UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIKE KOWALL, et al.,

Plaintiffs,

v.

JOCELYN BENSON,

Defendant.
_____/

Case No. 1:19-cv-985

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiffs, ten former state legislators, filed this lawsuit against Defendant Benson, in her official capacity as Michigan's Secretary of State, to challenge the Michigan Constitution's term limits provision, which voters adopted nearly thirty years ago. Pending before the Court are the parties' cross-motions for summary judgment (ECF Nos. 25 & 27). For the reasons that follow, the Court denies Plaintiffs' motion and grants Secretary Benson's motion.

I. BACKGROUND

In 1992, Michigan voters amended the Michigan Constitution to impose lifetime term limits on state legislators (Jt. Stat.[1] ¶ 1). State representatives are limited to three two-year terms (a total of six years), and state senators are limited to two four-year terms (a total of eight years) (*id.*). Specifically, the amendment added the following language to MICH. CONST. Art. IV, § 54:

> No person shall be elected to the office of state representative more than three times. No person shall be elected to the office of state senate more than two times. . . .

[1] The parties filed a "Joint Statement of Material Facts" (Jt. Stat.) (ECF No. 33), upon which this Court relies for resolution of these motions unless otherwise indicated.

> This limitation on the number of times a person shall be elected to office shall apply to terms of office beginning on or after January 1, 1993.
>
> This section shall be self-executing. Legislation may be enacted to facilitate operation of this section, but no law shall limit or restrict the application of this section. If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect.

(*id.*). The proposal was approved by 58.8 percent of voters (*id.* ¶ 2).

In 2014, Michigan's term limits resulted in thirty-four lawmakers leaving office (*id.* ¶ 18). These term-limited legislators had a combined 248 years of experience and included the Senate Majority Leader, Senate Minority Leader, and House Speaker (*id.*). In 2019, term limits resulted in nearly seventy percent of state senators and more than twenty percent of state representatives being prohibited from running for their legislative seats (*id.* ¶ 19). Nearly one-quarter of term-limited legislators end up either registering as lobbyists or working as consultants or paid advocates (*id.* ¶ 20).

On November 20, 2019, Plaintiffs Mike Kowall, Roger Kahn, Scott Dianda, Clark Harder, Joseph Haveman, David E. Nathan, Paul Opsommer, Douglas Spade, Mark Meadows and Mary Valentine—Democrat and Republican former members of the Michigan Legislature—filed this lawsuit against Secretary Benson. Plaintiffs state that but for Michigan's lifetime term limits, they would seek reelection and/or vote for other experienced candidates based on their belief that reduced legislator experience and the corresponding increase in power among lobbyists has been harmful to Michigan government (*id.* ¶¶ 29-38). In addition to their own statements, Plaintiffs allege that certain research also demonstrates that the term limits provision Michigan voters passed was a "failed social experiment" (Am. Compl. ¶¶ 29-45).

In their Amended Complaint filed on December 11, 2019, Plaintiffs allege the following five claims:

I. Violation of the First and Fourteenth Amendments (Ballot Access)

II. Violation of the First and Fourteenth Amendments (Freedom of Association)

III. Violation of the Guarantee Clause

IV. Violation of Mich. Const. 1963, Art. IV, § 24

V. Violation of Mich. Const. 1963, Art. XII, § 2

(ECF No. 5). Plaintiffs seek "(1) a declaratory judgment that Mich. Const. 1963 art. IV, § 54 violates the First and Fourteenth Amendments of the United States Constitution and the Guarantee Clause, Article IV, section 4 of the United States Constitution; (2) a declaratory judgment that Mich. Const. 1963, art. IV, § 54 violates Mich. Const., art. IV, § 24 and art. XII, § 2; (3) a permanent injunction prohibiting the Michigan Secretary of State from enforcing Mich. Const. 1963 art. IV, § 54; (4) Plaintiffs' reasonable costs and expenses, including attorneys' fees; and (5) any other relief the Court deems just and proper" (*id.* at PageID.64-65). Secretary Benson answered the Amended Complaint in March 2020 (ECF No. 18).

