

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 19 - 000092 MZ <i>Judge Kelly</i>
---	----------------	---

Court address
Michigan Court of Claims - 925 W Ottawa St - P.O. Box 30185 - Lansing, MI 48909

Court telephone no.
517-373-0807

Plaintiff's name(s), address(es), and telephone no(s). MICHIGAN SENATE and MICHIGAN HOUSE OF REPRESENTATIVES 124 N. Capitol Avenue - Suite 2 Lansing, MI 48933 (517) 373-1800
Plaintiff's attorney, bar no., address, and telephone no. Charles R. Spies (P83260); Brian D. Shekell (P75327); Kevin A. Fanning (P57125) CLARK HILL PLC 212 E. Caesar Chavez Ave. - Lansing, MI 48906 (313) 965-8300

v

Defendant's name(s), address(es), and telephone no(s). JOCELYN BENSON, in her official capacity as Michigan Secretary of State 611 W. Ottawa 1st Floor P.O. Box 30670 Lansing, MI 48909 (517) 373-8068
--

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where it was given case number 19-000084-MM and assigned to Judge Cynthia Stephens.

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

- You are being sued.
- YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
- If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
- If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date <u>6/7/19</u>	Expiration date* <u>9/4/19</u>	Court clerk Jerome W. Zimmer Jr.
-----------------------------	-----------------------------------	--

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

<input type="checkbox"/> OFFICER CERTIFICATE I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> AFFIDAVIT OF PROCESS SERVER Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)
--	----	---

- I served personally a copy of the summons and complaint,
 I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with _____
 List all documents served with the summons and complaint _____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature _____
 Name (type or print) _____
 Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
 Date

My commission expires: _____ Date Signature: _____
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments
 _____ on _____
 Day, date, time
 _____ on behalf of _____
 Signature

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN SENATE and MICHIGAN
HOUSE OF REPRESENTATIVES,

Plaintiffs,

v.

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

Defendant.

19-000092-MZ

Case No. 19- - MZ

Hon.

Kelly

John J. Bursch (P57679)
Bursch Law PLLC
9339 Cherry Valley Ave.
SE Unit 78
Caledonia, MI 48316
jbursch@burschlaw.com
Attorneys for Plaintiffs

Charles R. Spies (P83260)
Brian D. Shekell (P75327)
Kevin A. Fanning (P57125)
CLARK HILL PLC
212 E. Caesar Chavez Ave.
Lansing, MI 48906
(313) 965-8300
cspies@clarkhill.com
bshekell@clarkhill.com
kfanning@clarkhill.com
Attorneys for Plaintiffs

2019 JUN -5 PM 3:33
COURT OF CLAIMS
CLERK OF COURT

*There is a pending civil action arising out of the same transaction or occurrences
alleged in the Complaint in the Michigan Court of Claims entitled
League of Women Voters of Michigan, et al. v. Jocelyn Benson,
bearing Case No. 19-000084-MM.*

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action for declaratory and injunctive relief against Jocelyn Benson, in her official capacity as Michigan Secretary of State. Specifically, Plaintiffs the Michigan Senate and the Michigan House of Representatives ask this Court to reject the May 22, 2019 Opinion of Attorney General Dana Nessel regarding the constitutionality of 2018 PA 608, declare the validity of 2018 PA 608, and issue an order enjoining the Secretary of State to enforce 2018 PA 608.

PARTIES

2. Plaintiff Michigan Senate is the upper chamber of the Michigan Legislature. It consists of 38 members who are elected by the qualified electors of their respective districts.

3. Plaintiff Michigan House of Representatives is the lower chamber of the Michigan Legislature. It consists of 110 members who are elected by the qualified electors of their respective districts.

4. Pursuant to Article IV § 1 of the Michigan Constitution, Plaintiffs Michigan Senate and Michigan House of Representatives are vested with “the legislative power of the State of Michigan.” As the exclusive lawmaking body of the State of Michigan, the Michigan Senate and Michigan House of Representatives stand to be harmed if Defendant Secretary refuses to enforce its duly enacted law. As such, the Michigan Senate and Michigan House of Representatives have standing to bring this action to prevent Defendant Secretary from usurping the Legislature’s constitutional authority.

5. Defendant Jocelyn Benson is Michigan’s Secretary of State (“Defendant Secretary”). As Michigan’s chief election officer, Defendant Secretary is responsible for overseeing and administering the manner in which initiatives, referendums and constitutional

amendments are placed on the ballot. This includes her legal duty to “[p]repare the form of ballot for any proposed amendment to the constitution or proposal under the initiative or referendum provision of the constitution to be submitted to the voters of this state.” MCL 168.31(1)(f).

JURISDICTION

6. This Court has jurisdiction pursuant to MCL 600.6419(1)(a).

FACTUAL ALLEGATIONS

A. Public Act 608 of 2018

7. On December 21, 2018, the Michigan House of Representatives and Michigan Senate voted to pass House Bill No. 6595. The passage of this bill was done pursuant to proper legislative procedures and was a valid exercise of the Michigan Legislature’s exclusive lawmaking function.

