

STATE OF MICHIGAN
IN THE COURT OF APPEALS

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

Plaintiffs-Appellees,

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-Appellants.

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

Plaintiffs-Appellees,

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-Appellants.

Court of Appeals No. 363503
Case No. 22-00162-MZ

HON. BROCK A. SWARTZLE

**THE APPEAL INVOLVES A
RULING THAT A PROVISION
OF THE CONSTITUTION, A
STATUTE, RULE OR
REGULATION, OR OTHER
STATE GOVERNMENTAL
ACTION IS INVALID.**

**EMERGENCY RELIEF IS
REQUESTED BY 3:00 P.M. ON
WEDNESDAY, OCTOBER 26,
2022**

Court of Appeals No. 363505
Case No. 22-00164-MZ

HON. BROCK A. SWARTZLE

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**Pro hac vice motion forthcoming*

**DOWNRIVER/DETROIT CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE’S
MOTION FOR IMMEDIATE CONSIDERATION OF ITS EMERGENCY
APPLICATION FOR LEAVE TO FILE AMICUS BRIEF**

Pursuant to MCR 7.205(F)(2), the Detroit/Downriver Chapter of The A. Philip Randolph Institute (“DAPRI”) respectfully moves for immediate and expedited consideration of its emergency application for leave to file an amicus brief. In support of the requested relief, DAPRI states as follows:

1. Appellees Phillip M. O’Halloran, Braden Giacobazzi, Robert Cushman, Penny Crider, and Kenneth Crider (“O’Halloran Appellees”) filed a complaint against Secretary of State Benson and Director Brater on September 29, 2022. Appellees Richard DeVisser, the Michigan Republican Party, and the Republican National Committee (“DeVisser Appellees”) filed a verified complaint against Secretary Benson and Director Brater on September 30, 2022. These two cases were consolidated on October 3, 2022. On October 13, 2022, the O’Halloran Appellees filed an amended complaint that sought to cure the signature and verification deficiency of their original complaint.

2. On October 14, 2022, DAPRI filed its Motion to Intervene or, in the Alternative, Participate as Amici Curiae; proposed Answers; and proposed Motion for Summary Disposition and accompanying Brief in Support or, in the alternative, proposed Amicus Brief. DAPRI and similar organizations have dedicated significant resources toward recruiting and training poll watchers based on the May 2022 instructions, and any challenge or change to the Secretary of State’s instructions explaining the rights and duties of election challengers and poll watchers will unquestionably disrupt DAPRI’s poll watchers’ uniform training.

3. On October 14, 2022, the Court of Claims ordered parties to submit letters addressing the scope of the prohibition on electronic devices in absent voter counting boards

(“AVCBs”). The O’Halloran Appellees filed a response on October 17, 2022, while the DeVisser Appellees and State Appellants filed their responses on October 18, 2022. DAPRI also filed a response on October 18, 2022.

4. DAPRI was granted amicus curiae status in the Court of Claims Opinion and Order on October 20, 2022.

5. The Court of Claims, in its October 20, 2022 Opinion and Order, declined to invalidate the 2022 Manual and granted relief with respect to five provisions regarding 1) the credential form requirement; 2) appointing or credentialing challengers on election day; 3) communication through only the challenger liaison; 4) electronic devices in AVCBs; and 5) recording impermissible challenges.

6. On October 21, 2022, State Appellants timely filed with this Court a claim of appeal from the final judgment or order entered on October 20, 2022 in the Michigan Court of Claims.

7. On October 24, 2022, DAPRI timely filed with this Court an emergency application for leave to file an amicus brief.

8. Because of its interest in the case, DAPRI is entitled to participate as amicus curiae pursuant to MCR 7.212(H).

9. Allowing the Court of Claims’ order to take effect at this late date—just fifteen days before the election and months after the instructions were issued—will harm DAPRI in several ways. DAPRI will need to spend significant time and resources re-training poll watchers and recruiting new poll watchers to protect against anticipated challenger misbehavior and to account for attrition due to re-training needs. DAPRI’s pro-democracy mission will also be hindered due to the substance of the changes and the confusion that will ensue from these eleventh-hour changes, both of which will disproportionately harm DAPRI’s constituents, who are primarily

marginalized voters. Finally, DAPRI's members who serve as poll watchers and election inspectors will be harmed because they will need to be re-trained and because they will risk facing harms like those they experienced at polling places and AVCBs in 2020.

10. Delaying adjudication of DAPRI's emergency application for leave to file an amicus brief would thus "cause substantial harm" to DAPRI and its members. MCR 7.305(B)(4)(a); see also Mich Appellate Handbook, § 7.7 (ICLE, January 2018 update) ("Election controversies are resolved on an expedited basis because they are usually of great public significance and the election date is set by statute and cannot be moved.").

11. This Court should immediately consider and decide DAPRI's emergency application regarding the urgent and critical question of whether the DAPRI can file an amicus brief to protect its substantial interests.

12. To avoid the need for this motion, on October 23, 2022, pursuant to MCR 2.119(A)(2), DAPRI sought concurrence to file its brief. While concurrence was granted by the State Appellants and the DeVisser Appellees, it was not granted by O'Halloran Appellees.

WHEREFORE, the Court should immediately consider and decide DAPRI's emergency application for leave to file an amicus brief.

Dated this 24th day of October, 2022.

Respectfully submitted,

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**Pro hac vice motion forthcoming*

PROOF OF SERVICE

Sarah S. Prescott certifies that on the 24th 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 S. Prescott

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