In July 2020, without conducting discovery, Plaintiffs filed their Motion for Summary Judgment (ECF No. 25). Secretary Benson filed a response in opposition to their motion and moves for summary judgment in her favor (ECF No. 29). Plaintiffs filed a reply (ECF No. 29), and Secretary Benson filed a Sur-Reply (ECF No. 31). Having considered the parties' submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

II. ANALYSIS

A. Motion Standard

When there is no dispute as to any material fact and the movant is entitled to judgment as a matter of law, summary judgment is appropriate. FED. R. CIV. P. 56(a). In conducting this

inquiry, the court views all evidence in the light most favorable to, and draw all inferences in favor of, the non-moving party. *Mays v. LaRose*, 951 F.3d 775, 782-83 (6th Cir. 2020) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). Constitutional questions, such as the issues presented herein by the parties' cross-motions, are questions of law. *See Hamby v. Neel*, 368 F.3d 549, 556 (6th Cir. 2004); *Johnson v. Econ. Dev. Corp. of Cty. of Oakland*, 241 F.3d 501, 509 (6th Cir. 2001).

B. Discussion

1. Counts I & II

In Counts I and II, Plaintiffs allege that Michigan's lifetime term limits violate their First and Fourteenth Amendment rights. Specifically, in Count I (Ballot Access), Plaintiffs allege that § 54 violates the First and Fourteenth Amendments by "interfer[ing] with the ability of both individuals and political parties to select the candidate of their choice" (Am. Compl. ¶ 123). In Count II (Freedom of Association), Plaintiffs allege that § 54 violates the First and Fourteenth Amendments because the provision "denies voters the opportunity to participate on an equal basis with other voters in the election of their choice of representative, and denies such voters the ability to support an entire class of candidates—experienced legislators" (*id.* ¶ 135).

In support of summary judgment in their favor, Plaintiffs argue that lifetime term limits on state legislators are similar to ballot-access fees inasmuch as such limits "disadvantag[e] a particular class of candidates" by excluding them from the ballot "without reference to the candidates' support in the electoral process" (ECF No. 25 at PageID.174-177, quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 835 (1995)). Plaintiffs argue that "[w]hen paired with the substantial impingement on candidate expression and association rights that term limits entail, the Supreme Court's precedents counsel strongly in favor of applying strict scrutiny here" (*id.* at

PageID.177). According to Plaintiffs, Michigan's term-limit provision fails strict scrutiny because "a lifetime ban paired with a six-year limit in the Michigan House and an eight-year limit in the Michigan Senate is not the 'least restrictive' means necessary to advance [Michigan's] goals" (*id.* at PageID.179-181).

Alternatively, Plaintiffs argue that "[a]t a bare minimum, the highest end of *Anderson-Burdick's* sliding scale is applicable to candidate restrictions that forever bar a term-limited candidate from again running for her Michigan legislative seat" (ECF No. 25 at PageID.177, referencing *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992)). Plaintiffs argue that Michigan's term limits, which are the shortest and harshest in the nation, are not narrowly tailored to prevent political careerism or the advantages of incumbency or to increase diverse representation (*id.* at PageID.181-182).

In response, Secretary Benson argues that the Michigan Constitution's term limits provision does not violate Plaintiffs' rights under the federal constitution. Secretary Benson argues that the Sixth Circuit rejected the same First and Fourteenth Amendment arguments more than twenty years ago in *Citizens for Legislative Choice v. Miller*, 144 F.3d 916, 921-22 (6th Cir. 1998), where the Sixth Circuit concluded that § 54 does not impose a severe burden because voters do not have a right to "vote for a specific candidate or even a particular class of candidates," the provision does not impose "a content-based burden," and voters "have many other avenues to express their preferences" (ECF No. 27 at PageID.272). Secretary Benson points out that the Sixth Circuit in *Miller* additionally determined that the "State of Michigan has a compelling interest in enacting § 54," to wit: "'maintaining the integrity of the democratic system,'" "foster[ing] electoral competition," "enhanc[ing] the lawmaking process," "curbing special interest groups," and "decreasing political careerism" (*id.* at PageID.272-273, quoting *Miller*, 144 F.3d at 923). Last,

Secretary Benson points out that the Sixth Circuit in *Miller* determined that "Michigan narrowly tailored § 54 to satisfy its compelling interests" (*id.* at PageID.274, quoting *Miller*, 144 F.3d at 924).

In reply, Plaintiffs assert that the Sixth Circuit made its ruling in *Miller* on the lowest end of the *Anderson-Burdick* sliding scale because the ban "barely burdened voters at all" (ECF No. 29 at PageID.290). Plaintiffs opine that "[t]he fact that this is a candidate challenge rather than a voter challenge makes all the difference when considering the constitutionality of Michigan's term-limits scheme" (*id.*). According to Plaintiffs, "[t]his is the type of ban the Supreme Court warned against in *Thornton*" (*id.*).

