

STATE OF MICHIGAN
IN THE SUPREME COURT

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

Supreme Court No. 166470

Court of Appeals No. 368628

Plaintiffs-Appellants,

Court of Claims No. 23-000137-MZ

v

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

Defendant-Appellee,
and

DONALD J. TRUMP,

Intervening Defendant-Appellee.

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other state governmental action is invalid.

**DEFENDANT-APPELLEE SECRETARY OF STATE JOCELYN BENSON'S
RESPONSE TO PLAINTIFFS-APPELLANTS' MOTION FOR IMMEDIATE
CONSIDERATION**

Defendant-Appellee Secretary of State Jocelyn Benson does not oppose Plaintiffs-Appellants' motion for immediate consideration of their application for leave to appeal to this Court. The Secretary, however, wishes to apprise this Court of the very imminent election deadlines associated with conducting the February 27, 2024, presidential primary election.

Michigan's 83 Boards of County Election Commissioners are responsible for preparing and printing ballots for the election. MCL 168.689. The ballot preparation process began after the Secretary and the Republican and Democratic parties identified candidates for the primary on November 14 and 15, 2023,

pursuant to MCR 168.614a(1)-(2), and the time for withdrawal elapsed on December 8, 2023. See MCL 168.615a(1). Beginning this preparatory work ensures county clerks will meet the statutory deadlines set forth below for sending proof copies of ballots to candidates, obtaining the Secretary of State's approval of proof ballots, and printing and delivering ballots for timely issuance to absent voters, especially those in the military or residing overseas.

The Boards of County Election Commissioners prepare the format of the ballot in accordance with uniform standards governing ballot design, ballot headings and instructions, arrangement and titles of offices, order of candidates' names, rotation of candidates' names on the nonpartisan section of the ballot, presentation of ballot proposals, paper and ink specifications, and other procedures to ensure uniformity. MCL 168.568, 168.706, 168.697.

Every county produces multiple ballot styles for the election, often numbering in the dozens or even hundreds per county, based on the geographic boundaries of the various electoral districts and precincts, and elective offices that will appear on the ballot.

Prior to printing, the Boards of County Election Commissioners are required to submit proof copies of each ballot style used in their respective counties to the Secretary of State and each candidate whose name appears on the ballot. MCL 168.711. Candidates are allotted two business days in which to review the proof ballots and notify the Board of County Election Commissioners of any corrections. *Id.* In addition, the Secretary of State reviews ballot proofs for errors and if

necessary, may require corrections. *Id.* Corrected ballot proofs must also be submitted for approval by the Secretary of State. *Id.* After the Secretary of State's review is complete and the two-business day period for candidate review elapses, ballot printing may commence.

Absent voter ballots must be available no later than the 45th day before the February 27, 2024 election, or by January 13, 2024. This deadline for distribution of absent voter ballots is governed by the Federal Military and Overseas Voters Empowerment Act (MOVE Act), 52 USC 20302(a)(8), Michigan Election Law, MCL 168.714 and 759a, and Michigan's Constitution, art 2 § 4. County clerks must also deliver absent voter ballots for the election to local clerks by January 13, 2024, MCL 168.714, so local clerks can start delivering absent voter ballots by the 40th day before the election. Const 1963, art 2, § 4.

In order to meet the January 13 deadline to deliver MOVE ballots, counties must begin the printing process well in advance. For this election, the counties will need at least 14 days to print ballots so they can be timely delivered to local clerks and voters. Further, the Bureau of Elections has been notified that some counties intend to commence the ballot printing process during the week of December 25, 2023.

For these reasons, a final decision from this Court regarding whether former President Donald Trump will remain a candidate on the presidential primary election ballot must be had no later than December 29, 2023, in order to ensure an orderly election process.

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: December 20, 2023

PROOF OF SERVICE

Heather S. Meingast certifies that on December 20, 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

RECEIVED by MSC 12/20/2023 4:56:34 PM