

**STATE OF MICHIGAN
IN THE COURT OF CLAIMS**

ROBERT LABRANT, ANDREW
BRADWAY, NORAH MURPHY,
WILLIAM NOWLING,

Plaintiffs,

v.

JOCELYN BENSON, in her official
capacity as Secretary of State,

Defendant,

DONALD J. TRUMP,

Intervening Party.

Case No. 23-000137-MZ

Hon. James Redford

**10/23/2023 MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF BY GERARD N.
MAGLIOCCA**

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NOW COMES Gerard Magliocca, who respectfully moves this Court under MCR 2.119 for leave to file the attached amicus curiae brief. In support of this motion, Gerard Magliocca states the following:

Professor Magliocca seeks leave to file an amicus brief in the public interest supporting Petitioners.

1. Pursuant to MCR 2.119, Law Professor Gerard Magliocca respectfully moves for leave to file, in the public interest, a brief supporting Plaintiffs, attached as Exhibit A.

Professor Magliocca is well-qualified to assist this Court regarding the central issues presented.

2. As this Court recognizes, the issues raised here are of critical importance to our democracy. An amicus brief by Professor Magliocca will assist the Court because his scholarship provides valuable historical context.
3. Professor Magliocca is a constitutional law scholar whose work has long focused on the Fourteenth Amendment. He can assist the Court in understanding the meaning that Section 3 had at the time of the proposal, ratification, and early implementation of the Fourteenth Amendment.
4. Professor Magliocca will address the following issues in this case: the legal construction of Section 3 of the Fourteenth Amendment, including but not limited to (a) whether Section 3 of the Fourteenth Amendment is self-executing; (b) whether Section 3 of the Fourteenth Amendment operates to preclude a person from being President of the United States; and (c) whether Section 3 of the Fourteenth Amendment applies to a person who has previously taken an oath as President of the United States.
5. Professor Magliocca is well-qualified to assist the Court with addressing these issues. He is the Samuel R. Rosen Professor at the Indiana University Robert H. McKinney School of

Law. He teaches constitutional law and has written extensively on the history of the Fourteenth Amendment.

6. In 2020, Professor Magliocca wrote an article on Section 3 of the Fourteenth Amendment that was made publicly available before January 6, 2021 and was published shortly afterwards. This article has been cited as reliable authority by courts and litigants in election cases. *See, e.g., Cawthorn v. Amalfi*, 35 F.4th 245, 259 (4th Cir. 2022) (“To the contrary, the available evidence suggests that the Congress that enacted the 1872 Amnesty Act was, understandably, laser-focused on the then-pressing problems posed by the hordes of former Confederates seeking forgiveness. *See* Gerard N. Magliocca, *Amnesty and Section Three of the Fourteenth Amendment*, 36 *Const. Comment.* 87, 111–21 (2021)”).
7. In 2013, he published a biography of Congressman John A. Bingham, who was one of the drafters of the Fourteenth Amendment as a member of the Joint Committee on Reconstruction.¹ Professor Magliocca has also published four law review articles on the proposal, ratification, or early implementation of Sections One and Two, and Three of the Fourteenth Amendment.²

¹ Gerard N. Magliocca, *American Founding Son: John Bingham and the Invention of the Fourteenth Amendment* (NYU Press, 2013).

² Three of these articles are Gerard N. Magliocca, “Our Unconstitutional Apportionment Process,” 86 *George Washington Law Review* 774 (2018) (discussing the history of Section Two of the Fourteenth Amendment at length); Gerard N. Magliocca, “Indians and Invaders: The Citizenship Clause and Illegal Aliens,” 10 *University of Pennsylvania Journal of Constitutional Law* 499 (2008) (providing a historical account of the first sentence in Section One of the Fourteenth Amendment); Gerard N. Magliocca, “The Cherokee Removal and the Fourteenth Amendment,” 53 *Duke Law Journal* 873 (2003) (analyzing other historical aspects of Section One).

8. Finally, Professor Magliocca has been an important voice in the recent debates around the Fourteenth Amendment, as can be seen in his frequent contributions to newspapers, websites, and podcasts on the meaning and interpretation of the Fourteenth Amendment.³
9. Professor Magliocca’s well-regarded scholarship on the Fourteenth Amendment mean that he can add important context and arguments to the issues facing this Court.

Conclusion

WHEREFORE, for the foregoing reasons, Professor Magliocca respectfully requests that this Court grant his request to participate as amicus curiae in this case, and accept the attached proposed brief, Exhibit A, for filing

Respectfully submitted,

Dated: October 23, 2023

/s/ Sarah S. Prescott

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³ These contributions are listed in an electronic C.V. at <https://mckinneylaw.iu.edu/faculty-staff/profile-WCMS.cfm?Id=40>

CERTIFICATE REGARDING CONCURRENCE

I certify that the undersigned requested concurrence in the relief sought herein from the counsel on the pleadings of record herein on October 23, 2023, and that Plaintiffs concur in the relief sought, and Defendants neither concur or oppose the relief sought, and therefore, that it is necessary to present the motion.

Respectfully submitted,

Dated: October 23, 2023

/s/ Sarah S. Prescott

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Proposed amicus curiae Gerard Magliocca relies on the rules and authorities set forth in his foregoing motion, including MCR 2.119 and those stated within his proposed Brief, attached as Exhibit A.

Respectfully submitted,

Dated: October 23, 2023

/s/ Sarah S. Prescott

Sarah S. Prescott (P70510)

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CERTIFICATE OF SERVICE

I certify that on October 23, 2023, I filed the foregoing documents with the Clerk of the Court using the Court’s ECF system (MiFILE), which will send notice and a copy of such filing to all counsel of record.

Dated: October 23, 2023

/s/ Sarah S. Prescott
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