

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN COMMON SENSE PARTY,
LIBERTARIAN PARTY OF MICHIGAN,
GORDON BLOEM, P. JOSEPH HAAS,
ROGER MARTIN and RACHEL GROSS,

Plaintiffs,

v

JOCELYN BENSON, in her official
capacity as Secretary of State, and
JONATHAN BRATER, in his official
capacity as Director, Michigan Bureau of
Elections,

Defendants.

MICHIGAN COMMON SENSE PARTY,
LIBERTARIAN PARTY OF MICHIGAN,
GORDON BLOEM, P. JOSEPH HAAS,
ROGER MARTIN and RACHEL GROSS,

Plaintiffs,

v

JOCELYN BENSON, in her official
capacity as Secretary of State, and
JONATHAN BRATER, in his official
capacity as Director, Michigan Bureau of
Elections,

Defendants.

Mark Brewer (P35661)
Attorney for Plaintiffs
Two Towne Square, Suite 444
Southfield, Michigan 48076
248.483.5000
mbrewer@goodmanacker.com

Case No. 26-000106-MZ

HON. MICHAEL F. GADOLA

BRIEF IN SUPPORT OF
DEFENDANTS SECRETARY OF
STATE JOCELYN BENSON AND
DIRECTOR OF ELECTIONS
JONATHAN BRATER'S 8/7/2026
MOTION FOR SUMMARY
DISPOSITION

Case No. 26-000149-MZ

HON. MICHAEL F. GADOLA

Robert S. LaBrant (P35462)
Attorney for Plaintiffs
12411 Pine Ridge Drive
Perry, Michigan 48872
517.881.5146
bob@boblalbrant.com

Samuel R. Bagenstos (P73971)
Attorney for Plaintiffs
625 South State Street
Ann Arbor, Michigan 48109
857.231.1663
sbagen@gmail.com

Heather S. Meingast (P55439)
Erik A. Grill (P64713)
Assistant Attorneys General
Attorneys for Defendants
P.O. Box 30736
Lansing, Michigan 48909
517.335.7659
meingasth@michigan.gov
grille@michigan.gov

**BRIEF IN SUPPORT OF DEFENDANTS SECRETARY OF STATE
JOCELYN BENSON AND DIRECTOR OF ELECTIONS JONATHAN
BRATER’S 8/7/2026 MOTION FOR SUMMARY DISPOSITION**

Erik A. Grill (P64713)
Heather S. Meingast
Assistant Attorneys General
Attorneys for Defendants
P O Box 30736
Lansing, Michigan 48909
517.335.7659

Dated: August 7, 2026

TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	iii
Index of Authorities	iv
Introduction	1
Counter-Statement of Facts	2
Standard of Review	5
Argument	6
I. Prohibiting candidates from appearing on the ballot for more than one political party does not violate the purity of elections.	6
II. Prohibiting candidates from appearing on the ballot for more than one political party does not violate the freedoms of association or speech.	12
III. Prohibiting candidates from appearing on the ballot for more than one political party does not unduly burden the fundamental right to vote under article 2, § 4(1) of the Constitution.....	20
Conclusion and Relief Requested	24
Proof of Service	24

INDEX OF AUTHORITIES

	<u>Page</u>
 Cases	
<i>Anderson v Celebrezze</i> , 460 US 780 (1983)	14, 15, 16, 19
<i>Barrow v Detroit Election Comm’n</i> , 301 Mich App 404 (2013)	13
<i>Bullock v Carter</i> , 405 US 134 (1972).....	13
<i>Burdick v Takushi</i> , 504 US 428 (1992)	14, 15, 16, 19
<i>Burns v City of Detroit</i> , 253 Mich App 608 (2002).....	13
<i>Carver v Dennis</i> , 104 F3d 847 (CA 6, 1997).....	13
<i>City of Ecorse v Peoples Community Hospital Authority</i> , 336 Mich 490 (1953)	8
<i>City of Owosso v Pouillon</i> , 254 Mich App 210 (2002)	13
<i>Crawford v Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008)	15
<i>Dearborn Twp Clerk v Jones</i> , 335 Mich 658 (1953).....	11
<i>Green Party of Tenn v Hargett (Hargett I)</i> , 767 F3d 533 (CA 6, 2014)	15
<i>Henry v Dow Chem Co</i> , 473 Mich 63 (2005)	5
<i>In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA</i> <i>71</i> , 479 Mich 1 (2007)	16
<i>League of Women Voters of Mich v Secretary of State</i> , 333 Mich App 1 (2020).....	6
<i>League of Women Voters of Michigan v Sec’y of State</i> , 508 Mich 520 (2022).....	7
<i>MacDonald v PKT, Inc.</i> , 464 Mich 322 (2001)	5
<i>Mahmood v City of Hamtramck</i> , unpublished per curiam opinion of the Court of Appeals, decided March 27, 2026 (Docket No. 378814), 2026 Mich App LEXIS 2651	22
<i>MDOT v Tomkins</i> , 481 Mich 184 (2008)	22
<i>Michigan State AFL-CIO v Civil Serv Comm’n</i> , 208 Mich App 479 (1995), rev’d on other grounds, <i>Michigan State AFL-CIO v Civil Serv Comm’n</i> , 455 Mich 720 (1997).....	13

