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STATE OF MICHIGAN

IN THE SUPREME COURT

WILLIAM R. HENDERSON and
MICHIGAN CORRECTIONS ORGANIZATION,

Plaintiffs-Appellants,

S. Ct. Docket No.
COA No. 332314
Lower Case No. 15-645-AA

MICHIGAN CIVIL SERVICE COMMISSION and
MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.
____/

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PLAINTIFFS WILLIAM R. HENDERSON'S AND MICHIGAN CORRECTIONS ORGANIZATION'S APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

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STATEMENT OF THE JUDGMENT OR ORDER APPEALED AND RELIEF SOUGHT

Appellants seek leave to appeal a July 29, 2017 decision of the Court of Appeals which reviewed and reversed a Circuit Court decision which had in turn reversed a decision of the Civil Service Commission. In its decision, the Court of Appeals held that the Circuit Court, when reviewing the decision of the Civil Service Commission, incorrectly adopted the substantial evidence standard and incorrectly applied the authorized by law standard. The underlying Commission decision had held that 2,415 Resident Unit Officers and 57 Corrections Medical Unit Officers whose jobs were "abolished" and who were "bumped" to lower classified, lower paid positions were properly classified as Corrections Officers and Corrections Medical Unit Officers, notwithstanding the fact that the employees performed precisely the same work before and after their jobs were "abolished."

Henderson, the other affected Officers, and the Michigan Corrections Organization SEIU Local 526M ("MCO") seek relief from this Court. Leave to appeal should be granted so that a complete and correct review can be afforded to this significant matter. The Plaintiffs further seek all other relief that this Court deems appropriate.

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STATEMENT OF QUESTIONS PRESENTED

1) Article 6 § 28 of the Michigan Constitution requires direct review of final agency decisions as provided by law. Where MCR 7.117 provides for appeal from the Civil Service Commission and directs compliance with MCR 7.119, which provides for Appeal from Administrative Agencies governed by the Administrative Procedures Act ("APA"), and sets forth the APA standards of review, did the Court of Appeals clearly err by ruling that authorized by law is the sole correct standard of review when Circuit Court judges review Civil Service Commission decisions when no hearing is required by Civil Service Commission rules?

   Henderson's answer: Yes

   Circuit Court's answer: Yes

   Court of Appeals' answer: No

   Defendants' answer: No

2) Did the Court of Appeals clearly err by ruling that the Circuit Court incorrectly applied the authorized by law standard when the Circuit Court concluded that the Civil Service Commission's decision was arbitrary and capricious?

   Henderson's answer: Yes

   Circuit Court's answer: Yes

   Court of Appeals' answer: No

   Defendants' answer: No

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STATEMENT OF FACTS AND PROCEEDINGS

On April 1, 2012, the Department of Corrections (DOC) "abolished" 2,415 Resident Unit Officer (RUO) positions and simultaneously created 2,415 new Corrections Officer (CO) positions, to which the RUOs were reassigned. At the same time, the DOC "abolished" 57 Corrections Medical Unit Officer (CMUO) positions and simultaneously created 57 new Corrections Medical Officer (CMO) positions, to which the CMUOs were reassigned. The CO and CMO positions were a lower classification with a lower rate of pay, which entailed a yearly wage loss of approximately $8 million for affected employees.[1] This, despite the fact that the employees continued on April 2, 2012 to do precisely what they had done on April 1, 2012. Nothing changed but the position titles and the rates of pay.

Some time after this wholesale abolishment of positions in April 2012, the Office of Classifications, Selections and Compensation (OCSC) undertook a Classification Study, purportedly to determine whether the newly created, lower paying CO and CMO classifications were appropriate for the affected employees.

On June 14, 2013, the OCSC issued its 17-page report, concluding that the new classifications for the old jobs were appropriate. On October 4, 2013, several employees filed technical classification complaints challenging these conclusions. The technical complaints were considered by a Technical Review Officer (TRO) who ultimately decided on June 25, 2014 in a Technical Review Decision that the former RUOs were now properly classified as COs and the former CMUOs were now properly classified as CMOs. In accordance with Civ Serv R 8-

[1] Dan Heyns, director of the DOC in 2012, stated that the abolishment of positions was regrettable but necessary as the legislature had cut the DOC appropriation and the abolishment of the positions (albeit not the jobs or the work) could lead to $8 million in cost savings annually.

