

STATE OF MICHIGAN  
COURT OF CLAIMS

ROBERT LaBRANT, ANDREW BRADWAY,  
NORAH MURPHY and WILLIAM NOWLING,

Plaintiffs,

No. 23-000137-MZ

v

HON. JAMES ROBERT REDFORD

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

Defendant.

\_\_\_\_\_/

Mark Brewer (P35661)  
Rowan Conybeare (P86571)  
Attorneys for Plaintiffs  
17000 West Ten Mile Road  
Southfield, Michigan 48075  
248.483.5000  
[mbrewer@goodmanacker.com](mailto:mbrewer@goodmanacker.com)

Ronald Fein (*pro hac vice*)  
Amira Mattar (*pro hac vice*)  
Courtney Hostetler (*pro hac vice*)  
John Bonifaz (*pro hac vice*)  
Ben Clements (*pro hac vice*)  
Attorneys for Plaintiffs  
1320 Centre Street, #405  
Newton, MA 02459  
617.244.0234

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendant Benson  
P.O. Box 30736  
Lansing, Michigan 48909  
517.335.7659  
[meingast@michigan.gov](mailto:meingast@michigan.gov)  
[grille@michigan.gov](mailto:grille@michigan.gov)

David A. Kallman (P34200)  
Stephen P. Kallman (P75622)  
Attorneys for Proposed Intervenor  
5600 W. Mount Hope Highway  
Lansing, Michigan 48917  
517.322.3207  
[dave@kallmanlegal.com](mailto:dave@kallmanlegal.com)  
[steve@kallmanlegal.com](mailto:steve@kallmanlegal.com)

\_\_\_\_\_/

**DEFENDANT SECRETARY OF STATE'S RESPONSE TO PROPOSED INTERVENOR  
DONALD TRUMP'S MOTION TO INTERVENE**

Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendant Benson  
PO Box 30736  
Lansing, Michigan 48909  
517.335.7659

Dated: October 23, 2023

**TABLE OF CONTENTS**

	<u>Page</u>
Index of Authorities .....	ii
Counter-Statement of Facts.....	1
Argument .....	2
I.    The Court of Claims’ exclusive and limited jurisdiction has been interpreted to preclude intervention by private parties as party defendants.....	2
A.    An intervening party is a party to the action.....	3
B.    The Court of Claims may only decide claims against the State. ....	4
C.    Precluding intervention as a defendant in this action does not appear to implicate due process concerns.....	5
Conclusion and Relief Requested .....	6

**INDEX OF AUTHORITIES**

	<u>Page</u>
<b>Cases</b>	
<i>Blue Cross &amp; Blue Shield of Michigan v Eaton Rapids Cmty Hosp</i> , 221 Mich App 301 (1997).....	3
<i>Bonner v City of Brighton</i> , 495 Mich 209 (2014).....	5
<i>Council of Organizations &amp; Others for Education about Parochiaid v State</i> , 321 Mich App 456 (2017).....	2, 4, 5
<i>Davis v Benson</i> , Court of Claims Case No. 23-000128.....	1
<i>Davis v Secretary of State</i> , 2023 WL 3027517 (Mich Ct App, April 20, 2023).....	5
<i>Estes v Titus</i> , 481 Mich 573 (2008).....	5
<i>Grand Rapids v Consumers Power Co</i> , 216 Mich 409 (1921).....	3
<i>Hill v LF Transp, Inc</i> , 277 Mich App 500 (2008).....	3
<i>In re Credit Acceptance Corp</i> , 273 Mich App 594 (2007).....	3
<i>Michigan Alliance for Retired Americans v Secretary of State</i> , 506 Mich 915 (2020).....	2, 3
<i>Okrie v State of Michigan</i> , 306 Mich App 445 (2014).....	5
<b>Statutes</b>	
MCL 600.6419(1)(a).....	4
MCL 600.6419(7).....	4
MCL 600.6422.....	4
<b>Rules</b>	
MCR 2.209(A).....	3
MCR 7.215(C)(2).....	2
MRPC 3.3(a)(2).....	3

## COUNTER-STATEMENT OF FACTS

On September 29, 2023, Plaintiffs Robert LaBrant, Andrew Bradway, Noah Murphy, and William Nowling filed the instant complaint against Defendant Secretary of State Jocelyn Benson. In Count I of their complaint, Plaintiffs request that the Court enter a declaratory judgment declaring that former President Donald Trump is ineligible to be placed on Michigan's presidential primary or general election ballot because he is disqualified under § 3 of the Fourteenth Amendment. (Comp, ¶¶ 316-319.) In Count II, Plaintiffs request that the Court enjoin the Secretary from placing Mr. Trump on Michigan's presidential or general election ballots. (*Id.*, ¶¶ 320-322.)

