

**In the Supreme Court of the United States**

---

LEAGUE OF WOMEN VOTERS OF MICHIGAN, ET AL.  
Applicants,

v.

JOCELYN BENSON, In her official capacity as Michigan Secretary of State  
Respondent.

---

*On Petition for a Writ of Mandamus to the United States District Court for the  
Eastern District of Michigan, Clay, Circuit Judge; Hood, Chief District Judge; Quist,  
District Judge presiding*

---

**EMERGENCY MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN  
SUPPORT OF APPLICATION TO STAY WITHOUT 10-DAY NOTICE AND  
WITHOUT THE CONSENT OF THE RESPONDENT AND *AMICUS CURIAE*  
BRIEF OF VOTERS NOT DONORS**

---

JOHN J. BURSCH  
*Counsel of Record*  
BURSCH LAW PLLC  
9339 Cherry Valley Ave. SE, #78  
Caledonia, MI 49316  
(616) 450-4235  
jbursch@burschlaw.com

*Counsel for Amicus Curiae  
Voters Not Donors*

---

1. *Amicus Curiae* Voters Not Donors, pursuant to Supreme Court Rules 22, 33.2, and 37(2)(a) and (b), respectfully moves this Court for a waiver of the 10-day notice requirement and for leave to file the accompanying *amici curiae* brief in support of emergency applicants Republican Congressional Delegation, Lee Chatfield, and Aaron Miller. Emergency applicants and Secretary of State Jocelyn Benson have provided consent to the filing of the attached *amici curiae* brief. Request for consent has been provided to Plaintiffs but, given the incredibly short time frame involved, they have been unable to respond.

2. This case involves a challenge to Michigan's legislatively-adopted redistricting map, signed into law by Public Acts 128 and 129 of 2011, and codifying the boundaries of Michigan's 14 Congressional, 38 State Senate, and 110 State House districts. More than six years and three elections after the enactment date, Plaintiffs filed a complaint seeking declaratory and injunctive relief, claiming that the redistricting legislation is an unconstitutional partisan gerrymander in violation of the First Amendment and Equal Protection Clause of the U.S. Constitution.

3. Trial in the district court is set to begin February 5, 2019. But on January 4, 2019, this Court announced that, in March 2019, it will consider jurisdictional and other likely dispositive issues associated with the very similar gerrymandering claims brought in *Common Cause v. Rucho*, No. 18-422 (U.S. filed Oct. 1, 2018) and *Lamone v. Benisek*, No. 18-726 (U.S. filed Dec. 3, 2018).

4. The dispositive issues common to *Rucho* and *Benisek*—whether such redistricting claims are justiciable and, if so, what legal and factual standards courts must apply when resolving those disputes—are the same dispositive issues before the three-judge panel in this case.

5. As explained in the Application, although this Court will consider the *Rucho* and *Benisek* cases at oral argument in approximately one month, the district court has since denied all Motions for Stay, necessitating a complex, time-consuming, and expensive trial that could be entirely mooted by this Court’s rulings in *Rucho* and *Benisek*. That disinclination is not only contrary to the wishes of Applicants, it is also contrary to the desires of Plaintiffs and Respondent, who have discussed their desire to continue to trial so that they can engage in settlement negotiations and possible resolution of the dispute via consent decree. So, while all parties and intervenors desire to stay commencement of trial (though for somewhat different reasons), the district court has been unwilling to stay the trial for any reason.

5. *Amicus Curiae* Voters Not Donors is a nonpartisan, nonprofit, tax-exempt political organization dedicated to fighting conflicts of interest in electoral politics. Voters Not Donors submits this *amicus curiae* brief in support of the Application for Stay because of the serious appearance of impropriety in the present case where the newly-elected Michigan Secretary of State and named Defendant in this case, Jocelyn Benson, has decided not to pursue the defense of litigation within mere weeks of assuming office. This decision is particularly troubling since:

(1) Michigan’s previous Secretary of State vigorously defended the case for more than a year until her term of office expired on January 1, 2019; (2) the lead counsel for Plaintiffs in this case is a campaign donor to and political mentor of Secretary of State Jocelyn Benson; and (3) five of the 11 named Plaintiffs in this case are campaign donors to Secretary Benson’s campaigns for office.

