

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

Michigan Republican Party, Republican
National Committee, Cindy Berry, and
Edward McCall

Case No.: 26-000134-MZ
Hon. Randy J. Wallace

Plaintiffs,

v

Jocelyn Benson, in her official capacity as
Secretary of State, and Jonathan Brater, in his
official capacity as Director of Elections,

Defendants.

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**[7/20/2026] AMICUS BRIEF ON BEHALF OF LOCAL ELECTION OFFICIALS
IN SUPPORT OF DEFENDANTS' 7/8/26 MOTION FOR SUMMARY
DISPOSITION**

DATED: July 20, 2026

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TABLE OF CONTENTS

STATEMENT OF INTEREST	1
INTRODUCTION	3
BACKGROUND	4
ARGUMENT	5
A. The 2026 Rules Ensure Local Election Officials Can Perform Their Duties and Administer Elections in an Orderly Manner.....	6
B. The Success of the 2022 and 2024 Rules Demonstrate That the 2026 Rules Will Allow for an Orderly Election	8
C. Plaintiffs’ Challenge Must Be Rejected Because It Was Brought Too Close to an Election	9
CONCLUSION.....	11
Appendix A – List of <i>Amici Curiae</i>	13

TABLE OF AUTHORITIES

CASES

<i>Crookston v. Johnson</i> , 841 F.3d 396 (6th Cir. 2016)	10
<i>Davis v. Secretary of State</i> , 12 N.W.3d 653 (Ct. App. 2023).....	9
<i>New Democratic Coalition v. Austin</i> , 200 N.W.2d 749 (Ct. App. 1972).....	10
<i>O’Halloran v. Sec’y of State</i> , 29 N.W.3d 429 (Mich. 2024).....	4, 5
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) (per curiam)	6, 10, 11
<i>U.S. Student Ass’n Found v Land</i> , 546 F.3d 373 (6th Cir. 2008)	10

RULES

Mich. Admin. Code. R 168.206(4)	8
Mich. Admin. Code. R 168.214(3)(n)–(o).....	7
Mich. Admin. Code. R 168.214(4)(c).....	8

OTHER AUTHORITIES

9 Mich. Reg. 2–14 (June 1, 2026).....	5
Alexandra Berzon & Ken Bensinger, <i>Fueled by Falsehoods, a Michigan Group Is Ready to Challenge the Vote</i> , N.Y. Times (Nov. 7, 2022), https://perma.cc/DP9A-9VVB	7
Andrew Howard, <i>Election Officials Grapple with a Brain Drain as Threats Rise</i> , Politico (Feb. 3, 2026), https://perma.cc/5MTG-6BLT	8
Mich. Bureau of Elections, <i>The Appointment, Rights, and Duties of Election Challengers and Poll Watchers (May 2022)</i> , attached as Ex. C to Verified Compl., <i>DeVisser v. Benson</i> , No. 22-000164-MZ (Mich. Ct. Cl. Sept. 30, 2022).	4
Mich. Dep’t of State, <i>2024 Election Report Access Matters: Michigan #3 in Voter Turnout</i> (July 2025), https://perma.cc/Y2YE-BXR7	6

Mich. Dep’t of State, <i>The Appointment, Rights, and Duties of Election Challengers and Poll Watchers</i> (Oct. 2024), https://perma.cc/75KK-5H4A	5
Mich. S. Oversight Comm., <i>Report on the November 2020 Election in Michigan</i> , at 13 (2021), https://perma.cc/2RUS-DT3J	3
Press Release, Mich. Dep’t of State, <i>2024 Post-Election Recount and Audit Report Confirms Michigan’s Elections Are Secure and Accurate</i> (Oct. 13, 2025), https://perma.cc/V83A-WFSM	6
<i>Recounting Election Night 2020: Trouble at TCF Center</i> , Det. PBS: One Det. (Jan. 6, 2022), https://perma.cc/7WHR-ZA5B	3
Tresa Baldas et al., ‘ <i>Get to TCF</i> ’: <i>What really happened inside Detroit’s ballot counting center</i> , Detroit Free Press (Nov. 6, 2020), https://perma.cc/5MNN-939M	3
Verified Compl. ¶ 31, <i>Mich. Republican Party v. Benson</i> , No. 26-000134-MZ (Mich. Ct. Cl. June 23, 2026).....	9
Verified Compl., <i>DeVisser v. Benson</i> , No. 22-000164-MZ (Ct. Cl. Sept. 30, 2022)	4
Verified Compl., <i>O’Halloran v. Benson</i> , No. 22-000162-MZ (Ct. Cl. Sept. 28, 2022)	4