3.3(b)(1), the TRO was not authorized to conduct a hearing: "**Hearing not authorized.** A technical review officer is not authorized to conduct a hearing." (emphasis in original)

On December 1, 2014, Officer William R. Henderson, through the Michigan Corrections Organization (MCO), applied for leave to appeal the Technical Review Decision to the Employment Relations Board (ERB). On May 20, 2015, the ERB issued a very brief decision agreeing with the conclusions of the Civil Service Department Classification Study and the Technical Review Decision.

Henderson again appealed, this time to the Civil Service Commission (CSC). On June 12, 2015, the CSC issued its own brief decision, adopting the ERB determination that the employees were properly classified in the "newly created" positions, which were completely unchanged from the previously held positions.

The final decision of the CSC included a notice of the right to appeal to Circuit Court with citations to MCR 7.117 and MCL 24.301-24.306, the appeal procedure set forth in the Administrative Procedures Act.

On August 7, 2015, Henderson appealed to the Circuit Court. On March 14, 2016, the Circuit Court, applying the review standards from MCR 7.119 and MCL 24.306, issued a decision holding that the CSC decision was not supported by competent, material and substantial evidence on the record. The Circuit Court also held that the decision was arbitrary and capricious because no facts on the record showed that the employees' classification change was supported by a change in job duties.

The Circuit Court characterized the classification determination regarding the former RUOs and CMUOs as "simply an exercise of will," stating: "former RUOs do different and additional work as compared to the COs… the former RUOS... do not work in… assignments traditionally

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performed by COs and not performed by RUOs." *Henderson v Civil Serv Comm*, opinion of the Ingham Circuit Court, issued March 14, 2016 (Docket No 15-64-AA) p 5. As to former CMUOs, the Circuit Court stated: "the classification study … was even more flawed …. [because] the classification study came to its conclusion based solely on job specifications, rather than any reports from former CMUOs or their supervisors." *Id.* at 6.

Therefore, the Circuit Court rejected and reversed the CSC determination that the "newly created" positions were properly classified.

On April 7, 2016, the DOC and CSC appealed this decision to the Court of Appeals. On June 29, 2017, the Court of Appeals overturned the Circuit Court's decision, finding that the authorized by law standard was appropriate, not the substantial evidence standard, and stating: "where a case did not require a hearing, agency [decisions] are reviewed to determine whether the decisions are authorized by law." *Henderson v Civil Serv Comm*, unpublished opinion of the Court of Appeals, issued June 29, 2017 (Docket No 332314) p 8. It also found that the Circuit Court erred when holding that the CSC decision was arbitrary and capricious, because the Circuit Court had reviewed the factual record, an examination which the Court of Appeals ruled here was not permitted under the authorized by law standard.

ARGUMENT
Grounds for Application

Henderson seeks Supreme Court review of the Court of Appeals' decision as permitted by MCR 7.305(B)(2)-(5). Supreme Court review is warranted here because the Court of Appeals' decision involves matters of significant public interest, especially to the nearly 48,000 people employed by the State of Michigan, of whom approximately one in three is a Department

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of Corrections employee.[2] It also implicates the integrity of the civil service system and the propriety of the classification of 2,472 public employees. Further, it clearly errs in its interpretation of Article 6 § 28 of the Michigan Constitution, and is contrary to this Court's decision in *Viculin v Department of Civil Service*, 386 Mich 375; 192 NW2d 449 (1971).

I. THE COURT OF APPEALS' INCORRECT DECISION IMPLICATES THE PUBLIC INTEREST, MAKING SUPREME COURT REVIEW APPROPRIATE UNDER MCR 7.305(B)(2).

This decision of the Court of Appeals so limits the appellate review of a CSC classification decision of the Civil Service Commission ("CSC") that it effectively eliminates the right of appeal.

Under the Supreme Court's interpretation of Article 6 § 28 in *Viculin*, as applied by the Circuit Court, the substantial evidence standard of review was appropriate. Even the lesser standard -- authorized by law -- requires a reviewing court to engage in a review of the record sufficient to determine whether *any* facts support the administrative agency's decision. The differences between Henderson's and the Court of Appeals' positions are hugely consequential for public employees seeking to challenge the propriety of a classification.

