



State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

Spotlight on Democracy: The Michigan Supreme Court's 2023- 2024 Term

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The Michigan Supreme Court finished its 2023-2024 term in July, wrapping up a year in which the court decided several cases that will likely leave lasting impacts on democracy in the state.

Perhaps most significantly, the court struck down a legislative attempt to thwart two citizen-initiated ballot measures; the decision not only resulted in an increase in the state's minimum wage and guarantees for workers to earn paid sick leave but also suggested a framework of judicial review in future election-related cases that prioritizes the people's ability to govern themselves over legislative machinations.

The court decided other important democracy-related cases as well. It upheld a criminal prohibition against voter intimidation, albeit with a narrowed construction; declined to weigh in on Donald Trump's eligibility to run for President; and ended a years-long challenge to a state law that invalidates any signature on a statewide initiative petition collected more than 180 days before the petition is filed.

This report recaps the Michigan Supreme Court's major democracy decisions from its 2023-2024 term, which ran from August 1, 2023 to July 31, 2024. It begins with an overview of the term before discussing the major democracy-related decisions. It then previews significant democracy cases that are currently working their way through Michigan's court system and could soon be decided by the Michigan Supreme Court.

Overview of the Court's 2023-2024 Term

This Michigan Supreme Court's 2023-2024 term was one of the court's more productive [in recent years](#), with the court issuing [a total of 38 published opinions](#). For comparison, the court

[†] *Derek Clinger thanks Charlotte Gude for her research assistance.*

issued [26 published opinions in the prior term](#), [39 in its 2021-2022 term](#), [31 in its 2020-2021 term](#), and [24 in its 2019-2020 term](#).

The term's opinions addressed a wide variety of legal issues. Most of them—26 in total—were civil matters. These include decisions that affirmed a state agency's ability to regulate livestock-related runoff to protect the state's water quality ([Michigan Farm Bureau v. Department of Environment, Great Lakes, and Energy](#)), applied the state's open meetings act to a municipal committee tasked with recommending whether to award medical marijuana dispensary licenses ([Pinebrook Warren, LLC v. City of Warren](#)), and held that aerial photos and videos of a property obtained by flying a drone over the property without permission could be used by a local government in a civil case to prove that the property owners were operating an unpermitted junkyard ([Long Lake Township v. Maxon](#)).

The term's remaining 12 opinions involved criminal matters. These include a decision finding it fundamentally unfair to deny funding to an indigent defendant to support expert testimony ([People v. Warner](#)); a decision holding that a statute requiring registration as a sex offender violates the state constitution's ban on "cruel or unusual" punishments when applied to people whose convictions lack a sexual element ([People v. Lymon](#)); and a decision concluding that a trial judge's ex parte communications with a prosecutor violated the state's judicial ethics code but did not violate the defendant's constitutional rights to trial by an impartial decision-maker, right to be present, or right to counsel ([People v. Loew](#)).

Despite a split in the partisanship of the court's seven justices—four justices are backed by the Democratic Party and three are backed by the Republican Party—there was a notable amount of cross-party agreement among the justices: Only four decisions were decided by a party-line vote, while the rest were decided by majorities made up of at least one justice backed by each political party.

Major Democracy Decisions & Orders from the 2023-2024 Term

Reflecting Michigan's status as a pivotal swing state, the Michigan Supreme Court resolved several major democracy-related decisions during its 2023-2024 term. The court did so not only through its published decisions but also through less attention-grabbing orders that are typically used to address procedural matters.

***Mothering Justice v. Attorney General*: The court struck down a legislative attempt to thwart the people's direct democracy power.**

One of the biggest decisions from the court's term was [Mothering Justice v. Attorney General](#) in which the court held that the Michigan Legislature wrongly thwarted two citizen-proposed initiated statutes back in 2018. One of the proposals was a minimum wage increase, and the other provided guarantees for paid sick leave. Both will take effect in early 2025 as a result of

the court's decision.

The case concerned a provision in the Michigan Constitution ([Article II, Section 9](#)) in which the people of Michigan reserved to themselves the power to propose laws by initiative petition. The state constitution provides that when the legislature is presented with a law proposed by initiative petition, its three options are to (1) reject the proposal and send it to the voters, (2) offer a competing proposal to the voters, or (3) enact it without changes, in which case it is not sent to the voters.