<i>Ohio Council 8 Am. Fed’n of State v Husted</i> , 814 F.3d 329 (CA 6, 2016)	15
<i>Ohio Democratic Party v Husted</i> , 834 F.3d 620 (CA 6, 2016)	16
<i>Promote the Vote v Secretary of State</i> , 333 Mich App 93 (2020).....	14
<i>Socialist Workers Party v Secretary of State</i> , 412 Mich 571 (1982)	6, 9, 10
<i>Storer v Brown</i> , 415 U.S. 724 (1974)	15
<i>Taylor v Currie</i> , 277 Mich App 85 (2007).....	6
<i>Thomas M Cooley Law Sch v Doe</i> , 300 Mich App 245 (2013)	13
<i>Timmons v Twin Cities Area New Party</i> , 520 US 351 (1997)	16, 17, 19
<i>Todd v Hull</i> , 288 Mich 521 (1939).....	8, 10, 11
<i>Turunen v Dir of Dep’t of Nat Resources</i> , 336 Mich App 468 (2021).....	6
<i>Up & Out of Poverty Now Coalition v Michigan</i> , 210 Mich App 162 (1995)	13
<i>Wells v Kent County Bd of Election Comm’rs</i> , 382 Mich 112 (1969).....	11

Statutes

MCL 168.560b.....	2
MCL 168.561.....	2
MCL 168.691.....	5, 8, 23
MCL 168.691(1)	2
MCL 168.692.....	3, 5, 8, 23
MCL 168.693.....	3, 5, 8, 23
MCL 168.694.....	4, 5, 8, 23
MCL 168.695.....	4, 5, 8, 23

Rules

MCR 2.116(C)(8)	5, 12, 19, 23
-----------------------	---------------

Constitutional Provisions

Const 1963, art 2, § 4(1)(a)	passim
Const 1963, art 2, §4(2).....	14
US Const, art I, § 4	14

INTRODUCTION

This case presents a perfect example of litigants trying to solve a policy question through a judicial declaration. Plaintiffs brought this case seeking to invalidate the 1895 ban on a practice known as “fusion voting,” a process in which one candidate may be the nominee of multiple political parties and the combined votes for that candidate cast under all those political parties are counted together. That ban was upheld by a contemporary challenge brought to the Michigan Supreme Court. For over 120 years since that time, this practice has been entirely absent from Michigan’s political life.

Plaintiffs, arguing that fusion voting is “essential to bridge our current polarization” and break the dominance of the two major political parties, seek to renew the century-old constitutional challenge to Michigan’s prohibition against the practice. But this case is not about whether fusion voting is good policy or whether it would be beneficial to the political ecosystem of our state. The only question is whether fusion voting is protected by the Michigan Constitution. On this question, the Plaintiffs present little or no applicable legal authority in support of their claims, and disregard countervailing precedent. Accordingly, their claims fail to state a viable legal claim for which relief may be granted, and the complaint should be dismissed for the following reasons:

First, the “purity of elections” clause of Michigan’s Constitution—while it may permit fusion voting—does not make the practice of fusion voting compulsory.

Second, the current prohibition against fusion voting does not conflict with the freedom of association or speech. Candidates may express whatever views they

wish, and associate with any person or political party they choose. The only restraint placed upon them is that they may only appear on the ballot under the banner of one party.

Third, the ban on fusion voting does not violate the fundamental right to vote under article 2, § 4(1) of the Michigan Constitution where the practice had been unknown for over a century at the time that section was adopted by the electors.

COUNTER-STATEMENT OF FACTS

Michigan Statutes Prohibiting “Fusion Voting”

There are currently five statutes in the Michigan Election Law that act to prohibit candidates from appearing on the ballot for more than one political party.

MCL 168.691(1) provides that a candidate’s name cannot appear in more than one column on the ballot (i.e. political party) for the same office:

Each board of election commissioners shall have printed on the ballot, or on ballot labels or slips to be placed on a voting machine, when used, the names of the candidates certified to that board under this act. *A candidate's name shall not be placed or printed in more than 1 column on the ballot for the same office.* A board of election commissioners for a county or city may arrange the ballots with an identification numeral placed in the same space with the name of each of the candidates. That identification numeral shall be rotated with the name of the candidate, and when rotated, shall appear in the same space with the same candidate regardless of where the candidate's name appears on the ballot. [Emphasis added.]

Section 691 was amended by 2002 PA 163, which largely made minor changes to the phrasing without altering the substance of the law, other than changing subsection (2)’s requirements for how names should appear, to instead refer to MCL 168.560b and 168.561.

