

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

MICHAEL GONIDAKIS et al.,

Plaintiffs,

THE OHIO ORGANIZING  
COLLABORATIVE, COUNCIL ON  
AMERICAN-ISLAMIC RELATIONS,  
OHIO, OHIO ENVIRONMENTAL  
COUNCIL, SAMUEL GRESHAM JR.,  
AHMAD ABOUKAR, MIKAYLA LEE,  
PRENTISS HANEY, PIERRETTE  
TALLEY, and CRYSTAL BRYANT,

Proposed Intervenor-Plaintiffs,

v.

FRANK LAROSE, in his official capacity,

Defendant.

Case No. 2:22-cv-00773

Judge Algenon L. Marbley

Magistrate Judge Elizabeth Preston Deavers

**MOTION TO INTERVENE**

**OF THE OHIO ORGANIZING COLLABORATIVE, ET AL.**

The Ohio Organizing Collaborative (the “OOC”), Council on American-Islamic Relations, Ohio (“CAIR-Ohio”), Ohio Environmental Council (“OEC”), Samuel Gresham Jr., Ahmad Aboukar, Mikayla Lee, Prentiss Haney, Pierrette Talley, and Crystal Bryant (collectively, the “OOC Petitioners”) hereby move, pursuant to Fed. R. Civ. P. 24, to intervene in the above-captioned matter. Pursuant to Fed. R. Civ. P. 24(c), the attached Memorandum in Support states the grounds for intervention. This Motion is also accompanied by a proposed complaint in intervention (Ex. A), as well as a proposed order granting intervention. The OOC Petitioners further provide notice of their intent to submit forthwith additional filings opposing

the Gonidakis Plaintiffs' premature request for a three-judge panel and moving to stay this case on the basis of abstention.

Before filing this motion, counsel for the OOC Petitioners contacted counsel for the existing plaintiffs and defendants in this case via email to determine whether the parties would oppose this motion to intervene. Counsel for Secretary of State Frank LaRose stated that Defendant had no objection to the motion. Counsel for Plaintiffs Gonidakis et al. did not respond by the time of filing this motion.

Dated: February 24, 2022

Alicia L. Bannon\*  
Yurij Rudensky\*  
Michael Li\*  
Harry Black\*  
Brennan Center for Justice  
at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
(212) 463-7308 (Facsimile)  
alicia.bannon@nyu.edu

*Attorneys for Proposed Intervenor-  
Plaintiffs The Ohio Organizing  
Collaborative, et al.*

*\*Pro Hac Vice Motion  
Forthcoming*

Respectfully submitted,

/s/ Peter M. Ellis  
Peter M. Ellis (Ohio Bar No. 0070264)  
*Counsel of Record*  
Reed Smith LLP  
10 South Wacker Drive, 40th Floor  
Chicago, IL 60606  
(312) 207-1000  
(312) 207-6400 (Facsimile)  
pellis@reedsmith.com

Brian A. Sutherland\*  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
(415) 543-8700  
(415) 391-8269 (Facsimile)  
bsutherland@reedsmith.com

Ben R. Fliegel\*  
Reed Smith LLP  
355 South Grand Avenue, Suite 2900  
Los Angeles, CA 90071  
(213) 457-8000  
(213) 457-8080 (Facsimile)  
bfliegel@reedsmith.com

### MEMORANDUM IN SUPPORT

The OOC, CAIR-Ohio, OEC, Samuel Gresham Jr., Ahmad Aboukar, Mikayla Lee, Prentiss Haney, Pierrette Talley, and Crystal Bryant—*i.e.*, the OOC Petitioners—commenced and prevailed in an apportionment case before the Ohio Supreme Court, *The Ohio Organizing Collaborative v. Ohio Redistricting Commission*, No. 2021-1210, which remains the subject of ongoing proceedings. The OOC Petitioners seek to intervene in this case to protect their interests in that apportionment case and, if necessary at a later time, to ensure that they are able to cast votes in state legislative districts that are properly apportioned and fully compliant with both federal and state law. Accordingly, this Court should grant this motion to intervene and permit the OOC Petitioners to file the complaint in intervention submitted herewith.

### BACKGROUND

Much of the relevant background for this motion is set forth in the memorandum of law in support of intervention filed by the Bennett Petitioners in this action. (ECF No. 12, at pp. 1–7) A condensed version of that history, as relevant to the OOC Petitioners, follows here.

The OOC Petitioners commenced an apportionment case against the Ohio Redistricting Commission and its members in September 2021, after the Commission adopted a General Assembly district plan that violated 2015 amendments to the Ohio Constitution. Their complaint, like the separate complaint filed by Bria Bennett, et al., and another complaint filed by the League of Women Voters, et al., alleged that the plan violated Sections 6(A) and 6(B) of Article XI of the Ohio Constitution. The OOC Petitioners also alleged that the plan violated Ohio’s equal protection clause, and therefore also violated Article XI’s provision that requires compliance with the Ohio Constitution as a redistricting standard. *See* Ohio Constitution, Article XI, Section 3(B)(2). On January 12, 2022, the Ohio Supreme Court ruled in favor of all the

challengers (Nos. 2021-1193, 2021-1198, and 2021-1210), invalidated the plan, and ordered the Commission to adopt a new one. *See League of Women Voters of Ohio v. Ohio Redistricting Commission*, --Ohio St. 3d--, 2022-Ohio-65.