In 2018, the legislature *adopted* the two initiated proposals but then *amended* them with watered-down changes during the same legislative session. Through this "adopt-and-amend" tactic, the legislature effectively rejected the initiatives without giving voters an opportunity to approve or reject them in a statewide election as the Michigan Constitution would have required had the legislature rejected the proposals outright.

Supporters of the initiatives cried foul, arguing that adopt-and-amend was unconstitutional because the state constitution does not expressly allow the legislature to adopt an initiated statute and amend it during the same legislative session. However, the legislature defended the maneuver, arguing it was permissible because the state constitution does not expressly *prohibit* it.

The Michigan Supreme Court, in one of its few party-line 4-3 decisions from the term, sided with the plaintiffs and held that adopt-and-amend violated the state constitution.

Writing for the majority, Justice Elizabeth Welch drew upon the text, structure, history, and spirit of the constitution's initiative provision. For instance, citing the "three discrete options" the constitution gives to the legislature when it is presented with a valid initiative petition, Justice Welch reasoned that "it is implausible" that the constitution's ratifiers understood the constitution "as allowing a *contradictory* fourth option" with adopt-and-amend. (Emphasis in original.) Based on this and similar factors, Justice Welch concluded that adopt-and-amend "deprived the people of access to the process that is guaranteed to them" by the Michigan Constitution.

Turning to the appropriate remedy, the majority voided the legislature's amendments to the initiatives, allowing the measures to go into effect as though they had never been amended. Justice Welch's opinion provided that the measures will go into effect 205 days from the date of the court's decision—February 21, 2025—which is equal to the amount of time it would have taken for the initiatives to go into effect if the legislature had not amended them. Justice Welch's opinion also clarified that the minimum wage will gradually increase over several years as the initiative intended and that employers cannot be held liable for their reliance upon the government's assurances that the now-voided amendments were good law.

Mothers Justice was a long-awaited victory for supporters of the minimum wage and paid sick leave initiatives. Backers of the minimum wage increase had attempted to place another proposed minimum wage increase on the ballot in 2024 but were ultimately unsuccessful. The [Board of State Canvassers deadlocked](#) on whether to certify the measure for placement on the ballot, and the state supreme court subsequently denied a request to force the Board to approve the measure, issuing a short order in May 2024 in [Raise the Wage MI v. Board of State Canvassers](#).

Mothers Justice is also significant for direct democracy rights in Michigan and points to how the court may approach other voting-related lawsuits. Justice Welch’s opinion embraced the state constitution’s commitment to “the democracy principle” –the notion that state constitutions were drafted to prioritize popular sovereignty, majority rule, and political equality. She wrote that the principle provides a “helpful tool to analyze our laws—especially those statutes and constitutional provisions that implicate elections and direct democracy,” suggesting that the court will prioritize safeguarding the people’s democratic rights over legislative machinations in the future.

A deeper look at the court’s decision in *Mothers Justice*, including a discussion of its national implications, is available [here](#).

The State Democracy Research Initiative contributed to [amici curiae briefs in the case](#) on behalf of a group of legal scholars arguing that the “adopt-and-amend” tactic contravened the Michigan Constitution’s democratic commitments.

People v. Burkman & People v. Wohl: The court narrowly construed a voter intimidation prohibition to avoid declaring it unconstitutional.

The court issued another significant democracy-related decision in the consolidated cases of [People v. John Burkman and People v. Jacob Wohl](#) which concerned the constitutionality of a criminal statute designed to prohibit voter intimidation.

The cases involve the prosecutions of two political operatives who planned and financed a series of robocalls intended to discourage Black Detroit-area voters from using mail-in voting during the 2020 general election. The robocalls falsely told recipients that if they voted by mail, their personal information would be used by police departments to track down old warrants, by credit card companies to collect outstanding debts, and potentially by the Center for Disease Control to enforce mandatory vaccines. (The defendants were caught orchestrating similar robocalls in several other states, too, resulting in [additional criminal charges](#) and [hefty fines](#).)

Michigan Attorney General Dana Nessel [charged the defendants](#) in October 2020 with violating [a state law](#) that makes it a felony to “attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in

this state.” The charges alleged that the robocalls constituted a “menace” or, alternatively, an “other corrupt means or device” under the law.

