

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,
Plaintiffs

v.

JOCELYN BENSON, in her official capacity
as Secretary of State of Michigan, *et al.*,

Defendants

Case No. 1:22-CV-00054-PLM-SJB

Circuit Judge Raymond Kethledge
District Judge Paul L. Maloney
District Judge Janet T. Neff

**EXPEDITED CONSIDERATION
REQUESTED**

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS'
MOTION FOR LEAVE TO INTERVENE AS DEFENDANT**

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (“VNP”) a Michigan non-profit corporation, respectfully moves this court for leave to intervene as a defendant in the above-captioned action pursuant to Fed. R. Civ. P. 24(b).

For the reasons explained in the accompanying Brief in Support of this Motion, which are incorporated herein by reference, the requirements for permissive intervention under Fed. R. Civ. P. 24(b) have been satisfied and permissive intervention is appropriate.

Expedited consideration of this Motion pursuant to LCivR 7.1(e) is likewise appropriate in this matter. Plaintiffs have filed a Motion for Preliminary Injunction. (Doc. 9 PageID.94-189). VNP seeks expedited consideration of its motion for intervention to allow a timely response to Plaintiffs’ Motion for Preliminary Injunction.

Wherefore, Proposed Intervenor-Defendant VNP respectfully requests that this Court grant its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) and enter an order that permits it to participate as a Defendant in this matter.

Dated: February 7, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Western District of Michigan by using the CM/ECF system on February 7, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the using the CM/ECF system.

February 7, 2022

/s/ Andrew M. Pauwels
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Counsel for Intervenor-Defendant VNP

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**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS’
BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AS DEFENDANT**

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CONCISE STATEMENT

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (“VNP”) has satisfied the requirements for permissive intervention pursuant to Fed. R. Civ. P. 24(b). VNP’s Motion is timely, presents a defense that shares common questions of law and fact with this action, and will neither cause undue delay nor prejudice the other parties’ rights. *See, e.g., Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350 (W.D. Mich. Aug. 28, 2019); *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020). VNP will offer the Court its unique expertise and insights as the drafter and sponsor of the constitutional amendment that established the Michigan Independent Citizens Redistricting Commission as the Court considers the issues raised in the Plaintiffs’ Complaint.

Introduction

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (hereinafter, “VNP”) respectfully moves this Court to permit its intervention as a defendant in this matter. VNP’s Motion is timely, raises defenses that share common questions of law and fact with the main action, and will cause neither undue delay nor prejudice to any party.

Statement of Facts

On November 6, 2018, an overwhelming majority of Michigan voters—more than 2.5 million citizens, or 61% of the electorate—approved Proposal 18-2, which amended the Michigan Constitution to create an Independent Citizens Redistricting Commission (the “Commission”) to draw electoral districts in a fair, impartial, and transparent manner. VNP, a nonpartisan non-profit advocacy organization, was the sponsor of that voter-initiated ballot proposal and the drafter of that constitutional amendment, and as such has a unique understanding of the structure and purpose of the amendment and a strong interest in ensuring that the Commission’s work is conducted in a manner consistent with that amendment, free from political interference or reliance on pre-amendment standards.

On December 28, 2021, following the release of the 2020 Census data, the Commission adopted and enacted a new plan for Michigan’s 13 Congressional districts. *See Clara Hendrickson and Todd Spangler, Michigan’s redistricting commission adopts final congressional map for the next decade*, Detroit Free Press (Dec. 28, 2021), <https://www.freep.com/story/news/politics/2021/12/28/michigan-redistricting-commission-finalizes-congressional-map/9029285002/>. Plaintiffs in the instant action filed their Complaint (No. 7, PageID.56-77) and Motion for Preliminary Injunction with accompanying exhibits (No. 9, PageID.94-189) on January 27, 2022.

Legal Standard

Pursuant to Rule 24(b), “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). In exercising its discretion to grant permissive intervention, the Court must consider whether such intervention “will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Permissive intervention requires only that the proposed intervenor establish that the motion is timely and at least one common question of law or fact exists. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). After those two requirements are met, consideration of undue delay, prejudice to the original parties, and any other relevant factors are left to the court’s discretion. *Id.*¹

Argument

First, there can be no doubt that VNP’s Motion is timely. “[A] motion for intervention brought within two weeks after the filing of the complaint is timely as a matter of law.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245, 1248 (6th Cir. 1997); *Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350, at *2 (W.D. Mich. Aug. 28, 2019). VNP filed its Motion on February 7, 2020—eleven days after Plaintiffs’ First Amended Complaint was filed, thus the motion is timely. *See Donald J. Trump for President, Inc. v. Benson*, No 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020).

