

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs,

-vs-

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

Defendant,

and

DONALD J. TRUMP,

Proposed-Intervenor.

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PROPOSED-INTERVENOR'S MOTION
TO INTERVENE, BRIEF IN SUPPORT,
AND PROOF OF SERVICE

FILE NO.: 23-000137-MZ

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PROPOSED-INTERVENOR’S MOTION TO INTERVENE

NOW COMES the Proposed-Intervenor, Donald J. Trump (“President Trump”), by his undersigned legal counsel, bringing this Motion to Intervene pursuant to MCR 2.209, and in support of the motion, states the following:

1. Plaintiffs are residents and registered voters in Michigan intending to vote in the 2024 presidential primary and general elections.
2. Defendant is Jocelyn Benson, named in her official capacity as Secretary of State for her role in administering elections in the State of Michigan which includes causing the name of a presidential candidate to be printed on election ballots.
3. Proposed-Intervenor, President Trump, seeks to uphold his constitutional right to have his name placed on the Michigan presidential primary and general election ballots for the 2024 election.
4. In their complaint, Plaintiffs seek declaratory relief that President Trump is “disqualified, by section 3 of the Fourteenth Amendment, is ineligible to appear on the presidential primary or general election ballot and has no legal right to appear on the ballot.” LaBrant Compl. at 319, 321. Plaintiffs also seeks “permanent injunctive relief

preventing the Secretary [of State] from placing Trump on 2024 presidential primary or general election ballots.” LaBrant Compl. at 322.

5. By this motion, the Proposed-Intervenor requests he be allowed to intervene in this action as Intervening Party so that he may be afforded reasonable opportunity to present his arguments in opposition of Plaintiffs’ claims in order to protect his interests in this matter, and that he be added as an Intervening Party pursuant to MCR 2.209.
6. To ensure that he has a sufficient opportunity for meaningful and helpful participation, the Proposed-Intervenor also requests that he be granted an opportunity to present oral arguments before your Honor.
7. Proposed-Intervenor sought concurrence for his motion pursuant to Local Rule 2.119(A)(2) on October 16, 2023. Defendant did not concur, and Proposed-Intervenor is awaiting a response from Plaintiffs, thus necessitating this motion.
8. Donald J. Trump hereby requests that his Motion to Intervene be granted for all the reasons as stated in the attached Brief in Support which are incorporated herein in full.

WHEREFORE, Proposed-Intervenor respectfully requests that this Honorable Court grant his Motion to Intervene, and grant all other relief as the Court deems just and appropriate.

KALLMAN LEGAL GROUP, PLLC

DATED: October 16, 2023.

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Attorney for Proposed-Intervenor,
Donald J. Trump

DATED: October 16, 2023.

/s/ Stephen P. Kallman
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/s/ Michael Columbo
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/s/ Zachary Kramer
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BRIEF IN SUPPORT

A. Jurisdiction.

While the Court of Claims is a Court of limited jurisdiction pursuant to MCL 600.6419, Donald J. Trump (“President Trump”) must be permitted to intervene in this matter to protect his interests and constitutional rights as outlined below and in the companion Motion for Summary Disposition (which is fully incorporated herein). Permitting this matter to proceed without allowing President Trump to be a party could deprive him of the typical rights of a party, such as the ability to file motions or an appeal.

Donald J. Trump’s name is mentioned 354 times in the complaint including three times in the prayer for relief. This entire matter is about President Trump, his alleged statements, and his alleged political activities. To adjudicate the effect of Donald J. Trump’s speech and his ability to be on the ballot without President Trump being a party would violate his constitutional rights,

including, but not limited to, his First Amendment free speech rights¹ and his Due Process rights. US Const, am I and XIV. These constitutional interests would override any statutory limitations.

The Michigan Supreme Court held that “due process requires-at a minimum-that a person whose interests might be affected by government action be given notice and a meaningful opportunity to be heard before the government acts. *Bonner v City of Brighton*, 495 Mich 209, 235; 848 NW2d 380 (2014). “Additional[] requirements may be necessary depending on three considerations: the private interest that will be affected, the risk of erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards.” *Id.*

In order to preserve President Trump’s rights and objections for a possible appeal or federal court action, he is requesting to intervene in this matter.