After a Wayne County Circuit Court judge bound the defendants over for trial, the pair moved to quash the judge’s decision. They argued that their conduct did not fall within the scope of the statute and, alternatively, that the statute violated their federal and state constitutional rights to free speech. The trial court denied the motion, and this decision was subsequently [affirmed by the Court of Appeals](#), leading the defendants to appeal to the Michigan Supreme Court.

The supreme court justices unanimously agreed with the defendants that the robocalls did *not* fall within the term “menace,” reversing the Court of Appeals which had held otherwise. Citing legal dictionary definitions, the court held that “menace” requires the victim to reasonably believe that the *speaker* will execute the threat and reasoned that the robocalls did not meet this standard because the calls said that the threats would be executed by other parties—police departments, credit card companies, and the CDC—not by the defendants.

But the court lost its unanimity on whether the robocalls amounted to an “other corrupt means or device.” A 5-2 majority held that the robocalls *did* fall within the meaning of this term, affirming this aspect of the appellate court’s decision. Writing for the majority, Chief Justice Clement held that the phrase operates as a catchall term for “any other depraved or immoral method or scheme of deterring or preventing someone from voting or influencing or interrupting someone in giving their vote.” She concluded that the prosecution had sufficiently alleged that the defendants’ robocalls met this standard for purposes of binding the defendants over for trial.

The court then turned to the parties’ arguments concerning the constitutionality of the statute. The court first rejected the prosecution’s arguments that the robocalls were exempt from constitutional free-speech protections but also rejected the defendants’ argument that the “or other corrupt means or device” language is unconstitutionally vague.

The 5-2 majority did, however, agree with the defendants that “or other corrupt means or device” is unconstitutionally overbroad. Chief Justice Clement warned that the statute’s “broad sweep” could conceivably prohibit several forms of purely political speech, including campaign speeches, rallies, door-to-door campaigning, flyers, and buttons, if understood as seeking to deter an elector from voting. She then reasoned that while the state has an interest in protecting the integrity of the election process, the statute risks chilling more speech than is necessary to serve this interest.

Turning to the remedy, the majority did not invalidate the statute altogether. Instead, Chief Justice Clement wrote that the court is “duty bound under the Michigan Constitution to preserve the laws of this state and to that end to construe them if we can so that they conform” to constitutional requirements. Citing precedent from the U.S. Supreme Court, she explained

that states have historically been permitted to prohibit messages intended to mislead voters about voting requirements and procedures. She therefore provided a limiting construction of the phrase “or other corrupt means or device,” holding that this catchall language “operates to proscribe that speech only if it is intentionally false speech that is related to voting requirements or procedures and is made in an attempt to deter or influence an elector’s vote.” The court then remanded the cases to the Court of Appeals to determine whether the defendants’ conduct falls within the limiting construction of the statute.

The bottom line of the decision is that, heading into the 2024 presidential election, it remains a felony in Michigan to use a corrupt means or device to distribute intentionally false speech related to voting requirements or procedures in an attempt to deter or influence an elector’s vote.

Labrant v. Secretary of State: The court declined to consider Donald Trump’s eligibility to run for president.

The court also drew national attention in December 2023 when it declined to hear an appeal of an unsuccessful challenge to Donald Trump’s eligibility to appear on the state’s primary and general election ballots in [Labrant v. Secretary of State](#).

The lawsuit argued that the former president was ineligible under the Insurrection Clause of the Fourteenth Amendment to the U.S. Constitution due to his role in the January 6, 2021 attack on the U.S. Capitol and his refusal to accept his defeat in the 2020 presidential election. It sought a declaration that Trump is disqualified from holding the office of President and sought to enjoin Michigan Secretary of State Jocelyn Benson from placing Trump’s name on the primary and general election ballots.

Similar challenges were filed throughout the country, most notably in Colorado where the [Colorado Supreme Court ruled](#) that Trump was indeed ineligible to be president and therefore could not appear on the state’s primary election ballot. Trump appealed that decision to the U.S. Supreme Court, which held in March 2024 ([Trump v. Anderson](#)) that it is up to Congress—and not the states—to enforce the Insurrection Clause against federal officeholders and candidates.

Labrant played out several months before the U.S. Supreme Court’s decision in *Trump v. Anderson*. The plaintiffs commenced their action in Michigan’s Court of Claims, which [ultimately held](#) that the Michigan Secretary of State lacked the legal authority to remove or withhold the former president from appearing on the ballot in Michigan.