STATEMENT OF INTEREST

Amici are local election officials representing jurisdictions across Michigan.¹ They are duty-bound under state and federal law to promote the exercise of the right to vote. Mich. Const. art. II, § 4; 52 U.S.C. § 20501(a)(2). As election officials, *amici*'s primary duty is to ensure the right to vote of all eligible citizens in their jurisdictions, under the supervisory control of the Secretary of State. Mich. Comp. Laws § 168.31(1)(b). *Amici*'s responsibilities include oversight of all federal, state, and local elections. Duties also include the programming, printing, and distributing of ballots and the coordination of the canvass of federal, state, and local elections. Most pertinent here, *amici* are responsible for training election workers, administering elections, and responding to challenges and other objections lodged on Election Day and during vote counts. *Id.* § 168.21.

As the local administrators of all elections in Michigan, *amici* have a significant interest in the outcome of this case as well as ensuring certainty about their roles and responsibilities for the August 4, 2026 primary election and November 3, 2026 general election. *Amici* have trained staff and election workers on the guidance provided in R 168.201 to R 168.220 of the Michigan Administrative Code. That guidance was codified as administrative rules in May 2026 (the "2026 Rules"). They collectively administered both the 2022 and 2024 elections under, respectively, guidance published in 2022 and 2024. And they are prepared to administer the August primary and November general elections in accordance with the 2026 Rules, which substantively match the guidance issued in 2022 and in 2024. *Amici* write to underscore both the importance of the

¹ *Amici* are listed in Appendix A. No counsel for a party to this action has authored this brief in whole or in part, and no party or counsel for a party or any individual other than the amicus curiae, its members, or its counsel, has made a monetary contribution intended to fund the preparation or submission of this brief.

rules challenged by this litigation and the burden that upending those rules less than two weeks before a primary election day and less than four months before a general election would have, all without providing material benefit to voters or the democratic process.

INTRODUCTION

On November 4, 2020, hundreds of people descended on the Absentee Vote Counting Board (“AVCB”) at the TCF Center in Detroit amidst viral, false, allegations of election fraud.² The masses attempted to enter the AVCB—chanting political slogans, refusing to remove full face masks when asked by law enforcement, banging on windows, and screaming at election staff—with the clear intent of overwhelming election officials and disrupting the counting of ballots.³ A report subsequently commissioned by the Michigan Senate Oversight Committee found that a key contributor to the “confusion and hostility of poll watchers and challengers” that night “was the differing opinions regarding the actual rights and duties of those individuals,”⁴ noting that the “environment at the TCF Center became intolerable.”⁵

In response, the Secretary of State published updated guidance to clarify the rights of election challengers, as well as the obligations of election officials, and to impose a process to ensure that challengers can raise legitimate challenges (and have those challenges heard) in an orderly and efficient manner. In every election since, the process has worked as intended. Challengers have been able to observe and raise appropriate challenges without impeding the work of election officials.

Earlier this year, the Secretary of State codified the guidance, including the slight revisions made to it by the Secretary in 2024, in response to the Michigan Supreme Court’s decision in

² *Recounting Election Night 2020: Trouble at TCF Center*, Det. PBS: One Det. (Jan. 6, 2022), <https://perma.cc/7WHR-ZA5B>.

³ Tresa Baldas et al., ‘Get to TCF’: What really happened inside Detroit’s ballot counting center, Detroit Free Press (Nov. 6, 2020), <https://perma.cc/5MNN-939M>.

⁴ Mich. S. Oversight Comm., *Report on the November 2020 Election in Michigan*, at 13 (2021), <https://perma.cc/2RUS-DT3J>.

⁵ *Id.*

O'Halloran v. Benson, discussed *infra*, as administrative rules. *O'Halloran v. Sec'y of State*, 29 N.W.3d 429 (Mich. 2024). Almost two months after those rules became effective, Plaintiffs brought the present lawsuit, challenging certain provisions of those rules, amidst the already-underway August 4 primary election and less than four months before the November 3 general election. Plaintiffs' request for relief is both too late and too close to forthcoming elections. And irrespective of the late date at which Plaintiffs have commenced this action, their challenge also fails on the merits. *Amici* thus respectfully request that this Court grant Defendants' motion for summary disposition and allow local election officials to implement the 2026 Rules as planned.

