

Order

Michigan Supreme Court
Lansing, Michigan

July 31, 2020

Bridget M. McCormack,
Chief Justice

161671 & (65)

David F. Viviano,
Chief Justice Pro Tem

LEAGUE OF WOMEN VOTERS OF MICHIGAN,
DEBORAH BUNKLEY, ELIZABETH CUSHMAN,
and SUSAN SMITH,
Plaintiffs-Appellants,

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

v

SC: 161671
COA: 353654

SECRETARY OF STATE,
Defendant-Appellee.

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the July 14, 2020 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

BERNSTEIN, J. (*dissenting*).

A majority of this Court has voted to deny leave in this case; I write to express how strongly I disagree with this course of action. This case concerns absentee ballots—specifically, whether absentee ballots must be received by local election clerks by 8 p.m. on an election day in order to be counted. I express no opinion on the substantive issue presented in this case. However, it must be noted that Proposal 3, which allows for no-reason absentee voting in Michigan, was approved by Michigan voters in November 2018. The upcoming general election will be the first presidential election in which no-reason absentee ballots are accepted. Although numbers for the upcoming August primary election have not yet been finalized, we know that Michigan voters have already requested many more absentee ballots this year than in past years, and it seems obvious that the COVID-19 pandemic will only increase the number of requests.¹

¹ “Since the passage of Proposal 3 in 2018, any registered voter can now cast absentee ballots in Michigan. And voters are fully taking advantage of the option for the 2020 presidential primary March 10. Nearly 800,000 voters have requested absentee ballots, which is nearly double the number at this point in the 2016 presidential primary cycle.”

Given the importance that absentee voting will have on the upcoming general election, I am baffled and troubled by the majority's vote to deny leave to appeal here. The very split in the Court of Appeals panel below, which resulted in no less than three separate opinions being authored, suggests that this is not such a clear-cut case that a simple denial is obviously appropriate. Even if I were convinced that the Court of Appeals majority had correctly decided this case, it seems abundantly clear to me that this case is at least significant enough to demand full consideration by this Court via briefing and oral argument.

I would also note that, in the November 2016 general election, the difference between votes cast for the presidential nominees of our two major political parties was less than 0.3% of the total votes cast in Michigan, a little less than 11,000 votes.² The margins of victory were similarly close in a number of down-ballot races. The plaintiffs here estimate that as a result of the Court of Appeals' decision, between 41,000 and 64,000 absentee ballots will not be counted. Because absentee ballots will undoubtedly play a significant role in the upcoming general election, I would hold oral argument in this case ahead of that election in order to ensure that the interests of Michigan

Gray, *Michigan Primary Election 2020: Yes, You Can Change Your Vote on Absentee Ballots*, Detroit Free Press (March 2, 2020) <<https://www.freep.com/story/news/politics/elections/2020/03/02/michigan-primary-2020-absentee-ballot-election/4881820002/>> (accessed July 24, 2020) [<https://perma.cc/C8YN-P6MA>]. The May 5, 2020 election was the first election to take place after the onset of the COVID-19 pandemic in Michigan. "Michigan saw record-breaking turnout for the approximately 50 elections in 33 counties and 200 municipalities across the state yesterday, with nearly 25 percent of eligible voters participating and 99 percent of those voters casting absent voter ballots." Michigan Secretary of State, *Record-breaking Turnout for May 5 Election Demonstrates Michigan Voter Commitment to Democracy* (May 6, 2020) <https://www.michigan.gov/sos/0,4670,7-127-1640_9150-528236--,00.html> (accessed July 24, 2020) [<https://perma.cc/G8LQ-89RD>]. "Absent voter ballot numbers continue to grow steadily ahead of the August 4 state primary, with more than 1.8 million requested and more than 600,000 already returned. The total number of absent voter ballots cast in the August 2016 state primary was just 484,094." Michigan Secretary of State, *Absent Voter Ballot Returns Already Top 2016 Total* (July 22, 2020) <<https://www.michigan.gov/sos/0,4670,7-127--534590--,00.html>> (accessed July 24, 2020) [<https://perma.cc/D9N9-CXW2>].

² Michigan Secretary of State, *2016 Michigan Election Results* (updated November 28, 2016) <https://mielections.us/election/results/2016GEN_CENR.html> (accessed July 24, 2020) [<https://perma.cc/G74E-XDBS>].

voters are thoroughly examined and considered before votes are tallied, in order to avoid any potential disruption to the election process. The people of Michigan deserve nothing less.

MCCORMACK, C.J., and CAVANAGH, J., join the statement of BERNSTEIN, J.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 31, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk