STATE OF MICHIGAN
IN THE SUPREME COURT

THE MACKINAC CENTER FOR PUBLIC POLICY,

Plaintiff/Appellee,

Case No. _____
Court of Appeals Case No. 364244
Court of Claims Case No. 21-000011

v.

MICHIGAN STATE UNIVERSITY,

Defendant/Appellant.

Derk A. Wilcox (P66177)
Mackinac Center for Public Policy
Attorney for Plaintiff-Appellee
140 West Main Street
Midland, MI 28640
T: (989) 631-0900
E: wilcox@mackinac.org

Elizabeth M. Watza (P54052)
Matthew R. Daniels (P75601)
MSU Office of General Counsel
Attorneys for Defendant-Appellant
426 Auditorium Road, Room 494
East Lansing, MI 48823
T: (517) 884-9483
E: watzaeli@msu.edu
E: danie188@msu.edu

DEFENDANT-APPELLANT MICHIGAN STATE UNIVERSITY'S APPLICATION FOR LEAVE TO APPEAL

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

STATUTES

RULES/OTHER

APPENDIX

Exhibit A – October 19, 2023, Court of Appeals' Opinion

Exhibit B – December 1, 2022, Court of Claims' Opinion and Order Granting in Part and Denying In Part Defendant-Appellant's Motion for Reconsideration

Exhibit C – October 13, 2022, Court of Claims' Opinion and Order Granting in Part and Denying in Part the Parties' Cross Motions For Summary Disposition Pursuant to MCR 2.116(C)(10)

Exhibit D - Spring 2023, Department of Education Abstract Describing Anticipated Amendments to FERPA regulations, including clarification of the definition of education records

STATEMENT OF QUESTIONS PRESENTED

I. MCL 15.243(2) states that "[a] public body shall exempt from disclosure information that, if released, would prevent the public body from complying with" the Family Educational Rights and Privacy Act ("FERPA"). In response to Plaintiff-Appellee's FOIA request for email communication, Defendant-Appellant redacted student names, email addresses, and other personally identifiable information in order to comply with FERPA. Did the Court of Appeals err in holding that the student names and email addresses do not qualify as "education records" as that term is defined by FERPA, and therefore must be disclosed?

Defendant-Appellant's answer: Yes.

Court of Claims' Answer: No.

Court of Appeals' Answer: No.

Plaintiff-Appellee's Will Answer: No.

II. Directory information is excluded from the general FERPA prohibitions against disclosure of education records. 20 USC § 1232(g)(b)(1). In response to Plaintiff-Appellee's FOIA request for email communication Defendant-Appellant redacted student names, mail addresses, and other personally identifiable information in order to comply with FERPA. Did the Court of Appeals err in holding that the student names and email addresses, which were included in direct email communication between students and a university president and that revealed the students' opinions on a sensitive topic are merely directory information, and therefore must disclosed?

Defendant-Appellant's answer: Yes.

Court of Claims' Answer: No.

Court of Appeals' Answer: No.

Plaintiff-Appellee's Will Answer: No.

GROUNDS FOR APPEAL

There are four independent grounds for this Court to Grant Defendant-Appellant's Application for Leave. First, the issues in this case involve a legal principle of major significance to the state's jurisprudence under MCR 7.305(B)(3). Specifically, the Court of Appeals' opinion interprets what constitutes "education records" in the context of the Family Educational Rights and Privacy Act ("FERPA").[1] There is little caselaw in Michigan that construes FERPA, however the law applies to all schools that receive federal funds from the Department of Education. Accordingly, the Court of Appeals' opinion, which was decided incorrectly, has the potential to have a significant negative impact on educational institutions at every level across the state. In addition, this case relates to the scope of what education records are protected from disclosure pursuant to FERPA. Therefore, this case relates directly to the privacy rights of every student in the state that attends a school that receives funding from the Department of Education.

