

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*

**10/13/2022 MOTION OF DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP
RANDOLPH INSTITUTE TO INTERVENE AS DEFENDANT OR, IN THE
ALTERNATIVE, PARTICIPATE AS AMICUS CURIAE**

Pursuant to Michigan Court Rule 2.209, the Downriver/Detroit Chapter of the A. Philip Randolph Institute (“DAPRI”) respectfully request that it be permitted to intervene as a defendant in this consolidated matter. Attached are DAPRI’s proposed Answers to Plaintiffs’ Complaints for Declaratory and Injunctive Relief, in accordance with Michigan Court Rule 2.209(C)(2).

DAPRI relies on the attached brief as support. DAPRI recognize that intervention is barred by the Michigan Court of Appeals’ decision in *Council of Organizations & Others for Education about Parochiaid v State*, 321 Mich App 456, 909 NW2d 449 (2017). According to *Council of Organizations*, because DAPRI is a private party, this Court does not have jurisdiction to grant this motion to intervene. *Id.* at 468. Even if this Court is bound by that decision, DAPRI seeks to preserve their right to intervene on appeal.

In the alternative, because of its interest in the case, DAPRI moves for the Court to grant it status to participate as amicus curiae pursuant to Michigan Court Rule 7.212(H). DAPRI ask the Court to promptly issue its ruling on this Motion.

Respectfully submitted,

Dated: October 14, 2022

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PROOF OF SERVICE

Sarah Prescott certifies that on the 14th 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
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**BRIEF IN SUPPORT OF 10/13/22 MOTION OF DETROIT/DOWNRIVER CHAPTER
OF THE A. PHILIP RANDOLPH INSTITUTE TO INTERVENE AS DEFENDANT OR,
IN THE ALTERNATIVE, PARTICIPATE AS AMICUS CURIAE**

Proposed Intervenor Detroit/Downriver Chapter of the A. Philip Randolph Institute (“DAPRI”) moves to intervene as a defendant in these consolidated cases filed by Plaintiffs Phillip M. O’Halloran, Braden Giacobazzi, Robert Cushman, Penny Crider, and Kenneth Crider, and Plaintiffs Richard DeVisser, the Michigan Republican Party and the Republican National Committee (collectively “Plaintiffs”). Through these lawsuits, Plaintiffs ask this Court to invalidate or drastically alter the Secretary of State’s instructions regarding the rights and duties of poll watchers and challengers (“2022 Manual”). These instructions—which were issued five months ago—strike a careful balance between the orderly conduct of elections and transparency into the election process. Plaintiffs’ last-minute effort to tip the scales at the expense of the safety of voters, poll workers, and poll watchers will unquestionably impact DAPRI’s operations and interests. DAPRI’s immediate intervention to protect those interests is warranted.

Intervention is governed by Michigan Court Rule (“MCR”) 2.209:

(A) **Intervention of Right.** On timely application a person has a right to intervene in an action . . . (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

(B) **Permissive Intervention.** On timely application a person may intervene in an action . . . (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.

“The rule for intervention should be liberally construed to allow intervention where the applicant’s interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133, 135 (1996); *see also State Treasurer v Bences*, 318 Mich App 146, 150; 896 NW2d 93, 95 (2016).

Here, DAPRI readily satisfies the requirements for intervention as of right under MCR 2.209(A). First, its application is timely because it follows within two weeks of the filing of this suit, before any significant action has been taken. *See, e.g., Karris v Cannon Tp*, 115 Mich App

726, 731; 321 NW2d 690, 692 (1982) (finding no valid claim of unreasonable delay by the proposed intervenors because they moved to intervene two months after the filing of plaintiffs' complaint and before any proceedings or discovery had been taken).

Second, DAPRI possesses interests that will likely be impaired or impeded by this action. DAPRI is a nonprofit organization that is, among other things, dedicated to recruiting and training poll watchers to protect voters from harassment and intimidation. DAPRI has a significant interest in ensuring that its members who work as poll watchers can effectively protect the communities they represent at the polls, who are primarily voters of color, immigrants, and other marginalized citizens. In the August 2022 primary elections, the 2022 Manual enabled DAPRI's members to carry out their duties as poll watchers without interference of unauthorized or untrained challengers. If Plaintiffs successfully enjoin the 2022 Manual, DAPRI's members will be subjected to the chaos and disruption that previously erupted due to ambiguous instructions that emboldened challengers beyond their rights and duties. *See* Senate Oversight Committee's Report on the November 2020 Election in Michigan. Because DAPRI's members' ability to ensure the safe and orderly conduct of elections will be impacted by this suit, it has readily satisfied this requirement.

Third, no current party adequately represents DAPRI's interests. Plaintiffs are indisputably opposed to DAPRI's interest in upholding the 2022 Manual. And although Defendants have a duty to defend the instructions and the public interest generally, they cannot be relied upon to vindicate DAPRI's specific interests, which include protecting marginalized communities from harassment and intimidation at polling locations. *See, e.g., Estate of Lyle v Farm Bureau Gen Ins Co of Mich*, unpublished opinion of the Court of Appeals, issued September 19, 2019 (Docket No 343358), 2019 WL 4555993, p *7 (affirming intervention and noting that where "concern of inadequate representation of interests exists, the rules of intervention should be construed liberally in

favor of intervention” (quoting *Vestevich v W Bloomfield Twp*, 245 Mich App 759, 762; 630 NW2d 646 (2001)).

DAPRI also satisfies the requirements for permissive intervention under MCR 2.209(B)(2). That rule provides for permissive intervention where a party timely files a motion and the party’s “claim or defense and the main action have a question of law or fact in common.” MCR 2.209(B)(2). “[T]he trial court has a great deal of discretion in granting or denying [permissive] intervention.” *Mason v Scarpuzza*, 147 Mich App 180, 187; 383 NW2d 158, 161 (1985) (BEASLEY, J., dissenting); see also *City of Holland v Dep’t of Nat Res & Env’t*, unpublished opinion of the Court of Appeals, issued March 1, 2012 (Docket No. 302031), 2012 WL 676356, p *3. As discussed above, DAPRI’s motion is timely, and DAPRI is entitled to advocate for its interests in ensuring that its members can safely and effectively protect voters from harassment, intimidation, and unsubstantiated challenges.

In the alternative, because of their interest in the case, DAPRI moves the Court to grant it status to participate as amicus curiae pursuant to Michigan Court Rule 7.212(H). DAPRI asks the Court to promptly issue its ruling on this Motion.

Respectfully submitted,

Dated: October 14, 2022

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