

**STATE OF MICHIGAN**  
**COURT OF CLAIMS**

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

Plaintiffs,

v

Case No. 22-000162-MZ

JOCELYN BENSON, in her Official Capacity as  
Secretary of State for the State of Michigan and  
JONATHAN BRATER, in his Official Capacity as  
Director of the Michigan Bureau of Elections,

Hon. Brock A. Swartzle

Defendants.  
\_\_\_\_\_ /

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

Plaintiffs,

v

Case No. 22-000164-MM

JOCELYN BENSON, in her Official Capacity as  
Secretary of State, and JONATHAN BRATER, in  
his Official Capacity as Director of Elections,

Hon. Brock A. Swartzle

Defendants.  
\_\_\_\_\_ /

**ORDER OF THE COURT**

Plaintiffs in these two cases challenge the legality of various provisions in defendants' recently issued document, "The Appointment, Rights, and Duties of Election Challengers and Poll Watchers" (May 2022) (the "document"). They argue, among other things, that certain provisions of the document are not merely descriptive guidance or informational instruction of what current law requires (as found in statute, case law, common law, or promulgated rule), but instead purport to add or modify legal requirements not found in such law. Both parties seek relief on an

emergency/expedited basis, and plaintiffs in Docket No. 22-000162-MZ have moved for emergency relief. Because plaintiffs' claims involve the upcoming November 2022 election, and in the interest of permitting sufficient time for appellate review, the Court orders as follows:

1) On the Court's own motion:

A) The two cases shall be consolidated.

B) Plaintiffs shall effectuate service of their respective summons and complaint on defendants by no later than close of business on Tuesday, October 4, 2022, and they shall file their proofs of service by no later than close of business on Wednesday, October 5, 2022.

C) Defendants are directed to show cause by close of business on Tuesday, October 11, 2022, why this Court should not issue the relief sought by plaintiffs. Defendants' combined brief shall not exceed thirty (30) pages, and, in that brief and in addition to any other matter that defendants wish to address, defendants shall (i) cite and discuss the source of law (i.e., statute, case law, common law, or promulgated rule) that purportedly supports each disputed provision in the document, and (ii) explain with specificity how the document comports with our Legislature's distinction between a promulgated rule that has the force and effect of law and an informational guideline or pamphlet that does not have such force or effect. MCL 24.207; MCL 24.203(7); *Twp of Hopkins v State Boundary Comm'n*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2022) (Docket No. 355195); *Davis v Benson*, unpublished opinion of the Court of Claims, issued October 27, 2020, 2020 WL 7033534 (Docket No. 20-000207-MZ); *Genetski v Benson*, unpublished opinion of the Court of Claims, issued March 9, 2021, 2021 WL 1624452 (Docket No. 20-000216-MM).

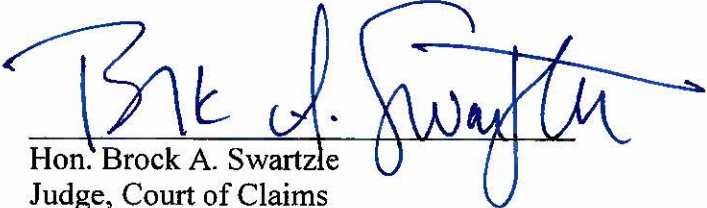
D) Plaintiffs from each case may file their own individual brief, not to exceed fifteen (15) pages, in response to defendants' combined brief by close of business on Thursday, October 13, 2022. Collectively, plaintiffs may file a single, combined brief, and if they choose to do so, such brief may not exceed thirty (30) pages.

E) With respect to the Court's show-cause order only, no reply or sur-reply briefs shall be permitted.

F) The time periods set forth in this order shall also apply to any answer, responsive pleading, or motion for summary disposition filed by a party.

IT IS SO ORDERED.

Date: October 3, 2022

  
Hon. Brock A. Swartzle  
Judge, Court of Claims