UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA, Plaintiff, v. JOCELYN BENSON, in her official capacity as the Michigan Secretary of State, Defendant.	Civil Action No. 3:19-cv-13188-RHC-APP Hon. Robert H. Cleland

PLAINTIFF'S RESPONSE TO MOTION TO INTERVENE

The Michigan House of Representatives and Michigan Senate (collectively, the "Legislature") have moved to intervene in this case, but their Motion should be denied because they are not entitled to intervention as of right under Federal Rule of Civil Procedure 24(a)(2) or permissive intervention under Rule 24(b).

The Legislature's request to intervene as of right fails for two independent reasons. First, the Legislature has not identified a substantial interest in this litigation that will be impaired absent intervention. *See Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 343 (6th Cir. 2007). Its Motion cites only a general desire to enforce Michigan's election laws and prevent fraud, but such generic interests are shared by the State and its citizens, including the Secretary of State (the "Secretary") and the Attorney General, who are tasked with defending this lawsuit. *See Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007); *League*

of Women Voters of Mich. v. Johnson, No. 2:17-cv-14148, 2018 WL 3861731, at *1 (E.D. Mich. Aug. 14, 2018). The Legislature's alleged interests are therefore insufficient to demonstrate a right to intervene.

Second, the Legislature's alleged interests are already adequately protected by other State officials. It is the Secretary's duty to enforce the challenged laws and the Attorney General's duty to defend them in a manner consistent with the State's constitutional obligations. *See* MICH. COMP. LAWS § 14.29. The Legislature merely speculates, but provides no reason to suggest, that the Secretary and Attorney General will not carry out these duties.

Furthermore, the Legislature is not entitled to permissive intervention because its involvement in this case would only prolong litigation proceedings, multiply litigation costs, and inject unnecessary partisan disputes between separate branches of government. *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019) (affirming denial of permissive intervention where the legislature's participation "would likely infuse additional politics into an already politically-divisive area of the law and needlessly complicate this case").

For these and other reasons explained more fully in the brief filed herewith, the Legislature's Motion to Intervene should be denied.

Date: December 11, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2019, the foregoing was filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,

s/ *Marc E. Elias*

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SOUTHERN DIVISION

PRIORITIES USA,

Plaintiff,

v.

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

Defendant.

Civil Action No. 3:19-cv-13188-RHC-APP

Hon. Robert H. Cleland

PLAINTIFF'S BRIEF IN SUPPORT OF RESPONSE TO MOTION TO INTERVENE

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ISSUES PRESENTED

The Michigan House of Representatives and Michigan Senate (collectively, the "Legislature") have moved to intervene in this case, which challenges the State's signature matching laws for absentee ballots and ballot applications as unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution. Plaintiff Priorities USA opposes the Legislature's Motion to Intervene.

1. The Legislature's request for intervention as of right should be denied because it asserts only a generalized desire to prevent fraud and enforce the enacted State laws at issue in this lawsuit, which is insufficient to demonstrate the substantial interest required in the Sixth Circuit; the Legislature's generic interests are in any event adequately protected by the Secretary of State and Attorney General who are tasked with defending the State's interests in this lawsuit; and the Legislature's belief that the Secretary and Attorney General will not defend this case relies entirely on unfounded speculation.

2. The Legislature's request for permissive intervention should be denied because its participation in this case will unduly delay this time-sensitive proceeding, multiply litigation costs, and inject interbranch political disputes into a nonpartisan matter.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Bradley v. Milliken, 828 F.2d 1186 (6th Cir. 1987)

Coal. to Defend Affirmative Action v. Granholm, 501 F.3d 775 (6th Cir. 2007)

League of Women Voters of Mich. v. Johnson, No. 2:17-cv-14148, 2018 WL 3861731 (E.D. Mich. Aug. 14, 2018)

Planned Parenthood of Wis., Inc. v. Kaul, 942 F.3d 793 (7th Cir. 2019)

Providence Baptist Church v. Hillandale Comm., Ltd., 425 F.3d 309 (6th Cir. 2005)

Newdow v. U.S. Congress, 313 F.3d 495 (9th Cir. 2002)

Northland Family Planning Clinic, Inc. v. Cox, 487 F.3d 323 (6th Cir. 2007)

Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983).

