

**STATE OF MICHIGAN
IN THE SUPREME COURT**

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

Supreme Court No. 166424
Court of Appeals No. 363503
Court of Claims No. 22-000162-MZ

Plaintiffs-Appellees,

**The appeal involves a ruling that a provision of
the constitution, a statute, rule or regulation, or
other state governmental action is invalid.**

v

SECRETARY OF STATE and DIRECTOR
OF THE BUREAU OF ELECTIONS,

Defendants-Appellants.

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

Supreme Court No. 166425
Court of Appeals No. 363505
Court of Claims No. 22-000164-MZ

Plaintiffs-Appellees,

v

SECRETARY OF STATE and DIRECTOR
OF THE BUREAU OF ELECTIONS,

Defendants-Appellants.

_____ /

**PROPOSED BRIEF OF AMICI CURIAE LOCAL ELECTION OFFICIALS
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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STATEMENT OF QUESTION PRESENTED

Amici Local Election Officials concur with Defendants-Appellants' Statement of Questions Presented.

STATEMENT OF INTEREST

Amici are local election officials of Michigan.¹ As election officials, *amici*'s primary duty is to ensure the right to vote of all eligible citizens in their jurisdictions. *Amici*'s responsibilities include oversight of all federal, state, and local elections. Duties also include the programming, printing, and distributing of ballots and the coordination of the canvass of federal, state, and local elections. Most pertinent here, *amici* are responsible for training election workers and responding to challenges and other objections lodged on Election Day and throughout the voting process.

Amici have experience with the disruptions that bad-faith election challengers can cause and with the ameliorative effects of the Secretary's guidance. The guidance allows *amici* and the poll workers they train to appropriately address good-faith challenges, while ensuring that bad-faith actors cannot abuse the challenge process to obstruct voters or delay the counting of ballots. The guidance also ensures consistency in how challenges are addressed within each jurisdiction and in jurisdictions across the state. *Amici* are concerned that absent the guidance, bad-faith challengers will be able to slow the voting process—leading to long lines at the polls—and hinder the ability of officials to efficiently count absentee ballots. As the local administrators of all elections in Michigan, *amici* have a significant interest in ensuring that the Secretary's guidance remains an available tool for training and providing clarity to election workers and challengers, and for preventing bad-faith challengers from disrupting the election process.

¹ Pursuant to MCR 7.312(H)(5), *amici curiae* state that no counsel for a party authored this brief in whole or in part, nor did anyone, other than *amici* and their counsel, make a monetary contribution intended to fund the preparation or submission of the brief. A list of all *amici* is attached as Appendix A.

INTRODUCTION

The 2020 election cycle saw allegations of unprecedented abuses of process and ceaseless, baseless questioning of the integrity of the elections across the country. Michigan was not spared from this disorder, including the well-documented abuse of the challenge system at the TCF Center in Detroit.

Following that election cycle, Secretary of State Jocelyn Benson issued the 2022 Manual to address growing concerns about the misuse of the elections challenger process to intimidate voters, disenfranchise voters through undue delay, cause chaos and confusion in polling places and counting centers, and unfairly call the integrity of elections into question without basis. The Secretary's guidance includes straightforward updates intended to empower local election officials. The challenged provisions of the guidance align with Michigan law and fall squarely within the Secretary's authority.

Challengers play an important role in promoting confidence in the integrity of our elections, but their role is intended to be modest. Challenges can only be mounted with specific information about an individual's eligibility to vote. MCL 168.733(1)(c)–(d), 168.727(1). The bases for these challenges are narrow. However, there are groups in Michigan who may be seeking to misuse the challenge process by challenging hundreds of voters at a time. Several *amici* received challenges relating to large numbers of voters in advance of the primary and general elections in 2022. *Amici* have also seen unprecedented numbers of applications for credentialing organizations. The goal of some of these organizations may be to overwhelm local elections officials—many of whom are part-time administrators—and the election inspectors they train, to obstruct citizens' right to vote and sow doubt about the electoral process. The Secretary's Manual empowers local election officials to maintain order and to protect the right to vote. The Manual does not alter the

rights or opportunities of legitimate challengers to raise questions about voter registration when they are acting in good faith and relying on factual information. It is sensible guidance that enables election officials to perform their jobs better.