B. President Trump Is Entitled to Intervene as of Right.

The Prospective Intervening Party has a right to intervene in this action pursuant to MCR 2.209(A)(3), which permits a party’s right to timely intervene as follows:

“when the applicant claims an interest relating to the ... transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

Put simply, MCR 2.209(A)(3) “allows an intervention of right in cases in which the intervenor's interests are not adequately represented by the parties.” *Estes v Titus*, 481 Mich 573, 583; 751 NW2d 493 (2008). “[A] person may intervene by right in an action on timely application when that person asserts an interest in the subject of the action ‘and is so situated that the

¹ For further analysis of Donald J. Trump’s First Amendment rights, see Proposed-Intervenor’s companion Motion for Summary Disposition, which is fully incorporated herein.

disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” *Kuhlgert v Mich State Univ*, 328 Mich App 357, 378; 937 NW2d 716 (2019). The “rule should be liberally construed to allow intervention when the applicant’s interest otherwise may be inadequately represented.” *Auto-Owners Ins Co v Keizer-Morris, Inc*, 284 Mich App 610, 612 (2009) (citing *Precision Pipe & Supply Inc v Meram Constr Inc*, 195 Mich App 153, 156 (1992)).

1. President Trump’s motion to intervene is timely.

A motion is timely if it is “asserted within a reasonable time,” an inherently contextual standard. *D’Agostini v City of Roseville*, 396 Mich 185, 188 (1976); see also *Cameron v EMW Women’s Surgical Ctr, PSC*, 142 S Ct 1002, 1012 (2022) (timeliness under federal intervention rules “is to be determined from all the circumstances”).² Although Michigan courts have not enumerated the specific factors that should be analyzed in determining timeliness, courts have generally found that “a right to intervene should be asserted within a reasonable time.” *D’Agostini*, 396 Mich at 188. First, this motion is timely. Plaintiffs sued on September 29, 2023 and this motion is being filed just seventeen (17) days later, before any issues have been decided or any procedural Rubicons have been crossed. There has been very little activity in the case, and Trump’s intervention will not prejudice any party.

President Trump’s motion to intervene in this case is timely. This motion is being made in a matter of days since becoming aware of this litigation. Therefore, President Trump’s motion is timely and will not impact or delay future proceedings.

2. President Trump has a sufficient interest affected by the disposition of this case.

² “Because of the similarity of the state and Federal provisions,” the Michigan Supreme Court “deem[s] it proper to look to the Federal courts for guidance” in applying the intervention rules. *D’Agostini v City of Roseville*, 396 Mich 185, 188 (1976).

President Trump has a sufficient interest in this case, and “the disposition of the action may as a practical matter impair or impede [his] ability to protect [his] interest.” *Precision Pipe & Supply*, 195 Mich App at 156 quoting MCR 2.209(A)(3).

President Trump is the frontrunner for the Republican nomination and has an overwhelming interest in defending constitutional challenges to his eligibility to appear on election ballots. And no party has a greater interest in ensuring Secretary Benson places his name on the ballots in Michigan than President Trump. Donald J. Trump has also exercised his First Amendment rights to freedom of association and speech and Fourteenth Amendment Due Process rights under the United States Constitution to campaign for the right to be on the primary and general election ballots in 2024. He has a strong interest in securing his access to those ballots and in clarifying the state of the law on Section Three of the Fourteenth Amendment and whether it is constitutional for a Secretary of State to interpret the same and cause for a candidate to remain off the election ballots.

At the Constitutional Convention of 1787, James Madison observed that “[t]he qualifications of electors and elected were fundamental articles in a Republican Govt, and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect.”³

States have “a less important interest in regulating Presidential elections than statewide or local elections, because the outcome of the former will be largely determined by voters beyond the State’s boundaries.” *Anderson v Celebrezze*, 460 US 780, 795 (1983). Plaintiff’s request that this

³ *The Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia in 1787*, as reported by James Madison, Revised and arranged by Jonathan Elliot, (1876) Vol. V., p. 404

Court declare that Donald J. Trump is disqualified from holding the office of President of the United States and enjoin the Secretary of State from including Donald J. Trump on the ballot in Michigan. Plaintiff's request will have an effect on voters beyond Michigan's boundaries. Plaintiff's request is not targeted at "protect[ing] the integrity and reliability of the electoral process itself." *Id.* at 788, n 9. It does not ensure that "some sort of order, rather than chaos" accompanies the election. *Cook v Gralike*, 531 US 510, 524 (2001). And it does not require some minimum level of support before a presidential candidate can be put on the ballot. *Anderson*, 460 US at 788, n 9. Plaintiffs' requested relief is therefore improper, and President Trump has a sufficient interest in this matter to intervene.