UAW v. GMC, No. 05-CV-73991-DT, 2006 WL 334283 (E.D. Mich. Feb. 13, 2006)

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INTRODUCTION

The Legislature's Motion to Intervene hinges entirely on a false, legally-flawed assumption: that the Secretary of State will not defend the Signature Matching Regime because of her political affiliation.[1] Yet the Motion does not identify a single instance in which the Secretary has ever stated or even indicated that she will not defend the statutes challenged in this lawsuit. The Legislature's assumptions are premature and ultimately misplaced because under Michigan law, the Secretary is charged with implementing election laws, and the Attorney General with defending them, in accordance with the State's constitutional obligations. And beyond its own conjecture, the Legislature offers nothing to suggest that the Defendant will not carry out her official duties.

Nor has the Legislature identified a substantial interest in this litigation. It cites a generic desire to enforce election laws and prevent fraud—an interest it shares with just about everybody involved in the political process, including the parties currently litigating this case—but its argument "is in tension with the principle of separation of powers" because "[r]epresenting the State of Michigan in court . . . is an executive function." *League of Women Voters of Mich. v. Johnson*, No. 2:17-cv-14148, 2018 WL 38617131, at *1 (E.D. Mich. Aug. 14, 2018). Intervention as of right requires much more than the generalized policy preferences and unfounded distrust of Democratic officials that the Legislature has expressed in its Motion. And a proposed intervenor cannot satisfy its burden under Rule 24 with unfounded

[1] This response incorporates the definition of "Signature Matching Regime" set forth in Plaintiff's Complaint. *See* ECF No. 1, at ¶ 2.

accusations of forum-shopping or extraneous criticisms of other ongoing voting rights lawsuits—as the Legislature attempts to do here—none of which informs the Court's analysis on any of the legal issues relevant to the Legislature's Motion.

Under the applicable legal standards, the Legislature fails to demonstrate that it is entitled to intervene, and its participation in this case would only replicate the efforts of State officials currently tasked with defending State laws; increase litigation costs and delay—which is especially harmful in election law cases where timely resolution of the disputed election practices or procedures is essential—and inject unnecessary and unbridled partisan disputes (as the Motion already does) into otherwise politically neutral litigation. These factors counsel against intervention, whether permissive under Rule 24(b) or as of right under Rule 24(a)(2); therefore, the Legislature's Motion should be denied.

LEGAL STANDARD

A party seeking intervention as of right under Federal Rule of Civil Procedure 24(a)(2) must demonstrate that: (1) its motion to intervene is timely; (2) it has "a substantial legal interest in the subject matter of the case"; (3) its ability to protect its interest "may be impaired in the absence of intervention"; and (4) the defendant already before the court "may not adequately represent its interest." *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 343 (6th Cir. 2007) (citation omitted); Fed. R. Civ. P. 24(a)(2). A proposed intervenor's motion must be denied if it fails to meet its burden to prove any one of these criteria. *See Stupak-Thrall v. Glickman*, 226 F.3d 467, 471 (6th Cir. 2000) ("Failure to meet [any] one of the [four] criteria will require that the motion to intervene be denied.") (citation omitted).

A party seeking permissive intervention must establish that its motion is timely and must allege at least one common question of law or fact. *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005) (citing *Michigan State AFL–CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir.1997)). But even if both requirements are met, a district court has the discretion to deny permissive intervention after considering the potential for undue delay and prejudice to the original parties, along with any other relevant factors. *Id.* Here, as set forth below, the Legislature has failed to meet either test for intervention, and thus its motion should be denied.

ARGUMENT

I. The Legislature is not entitled to intervene as of right.

The Legislature's request to intervene as of right should be denied for two reasons: first, the Legislature does not identify a substantial legal right that will be impaired absent intervention, nor does it point to a single statement, act, or litigation decision relating to this lawsuit that suggests the Secretary or Attorney General will not adequately protect the Legislature's generalized interest in enforcing the law. Indeed, it is the Attorney General's duty to do so. *See* MICH. COMP. LAWS § 14.29. Second, the Legislature asks this Court to infer prematurely (and inappropriately) that the Secretary and Attorney General will not defend this lawsuit because they are Democrats—a charge that is grounded entirely in conjecture and in any event falls well short of the pre-requisites to demonstrate a right to intervene under Rule 24(a)(2). As a result, the Legislature is not entitled to intervene as of right.