MCL 168.692 then requires that a person nominated at a primary election for more than office be notified and required to advise the clerk which party they desire their name be placed under:

Any person nominated at a primary election by more than 1 political party, or certified as a nominee by more than 1 political party, or nominated by 1 political party and thereafter certified as a nominee by another political party, shall be notified of such dual nominations by registered or certified mail with a return receipt demanded, by the county clerk, or clerks of the several counties affected if for a state or district office, immediately upon certification to him of such nominations by the board of canvassers or by the party committees, as the case may be. Such person shall, within 3 days after the receipt of said notification, advise the county clerk or clerks in writing in which political party column it is desired that his or her name be printed or placed on the ballots or voting machines for the ensuing election. Any person who has been certified for more than 1 office, except where 2 or more offices may be legally combined, shall be notified in a like manner and shall, within 3 days of receipt thereof, advise the county clerk or clerks of the particular office for which he desires to be a candidate. [Emphasis added.]

MCL 168.693, in turn, provides the method of determining the party designation for a candidate if a candidate who has been nominated by more than one political party fails to designate the party column in which they desire to appear:

Any person nominated at a primary or certified as a candidate by more than 1 political party for the same office, or for more than 1 office, except where 2 or more offices may be legally combined, who fails to designate the particular office sought and the party column in which it is desired that his or her name be printed or placed on the ballots or voting machines for the ensuing election, as herein provided, shall have his or her name printed or placed on said ballots or voting machines by the proper board of election commissioners in the following manner:

(1) Should such candidate's name have been certified by more than 1 political party, it shall be printed or placed in the column of that party first making certification;

(2) Should such candidate be nominated at a primary by 1 political party pursuant to the filing of petitions and be certified as a candidate by another party for the same office, or for more than 1 office, except where 2 or more offices may be legally combined, such candidate's name shall be printed or placed on the ballots or voting machines in the party column and for that office for which petitions were filed; or

(3) Should the name of such candidate be written or placed on the primary election ballots or voting machines for the same office, or for more than 1 office, except where 2 or more offices may be legally combined, by the electors of more than 1 political party without petitions having been filed or certification made, then the name of such candidate shall be printed or placed on the ballots or voting machines for the office and in the column of that party casting the greatest number of votes for such candidate at the preceding primary election.

MCL 168.694 simply provides that the same basic rules apply to city, village, and township elections:

Sections 691, 692, 693, and 695 apply to all city, village, and township elections held in this state under this act, except that the notice required to be given by a candidate shall, in case of a city, village, or township office, be given by him or her to the proper city or township board of election commissioners within 2 days after his or her name is certified as nominated by 2 or more political parties for the same office.

Section 694 was amended by 2018 PA 120 to make minor changes to the language of the statute, such as changing "his" to "his or her."

Lastly, MCL 168.695 provides Michigan's version of the "sore loser" rule, and prohibits a candidate who ran for nomination in one party's primary election from appearing as a candidate for another political party at the following general election:

No person whose name was printed or placed on the primary ballots or voting machines as a candidate for nomination on the primary ballots of 1 political party shall be eligible as a candidate of any other political party at the election following that primary.

Procedural History of the Combined Cases

Plaintiffs Michigan Common Sense Party and Libertarian Party of Michigan (“the Party Plaintiffs”), Rachel Gross (“the Candidate Plaintiff”), Gordon Bloem, P. Joseph Haas, and Roger Martin (“the Voter Plaintiffs”) filed their complaint, No. 26-106-MZ, in this Court on May 20, 2026, raising three counts, in which they challenge MCL 168.691, 692, 693, 694, and 695 as violating the “purity of elections” clause, the freedom of expression, and the freedom of speech under the Michigan Constitution.

On the following day, the same Plaintiffs also filed a complaint in the Ingham Circuit Court, No. 26-2815-CZ, challenging the same laws as violating article 2, §4(1)(a) of the Michigan Constitution. The case was later transferred to the Court of Claims by stipulation of the parties. That case was assigned Court of Claims case No. 26-149-MZ and was subsequently consolidated with No. 26-106-MZ.

STANDARD OF REVIEW

Summary disposition is proper under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted. *Henry v Dow Chem Co*, 473 Mich 63, 71 (2005). “A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and allows consideration of only the pleadings.” *MacDonald v PKT, Inc.*, 464 Mich 322, 332 (2001).

ARGUMENT

I. Prohibiting candidates from appearing on the ballot for more than one political party does not violate the purity of elections.

Article 2, § 4(2) of the Constitution provides that “[e]xcept as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws . . . to preserve the purity of elections, to preserve the secrecy of the ballot, [and] to guard against abuses of the elective franchise[.]” Const 1963, art 2, § 4(2).

“The phrase ‘purity of elections’ does not have a single precise meaning. However, it unmistakably requires fairness and evenhandedness in the election laws of this state.” *League of Women Voters of Mich v Secretary of State*, 333 Mich App 1, 25 (2020) (quotation marks and citation omitted). The “purity of elections” clause has been interpreted to embody two principles: “first, that the authority to enact laws to preserve the purity of elections resides in the legislature; and second, that any law enacted by the legislature that adversely affects the purity of elections is constitutionally infirm.” *Taylor v Currie*, 277 Mich App 85, 96 (2007)(quoting *Socialist Workers Party v Secretary of State*, 412 Mich 571, 596 (1982)). So, the Legislature is empowered to pass laws preserving the purity of elections, and any laws that “adversely affect” that purity may be held unconstitutional.

