

IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
Letica, Anica, Riordan, Michael J., and Cameron, Thomas C.

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

SUPREME COURT DOCKET NO. 166470

Plaintiffs/Appellants,

COURT OF APPEALS DOCKET NO. 368628

v

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

COURT OF CLAIMS
CASE NO. 23-000137-MZ
HON. JAMES ROBERT REDFORD

Defendant/Appellee,

-and-

DONALD J. TRUMP,

Intervening Appellee.

**Intervening Appellee Donald J. Trump's Response to
Plaintiffs-Appellants' Motion for Immediate and Expedited Consideration of
Emergency Application for Leave to Appeal**

*****REQUESTING FINAL DECISION BY DECEMBER 27, 2023****

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Introduction

Plaintiffs-Appellants Robert LaBrant, et al. (“Plaintiffs”) filed the underlying suit to exclude Intervening Appellee Donald J. Trump (“President Trump”) from appearing on the ballot for Michigan’s February 27, 2024 presidential primary election. The trial court rejected their claims and the Court of Appeals affirmed that ruling on December 14, 2023, the Court of Appeals affirmed.¹

On December 19, 2023, Plaintiffs filed their Emergency Application for Leave to Appeal along with their Motion for Immediate and Expedited Consideration without waiving oral argument. But, although Plaintiffs’ motion says “time is of the essence in this election case,” it doesn’t suggest a date for a decision. However, in their ALA, Plaintiffs ask this Court to render a

¹ *Davis v Wayne County Election Commission and LaBrant v Secretary of State*, ___ Mich App ___ (2023) (COA Docket Nos. 368615 and 368628) (consolidated on appeal).

decision by December 25, 2023 (although they don't explain why this specific date—a Court Holiday²—matters).

In response, President Trump agrees that this Court should immediately consider and, following the Supreme Court's precedent outlined in *Purcell v. Gonzalez*, 549 U.S. 1 (2006) deny, Plaintiffs' Application. But, regardless whether this Court denies the Application or grants any other relief, President Trump believes that this Court needs to reach a final decision by December 27, 2023 so that the losing party has a slight possibility to pursue an appeal to the United States Supreme Court.³

Analysis

A. President Trump agrees there is ample authority and procedural need supporting the request for immediate consideration and expedited consideration.

President Trump agrees with Plaintiffs that this Court has authority to consider an application for leave to appeal on an expedited basis.⁴ This is especially true in election-related cases because of the “extreme time constraints” they can involve.⁵ However, in *Purcell*, the Court ruled that “[a]s an election draws closer” when there is not sufficient time for the losing side to appeal to the Supreme Court, the appellate courts must “give deference to the discretion” of the lower courts.⁶

B. This Court should decide this case by December 27, 2023 so the parties have a meaningful opportunity to petition the Supreme Court of the United States.

This Court should deny Plaintiffs' application. No matter what, a decision is necessary by December 27, 2023.

² <https://www.courts.michigan.gov/courts/court-holidays/>.

³ President Trump requests the same relief respecting any other Application for Leave to Appeal that may be filed by a party arising out of the Consolidated Appeals.

⁴ MCR 7.311(E); MCR 7.312(J); MSC IOP 7.305B(11); MSC IOP 7.311(E).

⁵ See *Scott v Director of Elections*, 490 Mich 888, 889; 804 NW2d 119 (2011).

⁶ *Purcell* 549 US 5.

This deadline for a decision is well founded. Next year’s presidential primary election “must be conducted...on February 27, 2024.”⁷ The statutory deadline for delivering absentee ballots to local clerks and for mailing ballots to military or overseas voters is 45 days before the presidential primary election on February 27, 2024—i.e., January 13.⁸ The Director of the Michigan Bureau of Elections has previously stated ballot proofing and printing takes about two weeks. So, to get the ballots sent out on time, ballot proofing and printing must begin at the end of December or the beginning of January. This dispute—and any subsequent appeals—need to be definitively resolved by that date so that ballot proofing and printing can commence in time for compliance with the absentee and military ballot deadlines.

And, importantly, given the significant federal constitutional issues presented combined with the ramifications for the entire nation, this Court isn’t the last word on the issues raised in this case—the United States Supreme Court is. As the Supreme Court has recognized, in presidential elections, “the State has 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.”⁹ Indeed, if this Court reverses, due process requires that President Trump be given sufficient time to exercise and perfect his right to petition the United States Supreme Court.¹⁰ And there must be adequate time for that process to occur *before* Michigan’s ballots must begin being printed and proofed at the beginning of January. So this Court needs to reach a final decision by a date that allows for perfection of further appellate remedies.

⁷ MCL 168.613a as amended by 2023 PA 2 (effective February 13, 2024).

⁸ MCL 168.759a; MCL 168.714; see also Const 1963, Art II, § 4.

⁹ *Anderson v. Celebrezze*, 460 US 780, 795 (1983).

¹⁰ *Purcell*, 549 U.S. 5.

President Trump believes that December 27, 2023 is the latest date by which this Court can make its decision and still allow for a slight chance of any appellate review. So he asks this Court to issue a decision by that date.

Conclusion and Relief Requested

This Court should expedite consideration of Plaintiffs-Appellants' application and deny it immediately or (if necessary) issue a final decision on the merits on or before December 27, 2023 because it presents issues of great public importance that relate to the imminent primary election for which ballots will soon be printed and for which due process requires adequate time for a party aggrieved by such a decision to perfect an appeal in the Supreme Court of the United States.

Respectfully submitted,

Date: December 19, 2023

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