

STATE OF MICHIGAN  
IN THE COURT OF CLAIMS

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REPUBLICAN NATIONAL COMMITTEE, and  
MICHIGAN REPUBLICAN PARTY,

*Plaintiffs,*

v.

SECRETARY OF STATE, and  
ATTORNEY GENERAL,

*Defendants.*

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No. 20-000191-MM

HON. Murray

**RELATED ACTION:**

The claims in this Complaint arise from the same transactions or occurrences alleged in the following related action:

*Michigan Alliance for Retired Americans v Benson*, No. 2020-000108-MM

This action is still pending.

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**VERIFIED COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs Republican National Committee and Michigan Republican Party (collectively the “Republican Committees”) file this Verified Complaint for Declaratory Relief against the Secretary of State and the Attorney General (collectively “State Defendants”):

**INTRODUCTION**

1. The Republican Committees seek declaratory relief that Michigan’s long-standing election laws, specifically: (1) the prohibition against strangers possessing and delivering absent voter (“AV”) ballots (“harvesting ban”), MCL 168.932(f), and (2) the deadline for AV ballots to be counted when the polls close at 8 p.m. on election day (“ballot receipt deadline”), MCL 168.764a, 168.720, are enforceable both facially and as generally applied to the November general election.

2. The Republican Committees acknowledge that the Court enjoined the harvesting ban and ballot receipt deadline as generally applied to the general election in *Michigan Alliance for Retired Americans v Benson*, No. 2020-000108-MM (the “9-18-20 Order”) (Ex. 1). The Republican Committees were, however, jurisdictionally barred from intervening by *Council of Organizations & Others for Education About Parochiaid v State*, 321 Mich App 456 (2017), which interpreted the Court of Claims jurisdictional statute, MCL 600.6419, and held that the Court lacks subject-matter jurisdiction over claims against intervening private parties. The Republican Committees believe that the *Council of Organizations* ruling was wrongly decided, but in any event, it is not applicable here as the Republican Committees bring this original action against State Defendants.

3. The Republican Committees have exhausted their direct appeal to overturn *Council of Organizations*, and thus have exhausted their attempt to intervene as defendants in *Michigan Alliance*, to protect their interests, as well as the interests of their voters, candidates and members.

4. After the Court enjoined the harvesting ban and ballot receipt deadline, the Secretary of State and the Attorney General have publicly announced their intention not to enforce the challenged laws for the general election on the basis of voters and local clerks “need[ing] certainty.”

5. With no parties defending the enjoined laws, the Republican Committees seek declaratory relief that the harvesting ban and ballot receipt deadline are enforceable both facially and as generally applied to the general election.<sup>1</sup>

## JURISDICTION

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<sup>1</sup> On September 21, 2020, the Legislature filed a renewed motion to intervene for purposes of appeal, in which counsel for State Defendants concurred. The Court ordered the parties to file responses to the Legislature’s motion by September 28. Regardless of the Court’s ruling on the Legislature’s motion, the Republican Committees are entitled to seek declaratory relief in the present action to protect their interests, as well as the interests of their voters, candidates and members.

6. The Court has exclusive, original subject-matter jurisdiction over this action under MCL 600.6419.

7. The Court has personal jurisdiction over State Defendants.

8. The Court has the authority to enter a declaratory judgment under MCR 2.605.

### **PARTIES**

9. Plaintiffs are political party committees that support Republicans in Michigan.

10. Plaintiff Republican National Committee is a national committee as defined by 52 USC 30101. It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform.

11. Plaintiff Michigan Republican Party is a recognized major political party, *see* MCL 168.16, that works to promote Republican values and to assist Republican candidates in obtaining election to partisan federal, state, and local office.