6. Significantly, Michigan Secretary of State Jocelyn Benson failed to disclose these conflicts of interest to the district court below upon taking office; instead, Secretary Benson immediately attempted to secretly “settle” this case with Plaintiffs, allowing Plaintiffs’ attorneys to reap significant taxpayer funds in the form of an award of attorney fees and costs and, of course, granting relief to Plaintiffs themselves.

7. To protect the integrity of the judicial process against what appears to be impropriety, Voters Not Donors respectfully submits this brief as *amicus curiae* in support of the Emergency Application for a stay in these proceedings.

8. No party or party’s counsel authored any part of the accompanying brief, nor did proposed *Amicus Curiae* or its counsel receive any money from a party to fund preparing or submitting this brief.

9. The proposed *Amicus Curiae*’s position as a watchdog for Michigan voters provides it with a prospective different from the parties and the Emergency Applicants that is relevant to the disposition of the Application for Stay. This perspective will assist the Court in its deliberations.

10. The contemporaneously filed brief addresses the possible motives for Michigan Secretary of State Jocelyn Benson's desire to settle this dispute.

11. Given the abbreviated time in which the Emergency Applicants have asked for action on their Application for Stay following the district court denying all parties' sensible requests to stay the trial that is scheduled to begin tomorrow, Order Denying All Motions to Stay, PgID 8393, *Amicus Curiae* Voters Not Donors respectfully requests a waiver of the 10-day notice requirement and for leave to file the accompanying *amicus curiae* brief.

For these reasons, the motion for leave to file the attached *amicus curiae* brief should be granted.

Respectfully submitted,

/s/ John J. Bursch

JOHN J. BURSCH

*Counsel of Record*

BURSCH LAW PLLC

9339 Cherry Valley Ave. SE, #78

Caledonia, MI 49316

(616) 450-4235

[jbursch@burschlaw.com](mailto:jbursch@burschlaw.com)

*Counsel for Amicus Curiae*

*Voters Not Donors*

February 4, 2019

## QUESTION PRESENTED

Whether this Court should grant an emergency stay of proceedings in the three-judge district court, which is about to begin a gerrymandering trial on February 5, 2019, when the underlying claims suffer from jurisdictional and other dispositive defects that are likely to be resolved by this Court's decisions in *Common Cause v. Rucho*, No. 18-422 (U.S. filed Oct. 1, 2018) and *Lamone v. Benisek*, No. 18-726 (U.S. filed Dec. 3, 2018).

**TABLE OF CONTENTS**

QUESTION PRESENTED ..... i  
TABLE OF CONTENTS.....iii  
TABLE OF AUTHORITIES ..... iiiii  
*AMICUS CURIAE'S* STATEMENT OF INTEREST..... 1  
INTRODUCTION ..... 2  
ARGUMENT ..... 3  
    I. SECRETARY BENSON'S ACTIONS DEMONSTRATE A LACK OF  
        TRANSPARENCY..... 3  
    II. SECRETARY BENSON'S ACTIONS REPRESENT A CONFLICT OF  
        INTEREST..... 5  
    III. SECRETARY BENSON'S ACTIONS ILLUSTRATE THE PARTISAN  
        ADMINISTRATION OF ELECTIONS..... 7  
CONCLUSION..... 10

## TABLE OF AUTHORITIES

### Cases

<i>Ashwander v. TVA</i> , 297 U.S. 288 (1936) .....	10
<i>Common Cause v. Rucho</i> , No. 18-422 (U.S. filed Oct. 1, 2018) .....	3
<i>Lamone v. Benisek</i> , No. 18-726 (U.S. filed Dec. 3, 2018).....	3
<i>League of Women Voters of Michigan v. Johnson</i> , 902 F.3d 572 (6th Cir. 2018) .....	9

