



IN THE SUPREME COURT OF THE STATE OF DELAWARE

THE HONORABLE ANTHONY J.
ALBENCE, in his official capacity as
State Election Commissioner, and
STATE OF DELAWARE
DEPARTMENT OF ELECTIONS,

Defendants-Appellants,

v.

MICHAEL HIGGIN and MICHAEL
MENNELLA,

Plaintiffs-Appellees /
Cross-Appellants.

DELAWARE DEPARTMENT OF
ELECTIONS, and ANTHONY J.
ALBENCE, State Election
Commissioner,

Defendants-Appellants,

v.

AYONNE "NICK" MILES, PAUL J.
FALKOWSKI, and NANCY M.
SMITH,

Plaintiffs-Appellees.

No. 342, 2022

On Appeal from the Court of
Chancery of the State of
Delaware

C.A. Nos. 2022-0641-NAC and
2022-0644-NAC

MOTION OF JUDICIAL WATCH, INC.
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Delaware Supreme Court Rule 28, Judicial Watch, Inc. (“Judicial Watch”) respectfully moves the Court for leave to file the [Proposed] Brief of Amicus Curiae Judicial Watch, Inc. in Support of Plaintiffs-Appellees and Affirmance in support of affirmance of the decision below.

I. Movant’s Interest.

Judicial Watch is a non-partisan, public interest organization headquartered in Washington, D.C. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government, and fidelity to the rule of law. Judicial Watch files amicus curiae briefs in cases involving issues it believes are of public importance, including cases involving the proper interpretation of federal election statutes. *See, e.g.*, Brief of Amici Curiae Judicial Watch, Inc. and Allied Educational Foundation in Support of Appellants, *Gill v. Whitford*, No. 16-1161 (partisan gerrymandering claim under the First and Fourteenth Amendments); and Brief of Amici Curiae Judicial Watch, Inc. and Allied Educational Foundation in Support of Appellants, *Rucho v. Common Cause*, No. 18-422 (same).

Amicus curiae have an interest in the proper interpretation of constitutional provisions as it relates to state election law. Counsel for amicus have litigated a wide range of voting and election cases in both federal and state court, such as a recent successful challenge to Maryland’s 2021 congressional redistricting maps as an unlawful partisan gerrymander in violation of the Maryland State Constitution.

See Mem. Opinion and Order, *Parrott v. Lamone*, No. C-02-CV-21-1773 (Md. Cir. Ct. March 25, 2022). Amicus respectfully submits that the Delaware General Assembly likewise exceeded its state constitutional authority when it passed the vote-by-mail legislation at issue in the case. Amicus writes to highlight the dangers of absentee voting and the importance of having election regulations properly enacted in accordance with state and federal law. Adhering to bedrock constitutional principles—like prohibiting impermissible legislative amendments to the constitution—prevents long term damage to democratic principles for the sake of short-term gains. Moreover, adhering to such principles promotes public trust and upholds the legitimacy of electoral outcomes. This is critical no matter how well-intended the election regulation in question.

II. Relevance of the Amicus Curiae Brief to the Disposition of the Case

The [Proposed] Amicus Curiae Brief of Judicial Watch, Inc. in Support of Affirmation provides legal and factual support for affirmation of the Court of Chancery’s opinion below, holding that Delaware Vote By Mail statute, 83 Del. Laws ch. 353 (2022) is unconstitutional under the Delaware Constitution. The [Proposed] Brief of Amicus Curiae Judicial Watch, Inc. in Support of Plaintiffs-Appellees and Affirmance does not duplicate Appellees’ arguments, but rather provides additional analysis and background concerning the constitutional issues raised in this case.

III. Consent of the Parties

The parties have consented to the filing of movant's amicus curiae brief.

The movant has timely submitted this motion and the accompanying brief pursuant to Supreme Court Rule 28.

CONCLUSION

For all the reasons stated herein, movant Judicial Watch, Inc. respectfully requests that this Honorable Court grant leave to file the proposed amicus curiae brief in this matter.

Dated: October 5, 2022

HALLORAN FARKAS + KITTLA LLP

/s/ William E. Green, Jr. _____

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENT AND TYPE-VOLUME LIMITATION**

1. This motion complies with the typeface requirement of Delaware Supreme Court Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word for Microsoft 365.

2. This motion complies with the type-volume limitation of Rule 30(d) because it contains 510 words, which were counted by Microsoft Word for Microsoft 365.

/s/ William E. Green, Jr.
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