12. Republican Committees have “direct” and “significant” interests in the continued enforcement of state laws governing ballot-receipt deadlines, postage requirements, and ballot-harvesting, as those laws are designed to serve “the integrity of [the] election process,” *Eu v San Fran Cty Democratic Cent Comm*, 489 US 214, 231 (1989), and the “orderly administration” of elections, *Crawford v Marion Cty Election Bd*, 553 US 181, 196 (2008). Federal courts “routinely” find that political parties have interests in litigation regarding elections and election procedures. *See Issa v Newsom*, 20-01044; 2020 WL 3074351, at \*3 (ED Cal, June 10, 2020). That is certainly true where, as here, “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” *Ohio Democratic Party v Blackwell*, No. 04-1055; 2005 WL 8162665, \*2 (SD Ohio, Aug. 26, 2005); *see id.* (under such circumstances, “there [was] no dispute that the Ohio Republican Party had an interest in the subject matter of this case”).

13. Plaintiffs have interests—their own and those of their members—in the rules governing Michigan elections.

14. Defendant Secretary of State, an office currently held by Jocelyn Benson, is “the chief election officer of the state” with “supervisory control over local election officials in the performance of their duties under the provisions of” the Michigan Election Law. MCL 168.21. The Secretary of State is responsible for “[a]dvis[ing] and direct[ing] local election officials as to the proper methods of conducting elections” and providing to each precinct “specific instructions on assisting voters in casting their ballots.” MCL 168.31(1)(b)–(c). The Secretary of State, 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.

15. Defendant Attorney General, an office currently held by Dana Nessel, is Michigan’s top law enforcement official and is responsible, along with other prosecuting attorneys, for prosecuting the laws of Michigan. MCL 168.940. The Attorney General, 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.

## COUNT I DECLARATORY JUDGMENT

16. In *Michigan Alliance*, the plaintiffs sued the Secretary of State and Attorney General to enjoin enforcement of Michigan’s harvesting ban and ballot receipt deadline for the August primary election and November general election.<sup>2</sup>

17. The Republican Committees attempted to intervene as defendants, but was barred by *Council of Organizations* where the court reasoned that the Court of Claims does not have jurisdiction to allow private parties to intervene as defendants, even in actions “against the state.” 321 Mich App at 467–68. The Republican Committees argued that *Council of Organizations* was

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<sup>2</sup> The *Michigan Alliance* plaintiffs also challenged Michigan law that requires voters who return their AV ballots by mail to provide their own postage, MCL 168.764a(a), which is not at issue here.

wrongly decided as applied in that case. Nothing in the Court of Claims' jurisdictional statute—or any other statute relating to the Court of Claims—bars the intervention of nongovernmental parties as defendants. And denying intervention to the Republican Committees precluded them from defending their interests in a proceeding in which those interests were irreparably harmed, constituting a violation of due process.

18. The Court, bound by *Council of Organizations*, denied the Republican Committees' motion and held that *Council of Organizations* “precludes [the Republican Committees] from intervening as defendants in this matter” (the “7-14-2020 Order”). The Court further found that their interests were adequately represented. Finally, the Court *sua sponte* granted the Republican Committees the status of amici curiae.

19. The Republican Committees filed an emergency application for leave to appeal with the Court of Appeals. Shortly after, the Republican Committees filed with the Supreme Court an emergency bypass application for leave to appeal before decision by the Court of Appeals. The Court of Appeals denied the Republican Committees' application on the basis that the Court is bound by *Council of Organizations* (the “8-18-2020 Order”). Then, the Supreme Court denied the Republican Committees' emergency application not persuaded that the question presented should be reviewed (the “8-28-2020 Order”). The Republican Committees filed a timely motion for reconsideration, which remains pending before the Court.

20. On September 18, 2020, within 50 days until the general election, the Court found that the harvesting ban and ballot receipt deadline are unconstitutional as generally applied to the November 2020 general election in light of the COVID-19 pandemic, and enjoined these election laws. (9-18-2020 Opinion and Order).

21. *First*, the Court enjoined the harvesting ban for the general election from 5:00 p.m. on Friday, October 30, 2020, until the close of the polls on Tuesday, November 3, 2020, without any restrictions on who may solicit and return AV ballots from Michigan voters.