### Other Authorities

Ingrid Jacques, <i>Benson’s ‘nonpartisan’ persona on line</i> , The Detroit News (Jan. 29, 2019), <a href="https://bit.ly/2SomCh4">https://bit.ly/2SomCh4</a> .....	6, 8
Nolan Finley, <i>Benson risks credibility on Brewer deal</i> , The Detroit News (Jan. 23, 2019), <a href="https://bit.ly/2t7PgEA">https://bit.ly/2t7PgEA</a> .....	8
Jackie Headapohl, <i>A Political Party’s Strength Lies in Redefined Borders</i> , The Jewish News (Aug. 23, 2017), <a href="https://bit.ly/2G9QzLU">https://bit.ly/2G9QzLU</a> .....	5
Fox 47 News, <i>Jocelyn Benson Sworn-in As Michigan’s 43<sup>rd</sup> Secretary of State</i> (Jan. 1, 2019), <a href="https://bit.ly/2MNqsee">https://bit.ly/2MNqsee</a> .....	3
<i>Michigan Campaign Statement Contributions</i> (2017 October Quarterly), <a href="https://bit.ly/2GoYzYD">https://bit.ly/2GoYzYD</a> .....	6
<i>Secretary Benson issues statement on Gov. Whitmer’s executive directive on transparency in state government</i> (undated), <a href="https://bit.ly/2BhDk83">https://bit.ly/2BhDk83</a> .....	5
<i>Secretary of State Jocelyn Benson files brief in League of Women Voters vs. State of Michigan</i> (Jan. 17, 2019), <a href="https://bit.ly/2DQXQOd">https://bit.ly/2DQXQOd</a> .....	4



## **AMICUS CURIAE'S STATEMENT OF INTEREST**

*Amicus Curiae* Voters Not Donors is a nonpartisan, nonprofit, tax-exempt political organization dedicated to fighting conflicts of interest in electoral politics.<sup>1</sup> Voters Not Donors submits this *amicus curiae* brief in support of the Application for Stay because of the serious appearance of impropriety in the present case where the newly-elected Michigan Secretary of State and named Defendant in this case, Jocelyn Benson, has decided not to pursue the defense of this case within mere weeks of assuming office. This decision is particularly troubling since: (1) Michigan's previous Secretary of State vigorously defended the case for more than a year until her term of office expired on January 1, 2019; (2) the lead counsel for Plaintiffs in this case is a campaign donor to and political mentor of Secretary of State Jocelyn Benson; and (3) five of the 11 named Plaintiffs in this case are campaign donors to Secretary Benson's campaign.

This Court should consider these conflicts of interest and other public information discussed below before deciding the Emergency Application for Stay.

---

<sup>1</sup> No party or party's counsel authored any part of the accompanying brief, nor did proposed *Amicus Curiae* or its counsel receive any money from a party to fund preparing or submitting this brief.

## INTRODUCTION

In 2011, Michigan's Legislature enacted and Michigan Governor Snyder signed into law Public Acts 128 and 129 of 2011, codifying the boundaries of Michigan's Congressional and state legislative districts. More than six years later, in December 2017, Plaintiffs filed a complaint seeking declaratory and injunctive relief, claiming that Public Acts 128 and 129 violated their rights under the First Amendment and Equal Protection Clause of the U.S. Constitution. A three-judge district court was convened, and litigation commenced. In accord with duty to uphold Michigan law, then-Michigan Secretary of State Ruth Johnson vigorously defended the legislation.

Following the November 2018 election, Respondent Jocelyn Benson was sworn in as Michigan's new Secretary of State on January 1, 2019. This placed Secretary Benson in a difficult position. On the one hand, as an officer of the State of Michigan, she is obligated to follow and uphold Michigan law. On the other hand, Jocelyn Benson had been an outspoken critic of the 2011 redistricting legislation, including sponsoring a contest in 2011 inviting Michigan citizens to draw fairer political maps when Ms. Benson was a professor at Wayne State University Law School. Jo Mathis, *Drawing lines: Redistricting competition involves citizens in the process*, Detroit Legal News (April 1, 2011), available at <https://bit.ly/2D5Q4yC>. But the bigger problem was ethical: five of the named Plaintiffs—including the lead plaintiff—and Plaintiffs' counsel were donors to Secretary of State Jocelyn Benson's campaigns.

In the face of these conflicting motivations, Secretary Benson had a number of choices. She could have continued defending Michigan law by taking the position of her predecessor Secretary of State. She also could have declared herself conflicted out

of taking a legal position and deferring to the Michigan Attorney General's office. Instead, on the eve of trial, Secretary Benson fired Jones Day and Dickinson Wright, the law firms that had been litigating this case over the past year and four months, and she filed a joint motion with Plaintiffs, her former donors, seeking the district court's approval of a consent decree that purported to settle the case on favorable terms to those donors and their attorney, the former chair of the Michigan Democratic Party who also happens to have been Secretary Benson's political mentor.

