

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DONALD AGEE, JR <i>et al.</i> ,	)	
Plaintiffs,	)	
	)	
v.	)	
	)	Civil Case No.:1:22-cv-272
JOCELYN BENSON, in her official	)	
capacity as the Secretary of State of	)	
Michigan, <i>et al.</i> ,	)	
Defendants.	)	
	)	

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**Motion of the Michigan Senate for Leave to  
File Brief as Amicus Curiae**

**I. Introduction and Identity of Amicus**

*Amicus curiae*, the Michigan Senate, respectfully moves for leave of Court to oppose the relief Plaintiffs seek in this action.

Plaintiffs challenge the drawing of certain of Michigan’s state legislative districts under the Voting Rights Act and the Equal Protection Clause of the United States Constitution. The matter has proceeded to trial and the Court issued an opinion on December 21, 2023. *See generally* ECF 131. The Court found that the at-issue districts were drawn in violation of the Equal Protection Clause, and, as such, were invalid. The Court further directed the Parties to appear before the Court to discuss how to proceed to redraw these districts on January 5, 2024. *See* ECF 131, PageID.4817; *see also* ECF 132, PageID.4820-21.

Subsequently, on January 2, 2024, the Parties submitted briefing to the Court outlining their respective proposed remedies. *See generally*, ECF 135; ECF 136. Plaintiffs' second request for relief requests that the Court order a special election to be held in 2024 for the Senate. *See* ECF 136, PageID.4856-57.

Upon review of the record and pleadings before the Court, the Senate believes that it could, as *amicus curiae*, offer the Court an insightful and useful perspective on the legal framework governing Plaintiffs' request for a special election.

## **II. Standard of Review**

The decision to allow an appearance as *amicus curiae* falls under the district court's inherent authority. *United States v. Mich.*, 116 F.R.D. 655, 660 (W.D. Mich. 1987). There is no applicable Federal Rule of Civil Procedure that controls filing an amicus brief in this Court. *Am. Humanist Ass'n v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014). Likewise, there is no specific local rule. *See Kollartisch v. Mich. State Univ. Bd. of Tr.*, No. 1:15-cv-1191, 2017 WL 11454764, at \*1 (W.D. Mich. Oct. 30, 2017). A district court has broad discretion to determine whether to allow a non-party to participate as *amicus curiae* in a case. *Id.* When making this determination, courts focus on the usefulness and timeliness of the brief and consider a variety of factors, including the opposition of parties, interest of the movants, partisanship, and adequacy of representation. *Id.*

## **III. The Information Proffered in the Brief Is Timely and Useful**

As the entity most directly impacted by Plaintiffs' request for a special election, the Senate is uniquely positioned to apprise the Court of the legal framework governing

this aspect of Plaintiffs' proposed remedies. Because the parties' supplemental briefs on the remedies question were simultaneously filed and only the Plaintiffs' brief addressed the issue of a special Senate election, the Senate believes the Court and parties would benefit from fuller discussion of that issue.

As explained in the accompanying brief, the imposition of a special Senate election in 2024, while within the Court's power, is not warranted by a balancing of the equitable factors the Supreme Court has directed federal courts to weigh in considering such an extraordinary step. The Senate has particular knowledge of the impact this remedy would have, and, as such, is well placed to provide an amicus brief on this limited topic.

This Motion and the Senate's proposed arguments are timely because the hearing on proposed remedies has not yet occurred. *See* ECF 132. Moreover, the Senate's specific interest in this action only arose very recently. The Senate was unaware that the Plaintiffs would request a special election in their supplemental remedies brief until January 2, 2024—three days ago. Hearing from the Senate at this juncture will neither delay litigation nor impede the Court's decision-making process. As such, this Motion is timely.

#### **IV. Conclusion**

For the forgoing reasons, the Senate respectfully requests that the Court grant this motion for leave to file a brief as *amicus curiae* and accept for filing the *amicus curiae* brief submitted with this motion.

Respectfully submitted,

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By: /s/ James J. Hunter

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Dated: January 5, 2024

**CERTIFICATE OF SERVICE**

I certify that on January 5, 2024 the foregoing Motion of the Michigan Senate for Leave to File Brief as Amicus Curiae was filed electronically and has been served via the Court's ECF filing system on all registered counsel of record.

By: /s/ James J. Hunter  
James J. Hunter (P74829)  
Kari Melkonian (P72012)