

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR., <i>et al.</i> ,)	
Plaintiffs,)	
)	No. 1:22-cv-272
v.)	
)	Three-Judge Court
JOCELYN BENSON, in her official)	
capacity as the Secretary of State)	
of Michigan, <i>et al.</i> ,)	
Defendants.)	
_____)	

ORDER REGARDING DEFENDANTS’ MOTION TO STRIKE EVIDENCE

MALONEY, District Judge. Following trial, the Parties submitted post-trial filings on December 4, 2023. (ECF Nos. 113, 115, & 116). The Michigan Independent Citizens Redistricting Commission (“MICRC”) moved to strike certain evidence from Plaintiffs’ post-trial filings on December 8, 2023. (ECF No. 120). The Court will grant in part Defendants’ motion.

I. Background

Plaintiffs and Defendants stipulated to the admission of the “entire Commission record of proceedings” in the final pretrial order. (ECF No. 93 at PID 2191-97). The Parties were directed to file proposed findings of fact and conclusions of law after trial. (ECF No. 97). Plaintiffs’ proposed findings of fact includes seven new exhibits, which span forty pages.¹ (ECF No. 114-1-114-8 at PID 3950-90). Plaintiffs’ post-trial brief includes one attachment—

¹ Exhibit A is the “Michigan Department of State Vendor Evaluation Ranking and Rational.” Exhibit B is the “Communities of Interest Process Document.” Exhibits C, E, F, are emails from either general counsel or Dr. Handley. Exhibit D is a new declaration from Commissioner Szetela concerning the closed session meeting NDAs and includes three attachments of its own. Exhibit G is a MIRS article about the Commission. (ECF No. 144-1 at PID 3950).

the results of thirteen general elections in Wayne County and Oakland County. (ECF No. 116-1).

II. Discussion

Courts “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). Courts can take judicial notice anytime. Fed. R. Evid. 201(d). Courts have recognized that election results are an appropriate subject of judicial notice. *See, e.g., Badillo v. City of Stockton*, 956 F.2d 884, 887 n.1 (9th Cir. 1992). The Court will take judicial notice of the thirteen general elections in Wayne County and Oakland County attached to Plaintiffs’ post-trial brief. The Court declines to strike the election results from the record.

The Parties stipulated to the admission of the “entire Commission record.” (ECF No. 93 at PID 2191-97). Several exhibits attached to Plaintiffs proposed finding of fact are clearly a part of the MICRC record, and others are not. (ECF No. 114-1-144-8 at PID 3950-90). The Court will strike the exhibits that cannot plausibly be considered a part of the “entire Commission record.” The Court will strike Exhibit D and Exhibit G. The remaining exhibits were produced by the MICRC during the redistricting process, and the Court declines to strike them.

Plaintiffs assert that exhibit D, Commissioner Szetela’s new declaration, is necessary because Plaintiffs were unaware of the NDAs prior to trial. But two years before trial, the Michigan Supreme Court ordered MICRC to release an audio recording of the closed session meeting in 2021. *Detroit News, Inc. v. Indep. Citizens Redistricting Comm’n*, 976

N.W.2d 612, 630 (2021). That recording makes several references to the NDAs, and the Plaintiffs cite those instances in their response to the instant motion to strike. (ECF No. 127 at PID 4651). Plaintiffs’ assertion that they “had no way of knowing [the NDAs] existed” is incorrect. (ECF No. 127 at PID 4648). Plaintiffs could have conducted some discovery on that issue but did not. Additionally, Plaintiffs could have called Commissioner Szetela as a rebuttal witness after learning about the NDAs at trial but did not. Finally, Exhibit G was not produced by the Commission and will be stricken from the record.

III. Conclusion

The Court will strike exhibits D and G from Plaintiffs’ proposed finding of fact. (ECF Nos. 114-5 & 114-8). The Court will take judicial notice of the Wayne County and Oakland County election results attached to Plaintiffs’ post-trial brief. (ECF No. 116-1). The Court declines to strike the remaining exhibits as they are a part of the “entire Commission record.”

IT IS HEREBY ORDERED that Defendants’ motion to strike (ECF No. 120) is **GRANTED** in part and **DENIED** in part.

IT IS SO ORDERED.

Date: December 15, 2023

/s/ Raymond M. Kethledge
Raymond M. Kethledge
United States Circuit Judge

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge

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