In sur-reply, Secretary Benson argues that "grounding their claims in the rights of candidates does nothing to make Plaintiffs' claims any more meritorious" (ECF No. 31 at PageID.305). Secretary Benson opines that "[i]t would be a curious outcome if this Court were to hold that elected officials were entitled to more protection from the First and Fourteenth Amendments than the *voters* who brought the virtually identical challenge in *Miller*" (ECF No. 27 at PageID.275 [emphasis in original]).

Plaintiffs' First and Fourteenth Amendment claims are without merit, and Secretary Benson is entitled to judgment as a matter of law on both Counts I and II.

"[T]he *Anderson-Burdick* framework is used for evaluating 'state election law[s.]'" *Daunt v. Benson*, 956 F.3d 396, 407 (6th Cir. 2020) (quoting *Burdick*, 504 U.S. at 434). Under the *Anderson-Burdick* framework, courts weigh the character and magnitude of the burden a State's rule imposes on a plaintiff's rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Schmitt v. LaRose*, 933 F.3d 628, 639 (6th Cir. 2019) (examining statutes governing Ohio's municipal ballot-initiative

process). "[T]he touchstone of *Anderson-Burdick* is its flexibility in weighing competing interests…" *Ohio Democratic Party v. Husted*, 834 F.3d 620, 627 (6th Cir. 2016) (quoting *Burdick*, 504 U.S. at 434). *Cf. Anderson*, 460 U.S. at 787 (examining "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters ... to cast their votes effectively") (citation omitted).

The first, most critical step is to consider the severity of the restriction. *Schmitt*, 933 F.3d at 639. Laws imposing "severe burdens on plaintiffs' rights" are subject to strict scrutiny, but "lesser burdens ... trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* (citations and internal quotation marks omitted). Regulations that fall in the middle "warrant a flexible analysis that weighs the state's interests and chosen means of pursuing them against the burden of the restriction." *Id.* (quoting *Libertarian Party of Ky. v. Grimes*, 835 F.3d 570, 574 (6th Cir. 2016) (citation and internal quotation marks omitted)). At the second step, courts identify and evaluate the state's interests in and justifications for the regulation. *Id.* The third step requires that courts "assess the legitimacy and strength of those interests" and determine whether the restrictions are constitutional. *Id.*

In *Miller*, 144 F.3d at 918-19, four individual voters and two non-profit corporations (the Citizens for Legislative Choice and the Michigan Handicapped Voters' Rights Association) filed a lawsuit contending that § 54 violated their First and Fourteenth Amendment rights to vote for their preferred legislative candidates. The Sixth Circuit concluded that § 54 was properly upheld under either the *Anderson-Burdick* balancing approach or a deferential approach to analyzing term limit provisions. The *Anderson-Burdick* balancing approach was the focus of the Sixth Circuit's opinion. The Sixth Circuit began its analysis by reiterating that a state may permanently bar voters

from voting for particular classes of candidates because "[a] voter has no right to vote for a specific candidate or even a particular class of candidates." *Id.* at 921 (citing *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 128 (6th Cir. 1995); *Zielasko v. Ohio*, 873 F.2d 957, 961 (6th Cir. 1989)). The Sixth Circuit observed that of the twenty-four courts to have addressed the precise issue before it—"whether lifetime term limits for state legislators violate the First and Fourteenth Amendments"—twenty-three courts upheld the term limits. *Id.* The Sixth Circuit noted that "[o]nly one lone district court judge has found these term limits unconstitutional—and he was reversed." *Id.* at 922.

The Sixth Circuit held that "importantly for the *Anderson-Burdick* analysis, lifetime term limits impose a neutral burden, not a content-based burden." *Miller*, 144 F.3d at 922-23. The Sixth Circuit explained that the lifetime-term-limit provision did not impose a severe burden because it "burdens no voters based on 'the content of protected expression, party affiliation, or inherently arbitrary factors such as race, religion, or gender.' It burdens no voters based on their views on any of the substantive 'issues of the day,' such as taxes or abortion." *Id.* at 922 (citations omitted).