3. President Trump's interests are not represented by any existing party.

There is no other party in this matter who can adequately represent Donald J. Trump's interests because the sole defendant is a state official who does not share his personal interest in ensuring he gains lawful access to the primary and general election ballots in 2024. For the sake of completeness, none of the Plaintiffs will adequately represent President Trump's interests. "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Hill v LF Transp, Inc*, 277 Mich App 500, 508; 746 NW2d 118 (2008) (emphasis added and citations omitted).

A party seeking intervention isn't required to definitively prove that its interests are inadequately represented. Instead, "the concern of inadequate representation of interests need only exist." *Vestevich v W Bloomfield Twp*, 245 Mich App 759, 761-762; 630 NW2d 646 (2001). "[T]here need be no positive showing that the existing representation is in fact inadequate. All that is required is that the representation by existing parties may be inadequate." *Mullinix v City of Pontiac*, 16 Mich App 110, 115; 167 NW2d 856 (1969); *Kamp v Cannon Twp*, 115 Mich App 726,

731-732; 321 NW2d 690 (1982) (citations omitted) (“The proposed intervenors satisfied the second requirement by establishing that their representation is or may be inadequate.”) The possibly-inadequate-representation rule “is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.” *D'Agostini v City of Roseville*, 396 Mich 185, 188-189; 240 NW2d 252 (1976), quoting *Trbovich v United Mine Workers of Am*, 404 US 528, 538 n 10; 92 S Ct 603; 30 L Ed 2d 686 (1972).

The interests of the Secretary of State are clearly different from that of President Trump. Here, President Trump’s interests are in the maintenance of his own rights and that of the American people who wish to see him on the ballot for the upcoming elections. In the wake of political persecution through various prosecutions by multiple state actors, Secretary Benson, an active member of the opposing major political party, has publicly weighed in with her views on Trump and her fear of a repeat of the 2020 election. In fact, her many public comments demonstrate her extreme and incurable bias against President Trump. For instance,

- During an interview with Cynthia McFadden of NBC News, Jocelyn Benson said, “Even **the president himself had called on me to be arrested and tried for treason, potentially executed.**”⁴
- During an interview with Erik Meers, founder of uPolitics, Jocelyn Benson said:

“There’s kind of a good side and a bad side to the impact of having a **former president spread lies about not just our election administration and procedures, but those who administer them like myself.** [...] All of that said, of course, **his attacks** and those of his most ardent followers, has created this strain on our work. Whether it’s actual violence, or threats of violence, or harassment and requests for duplicative meaningless information, a lot of the misinformation has metastasized [...] and **until there’s real accountability for those who are spreading these lies, from the former president** on down, we’re going to continue to see these

⁴ *Transcript: The ReidOut*, NBC NEWS (May 19, 2022, 7:00 PM EST), <https://www.msnbc.com/transcripts/reidout/transcript-reidout-5-19-22-n1295603>

tactics...”⁵

- In response to Oliver Darcy’s January 25, 2023 article, *Meta says it won’t punish Trump for attacking the 2020 election results. But the 2024 vote is a different story*, Jocelyn Benson tweeted, “@Meta: **Trump’s baseless, false attacks on the 2020 election** still generate **harassment & violent threats aimed at election officials** across the country, on both sides of the aisle. Your decision will lead to more harm aimed at us & our families.”⁶
- In a tweet referring to Donald J. Trump, Jocelyn Benson said, “Pledging to pardon individuals convicted of using violence, force and threats to overturn the results of a legitimate presidential election shows **you have no respect for the rule of law** or the will of the people.”⁷
- In linking to a Washington Post article about Trump and his advisors titled *Justice Dept. asking about 2020 fraud claims as well as fake electors*, Jocelyn Benson tweeted, “I know for years how many have rightfully demanded accountability for **those who abused and misused the legal system** to overturn a legitimate presidential election. And while the moral arc of the universe may be long ... it bends towards justice.”⁸
- During an interview with MSNBC’s Nicolle Wallace, Jocelyn Benson had this exchange:

