

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Michigan Republican Party, *et al*

Plaintiffs,

Case No.: 19-cv-00669-JTN-ESC

v

Hon. Janet T. Neff
Magistrate Judge Ellen S. Carmody

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

Defendant.

**PROPOSED INTERVENOR-DEFENDANT'S
MOTION FOR LEAVE TO INTERVENE**

**** EXPEDITED CONSIDERATION REQUESTED****

NOW COMES Proposed Intervenor-Defendant Count MI Vote (d/b/a “Voters Not Politicians”), a Michigan non-profit corporation, by and through its attorneys Fraser Trebilcock Davis & Dunlap, P.C., and for its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) states as follows:

1. For the reasons explained in the accompanying brief, which are incorporated by reference, the requirements for permissive intervention under Fed. R. Civ. P. 24(b) and (c) have been satisfied and permissive intervention is properly granted.

2. In a companion case, *Daunt v. Benson*, Case No. 19-cv-00614, this Court recently granted leave to Voters Not Politicians to intervene in that matter by order dated August 28, 2019. (ECF No. 23, Case 1:19-cv-00614-JTN-ESC). The case at bar and *Daunt* are cognate cases, which share common questions of law and fact, such that their assignment to a single judge, the Honorable Janet T. Neff, was warranted to effect a substantial saving of judicial effort and to avoid wasteful and duplicative proceedings.

3. Voters Not Politicians seeks expedited consideration of the present motion for permissive intervention pursuant to W. Mich. LCivR. 7.1(e) because the Plaintiffs in this matter have filed a Motion for Preliminary Injunction. (ECF No. 2). The Plaintiffs' Motion for Preliminary Injunction was filed on August 22, 2019, and pursuant to LCivR. 7.2(c), any response should be filed within 28 days thereafter. Voters Not Politicians seeks expedited consideration of its motion for permissive intervention so that it may be allowed to timely respond to Plaintiffs' Motion for Preliminary Injunction.

4. Pursuant to LCivR. 7.1(d), Voters Not Politicians has attempted to ascertain whether or not this motion will be opposed. Neither Plaintiffs nor the Defendant oppose this motion. A separately filed certificate has been submitted that sets forth in detail the efforts that were taken to comply with the obligations created by LCivR. 7.1(d).

WHEREFORE, 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 enter an order that permits it 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: September 5, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 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: September 5, 2019

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

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CONCISE STATEMENT

Pursuant to W.D. Mich. 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. Both the Plaintiffs and the Defendant have concurred in the permissive intervention by Voters Not Politicians.



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. Proposed 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.

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.* Proposed 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, Proposed 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. 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

Plaintiffs in the case at bar, the Michigan Republican Party and a small handful of individuals, now challenge the amendment to Michigan's Constitution that was created with the approval of Proposal 18-2. (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 those who have a conflict of interest that prevents them from serving on the Independent Redistricting Commission. In addition, Plaintiffs alleged that because applicants for the Commission are permitted to self-designate their party affiliation (if any), the Michigan Republican Party has lost the ability to designate its own “standard bearer” for the party who might serve on the Commission. (ECF

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.

No. 1, PageID#16-17, ¶72). Voters Not Politicians seeks permission to intervene in this matter in order to demonstrate the many flaws in Plaintiffs' 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.

In a companion case, *Daunt v. Benson*, Case No. 19-cv-00614, this Court recently granted leave to Voters Not Politicians to intervene in that matter by order dated August 28, 2019. (ECF No. 23, Case 1:19-cv-00614-JTN-ESC). The case at bar and *Daunt* undeniably share common questions of law and fact. As such both cases were assigned to the same judge, the Honorable Janet T. Neff, and in all likelihood, will soon be consolidated.

In *Daunt*, the Court concluded in a well-reasoned opinion that "having VNP participate as a party in [that] action rather than merely as amicus [was] preferable" and that the participation by Voters Not Politicians as a party "will be helpful to the Court in analyzing the merits of Plaintiffs' claims." (ECF No. 23, PageID#265, Case 1:19-cv-00614-JTN-ESC). Voters Not Politicians respectfully suggest that permissive intervention should be granted in the case at bar for the same reasons.

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 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 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 –

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).

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).

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). Notably, neither Plaintiffs nor the Defendant Secretary of State oppose this motion. In addition, 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 or as otherwise ordered by the Court. 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.

In short, Voters Not Politicians has presented a defense that shares common questions of law and fact with the main action. The demands of Rule 24(b) 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.
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Count MI Vote, d/b/a Voters Not Politicians

Dated: September 5, 2019

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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 1,649 which is less than the 4,300-word limit for a brief filed in support of a nondispositive motion.

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