Conversely, the Sixth Circuit held that in enacting § 54, Michigan had identified, among other interests, that "lifetime term limits will foster electoral competition by reducing the advantages of incumbency and encouraging new candidates" and will also "enhance the lawmaking process by dislodging entrenched leaders, curbing special interest groups, and decreasing political careerism." *Id.* at 923. The Sixth Circuit observed that these sovereign interests are "well-known" and need not be justified with "elaborate, empirical verification." *Id.* at 924. Indeed, the Sixth Circuit observed that "[e]very court to address the issue has found that a State has a compelling interest in imposing lifetime term limits on state legislators." *Id.* at 923.

Last, the Sixth Circuit held that Michigan narrowly tailored § 54 to satisfy its compelling interests, expressly rejecting the plaintiffs' assurance that consecutive term limits were a viable alternative. *Id*. Indeed, given the compelling nature of the interests at stake, the Sixth Circuit held that "even if we found that lifetime term limits burdened voters severely, we would still uphold § 54 under the compelling interest standard." *Id.* As a result, the Sixth Circuit concluded that "§ 54 passes the *Anderson-Burdick* balancing test regardless of whether we apply rational basis or strict scrutiny." *Id.*

As Secretary Benson points out, the term limits provision at issue has not changed since the Sixth Circuit reviewed it in *Miller* in 1998 and found that it did not violate either the First or Fourteenth Amendments. Plaintiffs assert that "[a]nalyzing Michigan's purported compelling interests in the candidate context requires a fresh look and a different result" (ECF No. 29 at PageID.291). However, Plaintiffs offer no justification for such a "fresh look." The Court agrees with Secretary Benson that the fact that Plaintiffs seek to be candidates "does nothing to change the *Anderson-Burdick* review of any alleged burden on the right to associate that is implicated by candidate qualifications" (ECF No. 31 at PageID.306). As Secretary Benson points out, by suggesting that their claims should succeed where the plaintiffs' claims in *Miller* failed, "Plaintiffs' argument necessarily requires that there be a higher degree of First Amendment protection for elected officials than is provided for voters," yet Plaintiffs offer no explanation or justification for such a disparity (*id.*).

Plaintiffs' reliance on the Supreme Court's decision in *Thornton*, 514 U.S. 779, which addressed the state-imposed qualifications for service in the United States Congress, does not compel a different result in this case. Indeed, the decision in *Thornton* was issued three years before the Sixth Circuit decided *Miller*, and the *Miller* Court noted that the Supreme Court in

Thornton had expressly "not address[ed] the validity of term limits for state legislators." *Miller*, 144 F.3d at 922 n.2.

In short, Plaintiffs offer no basis on which this Court may properly disregard the clear and binding precedent in *Miller*.

2. Count III

In Count III, Plaintiffs allege that § 54 violates the Guarantee Clause of the federal Constitution, which provides the following: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." U.S. Const. Art. 4, § 4. Plaintiffs allege that § 54 has "created a less professional, less organized, and less competent legislature," thereby "destabilizing and deinstitutionalizing Michigan's Legislature" and "violat[ing] the right to a republican form of government" (Am. Compl. ¶¶ 152-153).

In support of summary judgment in their favor, Plaintiffs argue that their Guarantee Clause claim is justiciable inasmuch as (1) the Clause's enforcement is committed to the federal government generally, not to a non-judicial branch specifically; (2) the law infringes on the right of the people to choose their own officers for governmental administration; and (3) the matter turns on an interpretation of the Constitution (ECF No. 25 at PageID.184-185). On the merits of their claim, Plaintiffs argue that Michigan's lifetime term limits violate the Guarantee Clause because "term limits have resulted in more legislator time spent on re-election-centric efforts and less time on actually legislating," which in turn results in a governmental power structure that "increases the power of the Governor, the executive branch, and lobbyists while decreasing the Legislature's power" (*id.* at PageID.186).

In response, Secretary Benson argues that Plaintiffs have failed to offer legal authority showing that this claim is justiciable (ECF No. 27 at PageID.276). Secretary Benson argues that even if Plaintiffs' Guarantee Clause claim was justiciable, the claim is without merit where "the people of Michigan continue to choose their state legislators subject to a constitutional limitation enacted by the people themselves" (*id.* at PageID.277).

Plaintiffs' Guarantee Clause claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count III.