A similar case was filed by Robert Davis on September 15, 2023. See *Davis v Benson*, Court of Claims Case No. 23-000128.

On October 9, 2023, this Court entered an expedited scheduling order in both cases. The Court stated that it was expediting the instant case along with the *Davis* case, No. 23-00028-MZ.

In response to Plaintiffs' complaint and pursuant to the scheduling order, on October 16, 2023, Defendant Benson filed an answer and memorandum of law addressing the specific questions raised by the Court in its scheduling order.

The same day, Mr. Trump filed a motion to intervene in this matter and a proposed motion for summary disposition. Previously, counsel for Mr. Trump sought the Secretary's concurrence in the motion to intervene. The undersigned counsel responded that they could not concur in the motion due to precedent limiting the Court of Claims' jurisdiction. (Ex 1, email.) Counsel for LaBrant, however, ultimately concurred in the motion.

On October 18, 2023, this Court entered a second scheduling order, specifying that responses to the motion to intervene are due October 23, 2023.

## ARGUMENT

### **I. The Court of Claims' exclusive and limited jurisdiction has been interpreted to preclude intervention by private parties as party defendants.**

The Secretary previously explained in her memorandum of law that she has no authority to determine whether the Fourteenth Amendment applies to disqualify the former President from appearing on Michigan's presidential primary or general election ballot. As a result, she has no official position as to that issue or the related constitutional questions. Nor does she necessarily have any personal objection to Mr. Trump's participation in this litigation. Nevertheless, Michigan law currently prohibits his intervention as a defendant in this proceeding.

In *Council of Organizations & Others for Education about Parochiaid v State*, the Court of Appeals concluded that private parties could not intervene as co-defendants in the Court of Claims because that court does not have subject-matter jurisdiction to resolve the rights of private parties. 321 Mich App 456, 465-467 (2017). In 2020, the Michigan Supreme Court asked the parties in a case before it whether *Council of Organizations* should be overruled. See *Michigan Alliance for Retired Americans v Secretary of State*, 506 Mich 915 (2020). Because the question of intervention in this Court raises institutional concerns, the Secretary filed a brief in support of the decision in *Council of Organizations* in that case. Ultimately, the Michigan Supreme Court declined to review the question. See 506 Mich 1023 (2020).

The Secretary finds herself in a similar position here. Mr. Trump has an interest in the subject matter and outcome of this proceeding as it concerns whether he may appear as candidate for President on Michigan's presidential primary or general election ballots. And his concerns regarding the adequacy of representation are not without merit as the Secretary will not be advocating one way or the other regarding the application of the Fourteenth Amendment to Mr. Trump in this case. (See Benson, 10/16/23 Memorandum of Law.) Regardless, the *Council of*

*Organizations* case is binding precedent. MCR 7.215(C)(2). And where counsel for Mr. Trump did not cite that case in his filing, the Secretary and her counsel, as attorneys, are obligated to bring that decision to the Court’s attention. See MRPC 3.3(a)(2). Further, his motion to intervene raises the same institutional concerns the Secretary previously voiced in the *Michigan Alliance for Retired Americans* case. For these reasons, the Secretary submits the instant response.

**A. An intervening party is a party to the action.**

As an initial matter, the effect of intervention in a case must be considered. Once permitted to intervene, whether by right or permission, MCR 2.209(A)-(B), the intervenor becomes a party to the action and is bound by any judgment. *Blue Cross & Blue Shield of Michigan v Eaton Rapids Cmty Hosp*, 221 Mich App 301, 307 (1997), citing *Grand Rapids v Consumers Power Co*, 216 Mich 409, 415 (1921). See also *Hill v LF Transp, Inc*, 277 Mich App 500, 508 (2008) (Intervention is “an action where a third party becomes a party in a suit that is pending between others.”) Thus, unless otherwise limited, it appears an intervenor can contest on the merits of the action, raise questions or defenses that are either personal or necessary to the intervenor, and file a counterclaim or cross-claim, and they may also seek to bring in additional parties, just as any other party might under the court rules. The exercise of these rights are subject to the discretion of the trial court, but MCR 2.209 nevertheless places no limits on an intervenor’s participation in the case after a grant of intervention. See *In re Credit Acceptance Corp*, 273 Mich App 594, 601 (2007) (“a court has inherent powers to manage its own affairs so as to achieve the orderly and expeditious disposition of cases”).

