

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, et al.,

Plaintiffs,

Civil Action No. 17-cv-14148

v.

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

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

Defendant.

_____ /

**CONGRESSIONAL AND LEGISLATIVE
DEFENDANTS-INTERVENORS' MOTION FOR APPOINTMENT
OF A REPLACEMENT OF THE SECRETARY AS A DEFENDANT**

Congressional and Legislative Defendants-Intervenors (“Intervenors”), by their attorneys, move this Court for appointment of a replacement of the Secretary of State as a Defendant in this matter based on the directive from the United States Court of Appeals for the Sixth Circuit. In support of their Motion, Intervenors state as follows:

1. On August 30, 2018, the Sixth Circuit ruled that “[i]f the new Secretary takes office in January 2019 and decides not to further pursue the state’s defense of its apportionment schemes, the district court will have to appoint someone to take the Secretary’s place.” *League of Women Voters of MI v.*

Johnson, 902 F.3d 572, 580 (6th Cir. 2018) (emphasis added).

2. Secretary Benson has decided not to pursue the State's defense of the apportionment maps and should be replaced as a Defendant. This is evidenced by the following events:

- a. Since her election, Secretary Benson has openly refused to defend the state's apportionment scheme. Shortly after taking office, Secretary Benson announced: "[i]t's clear the court has found significant evidence of partisan gerrymandering," as well as that she was working to settle this case. *See* <https://www.detroitnews.com/story/news/local/michigan/2019/01/17/benson-seeks-settle-federal-gerrymandering-case/2608845002/> (last visited 2/1/19).
- b. During the parties' off-the-record pretrial conference with the Court on January 22, 2019, Counsel for Secretary Benson told the Court that Secretary Benson does not intend to call any witnesses at trial.
- c. On January 25, 2019, Secretary Benson filed a Motion to Amend the Proposed Supplement to the Proposed Joint and Final Pretrial Order. (ECF No. 213). In it, Secretary Benson unequivocally states that her "anticipated plan for presenting

witnesses and evidence has changed significantly” from that of her predecessor, former Secretary of State and named Defendant, Ruth Johnson. (ECF No. 213 at ¶ 10) (emphasis added).

- d. Secretary Benson’s Amended Supplemental Witness List that is attached to her Motion to Amend the Proposed Supplement to the Proposed Joint and Final Pretrial Order states: “the Secretary does not intend to call any witnesses in her case in chief.” (ECF No. 213-4, p. 4) (emphasis added). Secretary Benson reiterates this position in the Amended Supplemental Witness List by stating “will not call” under each witness identified. (ECF No. 213-4).

3. In its Order Granting Plaintiff’s Motion for Determination of Privilege, this Court stated: “The new Secretary’s attorneys have informed the Court that the Secretary does not intend to defend the current apportionment plans at issue in this case.” (ECF No. 216, n.1) (emphasis added). This recognition by the Court, when combined with the aforementioned statements and representations by Secretary Benson, leaves no doubt that Secretary Benson had decided “not to further pursue the state’s defense of its apportionment scheme.”

4. In light of the Sixth Circuit’s mandate and the foregoing undisputed

facts, this Court “will have to appoint someone to take the Secretary’s place” as a Defendant in this lawsuit. *League of Women Voters of MI v. Johnson*, 902 F.3d at 580.

5. In accordance with Local Rule 7.1, Intervenors sought the concurrence of Plaintiffs and Secretary Benson in the relief requested herein. Concurrence was denied.

WHEREFORE, the Congressional and Legislative Defendants-Intervenors respectfully request the Court grant their Motion and follow the Sixth Circuit’s ruling by appointing someone else to take the Secretary’s place as Defendant in this lawsuit in light of her decision not to further pursue the state’s defense of its apportionment schemes.

Respectfully submitted,

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Date: February 1, 2019

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RUTH JOHNSON, in her official
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**BRIEF IN SUPPORT OF CONGRESSIONAL AND LEGISLATIVE
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CONCISE STATEMENT OF THE ISSUE PRESENTED

Whether the Court should appoint someone to take the Secretary of State's place as a Defendant in this lawsuit due to her decision not to further pursue the state's defense of its apportionment scheme?

Movant's answer: Yes

Plaintiffs' answer: No

Defendant Secretary of State's Answer: No.

This Court should answer: Yes

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Cases

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

BRIEF IN SUPPORT OF CONGRESSIONAL AND LEGISLATIVE DEFENDANTS-INTERVENORS' MOTION FOR APPOINTMENT OF A REPLACEMENT OF THE SECRETARY AS A DEFENDANT

Intervenors rely on the facts and legal authority set forth in the above Motion for Appointment of a Replacement of the Secretary as a Defendant.

In light of the foregoing, Congressional and Legislative Defendants-Intervenors respectfully request the Court grant their Motion and follow the Sixth Circuit's ruling by appointing someone else to take the Secretary's place as Defendant in this lawsuit in light of her decision not to further pursue the state's defense of its apportionment schemes.

Respectfully submitted,

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Date: February 1, 2019.

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 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/ Charles R. Spies