

Honorable Jocelyn Benson
Secretary of State of Michigan
Department of State
Lansing, MI 48918

Subject: Request for Declaration of Vacancy - Commissioner Rebecca Szetela

Dear Madam Secretary Benson,

I, Dustin J. Witjes, a commissioner in good standing of the Michigan Independent Citizens Redistricting Commission, am officially notifying the commission, in accordance with section 6(3)(e) Article 4 of the Michigan Constitution, to consider declaring the office held by Commissioner Rebecca Szetela vacant.

The commission, established by the voters of the State of Michigan in 2018, is designed to consist of 13 individuals, with 4 identifying as Democratic, 4 as Republican, and 5 as non-affiliated. Throughout our tenure as commissioners, we have consistently emphasized the importance of speaking with one unified voice, resolving disagreements through voting on crucial decisions, and standing united behind the outcomes of those votes.

Regrettably, it has come to my attention that Commissioner Szetela, through sworn testimony [Exhibit 1], actively collaborated with opposing counsel, undermining the collective will of the commission. Her engagement extended beyond mere communication, involving the provision of information in person, actions that should have been directed through our legal counsel rather than independently pursued. Commissioner Szetela, though an attorney, was not the commission's legal representative, and proper protocol would have dictated working directly through our counsel. Her actions would have been ill advised. It has also become apparent that Commissioner Szetela continues to work with plaintiffs through affidavits [Exhibit 2].

This overt act of what can only be described as sabotage is unacceptable. The commission had retained the services of Baker Hostetler and Fink Bressack, two law firms, to assist in defending our legally drawn district maps for the State of Michigan. At no point did the commission authorize or vote to permit any commissioner to work directly with opposing counsel. Commissioner Szetela's actions ran counter to the collective will of the commission, creating undue challenges for our legal team in defending our maps.

It is crucial to highlight that Commissioner Szetela was among those who dissented, either in part or in whole, with the final approved maps, suggesting that her actions may have been motivated by personal disagreement rather than a commitment to the commission's objectives.

It is unprecedented for a named defendant in a case to actively collaborate with plaintiffs in a civil action against the will of the public body to which the defendant belongs. This conduct constitutes "neglect of duty, gross misconduct in office, or inability to discharge the duties of office"; grounds for removal according to Article IV, Section 6, Sub-section 3 of the Michigan Constitution.

This commission is a commission of 13, not a commission of one. Such acts of defiance against the will of the commission contradict our core principles.

For the aforementioned reasons and in light of sworn statements made in open court, I, Dustin J. Witjes, formally propose that the office held by Commissioner Rebecca Szetela be declared vacant through a vote in accordance with the commission's rules of procedure. I recommend that the vacancy be promptly filled in accordance with state law.

Sincerely,



Dustin J. Witjes
Commissioner - Michigan Independent Citizens Redistricting Commission

EXHIBIT 1: Pages 170 - 173 First volume of transcripts.

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1 tender the witness.

2 JUDGE MALONEY: All right. Thank you. It's 2:45.
3 We'll take 15 minutes and resume at three o'clock for cross.

4 Thank you.

5 THE CLERK: All rise, please. Court is in recess.

6 *(Recess taken at 2:48 p.m.; reconvened at 3:03 p.m.)*

7 THE CLERK: All rise, please. Court is in session.
8 You may be seated.

9 JUDGE MALONEY: We're back on the record in Agee
10 versus Benson.

11 Ms. McKnight, you may inquire.

12 MS. MCKNIGHT: Thank you, Your Honor. We have an
13 agreement from plaintiff that they'll provide us with a list
14 of the audio time stamps and they'll do it by today so we're
15 able to review them.