Here, as always, “[s]tatutes are presumed to be constitutional, and a ‘party challenging the constitutionality of a statute has the burden of proving the law’s invalidity.’” *Turunen v Dir of Dep’t of Nat Resources*, 336 Mich App 468, 482 (2021) (citation omitted). “[A] statute comes clothed in a presumption of constitutionality”

because the court presumes that “the Legislature does not intentionally pass an unconstitutional act.” *League of Women Voters of Michigan v Sec’y of State*, 508 Mich 520, 534 (2022) (cleaned up.) Plaintiffs’ complaint, however, fails to demonstrate how the challenged laws “adversely affect” the purity of elections. Plaintiffs blanketly allege that fusion voting “affords an unfair advantage to one party or its candidates over a rival party or its candidates.” (Cmplt, ¶69). But for all its review of history and hoped-for future effects, the complaint does little to demonstrate how any of the challenged laws grant any advantage to “one party over another” by requiring any one candidate to appear on the ballot only once. Absent from the complaint is a clear statement about which party they allege is presently being advantaged over another.

Instead, the complaint merely restates long-repeated claims about how votes for minor parties are “wasted votes,” and posits that voters are being excluded from participating in the democratic process because they cannot find a party that represents their preferences. (Cmplt, ¶53-59). Most curiously, the complaint theorizes that allowing fusion voting would provide voters a means to “signal” their disapproval to the major parties “without fully defecting to the opposition.” (Cmplt, ¶57). But Plaintiffs do not explain how a vote for a minor party is less “wasted” when the minor party is simply a different label for the same major party candidate, or why a major party would change its behavior when the end-result is that its party’s nominees still win.

At best, Plaintiffs’ allegations present policy arguments that minor parties would benefit from fusion voting, and that—if allowed—fusion voting would promote “electoral stability.” (See Cmplt, ¶71). While arguably the Legislature might constitutionally pass laws that allow for fusion voting, the Plaintiffs have failed to demonstrate that prohibiting the practice “adversely affects the purity of elections.”

As part of their attempt to show a partisan advantage imposed by the lack of fusion voting, Plaintiffs include allegations attributing motives to the Legislature’s enactment of the original “ban” in 1895. (Cmplt, ¶40-41). But motive or the wisdom of the Legislature’s policy choice is ordinarily not a consideration in assessing the constitutionality of a statute. See, e.g., *Todd v Hull*, 288 Mich 521, 533-534 (1939); *City of Ecorse v Peoples Community Hospital Authority*, 336 Mich 490, 500-501 (1953). Even so, Plaintiffs do little to address the motives of the Legislature in 1954, when the statutes at issue in this lawsuit were actually enacted. See MCL §§ 168.691, 168.692, 168.693, 168.694, 168.695. For that matter, the complaint similarly fails to address the Legislature of 2002, which amended § 691 (the section among the group that is arguably the most explicit expression of the “ban”), or the Legislature of 2018 when it amended § 694 (which applies the same requirements for local elections).

Moreover, the Michigan Supreme Court has already heard—and rejected—a challenge to similar laws based on the purity of elections. *Todd v Bd of Election Comm’rs*, 104 Mich 474, 477 (1895). In its initial ruling in that case, the Supreme

Court issued an abbreviated holding that the law prohibiting “fusion voting” was valid under the purity of elections clause. *Id.* The Court subsequently issued a written opinion expanding on its ruling. *Id.* at 480-488. After surveying its prior holdings, the Court summarized the applicable rule:

All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. [*Id.* at 483.]

This is not altogether different than the “fairness and evenhandedness” the Supreme Court would later describe in *Socialist Workers Party*, 412 Mich at 598-599. The Court then evaluated the process by which voters would mark their ballots without “fusion” voting, and concluded:

Any voter able to read could in a few seconds prepare his ballot. Is this destructive of the elective franchise? Does it destroy the full, free, and intelligent exercise of that precious right which is essential to the perpetuity of our government? To so hold would be absurd, and further argument cannot make it clearer. [*Id.* at 484.]

Notably, the Court’s opinion goes on identify risks of “bargains” and “trades” that the ban aims to avoid:

It is alleged by the respondents that corrupt bargains have been made, between unscrupulous managers of different political parties, by which one candidate has been bought off and another substituted, and that new political parties have been organized by unscrupulous men for the sole purpose of bargain and sale, and that the purpose of this law is to prevent these corrupt deals between corrupt politicians. No fraud is charged in the present case, but it affords an illustration of the opportunities for such trades, which every good citizen condemns, and which should, if possible, be prevented by law. [*Id.* at 486-487.]

Plaintiffs have alleged that the current statutes do not “sufficiently advance any state interests in avoiding fraud,” (Cmplt, ¶70, 79), but they allege no new answers to the risks the Supreme Court identified in 1895. The Court further concluded that candidates had no inalienable constitutional right to appear on the ballot for more than one party, and that so long as they appeared on the ballot for one, “every voter has a reasonable opportunity to vote for him.” *Id.* at 487.