Second, the Court of Appeals' opinion is clearly erroneous and will cause material injustice under MCR 7.305(B)(5(a). The opinion is clearly erroneous based on the manner in which the Court of Appeals construes "directory information," as that term is defined by FERPA, and the interplay of that term with MCL 15.243(2). This will cause material injustice because it severely limits educational institutions' ability to redact information protected by FERPA, which jeopardizes the privacy rights of students throughout the state. Further, the opinion conflicts with the intent of FERPA and how the Department of Education instructs educational institutions to comply with the law. This means that educational institutions in Michigan are left with the

[11] This case arises from a FOIA dispute, but the relevant FOIA exemption here is MCL 15.243(2), which requires public bodies to withhold information that, if released, would prevent a public body from complying with FERPA.

impossible choice of adhering to the Court of Appeals opinion or complying with FERPA in accordance with instruction and advice from the agency tasked with enforcing the law.

Third, the Court of Appeals opinion conflicts with another decision of the Court of Appeals under MCR 7.305(B)(5)(b). The opinion fails to address or reconcile its holding with *Connoisseur Communication of Flint v University of Michigan*, 230 Mich App 732, 735; 58 NW2d 647 (1988), with respect to what it means to "maintain" an education record. Therefore, the opinion confuses FERPA jurisprudence in the lower court.

Fourth, he issues in this case have significant public interest and the case is one against a subdivision of the state under MCR 7.305(B)(2). As described above, this case relates to the manner in which educational institutions will apply FERPA in the context of MCL 15.243(2), and therefore the privacy interests of students throughout the state are implicated. Defendant-Appellant, Michigan State University ("MSU") is a subdivision of the state.

Jurisdiction is appropriate pursuant to MCR 7.303(B)(1).

STATEMENT OF ORDER APPEALED FROM

MSU brings this Application for Leave to Appeal ("Application") in connection with the Court of Appeals' October 19, 2023, opinion affirming the Court of Claims' December 1, 2022, opinion and order granting in part and denying in part MSU's motion for reconsideration.[2] MSU requests that this Application be granted and that the Court of Appeals' October 19, 2023, opinion be reversed in part. MSU timely filed a motion for reconsideration in connection with the Court of

[2] In accordance with MCR 7.305(B)(2), the Court of Appeals' opinion is attached at Exhibit A; the Court of Claims' opinion and order granting in part and denying in part MSU's motion for reconsideration is attached at Exhibit B; and the Court of Claims' October 13, 2022, opinion and order regarding the parties' cross motions for summary disposition pursuant to MCR 2.116(C)(10), which prompted MSU's motion for reconsideration in the trial court, is attached at Exhibit C.

Appeals' October 19, 2023, opinion which was denied on December 1, 2023. Accordingly, this Application is timely pursuant to MCR 7.305(C)(2)(c).

STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

I. Background Facts

A. Stephen Hsu Controversy

In June 2020, the MSU graduate student union circulated a petition seeking the resignation of then-Senior Vice President of Research and Innovation Stephen Hsu from his administrative position with MSU. A counter petition was also circulated. The Petitions received considerable media attention, and many MSU students, faculty, and alumni sent unsolicited emails to the President of MSU regarding the controversy. Several MSU students who were publicly identified as being involved in the Hsu Petitions received threats, including death threats.

B. Mackinac Center's Freedom of Information Act Request and Complaint

On June 26, 2020, Plaintiff-Appellee, the Mackinac Center for Public Policy ("Mackinac Center") sent MSU a Freedom of Information Act ("FOIA") request for "[a]ny emails to or from the president of Michigan State university that mention 'Hsu' from Feb. 1, 2020 to June 26, 2020." The MSU FOIA Office gathered 620 responsive, non-duplicative documents, all of which were reviewed and lawfully redacted or withheld in accordance with the following FOIA exemptions:

- MCL 15.243(1)(m), commonly referred to as the "frank communication" exemption, which permits exemption of a public body's communications of an advisory nature, that cover other than purely factual material, and are preliminary to a final agency determination or policy action.

- MCL 15.243(1)(u), (y), and (z), which permits exemption of information related to the ongoing security of a public body.

- MCL 15.243(1)(a), commonly referred to as the "personal privacy" exemption, which permits exemption of information of a personal nature if public disclosure would constitute an unwarranted invasion of an individual's privacy.

- MCL 15.243(2), which *requires* the withholding of information that, if released, would prevent a public body from complying with FERPA.

On December 23, 2020, MSU disclosed records responsive to the Mackinac Center FOIA request. Mackinac Center filed a Complaint against MSU in the Court of Claims on January 20, 2023, alleging various FOIA violations. Specifically, Mackinac Center asserts that MSU's redactions pursuant to MCL 15.243(1)(m); MCL 15.243(1)(u)(y), and (z); MCL 15.243(1)(m); and 15.243(2) were excessive and beyond the scope permitted by FOIA.

