

THE STATE OF MICHIGAN
COURT OF CLAIMS

PHILIP M. O'HALLORAN, M.D., BRADEN
GIACOBAZZI, ROBERT CUSHMAN, PENNY
CRIDER, and KENNETH CRIDER,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as
the duly elected Secretary of State, and
JONATHAN BRATER, in his official capacity
as DIRECTOR OF ELECTIONS,

Defendants,

and

DETROIT/DOWNRIVER CHAPTER OF THE
A. PHILIP RANDOLPH INSTITUTE,

Proposed Intervenor-Defendant.

Case No. 22-00162-MZ

HON. BROCK A. SWARTZLE

RICHARD DEVISSER, MICHIGAN
REPUBLICAN PARTY, and REPUBLICAN
NATIONAL COMMITTEE,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as
the duly elected Secretary of State, and
JONATHAN BRATER, in his official capacity
as DIRECTOR OF ELECTIONS,

Defendants,

and

DETROIT/DOWNRIVER CHAPTER OF THE
A. PHILIP RANDOLPH INSTITUTE,

Proposed Intervenor-Defendant.

Case No. 22-00164-MZ

HON. BROCK A. SWARTZLE

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**Pro hac vice motion forthcoming*

**[PROPOSED] ANSWER TO 9/29/22 COMPLAINT OF O’HALLORAN ET AL. FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Pursuant to MCR 2.209(C)(2), the Detroit/Downriver Chapter of the A. Philip Randolph Institute, through its counsel, submits the following proposed Answer to the O’Halloran Plaintiffs’ Complaint for Declaratory and Injunctive Relief.

SUMMARY

1. Paragraph 1 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

INTRODUCTION

2. Proposed Intervenor admits that the Secretary of State issued “The Appointment, Rights, and Duties of Election Challengers and Poll Watchers” in May 2022. Paragraph 2 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

3. Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

4. Paragraph 4 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

5. Paragraph 5 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

6. Proposed Intervenor admits that the quoted language appeared in the source cited.

Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6.

7. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 7.

8. Proposed Intervenor admits that the quoted language appeared in the source cited. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 8.

9. Proposed Intervenor admits that the quoted language appeared in the source cited. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 9.

10. Proposed Intervenor admits that the quoted language appeared in the source cited. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 10.

11. Paragraph 11 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

12. Paragraph 12 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

13. Paragraph 13 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

14. Paragraph 14 contains mere characterizations, legal contentions, and conclusions

to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

15. Paragraph 15 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

16. Paragraph 16 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

17. Paragraph 17 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

18. Paragraph 18 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

19. Paragraph 19 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

20. Paragraph 20 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

21. Paragraph 21 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

22. Paragraph 22 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

PARTIES

23. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 23.

24. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 24.

25. Paragraph 25 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

26. Paragraph 26 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

27. Paragraph 27 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

28. Proposed Intervenor admits the allegations in Paragraph 28.

29. Paragraph 29 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

30. Paragraph 30 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

31. Paragraph 31 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

32. Proposed Intervenor admits the allegations in Paragraph 32.

33. Proposed Intervenor admits the allegations in Paragraph 33.

JURISDICTION AND VENUE

34. Paragraph 34 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

LEGAL AND FACTUAL BACKGROUND

35. Proposed Intervenor admits the allegations in Paragraph 35.

36. Paragraph 36 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

37. Paragraph 37 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

38. Paragraph 38 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

39. Paragraph 39 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

40. Paragraph 40 contains mere characterizations, legal contentions, and conclusions

to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

41. Paragraph 41 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

42. Paragraph 42 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

43. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 43.

44. Paragraph 44 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

45. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 45.

46. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 46.

COUNT I – VIOLATION OF MCL §168.733

47. Proposed Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

48. Paragraph 48 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

49. Paragraph 49 contains mere characterizations, legal contentions, and conclusions

to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

50. Paragraph 50 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

51. Paragraph 51 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

52. Paragraph 52 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

53. Paragraph 53 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

54. Paragraph 54 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

55. Paragraph 55 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

56. Paragraph 56 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

57. Paragraph 57 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

58. Paragraph 58 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

59. Paragraph 59 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

60. Paragraph 60 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

61. Paragraph 61 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

62. Paragraph 62 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

63. Paragraph 63 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

64. Paragraph 64 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies

the allegations.

65. Paragraph 65 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

66. Paragraph 66 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

67. Paragraph 67 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

68. Paragraph 68 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

69. Paragraph 69 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

70. Paragraph 70 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

71. Paragraph 71 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

72. Paragraph 72 contains mere characterizations, legal contentions, and conclusions

to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

73. Paragraph 73 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

**COUNT II – VIOLATION OF THE ADMINISTRATIVE PROCEDURES
ACT**

74. Proposed Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

75. Paragraph 75 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

76. Paragraph 76 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

77. Paragraph 77 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

78. Paragraph 78 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

79. Paragraph 79 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

80. Paragraph 80 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required and the allegations misstate the law, Proposed Intervenor denies the allegations.

81. Paragraph 81 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

82. Paragraph 82 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

83. Paragraph 83 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

PRAYER FOR RELIEF

84. The remaining Paragraphs of the Complaint consist of Plaintiffs' request for relief, to which no response is required. To the extent that any response is deemed necessary, Proposed Intervenor denies that Plaintiffs are entitled to any of the requested relief or any other relief.

WHEREFORE, Proposed Intervenor respectfully request that this Court:

- A. Deny that Plaintiffs are entitled to any relief;
- B. Dismiss the complaint in its entirety, with prejudice; and
- C. Grant such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

Proposed Intervenor sets forth its affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Moreover, nothing stated here is intended or shall be construed as an admission that any

particular issue or subject matter is relevant to the allegations in the Complaint. Proposed Intervenor reserves the right to amend or supplement its affirmative defenses as additional facts concerning defenses become known.

As separate and distinct affirmative defenses, Proposed Intervenor alleges as follows:

This Court lacks jurisdiction over Plaintiffs' complaint;

Plaintiffs' claims are barred by laches.

Respectfully submitted,

Dated: October 13, 2022

s/ Sarah S. Prescott
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**Pro hac vice motion forthcoming*

PROOF OF SERVICE

Sarah Prescott certifies that on the 13th day of October 2022, she served a copy of the above document in this matter on all counsel of record and parties *in pro per* via MiFILE.

s/ Sarah S. Prescott
Sarah Prescott

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