Amici used the Secretary’s Manual effectively during the 2022 election cycle and in this year’s presidential primaries. By providing clarity about the challenge process, the manual has made it easier for clerks to train their election workers and to communicate ground rules to credentialed election challengers. The manual is also effective in helping to combat attempts to abuse the challenge system, particularly through its “challenger liaison” and “permissible-impermissible challenge” provisions. The “challenger liaison” provision ensures that challenges are directed to the election worker or official best positioned to address them. It allows the other election workers at each site to carry out other necessary tasks without distraction. The “permissible-impermissible challenge” provision ensures that mass, unsupported challenges do not interfere with voting or the counting of votes, both by clarifying that election workers need not record unsupported challenges if doing so would slow down the election process, and by allowing election workers to eject challengers who repeatedly refuse to follow the law regarding challenges.

The Secretary’s guidance not only helps to address bad-faith challenges when they occur, it also discourages challengers from presenting unsupported challenges in the first place. *Amici* provide the Secretary’s guidance to credentialed challengers, and the clear rules it establishes are often sufficient to prevent attempts to abuse the challenge system. Nonetheless, bad-faith challengers may be preparing to again attempt to use the challenge process to disrupt voting and vote counting in the 2024 general election, particularly if the Secretary’s guidance is rendered invalid. In many jurisdictions, an increasing number of organizations are seeking to credential challengers. In this context, it is critical that the Secretary’s guidance remain available to give

election officials and workers the tools they need to ensure that legitimate challenges are properly considered and that bad-faith challenges are not allowed to disrupt election processes. Accordingly, *amici* urge the Court to grant leave to appeal and reverse.

ARGUMENT

I. WITHOUT PROPER PROCEDURES, BAD-FAITH CHALLENGERS MAY DISRUPT VOTING AND VOTE COUNTING, DISENFRANCHISING VOTERS AND UNDERMINING CONFIDENCE IN ELECTIONS.

In November 2020, in a surreal display that was broadcast nationwide, challengers flooded the Detroit counting board the night of Election Day and for days after. Challengers chanted political slogans while election inspectors were attempting to process ballots, refused to remove full face masks when asked by law enforcement, banged on windows, and continuously screamed at election staff and other challengers in an apparent effort to derail the process and intimidate participants. Many of these challengers claimed that the board was engaging in blatant fraud. Some of the challengers sought to challenge large numbers of ballots without any articulated basis and demanded that election inspectors record these unsupported challenges. Fortunately, despite the disruptions, the board was eventually able to complete the count. This has raised concerns among *amici* that mass unsupported voter challenges could be used not only to delay the counting of absentee ballots, but also to disrupt the voting process on Election Day, leading to long lines and ultimately disenfranchising voters.

Following the events of 2020, *amici* have experienced a surge in the number of organizations registering to credential challengers. Based on public statements and published materials, it appears that certain of these groups may intend to launch broad attacks on registered voters without basis. One such organization, Michigan Citizens for Election Integrity, published

an article stating that to trust Detroit election inspectors is to trust a “snake.”² Another, Michigan’s Election Integrity Force (also known as the Election Integrity Fund), claims that there was “a massive amount of evidence of rampant, systemic election fraud”³ in 2020, and explains that it is committed to encouraging “the process of decertification of fraudulent elections.”⁴ *Amici* anticipate that these groups, as well as others with similar views, will organize, train, and send challengers to polling places and absent voter counting boards for the 2024 general election. Given these repeated, public expressions of distrust of Michigan’s election inspectors and voters, it is possible if not likely that election workers may be inundated with challenges.