II. Procedural Posture

MSU filed its Answer and Affirmative Defenses in response to the Mackinac Center Complaint on February 23, 2021. The parties engaged in limited discovery and filed cross-motions for summary disposition pursuant to MCR 2.116(C)(10) in November of 2021. Prior to ruling on the summary disposition motions, the Court of Claims ordered the subject records produced for in camera review. On January 18, 2022, MSU provided the Court of Claims the redacted version of the records disclosed to Mackinac Center in response to its FOIA request; a bill of particulars explaining which of the applicable FOIA exemptions apply to each specific redaction; the unredacted version of the records; and the records withheld from disclosure.

A. The Trial Court's Decision On Cross Motions for Summary Disposition

In an October 13, 2022, opinion and order, the Court of Claims partially denied MSU's motion for summary disposition. (Exhibit C, pg. 1). Regarding redactions pursuant to MCL 15.243(1)(a), the "personal privacy" exemption, the Court of Claims broadly ruled that the names of individuals who sent unsolicited emails to the president of MSU regarding Stephen Hsu were not exempt from disclosure, but their email addresses, telephone numbers and printed signatures were. (Exhibit C, pg. 5-8). The Court of Claims ruled that the majority of redactions MSU applied pursuant to MCL 15.243(1)(m), the "frank communications" exemption, complied with FOIA.

(Exhibit C, pg. 10-15). And the Court of Claims ruled that all of the records MSU withheld from disclosure were exempt from disclosure on the basis of the "personal privacy" exemption or MCL 15.243(1)(h), which protects attorney-client communications (Exhibit C, pg. 15-16).

B. The Trial Court's Decision On MSU's Motion for Reconsideration

On November 13, 2022, MSU filed a motion for reconsideration and clarification regarding the Court of Claims October 13, 2022, opinion and order. Relevant to this Application, MSU sought reconsideration of the applicability of MCL 15.243(2) to its redactions. MCL 15.243(2) *requires* a public body to exempt from disclosure information that, if released, would violate FERPA. MSU redacted the names, student email addresses, and other information that could be used to identify a student on the basis that when such information is contained in a record, that record constitutes an "education record," which MSU cannot disclose unredacted to a third-party without the written consent of the student. See 20 U.S.C § 1232g(d); see also Connoisseur, 230 Mich App at 735.

The Court of Claims December 1, 2022, opinion and order granted in part and denied in part the motion for reconsideration and clarification. The Court of Claims ruled, in relevant part:

> FERPA defines "education records" as "those records, files, documents, and other materials which-- (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 USC 1232g(a)(4)(A). The Court finds that the students' names are not "information directly related to a student," and that the names were not "maintained" in the manner FERPA contemplates. [Exhibit B, pg. 2].
>
> ***
>
> [T]he Court finds that the petitions and e-mails are not "education records" because they do not "directly relate[] to the student signers and senders. Rather the petitions relate to Professor Hsu, and are "only tangentially related" to the students. See *Ellis v Cleveland Muni Sch Dist*, 309 F Supp 2d 1019, 1022 (ND Ohio, 2004)" [Exhibit B, pg. 3].

C. The Court of Appeals' Opinion

Mackinac Center and MSU each filed a timely claim of appeal in the Michigan Court of Appeals.[3] Mackinac Center challenged the Court of Claims' ruling insofar as it found the majority of redactions applied pursuant to the "frank communications" exemption complied with FOIA.[4] Relevant to this Application, MSU appealed the Court of Claims' ruling that MCL 15.243(2) does not exempt disclosure of the student names, email addresses, and other information that could be used to identify a student in the emails and petitions at issue. Specifically, MSU argued that the Court of Claims erred in holding that the student names, email addresses, and petitions contained in the records do not qualify those as "education records" under FERPA because (a) the information is not "directly related" to a student; and (b) MSU does not "maintain" the underlying records. The Court of Appeals entered an unpublished opinion on October 19, 2023, affirming the Court of Claims with respect to applicability of FERPA. The Court of Appeals held in relevant part:

> We conclude that the emails are not education records because they do not contain information directly related to the students who sent them and because they are not maintained by the defendant. Moreover, even if the e-mails were education records, the redacted information consisted of directory information that was not exempt from disclosure. [Exhibit A, pg. 7].
>
> ***
>
> [W]e conclude the redacted student information is mere directory information, which is excluded from the general FERPA disclosure prohibitions. 20 USC 1232g(b)(1). The redacted information contained students' names, e-mails, and phone numbers, and such information is explicitly included in the definition of "directory information." See 20 USC 1232g(a)(5)(A). [Exhibit A, pg. 8].

