

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

Anthony Daunt, *et al*

Plaintiffs,

Case No.: 19-cv-00614-JTN-ESC

v

Hon. Janet T. Neff

Jocelyn Benson, in her official capacity as
Michigan Secretary of State,

Magistrate Judge Ellen S. Carmody

Defendant.

**PROPOSED INTERVENOR-DEFENDANT'S BRIEF IN SUPPORT
OF MOTION FOR LEAVE TO INTERVENE**

TABLE OF CONTENTS

Index of Authorities ii

Concise Statementiii

Introduction.....3

Statement of Facts.....3

Legal Argument5

Conclusion9

TABLE OF AUTHORITIES

CASES

Associated Builders & Contractors v Perry, 16 F.3d 688, 690 (6th Cir. 1994) 6

City of Colo. Springs v. Climax Molybdenum Co., 587 F.3d 1071 (10th Cir. 2009)..... 6

King v Christie, 981 F.Supp.2d 296 (D.N.J. 2013)..... 6, 7

League of Women Voters of Michigan v. Johnson, 902 F.3d 572 (6th Cir., 2018).....5

Michigan State AFL-CIO v. Miller, 103 F.3d 1240 (6th Cir. 1997) 6, 7

Ruiz v. Estelle, 161 F.3d 814 (5th Cir. 1998)..... 6

Yniguez v. Arizona, 939 F.2d 727 (9th Cir. 1991)..... 6

STATUTES

Michigan Campaign Finance Act, MCL 169.201, *et seq.*..... 3

RULES

Federal Rules of Civil Procedure 24(a)..... 7

Federal Rules of Civil Procedure 24(a)(2)..... 7

Federal Rules of Civil Procedure 24(b) 9

Federal Rules of Civil Procedure 24(b)(1)(b) 5, 7, 8

Federal Rules of Civil Procedure 24(b)(3)..... 5, 7

Federal Rules of Civil Procedure 24(c)..... 5

OTHER

Wright and Miller, *Federal Practice and Procedures*, § 1911, at pp 451-52 (3d ed. 2007)..... 6



CONCISE STATEMENT

Pursuant to LCivR 7.1(a), Proposed Intervenor-Defendant Count MI Vote (d/b/a “Voters Not Politicians”) states that intervention is supported by Fed. R. Civ. P 24(b). Voters Not Politicians has satisfied the requirements for permissive intervention because its motion is timely and because it presents a defense that shares common questions of law and fact with the main action. *See League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579-580 (6th Cir., 2018); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). In addition, allowing Voters Not Politicians to intervene will not result in undue delay or prejudice to the original parties. *See Fed. R. Civ. P. 24(b)(3)*. Instead, Voters Not Politicians will offer its expertise and insights as the drafter and sponsor of the constitutional amendment at issue, as the Court considers the issues raised by the Plaintiffs’ Complaint.



INTRODUCTION

On November 6, 2018, an overwhelming majority of the voters in Michigan – 61%, or over **2.5 million citizens** – approved Proposal 18-2, which amended the state’s constitution to take politicians out of Michigan’s redistricting process and to create an Independent Citizens Redistricting Commission that must draw election districts in a fair, impartial and transparent way. Intervenor-Defendant Count MI Vote (d/b/a Voters Not Politicians) was the sponsor of that voter-initiated ballot proposal and the drafter of the constitutional amendment; as such, it has a unique appreciation of the important public interests advanced by the constitutional amendment and a heightened interest in defending the constitutionality of the amendment now being challenged by Plaintiffs.

Prior to the approval of Proposal 18-2, politicians in Michigan consistently abused their redistricting power to rig elections in their favor, making Michigan one of the most gerrymandered states in the entire country. The People recognized that politicians have an inherent conflict of interest in drawing the election district lines on which their hold on power depends, so in 2018, the People took politicians out of the process and put voters – not politicians – in charge. The disqualification criteria that were approved by the voters, and are now being challenged by the Plaintiffs, help to ensure that district lines are not manipulated to advance special interests to the detriment of voters.

STATEMENT OF FACTS

On February 22, 2017, the Voters Not Politicians Ballot Committee was registered with the Michigan Secretary of State as a ballot question committee in accordance with the Michigan Campaign Finance Act, MCL 169.201, *et seq.* Intervening-Defendant Count MI Vote is a Michigan non-profit corporation which was subsequently formed and incorporated

for the purpose of operating the Voters Not Politicians Ballot Committee under the names “Voters Not Politicians” and “Voters Not Politicians Ballot Committee.” For the sake of simplicity, Intervenor-Defendant Count MI Vote will be referred to hereinafter as “Voters Not Politicians.”

Voters Not Politicians has an especially strong appreciation of the right reserved by the People of Michigan under Const 1963, art 12, § 2, to propose constitutional amendments because it has encountered and prevailed against the nearly insurmountable obstacles that face sponsors of voter-initiated proposals for amendments to the Constitution. In the case of Proposal 18-2, those obstacles included, among other things, the need to collect the large number of valid petition signatures required within the short period of time allowed for the collection of those signatures.