Furthermore, by the "abolishment" of the former Resident Unit Officer (RUO) and Corrections Medical Officer (CMO) positions in 2012, 2,742 employees of the Michigan

[2] In a June 14, 2013 letter to then-Acting State Personnel Director, Janet McClelland, from then-acting Office of Classifications, Selections, and Compensation Director Amy Cahoon stated that the affected employees made up 5% of the classified public employee workforce. *See also* "Fiscal Year to Date Average Number of Employees." (study available on the state of Michigan website stating that there were approximately 47,000 classified public employees in 2012, of whom approximately 13,000 were corrections employees).

Department of Corrections have already lost wages in the amount of as much as $40 million.[3] Absent the judicial review sought here, this workforce and their families stand to lose far more than that going forward. This loss of pay also significantly negatively impacts the communities surrounding correctional facilities, because many are located in rural areas of the state[4] where they are the main employers and drivers of local economies.

Lastly, the state's conduct in its employment relationship with its employees inherently concerns the public and its taxpaying members who make this relationship possible.

II. THE COURT OF APPEALS' DECISION, WICH HELD THAT ONLY THE AUTHORIZED BY LAW STANDARD WAS APPLICABLE TO THIS CASE, WAS CLEARLY ERRONEOUS AND CONTRARY TO THIS COURT'S DECISION IN *VICULIN*, MAKING SUPREME COURT REVIEW APPROPRIATE UNDER MCR 7.305(B)(5).

The Court of Appeals clearly erred in its interpretation of Article 6 § 28 of the Michigan Constitution, which states:

> All final decisions, findings, rulings, and orders of any administrative officer or agency existing under the constitutions or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts *as provided by law*. This review shall include, *as a minimum*, the determination whether such final decisions, findings, rulings, and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law. (Emphases added.)

---

[3] Dan Heyns, serving as director of the MDC in 2012, stated that the abolishment of positions could lead to $8 million in cost savings annually. (R 0001095-96).

[4] "MAP Correctional Facilities Administration Prison Locations" http://www.michigan.gov/corrections/0,4551,7-119-68854_1381_1387---,00.html

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The Article contains two critical phrases, "as provided by law" and "as a minimum." It is a cardinal principle of constitutional and statutory interpretation that each phrase must be given effect so as not to render any word surplusage or nugatory. *Baker v General Motors Corp*, 409 Mich 639, 665; 297 NW2d 387 (1980); *AK Steel Holding Corp v Dept of Treasury*, 314 Mich App 453, 464; 887 NW2d 209 (2016). When the words of these two critical phrases are given effect, it is apparent that the constitutional article does three things: (1) it sets a floor for appellate review -- the minimum standard – which is authorized by law, (2) it requires the application of the substantial evidence test to decisions where a hearing is required, and (3) states that in cases where no hearing is required, as here, a standard of review higher than authorized by law may be provided for by legislative enactment ("by law").

This Court adopted this view in *Viculin*, where it considered the method and scope of judicial review of final decisions of the CSC. After concluding as an initial matter that Article 6, § 28 was applicable to CSC decisions, the Court observed that the language was not self-executing and that, "the provision does no more than to dictate a minimum scope for the review to be provided by law." 386 Mich at 391.

Giving effect to the phrase "as provided by law," the Court then reviewed other laws to determine whether they provided for the substantial evidence standard. The laws most likely to do so, Section 631 of the Revised Judicature Act and General Court Rules 701 and 702, did not -at that time- provide that the Administrative Procedures Act's substantial evidence standard of review was applicable to the appeal from a final CSC decision. *Id.* at 393-96.

Since *Viculin*, however, the Michigan Court Rules have been substantially changed to now provide for substantial evidence review in accordance with the Administrative Procedures Act. The final decision of the CSC in the instant case admits as much in a notice that the decision

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is subject to review in circuit court, adding "(SEE MICHIGAN COURT RULE 7.117 AND MICHIGAN COMPILED LAWS §§ 24.301 - 24.306.)" (capitalization in original.) MCL §§ 24.301 - 24.306 are the appellate review provisions of the APA.