The Guarantee Clause ensures a republican form of government, the "distinguishing feature" of which "is the right of the people to choose their own officers for governmental administration, and pass their own laws." *In re Duncan*, 139 U.S. 449, 461 (1891). While the Supreme Court has delineated certain circumstances under which a case may present a justiciable political question, *see Baker v. Carr*, 369 U.S. 186, 217 (1962), the Supreme Court has "several times concluded … that the Guarantee Clause does not provide the basis for a justiciable claim," *Rucho v. Common Cause*, ___ U.S. ___; 139 S. Ct. 2484, 2506; 204 L. Ed. 2d 931 (2019). *See also Phillips v. Snyder*, 836 F.3d 707, 716-17 (6th Cir. 2016) ("Traditionally, the Supreme Court 'has held that claims brought under the Guarantee Clause are nonjusticiable political questions.'") (citation omitted). The Sixth Circuit has similarly held that "it is up to the political branches of the federal government to determine whether a state has met its federal constitutional obligation to maintain a republican form of government." *Phillips*, 836 F.3d at 717.

Plaintiffs' argument that its Guarantee Clause claim is justiciable is unavailing. As Secretary Benson observed in sur-reply, "Plaintiffs' brief groans under the weight of various policy determinations about whether term limits are good, desirable, or accomplish their objectives" (ECF No. 31 at PageID.309). Even assuming arguendo that Plaintiffs' Guarantee Clause claim is

justiciable, there is simply no Guarantee Clause violation here where § 54 was approved by a large majority of Michigan voters and Michigan voters continue to choose their own state officers. Indeed, the Sixth Circuit in *Miller* observed that "nothing prevents [voters] from overturning § 54 through Michigan's constitutional processes, and thereby convincing others that experience counts." *Miller*, 144 F.3d at 922. In short, Plaintiffs have not demonstrated that the federal Constitution's guarantee of a republican form of government in Article IV provides them with a basis for invalidating § 54.

3. Count IV

Next, in Count IV, Plaintiffs allege that "Proposal B," the 1992 ballot measure that led to the enactment of § 54, violates the Title-Object clause of the Michigan Constitution, Article IV, § 24, which provides that "[n]o law shall embrace more than one object, which shall be expressed in its title" (Am. Compl. ¶ 158).

In support of summary judgment in their favor, Plaintiffs argue that Proposal B violates Michigan's Title-Object clause because, while the proposal was carefully promoted as a single-object proposal to only limit the number of years a Michigan resident could serve in certain elected offices, the "actual changes to the 1963 Constitution were multiple and diverse, in violation of Article 24, Section 2 [sic]" (ECF No. 25 at PageID.188-189).

In response, Secretary Benson points out that no Michigan court has ever held that the Title-Object clause applies to amendments to the Michigan Constitution, whether proposed by the Legislature or by the people through petition, as here (ECF No. 27 at PageID.277-278; ECF No. 31 at PageID.310).

Plaintiffs' Title-Object clause claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count IV.

The Title-Object clause appears in Article IV of Michigan's Constitution ("Legislative Branch"), the article that governs the Legislative Branch's law-making power, whereas constitutional amendments, such as § 54, are governed by Article XII of Michigan's Constitution ("Amendment and Revision"). The text of Article IV, § 24 itself provides that "[n]o *law* shall embrace more than one object, which shall be expressed in its title" (emphasis added). The Michigan Supreme Court has held that the Title-Object clause ensures that legislators and the public receive proper notice of legislative content. *Pohutski v. City of Allen Park*, 641 N.W.2d 219, 230 (Mich. 2002); *City of Livonia v. Dep't of Soc. Svcs.*, 378 N.W.2d 402, 417 (Mich. 1985). The Michigan Court of Appeals has elaborated to explain that the Title-Object clause serves four purposes: "(1) to prevent the Legislature from passing laws not fully understood; (2) to fairly notify the Legislature of a proposed statute's design and purpose; (3) to aid the Legislature and the public in understanding that only subjects germane to the title are included in the legislation; and (4) to curtail 'logrolling' by preventing bringing into one bill diverse subjects not expressed in its title." *Boulton v. Fenton Twp.*, 726 N.W.2d 733, 739 (Mich. Ct. App. 2006). Plaintiffs identify no basis upon which this Court could properly conclude that the framers intended the Michigan Constitution's Title-Object clause from Article IV to apply to proposals to amend the Constitution under Article XII. Plaintiffs have not demonstrated that the Title-Object clause provides a basis for invalidating § 54.