BACKGROUND

Following the chaos at the Detroit AVCB during the 2020 presidential election, the Secretary of State issued updated guidance on election challenges in *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* manual (the "2022 Guidance").⁶ That guidance, among other things, imposed new requirements on the credentialing of challengers, required challengers to communicate with an appointed challenger liaison, and clarified what constituted an improper challenge. The 2022 Guidance governed the 2022 primary and general elections.

Two groups of plaintiffs, including the Republican National Committee ("RNC") and the Michigan Republican Party ("MRP")—both Plaintiffs here—subsequently sued to challenge certain provisions of the 2022 Guidance as violating Michigan Election Law; they also challenged the Guidance as a whole for not being promulgated in accordance with the state's Administrative Procedures Act. *See* Verified Compl., *O'Halloran v. Benson*, No. 22-000162-MZ (Ct. Cl. Sept. 28, 2022); Verified Compl., *DeVisser v. Benson*, No. 22-000164-MZ (Ct. Cl. Sept. 30, 2022). The

⁶ Mich. Bureau of Elections, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* (May 2022), attached as Ex. C to Verified Compl., *DeVisser v. Benson*, No. 22-000164-MZ (Mich. Ct. Cl. Sept. 30, 2022).

Michigan Supreme Court ultimately rejected the challenge to the guidance as a whole, concluding that the Secretary was not required to promulgate the guidance as administrative rules. *O’Halloran*, 29 N.W.3d. The Court also upheld the specific challenged provisions of the 2022 Guidance, except in two instances. *Id.* Thereafter, the Secretary re-published substantially similar guidance, with slight alterations to address the *O’Halloran* decision (the “2024 Guidance”).⁷ The 2024 Guidance governed administration of the 2024 general election.

In 2025, the Secretary initiated an effort to codify the 2022 and 2024 Guidance as formal administrative rules. *See* Sec’y of State Brief at 2. As Defendants explain at length, that regulatory process spanned more than twelve months and included a public notice and comment period, as well as a public hearing. *Id.* at 2–5. The final rules were published on February 11, 2026, and took effect on May 6, 2026. *See* 9 Mich. Reg. 2–14 (June 1, 2026). Plaintiffs filed this lawsuit on June 22, 2026.

ARGUMENT

Defendants argue that Plaintiffs’ claims fail for four distinct reasons: *first*, the claims for relief are too late and barred by laches because the final language for the 2026 Rules was filed February 11, the 2026 Rules took effect on May 6, and Defendants waited until 48 days *later* to seek any relief; *second*, the 2026 Rules are valid because they fall within the relevant agency scope, do not conflict with statute, and are not arbitrary or capricious; *third*, the Secretary has express authority to promulgate rules for elections and therefore the 2026 Rules are not ultra vires; and *fourth*, the 2026 Rules do not violate the separation of powers.

⁷ Mich. Dep’t of State, *The Appointment, Rights, and Duties of Election Challengers and Poll Watchers* (Oct. 2024), <https://perma.cc/75KK-5H4A>.

Amici adopt these arguments in full and write separately to underscore both the importance of the challenged rules and the burden that upending those rules less than two weeks before a primary election day and less than four months before a general election would have, all without providing material benefit to voters or the democratic process. *Amici* further note that the challenged provisions, examined individually, either make no substantive change to existing procedures or actively improve how elections are administered. Striking them down would prejudice the fair administration of elections and should be reason alone to reject Plaintiffs' claims. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam).

A. The 2026 Rules Ensure Local Election Officials Can Perform Their Duties and Administer Elections in an Orderly Manner.

The 2026 Rules were promulgated to codify long-standing guidance governing how election challenges work in Michigan. The Rules ensure that both challengers *and* election officials understand their roles, responsibilities, and the processes each participant in the electoral process must follow. That clarity is vital to ensuring the integrity of Michigan's elections, particularly as election turnout in Michigan increases.⁸

A short review of the history—and *amici*'s unique perspective on the front lines of election administration in Michigan—shows how disruptive Plaintiffs' requested relief would be. The 2024 general election saw Michigan's third consecutive election with record-breaking voter turnout.⁹ That means *amici* are now accountable for processing more registrations, ballots, and audits than ever before. With this increased participation comes the possibility for a greater number of vote challenges—both legitimate challenges and meritless ones levied solely with the intention of

⁸ Mich. Dep't of State, *2024 Election Report Access Matters: Michigan #3 in Voter Turnout* (July 2025), <https://perma.cc/Y2YE-BXR7>.