MCR 7.117 became effective May 1, 2012 and requires compliance with MCR 7.119(H), which states:

> The court may affirm, reverse, remand, or modify the decision of the agency and may grant further relief as appropriate based on the record, findings, and conclusions.
>
> (1) If the agency's decision or order is not supported by *competent, material, and substantial evidence on the whole record*, the court shall specifically identify the finding or findings that lack support.
>
> (2) If the agency's decision or order violates the Constitution or a statute, is affected by a material error of law, or is affected by an unlawful procedure resulting in material prejudice to a party, the court shall specifically identify the agency's conclusions of law that are being reversed. (italicization added)

By its plain language, MCR 7.119(H) sets forth two standards of review that both must be met when affirming a CSC ruling. One of these standards is the APA's substantial evidence standard. MCR 7.119(H) also instructs Circuit Court judges what to do in the event that the CSC decision fails to meet either one or both of these standards. The first bloc of text of the rule suggests that the two different standards of review must be met in all cases. Nothing in the rule suggests that there is some demarcation whereby substantial evidence review applies in some cases and not others.

But the Court of Appeals created such a new line of demarcation -- whether a hearing is required. To do so, it relied upon a prior analysis in *Hanlon v Civil Service Commission*, 253 Mich App 710, 725, n 6; 660 NW2d 74 (2002), "MCR 7.104(C) provides that 'an appeal from a decision of the Michigan Civil Service Commission is governed by the provisions for appeals

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from administrative agencies in the Administrative Procedures Act.' This provision regards the appellate process and does not affect the burden of proof that the CSC may implement."

Whatever its merits, that prior approach to MCR 7.104(C) is irrelevant today. Two major changes, requiring a new conclusion, have taken place since. ***First***, effective May 1, 2012, the version of MCR 7.104(C) interpreted in *Hanlon* was replaced by an entirely different version of MCR 7.104(C), which does not even mention the APA. ***Second***, MCR 7.117 and MCR 7.119 have also been in effect as of May 1, 2012. If the Supreme Court had wanted to preserve the prior approach of not adopting the APA standard of review, it would not have made these changes, or would not have drafted them as it did.

Accordingly, the Court of Appeals misplaces its reliance upon the "binding authorities" cited for the notion that substantial evidence review does not apply where no hearing is required. Each of these authorities featured a review of a Circuit Court's own review of an administrative agency decision where the Circuit Court review took place before the effective date of MCR 7.117 and MCR 7.119 and replacement of the former version of MCR 7.104(C). *See Ross v Blue Care Network of Mich*, 480 Mich 153, 164; 747 NW2d 828 (2008); *Brandon Sch Dist v Mich Educ Special Servs Ass'n*, 191 Mich App 257, 263; 477 NW2d 138 (1991); *Wescott v Civil Serv Comm*, 298 Mich App 158, 162; 825 NW2d 674 (2012)(application for leave to appeal filed February 11, 2011, Available at: http://courts.mi.gov/opinions_orders /case_search/pages/ default.aspx?SearchType=1&CaseNumber=302524&CourtType_CaseNumber=2)[5]

[5] Although not cited as "binding," *Attorney General v Michigan Public Service Commission*, 206 Mich App 290; 520 NW2d 636 (1994) was also decided before the effective date. One of the unpublished, non-binding Court of Appeals decisions cited to also featured a Circuit Court review of a Commission decision that took place before the effective date. *See Hammond v. Civil Serv Comm*, unpublished opinion of the Court of Appeals, issued July 16, 2013 (Docket No. 309704)(leave for appeal to Court of Appeals filed April 12, 2012) Available at:

Assuming arguendo that these decisions were issued after the effective date, their pronouncements as to the standard of review would still not be binding because they are *dicta*.

In *Ross*, the court cited Article 6 § 28 for the proposition that where no hearing was held, the scope of review was limited to whether the administrative decision was authorized by law. 480 Mich at 164. But, the decision dealt with insurance coverage for cancer treatment and the issue presented was whether the Commissioner of the Office of Financial and Insurance Services was bound by a recommendation of an Independent Review Officer with regard to issues of medical necessity and clinical review. The court made a legal determination and its conclusion had nothing to do with the scope of review of an administrative decision.