A. The Legislature has not identified a substantial legal interest that will be impaired absent intervention.

The Legislature demands intervention in this lawsuit in order to advance two related, generalized interests—(1) to defend a law that it enacted, and (2) ensure that votes are cast in Michigan without the taint of fraud, Mot. at 10-11—both of which are variants of the same undifferentiated desire to enforce State laws, which the Sixth Circuit has found insufficient for intervention. *See Northland*, 487 F.3d at 346.

As the Sixth Circuit recognized in *Coalition to Defend Affirmative Action v. Granholm*, a "general ideological interest" in enforcing State laws "amounts to only a generic interest shared by the entire Michigan citizenry" and "cannot be deemed substantial." 501 F.3d 775, 782 (6th Cir. 2007). In so holding, the court noted that without such limitations on the legal interest required for intervention, "Rule 24 would be abused as a mechanism for the over-politicization of the judicial process." *Id*. at 782-83; *see also Northland*, 487 F.3d at 346 (holding that organization's interest pertained to enforceability of a statute in general, which was not "cognizable as a substantial legal interest sufficient to require intervention as of right). In other words, to avoid the type of political wrangling that the Legislature is engaged in here, the Sixth Circuit has demanded more than a general desire to see laws upheld—which necessarily includes the desire to prevent fraud—when applying the "substantial interest" requirement. *See Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 251 (D.N.M. 2008) (citation omitted) (holding interest in preventing registration fraud is insufficient for intervention because it is shared with "almost everyone else").

This rule applies with equal force here notwithstanding the Legislature's role in enacting the challenged laws. "[A] public law, after enactment, is not the [legislature's] any more than it is the law of any other citizen or group of citizens" who are governed by it, and a legislature's interest in defending a law is no less generic than the interests of other citizens in seeing laws enforced. *Newdow v. U. S. Congress*, 313 F.3d 495, 499-500 (9th Cir. 2002) (rejecting the U.S. Senate's argument that it had a significant, protectable interest in defending a statute that it had passed because that interest only constituted "generalized harm."); *see also Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 317 (6th Cir. 2005) (holding that "[a]ny substantial legal interest held by 'the duly authorized committee for a referendum which circulated the referendum petitions' was terminated when the referendum was held and the results certified," and the committee was not entitled to intervene as of right).

The Seventh Circuit's recent ruling in *Planned Parenthood of Wisconsin, Inc. v. Kaul*, 942 F.3d 793 (7th Cir. 2019) is also instructive here. In that case, the court rejected the Legislature's suggestion that its involvement in enacting the challenged law automatically conferred a substantial interest in defending the law and affirmed the denial of the Wisconsin Legislature's motion to intervene as a defendant. *See id.* at 798. The court also held that because the challenged regulations were already enacted—and some had existed for decades—"the Legislature-as-legislature ha[d]

no interest in th[e] case under. . . Rule 24."[2] *Id.* at 798; *see also id.* (describing as a "wise concession" the Wisconsin Legislature's decision to drop its argument that it had a "unique institutional interest[]" as a legislature); *cf. Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019) ("This Court has never held that a judicial decision invalidating a state law as unconstitutional inflicts a discrete, cognizable injury on each organ of government that participated in the law's passage."). And the same is true of the Legislature's interest in this lawsuit, which concerns a Signature Matching Regime that has already been enacted.

Tellingly, the Legislature does not point to a single authority that adopts its theory and it ignores Sixth Circuit precedent which makes clear that an interest in enforcing a statute "is greatly diminished" when state officials have an ongoing responsibility to enforce and defend the law. *See Coal. to Defend Affirmative Action*, 501 F.3d at 781; *Northland*, 487 F.3d at 346. The authorities cited in the Legislature's brief are inapposite for that same reason: in each case, the state executive charged with enforcing the law refused to provide a defense. *See Karcher v. May*, 484 U.S. 72, 75 (1987) (declining to vacate the lower court's judgment for lack of a proper defendant because the New Jersey Legislature intervened "[w]hen it became apparent that neither the Attorney General nor the named defendants would defend the statute"); *INS v. Chadha*, 462 U.S. 919, 940 (1983) ("[D]efendant

[2] The court ultimately assumed, without deciding, that a Wisconsin statute which purported to grant the Legislature a right to participate in certain actions also conferred an interest in the lawsuit, but held that the interest was adequately protected by the Attorney General. *Planned Parenthood of Wis.*, 942 F.3d at 798. No such provision exists under Michigan law.