8. House Bill No. 6595 sought to amend 1954 PA 116 (“Michigan Election Law”) by amending sections 471, 477, 479, 482, and 544d (MCL 168.471, 168.477, 168.479, 168.482, and 168.544d), section 471 as amended by 1999 PA 219, section 477 as amended by 2012 PA 276, section 482 as amended by 1998 PA 142, and section 544d as amended by 1999 PA 218, and by adding sections 482a, 482b, 482c, and 482d.

9. On December 28, 2018, House Bill 6595 was signed by then-Governor Richard Snyder, at which time it became known as Public Act 608 (“2018 PA 608”). 2018 PA 608 became effective upon its filing and is the current law of the State of Michigan.

10. 2018 PA 608 amended various statutory provisions of the Michigan Election Law regarding the requirements for circulating petitions to place initiatives, referendums and constitutional amendments for the purpose of placing the particular issue on the ballot in the next appropriate election.

11. The key amendments and additions to the Michigan Election Law as provided for in 2018 PA 608, include, but are not limited to, the following:

- a. Ensuring that petition signatures for any initiative, referendum or constitutional amendment be representative of the population of the State of Michigan as a whole rather than only small, highly populated geographic areas by requiring that “[n]ot more than 15% of the signatures to be used to determine the validity of petition described in this section shall be of registered electors from any one congressional district.” MCL 168.471.
- b. Requiring sponsors of a statewide initiative, referendum or constitutional amendment to gather petition signatures on congressional district forms, as opposed to countywide forms used prior to the enactment of this law. MCL 168.482(3) and 168.544d.
- c. Requiring individuals who are paid to circulate an initiative, referendum or constitutional amendment petition to file a signed affidavit with the Secretary of State that he or she is a “paid signature gatherer” prior to circulating any petitions. MCL 168.482a(1).
- d. Providing that if sponsors of a specific initiative, referendum or constitutional amendment voluntarily elect to seek and subsequently obtain approval of the summary of the purpose of the proposed amendment or question proposed from the Board of State Canvassers, the Board of State Canvassers may not consider a challenge to the sufficiency

of a submitted petition on the basis of the summary being misleading or deceptive. MCL 168.482b(1).

- e. Authorizing a person who feels “aggrieved by any determination made by the Board of State Canvassers regarding the sufficiency or insufficiency of an initiative petition” to file a legal action in the Michigan Supreme Court “7 business days after the date of the official declaration of the sufficiency or insufficiency of the initiative petition or not later than 60 days before the election at which the proposal is to be submitted, whichever occurs first.” MCL 168.479.
- f. Adding a disclosure statement on the petition form regarding whether an individual is a paid or volunteer circulator and that a circulator’s failure to comply with the Michigan Election Law’s requirements may result in the invalidation of the petition and the signatures not counted. MCL 168.482(7)-(8).
- g. Creating legal penalties for individuals who provide false information in connection with their status as a paid or volunteer circulator. MCL 168.482a(3)-(5), MCL 168.482c.

B. Secretary Benson Requests A Formal Opinion From Attorney General Nessel Regarding 2018 PA 608

12. Shortly after taking office, on January 22, 2019, Secretary Benson requested that Attorney General Dana Nessel provide a formal opinion as to the constitutionality of several provisions of 2018 PA 608.

13. While Secretary Benson requested the formal opinion under the guise of understanding how 2018 PA 608 “affects the rights” of “potential petition sponsors, circulators

and voters,” the actual motivation for obtaining a formal opinion appears to have been so that she can circumvent the requirements of validly enacted statutes she has a legal duty to enforce.

14. In her letter to Attorney General Nessel, Secretary Benson made clear her personal disdain for 2018 PA 608, characterizing the validly enacted law as establishing “new grounds for rejecting otherwise valid petition signatures.” Secretary Benson further characterized 2018 PA 608 as a “burden” simply because it, like all statutory amendments, changes laws previously in effect.

15. When receiving a request about the validity of a duly enacted Michigan law, the Michigan Attorney General, if she responds to the request at all, is supposed to be a neutral arbiter of the law’s validity. This neutrality is of crucial importance, because Michigan Attorney General Opinions can affect the conduct of state agencies and officers and thus can effectively nullify a democratically enacted law.

16. When Attorney General Nessel received Secretary Benson’s request for an opinion, she took the extraordinary step of issuing a press release in which she “welcomed” the request, which the Attorney General said “rightly contests” 2018 PA 608. *Nessel: Secretary of State rightly contests new petition drive law* (Jan 22, 2019), https://www.michigan.gov/ag/0,4534,7-359-92297_47203-487945--,00.html .Without having even started the process of discerning the law’s validity, the Attorney General opined that “Restricting the right of Michiganders to participate in the political process is a serious subject matter,” criticized the Legislature for failing to consider how the law “puts a limit on the peoples’ voice,” and praised Secretary Benson for “challeng[ing] and rais[ing] the important question of this Act’s constitutionality.” *Id.*

C. Attorney General Nessel Issues Opinion Regarding 2018 PA 608

17. On May 22, 2019, Attorney General Nessel issued Opinion No. 7310 in response to Secretary Benson’s January 22, 2019 request for a formal opinion regarding 2018 PA 608 (“Opinion”).