[3] The issues were fully briefed in the Court of Appeals on July 23, 2023, and oral argument was heard on October 4, 2023.

[4] The Court of Appeals affirmed the Court of Claims' ruling regarding applicability of the "frank communications" exemption. (Exhibit A, pg. 4-5).

ARGUMENT

I. The Court of Appeals Erred In Holding That The Email Communication Requested By Mackinac Center Does Not Qualify As "Education Records" As That Term Is Defined By FERPA, and Therefore Is Not Exempt From Disclosure Under MCL 15.243(2).

MCL 15.243(2) states, "[a] public body *shall* exempt from disclosure information that, if released, would prevent the public body from complying with 20 USC § 1232g, commonly referred to as the family educational rights and privacy act of 1974." MCL 15.243(2) (emphasis added). Defendant, a public university, is undoubtedly a public body. See MCL 15.232(h). Thus, MCL 15.243(2) applies to MSU, and MSU is prohibited from disclosing information in violation of FERPA. Broadly, an educational institution cannot disclose a student's personally identifiable information contained in an education record to third parties without the written consent of the student. See 20 USC §1232g(d); See also *Connoisseur*, 230 Mich App at 735. Education records are "those records, files, documents, and other materials" that "contain information directly related to a student" and "are maintained by an educational agency or institution. . . ." 20 USC § 1232g(a)(4)(A).

A. The Emails Sought By Mackinac Center Are Directly Related To The Students That Sent Them.

The Court of Appeals held that the subject emails do not qualify as education records because they do not contain information directly related to the students who sent them because:

> [T]he students were reaching out to address the situation involving Hsu and showcasing whether they supported or opposed Hsu's removal. As the Court of Claims found, the information related more directly to Hsu than to the students. In other words, although the information related *tangentially* to the students, the information did not *directly* relate to them but, instead directly related to the situation involving Hsu. [Exhibit A, pg 8.]

The Court of Claims December 1, 2022, opinion reasoned as follows:

> [T]he Court finds that the petitions and e-mails are not "education records" because they do not "directly relate[]" to the student signers or senders. Rather, the emails

> and the petition relate to Professor Hsu, and are "only tangentially related" to the students. See *Ellis v Cleveland Muni Dist*, 309 F Supp 2d 1019, 1022 (ND Ohio, 2004) (explaining that "courts have held FERPA does not prevent the disclosure of records specifying reasons for teacher certificate revocations or the names of the victim and witnesses to an alleged incident of sexual harassment by a teacher," and collecting cases). [Exhibit B, pg. 3].

Reliance on *Ellis*, a Northern District of Ohio decision, is misplaced.[5] The records at issue in *Ellis* did not relate to student involvement in, and their specific opinions on efforts for or against the resignation of a university administrator.[6] *Ellis* related to records involving allegations of physical altercations by substitute teachers and student witness statements about those altercations. *Id*. at 1021.

Teacher disciplinary information, according to *Ellis*, is a teacher record, not a student record. 309 F Supp 2d at 1022. Here, the subject emails are not teacher disciplinary records and cannot otherwise be considered just a teacher record given that they were created by students, relate to their personal impressions, include their opinions about Hsu and the university broadly, and constitute direct communication between students and the President of MSU. For these reasons, although the focus of the emails may be Hsu, it is error for the Court to conclude that the emails are only "tangentially related" to the students.

Further, the *Ellis* decision is based in part on a public policy rationale that does not present in this case. The Court noted that its "conclusion that the records at issue… do not implicate

[5] MSU notes that the Florida Court of Appeals declined to follow the rationale set forth in *Ellis* in a case that is factually more on point with this matter. See *Rhea v District Bd of Trustees of Santa Fe College*, 109 So3d 851; 291 Ed Law Rep 521 (Fla Dist Ct App 2013). In *Rhea* the Court found that an email to a department chair describing a student's personal impressions of an adjunct professor related directly to the student. *Id*. at 858 ("[i]f a record contains information directly related to a student, then it is irrelevant under the plain language in FERPA that the record may also contain information directly related to a teacher or another person.")