charged with enforcing the statute[] agrees with plaintiffs that the statute is inapplicable or unconstitutional.") (citations omitted); *Adolph Coors Co. v. Brady*, 944 F.2d 1543, 1546 (10th Cir. 1991) (explaining that the United States House of Representatives was allowed to intervene previously because the defendants had admitted that the challenged statutes were unconstitutional); *In re Benny*, 812 F.2d 1133, 1135 (9th Cir. 1987) (allowing intervention of the U.S. Senate and House when the Department of Justice agreed with the plaintiff that the statute was unconstitutional); *Ameron, Inc. v. U. S. Army Corps of Eng'rs*, 787 F.2d 875, 888, n.8 (3d Cir. 1986) (holding Congress had standing to intervene because the Army defendant took the position that the challenged statute was unconstitutional under certain circumstances); *Windsor v. United States*, 797 F. Supp. 2d 320, 324 (S.D.N.Y. 2011) (allowing intervention by the House when the defendant Department of Justice "made clear that it w[ould] not defend the constitutionality" of the challenged statute). And *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999 (6th Cir. 2006), while not involving the intervention of a legislative body, is similarly distinguishable; the court there allowed the State of Ohio to intervene through its Attorney General because, as the Legislature acknowledges, "the Ohio Secretary of State[] desire[d] not to defend the Ohio law." Mot. at 12. None of these cases support the Legislature's asserted interest in this lawsuit, where other State officials are defending the challenged law.

To the extent the Legislature advances an interest in protecting its institutional integrity, *see* Mot. at 10, this argument also fails because Plaintiff's challenge of an already-enacted statute does not implicate any institutional rights. *See Tennessee v.*

U.S. Dep't of State, 931 F.3d 499, 514 (6th Cir. 2019) (holding state legislature suffered no institutional injury when it did not experience "disruption of the legislative process, a usurpation of its authority, or nullification of anything it has done," and was still able to pass appropriations bills); *see also Planned Parenthood of Wis.*, 942 F.3d at 798 (rejecting argument that the Wisconsin Legislature's "votes would be nullified by an adverse ruling" regarding abortion regulations it passed). And the Legislature's reliance on *Powell v. McCormack*, 395 U.S. 486, 548 (1969), which did not even involve intervention, is misplaced. In *Powell*, the Court examined the challenged seating denial of a duly elected House member due to his prior illegal actions—not the enforcement of an already-enacted law—and held that the lower court erred in dismissing his complaint. *See id*. The Court noted that "Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds." *Id.* But nowhere in *Powell*—or in any other authority cited by the Legislature—does the Court recognize an institutional interest in preserving already-enacted statutes.

Accepting the Legislature's arguments here would mean that virtually all legislative bodies would have a right to intervene in every case challenging an enacted law. Recognizing the potential for abuse that such an expansive interpretation of Rule 24 would invite upon the judicial process, the Sixth Circuit has enforced clear limitations on the types of legal interests that warrant intervention as of right, and has expressly rejected the generic right to enforce laws (and, by

extension, to prevent fraud)—which the Legislature relies upon here—in order to avoid the "over-politicization of the judicial process." *Northland*, 487 F.3d at 346. The task of defending the State and enforcing its laws has been entrusted to the State's executive branch, *see League of Women Voters*, 2018 WL 3861731, at *1, and the Legislature's generalized interests in implementing the current Signature Matching Regime and preventing fraud are not sufficiently substantial to support intervention as of right. *See Coal. to Defend Affirmative Action*, 501 F.3d at 782.

B. The Legislature's purported interests are adequately represented by the Secretary.

The Legislature's request to intervene as of right should be denied for the further independent reason that the Secretary will adequately represent its interests, and the Legislature has not presented any plausible argument that suggests otherwise. Instead, the Legislature's motion: (1) claims that the Secretary has signaled that she will not defend the Signature Matching Regime, which is incorrect; (2) suggests that the Secretary's political affiliation presents a conflict of interest—even though courts have rejected a political party litmus test in examining the adequacy of representation; and (3) points to the Secretary's previous settlements in two unrelated lawsuits—even though courts have rejected similar, erroneous attempts to equate a settlement with a failure to defend.