Ultimately, the Supreme Court’s final paragraph is most devastating to Plaintiffs’ claim under the purity of elections:

The law is general, and aims at no political party. One party may be affected at one election, and another at another, or all parties may be affected at one election, some in one locality and others in another. It does not prevent coalition between different political parties, which is often very commendable and patriotic. It does not deprive the members of those political parties of the means to put their coalition into effect by their votes, but furnishes all reasonable facilities for so doing. It only requires some degree of intelligence and care on the part of the voters. We hold the law to be constitutional. [*Id.* at 487-488.]

Even after more than a century, the Supreme Court’s analysis in *Todd* directly refutes the premises and arguments that the Plaintiffs are trying to raise today. While Plaintiffs have meekly suggested that *Todd* is no longer valid because it predates the Supreme Court’s later articulation of the purity of elections in *Socialist Workers Party*, 412 Mich at 598-599, to bar election procedures that “afford an unfair advantage to one party”, they offer no retort to the portion of the 1895 opinion that squarely addresses that precise point. (See Cmplt, ¶6.)

Further, the Supreme Court’s opinion in *Todd* was not isolated, and there have been several occasions since its publications where the Court has confirmed or cited the result approvingly. In *Dearborn Twp Clerk v Jones*, 335 Mich 658, 663-

664 (1953), the Court rejected claims that the same person could run for one office in both the Democratic and Republican party primaries, concluding that such a process, “could possibly result in the nomination of each of them on more than 1 party ticket at the primary, and thus thwart any opposition in the ensuing election.” The Court held that while the statutes prohibiting candidates from running for the same office under more than one party did not expressly mention primary elections, it was the Legislature’s intention that names of a person should appear on the primary election ballots as a candidate of only 1 political party or organization. *Id.* at 663. “Any other holding would be repugnant to other parts of the general election law.” *Id.*

Also, the Supreme Court again considered *Todd* in the context of the purity of elections in *Wells v Kent County Bd of Election Comm’rs*, 382 Mich 112 (1969). That case—decided under our current constitution—was brought by a municipal judge seeking an incumbent designation for the then-newly-created office of district judge, as provided by a statute. *Id.* at 114. The Court reviewed the ballot-designation statute under the purity of elections clause. *Id.* at 118-119. The Court quoted approvingly from the decision in *Todd* where it stated that the law (i.e. the prohibition against a candidate appearing on more than one party ticket) did not deprive political parties of the means to make coalitions, and only required some degree of “intelligence and care” on the part of the voters. *Id.* at 121, quoting *Todd*, 104 Mich at 487-488. The Court went on to hold the ballot designation statute unconstitutional as an attempt by the Legislature to “place its own evaluation on

the qualification of candidates for office.” *Id.* at 126. But, there is at least a conceivable argument that permitting a single candidate to display on the ballot their nomination by multiple parties might similarly be considered to “place an evaluation on the qualification of candidates.”

Plaintiffs cite no subsequent case in which the Supreme Court or the Court of Appeals has determined that the purity of elections is offended by laws providing that no individual may be the nominee of more than one party for the same political office. For that matter, they cite no cases casting any genuine doubt on the continuing validity of the Michigan Supreme Court’s long-standing decision upholding such laws under the purity of elections. Plaintiffs’ challenge under the purity of elections clause, article 2, § 4(2), thus fails as a matter of law, and so Count I of the complaint must be dismissed under MCR 2.116(C)(8).

II. Prohibiting candidates from appearing on the ballot for more than one political party does not violate the freedoms of association or speech.

Plaintiffs’ Count II and III are based on article 1, §§ 3 and 5 of the Michigan Constitution. (Cmplt, ¶75, 83). Article 1, § 3 states: “The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.” Article 1, § 5, in turn, provides: “Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such right; and no law shall be enacted to restrain or abridge the liberty of speech or of the press.”

The Michigan Court of Appeals has held that the rights to free speech under the Michigan and federal constitutions are coterminous. *City of Owosso v Pouillon*, 254 Mich App 210, 213-214 (2002), citing *Up & Out of Poverty Now Coalition v Michigan*, 210 Mich App 162, 168-169 (1995), *Burns v City of Detroit*, 253 Mich App 608, 621 (2002), *Thomas M Cooley Law Sch v Doe*, 300 Mich App 245, 256 (2013). The Court of Appeals also held that federal authority construing the First Amendment may be used in construing Michigan’s constitutional free speech rights. *Id.* Similarly, the Court of Appeals has also observed that the rights to speech and association under article 1, §§ 3 and 5 are “coterminous with those under the First Amendment.” *Michigan State AFL-CIO v Civil Serv Comm’n*, 208 Mich App 479, 489 n 7 (1995), rev’d on other grounds, *Michigan State AFL-CIO v Civil Serv Comm’n*, 455 Mich 720 (1997).