Secretary Benson's actions demonstrate a lack of transparency, suffer from a stark conflict of interest, and illustrate the partisan administration of elections, some of the very reasons this Court may use to dismiss similar gerrymandering actions currently pending before it in *Common Cause v. Rucho*, No. 18-422 (U.S. filed Oct. 1, 2018) and *Lamone v. Benisek*, No. 18-726 (U.S. filed Dec. 3, 2018). Accordingly, Voters Not Donors agrees that this Court should grant the Applicants' Emergency Motion for Stay and postpone the scheduled trial for the modest amount of time required for this Court to issue its decisions in *Rucho* and *Benisek*.

## ARGUMENT

### I. SECRETARY BENSON'S ACTIONS DEMONSTRATE A LACK OF TRANSPARENCY.

Secretary Jocelyn Benson took her oath of office on January 1, 2019, reiterating her campaign theme that she would work diligently "to take Michigan from worst to first in transparency, ethics, and accountability." Fox 47 News, *Jocelyn Benson Sworn-in As Michigan's 43<sup>rd</sup> Secretary of State* (Jan. 1, 2019), <https://bit.ly/2MNqsee>. But Secretary Benson's actions since that day have been anything but transparent.

On January 7, 2019, and again on January 9, 2019, only six and eight days respectively after Secretary Benson’s inauguration, her attorneys and counsel for Plaintiffs met to discuss settlement. The Intervenor’s counsel was not notified of these settlement discussions until after they had occurred—on January 10, 2019. Br. in Support of Joint Motion to Approve Consent Decree, pp. 1–2, PgID 7857–58. There is no way to characterize these discussions as anything other than “secret.”

Likewise, Secretary Benson’s new counsel has demurred even the most straightforward procedural issues relating to the upcoming trial. On January 11, 2019, for example, counsel for Secretary Benson advised counsel for Intervenor’s that because the Secretary was still getting up to speed on the litigation, they could not provide a simple answer to the question whether the Secretary intended to continue using defense expert Yan Liu during the trial. Intervenor’s Mot. For Leave to Conduct Limited Discovery and Defer Consideration of Settlement Agreement, p. 7, PgID 7659. Intervenor’s counsel posed the same question and again received no answer on January 14, 2019, less than three weeks before the trial was to begin. *Id.*

Though still trying to obtain an understanding of the litigation, Secretary Benson has made public and prejudicial statements about the case. In a January 17, 2019 press release, the Secretary announced: “It is clear the court has found significant evidence of partisan gerrymandering, and the likely outcome would not be favorable to the state.” *Secretary of State Jocelyn Benson files brief in League of Women Voters vs. State of Michigan* (Jan. 17, 2019), <https://bit.ly/2DQXQOd>. But the district court has made no such findings; that is the purpose of the upcoming trial.

In addition, while informing the district court that any consent decree (i.e., settlement) must be “fair, adequate, and reasonable, as well as consistent with the public interest,” Joint Mot. To Approve Consent Decree and Br. in Support, p. 3, PgID 7859, Secretary Benson negotiated a proposed consent decree in secret with Plaintiffs’ counsel and without input from Intervenors or the public. A “fair, adequate, and reasonable” districting map for Michigan citizens presumably involves participation from those who hold views that might be different than the Secretary and Plaintiffs.

Secretary Benson’s actions in this litigation run exactly opposite of her recent comments on a Michigan gubernatorial executive order designed to increase transparency in Michigan government. Secretary Benson declared: “A healthy democracy requires an informed and engaged electorate. The best way to restore and maintain confidence among voters is for government to be fully transparent.” *Secretary Benson issues statement on Gov. Whitmer’s executive directive on transparency in state government* (undated), <https://bit.ly/2BhDk83>. Voters Not Donors fully agrees with Secretary Benson’s public statements, not her private actions in this litigation.

## **II. SECRETARY BENSON’S ACTIONS REPRESENT A CONFLICT OF INTEREST.**

More concerning are Secretary Benson’s conflicts of interest and her decision not to recuse herself. For example, Secretary Benson—Defendant in this dispute—previously appeared together with Plaintiffs’ counsel, Mark Brewer, to support Plaintiffs’ litigation position. Jackie Headapohl, *A Political Party’s Strength Lies in Redefined Borders*, The Jewish News (Aug. 23, 2017), <https://bit.ly/2G9QzLU>.