The *Labrant* plaintiffs promptly appealed. They first sought to bypass the Court of Appeals and go directly to the Michigan Supreme Court. The court [declined this request](#), allowing the Court of Appeals to weigh in first. The appellate court [largely affirmed](#) the Court of Claims’ decision.

The plaintiffs then asked the Michigan Supreme Court to review the Court of Appeals' decision. Briefing was expedited, and less than two weeks after the appellate issued its decision, the supreme court [denied the plaintiffs' request](#) to review the matter. The court issued a short order that said it was "not persuaded" that it should review the questions presented.

Justice Welch dissented, arguing that the Court should hear the appeal, which she described as presenting questions "of monumental importance for our system of democratic governance." She added that she agreed with the lower courts that the Secretary of State lacks the authority to keep a candidate off the presidential primary ballot but suggested that the question could be reconsidered for the general election were Trump the Republican nominee. That possibility, however, was later foreclosed by the U.S. Supreme Court's decision in *Trump v. Anderson*.

***Graziano v. Brater*: Declining to consider the constitutionality of a 180-day limit on statewide initiative petition gathering.**

The court also declined to hear an appeal of a long-running, multi-suit challenge to a [2016 state law](#) that invalidates any signature on a statewide initiative petition collected more than 180 days before the petition is filed, [Graziano v. Brater](#).

The matter involved a citizen-proposed initiative to ban fracking in Michigan that proponents originally aimed to place on the 2016 general election ballot. Signatures for the petition were collected over several years, and different plaintiff groups unsuccessfully attempted to challenge the constitutionality of the 180-day limit.

The committee backing the petition first brought suit in 2016, before submitting its initiative petition, but the suit was [denied as premature](#). After its petition was submitted and rejected by the Board of State Canvassers, the committee filed a mandamus action in the Michigan Supreme Court. The court issued [a three-sentence order](#) in 2020 denying relief. The committee also tried unsuccessfully to bring a declaratory judgment action in the Court of Claims, but that court held that it lacked subject-matter jurisdiction due to a state law requiring challenges to the Board of State Canvassers' decisions to be brought as mandamus actions in the Michigan Supreme Court. That decision was subsequently [affirmed by the Court of Appeals](#) in January 2021.

The *Graziano* plaintiffs, who were individual voters who had signed the petition, then brought their own suit in the Court of Claims. They argued that, unlike the petition committee, they did not need to bring their suit as a mandamus action in the Michigan Supreme Court. The Court of Claims rejected their argument, and the Court of Appeals [affirmed](#) in July 2022. The plaintiffs then asked for the Michigan Supreme Court's review.

After hearing [oral argument](#) on whether to take the case, a 6-1 majority of the Michigan Supreme Court [declined to accept the appeal](#), leaving the Court of Appeals' decision in place. The court announced its decision in a brief, two-sentence order. Justice Welch dissented,

agreeing with the plaintiffs' jurisdictional arguments and casting doubt on the 180-day limit's constitutionality.

Despite the numerous lawsuits, Michigan courts have not yet directly addressed the constitutionality of the 180-day limit, leaving open the possibility of a future mandamus action in the Michigan Supreme Court.

Democracy Cases on the Horizon

Several more consequential democracy-related cases are currently working their way through Michigan's court system and may reach the Michigan Supreme Court in upcoming terms. These touch on a range of issues, including election challengers and voter challenges, the partisan composition of precinct-level election officials, and the prosecution of the so-called "fake electors" who signed documents in December 2020 falsely claiming to be electors for Donald Trump in the Electoral College despite Trump having lost the state. These are previewed below.

O'Halloran v. Secretary of State & DeVisser v. Secretary of State: The conduct of poll watchers and voter challengers.

The consolidated matters [*O'Halloran v. Secretary of State and DeVisser v. Secretary of State*](#) involve instructions issued by Michigan Secretary of State Jocelyn Benson concerning poll watchers and voter challenges. Of the matters highlighted in this section, this is the only one that is already pending before the Michigan Supreme Court; a decision is expected before the 2024 general election.

As background, Michigan law allows certain organizations, including political parties, to appoint individuals to observe voting at polling locations and to challenge the eligibility of voters. Numerous laws and rules govern the appointment and conduct of these individuals, and in 2022, Secretary Benson issued additional instructions concerning them.