[6] *Ellis* did not arise from a FOIA litigation, but rather a discovery dispute under the Federal Rules of Civil Procedure. 309 F Supp 2d at 1021.

FERPA is not only consistent with the language of the statute itself but also operates to protect the safety of students in schools." 309 F Supp 2d at 1024. The Court reasoned that FERPA should not operate to protect allegations of student abuse from discovery mechanisms available to litigants in private actions that are intended to combat that type of abuse. *Id*. There is no such concern related to promoting student safety and well-being at issue in this case. In fact, redacting the student names and other identifying information serves to protect students. As noted above, certain students who advocated for the removal of Hsu were harassed and some even received death threats.

B. The Emails Sought By Mackinac Center Were "Maintained" By MSU As That Term Is Contemplated By FERPA And The Applicable Caselaw.

As the Court of Appeals correctly states in its October 19th opinion, "maintained" is not defined by FERPA. (Exhibit A, pg. 7). The U.S. Supreme Court has construed the term in accordance with its dictionary definition: "to keep in existence or continuance; preserve; retain." *Owasso Indp Sch Dist No I-011 v Falvo*, 534 US 426, 433; 122 S Ct 934 (2002) (quoting Random House Dictionary of the English Language 1160 (2d ed 1987)). The Court of Appeals held that "[t]o conclude that defendant maintained this information simply by virtue of possessing the e-mails would impermissibly render 'maintained' nugatory because it would then follow that *any* disputed information in an educational institution's possession would be 'maintained' by the institution." (Exhibit A, pg. 8).

The Court of Appeals draws a distinction between "maintain" and "possess" where one does not exist. If an educational institution is in possession of, say for example, information related to a student's grade point average, their financial aid, or their disciplinary history, those records are indisputably protected from disclosure under FERPA. The Court of Appeals incorrectly interprets FERPA to mean that records are not maintained unless and until an educational

institution stores them in a particular manner.[7] FERPA does not require educational institutions to take an affirmative act in order to "establish that it maintains student information." If records exist, are preserved, retained, *or possessed*, they are maintained. The Court of Appeals interpretation of the statute, which construes "maintain" too narrowly is inconsistent with the explicit purpose of FERPA, which is "to protect [students] rights to privacy by limiting the transferability of their records without their consent." *US v Miami Univ*, 294 F3d 797, 816; 166 Ed Law Rep 464 (6th Cir 2002) (quoting Joint Statement, 120 Cong Rec 39858, 39862 (1974)).

Defendant-Appellant's reading of FERPA is consistent with *Falvo*, which related to a challenge of the practice of peer-grading on FERPA grounds. 534 US at 433. There, the Supreme Court held only that the grade for a student's peer-graded assignment is not maintained until it is actually recorded, and that a teacher does not maintain those grades while other students are correcting the assignment. *Id*. In other words, the assignment was not maintained until it was in the possession of the teacher. In addition, this Court held in *Connoisseur*, a published Michigan Court of Appeals decision, that an information sheet regarding a car driven by a student athlete was maintained by the university defendant. 230 Mich 732, 736; 584 NW2d 647 (1998). Neither *Falvo* nor *Connoisseur* support the Court of Appeals' conclusion that "more must be shown by an educational institution to establish that it maintains" an education record. (Exhibit A, pg 8). If the records are in the possession of the educational institution, they are maintained.[8]

[7] Such a standard is confusing and unworkable for educational institutions. For example, if a record is not stored in a specific manner, but is possessed for a long period of time, does it eventually meet the definition of maintained? If so, at what point in time is a record no longer possessed, but rather maintained?

[8] The Court of Appeals' opinion does not cite to or otherwise reconcile its holding with *Connoisseur*, which is of course binding authority.

Even if the Court of Appeals distinction between possess and maintain was well founded, the emails here were in existence, preserved, and retained by MSU at the time of Mackinac Center's FOIA request. Had the records not been maintained by MSU "on an email server, in a filing cabinet, or in some other medium," then they would not have existed and there would have been no records responsive to the request. This is self-evident from the trial court record and the record on appeal.