WALLACE: “Certainly the evidence developed by the Select Committee leaves nothing to the imagination—**this was a Trump-directed coup** [...] The legal architecture was fleshed out by John Eastman. And **they knew it was both illegal and it violated the Electoral Count Act and unconstitutional** [...] Do you, from where you’re sitting, have any doubt that the evidence, if Jack Smith wishes to pursue it, **will take this plot all the way to Trump’s doorstep?**”

BENSON: “I think the evidence certainly shows **a direct line between the former president**, the phone calls, the pressure that he himself we know exerted on everyone from lawmakers in the State of Michigan, to local county certification boards. So, the line is there. Of course, the public speeches that you just showed earlier as well demonstrate that. So, **I think his involvement is clear**, and every drop of new evidence that emerges in the public arena only

⁵ Erik Meers, *Mich. Sec. of State Jocelyn Benson Pt. 2: Fighting Trump’s Election Lies*, UPOLITICS (Oct. 25, 2022), <https://www.youtube.com/watch?v=dk07z4YwIBo>

⁶ Jocelyn Benson (@JocelynBenson), Twitter (Jan. 26, 2023, 7:44 AM), <https://twitter.com/JocelynBenson/status/1618590577217441795>

⁷ Jocelyn Benson (@JocelynBenson), Twitter (May 25, 2023, 7:09 PM), <https://twitter.com/JocelynBenson/status/1661872120521998337>

⁸ Jocelyn Benson (@JocelynBenson), Twitter (Jul. 6, 2023, 11:26 AM), <https://twitter.com/JocelynBenson/status/1676975791517646849>

underscores that."⁹

- While interviewed by Victor Shi and Jill Wine-Banks on the “iGen Politics” podcast, Jocelyn Benson had the following exchange:

SHI: “We come here [...] less than a week after your State's Attorney General, Dana Wessel, issue indictments against 16 fake electors from 2020. Tell us more about what they're charged with and just how significant this is for our accountability nationwide.”

BENSON: “Yeah it's really a big deal [...] These felony charges that were filed against 16 individuals who allegedly, knowingly sought to defraud the government, the state and federal government, through submitting fake electoral vote certificates, with the goal of undoing the actual legitimate elector certificates, and having their fake elector certificates submitted to Congress on, what was January 6th, 2021. So, it was part of really, a national coordinated effort, to undo the will of the people simply because they, and others in their political party, as well as the **former president** were unhappy with the outcome of the election. So, as we now begin to enter the 2024 cycle it's really important that we see accountability and justice **for those who were part of this nationally coordinated effort** and this actionable plan to subvert the will of the people in the last presidential election because **if we don't see these types of charges brought and indictments** and accountability and in the legal process **then we have to prepare especially those of us as election administrators for a repeat of these actions again.**”

WINE-BANKS: “How high up do you think the fraud goes? [...] Do you know of any evidence that would link it [...] directly to [...] **the former president?**”

BENSON: “Yeah, I mean there have been some publicly disclosed pieces of evidence, voicemails from the **Trump** campaign to state officials and the like, we know there were meetings, we know Rudy Giuliani himself was in the state of Michigan a few days before the electors officially met, and testified before a sham legislative hearing about-with false claims of election fraud [...] I have a lot of confidence in the investigators in our state to get to the bottom of, and make all the connections, and I'm grateful that folks at the federal level are looking at this too because they could make those similar connections. But I do think to me, **it's important to seek**

⁹ *Deadline: White House*, MSNBC (Jul. 13, 2023, 4:10 PM EST), <https://www.rawstory.com/direct-line-evidence-trump/>

full accountability, but not just put this on the shoulders of one person, the **former president**. We know certainly, **he was a central piece** to a lot of different things, and **hence the indictments** that you see pre and post this moment, percolating. But that said, there were a number of other it would seem co-conspirators at every level, and I think when we talk about accountability, we have to see full accountability for everyone who was involved, in **this really unprecedented, un-American scheme to overturn a presidential election, because** a small group of people, including **the former president**, were unhappy with the results.”

WINE-BANKS: “**The big lie continues repeatedly having not just Trump but all of his acolytes** saying the election was stolen [...] It also seems to me that there was a **targeted effort in Michigan** in certain counties and that those counties were **counties with heavy minority populations**. Is that a correct interpretation of where the targeting was?”