Plaintiffs’ speech and association claims, however, fail under First Amendment analysis. It is well-established that a person has no constitutional right to be a candidate. *Barrow v Detroit Election Comm’n*, 301 Mich App 404, 422 n 11 (2013), citing *Bullock v Carter*, 405 US 134 (1972) and *Carver v Dennis*, 104 F3d 847 (CA 6, 1997). If there is no right to be a candidate, then there cannot be a right to be a candidate of multiple political parties for the same elective office.

Regardless, Plaintiffs’ speech and association claims would fail even if they could articulate a fundamental right at issue. Every election law, “whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—

the individual’s right to vote and his right to associate with others for political ends.” *Promote the Vote v Secretary of State*, 333 Mich App 93, 128-129 (2020), quoting *Anderson v Celebrezze*, 460 US 780, 788 (1983). Consequently, subjecting every voting regulation to strict scrutiny, thereby requiring that the regulation be narrowly tailored to advance a compelling state interest, would tie the hands of states seeking to ensure that elections are operated equitably and efficiently. *Id.*, citing *Burdick v Takushi*, 504 US 428, 433 (1992).

The “right to vote in any manner . . . [is not] absolute,” *Burdick*, 504 US at 433 (citation omitted); the federal Constitution recognizes the states’ clear prerogative to prescribe time, place, and manner restrictions for holding elections. US Const, art I, § 4, cl 1. The Michigan Constitution similarly provides that the Legislature shall enact laws, “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.” Const 1963, art 2, § 4(2).

Even following passage of Proposal 3, the Court of Appeals has recognized that the constitution does not provide that an individual has an “absolute constitutional right to vote,” and that certain requirements must be met. *Promote the Vote*, 333 Mich App 120. Indeed, 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.” *Burdick*, 504 US at 433, quoting

Storer v Brown, 415 US 724, 730 (1974). Federal law generally defers to the states’ authority to regulate the right to vote. See *Crawford v Marion Cty Election Bd*, 553 US 181, 203-04 (2008) (Stevens, J., op.) (recognizing that neutral, nondiscriminatory regulation will not be lightly struck down, despite partisan motivations in some lawmakers, so as to avoid frustrating the intent of the people’s elected representatives).

When a constitutional challenge to an election regulation requires courts to resolve a dispute concerning these competing interests, federal courts apply the *Anderson-Burdick* analysis, from *Anderson* and *Burdick*, *supra*. If a state imposes “severe restrictions” on a plaintiff’s constitutional right to vote, its regulations survive only if “narrowly drawn to advance a state interest of compelling importance.” *Burdick*, 504 US at 434. But “minimally burdensome and nondiscriminatory” regulations are subject to a “less-searching examination closer to rational basis” and “the State’s important regulatory interests are generally sufficient to justify the restrictions.” *Ohio Council 8 Am. Fed’n of State v Husted*, 814 F3d 329, 335 (CA 6, 2016), citing *Green Party of Tenn v Hargett (Hargett I)*, 767 F3d 533, 546 (CA 6, 2014), and quoting *Burdick*, 504 US at 434. Regulations falling somewhere in between—“i.e., regulations that impose a more-than-minimal but less-than-severe burden—require a ‘flexible’ analysis, ‘weighing the burden on the plaintiffs against the state’s asserted interest and chosen means of pursuing it.’” *Ohio Democratic Party*, 834 F3d at 627, quoting *Hargett I*, 767 F3d at 546.

The Michigan Supreme Court also applies the *Anderson-Burdick* analysis when a constitutional challenge to an election regulation requires courts to resolve a dispute concerning these competing interests, and it has described that analysis as follows:

[T]he first step in determining whether an election law contravenes the constitution is to determine the nature and magnitude of the claimed restriction inflicted by the election law on the right to vote, weighed against the precise interest identified by the state. If the burden on the right to vote is severe, then the regulation must be “narrowly drawn” to further a compelling state interest. However, if the restriction imposed is reasonable and nondiscriminatory, then the law is upheld as warranted by the important regulatory interest identified by the state. The United States Supreme Court has stressed that each inquiry is fact and circumstance specific, because “[n]o bright line separates permissible election-related regulation from unconstitutional infringements” [*In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 22 (2007).]

“Though the touchstone of *Anderson-Burdick* is its flexibility in weighing competing interests, the ‘rigorousness of [the court’s] inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.’” *Ohio Democratic Party v Husted*, 834 F3d 620, 627 (CA 6, 2016), quoting *Burdick*, 504 US at 434.

