

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL POWELL, ET AL.,

Plaintiffs,

Case No. 20-cv-11023

v.

U.S. DISTRICT COURT JUDGE
GERSHWIN A. DRAIN

JOCELYN BENSON, ET AL.,

Defendants.

ORDER REGARDING IMPLEMENTATION OF CONSENT DECREE

[#31]

On May 19, 2020, this Court entered a Consent Decree [#31] agreed to by the parties in this action. The Consent Decree required Defendants to implement a Remote Accessible Vote-By-Mail (“RAVBM”) system to allow voters with print disabilities to vote absentee privately and independently in time for the August 4, 2020 election, as well as to publicize the requirements of the Decree, to continue to assist voters with print disabilities to vote in person, and to ensure equal opportunity and equal effectiveness of the State’s Voting Program for voters with disabilities.

Defendants announced on June 26, 2020 that the RAVBM will not be implemented in time for the August 4, 2020 primary election. On June 26, 2020, Plaintiffs filed an Unopposed Motion for Status Conference regarding certain alleged violations of the Consent Decree. *See* ECF No. 32.

On July 2, July 7, July 8, and July 10, 2020, this Court held conferences via video technology to address Defendants' plan to make absentee voting during the August 4, 2020 primary election accessible to voters with print disabilities. For the reasons stated on the record, it is hereby **ORDERED**:

1. Defendants will continue the improved accessible UOCAVA-based system for voters with print disabilities for the August election. This system includes:

- a. Voters with print disabilities can access an accessible electronic absentee voter ballot application ("Accessible AV Request") available on the Secretary of State's website (https://www.michigan.gov/sos/0,4670,7-127-1633_8716_8728-21037--,00.html). The Accessible AV Request can be submitted entirely electronically by e-mail by entering the voter's drivers' license, state ID number, or last 4 digits of their social security in lieu of a signature. The completed application can be emailed to the voter's local clerk. The application includes instructions for looking up the local clerk's email.

2. By July 14, 2020, Defendants will modify the general online absentee voter ballot request ("Online AV Request") process, available at <https://mvic.sos.state.mi.us/>, so that it may be used to request accessible absentee ballots, including:

- a. For voters using the Online AV Request absentee voter ballot to request

an accessible ballot, clicking submit on the application will cause the request to be sent by online tool to the voter's local clerk online queue for processing.

- b. Voters requesting an accessible AV ballot through the Online AV Request system will check a box to request an accessible AV ballot and make the same declaration regarding disability that is required on the Accessible AV Request application. The Online AV Request will require the voter to input the voter's Michigan Driver's License or State ID, and the voter's stored signature will be sent to the clerk.

3. Defendants, in their supervisory capacity over local election officials, will ensure accessible AV ballot requests, whether received through the Accessible AV Request system or through the Online AV Request system, are processed as follows:

- a. Upon request for an accessible AV ballot, the clerk will generate an accessible ballot through the state's automated ballot conversion process.
- b. Defendants have tested the accessible AV ballot with JAWS and NVDA screen readers. By July 10, 2020, Defendants will test the accessible AV ballot with Apple VoiceOver screen reader and correct any barriers identified through such test.
- c. Once the clerk has generated an accessible ballot, the clerk will email it to the voter. The voter will mark the ballot electronically, print it, place it in

an envelope, sign the back of the envelope in any location, and mail or hand deliver it to the clerk or have an authorized person deliver it to the clerk by 8 p.m. on Election Day.

4. Within 24 hours of implementing the requirements of Paragraph 2, above, Defendants will add language to the initial screen of the Michigan Voter Information Center to alert voters that they can use the Online AV Request online tool to request an accessible AV ballot. Defendants will also publicize the Online AV Request process and tool and the process to request accessible AV ballots through the Online AV Request process in the same ways and through the same methods they used to publicize the Online AV Request system.

5. Defendants will ensure the Request for Proposals for a RAVBM results in a RAVBM being in place and available for absentee voting by voters with print disabilities at the same time (at least 40 days prior to the election) that absentee voting is made available to other voters for the November 3, 2020 election. The deadlines for interim steps, which may be modified without changing the Implementation Deadline with the agreement of the parties, are as follows:

- a. Vendor Selection – by July 20, 2020
- b. Contract and Project Initiation – by July 28, 2020
- c. Requirements – by July 30, 2020
- d. Design - by August 6, 2020
- e. Development or Configuration – by August 25, 2020
- f. User Acceptance Testing (UAT) – by August 27, 2020
- g. Implementation – by September 10, 2020

6. Defendants will notify Plaintiffs and the Court immediately upon selection of a vendor for the RAVBM, providing the information required by the Consent Decree at § II(5)(a)(i).

7. Defendants will report to the Court and to Plaintiffs at least weekly regarding their progress in carrying out this Order and the Consent Decree.

8. Within 24 hours of entry of this order, Defendants will make copies of the Original Consent Decree [#31] and this Order available on their website.

9. Defendants, in their supervisory capacity over local election officials, will continue the procedure they provided for the May 5, 2020 election of providing assistance to voters with print disabilities seeking to vote in person by absentee ballot.

10. Failure to meet the deadlines in this Order may result in sanctions.

IT IS SO ORDERED.

s/Gershwin A. Drain
GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

Dated: July 13, 2020

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on July 13, 2020, by electronic and/or ordinary mail.

/s/ Teresa McGovern
Case Manager