These arguments fail because the duty to defend State laws is assigned to other State officials, and the Legislature's interests in enforcing such laws and preventing fraud are already accounted for in this lawsuit. In the Secretary's own public statements—as opposed to the Legislature's speculation—she has indicated that

among her objectives is ensuring that Michigan's elections are free of fraud. *See, e.g.*, Benson for Sec'y of State, *Benson's Plan for Secretary of State*, https://votebenson.com/issues/ ("Benson. . . will toughen penalties for those who commit election fraud"); s*ee also* MICH. COMP. LAWS § 14.29 ("It shall be the duty of. . . the secretary of state. . . to prosecute and defend all suits relating to matters connected with their departments.").

Under these circumstances, where the proposed intervenor and the defendant share the same ultimate objective, the Sixth Circuit presumes adequate representation. *See Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987); *Am. Ass'n of People with Disabilities*, 257 F.R.D. at 253 (finding adequate representation where the Secretary was "representing the public interest in fair elections free of fraud"). The Legislature cannot simply rely on its distrust of state officials—or settlements by the Secretary in prior unrelated cases—to satisfy this element; indeed, in order to overcome the presumption of adequate representation, it must demonstrate: (1) collusion between the representatives and an opposing party; (2) that the representative has an interest adverse to the proposed intervenor, and (3) that the representative has failed in fulfilling its duty. *Bradley*, 828 F.2d at 1192 (citations omitted). The Legislature's Motion makes no such showing.

Having failed to establish any of the factors that rebut the presumption of adequate representation, the Legislature asks the Court to infer that the Secretary will capitulate based on her public statements generally opposing voter suppression and unconstitutional restrictions on the right to vote. None of these statements, however, support the Legislature's assumption that the Secretary will not defend the

Signature Matching Regime, and one would hope that the Legislature shares the same interest in preventing voter suppression. But putting aside the Legislature's troubling suggestion that a state official's efforts to protect the franchise and "guard our democracy" is inconsistent with the Legislature's objectives, even the Legislature admits later in its Motion that the Secretary "ha[s] *not taken a public position* on the particular statute targeted in this case." *See* Mot. at 13 (emphasis added). In other words, the Legislature's claim that the Secretary will not defend the challenged laws is entirely speculative and its Motion should be denied for that reason alone. *See League of Women Voters of Mich.*, 2018 WL 3861731, at *1 (finding legislators' motion to intervene was "premature" because their "argument presupposes events that have not yet come to pass").

This Court should also reject the Legislature's reliance on the Secretary's political affiliation as grounds for intervention. "[T]he mere change from one [] administration to another, a recurrent event in our system of government, should not give rise to intervention as of right in ongoing lawsuits." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). Courts have repeatedly denied intervention to legislative bodies, individual legislators, and other parties that attempt to invoke political affiliation as a proxy for adequate representation. *See, e.g., Planned Parenthood of Wis.*, 942 F.3d at 796 (affirming denial of motion to intervene as of right of the Republican legislature, when the defendant was a Democratic Attorney General, because "the Legislature did not demonstrate that the Attorney General [wa]s an inadequate representative of the State's interest absent a showing he is acting in bad faith or with gross negligence"); *Miracle v. Hobbs*, No.

CV-19-04694-PHX-SRB, 2019 WL 5690051, *3 (D. Ariz. Sept. 20, 2019) (finding that "Proposed Intervenors must do more than allege—and superficially at that—partisan bias" to establish that the defendant will not adequately represent their interests); *United States v. Alabama*, No. 2:06-cv-392-WKW, 2006 WL 2290726, at *5 (M.D. Ala. Aug. 8, 2006) (rejecting argument of proposed Democratic intervenors that the defendant would not adequately represent them because "the defendants are represented by a Republican Attorney General and the plaintiff is aligned with the Republican Party"). And this case is no different.