What's more, Mr. Brewer—a former chairperson of the Michigan Democratic Party—was a contributor to Ms. Benson's campaign for Secretary of State. *Michigan Campaign Statement Contributions* (2017 October Quarterly), <https://bit.ly/2GoYzYD> (showing contribution on 10/20/2017). Public reports have also described Mr. Brewer as Secretary Benson's "political mentor." Ingrid Jacques, *Benson's 'nonpartisan' persona on line*, *The Detroit News* (Jan. 29, 2019), <https://bit.ly/2SomCh4>. Intervenors have requested an opportunity to take modest discovery into Secretary Benson's relationship with Mr. Brewer, including communications leading up to the proposed consent decree, but to no avail.

That's not all. Five of the 11 named Plaintiffs in this case are also contributors to Ms. Benson's campaigns for Secretary of State. Plaintiff William Grasha made a political contribution shortly before the recent election, on September 16, 2018, as well as to Secretary Benson's previous, unsuccessful campaign for Secretary of State, in 2010. <https://bit.ly/2ScO16p> (click the "candidates" link). Plaintiff Donna Farris made a contribution on August 14, 2018. <https://bit.ly/2HSdSLS> (same) Plaintiff Diana Ketola made political contributions to Secretary Benson on June 26, 2018 and previously in 2010. <https://bit.ly/2RDrOcn> (same). Plaintiff Jon LaSalle contributed in support of Secretary Benson's previous run for Secretary of State, on March 29, 2010. <https://bit.ly/2S5WnfX> (same). So did Plaintiff Rashida Tlaib, who made contributions on December 29, 2009, and July 29, 2010. <https://bit.ly/2MLv6cC> (same).

In light of these contributions, the public is left to wonder (1) why Secretary Benson has not recused herself from this litigation, (2) what communications Secretary Benson had with these individuals about the litigation before assuming office on January 1, 2019, and (3) for what reason did Secretary Benson keep her settlement negotiations with her mentor and former campaign donors a secret from other litigants and the public?

### **III. SECRETARY BENSON'S ACTIONS ILLUSTRATE THE PARTISAN ADMINISTRATION OF ELECTIONS.**

Wholly apart from the transparency and conflict problems, Secretary Benson's actions illustrate the partisan administration of elections, calling into question whether Plaintiffs have raised a justiciable question that can be properly answered by the federal courts.

As noted above, Secretary Benson has admitted in her submissions to the district court that her attorneys were already discussing "settlement" on January 7, 2019. Br. in Support of Joint Motion to Approve Consent Decree, pp. 1–2, PgID 7857–58. But at that point, Secretary Benson was not even formally the Defendant in this case (that did not happen until January 15, 2019), and her attorneys were simultaneously telling Intervenors' counsel that the Secretary was not yet up to speed in the case, so much so that she did not know if she would call the expert the previous Secretary of State had retained to testify at trial. Intervenors' Mot. For Leave to Conduct Limited Discovery and Defer Consideration of Settlement Agreement, p. 7, PgID 7659.

Although Secretary Benson has a duty to defend Michigan law as a public official of the State, she informed the district court less than one month into her tenure that she did not intend to defend Public Acts 128 and 129 of 2011. Order Granting Plaintiffs' Mot. for Determination of Privilege, p. 1 n.1, PgID 8122. In fact, Secretary Benson "does not intend to call any witnesses in her case-in chief," including expert witnesses. Def.'s Mot. to Amend the Proposed Supplement to the Proposed Joint and Final Pretrial Order, Ex D, p. 4, PgID 8075.

