

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals

LEAGUE OF WOMEN VOTERS OF
MICHIGAN, PROGRESS MICHIGAN,
COALITION TO CLOSE LANSING
LOOPHOLES, AND MICHIGANDERS
FOR FAIR AND TRANSPARENT
ELECTIONS,

Plaintiffs,

v.

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

Defendant,

and

DEPARTMENT OF ATTORNEY
GENERAL,

Intervenor-Defendant,

and

THE MICHIGAN SENATE AND THE
MICHIGAN HOUSE OF
REPRESENTATIVES,

Amici Curiae.

Supreme Court No. 163711, 163712,
163747, 163748

Court of Appeals Nos.
357984, 357986

Court of Claims
Case No. 21-000020-MM

**THE APPEALS INVOLVE A
RULING THAT A STATUTE IS
UNCONSTITUTIONAL**

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**AMICUS CURIAE BRIEF OF THE MICHIGAN SENATE AND HOUSE OF
REPRESENTATIVES IN SUPPORT OF THE DEPARTMENT OF ATTORNEY
GENERAL'S APPLICATION FOR LEAVE TO APPEAL**

INTRODUCTION

This Court has previously recognized that constitutional law and common sense each “compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 20; 740 NW2d 444 (2007), quoting *Burdick v Takushi*, 504 US 428, 433 (1992). This case sits at the intersection of two fundamental principles of election law: (1) the People of Michigan’s power to propose and enact laws; and (2) the government’s “active role” in regulating elections and enacting supplemental legislation to self-executing provisions of the Michigan Constitution. Accordingly, the Michigan House of Representatives and Michigan Senate (the “Legislature”) submit this amici curiae brief in support of the Attorney General’s Application for Leave to Appeal, to emphasize the importance of having clarity and certainty as to the scope of the Legislature’s authority to regulate elections, and to facilitate and increase participation in the democratic process.

ARGUMENT

A. This appeal involves the jurisprudentially significant issue of the Legislature’s authority to supplement self-executing provisions of the Michigan Constitution.

In 2018, the Legislature passed House Bill 6595, which became known as Public Act 608 (“PA 608”) when it was signed into law. Among other provisions, PA 608 requires that, with respect to initiatives, referendums, or constitutional amendments, “[n]ot more than 15% of the signatures to [] determine the validity of [such] a petition . . . shall be of registered electors from any one congressional district.” MCL 168.471. The purpose of this provision was to ensure widespread grassroots support and increase participation in direct democracy. Nonetheless, the Court of Appeals struck down this provision as an unconstitutional legislative amendment that

curtails the People of Michigan’s right to propose and enact laws through the petition process. See Const 1963, art 2, § 9 (“The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum.”); *id.* at 12 § 2 (“Amendments may be proposed to this constitution by petition of the registered electors of this state.”).

This holding significantly restricts the Legislature’s ability to enact reasonable supplemental legislation to self-executing provisions of the Michigan Constitution—a right that all parties acknowledge the Legislature has. *Promote the Vote v Secretary of State*, 333 Mich App 93, 121; 958 NW2d 861 (2020) (holding that the Legislature “may enact laws that *supplement* a self-executing constitutional provision” if the laws do not curtail or place an undue burden on constitutional rights (emphasis added)). Thus, this Court should grant the Attorney General’s Application for Leave to Appeal to provide certainty and clarity regarding the Legislature’s power to engage in several of its most essential constitutional functions: regulating voting, preserving the purity of elections, and guarding against the abuses of the elective franchise. Const 1963, art 2, § 4(2) (it is the exclusive role of the Legislature “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.” (emphasis added)). A decision from this Court will clarify the Legislature’s ability to supplement self-executing elections-related constitutional provisions—specifically legislation designed to promote broad, increased participation in direct democracy.

B. This appeal also involves the jurisprudentially important issue of the Legislature’s power to regulate elections.

PA 608 also included a provision requiring paid petition circulators to file an affidavit with the Michigan Secretary of State, disclosing the fact that the circulator is a paid signature gatherer.

MCL 168.482a. While the Court of Appeals recognized that the Legislature “has a legitimate and compelling interest in increasing the transparency of elections and providing accurate information to the electorate,” the panel nonetheless struck down the affidavit provision as “imposing a significant burden on the right of political speech protected by the First Amendment.” *League of Women Voters of Mich v Secy of State*, unpublished per curiam opinion of the Court of Appeals, issued October 29, 2021 (Docket Nos. 357984 and 357986), p 21. The Court of Claims reached the exact opposite conclusion—agreeing that the state has important interests at stake, but holding that PA 608’s affidavit requirement is not onerous because it does not impact a paid circulator’s face-to-face interactions with the public. Finally, resolving this issue will have lasting ramifications on the Legislature’s ability to regulate elections and the ways in which the People of Michigan can participate in direct democracy. Granting the Attorney General’s Application for Leave to Appeal will provide needed clarity as to the Legislature’s role in regulating direct democracy and provide certainty to these processes for years to come.

CONCLUSION

Nothing is more sacred than our democratic election process. This case involves important questions of constitutional law concerning how and to what extent the Legislature can regulate and facilitate that process under the Michigan Constitution. It is a paradigm dispute for this Court’s resolution. Accordingly, the Michigan Senate and the Michigan House of Representatives respectfully request that this Court grant the Department of Attorney General’s Application for Leave to Appeal and uphold PA 608 in its entirety.

Dated: November 30, 2021

Respectfully submitted,

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