18. In her Opinion, and consistent with her January 22, 2019 press release, Attorney General Nessel declared the following provisions of 2018 PA 608 unconstitutional under the Michigan Constitution, U.S. Constitution, or both:

- a. The enactment of a 15% signature distribution requirement based on congressional district.
- b. Requiring the disclosure of the paid or voluntary status of petition circulators on the face of the petition.
- c. Requiring paid circulators to file an affidavit before circulating petitions.
- d. Requiring the Michigan Supreme Court to “accord highest priority to cases challenging the sufficiency of petitions.”

19. Attorney General Nessel further opined that these purportedly “unconstitutional” provisions may be severed from the remainder of 2018 PA 608.

20. Attorney General Nessel also determined that petitions to initiate legislation or a referendum, or to amend the Michigan Constitution, may be circulated on a city-township or countywide form in light of her prior opinion that collecting petition signatures on a congressional district basis is unconstitutional.

21. With respect to pre-approval from the Board of State Canvassers of a summary of the purpose of the proposed amendment or question proposed, Attorney General Nessel determined that the “Director of Elections and the Board of State Canvassers are authorized to

draft and approve a statement of purpose for a statewide ballot proposal that differs from the summary of the proposal previously approved by the Board....”

22. Showing remarkable speed and timing, the very next day following Attorney General Nessel’s release of her opinion, a group of plaintiffs represented by Mr. Mark Brewer, former Chair of the Michigan Democratic Party, filed a 34-page lawsuit with several dozen pages of exhibits in the Court of Claims against Secretary Benson, seeking declaratory and injunctive relief and raising the same constitutional issues addressed in Attorney General Nessel’s opinion.

COUNT I: 2018 PA 608 SHOULD BE DECLARED CONSTITUTIONAL

23. Plaintiffs re-allege and incorporate the above paragraphs as if fully set forth in this Count.

24. Pursuant to Article II § 4 of the Michigan Constitution, “the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting,” except as otherwise provided in the Michigan Constitution or in the Constitution or laws of the United States.

25. There is no constitutional or otherwise authoritative prohibition restricting the Michigan Legislature from amending the Michigan Election Law as provided for in 2018 PA 608.

26. The changes to the Michigan Election Law as a result of 2018 PA 608 were a valid exercise of the Michigan Legislature’s constitutionally-derived function to enact voting laws and ensure the integrity of the democratic process.

27. Indeed, Michigan’s constitutional provisions governing ballot petitions grant considerable power to the legislature. E.g., Const 1963, art 2, § 9 (“The legislature shall implement the provisions of this section.”); art 12, § 2 (a petition for constitutional amendment “shall be in the form, and shall be signed and circulated in such manner, as prescribed by law”).

28. And the Legislature also possesses a vast reservoir of power to ensure that elections are fair, free from fraud, and truly representative of the people’s will. 2018 PA 608 advances all these goals.

29. In Opinion No. 7310, Attorney General Nessel erroneously concluded that the above-cited provisions of 2018 PA 608 were in violation of the Michigan Constitution, U.S. Constitution, or both.

30. Plaintiffs have a clear legal right to have validly enacted laws of the State of Michigan implemented and enforced by Secretary Defendant.

31. Plaintiffs have no other adequate remedy. If the Michigan Senate and House tried to take supplemental legislative action to enforce the fair-representation and anti-fraud requirements of 2018 PA 608, the Attorney General would have the power to effectively nullify those provisions again with an Attorney General Opinion that purportedly binds the Secretary of State.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

- A. Declare that 2018 PA 608 is constitutional and a valid exercise of the legislature’s authority, and that the law is and must be implemented and enforced by the Secretary of State.

- B. Issue a permanent injunction requiring the Secretary of State and her agents, officers, and employees, and all persons acting in concert or cooperation with her, to enforce and give effect to every provision of 2018 PA 608 as enacted.
- C. Grant Plaintiffs such other further relief as is equitable and just.

Respectfully submitted,

Bursch Law PLLC

/s/ John J. Bursch

John J. Bursch (P57679)
9339 Cherry Valley Ave.
SE Unit 78
Caledonia, MI 48316
jbursch@burschlaw.com
Attorneys for Plaintiffs

CLARK HILL PLC


Charles R. Spies (P83260)
Brian D. Shekell (P75327)
Kevin A. Fanning (P57125)
212 E. Caesar Chavez Ave.
Lansing, MI 48906
(313) 965-8300
cspies@clarkhill.com
bshekell@clarkhill.com
kfanning@clarkhill.com
Attorneys for Plaintiffs

COURT OF CLAIMS
JENNIFER W. ZIMMER, JR., CLERK

2019 JUN -5 PM 3:33

DATE: June 5, 2019