22. *Second*, the Court enjoined the ballot receipt deadline to allow all AV ballots postmarked by November 2, 2020 (the day before election day) and received by November 17,

2020 (the deadline for certifying election results)—14 days after the general election, *see* MCL 168.822(2)—to be counted in the same manner as provisional ballots.

23. These rulings in *Michigan Alliance* are both legally and factually erroneous.

24. The Secretary of State and the Attorney General have publicly announced that they will neither appeal these rulings nor enforce the harvesting ban and ballot receipt deadline—resulting in no adverse parties defending these challenged laws.<sup>3</sup>

25. The Republican Committees seek a declaratory judgment that Michigan’s harvesting ban and ballot receipt deadline are enforceable both facially and as generally applied to the general election.

26. “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” MCR 2.605(A)(1).

27. There is an actual controversy and present controversy between the parties.

28. The Republican Committees’ claim for declaratory relief became ripe following the Court’s 9-18-2020 Order in *Michigan Alliance*.

29. Specifically, an actual controversy exists relating to State Defendants failure to enforce the long-standing harvesting ban and ballot receipt deadline before the general election.

30. The harvesting ban and ballot receipt deadline are constitutional both facially and as generally applied to the general election for the arguments set forth in Republican Committees’ brief as amici curiae in *Michigan Alliance*, which are incorporated herein. (**Ex. 3**).

31. The harvesting ban is constitutional and not preempted by federal law. The Legislature has the constitutional authority to enact laws to preserve the purity of elections, to

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<sup>3</sup> LeBlanc, *Michigan clerks must accept late ballots if mailed by Nov. 2, judge rules*, Detroit News (Sept. 18, 2020), <https://perma.cc/7M6G-HKEZ> (**Ex. 2**) (“Attorney General Dana Nessel’s office said it will not appeal [Judge] Stephens’ decision, nor a separate voting decision issued Thursday in federal court. ‘With the November election quickly approaching, voters and local clerks need certainty — and these decisions provide that,’ said Ryan Jarvi, a spokesman for Nessel. ‘Therefore, we do not intend to appeal, but rather will use this time to educate and inform voters of their rights.’”).

guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. *See* 1963 Const, art 2, § 4(2). The State’s important regulatory interests are sufficient to justify the reasonable, nondiscriminatory restrictions under the harvesting ban, especially in the context of absentee voting.

32. Prohibiting unlimited AV ballot harvesting is a commonsense means of preventing undue influence, voter fraud, ballot tampering, and voter intimidation. The harvesting ban preserves the integrity of absentee voting by increasing the likelihood that a voter will entrust his or her AV ballot with someone who is both familiarly trustworthy and legally accountable.

33. Further, on September 17, 2020—the day before the Court’s injunctions in *Michigan Alliance*—a federal court denied a similar challenge to Michigan’s prohibition that strangers cannot solicit and return AV ballot applications from Michigan voters. *Priorities USA v Nessel*, No. 19-13341 (ED Mich, Sept. 17, 2020) (Ex. 4).<sup>4</sup> There, the court found that the plaintiffs’ First Amendment, void-for-vagueness, and federal preemption under the Section 208 of the Voting Rights Act, 52 USC 10508, arguments were unlikely to succeed on the merits. The court ultimately denied the plaintiffs’ motion for a preliminary injunction relating to Michigan’s AV ballot application harvesting law. The federal court’s persuasive ruling should apply equally to harvesting AV ballots.

34. The ballot receipt deadline is also constitutional. The Michigan Court of Appeals recently held that the ballot receipt deadline is a “policy decision,” which “does not effectively preclude a voter from completing the process of voting by absentee ballot during the 40 days before the election.” *League of Women Voters of Mich v Secretary of State*, —Mich App—; 2020 WL 3980216, at \*8–9 (2020). As-applied challenges should be rejected for the substantive reasons articulated in the majority and concurring opinions in *League of Women Voters*.