In fact, Voters Not Politicians collected over 425,000 signatures in just four months, which was more than 100,000 signatures above the amount that was required by the governing statutory provisions to certify the proposal for submission to the voters. Moreover, Voters Not Politicians met that challenge by relying exclusively on its volunteers – a highly motivated and organized force of thousands of citizens who circulated the petition and collected signatures from voters without financial compensation.

Since the approval of Proposal 18-2, Voters Not Politicians has continued to maintain its strong interest in ensuring that voters control the redistricting process. Its purpose is succinctly summarized in its Mission Statement as follows: “Voters Not Politicians is a nonpartisan advocacy organization that works to strengthen democracy by engaging people across Michigan in effective citizen action.” Consistent with that mission, Voters Not Politicians is opposed to all efforts to return the power to draw election district lines to the

politicians who made Michigan one of the most gerrymandered states in the first place.¹

However, the unique, profound interest that Voters Not Politicians and its stakeholders have in limiting the impact of partisan politics on legislative districting is now under assault in this Court by partisan interests.

In a novel complaint, a handful of Michigan residents, in affiliation with the National Republican Redistricting Trust (an organization positioning for partisan redistricting) are attempting to undermine the constitutionally-created Independent Citizens Redistricting Commission. (ECF No. 1). In essence, the Complaint contends that by limiting who may serve on the redistricting commission, the State of Michigan is somehow violating the free-speech, free-association and equal-protection rights of hundreds of thousands of its residents. It then further contends that because the restrictions on who may serve on the commission (supposedly) are unconstitutional, Proposal 18-2 is unenforceable *it its entirety*. Voters Not Politicians respectfully seeks permission to intervene in this matter in order to demonstrate the many flaws in these legal claims and to help the Court fully understand the nature and significance of the Plaintiffs’ attempts to undermine the voters’ decision to have election district lines drawn in a fair, impartial and transparent way.

LEGAL ARGUMENT

In relevant part, Rule 24(b)(1)(b) provides that “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a

¹ Following the approval of Proposal 18-2 by 61% of the voters in the November 2018 general election, Voters Not Politicians turned to safeguarding the newly-approved constitutional provisions against legislative interference by vigorously opposing inconsistent “implementing legislation” – Senate Bill 1254 (Pavlov – R) – which was introduced and taken up in the lame duck session. Voter Not Politicians’ efforts were successful and SB 1254 was not enacted.

common question of law or fact.” (*Id.*) (emphasis added). In exercising its discretion to grant or deny the motion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights. Fed. R. Civ. P. 24(b)(3). Thus, permissive intervention requires only that the proposed intervenor establish that the motion is timely and that there exists at least one common question of law or fact. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). After those two requirements are met, the balancing of undue delay, prejudice to the original parties, and any other relevant factors is left to the sound discretion of the district court. *Id.*²

In the case at bar, Voters Not Politicians has satisfied the requirements for permissive intervention under Rule 24(b). First, the motion is timely. In fact, the Sixth Circuit has recognized that a motion for intervention that is brought within two weeks after the filing of the complaint is timely as a matter of law. *Miller*, 103 F.3d at 1245, 1248. Next, there is no doubt that Voters Not Politicians has a defense that shares a common question of law or fact with the main action. Indeed, no one can seriously dispute Voters Not Politicians’ strong interest in defending the People’s choice to create an Independent Citizens Redistricting

² Notably, in the Sixth Circuit, a person does **not** need Article III standing to intervene permissively. *Associated Builders & Contractors v Perry*, 16 F.3d 688, 690 (6th Cir. 1994) (holding that “[a]n intervenor need not have the same standing necessary to initiate a lawsuit in order to intervene in an existing district court suit where the plaintiff has standing.”) The Sixth Circuit’s view on this issue is consistent with the majority of the other circuits, which have held that an intervenor does not need to satisfy Article III standing requirements in order to intervene. *See King v Christie*, 981 F.Supp.2d 296, 307 (D.N.J. 2013); *see also* Wright and Miller, *Federal Practice and Procedures*, § 1911, at pp 451-52 (3d ed. 2007); *Ruiz v. Estelle*, 161 F.3d 814, 803 (5th Cir. 1998) (holding that Article III standing is not a prerequisite for intervention); *City of Colo. Springs v. Climax Molybdenum Co.*, 587 F.3d 1071, 1079 (10th Cir. 2009) (same); and *Yniguez v. Arizona*, 939 F.2d 727, 731 (9th Cir. 1991) (same).

