

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA and
MARISSA ACCARDO

Plaintiffs,

Case No. 3:19-CV-13188

v.

HON. ROBERT H. CLELAND
MAGISTRATE ANTHONY P. PATTI

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

and

THE MICHIGAN SENATE and
THE MICHIGAN HOUSE OF
REPRESENTATIVES,

Defendants.

**THE MICHIGAN SENATE AND MICHIGAN HOUSE OF
REPRESENTATIVES' ANSWER TO PLAINTIFF'S AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendants the Michigan House of Representatives and the Michigan Senate (“the Legislature”), through their counsel, submit the following Answer to Plaintiffs’ Amended Complaint for Declaratory and Injunctive Relief. For avoidance of doubt, the Legislature generally denies all allegations except those specifically admitted.

NATURE OF THE CASE

1. The Legislature admits only that this paragraph contains quotes from a

U.S. Supreme Court opinion but denies the inference of applicability to this case. The Legislature denies the remaining allegations of this paragraph.

2. The Legislature admits only that MCL 168.761(1)-(2) set forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph, including Footnote 1, to the extent they are inconsistent with or attempt to characterize the statutory text.

3. The Legislature admits only that MCL 168.765a(6) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

4. The Legislature admits only that MCL 168.766(1)(a)-(2) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph, including Footnote 2, to the extent they are inconsistent with or attempt to characterize the statutory text.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Denied.

10. Denied, except that the Legislature admits that Secretary Benson has

made public statements that are consistent with Plaintiff's positions in this action.

11. Denied.

12. The Legislature admits only that this paragraph contains quotes from various state and federal court cases but denies the inference of applicability to this case. The Legislature denies the remaining allegations of this paragraph.

13. Denied.

JURISDICTION AND VENUE

14. The Legislature admits only that Plaintiff invokes 42 U.S.C. §§ 1983 and 1988 as the basis for this action, and denies that Plaintiff's claims have merit.

15. The Legislature admits that this Court has original jurisdiction over the subject matter of this action.

16. The Legislature admits that this Court has personal jurisdiction over the Defendant, Secretary of State Jocelyn Benson, in her official capacity. The Legislature further admits that this Court has personal jurisdiction over the Legislature.

17. The Legislature admits that venue is proper in this Court.

18. The Legislature admits only that this Court has authority to enter a declaratory judgment under 28 U.S.C. §§ 2201 and 2202, but denies that exercise of that authority is proper here.

19. The Legislature lacks knowledge or information sufficient to form a

belief as to the truth of the allegations of this paragraph.

PARTIES

20. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

21. The Legislature denies that Priorities USA is harmed by Michigan's absentee-voting statutes. The Legislature denies that voters are disenfranchised by Michigan's absentee-voting statutes. The Legislature denies that individuals' absentee ballots are "erroneously rejected." Otherwise, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

22. The Legislature admits that Secretary Benson is the Secretary of State of Michigan and is sued in her official capacity. The Legislature admits that the Secretary of State acted under color of State law at all times relevant to this action. The Legislature admits that MCL 168.21 and 168.31 concern the powers of the Secretary of State. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

STATEMENT OF FACTS AND LAW¹

23. The Legislature admits only that the Michigan Constitution grants

¹ The Legislature declines to restate Plaintiff's argumentative subheadings, which are not allegations to which a response is required.

voters the right to cast absentee ballots. The Legislature lacks knowledge or information sufficient to form a belief about the remaining allegations of this paragraph.

24. The Legislature admits only that MCL 168.759(1), 168.761(3), and 168.759(2), set forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

25. The Legislature admits only that MCL 168.761(2) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

26. The Legislature admits only that MCL 168.761(2) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

27. Denied.

28. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

29. Denied.

30. The Legislature admits only that MCL 168.764a sets forth, in part,

procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

31. The Legislature admits only that MCL 168.764a sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

32. The Legislature admits only that MCL 168.764a sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

33. The Legislature admits only that MCL 168.767 sets forth, in part, procedures governing absentee voting in Michigan and that Footnote 4 quotes from the Election Officials' Manual provided by the Michigan Bureau of Elections. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

34. The Legislature admits only that MCL 168.765a(6) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

35. The Legislature admits only that MCL 168.766(1)(a) sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

36. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

37. Denied.

38. Denied.

39. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

40. The Legislature denies that there is a “high rate of error” under the procedures governing absentee voting in Michigan. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

41. Denied.

42. Denied.

43. The Legislature admits only that this paragraph quotes from an unpublished decision from another U.S. District Court. The Legislature denies the remaining allegations in this paragraph.

44. The Legislature lacks knowledge or information sufficient to form a

belief as to the truth of the allegations of this paragraph.

45. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

46. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

47. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

48. Denied.

49. Denied.

50. The Legislature admits only that MCL 168.759(5) and other Michigan statutes provide part of a framework of protections against voting fraud, but denies that such provisions are duplicative or independently sufficient. The Legislature denies the remaining allegations in this paragraph.

51. The Legislature admits only that MCL 168.759 sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text. Answering further, Plaintiff has challenged MCL 168.759 as unconstitutional in its companion case filed on November 12, 2019 in the U.S. District Court for the Eastern District of Michigan (Case No. 2:19-CV-13341), which undermines the premise that it should be

considered a substitute for the protections challenged in this action.

52. The Legislature admits only that MCL 168.759 sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text. Answering further, Plaintiff has challenged MCL 168.759 as unconstitutional in its companion case filed on November 12, 2019 in the U.S. District Court for the Eastern District of Michigan (Case No. 2:19-CV-13341), which undermines the premise that it should be considered a substitute for the protections challenged in this action.

53. The Legislature admits only that MCL 168.759 and 168.761 set forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

54. The Legislature admits only that MCL 168.761 sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

55. The Legislature admits only that MCL 168.761 sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or

attempt to characterize the statutory text.

56. The Legislature admits only that MCL 168.764a sets forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

57. The Legislature admits only that MCL 168.764a and 168.932 set forth, in part, procedures governing absentee voting in Michigan. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize the statutory text.

58. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph, except denies that reliance on the possibility of returned mail is a credible method to assure voting integrity.

59. The Legislature admits that Michigan's voters adopted no-reason absentee voting via an amendment to Article II, § 4 of the Michigan Constitution in 2018. Otherwise, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

60. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

61. Denied.

COUNT I

62. The Legislature incorporates its answers to paragraphs 1 through 61 as if fully set forth here.

63. Plaintiff's policy statements are not factual allegations requiring an answer. To the extent an answer may be deemed required, the Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

64. Denied.

65. Denied.

66. Denied.

67. Denied.

COUNT II

68. The Legislature incorporates its answers to paragraphs 1 through 67 as if fully set forth here.

69. The Legislature admits only that the quoted language is contained in the 14th Amendment to the United States Constitution and U.S. Supreme Court caselaw but denies the inference of applicability to this case.

70. The Legislature admits that the quoted language is contained in U.S. Supreme Court caselaw but denies the inference of applicability to this case.

71. Denied.

72. Denied.

73. Denied.

COUNT III

74. The Legislature incorporates its answers to paragraphs 1 through 73 as if fully set forth here.

75. The Legislature admits that the quoted language is contained in the 14th Amendment to the United States Constitution and U.S. Supreme Court caselaw but denies the inference of applicability to this case.

76. The Legislature admits that the quoted language is contained in a case from the U.S. District Court for the Northern District of Georgia but denies the inference of applicability to this case.

77. Denied.

78. Denied.

79. Denied.

RELIEF REQUESTED

WHEREFORE, the Legislature respectfully requests that the Complaint be dismissed with prejudice and that they be awarded costs, reasonable attorney fees, and such further relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of

laches.

3. Plaintiff Priorities USA lacks standing to pursue this claim because it is not an absentee voter.

4. Plaintiff Priorities USA is barred from raising others' rights and generalized grievances under the doctrine of prudential standing.

5. Plaintiffs have not alleged a deprivation of any right sufficient to maintain a procedural due process claim.

6. Plaintiffs have failed to identify a suspect classification sufficient to maintain its equal protection claim.

7. Plaintiffs have not identified any intentional discrimination by a state actor sufficient to maintain its equal protection claim.

8. Plaintiffs' claims are non-justiciable political questions.

9. Plaintiffs do not allege a cognizable case or controversy.

10. Plaintiffs' claims are not ripe for adjudication.

12. The right to vote is not an interest in life, liberty, or property protected by procedural due process.

13. Plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution.

The Legislature reserves the right to add additional affirmative defenses as the result of discovery or otherwise.

Respectfully submitted,

BUSH SEYFERTH PLLC

*Attorneys for the Michigan Senate and the
Michigan House of Representatives*

By: /s/ Patrick G. Seyferth

Patrick G. Seyferth (P47475)

Roger P. Meyers (P73255)

Michael K. Steinberger (P76702)

100 W. Big Beaver Rd., Ste. 400

Troy, MI 48084

(248) 822-7800

seyferth@bsplaw.com

meyers@bsplaw.com

steinberger@basplaw.com

Dated: April 17, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2020 I electronically filed the foregoing with the Clerk of the Court using the ECF System, which will send notification to all ECF counsel of record.

By: /s/ Patrick G. Seyferth
Patrick G. Seyferth (P47575)