4. Count V

Conversely, Plaintiffs last allege in Count V that Proposal B also violates § 2 of Article XII of Michigan's Constitution ("Amendment and Revision") because the ballot language did not "consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment" (Am. Compl. ¶ 164). According

to Plaintiffs, "[w]hen Proposal B was placed on the ballot, it contained the following savings clause: 'If any part of this section is held to be invalid or unconstitutional, the remaining parts of this section shall not be affected but will remain in full force and effect'" (*id.* ¶ 165). Plaintiffs allege that "[t]he effect of including a savings clause renders Proposal B unconstitutional because including this language creates a prejudice for passing the amendment as voters will likely vote 'yes' even if concerns about whether the proposed amendments are unconstitutional exist" (*id.* ¶ 166).

In support of summary judgment in their favor, Plaintiffs argue that Michigan voters were "effectively misled" into voting for a different constitutional amendment, one that they believed would place term limits on both federal and state offices (ECF No. 25 at PageID.191-192). Plaintiffs argue that "[t]he Savings effect on Proposal B led to voters not being adequately informed that the effect of their vote was only to place term limits on *state* legislative offices" (*id.* at PageID.191 [emphasis in original]). According to Plaintiffs, "[t]his serves as an independent basis to overturn Proposal B's passage," just as the Nebraska Supreme Court struck down Nebraska's term limit provision, in its entirety, in *Duggan v. Beermann,* 544 N.W.2d 68 (Neb. 1996) (*id.* at PageID.191-192).

In response, Secretary Benson argues that Plaintiffs' claim in Count V is without merit, if not frivolous, inasmuch as the ballot language does not refer to the savings clause (ECF No. 27 at PageID.279). Secretary Benson also opines that the "best demonstration of the voters' intent was the language of the amendment they adopted" (*id.* at PageID.280).

Plaintiffs' claim is without merit, and Secretary Benson is entitled to judgment as a matter of law on Count V.

Article XII, § 2 of Michigan's Constitution governs the amendment of the Constitution via initiative petition, setting forth the following requirements:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.
>
> Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.
>
> The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.
>
> If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

Proposal B, as quoted in *Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1042-43 (E.D. Mich. 1998), provided the following:

A PROPOSAL TO RESTRICT/LIMIT THE NUMBER OF TIMES A PERSON CAN BE ELECTED TO CONGRESSIONAL, STATE EXECUTIVE AND STATE LEGISLATIVE OFFICE

The proposed constitutional amendment would:

Restrict the number of times a person could be elected to certain offices as described below:

1) U.S. Senator: two times in any 24-year period.

2) U.S. Representative: three times in any 12-year period.

3) Governor, Lieutenant Governor, Secretary of State or Attorney General: two times per office.

4) State Senator: two times.

5) State Representative: three times.

Office terms beginning on or after January 1, 1993 would count toward the term restrictions. A person appointed to an office vacancy for more than one-half of a term would be considered elected once in that office.

Should this proposal be adopted?

Contrary to Plaintiffs' allegations, the ballot language did not refer to the savings clause; therefore, such language could not have "misled" voters about the proposal on which they were voting. The Court concludes that Plaintiffs' argument to the contrary is merely speculative. The Nebraska Supreme Court's decision in *Duggan* does not compel a different conclusion. That the Nebraska Supreme Court decided to overturn the term-limits initiative petition before it does not help Plaintiffs demonstrate that § 54 should be invalidated based on an alleged violation of Article XII, § 2 of Michigan's Constitution. *See, e.g., Ray v. Mortham*, 742 So. 2d 1276, 1282 (Fla. 1999) (rejecting *Duggan* as distinguishable, both factually and legally, and noting that in *Duggan*, "there were numerous proposed amendments, poorly and confusingly drafted"), holding modified by *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002).

III. CONCLUSION

For the foregoing reasons, Plaintiffs have not established, as a matter of law, that the Michigan Constitution's term limits provision violates either the federal or state Constitutions. Accordingly:

IT IS HEREBY ORDERED that Plaintiffs' Motion for Summary Judgment (ECF No. 25) is DENIED, and Defendant's Motion for Summary Judgment (ECF No. 27) is GRANTED.

Because this Opinion and Order resolves all pending claims in this case, a corresponding Judgment will enter. *See* FED. R. CIV. P. 58.

Dated: January 20, 2021

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge