

**STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT**

LEAGUE OF WOMEN VOTERS OF
MICHIGAN, MICHIGANDERS FOR
FAIR AND TRANSPARENT ELECTIONS,
HENRY MAYERS, VALERIYA EPSHTENYN,
and BARRY RUBIN,

Supreme Court No. 160907
Court of Appeals No. 350938
Court of Claims No. 19-000084-MM

Plaintiffs-Appellees,

v

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

Defendant-Appellee.

MICHIGAN SENATE AND MICHIGAN
HOUSE OF REPRESENTATIVES,

Supreme Court No. 160908
Court of Appeals No. 350938
Court of Claims No. 19-000092-MZ

Plaintiffs-Appellants,

v

JOCELYN BENSON,

Defendant-Appellant.

PLAINTIFFS' SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTIONS INVOLVED

1. Is this case moot as to Michiganders for Fair and Transparent Elections?
Plaintiffs' answer: Yes
2. Do the remaining Plaintiffs have standing based on the allegations in the Verified Complaint?
Plaintiffs' answer: No
3. If the case is moot, should the lower courts' judgments be vacated?
Plaintiffs' answer: Yes
4. If the Court proceeds to the merits should the decision be prospective only?
Plaintiffs' answer: The Court should not proceed to the merits but if it does the decision should be prospective only.

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INTRODUCTION

By order dated July 31, 2020 the Court directed the parties and proposed intervenors to file supplemental briefs on or before August 28, 2020 addressing four (4) issues. Plaintiffs address them *seriatim*.

ARGUMENT

I. THE CASE IS MOOT AS TO MICHIGANDERS FOR FAIR AND TRANSPARENT ELECTIONS.

On June 17, 2020 the Clerk of the Court inquired whether Plaintiff Michiganders for Fair and Transparent Elections (MFTE) “is still pursuing its ballot initiative at the present time.” Plaintiffs’ counsel answered in the negative and that answer remains the same.

This case is thus moot as to MFTE. *See, e.g., Poulton v Cox*, 368 P3d 844 (Utah 2016) (terminating petition drive rendered issues in lawsuit moot); *Personhood Nevada v Bristol*, 245 P3d 572; 126 Nev 599 (Nevada 2010) (appeal mooted when initiative petitions were not filed by the deadline).

Although the issues presented are capable of repetition they will not evade review because they can be resolved in future election cycles under this Court’s expedited election litigation procedures, as was sought here. *See* MCR 7.213(C)(4), 7.305(C)(1); *Scott v Michigan Director of Elections*, S Ct No 143878 (October 20, 2011); *Bristol*, 245 P3d at 603-04 (expedited election litigation procedures mean that issues will not evade review).

II. THE REMAINING PLAINTIFFS LACK STANDING BASED ON THE ALLEGATIONS IN THE VERIFIED COMPLAINT.

This Court articulated the requirements to establish standing in *Lansing Schools Ed Ass’n v Lansing Bd of Education*, 487 Mich 349; 792 NW2d 686 (2010). *Lansing Schools* returned Michigan law to the “limited, prudential doctrine” in effect before the Court adopted the federal

courts' standing test in *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726; 629 NW2d 900 (2001).

This Court described the revived "limited, prudential" standing doctrine as follows:

Generally, the court exercised its discretion to hear a case if the citizen had some individual interest in the subject matter of [the] complaint which is not common to all the citizens of the state...This was sometimes articulated as a special or specific injury or interest.

Id at 356 (quotation marks and citation omitted). Under this Court's standing analysis:

Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Id at 372.

Plaintiffs League of Women Voters of Michigan (LWVMI), Henry Mayers, Valeriya Epshteyn, and Barry Rubin did not plead "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *See Verified Complaint* ¶¶ 6, 8-10.

III. UNDER THIS COURT'S PRECEDENTS, SINCE THIS CASE IS MOOT THE LOWER COURT JUDGMENTS SHOULD BE VACATED AND THE RIGHTS OF THE PARTIES PRESERVED.

In cases which become moot while pending before this Court, the lower courts' judgments are vacated as moot and the parties' rights are preserved. *See Anglers of Au Sable v DEQ*, 489 Mich 884; 796 NW2d 240 (2011).

IV. A DECISION ON THE MERITS SHOULD BE PROSPECTIVE ONLY.

For the reasons stated the Court should not proceed to the merits. If it does, the Court's decision should apply prospectively only. *See Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2002).

CONCLUSION AND RELIEF SOUGHT

For the reasons stated Plaintiffs ask that the case be dismissed as moot and the lower court decisions be vacated as moot with all the rights of the parties preserved.

Respectfully submitted,

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