The plaintiffs challenged several of the Secretary's instructions in lawsuits filed shortly before the 2022 general election. Specifically, they object to the following directives: (1) challengers must be credentialed using a specific form created by the Secretary's office; (2) challengers must be appointed prior to election day; (3) challengers must communicate with election inspectors through a "challenger liaison" rather than with any inspector; (4) poll watchers cannot use electronic devices inside an absentee ballot processing facility while ballots are being processed; (5) poll challengers cannot make "repeated impermissible challenges" and risk being thrown out of the polling location if they do; and (6) election inspectors do not need to make a record of impermissible challenges in the poll books.

The plaintiffs argue that the challenged instructions conflict with statutory law and, alternatively, that the Secretary was required to promulgate them as a formal rule under the state's Administrative Procedures Act, which requires a public notice-and-comment process and more active legislative oversight.

The Court of Claims ruled in favor of the plaintiffs shortly before the 2022 general election, but the Michigan Supreme Court [stayed this decision](#)—and pre-emptively stayed any decision by

the Court of Appeals. The Court of Appeals later [affirmed the Court of Claims' decision](#), concluding that the Secretary's office cannot regulate election challengers or other outside observers through instructions and instead must promulgate the regulations as formal rules in accordance with the Administrative Procedures Act.

The Secretary appealed to the Michigan Supreme Court, which held an [oral argument](#) at a special session in June 2024. The court is expected to issue a decision early in its 2024–2025 term.

Michigan Republican Party v. Donahue: Partisan composition of precinct-level election workers.

[Michigan Republican Party v. Donahue](#) concerns the number of Republican election inspectors—or the lack thereof—in the city of Flint. The action was initially filed just before the 2022 general election, alleging that Flint's board of election commissioners violated a [statutory requirement](#) to appoint, "as nearly as possible," the same number of election inspectors from each major political party.

In March 2024, the Michigan Court of Appeals [affirmed a decision](#) from the Genesee Circuit Court finding that the plaintiffs—the Michigan Republican Party and the Republican National Committee—lacked standing to bring the action. Pointing to the fact that the key statutes allow major political party *county* chairpersons to assist boards of elections commissioners in recruiting prospective election inspectors to meet the partisan composition requirements but assign no role to state or national political parties, the appellate court concluded that county party chairpersons, rather than the plaintiffs, would have been the proper parties to bring the case. (One judge on the appellate court panel [dissented](#).)

The plaintiffs have asked the Michigan Supreme Court to review the decision, though as of publication, the Court has not yet announced whether it will hear the appeal.

Prosecution of 'Fake Electors' from 2020

A high-profile democracy case, still in its early stages, is the prosecution of the "fake electors" from the 2020 presidential election. In July 2023, Attorney General Nessel [charged 16 individuals](#) who signed legal documents falsely claiming to be electors for Donald Trump in the Electoral College, despite Trump having lost the state by more than 150,000 votes. Each defendant was charged with [multiple felony counts](#), including forgery, conspiracy to commit forgery, election law forgery, and conspiracy to commit election law forgery.

The prosecution is still in the early stages. One defendant had his charges dropped in October 2023 after [reaching a cooperation deal](#). Preliminary hearings to determine whether there is

probable cause to uphold the charges and send the matters to a jury [were held for 12 of the defendants](#) throughout the spring of 2024. Hearings for the three remaining defendants remain to be scheduled. The judge assigned to the case [reportedly indicated](#) that she would wait to finish all the preliminary hearings before deciding whether the cases can advance to a jury trial.

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Notably, the Michigan Supreme Court's composition could change in the term ahead as two seats on the court are up for election in November 2024. There will be at least one new face on the court in 2025 as Republican-backed Justice David Viviano has decided [not to seek re-election](#). The other seat up for election is currently held by Justice Kyra Bolden, who was [appointed to the court](#) on January 1, 2023 after now-former Chief Justice Bridget Mary McCormack [retired](#) with six years left on her term. Backed by the Democratic Party, Justice Bolden is running to serve out the remainder of that term.

Depending on the 2024 election results, the court could have anywhere from a 5-2 majority of Democratic Party-backed justices to a 4-3 majority of Republican-backed justices. And while the court's most recent term shows that cases are most often decided with at least some bipartisan consensus, close decisions like *Mothering Justice* show that a single justice can make a big impact.