16 JUDGE MALONEY: Terrific. Thank you.

17 *CROSS EXAMINATION*

18 BY MS. MCKNIGHT:

19 Q. Good afternoon, Ms. Szetela.

20 A. Good afternoon.

21 Q. Thank you for your time today and your work on the
22 Commission.

23 A. Thank you.

24 Q. Have you corresponded with plaintiffs' counsel prior to
25 today?

1 A. You mean writing them letters?

2 Q. Any type of correspondence.

3 A. I'm not sure what you mean by correspondence. You mean
4 e-mails, letters?

5 Q. Any of that and then we can break it down by type.

6 A. Yes.

7 Q. What types of correspondence have you had with them?

8 A. A few e-mails.

9 Q. Have you had any calls with them?

10 A. I honestly don't think so.

11 Q. And about what time did you -- what timeframe were those
12 e-mails sent and received?

13 A. I would say within the last month, maybe. I'm not a
14 hundred percent sure.

15 Q. And did you e-mail them first or did they e-mail you?

16 A. I reached out to them.

17 Q. Okay. And let's start with that first e-mail of you
18 reaching out to them. What did you say in that e-mail?

19 A. From memory, I told them that I had information that I
20 thought might be useful to their case and that I would like to
21 speak with them, is my recollection.

22 Q. Okay. And did you ever speak with them?

23 A. Yes.

24 Q. Okay. And so you did speak with them by phone?

25 A. No. I met with them in person.

1 Q. I see. Okay. How many meetings did you have with them?

2 A. Two.

3 Q. And about when were those meetings?

4 A. I would say within the last month or so.

5 Q. Okay. Within the last two weeks?

6 A. One was within the last two weeks. One was a little
7 longer ago than that, like maybe four weeks ago.

8 Q. And what caused you to reach out to plaintiffs' counsel?

9 A. Because I felt that there were facts that were not being
10 presented to the Court that I think are relevant to this case.

11 Q. And when you sent e-mails to them, did you include any
12 attachments on the e-mail?

13 A. No.

14 Q. Okay. And then the meeting that you had that was within
15 the last two weeks, what did you discuss at that meeting?

16 A. Exhibits and testimony.

17 Q. And then the meeting four weeks ago, what did you discuss
18 with plaintiffs' counsel?

19 A. Just generally I directed them towards transcripts that
20 had information that I thought might be useful to their case.

21 Q. You said that meeting was about four weeks ago. We stand
22 here at November 1. Does October 1 sound about right for that
23 meeting?

24 A. When did the strike against GM and Ford start?

25 Q. I'm not here to answer questions.

1 A. I don't know exactly. I can't tell you exactly without
2 looking at a calendar. I know that the strikers were striking
3 when I went to the first meeting so it was in that timeframe.

4 Q. And what did you share with them in that first meeting?

5 A. Just the transcripts I thought they should look at.

6 Q. And then at the second meeting that you had two weeks ago,
7 did you discuss your testimony with them?

8 A. Somewhat, yes.

9 Q. Okay. What did you discuss with them about your
10 testimony?

11 A. Just generally the flow of what they were going to ask
12 starting from the beginning of the Commission through December
13 of 2021.

14 Q. Commissioner Szetela, I'd like to ask you a question about
15 partisan fairness.

16 A. Sure.

17 Q. Isn't it true that partisan fairness measurements can only
18 be done on a full state-wide plan?

19 A. Yes.

20 MS. MCKNIGHT: Let's pull up PX15-19.

21 BY MS. MCKNIGHT:

22 Q. Commissioner Szetela, do you remember testifying about
23 this chart in your direct testimony?

24 A. Yes.

25 Q. Can you explain to the Court the difference between a

Exhibit 2: Affidavit from Commissioner Szetela via Plaintiffs post-trial brief (12/04/23):

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., an individual, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*;

Defendants.

Case No. 1:22-cv-00272

**Three-Judge Panel Appointed
Pursuant to 28 U.S.C. § 2284(a)**

AFFIDAVIT OF REBECCA A. SZETELA

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Rebecca A. Szetela, having been first duly sworn, deposes and states as follows:

1. I have personal knowledge concerning the statements contained in this Affidavit, and if called to testify, can testify competently to the facts stated in this Affidavit.

2. I have served as a Commissioner with the Michigan Independent Citizens Redistricting Commission ("MICRC") since November of 2020.

3. There are thirteen commissioners on the MICRC, including Commissioner Anthony Eid.