II. The Court of Appeals Erred In Holding That Student Names and Student Email Addresses Contained in The Email Communication Requested By Mackinac Center Was Mere Directory Information.

The Court of Appeals' opinion incorrectly concluded that the student information at issue in this case, student names and emails, is "mere directory information, which is excluded from the general FERPA disclosure prohibitions. 20 U.S.C. 1232g(b)(1)." (Exhibit A, pg. 8). FERPA defines "directory information" as follows:

> For purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, electronic mail address, date and place of birth, major field of study, participating in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees awarded, and the most recent previous educational agency or institution attended by the student.

20 USC 1232g(a)(5)(A). However, FERPA exempts a student's "personally identifiable information" from disclosure. 20 USC § 1232g(b)(1), (b)(2). Personally identifiable information is defined by the Department of Education ("DOE"), in relevant part, as a student's name, address, indirect identifiers such as date of birth; and other information that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. 34 CFR § 99.3.[9]

[9] The DOE's definition of "personally identifiable information" is persuasive authority.

Thus, the DOE, the agency tasked with enforcing FERPA nondisclosure provisions, contemplates that in certain instances there will be overlap between directory information and personally identifiable information. The Court of Appeals' opinion ignores this nuance, and mistakenly holds that directory information, e.g., student names and email addresses, can never be redacted from an education record. This interpretation contradicts "a vast number of other well-reasoned federal and state law decisions" which indicate that the proper procedure here is to redact the personally identifiable information of students so that the records no longer satisfy the definition of an education record prior to disclosure. *Kalamazoo Transp Ass'n v Kalamazoo Pub Sch*, unpublished per curiam opinion of the Court of Appeals, No. 349031, 2019 WL 6888666, at *3 n.4.

Although directory information is exempt from FERPA's prohibitions against disclosure, the Court of Appeals' opinion extends that prohibition to an unreasonable degree. For example, if the Court of Appeals' opinion is a correct statement of the law, if an educational institution in Michigan were to receive a FOIA request for a list of the names of students receiving financial aid, or a list of the names of students who have been subject to disciplinary proceedings, the institution would have no grounds for protecting against disclosure of that information pursuant to MCL 15.243(2). This is, of course, inconsistent with the plain language and intent of FERPA.

In this case, certain students who advocated for the removal of Hsu were harassed. Some even received death threats. These facts illustrate perfectly why student names and email addresses often need to be redacted from education records. Here, we are not dealing with just directory information, rather the subject emails reveal the students' opinions on a controversial matter, not just simply their name and email address, and therefore, the privacy protections afforded to students under FERPA should apply.

REQUEST FOR RELIEF

Based on the foregoing Defendant-Appellant, Michigan State University respectfully requests that this Application for Leave to Appeal be granted, and that the Court of Appeals' October 19, 2023 opinion be reversed in part in accordance with the argument set forth above.

In the alternative, Defendant-Appellant, Michigan State University respectfully requests the Court hold this matter in abeyance until the Department of Education publishes amendments to the applicable Code of Federal Regulations applicable to FERPA, which is to include clarification of the definition of education record. (Exhibit D). An abeyance is warranted given that the anticipated Department of Education guidance is relevant to the issues that present in this matter.

Respectfully submitted,

Date: January 12, 2024

Matthew Daniels
Elizabeth Watza
Attorneys for Defendant

CERTIFICATE OF COMPLIANCE WITH MCR 7.212(B)(1)

I hereby certify that this brief includes 4,265 words including headings, footnotes, citations and quotations and not including the case caption, cover sheets, any table of contents, any table of authorities, the signature block, attachments, and exhibits. This word count was generated by Microsoft Word 2010, the processing software utilized to draft the brief.

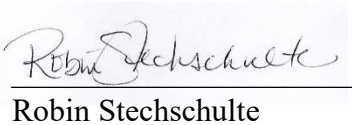
Matthew R. Daniels
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that on January 12, 2024, Defendant-Appellant's Application for Leave to Appeal was served on all parties to the above captioned suit electronically, and the Notice of Filing Application to the Court of Appeals and the Court of Claims electronically, in accordance with MCR 7.305(A)(2).

Respectfully submitted,

Date: January 12, 2024



Robin Stechschulte