

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

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, ROGER J. BRDAK,
FREDERICK C. DURHAL, JR.,
JACK E. ELLIS, DONNA E.
FARRIS, WILLIAM "BILL" J.
GRASHA, ROSA L. HOLLIDAY,
DIANA L. KETOLA, JON "JACK"
G. LASALLE, RICHARD "DICK"
W. LONG, LORENZO RIVERA
and RASHIDA H. TLAIB,

Plaintiffs,

v.

JOCELYN BENSON, in her official
Capacity as Michigan
Secretary of State,

Defendant.

Case No. 2:17-cv-14148

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

**NONPARTIES' MOTION FOR
IMMEDIATE CONSIDERATION
OF MOTION TO INTERVENE**

**NONPARTIES' MOTION FOR IMMEDIATE CONSIDERATION OF
MOTION TO INTERVENE**

Nonparties and Proposed Intervenors Michigan State Senators Jim Stamas, Ken Horn, and Lana Theis (the “Michigan Senators”), through their attorneys, Dykema Gossett PLLC, hereby move for immediate consideration of their Motion to Intervene. This Motion is accompanied by a Brief in Support per LR 7.1(d).

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 22, 2019

By: /s/ Jason T. Hanselman
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**NONPARTIES' BRIEF IN
SUPPORT OF MOTION FOR
IMMEDIATE CONSIDERATION
OF MOTION TO INTERVENE**

NONPARTIES' BRIEF IN SUPPORT OF MOTION FOR IMMEDIATE CONSIDERATION OF MOTION TO INTERVENE

In support of their Motion for Immediate Consideration of their Motion to Intervene, the Michigan Senators state, through their attorneys, Dykema Gossett PLLC, as follows:

1. On December 22, 2017, the League of Women Voters of Michigan and other named individuals (collectively, "Plaintiffs") filed a two-count Complaint for Declaratory and Injunctive Relief (ECF No. 1) against former Michigan Secretary of State Ruth Johnson in her official capacity, asserting that Michigan's current congressional and state legislative apportionment plans are unconstitutional pursuant to 42 U.S.C. § 1983, § 1988 and the First and Fourteenth Amendments to the United States Constitution.

2. Former Secretary Johnson vigorously defended the duly enacted congressional and state legislative apportionment plans during her term in office, which ended on December 31, 2018.

3. On January 1, 2019, Secretary of State Jocelyn Benson was sworn into office as former Secretary Johnson's successor and, under Fed. R. Civ. P. 25(d), was automatically substituted as a party in this case in her official capacity.

4. On January 17, 2019, Secretary Benson filed a Response to Defendants-Intervenors' Emergency Motion to Stay Trial, in which she agreed that

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an adjournment of the imminent trial scheduled for February 5, 2019, would be appropriate under the circumstances of this case and stated that “[a]n adjournment will permit the Secretary of State and Plaintiffs the opportunity to focus their efforts on negotiating a mutually agreeable and complete resolution of their disputes.” (ECF #199, PageID.7601.)

5. Because Secretary Benson is apparently declining to defend Michigan’s current duly enacted congressional and state legislative apportionment plans, the Michigan Senators’ interests, as described in their Motion to Intervene and Brief in Support, are no longer being vigorously defended.

6. Although Michigan Senators Stamas and Horn¹ contemplated intervening in this lawsuit last year, this Court’s August 14, 2018 Order denying intervention by members of the Michigan House of Representatives (the “House Intervenors”) dissuaded the Michigan Senators from doing so at that time.

7. This Court’s August 14, 2018 Order stated that “Applicants’ motion [to intervene] is premature. Although Applicants speculate about the ‘possibility’ that the executive branch will end its participation in this matter, [R. 70 at PageID #1221], Applicants’ argument presupposes events that have not yet come to pass, including but not limited to the executive branch ending its participation in this case and the legislative branch voting to fill the adversarial void. Assuming,

¹ Hon. Lana Theis became a Senator on January 1, 2019.

without deciding, that there are circumstances in which the legislative branch may permissibly represent the state's interests in court, Applicants' current motion is premature." (ECF #91, PageID.2061-62.)

8. The possibility that the executive branch would end its participation and vigorous defense in this case has now come to pass, and the Michigan Senators' interests are not being adequately represented.

9. Through their Motion to Intervene and Brief in Support, the Michigan Senators seek to meaningfully participate in any negotiations toward a "mutually agreeable and complete resolution of the[se] disputes" (ECF #199, PageID.7601) and, if no settlement is reached, in the subsequent trial.

WHEREFORE, for the foregoing reasons, the Michigan Senators respectfully request that this Court grant their Motion for Immediate Consideration of their Motion to Intervene.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 22, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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