Finally, the Secretary's settlement of prior lawsuits challenging unrelated Michigan laws and asserting different legal theories is irrelevant to the inquiry before the Court in this case, which concerns the constitutionality of Michigan's Signature Matching Regime. Yet even if the prior claims were related, the Sixth Circuit has made clear that a disagreement over whether to settle a case at bar does not establish inadequate representation. *See Bradley*, 828 F.2d at 1192, 1193 (rejecting the notion that agreeing to a settlement meant that the defendant "had failed in its duty to represent [the proposed intervenors'] interests"); *see also L.A. SMSA v. City of L.A.*, No. LA CV16-04954 JAK (SKx), 2019 WL 4570012, at *8 (C.D. Cal. July 31, 2019) (rejecting the argument that a city's agreement to a conditional settlement meant that it would not adequately represent the proposed intervenor's interests); *UAW v. GMC*, No. 05-CV-73991-DT, 2006 WL 334283, at *4 (E.D. Mich. Feb. 13, 2006) (rejecting argument that the Secretary's discussion of a settlement with the plaintiff demonstrated that the proposed intervenor's interest would be impaired absent intervention) (Cleland, J.). While the prospect of a settlement in any litigation

provides insufficient grounds for intervention to begin with, the Legislature's reliance on settlements in prior unrelated cases involving different plaintiffs is even less probative and provides no meaningful insight on the legal issues before the Court.

In sum, the Legislature is not entitled to intervene because its interests are insubstantial and, in any event, are adequately represented by the State officials tasked with defending State laws. The Federal Rules of Civil Procedure express a preference for the State to speak in a single voice and counsel against the unnecessary superfluous representation of the State that the Legislature's Motion seeks, and which courts disfavor. *See, e.g.*, *Planned Parenthood of Wis.*, 942 F.3d at 796, 800; *Ohio State Conf. of the NAACP v. Husted*, No. 2:14-cv-404, 2014 WL 12526627, at *1 (S.D. Ohio July 30, 2014) (holding "the General Assembly has failed to convince this Court that its position in support of SB 238 is ultimately any different than those advocated by the Attorney General and Secretary of State or that the General Assembly's presence in this case would not merely be superfluous to the other Defendants"). The Court should therefore deny the Legislature's request to intervene as of right.

II. The Court should deny permissive intervention.

The Legislature's request for permissive intervention relies on the same arguments it advances to support intervention as of right, *see* Mot. at 15-16; but as explained above, intervention—whether as of right or permissive—is inappropriate because the Legislature lacks a substantial legal interest in this action, and the interests it does assert are adequately represented by the Secretary. *See Coal. to*

Defend Affirmative Action, 501 F.3d at 784 ("[C]onclusions that the proposed intervenors lacked a substantial legal interest in the lawsuit, and that the proposed intervenors were adequately represented by existing parties, w[ere] a sufficient analysis of the relevant criteria required by Rule 24(b)."); *see also Bay Mills Indian Cmty. v. Snyder*, 720 F. App'x 754, 759 (6th Cir. 2018) (affirming denial of permissive intervention upon consideration of proposed intervenors' interest and adequacy of representation); *Katebian v. Missaghi*, No. 18-13379, 2019 WL 6210691, at *5 (E.D. Mich. Nov. 21, 2019) (same). Furthermore, allowing the Legislature to intervene here would only delay the proceedings, increase litigation costs, and embroil this Court in partisan, political power struggles between separate branches of government that are ill-suited for federal court adjudication.

A. Permitting the Legislature to intervene would unduly delay the resolution of this case.

The Legislature's involvement in this case would complicate and extend litigation proceedings, "creat[ing] a significant likelihood of undue delay and prejudice to the original parties." *League of Women Voters of Mich.*, 2018 WL 3861731, at *2. The Court and litigants will be forced to contend with multiple sets of counsel asking often duplicative questions at depositions, propounding duplicative discovery, and presenting evidence to obtain the same outcome (including negotiating stipulated facts, examining witnesses, marking trial exhibits, etc.). *See Michigan*, 424 F.3d at 445 (denying permissive intervention due to potential for prolonged discovery); *Moore v. Johnson*, No. 14-11903, 2014 WL 2171097, *3 (E.D. Mich. May 23, 2014) (denying permissive intervention because

it would result "in substantial duplication of efforts and undermined the efficiency of these time-sensitive proceedings"). The Legislature has not and cannot justify these added complications with any identifiable corresponding benefit to the adjudication of this matter.