⁹ Press Release, Mich. Dep't of State, *2024 Post-Election Recount and Audit Report Confirms Michigan's Elections Are Secure and Accurate* (Oct. 13, 2025), <https://perma.cc/V83A-WFSM>.

disrupting the orderly processing of elections. And that concern is far from academic: it is evident from the challengers' behavior at the Detroit AVCB in 2020 that a coordinated effort to use illegitimate challenges can work to derail, rather than protect, election proceedings. This concern is further underscored by the rhetoric of organizations founded since 2020 to influence the outcome of elections by disrupting the voting process.¹⁰

In the face of these real threats to the integrity of the electoral process, local election officials need clear, uniform guidance to allow them to prepare to handle vote challenges consistently and accurately. These preparations include additional staff training, communication with organizations that credential challengers, and staff or volunteer capacity increases. Rigorous handling of vote challenges is vital to respond quickly to valid challenges and to prevent bad-faith challenges from sowing doubt in the legitimacy of election processes. Consistency is also crucial to avoid any real or perceived bias. The timeliness of upsetting the ground rules is a distinct and separate concern, addressed in part in Section C *infra*. But even setting that aside, on the *substance*, the success of the existing guidance, now codified in the Rules, in fulfilling these interests is clear.

Plaintiffs point to several 2026 Rules that contain new language. None of the updated language Plaintiffs identify conflicts with Michigan election law for the reasons identified by Defendants. And for the interest of *amici*, each of the changes in the 2026 Rules either make no *substantive* changes to the procedures for the elections or further the orderly administration of the process—or both. For instance, Rule 168.214(3)(n)–(o) adds the word “intermittently” to guidance that remains substantively the same as it has been for the past two cycles. Same with updates in the 2026 Rules to Rule 168.214(4)(c) to specify that challengers may not stand continuously in

¹⁰ Alexandra Berzon & Ken Bensinger, *Fueled by Falsehoods, a Michigan Group Is Ready to Challenge the Vote*, N.Y. Times (Nov. 7, 2022), <https://perma.cc/DP9A-9VVB>.

close proximity in a manner a reasonable person could find intimidating. Neither change is vague or ambiguous; rather, they provide a clear standard for *amici* and others charged with administering the elections to fairly apply. And Rule 168.206(4) provides common sense limitations that apply only to election locations that cannot safely accommodate the maximum number of challengers and creates an evenhanded manner to deal with that rare circumstance. This update is reasonable, consistent with the law, and *further*s the safe and orderly administration of the election by letting election officials and challengers alike know a process rather than implementing one on the fly when required by the physical limitations of an election facility.

Vacating these rules would open the door to disorder and leave *amici* to face a gauntlet of possible challenges not just to voter eligibility but to election processes, without any instruction to guide their decisions. And in turn, the absence of operative guidance would leave *amici* open to allegations of bias or improper behavior in the course of carrying out their duties—and potentially without a firm footing to stop the unacceptable, chaotic behavior seen during the 2020 count. In an environment of increased violent threats towards public officials, including local elections officials,¹¹ a lack of clarity can lead to actual safety concerns for *amici*, in addition to difficulties carrying out their duties.

B. The Success of the 2022 and 2024 Rules Demonstrate That the 2026 Rules Will Allow for an Orderly Election.

The Court need not speculate about whether the 2026 Rules will achieve their stated goal. That is clear from the fact that the guidance that the rules codify has now successfully guided two consecutive smooth election cycles in Michigan. The rules are functionally the same as the 2022 Guidance and the 2024 Guidance. In both years, elections were administered without disruptive

¹¹ Andrew Howard, *Election Officials Grapple with a Brain Drain as Threats Rise*, Politico (Feb. 3, 2026), <https://perma.cc/5MTG-6BLT>.

incidents at polling places, and without any increase in voter fraud. Credentialing organizations and political parties continued to have opportunities to challenge votes. And the record turnout in both elections demonstrates that neither version of the guidance impeded voter participation. There is no plausible argument that the Court should accept that the 2026 Rules will interfere with voters' ability to participate in the franchise or prevent legitimate challengers from appropriately participating in the process.