So, because Plaintiffs allege that Michigan’s ban on fusion voting violates their associational and speech rights, *Anderson-Burdick* analysis is appropriate. But the U.S. Supreme Court has already analyzed a First Amendment challenge to a state’s ban on fusion voting using *Anderson-Burdick*. In *Timmons v Twin Cities Area New Party*, 520 US 351 (1997), the Court decided a challenge to Minnesota’s ban on “multiple-party, or ‘fusion’ candidacies for elected office.” *Timmons*, 520 US at 353. The *Timmons* Court first concluded that while a party has the right to

select its own candidate, “it does not follow, though, that a party is absolutely entitled to have its nominee appear on the ballot as that party’s candidate.” 520 US at 359. “That a particular individual may not appear on the ballot as a particular party’s candidate does not severely burden that party’s association rights.” *Id.* The Court went on to reason that the ban did not involve a party’s associational rights because, “[t]he ban, which applies to major and minor parties alike, simply precludes one party’s candidate from appearing on the ballot, as that party’s candidate, if already nominated by another party.” *Id.* at 360. The Court also rejected arguments that new party voters were forced to make a “no win choice” between voting for candidates with “no realistic chance of winning, defecting from their party and voting for a major party candidate, or not voting at all,” (see *Cmplt.*, ¶54-55), and the Court instead observed that the ban does not preclude minor parties from developing and organizing, or exclude a group of citizens from participating in the election process. *Id.* at 361. Pointedly, the Court expressly recognized that “[t]he New Party remains free to endorse whom it likes, to ally itself with others, to nominate candidates for office, and to spread its message to all who will listen.” *Id.* at 361. The same is true here.

Further, the Court observed the supposed inability of new parties to thrive without fusion voting was “predictive judgment which is by no means self-evident.” 520 US at 361. Moreover, the purported benefits to minor parties “does not require that [the state] permit it.” *Id.* at 362. And, ultimately, the Court was “unpersuaded . . . by the Party’s contention that it has a right to use the ballot itself to send a

particularized message, to its candidate and to the voters, about the nature of its support for the candidate. Ballots serve primarily to elect candidates, not as fora for political expression.” *Id.* The Court thus concluded that the burden imposed by the ban was not severe. 520 US at 364.

Because it held that the burden was not severe, the appropriate level of scrutiny under the *Anderson-Burdick* analysis was simply whether the state’s asserted regulatory interests were “sufficiently weighty to justify the limitation” imposed on the plaintiffs’ rights. 520 US at 364. The Court noted that the state “certainly” had interests in “protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials,” and that the petitioners in that case had argued that fusion voting could be exploited “as a way of associating his or its name with popular slogans and catchphrases” through “newly-formed” parties with names like “No New Taxes,’ ‘Conserve Our Environment,’ and ‘Stop Crime Now.’” *Id.* at 365. The Court held that, “such maneuvering would undermine the ballot’s purpose by transforming it from a means of choosing candidates to a billboard for political advertising.” *Id.*

The Court also held that the state had “a valid interest in making sure that minor and third parties who are granted access to the ballot are bona fide and actually supported, on their own merits, by those who have provided the statutorily required petition or ballot support,” instead of “bootstrapping” their way to major-party status in the next election by nominating a more popular party’s candidate. *Id.* at 366. Having so concluded, the Court held that any burdens imposed by the

ban on fusion voting were justified by “correspondingly weighty” valid state interests in ballot integrity and political stability and does not unconstitutionally burden First Amendment rights. 520 US at 369-370.

The U.S. Supreme Court rightly expressed no view on the policy arguments regarding the wisdom of fusion voting, and its final words seem especially apt in the context of this case:

It may well be that, as support for new political parties increases, these arguments will carry the day in some States’ legislatures. But the Constitution does not require Minnesota, and the approximately 40 other States that do not permit fusion, to allow it.

520 US at 370. So, it is here—in one of the “other states” that does not permit fusion voting—that Plaintiffs’ arguments might more appropriately be addressed to persuading the Michigan Legislature to enact laws adopting fusion voting, rather than seeking to require it as a constitutional necessity.

The U.S. Supreme Court’s application of the *Anderson-Burdick* analysis to uphold a state ban on fusion voting is thorough, well-reasoned, and fully supported by legal authority. There is no reason this Court should reach a different conclusion applying the same analysis, and Plaintiffs have offered none in their complaint. In fact, the complaint does not cite *Timmons* or attempt to distinguish that case in any way. Counts II and III of Plaintiffs’ Complaint thus fail as a matter of law and must be dismissed under MCR 2.116(C)(8).

III. Prohibiting candidates from appearing on the ballot for more than one political party does not unduly burden the fundamental right to vote under article 2, § 4(1) of the Constitution.

In Case No. 26-149, Plaintiffs raise a single count alleging that the ban on fusion voting violates the fundamental right to vote under article 2, § 4(1)(a). (Cmplt 26-149-MZ, ¶¶67-74). Specifically, Plaintiffs allege that the statutes prohibiting fusion voting have “the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.” (*Id.* at ¶¶71-72).

Article 2, § 4(1)(a) provides, in pertinent part:

Every citizen of the United States who is an elector qualified to vote in Michigan shall have the...fundamental right to vote, including but not limited to the right, once registered, to vote a secret ballot in all elections. No person shall: (1) enact or use any law, rule, regulation, qualification, prerequisite, standard, practice, or procedure; (2) engage in any harassing, threatening, or intimidating conduct; or (3) use any means whatsoever, any of which has the intent or effect of denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.