These same concerns have led the Eastern District of Michigan to deny permissive intervention when the proposed additional parties would have "inhibit[ed] . . . a prompt resolution by th[e] Court." *Coal. to Defend Affirmative Action v. Granholm*, 240 F.R.D. 368, 377 (E.D. Mich. 2006). The court noted that "[a]dditional parties no doubt could seek to file more claims, amend pleadings even further, and inject issues that may not lead directly to a resolution of the issues circumscribed by the present pleadings." *Id.* Indeed, the Legislature's intervention here would create an "intractable procedural mess that would result from the extraordinary step of allowing a single entity, even a state, to have two independent parties simultaneously representing it." *Planned Parenthood of Wis.*, 942 F.3d at 801. The Secretary and the Legislature "could take inconsistent positions on any number of issues beyond the decision whether to move to dismiss, from briefing schedules, to discovery issues, to the ultimate merits of the case." *Id.* And that is precisely what the Legislature seeks to do; as discussed above, the Legislature has expressed its disagreement with the Secretary's litigation strategy in prior cases. *See* Mot. at 11-14; *League of Women Voters of Mich.*, 2018 WL 3861731, at *2 (finding that because proposed intervenors' "litigation strategy could conflict with that of the executive, [their] intervention could be prejudicial to the executive's representation of state interests.").

The added time and expense that the Legislature's involvement inevitably brings to this lawsuit will prejudice the existing parties and will "outweigh[] any potential prejudice to the [Legislature] if intervention is denied given the overlapping interests" of the Legislature and the Secretary. *Ohio State Conference of the NAACP*, 2014 WL 12526627, at *2. And when combined with the fact that the Legislature lacks "a substantial legal interest in the lawsuit, and [it is] adequately represented by existing parties," permissive intervention here is unwarranted. *Coal. to Defend Affirmative Action*, 501 F.3d at 784; *see also Planned Parenthood of Wis.*, 942 F.3d at 804 (affirming denial of permissive intervention, when "the value the Legislature added to the Attorney General's representation of the State was outweighed by the practical complications that could have resulted from the State's having two representatives at the same time").

B. The Legislature's intervention would unnecessarily inject partisan politics into this dispute and derail this litigation.

The partisan rhetoric in the Legislature's motion also leaves little doubt that its intervention in this case will cause partisan politics to become the focal point of this legal dispute. In similar contexts, courts have denied permissive intervention, recognizing the federal courts' obligation "to take pains to avoid entering the fray of interbranch political controversies." *Buquer v. City of Indianapolis*, No. 1:11-cv-00708-SEB-MJD, 2013 WL 1332137, at *7 (S.D. Ind. Mar. 28, 2013); *see also Planned Parenthood of Mid–Mo. & E. Kan., Inc. v. Ehlmann*, 137 F.3d 573, 578 n.5 (8th Cir. 1998) ("Federal courts should exercise [] caution when, as in this case, there exists a political interbranch controversy between state legislators and a state

executive branch concerning implementation of a bill."); *Planned Parenthood of Wis.*, 942 F.3d at 803 (affirming denial of permissive intervention in which the legislature's intervention "would likely infuse additional politics into an already politically-divisive area of the law and needlessly complicate this case").

Federal courts throughout the country have recognized that the risk of political wrangling is high in voting rights cases, and that "[i]n cases like this one, where [a plaintiff] challenge[s] state legislation, the court should evaluate requests to intervene with special care, lest the case be swamped by extraneous parties who would do little more than reprise the political debate that produced the legislation in the first place." *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015); *see also id.* ("Rule 24 is not designed to turn the courtroom into a forum for political actors who claim ownership of the laws that they pass.").

Ultimately, this lawsuit is about protecting the right to vote and preventing the Signature Matching Regime's continued unconstitutional infringement on that right—an issue that should transcend the partisan interests that the Legislature attempts to inject into this case. It is the routine business of federal courts to decide whether state laws pass constitutional muster, and such cases are regularly litigated (and defended) by state officials of various political affiliations without input from the state's legislative branch. This case is no different. Like any other entity in the State, the Legislature is free to monitor proceedings and may seek leave to participate as *amici curiae* if it wishes to be separately heard. *See Moore*, 2014 WL 2171097, at *3 (denying permissive intervention and allowing participation as amicus curiae to "strike[] the proper balance between maintaining efficiency and

allowing [other parties] to be heard when appropriate"). But the Court should not allow the Legislature to intervene in this case, where doing so would only delay and complicate proceedings while providing no meaningful benefit to the Court, the existing parties, or the interests of justice.

CONCLUSION

For the reasons set forth above, the Legislature's Motion to Intervene should be denied.

Date: December 11, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2019, the foregoing was filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Respectfully submitted,

s/ *Marc E. Elias*