BENSON: “Yeah. Sure [...] It was the urban center where communities of color were concentrated where you saw initially the attempts to call out fraud, you know, falsely were targeted. Again, **when you don’t have any evidence of fraud then [...] go towards the minority communities and start using racism to sow seeds of doubt**. Which was clearly the strategy and then they began picking apart other things.”¹⁰

- In an X (formerly Twitter) post after Trump and his allies were indicted for the events on January 6, 2020, Jocelyn Benson said, “Feeling vindicated. Grateful for the rule of law and those who enforce it.”¹¹
- In an X post on August 3, 2023, Jocelyn Benson said, “**Trump** allegedly led a national scheme to overturn the results of a legitimate presidential election. But his plot would only succeed with willing co-conspirators in the states. That’s why the state charges against those in Michigan who signed fake electoral votes are so critical.”¹²
- Again, on August, 3, 2023, Jocelyn Benson went on X to post, “If ‘I’m being arrested for you’ is Trump-speak for ‘I’m being arrested for trying to nullify millions of your votes’ then yeah, I guess that tracks.”¹³

¹⁰ Victor Shi and Jill Wine-Banks, *Defending Democracy with Jocelyn Benson*, IGEN POLITICS (Jul. 25, 2023), <https://www.youtube.com/watch?v=EYvbK51VMmk>

¹¹ Jocelyn Benson (@JocelynBenson), Twitter (Aug. 2, 2023, 8:49 AM), <https://twitter.com/JocelynBenson/status/1686720760570605569>

¹² Jocelyn Benson (@JocelynBenson), Twitter (Aug. 3, 2023, 9:57 AM), <https://twitter.com/JocelynBenson/status/1687100474552688642>

¹³ Jocelyn Benson (@JocelynBenson), Twitter (Aug. 3, 2023, 4:11 PM),

It is clear there is a real possibility Secretary Benson will undermine President Trump's interests in this action. Her inherent views and posture, and desire to avoid a feared repeat of the inconveniences she had to endure because of challenges made in the 2020 election will certainly keep her from advocating for President Trump's interests, namely that he appear on the ballots. Her mind is already made up.

Based on the above, President Trump more than satisfies this "minimal" burden and he "certainly has an interest in defending" against lawsuits seeking to stop him from appearing on the primary and general election ballots in Michigan. Therefore, President Trump should not be forced to trust and hope that Defendant will adequately represent his interests.

C. President Trump Also Meets the Standard for Permissive Intervention.

In addition to being entitled to intervene as of right, President Trump also meets the standard for permissive intervention. Such intervention is appropriate when: (1) the application is timely; (2) the applicant's claim or defense has a common question of law or fact with the main action; and (3) there will be no prejudice or delay to the original parties. See *Dean v Dep't of Corrections*, 208 Mich App 144, 150 (1994) citing MCR 2.209(B). These elements have been satisfied.

First, President Trump's motion is timely as explained above. Second, President Trump's claims and defenses surround the common question of law related to his First Amendment rights to freedom of association and speech and Fourteenth Amendment Due Process rights to campaign to be on the Michigan primary and general election ballots in 2024—the very rights being threatened by the relief sought by Plaintiffs. Finally, President Trump's intervention will not result

<https://twitter.com/JocelynBenson/status/1687194481773125632>

in any prejudice or delay. President Trump moved to intervene promptly after Plaintiffs filed their complaint. As with intervention as of right, President Trump readily meets the requirements for permissive intervention.

CONCLUSION

Donald J. Trump’s name is mentioned 354 times in Plaintiffs’ complaint and three of those times in Plaintiffs’ prayer for relief. Nonetheless, Plaintiffs failed to name him as a Defendant or as an interested party to the litigation. If this Court were to grant Plaintiffs’ relief, it would impede President Trump’s ability to protect his interest. For all the reasons stated above, Proposed-Intervenor, Donald J. Trump, respectfully requests that his Motion to Intervene be granted.

Respectfully submitted,

KALLMAN LEGAL GROUP, PLLC

DATED: October 16, 2023.

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DATED: October 16, 2023.

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/s/ Zachary Kramer

Zachary Kramer

Attorney for Proposed-Intervenor,
Donald J. Trump

PROOF OF SERVICE

David A. Kallman, hereby states and affirms that on the 16th day of October, 2023, he did serve a copy of Proposed-Intervenor's Motion to Intervene, with Brief in Support, upon Plaintiffs' and Defendant's counsel listed above via MiFile.

DATED: October 16, 2023.

/s/ David A. Kallman

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