

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 9/30/22 COMPLAINT OF DEVISSER ET AL. FOR
EXPEDITED 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 DeVisser Plaintiffs' Complaint for Expedited Declaratory and Injunctive Relief.

INTRODUCTION

1. Paragraph 1 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.

2. Paragraph 2 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 is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations in Paragraph 6.

PARTIES, JURISDICTION, AND VENUE

7. Proposed Intervenor admits that the Michigan Republican Party (“MRP”) maintains its headquarters at 520 Seymour Street, Lansing, Michigan 48912. 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 7.

8. 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 8.

9. Proposed Intervenor admits that the Republican National Committee (“RNC”) is a national political party with its principal place of business at 310 First Street, S.E., Washington, D.C. 20003. 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 the allegations in Paragraph 10.

11. Proposed Intervenor admits the allegations in Paragraph 11.

12. Paragraph 12 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.

13. Paragraph 13 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.

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, Proposed Intervenor denies

the allegations.

LEGAL AND FACTUAL BACKGROUND

16. Paragraph 16 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.

17. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations about MRP's challenger appointment process. Paragraph 17 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.

18. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations about political parties' challenger appointment process. Paragraph 18 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.

19. Paragraph 19 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.

20. Proposed Intervenor admits the allegations in Paragraph 20.

21. Proposed Intervenor admits the allegations in Paragraph 21.

22. Proposed Intervenor admits the allegations in Paragraph 22.

23. Proposed Intervenor admits the allegations in Paragraph 23.

24. Proposed Intervenor denies that the Secretary of State issued "The Appointment, Rights, and Duties of Election Challengers and Poll Watchers" "less than a month before the

August 2022 primary election.”

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. Proposed Intervenor admits the allegations in Paragraph 27.

28. Paragraph 28 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.

29. Paragraph 29 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.

30. Paragraph 30 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.

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. Paragraph 32 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.

33. Paragraph 33 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.

34. Proposed Intervenor admits that the Secretary's instructions were not promulgated through a formal rulemaking process. Paragraph 34 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required.

35. Paragraph 35 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.

36. 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 36.

37. 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 37.

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. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the RNC representative's conversation with the election inspector. Paragraph 39 otherwise 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. 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 40.

41. 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 41.

42. 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 42.

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. 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 44.

45. Paragraph 45 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.

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.

47. 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 47.

48. 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 48.

49. Paragraph 49 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.

50. Paragraph 50 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.

51. Paragraph 51 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.

52. Paragraph 52 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 I – VIOLATIONS OF THE MICHIGAN ELECTION LAW

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

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, 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, 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, Proposed Intervenor denies the allegations.

WHEREFORE, Proposed Intervenor respectfully request that this Court deny that Plaintiffs are entitled to any relief; dismiss the complaint in its entirety, with prejudice; and grant such other and further relief as the Court may deem just and proper.

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

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

62. Paragraph 62 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.

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.

WHEREFORE, Proposed Intervenors respectfully request that this Court deny that Plaintiffs are entitled to any relief; dismiss the complaint in its entirety, with prejudice; and grant such other and further relief as the Court may deem just and proper.

REQUEST FOR RELIEF

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.

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.

Dated: October 14, 2022

Respectfully submitted,

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

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
Sarah Prescott