Such actions should call into question Secretary Benson's motivation to enter the proposed consent decree in the first place. The media has done so already. A recent article noted that an earlier version of Secretary Benson's secret deal "would trigger perhaps the biggest partisan donnybrook this state has ever seen, disenfranchise voters who went to the polls last fall and leave the Legislature in chaos." Nolan Finley, *Benson risks credibility on Brewer deal*, The Detroit News (Jan. 23, 2019), <https://bit.ly/2t7PgEA>. While that version of the agreement "would redraw fewer than 34 of the state's 162 congressional and legislative districts," it "would heavily impact the Republican-controlled Senate." *Id.* For example, the deal would "cut[ ] in half the four-terms won by the mostly GOP senators in the affected districts and force them to run again in 2020." *Id.* As FairVote, a non-partisan election reform group, put it, "The new secretary of state appears to be saying 'let's make a deal' because there's enough evidence the state will lose," but "it's also in her political interest to come to that conclusion." *Id.*



The actual agreement affects fewer districts but is still partisan. For example, the new district map leaves in place Michigan’s 14<sup>th</sup> congressional district—one of the districts Plaintiffs previously highlighted as most egregious—presumably because the seat is currently held by a Democrat. Ingrid Jacques, *Benson’s ‘nonpartisan’ persona on line*, The Detroit News (Jan. 29, 2019), <https://bit.ly/2SomCh4>. The proposed consent decree also leaves out the 8<sup>th</sup> and 11<sup>th</sup> congressional districts that Plaintiffs initially challenged, apparently because Democrat candidates surprisingly won both seats this past November. *Id.*

Voters Not Donors does not take a position on whether Michigan’s Legislature unconstitutionally gerrymandered Michigan’s voting districts based on partisan politics. But the Benson-Brewer settlement agreement leaves little doubt that partisan politics is driving the litigation now. And while the district court appropriately declined to adopt the secret deal that Secretary Benson struck with her political mentor and campaign donor, it makes little sense to compel the parties to go to trial simply so a conflicted Secretary of State can refuse to defend Michigan law or put on any witnesses, to the benefit of her political allies and contributors.

It is precisely this scenario that caused the Sixth Circuit to presciently observe, at a previous stage of this litigation, that if a “new Secretary takes office in January 2019 and decides not to further pursue the state’s defense of its apportionment schemes, the district court will have to appoint someone to take the Secretary’s place.” *League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 580 (6<sup>th</sup> Cir. 2018). The Secretary’s relationships with Plaintiffs and Plaintiffs’ counsel at least raise a

question as to whether a “real, earnest and vital controversy” exists between them.  
*Ashwander v. TVA*, 297 U.S. 288, 346 (1936).

Accordingly, this Court should grant Intervenor’s Emergency Application and stay this case pending the outcome of the Court’s decisions in *Rucho* and *Benisek*.

### CONCLUSION

The emergency application for a stay should be granted.

Respectfully submitted,

/s/ John J. Bursch

JOHN J. BURSCH

*Counsel of Record*

BURSCH LAW PLLC

9339 Cherry Valley Ave. SE, #78

Caledonia, MI 49316

(616) 450-4235

[jbursch@burschlaw.com](mailto:jbursch@burschlaw.com)

*Counsel for Amicus Curiae*

*Voters Not Donors*

February 4, 2019

No. 18A769

**In the Supreme Court of the United States**

---

LEAGUE OF WOMEN VOTERS OF MICHIGAN, ET AL.  
Applicants,

v.

JOCELYN BENSON, In her official capacity as Michigan Secretary of State  
Respondent.

---

**CERTIFICATE OF SERVICE**

---

I, John J. Bursch, a member of the Supreme Court Bar, hereby certify that:

- (1) this motion and proposed *amicus curiae* brief were filed through the Court's electronic filing procedures, by electronic mail to the Clerk, and by delivering an original and 2 copies on February 4, 2019 to the U.S. Postal Service for next-day delivery to the Clerk; and
- (2) one copy of the same opposition was served by delivering it on February 4, 2019 to the U.S. Postal Service for next-day delivery to the following:

Michael J. Hodge  
Scott R. Eldridge  
MILLER, CANFIELD, PADDOCK  
& STONE, P.L.C.  
One Michigan Avenue, Suite 990  
Lansing, MI 48933  
Telephone: 517-487-2070  
hodge@millercanfield.com  
*Counsel for Plaintiffs*

Charles R. Spies  
Brian D. Shekell  
David M. Cessante  
CLARKHILL PLC  
212 E. Cesar Chavez Ave.  
Lansing, MI 48906  
Telephone : 517-318-3100  
cspies@clarkhill.com  
*Counsel for Intervenors/Applicants*

/s/ John J. Bursch  
John J. Bursch  
*Counsel of Record for Amicus Curiae*