In *Brandon School District*, the issues presented were whether an allegedly partial Commissioner on the Commission of Insurance could, consistent with due process, determine whether there was probable cause to believe that the Third Party Administrator Act had been violated, whether the Commissioner erred in determining that there was no probable cause, and whether, in the event of a contrary finding, a hearing was required. Like in *Ross*, the court made legal determinations unrelated to the scope of review of an administrative decision.

In *Wescott,* the court stated that in the absence of a hearing it was to apply the authorized by law standard. However, as in both *Ross* and *Brandon School District*, the statement had nothing to do with the court's decision. The court held that the circuit court's decision was arbitrary and capricious because it seemed to require that the CSC rely upon disability determinations made by the Social Security Administration and the State Retirement Board.

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http://courts.mi.gov/opinions_orders/case_search/pages/default.aspx?SearchType=1&CaseNumber=309704&CourtType_CaseNumber=2

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To sum up, these inapposite decisions do not support any deviation from this Court's ruling in *Viculin.*

III. THE COURT OF APPEALS' DECISION THAT THE AUTHORIZED BY LAW STANDARD PROHIBITS ANY REVIEW OF EVIDENCE WAS CLEARLY ERRONEOUS AND CONTRARY TO *VICULIN*'S CORRECT INTERPRETATION OF ARTICLE 6 § 28, MAKING SUPREME COURT REVIEW APPROPRIATE UNDER MCR 7.305(B)(5).

The Court of Appeals also clearly erred in its interpretation of the authorized by law standard. As stated earlier, this Court in *Viculin* stated that Article 6 § 28 "applies to final decisions of the Civil Service Commission." 386 Mich at 392. By the Court of Appeals' reasoning, however, Article 6 § 28 does not apply to such decisions.

An agency decision is not authorized by law if it is arbitrary and capricious. *Wescott*, 298 Mich App at 162. To determine whether a decision is arbitrary and capricious, a reviewing Circuit Court judge must, of necessity, review facts on the record to determine whether any of them support the CSC's legal conclusions, which is precisely what the Circuit Court judge did in this case. By his review, the Circuit Court judge determined that there were simply no facts supporting the classification decision, because, as is undisputed by the parties, the Officers' work did not change after the DOC's classification decision.

According to the Court of Appeals, the authorized by law standard does not permit any factual review whatsoever. *Henderson*, *supra* at 3. It cannot be determined whether any facts support a classification decision or if, instead, there is a total lack thereof: there is simply no meaningful judicial review of the CSC's executive action. This must be rejected as contrary to Article 6 § 28, which clearly does require review.

It must also be rejected as contrary to common sense. The very reason that no hearing is required in this case and, according to the CSC, authorized by law is the only applicable

standard, is that the CSC has promulgated Civ Serv R 8-3.3(b)(1) to expressly forbid Technical Review Officers from conducting hearings. Moreover, neither the Constitution, nor rules, nor regulations require either the ERB or the CSC to conduct a hearing. *See York v Civil Serv Comm*, 263 Mich App 694, 701; 689 NW2d 533 (2004). Accordingly, if the Court of Appeals' position is accepted, the CSC can essentially exempt itself from any judicial review of its decisions, even though review is required by Article 6 § 28. An internal rulemaking will be an end-run around the Michigan Constitution.

Furthermore, MCR 7.117, "Appeals from the Michigan Civil Service Commission," requires that, as to procedure, the appeal comply with MCR 7.119, and that otherwise MCR 7.101 through 7.115 apply. MCR 7.109, Record on Appeal, provides at Section (A)(2) that the record on appeal from an agency is defined by MCR 7.210(A)(2), which requires that in an appeal from an agency the record, "includes all documents, files, pleadings, testimony, and opinions and orders . . ."

By holding that the Circuit Court judge was prohibited from determining whether facts supported legal conclusions, the Court of Appeals makes MCR 7.210(A)(2) nugatory in this situation: the entire record must be delivered to a Circuit Court judge, but it cannot be looked at. This interpretation must be rejected.

