

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GENESEE

BRIAN BARKEY, DORIS BARKEY,
QUINCY MURPHY, MARYUM RASOOL,
NAYYIRAH SHARIFF, and AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN,

CASE NO. 20-114457-CZ

Plaintiffs,

HON. CELESTE D. BELL

v.

INEZ M. BROWN, in her official capacity as
City Clerk for the City of Flint, and
CITY OF FLINT,

AMENDED ORDER

Defendants.

At a session of said Court held at the Courthouse in
the City of Flint, County of Genesee, Michigan on
the 29th day of July, 2020

PRESENT: THE HONORABLE CELESTE D. BELL, CIRCUIT JUDGE

Note: This Order provides clarifications to paragraphs (c) and (d) of the order entered July 23, 2020.

On July 22 and 23, 2020, with all counsel present, the Court heard oral argument on Plaintiffs' Complaint for Writ of Mandamus and Other Relief, the latter including issuance of injunctive relief. As stated on the record, the Court acknowledges the detrimental effect the COVID-19 pandemic and the statewide shutdown has had on the conduct of all governmental business. It further notes that Genesee County ballots were delayed due to candidate challenges. These factors, combined, significantly affected the ability to meet the statutory deadline of providing ballots during the 40 days prior to the election, as well as providing a safe, open location in which to conduct business. Nonetheless, a substantial delay has occurred in providing absent voter applications and ballots that cannot be explained or excused by the unfortunate circumstances affecting the voters and the City Clerk. The Court makes the following findings:

- (1) Plaintiffs¹ have shown they have a clear, legal right to the performance of the duty sought;

¹ Counsel for Plaintiffs conceded at the hearing that Plaintiffs Brian Barkey and Doris Barkey have received and returned their ballots. Accordingly, the Court finds that, as to them, the Complaint is moot. Additionally, the Clerk states that Plaintiff Sharriff's application has been processed and her ballot mailed

- (2) Defendant Inez Brown, in her capacity as the Flint City Clerk², has a clear legal duty to perform the act of receiving applications for absent voter ballots; processing the received applications in a timely fashion; providing absent voter ballots in a timely fashion; and receiving completed absent voter ballots within the time schedule that allows the vote to be counted in the August primary election;
- (3) The duty to perform the above stated actions is ministerial;
- (4) No other adequate legal remedy exists that might achieve the same result;
- (5) Plaintiffs are in danger of irreparable harm through the loss of their constitutional absentee voting rights if the City Clerk fails to take immediate steps as required by this Order to comply with legal mandates regarding the issuance and receipt of absent voter ballots;
- (6) Plaintiffs will suffer more harm from the denial of injunctive relief than the Defendant will suffer from the granting of such relief; and
- (7) Granting such relief will serve the public interest.

Accordingly, for the above reasons and those stated on the record, the Plaintiffs' request for mandamus relief is granted. Defendant Clerk Brown will comply with the following terms:

- (a) All absent voter ballot applications currently in the possession of the Clerk, as well as any that are received through 5:00 p.m. on Saturday, July 25, shall be processed within 72 hours from the signing of this order. It is understood that if an application is deemed defective or insufficient in some way, additional time will be required for processing. Nonetheless, it is expected that the vast majority of the pending applications will be processed in the time frame stated. Processing includes the review of the application and mailing of the ballot.
- (b) All absent voter ballot applications received after 5:00 p.m. Saturday, July 25, shall be processed within 24 hours of receipt, as recommended by the Bureau of Elections. See also *League of Women Voters of Michigan. v. Secretary of State*, __ Mich App __, (2020) (Docket No. 353654) Westlaw 3980216, at *15-16.
- (c) With the exception of Sunday, July 26, the Clerk Office shall be open to the public *every day*, during regular business hours (8:00 am to 5:00) Monday-Friday and 9:00 a.m. - 5:00 p.m. on the added weekend days, for distribution and acceptance of absent voter ballot applications, distribution of absent voter ballots, and acceptance of completed absent voter ballots from the date of this order through Election Day, August 4, 2020.
- (d) Commencing Monday, July 27, the Clerk shall provide to this Court and to local opposing counsel a daily summary report containing the following information for the prior day: the total number of absent voter applications received; the total

to her on July 18. Because the relief requested could affect her, she remains a party along with the other named plaintiffs.

² The City Clerk is charged with the duties imposed by state election law and is, therefore, the proper party to this matter, not the City of Flint. Accordingly, the City of Flint is dismissed. See *League of Women Voters of Michigan. v. Secretary of State*, __ Mich App __, (2020) (Docket No. 353654) Westlaw 3980216 at *15-16.

number of absent voter ballots issued; the total number of completed absent voter ballots received; and the total number of absent voter ballot applications delayed due to some deficiency (state the deficiency). The report generated July 27 shall reflect the statistics from the date of this order through Sunday, July 26.

Based on the record submitted by the parties, which includes the postal mail delays caused by the COVID-19 pandemic and the documented delays in processing applications by the Clerk's office in this case, this Court finds that absentee voters cannot be assured that their ballots will arrive at the Clerk's office by 8 pm on Election Day. As such, the Court finds particularly applicable MCL 168.764a(d), which requires the Clerk to "provide assistance" to a voter, which includes picking up "the absent voter ballot within the jurisdictional limits of the city, township, or village in which [the voter is] registered." MCL 168.764a. The Clerk, through counsel, has assured the parties and the Court that this method of retrieving absent voter ballots will be available and engaged.

IT IS SO ORDERED.

Dated: July 27, 2020



CELESTE D. BELL (P41453)
CIRCUIT JUDGE