

**THE STATE OF MICHIGAN
COURT OF CLAIMS**

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTERGREN,

Plaintiffs,

and

Democratic National Committee,

Intervening Plaintiff,

v.

JOCELYN BENSON, in her official capacity as
the Michigan Secretary of State,

Defendant.

Civil Action No. 20-000225-MZ

HON. CYNTHIA STEPHENS

Marc F. (Thor) Hearne II, #P40231
True North Law, LLC
112 S. Hanley Road, Suite 200
St. Louis, MO 63015
314-296-4000

Marc E. Elias (DC #442007)*
Kevin Hamilton (WA # 15648)*
Uzoma N. Nkwonta (DC #975323)*
PERKINS COIE LLP
Attorneys for Proposed Intervenors
700 Thirteenth Street NW, Suite 800
Washington, DC 20005
(202) 654-6200

Scott R. Eldridge (P66552)
MILLER CANFIELD
One Michigan Avenue, Suite 900
Lansing, Michigan 48933 (USA)
1.517.483.4918
eldridge@millercanfield.com

**Pro hac vice motion forthcoming*

**[11/04/2020] MOTION OF DNC
TO INTERVENE AS PLAINTIFF**

DNC respectfully requests that it be permitted to intervene as Plaintiff in this matter under Michigan Court Rule 2.209.

In support, DNC relies on the attached brief. Attached as Exhibit A is DNC's Proposed Complaint-in-Intervention, in accordance with Michigan Court Rule 2.209(C)(2).

Due to the urgency of this case, DNC asks the Court to promptly issue its ruling on this Motion. If this Motion is granted, Intervening Plaintiff will file immediately with the Court a properly verified complaint.

Dated: November 4, 2020

Respectfully submitted,

s/ Scott Eldridge
Scott R. Eldridge (P66452)
MILLER CANFIELD
One Michigan Avenue, Suite 900
Lansing, Michigan 48933 (USA)
1.517.483.4918
eldridge@millercanfield.com

Marc E. Elias (DC #442007)*
Kevin Hamilton (WA# 15648)*
Uzoma N. Nkwonta (DC #975323)*
PERKINS COIE LLP
Attorneys for Proposed Intervenors
700 Thirteenth Street NW, Suite 800
Washington, DC 20005
Telephone: (202) 654-6200

**Pro hac vice motion forthcoming*

PROOF OF SERVICE

Scott Eldridge certifies that on the 4th day of November 2020, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via email.

s/ Scott Eldridge
Scott Eldridge

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

**IN THE STATE OF MICHIGAN
COURT OF CLAIMS**

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTERGREN,

Plaintiffs,

Democratic National Committee,

Intervening Plaintiff,

v.

JOCELYN BENSON, in her official capacity as
the Michigan Secretary of State,

Defendant.

Civil Action No. 20-000225-MM

HON. CYNTHIA STEPHENS

**[PROPOSED] VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

Intervenor-Plaintiff the Democratic National Committee (“DNC”) files this Verified Amended Complaint for Declaratory and Injunctive Relief against Defendant JOCELYN BENSON, in her official capacity as the Michigan Secretary of State, and allege as follows:

NATURE OF THE CASE

1. Donald J. Trump for President, Inc. and Eric Ostergren (the “Trump Plaintiffs”) filed this lawsuit to obstruct the counting process. In it, the Trump Plaintiffs ask the Court to stop the counting of all mail ballots and segregate those ballots that have already been cast. They do so based on specious claims that their rights to observe are being obstructed, devoid of factual allegations to support such claims.

2. The right to observe election day activity and exercises its attendant power to challenge voters is created and defined by statute. *Trump for President v Boockvar*, No. 20-cv-

966, 2020 WL 5997680, at *67 (“[T]here is no individual constitutional right to serve as a poll watcher.”) (WD Pa, Oct. 10, 2020); *Pennsylvania Democratic Party v Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *30 (Pa, Sept. 17, 2020) (same); *Republican Party of Pennsylvania v Cortes*, 218 F Supp 3d 396, 413–14 (ED Pa 2016) (similar); Opinion and Order, *Polasek-Savage v Benson*, No. 20-000217-MM (Mich Ct Cl Nov 3, 2020) (similar); Order, *Kraus v Cegavske*, No. 20 OC 00142 (Nev Dist Ct, Oct. 29, 2020) *motion to stay denied*, No. 82018 (Nev Sup Ct, Nov. 03, 2020) (denying mandamus because petitioners including Donald J. Trump for President and others failed to cite any constitutional provision, statute, rule, or case that supports ... request” for increased access to mail ballot processing and counting).

3. Michigan law allows registered voters in Michigan to serve as challengers. Challengers shall not make a challenge indiscriminately and without good cause. MCL § 168.727(3). A challenger may not “interfere with or unduly delay the work of the election inspectors.” *Id.* In fact, it is a misdemeanor to challenge “a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters.” *Id.* A challenge does not prevent a ballot from being counted. See Michigan Department of State Bureau of Elections, The Appointment, Rights and Duties of Election Challengers and Poll Watchers, at 10, https://www.michigan.gov/documents/SOS_ED_2_CHALLENGERS_77017_7.pdf.

4. Nevertheless through this action, the Trump Plaintiffs ask this Court to rewrite Michigan’s challenger laws, under the auspices of a claim for an equal protection violation under the Constitution. The Trump Plaintiffs’ claims are meritless. Moreover, should the Trump Plaintiffs be successful in using this action to obstruct the timely and lawful counting of ballots in Michigan or to otherwise slow the certification of the election in any way, it is the Intervening Plaintiff and its members, voters, and candidates with whom it affiliates whose equal protection

rights would be violated. Thus, for the reasons and those that follow, Intervening Plaintiff files this Complaint in Intervention to protect itself against irreparable constitutional injury in these proceedings.