Any Michigan citizen or citizens shall have standing to bring an action for declaratory, injunctive, and/or monetary relief to enforce the rights created by this part (a) of subsection (4)(1) on behalf of themselves. Those actions shall be brought in the circuit court for the county in which a plaintiff resides. If a plaintiff prevails in whole or in part, the court shall award reasonable attorneys' fees, costs, and disbursements.

For purposes of this part (a) of subsection (4)(1), “person” means an individual, association, corporation, joint stock company, labor organization, legal representative, mutual company, partnership, unincorporated organization, the state or a political subdivision of the state or an agency of the state, or any other legal entity, and includes an agent of a person.

The word “fundamental” and the present language in subsection (a) was added by amendment in 2022.¹ As an initial matter, the plain text of the Constitution casts doubt on the standing of the plaintiff political parties or candidates to raise any kind of claim under § 4(1)(a). This section of the Constitution recognizes a fundamental right *to vote*, and provides that “any Michigan citizen or citizens” have standing to bring an action to enforce that right “on behalf of themselves.” There is nothing in the text that creates any rights of political parties or candidates or permits them to raise claims on behalf of others. While § 4(1)(a) defines “person” in a way that would likely encompass political parties, “persons” are only referred to in the context of who the fundamental right to vote is protected *against*—that is, “No person shall” deny, abridge, interfere with, or unreasonably burden the fundamental right to vote. Instead, the fundamental right to vote is reserved for “every *citizen*,” and standing is granted to “any Michigan citizen or citizens...on behalf of themselves.”

With respect to the plaintiff voters, they allege that they are deprived “of the opportunity to cast an effective vote for a new or minor party” because those parties are prevented from forming or surviving, and because voters are forced to choose between casting a “wasted” ballot for the party they prefer, voting for a major party that does not fully represent them, or not voting at all. (Cmplt 26-149-MZ, ¶¶69, 71-72). But there is no support for such a claim in the text of § 4(1)(a).

¹ See, e.g., [Ballot Proposal 2 of 2022 - Promote The Vote Petition](#) (accessed August 7, 2026.)

When interpreting our Constitution, courts should seek “the original meaning of the text to the ratifiers, the people, at the time of ratification.” *MDOT v Tomkins*, 481 Mich 184, 191 (2008). Plaintiffs’ argument relies on the extraordinary claim that the people of Michigan incorporated into their fundamental right to vote—without any express statement—an absolute right to a voting practice that has been unknown in this state for over a hundred years. That claim is all the more remarkable when considered against the broader text of § 4(1), which explicitly and specifically reserved for each citizen rights to many things—even postage for absent voter ballots—but fusion voting was not among them. Plaintiffs’ entire claim assumes that fusion voting was silently incorporated through the “fundamental right to vote,” but they have failed to make allegations demonstrating that the ratifiers of § 4(1)(a) would have understood the “fundamental right to vote” to include fusion voting.

Indeed, although § 4(1)(a) was amended in 2022 to explicitly include the language for the “fundamental” right to vote, the Court of Appeals observed that “case law prior to 2022 supports the assertion that Michigan’s higher courts have long recognized the right to vote as fundamental.” *Mahmood v City of Hamtramck*, unpublished per curiam opinion of the Court of Appeals, decided March 27, 2026 (Docket No. 378814), 2026 Mich App LEXIS 2651 p *6. But Plaintiffs’ complaint cites no historical authority recognizing the incorporation of fusion voting into the concept of a “fundamental right to vote,” and certainly no authority finding fusion voting within § 4(1)(a).

Instead, the allegations Plaintiffs do raise simply miss the mark. Nothing in MCL 168.691 through 168.695 may fairly be read as forcing any voter to “waste” their vote, or compelling them to vote for a political party’s candidate that they do not support. A vote for a minor party is not wasted—it is cast and tabulated with every other vote. Plaintiffs remain free to try to convince any who will listen to join them. More pointedly, political parties remain free to endorse candidates, candidates remain free to affiliate with any party they like and to court voters from other parties, and voters may still vote for any candidate they wish. The only restraint these statutes impose is that a candidate may only appear on the ballot once for any one office. This is a modest limitation that still provides for all manners of political alliances and endorsements and is supported by the same state interests already discussed in the earlier arguments. These laws cannot reasonably be understood as “denying, abridging, interfering with, or unreasonably burdening the fundamental right to vote.” Plaintiffs’ claims fail to state a violation of article 2, § 4(1)(a) and summary disposition is appropriate under MCR 2.116(C)(8).

CONCLUSION AND RELIEF REQUESTED

For these reasons, Defendants Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater respectfully request that this Honorable Court enter an order granting their motion for summary disposition and dismissing this complaint in its entirety, together with any other relief that the Court determines to be appropriate under the circumstances.

Respectfully submitted,

/s/*Erik A. Grill*
Erik A. Grill (P64713)
Heather S. Meingast (P55439)
Assistant Attorney General
Attorney for Defendant
P.O. Box 30736
Lansing, Michigan 48909
517.335.7659
grille@michigan.gov

Date: August 7, 2026

PROOF OF SERVICE

Erik A. Grill certifies that on August 7, 2026, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

/s/*Erik A. Grill*
Erik A. Grill