35. COVID-19 does not nullify the Legislature’s obligation to set a deadline “for the submission of the completed ballot to election officials” and the ballot receipt deadline “does not

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<sup>4</sup> The Court may consider federal authority when interpreting Michigan’s constitutional protections. *See Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 256 (2013).

effectively preclude a voter from completing the process of voting by absentee ballot during the 40 days before the election.” *Id.* at \*9. These are election policy decisions best left to the Legislature. *See State Farm v Old Republic Ins Co*, 466 Mich 142, 149 (2002) (“It is not the role of the judiciary to second-guess the wisdom of a legislative policy choice; our constitutional obligation is to interpret—not to rewrite—the law.”). During these trying times of disruption caused by COVID-19, states have an even *greater* interest in avoiding judicial interference with the laws and processes which have long been in place to protect the integrity of elections.

36. The Republican Committees are forced to bring the present action because *Council of Organizations* unconstitutionally precluded them from defending their interests in *Michigan Alliance* in which those interests were irreparably harmed, constituting a violation of due process.

37. State Defendants further refuse to enforce the harvesting ban and ballot receipt deadline for the general election. *See, e.g., League of Women Voters*, —Mich—; No. 161671 (Mich, Sept. 11, 2020) (Viviano, J., concurring).

38. State Defendants’ failure to enforce the ballot receipt deadline represents a failure to adequately represent the Republican Committees’ interests, despite the Court’s ruling to the contrary in its 7-14-2020 Order in *Michigan Alliance*, completely depriving the Republican Committees of the opportunity to be heard and violating their right to due process.

39. The failure to enforce the harvesting laws and ballot receipt deadline unfairly impacts the Republican Committees, their candidates, their voters, and their own institutional interests by fundamentally changing the “structur[e] of this competitive environment.” *Shays v FEC*, 414 F3d 76, 85 (DC Cir, 2005). The Republican Committees and their candidates will face “a broader range of competitive tactics than [state] law would otherwise allow.” *Id.* at 86. The injunction “fundamentally alter[s] the environment in which [they] defend their concrete interests (e.g. . . . winning reelection).” *Id.* The Republican Committees will need to divert substantial resources to comply with the Court’s injunction in *Michigan Alliance*, which they have not had the opportunity to defend based on wrongfully decided *Council of Organizations*. Consequently,



the Republican Committees, their candidates, and their voters have suffered and will continue to suffer because of this dispute.

40. The Republican Committees have already expended resources on voter education and mailers that have been rendered incorrect by the failure to enforce the harvesting laws and ballot receipt deadline. Absent intervention by this Court, those expenditures will be wasted and the Republican Committees will be forced to spend additional resources to reeducate voters and correct its mailers. (**Ex. 5**).

41. The Republican Committees acknowledge that, absent a stay or reversal by the Court of Appeals or the Supreme Court, this Court's 9-18-2020 Order in *Michigan Alliance*, finding the harvesting ban and ballot receipt deadline unconstitutional as generally applied to the general election, prevents State Defendants from enforcing these enjoined laws. But with State Defendants refusing to further defend these laws and the Republican Committees being blocked from intervening in *Michigan Alliance* due to *Council of Organizations*, the Republican Committees have been left with no judicial avenue in which to seek protection of their substantial rights before the general election, outside of the present action.

42. The Republican Committees therefore seek a judicial declaration that the harvesting ban and ballot receipt deadline are enforceable both facially and as generally applied to the November 2020 general election.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Republican Committees respectfully ask the Court to grant the following relief:

A. A declaratory judgment that the harvesting ban and ballot receipt deadline are enforceable both facially and as generally applied to the general election as set forth in this Verified Complaint;

B. Award the Republican Committees their reasonable attorneys' fees, costs, and expenses under any applicable law;

C. Any other such further relief to which the Republican Committees may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Respectfully submitted,

BUTZEL LONG, P.C.

**KURTIS T. WILDER P37017**

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Dated: September 24, 2020

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