Absent the availability of proper procedures, mass unsupported voter challenges risk intimidating voters and causing delays that make it more difficult to vote and undermine confidence in the election system. Furthermore, if bad-faith challengers challenge many voters, and election inspectors are forced to record every challenge, the effect may be to stall the voting process, leading to long lines at the polls. Some voters, particularly those with demanding work or family responsibilities may be unable to wait to cast their votes. The disenfranchising effects of long lines are further compounded because voters who wait in long lines may be less likely to vote in future elections,⁵ and news coverage of long lines at the polls may discourage other citizens

² Michigan Citizens for Election Integrity, *Detroit Election Officials – Trusting a Snake!* (July 31, 2022), <https://mc4ei.com/detroit-election-officials-trusting-a-snake/>.

³ Election Integrity Fund and Force, *Evidence*, <https://electionintegrityforce.com/pages/evidence> (last visited June 10, 2024).

⁴ Election Integrity Fund and Force, *About*, <https://electionintegrityforce.com/pages/about> (last visited June 10, 2024).

⁵ Stephen Pettigrew, *The downstream consequences of long waits: How lines at the precinct depress future turnout*, *Electoral Studies* 71 (June 2021), <https://www.sciencedirect.com/science/article/pii/S0261379420300718?via%3Dihub>.

from voting.⁶ As demonstrated at the Detroit absent voter counting board in 2020, mass unsupported challenges and other disruptive behavior by challengers can also disrupt the counting of absentee ballots, delaying the release of election results and contribute to doubts about election integrity.

II. THE SECRETARY’S GUIDANCE PROVIDES ELECTION OFFICIALS AND WORKERS THE TOOLS THEY NEED TO ADDRESS BAD-FAITH CHALLENGERS.

The Secretary’s guidance does not alter Michigan law or election inspectors’ authority. Michigan law permits challenges to voting rights only where the challenger “has good reason to believe” the voter is “not a registered elector.” MCL 168.733(1)(c). It prohibits challengers from making challenges “indiscriminately and without good cause” and from “interfer[ing] with or unduly delay[ing] the work of the election inspector.” MCL 168.727(3). “An individual who challenges a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters” may be arrested and criminally prosecuted. *Id.* In the hands of an experienced election inspector with legal expertise, Michigan’s legal framework may be sufficient, without further guidance, to manage the efforts of bad-faith challengers to disrupt voting or vote counting. In trainings, *amici* encourage election inspectors to alert their local clerk or law enforcement if there are disruptions in the precinct—including challengers making repeated bad-faith challenges—and advise them to take action as needed to maintain an orderly polling location. But *amici* know from experience that, absent clear guidance, not all election inspectors will possess the knowledge and confidence to adequately address aggressive bad-faith challengers. The Secretary’s guidance provides all election inspectors and other election workers with the guidance

⁶ Kathleen Searles and Christopher Mann, *News coverage that shows long voting lines may discourage people from voting*, MIT Election Data + Science Lab (April 7, 2023), <https://electionlab.mit.edu/articles/news-coverage-shows-long-voting-lines-may-dissuade-people-from-voting>.

they need to address bad-faith challengers and ensures that challenges are treated uniformly across the state.

The “challenger liaison” provision ensures that challengers are directed to the person best equipped to properly address their challenges. At a polling place, the challenger liaison is generally the precinct chairperson. At an absent voter ballot processing facility, the challenger liaison is generally the most senior member of the clerk’s staff present. In both cases, the “challenger liaison” provision directs challenges to the most experienced official on site, ensuring that the challenges receive proper consideration while allowing the other election inspectors and staff to conduct their tasks without distraction. The guidance helps polling places and absent voter counting boards to operate efficiently when all challengers operate in good faith, but it becomes even more essential when challengers seek to disrupt election processes. By ensuring that all challenges are directed to a single experienced individual, the guidance decreases the likelihood that bad-faith challengers will disrupt the activities of the other election inspectors on site, and thereby grind voting or vote counting to a halt.