C. Plaintiffs' Challenge Must Be Rejected Because It Was Brought Too Close to an Election.

The primary election in Michigan is on August 4, which is approximately two weeks away. Voting has already begun, with processing and tabulating in select towns and cities set to begin next week. And with the general election on November 3, less than four months away, county clerks are due to start sending out ballots to local clerks in less than two months on September 19. Early voting for the general election will begin on October 24. Of course, Plaintiffs have not expressly said whether they are seeking relief ahead of the August primary, vaguely asserting that they “seek declaratory relief regarding the November 3, 2026 general election, and all future elections” and ignoring the potential impacts a decision in their favor would have on the fast-approaching primary election. Verified Compl. ¶ 31, *Mich. Republican Party v. Benson*, No. 26-000134-MZ (Mich. Ct. Cl. June 23, 2026). That vagueness, however, even construed in Plaintiffs' favor, should not make any difference: whether measured against the August primary election or the November general election, the outcome of the analysis is the same: The challenge is too close to forthcoming elections for any of Plaintiffs' requested relief not to risk “causing profound harm to the public and to the integrity of the election process.” *Davis v. Secretary of State*, 12 N.W.3d 653, 665 (Ct. App. 2023). Indeed, even if this Court were to delay ruling on Plaintiffs' challenge until after the August primary, the Court's ruling could result in local election officials applying

different rules to the primary and general elections, causing confusion for voters, challengers, and election officials, as well as negatively affecting the public’s perception of the fairness of the elections.

As courts in Michigan have long held, “[e]lections require the existence of a reasonable amount of time for election officials to comply with the mechanics and complexities of our election laws,” and courts should “reasonably endeavor to avoid unnecessarily precipitate challenges that would result in immense administrative difficulties for election officials.” *New Democratic Coalition v. Austin*, 200 N.W.2d 749, 755–56 (Ct. App. 1972); *see also Purcell*, 549 U.S. at 5–6. This principle, sometimes referred to as the *Purcell* principle, is especially pertinent where Plaintiffs have offered no explanation for bringing suit so close to an election. *Id.* at 5–6. And there can be no explanation here when, as Defendants explain at length in their brief, Plaintiffs waited 48 days from the time that the rules became effective before bringing this suit (and despite likely having knowledge of the text of the Rules for far longer than that). *See Defs.’ Br.* at 6–10.¹²

Moreover, Plaintiffs ask for exactly the kind of late-breaking change that would cause “great confusion associated with [its] implementation” and affect “the state’s entire voting methodology.” *See U.S. Student Ass’n Found v Land*, 546 F.3d 373, 387 (6th Cir. 2008). Over one thousand clerks and thousands of election workers have relied on the Michigan Secretary of State’s long-standing guidance to establish uniform statewide election procedures that have governed all elections in the state for the past four years, which Defendants codified into the 2026 Rules. To upend that now would either require the issuance of new guidance and procedures on the eve of

¹²*Amici* join the laches argument advanced by Defendants, but write separately to explain that *Purcell* leads to the same conclusion. The two doctrines converge on a single principle: “Call it what you will—laches, the *Purcell* principle, or common sense—the idea is that courts will not disrupt imminent elections absent a powerful reason for doing so.” *Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016).

an election, or, more likely, would result in the August and November elections proceeding with no guidance in place (or piecemeal guidance, varying by jurisdiction). Any of these outcomes is sure to impact *amici*'s ability to ensure the orderly and efficient administration of elections. That is not a hypothetical concern. It is precisely what happened in Detroit in 2020 and what the original 2022 Guidance was issued to prevent. In such circumstances, courts must stay their hands to protect the fundamental right to vote. *Purcell*, 546 U.S. at 5-6.

CONCLUSION

For the foregoing reasons, *amici* request that the Court of Claims grant the Defendants' 7/8/2026 Motion for Summary Disposition and uphold the 2026 Rules.

Respectfully submitted,

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DATED: July 20, 2026

/s/ Sarah Riley Howard
Sarah Riley Howard (P58531)

PROOF OF SERVICE

I, Sarah Howard, hereby affirm that on the date stated below I delivered a copy of Motion for Leave to File a Brief of *Amici Curiae*, upon all counsel in the case, via the Court's MiFile system. I hereby declare that this statement is true to the best of my information, knowledge, and belief.

DATED: July 20, 2026

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