Commission by constitutional amendment.³ Moreover, unlike parties seeking intervention as of right under Fed. R. Civ. P. 24(a), Voters Not Politicians is not required to show that the State will inadequately defend this case in order to be allowed to participate as a permissive intervenor. *Compare* Fed. R. Civ. P. 24(a)(2) *with* Fed. Civ. P. 24(b)(1)(B); *see also* *Miller*, 103 F.3d at 1245-1248. It is worth noting, however, that given the nature of the amendment at issue here – designed to take power from politicians and give it directly to the People of the State of Michigan – there would be great value in making sure the distinctive interests of the People have a separate representative in the case as it move forward. *Cf. League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579-580 (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).

Furthermore, allowing Voters Not Politicians to intervene will not result in undue delay or prejudice to the original parties. *See* Fed. R. Civ. P. 24(b)(3). Voters Not Politicians has attached to the present motion its answer to the complaint, in accordance with Fed. R. Civ. P. 24(c). (Exhibit A). Moreover, Voters Not Politicians is prepared to respond to Plaintiff’s Motion for Preliminary Injunction on or before the date on which the Secretary of State’s response to that motion is due. Simply put, Voters Not Politicians’ participation in this litigation will not result in any delay, much less undue delay. Further, no party will be prejudiced if Voters Not Politicians participates. Instead, Voters Not Politicians will offer its expertise and insights as the drafter and sponsor of the constitutional amendment at issue, as the Court considers the issues raised by Plaintiffs’ Complaint.

³ Further highlighting the interest that Voters Not Politicians has in this matter is the observation that some of the allegations in the Complaint are specifically directed at Voters Not Politicians. (*See e.g.*, Doc. No. 1, PageID#20-21, ¶ 45 and PageID#27, ¶61).

One case that is particularly instructive to the present motion is *King, supra*. In that case, the federal district court was asked to consider a law passed by New Jersey’s legislature that prohibited mental health professionals from using gay conversion therapy when working with juveniles. The plaintiffs in *King*, two therapists who used gay conversion therapy when working with juveniles (and who wanted to continue to do so) brought a lawsuit claiming that the law violated their First Amendment Rights. *King*, 981 F.Supp.2d at 302-303. The district court then allowed an advocacy group that supported the law to intervene. *Id.* at 306-310.

On the issue of “common question of law or fact,” the plaintiffs in *King* had contended that intervention was not necessary because the advocacy group’s interest was already adequately represented by the State. However, as the court astutely held, “the presence of overlapping interests between [the advocacy group] and the State does **not** preclude permissive intervention.” *Id.* at 309. (emphasis added). Rather, the court concluded that “[t]he shared interests of [the group] and the state defendants” supported the group’s argument that it shared “a common question of law with the current action” because the advocacy group, like the state, planned “to defend the constitutionality of [the law],” which was “the subject of the dispute between plaintiffs and the state defendants.” *Id.* (citation omitted).

Likewise, in the case at bar, Voters Not Politicians seeks to defend the constitutionality of the Independent Citizens Redistricting Commission that was approved by more than 2.5 million Michigan voters. The interest that Voters Not Politicians shares with the Secretary of State in this regard does not preclude permissive intervention. Instead, it proves that Voters Not Politicians has presented a defense that shares common questions of law and fact with the main action. The demands of the rule are satisfied and allowing Voters

Not Politicians to participate will in no way prejudice the adjudication of the original parties' rights. Therefore, the Court should grant Voters Not Politicians' motion, and enter an order that permits Voters Not Politicians to intervene as a Defendant in this matter.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendant Count MI Vote (d/b/a "Voters Not Politicians") respectfully requests that this Honorable Court GRANT its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) and that the Court enter an order that permits Voters Not Politicians to participate as a Defendant in this matter.

Respectfully submitted,

Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for Proposed Intervenor-Defendant
Count MI Vote, d/b/a Voters Not Politicians

Dated: August 12, 2019

By: /s/Ryan K. Kauffman

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
Ryan K. Kauffman (P65357)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800
rkauffman@fraserlawfirm.com

AND

Paul M. Smith (*motion for admission to be filed*)
Mark Gaber
Campaign Legal Center
1101 14th Street N.W., Suite 400
Washington D.C. 20005

Annabelle Harless
73 W. Monroe Street, Suite 302
Chicago, Illinois 60603

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.

Attorneys for Proposed Intervenor-Defendant

Count MI Vote d/b/a Voters Not Politicians

Dated: August 12, 2019

By: /s/Ryan K. Kauffman

Ryan K. Kauffman (P65357)

124 W. Allegan, Suite 1000

Lansing, Michigan 48933

(517) 482-5800



CERTIFICATE OF COMPLIANCE

This document was prepared using Microsoft Word. The word count for Intervenor-Defendant's Brief in Support of its Motion to Intervene as provided by that software is 1,863, which is less than the 4,300-word limit for a brief filed in support of a nondispositive motion.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Proposed Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians

Dated: August 12, 2019

By: /s/Ryan K. Kauffman

Peter D. Houk (P15155)
Jonathan E. Raven (P25390)
Graham K. Crabtree (P31590)
Ryan K. Kauffman (P65357)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