¹ Notably, in the Sixth Circuit, an intervenor need not establish Article III standing for permissive intervention. *Associated Builders & Contractors v. Perry*, 16 F.3d 688, 690 (6th Cir. 1994). This is consistent with the view of a majority of the other Circuits. *See, e.g., King v. Christie*, 981 F.Supp.2d 296, 307 (D.N.J. 2013); *Ruiz v. Estelle*, 161 F.3d 814, 903 (5th Cir. 1998); *City of Colo. Springs v. Climax Molybdenum Co.*, 587 F.3d 1071, 1079 (10th Cir. 2009); *Yniguez v. Arizona*, 939 F.2d 727, 731 (9th Cir. 1991).

Next, VNP's defense clearly shares common questions of law and fact with the main action. Since the approval of Proposal 18-2 by Michigan voters in 2018, VNP has continued to maintain its strong interest in ensuring that voters—not politicians, party bosses, or elected officials—control the redistricting process. VNP has previously intervened in federal litigation to defend the constitutionality of the Commission against partisan attack. *See Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350 (W.D. Mich. Aug. 28, 2019) (granting permissive intervention by VNP as a defendant in constitutional challenge to Commission).

As the drafters of the constitutional amendment that created the Commission and the primary supporters of the ballot initiative that approved it, VNP obviously has a strong interest in ensuring that the Commission functions as intended and that efforts to undermine its authority or undo the purpose of the amendment are curbed. VNP's defense of the Commission's use of the constitutional redistricting criteria *in the priority in which they were enshrined into the Michigan Constitution by the amendment* is critical to its mission to ensure that the People of the State of Michigan continue to have a voice in the decisions that shape their government and a separate representative in this case as it moves forward.

In a motion seeking permissive intervention, the proposed intervenor need not demonstrate that the existing Defendants will inadequately defend this case; that requirement applies only to parties seeking intervention as of right. *Compare* Fed. R. Civ. P. 24(a)(2) *with* Fed. R. Civ. P. 24(b)(1); *see also Miller*, 103 F.3d at 1245-48. However, given the nature of this action—namely, whether the Commission fairly complied with the requirements of an amendment designed to take power from politicians and give it directly to the People of the State of Michigan—permitting VNP to intervene would ensure that the distinct interests of the People are represented as the case moves

forward.² *Cf. League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579-80 (6th Cir. 2018) (finding an abuse of discretion where the district court, among other things, failed to consider the distinctiveness of proposed permissive intervenors' interest in the litigation). Indeed, by participating in this lawsuit as an intervenor-defendant, VNP will be able to offer its expertise and insights as the drafter and primary sponsor of the amendment that created the Commission as the Court considers the issues raised by the Plaintiffs' Complaint.

Permitting intervention by VNP will not result in undue delay or prejudice to the original parties. *See* Fed. R. Civ. P. 24(b)(3). This case is less than twenty days old, and VNP is fully prepared to participate in preliminary injunction briefing on the existing schedule contemplated by the Federal Rules of Civil Procedure, Local Rules of the Western District of Michigan, and any other scheduling order issued by this Court. Moreover, allowing VNP to participate in the case will not prejudice any of the original parties. Indeed, this Court has previously granted permissive intervention at a similarly early stage in an election-related lawsuit and directed the intervenors to “file responsive pleadings, motions, and briefs on the same schedule as Defendants,” and should take the same approach again here. *See Donald J. Trump for President, Inc.*, 2020 WL 8573863, at *3.

Finally, VNP has complied with the requirements of Rule 24(c) that a motion to intervene “be accompanied by a pleading that sets out the claim or defense for which intervention is sought,” Fed. R. Civ. P. 24(c). VNP has attached a Partial Motion to Dismiss (Exhibit A) and Brief in Support (Exhibit B), as well as a Proposed Answer (Exhibit C) to this Motion—well in advance

² Although there may be some overlap between VNP's interests and those of Secretary Benson and the Defendant Commissioners, “the presence of overlapping interests between [an intervening advocacy group] and the State does not preclude permissive intervention.” *King v. Christie*, 981 F.Supp.2d 296, 307 (D.N.J. 2013).

of the deadline for responsive pleadings for Defendant Benson and the Defendant Commissioners. Courts in the Sixth Circuit “take[] a lenient approach to the requirements of Rule 24(c).” *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314 (6th Cir. 2005). VNP’s proposed Partial Motion to Dismiss and Answer clearly satisfy this lenient standard.

Conclusion

For the foregoing reasons, Proposed Intervenor-Defendant VNP respectfully requests that this Court grant its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) and enter an order permitting VNP to participate as a Defendant in this matter.

Dated: February 7, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, the foregoing was electronically filed with the Clerk of the Court using the Court's e-filing system, which will send notification of such filing to all attorneys of record.

Dated: February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant

**CERTIFICATE OF COMPLIANCE
WITH LCivR 7.3(b)(ii)**

Pursuant to Local Rule 7.3(b)(ii), I hereby certify that this document was prepared using Microsoft Word, and that the word count for this document as provided by that software is 1,454, which is less than the 4,300-word limit for a brief filed in support of a nondispositive motion.

Dated: February 7, 2022

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