CONCLUSION

Supreme Court review of the Court of Appeals' decision is permitted by MCR 7.305(B)(2)-(5).

The Court of Appeals' incorrect decision involves significant public interests including the integrity of the civil service system and the pay rates of 2,472 public employees, is a clearly

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erroneous interpretation of Article 6 § 28 of the Michigan Constitution, and is contrary to this Court's decision in *Viculin*.

Accordingly, Henderson, the affected Officers, and the Michigan Corrections Organization seek relief from this Court in the form of a ruling that the Circuit Court was correct to adopt, and correctly applied, the substantial evidence standard in its review, and that the Circuit Court correctly applied the authorized by law standard. The Plaintiffs further seek all other relief that this court deems appropriate.

Respectfully Submitted,

SACHS WALDMAN, P.C.

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Dated: August 10, 2017

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STATE OF MICHIGAN
IN THE COURT OF APPEALS

WILLIAM R. HENDERSON and
MICHIGAN CORRECTIONS ORGANIZATION,

Plaintiffs-Appellants,

v.

MICHIGAN CIVIL SERVICE COMMISSION and
MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.
_______________________________________/

COA No. 332314

Lower Case No. 15 - 645-AA

NOTICE OF THE FILING OF APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

WHEREFORE, William J. Henderson and Michigan Corrections Organization, through their attorneys, Sachs Waldman, P.C., hereby notify this Court that it has filed an Application for Leave to Appeal this Court's June 29, 2017 unpublished decision.

Respectfully Submitted,

SACHS WALDMAN, P.C.

By: /s/ *Mary Ellen Gurewitz*

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Dated: August 10, 2017

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

WILLIAM R. HENDERSON and
MICHIGAN CORRECTIONS ORGANIZATION,

Appellants,

Case No. 15 - 645-AA

v.

Honorable William E. Collette

MICHIGAN CIVIL SERVICE COMMISSION and
MICHIGAN DEPARTMENT OF CORRECTIONS,

Appellees.
____/

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NOTICE OF THE FILING OF APPLICATION FOR LEAVE TO APPEAL TO THE MICHIGAN SUPREME COURT

WHEREFORE, Plaintiffs William J. Henderson and the Michigan Corrections Organization, through their attorneys, Sachs Waldman, P.C., hereby notify this Court that it has filed an Application for Leave to Appeal (enclosed) to affirm this Court's March 14, 2016 decision.

SACHS WALDMAN, P.C.

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STATE OF MICHIGAN

IN THE SUPREME COURT

WILLIAM R. HENDERSON, ET AL.,

Plaintiffs-Appellants,

v.

S. Ct. Docket No.
COA No. 332314
Lower Case No. 15 - 645-AA

MICHIGAN CIVIL SERVICE COMMISSION and
MICHIGAN DEPARTMENT OF CORRECTIONS,

Defendants-Appellees.

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CERTIFICATE OF SERVICE

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)ss.
County of Wayne)

PATRICIA L. MERCHAK, being first duly sworn, deposes and says that on August 10, 2017, she did serve a copy of Plaintiffs Michigan Corrections Organization's and William R. Henderson's Application for Leave to Appeal to the Michigan Supreme Court along with exhibits; Court of Appeals' Notice of The Filing of Application for Leave to Appeal to the Michigan Supreme Court; Ingham County Circuit Court's Notice of The Filing of Application for Leave to Appeal to the Michigan Supreme Court; and this Certificate of Service upon:

Clerk of the Court
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
P.O. Box 30022
Lansing, MI 48909-7522

Christopher W. Braverman
Michigan Dept. of Attorney General
Labor Division
P. O. Box 30217
Lansing, MI 48909

Clerk of the Court
Ingham County Circuit Court
341 S. Jefferson St.
Mason, MI 48854-1651

Michigan Department of Corrections
206 East Michigan
Lansing, MI 48933

Michigan Civil Service Commission
Capitol Commons Center
400 S. Pine Street
Lansing, MI 48933

by placing a true copy of same in an envelope, addressed as above and with first class postage fully pre-paid and affixed thereto, and depositing said envelope in a receptacle maintained by the U.S. Government for the purpose of mail.

FURTHER Deponent saith not.

PATRICIA L. MERCHAK

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