



Michigan Secretary of State loses YET AGAIN in O'Halloran vs. Benson.

Call to Action at Bottom of Release

10/25/2023

A 3-judge panel of Michigan Court of Appeals, in a unanimous decision, has ruled that Secretary of State Jocelyn Benson acted outside the bounds of Michigan law when issuing her 2022 manual for election poll challengers titled “The Appointment, Rights, and Duties of Election Challengers and Poll Watchers.”

This lawsuit, O'Halloran, et al vs. Secretary of State and Director of Bureau of Elections, was initiated because Secretary of State (SOS) Benson issued rules that conflicted with Michigan Election Law, infringing on the rights of poll challengers to properly ensure lawful elections across Michigan. Under Michigan's Administrative Procedures Act (APA), a rule must be promulgated by the APA or it is void. The SOS has no authority to make rules outside of the APA. Doing so would be a violation of the separation of powers, since she would essentially be legislating from her executive position without any oversight or power to do so.

Instead of staying within the powers granted to her, Benson forced new restrictive rules disguised as 'guidance' without any public notice or opinion period or voting, which violates the Administrative Procedures Act (APA). This seems to happen before every election with Benson, who knows that the litigation like this is a lagging remedy; by the time she loses (again) in court months or years later, the public has already lost the ability to have another election that is free, fair, transparent and lawful.

Her illegal 2022 rule manual increased from 10 to 26 pages. The updated pages contained numerous illegal restrictions that neutered the rights of poll challengers to ensure that elections were being run legitimately in 2022 and 2023. This is a continuation of Benson's perpetual executive branch overreach. She has been struck down for various kinds of election interference by courts 5 times already.

There was an initial attempt by radical Democrat swamp attorneys from the massive and infamous Elias Law Group (among others) to join this case on the side of the defense. Despite this, the plaintiffs' attorney Ann Howard—who has no such political pedigree or dealings with election law, prevailed with her team in this David vs. Goliath victory as judges saw through these bullying shenanigans.

Perhaps the exhaustion from having to deal with a 5-time loser, Benson, wore on the 3 appellate judges. This judicial fatigue would have been due, in part, to the hundreds of pages-- including the multiple amicus briefs in favor of Defendant Benson, that was required reading for all the judges in order to adjudicate this matter *again*. Benson first lost this case in the Court of Claims just prior to the 2022 election.

No matter how many times Benson gets beaten down in the courts, she continues to lawlessly put the thumb on the scale of justice prior to every election. This results in disenfranchising voters and poll challengers.

The court seemed to put an exclamation on this point when they said they will be publishing this ruling rather than leaving it as an unpublished opinion and stated in their ruling that "Plaintiff's shall tax costs."

The case was heard in the Court of Appeals on October 3rd, 2023 and can be viewed starting at the 12:20 mark, here: <https://www.youtube.com/watch?v=DjsRhE8Kxec>

During the court proceeding, Benson's attorney essentially argued that Benson may break the law whenever she feels like it by simply writing new rules – disguised as guidance. The attorney also suggests that legislation is no different from rules created by the SOS, which can be made on whim with no vote, election, or public process. We encourage readers to listen to the judges' responses to such assertions in the court video.

If this is how her attorney speaks openly to 3 judges in a court of law, imagine how Benson speaks and thinks behind closed doors...and imagine how she actually runs the process of the numerous elections that aren't so easily scrutinized.

Specifics:

Court agreed with plaintiff that electronic devices, such as smartphones, were permissible if not used to transmit certain information about an election during an election. However, this victory may be challenged by new Michigan legislation and rules that have passed since 2022 which may bar all electronic devices and negate this part of the decision.

Court agreed with plaintiff that SOS arbitrarily invented the term 'impermissible' challenge which does not exist in election law. Essentially, they agreed that no such thing exists. In the past, the term had been used as an excuse to arbitrarily and capriciously remove any poll challenger, illegally, who made a challenge that an election employee didn't want to deal with or didn't like.

Court agreed with plaintiff that it is illegal to require all poll challengers to report only to the "liaison." No such position is defined in Michigan election law or in the APA, yet the SOS was requiring all Poll Challengers to address only liaisons who would often be absent from tables, causing countless challenges to be missed.

Court agreed with plaintiff that the SOS devised a specific form/credential that she claimed was required to be a poll challenger, which is illegitimate.

Additional Notes:

At the 26:50 mark in the YouTube video link of the court proceeding above, the SOS's attorney had the audacity to state of the law that *"If there was an instruction [in the law] telling us to do something and we thought it was ok, we would probably do it."* But, if the SOS office decides that something the legislature passes is--according to the SOS, simply a *"bad idea, we might just choose not to do it. Right? You could leave that statute sitting there. And we would continue to issue instructions and give guidance and somebody would probably sue us. Haha"*

After laughing smugly about ignoring legal statutes, Benson's attorney then proclaimed to the judges that *"no discernable harm"* (27:26) comes from breaking the law via such illegal rule-making, even though it denies rights of Michiganders to a free, fair, transparent, and lawful election while openly mocking the idea of separation of powers. "I don't think that any of this has to be rules," she said.

Plaintiffs: Philip O'Halloran, MD, Braden Giacobazzi, Robert Cushman, Penny Crider and Ken Crider..

Call to Action:

In light of this victory, the Michigan Republican Party is providing several opportunities for Poll Challenger Training.

Individuals can attend the first training Saturday, October 28 either virtually [through this link](#) or in person in Mount Pleasant by sending an email to PollChallenger@migop.org. The training begins at 11:00 am.

There is an additional opportunity for a virtual training on Thursday, November 2, where attendees can [register here](#). The online November 2 training begins at 6:30 pm.

MCL 168.31(c)

(1) The secretary of state shall do all of the following:

...

(c) Publish and furnish for the use in each election precinct before each state primary and election a manual of instructions that includes specific instructions on assisting voters in casting their ballots, directions on the location of voting stations in polling places, procedures and forms for processing challenges, and procedures on prohibiting campaigning in the polling places as prescribed in this act.