

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS)	
OF MICHIGAN, et al.,)	Case No. 2:17-cv-14148
)	
Plaintiffs,)	Hon. Eric L. Clay
)	Hon. Denise Page Hood
)	Hon. Gordon J. Quist
v.)	
)	
JOCELYN BENSON, in her official)	
Capacity as Michigan)	
Secretary of State, et al.,)	
)	
Defendants.)	

CONGRESSIONAL AND LEGISLATIVE INTERVENORS'
RESPONSE TO MOTIONS TO INTERVENE AND MOTION TO STAY BY THE
MICHIGAN SENATE AND MICHIGAN SENATORS

Under the Federal Rules of Civil Procedure, intervention in cases as critical as this one should be granted to directly impacted parties when their interests are not fully and adequately represented. Illustrating this concept, in *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997), the Sixth Circuit addressed the Michigan Chamber’s motion to intervene in a campaign finance case:

At stake is more than just the opportunity to present argument to the district court, an interest that can be accommodated by amicus participation. What the Chamber also desires is the ability to seek appellate review in the event that the district court ultimately determines that one or more of the 1994 amendments are unconstitutional and the original defendants fail to appeal that ruling.

Id. at 1245.

This is clearly and precisely the same application urged here by the Senators and the Michigan Senate.

From the beginning of this case, this Court has on several occasions issued rulings that have been reversed by the United States Court of Appeals for the Sixth Circuit with respect to intervention of additional parties (See e.g. *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 580 (6th Cir. 2018) (ECF 102) granting intervention to Congressional Intervenors and Order of the United States Court of Appeals for the Sixth Circuit granting intervention to Legislative Intervenors (ECF 166)).

As of the January 29, 2019 ruling on privilege motions related to Jeff Timmer, this Court has now clearly acknowledged that the Secretary of State is not defending the 2011 duly enacted Congressional, Senate and State House Maps. Shortly after that filing, the Senate filed its Motion to Intervene.

For all of the reasons that Congressional Intervenors and Legislative Intervenors sought to be heard and appear as parties before this Court, the Intervenors fully concur with this Court granting intervention to the Michigan Senate and the Michigan Senators so that this case may be heard in a true adversarial legal proceeding where both sides are adequately and fully represented.

This precise sort of situation was acknowledged by the Sixth Circuit in *United States v. City of Detroit*, 712 F.3d 925 (6th Cir. 2013), where the Circuit reversed denial of intervention by a district court. As Judge Clay noted in a dissenting opinion where he agreed that the district court abused its discretion by denying intervention, “The rules governing intervention are predicated on assumptions about how parties can best represent their own interests in a adversarial process.” *Id.* at 938. In that case, intervention was sought by labor unions within ten days of a court order that would have impacted the labor unions. Here, the proposed Intervenors acted with at least as much dispatch after it was clear that the Secretary was not going to vigorously defend the maps.

The Secretary abandoning defense of the duly enacted statutes of the State of Michigan on the eve of trial severely burdens the current Intervenors, and Intervenors fully support the pending Motions for Intervention and Stay of Proceedings. The addition of additional parties who are directly impacted by the pending challenges, and additional time to prepare for trial, would be helpful to the parties and to this Court to have a better presentation and understanding of all of the issues. In addition, as Intervenors have requested multiple times, additional time would give this Court the benefit of a better understanding of the United States Supreme Court's view of the underlying legal issues as we await oral argument and opinions in *Rucho v. Common Cause*, No. 18-422, and *Lamone v. Benisek*, No. 18-726

Respectfully submitted,

Holtzman Vogel Josefiak Torchinsky PLLC

/s/ Jason Torchinsky

Jason Torchinsky

Shawn Sheehy

Phillip Gordon

45 North Hill Drive, S 100

Warrenton, Virginia 20106

(540) 341-8800

JTorchinsky@hvjt.law

ssheehy@hvjt.law

pgordon@hvjt.law

[Attorneys for Intervenors](#)

Clark Hill PLC

/s/ Charles R. Spies

Charles R. Spies

Brian D. Shekell (P75327)

David M. Cessante (P58796)

212 E. Cesar Chavez Ave.

Lansing, MI 48906

(517) 318-3100

cspies@clarkhill.com

bshekell@clarkhill.com

dcessante@clarkhill.com

Attorneys for Intervenors

/s/ Peter B. Kupelian

Peter B. Kupelian (P31812)

Kevin A. Fanning (P57125)

151 S. Old Woodward

Suite 200

Birmingham, MI 48009

(248) 642-9692

pkupelian@clarkhill.com

kfanning@clarkhill.com

Attorneys for Intervenors

Date: January 31, 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 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 all of the parties of record.

CLARK HILL PLC

/s/Charlie R. Spies

Charles R. Spies