JURISDICTION AND VENUE

5. The DNC brings this action under Article I, § 2 of the Michigan Constitution and MCR 2.605.

6. This Court has jurisdiction over the subject matter of this action pursuant to Michigan Compiled Laws § 600.6419.

7. This Court has personal jurisdiction over the Defendant Secretary of State Jocelyn Benson, who is sued in her official capacity only.

8. Venue is proper in the Court of Claims pursuant to Michigan Compiled Laws § 600.6419, because this is a constitutional and declaratory claim against the Secretary of State.

9. This Court has the authority to enter a declaratory judgment pursuant to Michigan Court Rule 2.605. It has authority to enter an injunction under the Michigan Constitution. *Sharp v City of Lansing*, 464 Mich 792 (2001).

PARTIES

10. Intervening Plaintiff DNC is the national party committee of the Democratic Party, as that term is defined by and used in 52 U.S.C. § 30101, dedicated to electing local, state, and national candidates of the Democratic Party to public office throughout the United States including in Michigan. The DNC has members and constituents across the State, including eligible voters who submitted absentee ballots in the November 3 election, and whose ballots have yet to be counted. The DNC also supports and affiliates with candidates whose electoral prospects, as well

as the Democratic Party's electoral prospects as well, stand to be harmed by the Trump Plaintiffs' baseless litigation.

11. Defendant JOCELYN BENSON is the Secretary of State of Michigan and is sued in her official capacity. Secretary Benson is Michigan's chief elections officer and, as such, has "supervisory control over local election officials in the performance of their duties." Mich. Comp. Laws § 168.21. In that role, she is specifically responsible for "[a]dvis[ing] and direct[ing] local election officials as to the proper methods of conducting elections." *Id.* § 168.31(1)(b). Secretary Benson is also tasked with overseeing voter registration, *e.g.*, *id.* §§ 168.496, 168.509o, including the automatic registration of voters who conduct business with her office to obtain a driver's license or state identification card. *Id.* § 168.493a. She, personally and through the conduct of her employees, officers, agents, and servants, acted under color of State law at all times relevant to this action.

CLAIMS FOR RELIEF

COUNT I

Michigan Const., Art. I, § 2 Denial of Equal Protection

12. The DNC realleges and incorporate by reference all prior and proceeding paragraphs, as though fully set forth herein.

13. The right to vote is a "fundamental political right . . . preservative of all rights," *Reynolds*, 377 U.S. at 562 (quoting *Yick Wo*, 118 U.S. at 370), that is protected by the Michigan Constitution. *In re Request for Advisory Op. Regarding Constitutionality of 2005 PA 71*, 479 Mich. at 35-36.

14. Article I, § 2 of the Michigan Constitution provides that "[n]o person shall be denied the equal protection of the laws."

15. Having adopted a system by which absentee voting is available to all voters, Michigan may not “by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Obama For Am v Husted*, 888 F Supp 2d 897, 910 (SD Ohio, 2012), *aff’d*, 697 F3d 423 (CA 6, 2012); *Bush v Gore*, 531 US 98, 104–05 (2000) (holding Equal Protection Clause applies to “the manner of [the] exercise [of voting]” and “once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another”).

16. All Michigan voters who cast lawful absentee ballots should have equal access to having their vote counted, which the Michigan Constitution provides.

17. The Trump Plaintiffs seek relief that would jeopardize this right. Segregating ballots treats some voters differently from others.

18. The State does not have even a legitimate, much less a compelling, interest in the disparate treatment of similarly situated voters. See *Obama for America*, 888 F Supp 3d 897, 910 (holding a state had no compelling interest in setting an in-person early voting deadline, which valued the rights of military voters over nonmilitary voters).

19. Any order by Defendant to stop the counting of ballot, as the Trump Plaintiffs demand, would amount to a violation of Michigan’s Equal Protection guarantee.

20. Absent relief, therefore, Michigan voters, including the DNC’s members, will be denied an equal opportunity to participate in Michigan’s elections.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

- (a) declaring that the counting of absentee ballots must continue;
- (b) declaring that any action by Defendant to stop the counting of ballots will result in a violation of Michigan’s Equal Protection Clause;

- (c) enjoining Defendant from issuing an order or instruction of any kind to stop the counting of ballots, as requested by the Trump Plaintiffs; and
- (b) granting such other and further relief as the Court deems just and proper.

Dated this 4th day of November, 2020.

Respectfully submitted,

/s/ Scott R. Eldridge

Scott R. Eldridge (P66452)

MILLER CANFIELD

One Michigan Avenue, Suite 900

Lansing, Michigan 48933 (USA)

1.517.483.4918

eldridge@millercanfield.com

Marc E. Elias (DC #442007)*

Kevin J. Hamilton (WA # 15648)*

Uzoma N. Nkwonta (DC #975323)*

PERKINS COIE LLP

Attorneys for Intervenors

700 Thirteenth Street NW, Suite 800

Washington, DC 20005

(202) 654-6200

Counsel for Plaintiffs

**Pro hac vice motion forthcoming*

VERIFICATION

“I declare under the penalties of perjury that this _____ has been examined by me and that its contents are true to the best of my information, knowledge, and belief.”

Date:

[name]