**B. The Court of Claims may only decide claims against the State.**

Turning to the jurisdiction of this Court, MCL 600.6419 expressly provides that its jurisdiction is “exclusive” as to claims against the “state” and its “officers.” See MCL 600.6419(1)(a)-(b), MCL 600.6419(7). Under § 6419, this Court’s jurisdiction is a two-way street: a claimant must bring claims against the State in the Court of Claims, unless an exception applies, and the State may bring any claim it has against the claimant by way of a counterclaim.

An intervening party comes into an action to vindicate its own rights or interests. While those rights or interests may be similar to that of a named party, they are nonetheless the intervenor’s rights to advance as a party to the case. Thus, an intervening defendant seeks to protect or defend its interests in relation to the claims brought by the plaintiff in the case. So, as in any other case, a party seeking to intervene as a defendant in the Court of Claims would be seeking to protect or advance *its own* rights and interests against the claimant. And if the intervening defendant is a private party or nonstate actor, see § 6419(7), the intervenor would be seeking through intervention an adjudication of the rights and interests between a nonstate actor defendant and the claimant in the Court of Claims. Thus, if a nonstate actor was permitted to intervene as a defendant in the Court of Claims, private party plaintiffs and private party defendants could litigate claims in that court. That result is contrary to § 6419 as interpreted by the Court of Appeals in *Council of Organizations*.

As the Court of Appeals recognized there, under the plain language of § 6419(1), subject-matter jurisdiction in the Court of Claims is limited to hearing and determining claims against the State and any counterclaims the State may have against the claimant. 321 Mich App at 466-468. Thus, the Court of Claims does not have jurisdiction to resolve claims between private parties. *Id.* The question then is whether intervention under MCR 2.209, which would generally apply to the Court of Claims, see MCL 600.6422, permits a private party to circumvent the Court

of Claims’ limited and exclusive jurisdiction.<sup>1</sup> The Court of Appeals, relying on Michigan Supreme Court precedent, concluded that it does not. *Council of Organizations*, 321 Mich App at 467-468, citing *Estes v Titus*, 481 Mich 573 (2008).

As noted above, *Council of Organizations* remains binding precedent, and counsel for Mr. Trump present no specific argument arguing for its modification or reversal. The Secretary recognizes the importance of the matters raised in this proceeding. But the importance of a case does not provide a basis for disregarding established law. Further, prohibiting private parties from intervening as defendants in the Court of Claims is consistent with the purpose of this Court, which was to provide an exclusive state-court forum to resolve claims against the State. *Okrie v State of Michigan*, 306 Mich App 445, 448-449 (2014) (providing short history of the court of claims).

**C. Precluding intervention as a defendant in this action does not appear to implicate due process concerns.**

The brief in support of intervention asserts that intervention is warranted where Mr. Trump’s due process rights are implicated. (Trump, Mot & Brf Intervene, pp 4-5), citing and quoting *Bonner v City of Brighton*, 495 Mich 209, 235 (2014).) But it is unclear why intervention as a defendant in this case is the only “process” that would suffice to protect any constitutional rights affected by this proceeding. For example, it is not uncommon for private parties to file their own parallel action against the State in the Court of Claims and have that case consolidated with the original proceeding in light of the bar against intervention. See, e.g, *Davis v Secretary of State*, 2023 WL 3027517 at \* 4, n 8 (Mich Ct App, April 20, 2023) (noting

---

<sup>1</sup> MCR 2.209 otherwise provides a vehicle in Court of Claims actions for other State actors to intervene.



judicial candidates filed parallel proceedings).<sup>2</sup> Thus, to the extent Mr. Trump’s due process rights are implicated, they appear redressable through means other than intervention in this case.

**CONCLUSION AND RELIEF REQUESTED**

For the reasons stated above, the decision in *Council of Organizations & Others for Education about Parochial v State*, 321 Mich App 456 (2017) binds this Court and the parties and thus compels the denial of the Proposed Intervenor’s motion to intervene in this case.

Respectfully submitted,

/s/Heather S. Meingast  
Heather S. Meingast (P55439)  
Erik A. Grill (P64713)  
Assistant Attorneys General  
Attorneys for Defendant Benson  
PO Box 30736  
Lansing, Michigan 48909  
517.335.7659

Dated: October 23, 2023

**PROOF OF SERVICE**

Heather S. Meingast certifies that on October 23, 2023, she served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

/s/Heather S. Meingast  
Heather S. Meingast

---

<sup>2</sup> There are likely additional vehicles for Mr. Trump to address his concerns, the Secretary simply notes one possibility.