



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-Below/Appellants,

v.

MICHAEL MENNELLA and THE  
HONORABLE GERALD W.  
HOCKER,

Plaintiffs-Below/Appellees.

No. 120, 2024

On Appeal from a Decision of the  
Superior Court of the State of  
Delaware

C.A. No. S23C-03-014 MHC

**MOTION OF COMMUNITY LEGAL AID SOCIETY, INC. AND THE ARC  
OF DELAWARE FOR LEAVE TO FILE A BRIEF OF *AMICI CURIAE*  
IN SUPPORT OF APPELLANT**

Pursuant to Rule 28(b) of the Rules of the Supreme Court of the State of Delaware, Community Legal Aid Society, Inc. (“CLASI”) and The Arc of Delaware (“The Arc”) (collectively “Movants”) respectfully move for leave to file the brief attached hereto as Exhibit A in support of Appellants and in support of the reversal of the decision below (hereafter “the accompanying brief”). Counsel for CLASI and The Arc have consulted with counsel for the parties to this appeal to confirm their position with respect to the instant motion. Appellants and Appellees consent to the motion.

## **MOVANTS' INTEREST**

CLASI and The Arc regularly advocate for the civil rights of persons with disabilities. The mission of CLASI is to combat injustice through creative and persistent civil legal advocacy on behalf of vulnerable and underserved Delawareans including people with disabilities. CLASI is designated by the Governor as the Protection and Advocacy (“P&A”) agency in Delaware, and one of its special projects is the Disabilities Law Program (“DLP”). The DLP provides advocacy services to Delaware residents with physical or mental disabilities.

The Arc of the United States is the world’s largest national community-based organization of and for people with intellectual and developmental disabilities. The Arc of Delaware (“The Arc”) was organized in 1953 as an affiliated chapter of the national network. The Arc advocates for policies, services and funding to promote and protect the civil rights of Delawareans with intellectual and developmental disabilities.

The Arc and CLASI seek leave to file the accompanying brief because this appeal raises important issues concerning early voting, which reduces the difficulty of voting for people with disabilities, and the process by which those persons and others qualify for absentee ballots. Early voting and absentee voting are important means to allow persons with disabilities to more meaningfully participate in the

voting process. As documented in a recent nationwide study, 74% of voters with disabilities voted with a mail ballot or early in person voting in 2020. See Lisa Schur & Douglas Kruse, *Disability and Voting Accessibility in the 2020 Elections: Final Report on Survey Results Submitted to the Election Assistance Commission*, U.S. Election Assistance Commission 1 (Feb. 16, 2021). There are over 200,000 persons with disabilities in Delaware. *Disability Impacts Delaware*, CDC (May 12, 2023).<sup>1</sup> Thus, early voting and absentee voting are important means by which persons with disabilities vote, and those persons represent a significant portion of the electorate.

As explained more fully in the accompanying brief, persons with disabilities confront multiple challenges to their ability to vote. Early voting substantially enhances the ability of persons with disabilities to vote, and requiring persons with disabilities to complete paperwork for each election in order to obtain an absentee ballot will materially increase their voting difficulty. Restrictions on absentee voting and early voting increase the burden on persons with disabilities. Conversely, changes in the law to permit early voting and absentee voting appear to cause increased voter participation among persons with disabilities. These

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<sup>1</sup> Internet citations are contained in the accompanying brief.

points are explained more fully in the accompanying brief that Movants seek leave to file.

The Superior Court's invalidation of early voting and the imposition of a requirement that an application for absentee voting be submitted separately for each election renders it more difficult for persons with disabilities to vote and, as demonstrated in the accompanying brief, are not mandated by the Delaware Constitution. For these reasons, CLASI and The Arc seek leave to file the accompanying brief in support of the Appellants and to advocate for the reversal of the Superior Court decision on appeal.

### **REASONS WHY AN AMICUS BRIEF IS DESIRABLE AND THE RELEVANCE OF THE MATTERS DISCUSSED**

The Appellants are not, by any means, the only parties that will be affected by the outcome of this case. The persons for whom CLASI and The Arc speak have a personal stake in the resolution of the issues on this appeal because it will affect whether many of them are able to vote. The civil rights and ability to vote of persons with disabilities will be directly impacted by the preservation or abolition of early voting and by the imposition of new procedural burdens on qualifying to vote by absentee ballot. None of the parties to the appeal will be so affected.

As explained in the accompanying brief the Movants seek leave to file, the Delaware Constitution does not prohibit the statutes that the Superior Court

invalidated. Counsel for the Movants have reviewed the Opening Brief filed by Appellants. The brief Movants seek leave to file advances some points not specifically expressed in the Appellants' Opening Brief. Thus, Movants respectfully suggest that they have something to add to the analysis of the issues presented on this appeal.

Finally, Movants respectfully submit that the elections this year present particularly consequential choices for this nation and for persons with disabilities. It is imperative that the voting by persons with disabilities be facilitated and their voices be heard. The resolution of this appeal will profoundly affect the ability of persons with disabilities to vote on these choices. Movants respectfully submit that their accompanying brief will be both helpful to the Court and important for the Court to consider.

## **I. CONCLUSION**

For the forgoing reasons, CLASI and The Arc respectfully request leave to file the brief attached hereto as Exhibit A in support of the Appellants and for reversal of the decision on appeal. A proposed order is submitted with this motion.

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Dated: April 25, 2024

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*/s/ David C. McBride*

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**CERTIFICATE OF SERVICE**

I, David C. McBride, Esquire, do hereby certify that on April 25, 2024, I caused a copy of the foregoing document to be served on the following counsel in the manner indicated below.

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