The “permissible-impermissible challenge” provision gives both election inspectors and challengers clarity about how challenges will be handled if the challenges do not comply with Michigan law. First, the provision clarifies that while even impermissible challenges should be recorded where possible, challenger liaisons are not required to record impermissible challenges if doing so would slow down the election process. This clarity is likely to dissuade some would-be bad-faith challengers from attempting to slow the election process. If such challengers persist in seeking to disrupt the election, the provision makes clear that the challenger liaison should prioritize the effective operation of election processes over the recording of challenges that fail to comply with Michigan law. The guidance further clarifies that in the most extreme cases, where a

challenger makes repeated impermissible challenges, the challenger may be removed from the premises. This creates an additional incentive for challengers to comply with the law and provides challenger liaisons with an additional tool to prevent disruption of election processes.

Overall, the Secretary's guidance is extremely valuable for the clarity it provides to both election inspectors and challengers. Michigan's clerks, including *amici*, train tens of thousands of election workers state-wide for each election cycle, and the Secretary's guidance enables them to provide clear instruction to all these trainees regarding the challenge process, and to ensure that challenges are treated uniformly across the state. *Amici* also distribute the Secretary's guidance to each credentialed challenger, enabling good faith challengers to properly navigate the challenge system and discouraging bad-faith challengers from seeking to disrupt election operations.

III. THE SECRETARY'S GUIDANCE DOES NOT HINDER GOOD FAITH CHALLENGERS.

There is no indication of actual harm to Plaintiffs from the Secretary's guidance. Notwithstanding suggestions to the contrary, nothing in the Secretary's guidance interferes with the ability of good faith challengers to lodge challenges and have their challenges properly considered. Rather, the guidance merely streamlines and clarifies the process for bringing lawful challenges. *Amici* have now conducted several elections using the guidance and are confident that only those challenges that fail to comply with Michigan law are inhibited.

The appointment of a challenger liaison has no effect on the content of the challenges that challengers may lodge. Rather, it ensures that challenges are brought to the election official or worker best positioned to effectively address the challenge. Nothing in Michigan law prohibits one election inspector from directing a challenger to another election inspector to respond to a challenge. Even before the Secretary issued her guidance, it was common for election inspectors to refer challengers to more experienced colleagues. The guidance merely formalizes this practice

and improves the operation of polling locations. It does nothing to limit challengers in their ability to lodge legitimate challenges.

Similarly, the “permissible-impermissible challenge” provision has no effect on the ability of challengers to lodge lawful challenges. Under the provision, a challenge is considered impermissible only if (1) the “[c]hallenge is made to something other than a voter’s eligibility or an election process,” (2) the challenge to a voter’s eligibility is not based on a relevant qualification or the challenger provides no support or explanation for the challenge, or (3) the challenge is made for a prohibited reason. In none of these cases would the challenge be valid under Michigan law, which permits only challenges to voters’ eligibility and election processes, MCL 168.733, and provides that a challenger may only challenge the voting rights of a person who the challenger “has good reason to believe is not a registered elector.” MCL 168.733(1)(c). In other words, if challengers comply with Michigan law, the “permissible-impermissible challenge” provision has no force or effect.

Because the Secretary’s guidance provides clarity for election inspectors and challengers, helps to ensure that bad-faith challengers cannot disrupt the voting or vote counting processes, and in no way interferes with the ability of good faith challengers to fulfill their important role in the election process, *amici* urge the Court to allow the continued use of the guidance.

CONCLUSION

For the foregoing reasons, *amici* request that the Supreme Court grant leave to appeal and reverse.

Respectfully submitted,

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WORD COUNT STATEMENT

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DATED: June 10, 2024

/s/ Bonnie G. Toskey

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APPENDIX A

The following is a list of all amici who joined this brief:

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