions apply – the Orders, a signature threshold, and a deadline. The same result occurs – exclusion from the ballot. Unlike the parties in *Thompson*, the jointly applied restrictions result in the "exclusion or virtual exclusion from the ballot. *Schmitt v. LaRose*, 933 F.3d 628, 639 (2019).

07, PageID.133-134.) The State reviewed three times as many measures in as much time in 2012. *See* https://ballotpedia.org/Michigan_2012_ballot_measures. It has enough time. Moreover, if the State fills the gap of a now-stricken signature requirement by imposing a lower signature quota, it will proportionately lessen its task. For example, canvassing 50% as many signatures should take roughly half as much time. That task is already expedited by random sampling measures. (*Id.*, PageID.118.)

As in *Esshaki*, Defendants assert an interest in "ensuring a modicum of support" for initiatives. (*Id.*, PageID.132.) The Supreme Court has acknowledged that a lower 5% requirement fully satisfied this interest, *see Meyer*, 486 U.S. at 420, and 4% is also adequate in some states, *see Doe*, 561 U.S. at 190-91 (Washington). The State can decide how much of a modicum it is administratively prepared to process. As of May 4, 2020, Plaintiffs collected 215,000 valid signatures – more than 5% of the relevant set of voters – at a pace comfortably expected to exceed the ordinary requirement. This is a serious ballot initiative with a large base of support. The State has not and cannot meet its burden to demonstrate that exclusion sufficiently advances its interest in ensuring a modicum of support. The State fails to advance evidence or support to meet any level of scrutiny, much less strict scrutiny, and Plaintiffs are therefore very likely to succeed on the merits.

b. Plaintiffs Will Be Irreparably Harmed Absent Relief

In relation to the point Plaintiff already raised that "even minimal

infringement upon First Amendment," *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989), the State concedes at least that "there is an undeniable burden imposed by these regulations on Plaintiffs." (ECF No. 07, PageID.127.) Having admitted that burden, irreparable injury exists. Moreover, without relief, Plaintiffs' substantial investment of time, money, grassroots will, and political capital, will be wasted.

c. The Balance of Harms and Public Interest Favor an Injunction.

Unlike Plaintiffs, the State does not face significant harms. Firstly, in terms of administrative burden, only two petitions are at issue, and only one deadline has elapsed. As noted above, the State has plenty of time before November to proceed in an orderly fashion to process these initiatives. Moreover, if the State cuts its requirement in half, it only needs to do half the work. Secondly, in terms of the interest in effectuating Michigan's constitution and laws, this interest exists in every case dealing with an unconstitutional state constitutional provision or law. [CITE]. Moreover, the interest recognized in *Maryland v. King* (PageID.138) in advancing voters' interest in vindicating a representative democracy is offset by their interest here in direct democracy. Through the Orders, moreover, the State disrupted – rather than maintained – the settled public expectations that usually attend an established election-law regime. Thirdly, in terms of the general overlap of the State and public interests, one thing about the pandemic merits mention. If the Court were to allow the State to insist that petitioners engage in one-on-one contact despite the COVID-

19 pandemic, that approach would impose on the petitioners and everyone with whom they had contact and increased risk of debilitating or deadly infection. Additionally, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Libertarian Party of Ohio v. Husted*, 751 F.3d 403, 412 (6th Cir. 2014). The failure to meet normal deadlines and thresholds amid a global pandemic cannot outweigh Plaintiffs' recognized fundamental rights.

CONCLUSION

The combination of the State's Stay-At-Home Orders, its signature threshold, and the signature deadline jointly and unconstitutionally burden Plaintiffs' First Amendment rights to petition the government for redress, as well as their rights to speech, association, assembly, ballot access and equal protection. A preliminary injunction is both necessary and proper to avoid a greater harm.

Respectfully Submitted,

June 1, 2020

By: /s/ Saura J. Sahu

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PROOF OF SERVICE

I hereby certify that on June 1, 2020, I caused the aforementioned and attached document to be electronically filed through the Court's electronic CM/ECF filing system, which will serve a copy and notice of filing on every attorney of record for Defendants. I also caused to be served via email the following parties:

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I declare under the penalty of perjury that the above statements are true to the best of my knowledge, information, and belief.

Respectfully Submitted,

June 1, 2020

By: /s/ Saura J. Sahu

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