On January 22, 2022, the Commission approved another General Assembly district plan, after which the OOC Petitioners and other challengers filed objections to the amended plan. On February 7, 2022, the Ohio Supreme Court again sided with the OOC Petitioners and again declared that the plan was invalid. The Court ordered the Commission to adopt a new plan by February 17. The Commission failed to comply with the Ohio Supreme Court's order, and instead declared an "impasse" in a document filed in that court on February 18. The OOC Petitioners asked the Ohio Supreme Court to issue an order directing the Commission and individual commissioners to show cause why they should not be held in contempt of court for failure to comply with the order to adopt new maps.

The very same day, on February 18, the Ohio Supreme Court filed a decision stating, "It is ordered by the court, sua sponte, that respondents show cause by filing a response with the clerk of this court no later than 12:00 p.m. on February 23, 2022, why respondents should not be found in contempt for failure to comply with this court's February 7, 2022 order." Even before the Commission filed its notice of "impasse," the Gonidakis Plaintiffs commenced this action (S.D. Ohio Case No. 2:22-cv-00773). On February 23, the Commission and individual respondents submitted their responses. The Commission stated that it "is continuing in its efforts to adopt a new compliant plan." Ohio Redistricting Commission's Response to Order to Show Cause, at 14, Nos. 2021-1193, 2021-1198, 2021-1210 (Feb. 23, 2022).

On February 24, the Ohio Supreme Court ordered the Commissioners to appear in person on March 1 for a hearing on the Court's February 18 show cause order. Later in the same day,

after 6:00 p.m., the Commission adopted new state House and Senate maps by a 4-3 vote. The Ohio Supreme Court has not yet had an opportunity to review the Commission's third plan or any objections to that plan.

## **ARGUMENT**

### **I. The OOC Petitioners Are Entitled to Intervene As of Right**

A court must “on timely motion . . . permit anyone to intervene” where the person “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a); see *Coalition to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 779-80 (6th Cir. 2007).

Under Rule 24(a), an intervenor must establish “(1) that the motion to intervene was timely; (2) that the intervenor has a substantial legal interest in the subject matter of the case; (3) that the intervenor’s ability to protect that interest may be impaired in the absence of intervention; and (4) that the parties already before the court may not adequately represent the intervenor’s interest.” *State v. United States Env’t Prot. Agency*, 313 F.R.D. 65, 68 (S.D. Ohio 2016) (citing *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 343 (6th Cir. 2007)). When “considering whether a proposed intervenor satisfies the four-part test, the factual circumstances considered under Rule 24(a) should be ‘broadly construed in favor of potential intervenors.’” *Davis v. Lifetime Cap., Inc.*, 560 F. App’x 477, 489–90 (6th Cir. 2014) (quoting *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991)). As the OOC Petitioners will demonstrate, this motion is timely, the OOC Petitioners have a substantial interest in the subject matter of this action, their ability to protect their interest may be impaired without intervention, and the existing parties cannot protect the OOC Petitioners’ interests in this case.

As to the first element, the OOC Petitioners' application for intervention is timely because 1) they have filed this motion on the third business day after the initial complaint was filed and 2) the parties have yet to hold their first status conference with the court and no pleadings responsive to the complaint or amended complaint have been filed. No delay or other harm to the parties would ensue if OOC Petitioners were to intervene at this early stage of the litigation.

Regarding the second element, "the Sixth Circuit has adopted 'a rather expansive notion of the interest sufficient to invoke intervention of right.'" *Zeeb Holdings, LLC v. Johnson*, 338 F.R.D. 373, 378 (N.D. Ohio 2021) (quoting *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997)). The Sixth Circuit has held that proposed intervenors have a substantial interest in litigation for the purposes of Rule 24(a) when that litigation could alter a judgment issued in favor of the intervenors. *See Jansen v. City of Cincinnati*, 904 F.2d 336, 342 (6th Cir. 1990) (holding that the district court should have granted intervention as of right in an action when an adverse outcome in the action "would impede the proposed intervenors' ability to enforce the provisions of [a] consent decree" to which they were a party). The OOC Petitioners have an analogous interest in this case.

Plaintiffs Michael Gonidakis et al. have asked this Court to order the defendants to adopt General Assembly maps that the OOC Petitioners successfully argued were invalid and unconstitutional in the Ohio Supreme Court. Such an order would essentially overturn the judgment of the Ohio Supreme Court, reinstating injuries to the OOC Petitioners that were the subject of litigation in their apportionment case. Plainly, the OOC Petitioners cannot count on plaintiffs or defendant to protect their interests, which would be impaired without intervention and advocacy. Thus, this is an exceptionally clear case for intervention as of right.

With respect to the third element, applicants for intervention “‘must show only that impairment of their substantial legal interest is possible if intervention is denied,’ and that such ‘burden is minimal.’” *Ark Encounter, LLC v. Stewart*, 311 F.R.D. 414, 423 (E.D. Ky. 2015) (quoting *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)). Certainly, that standard is met here. The Gonidakis Plaintiffs seek a federal court order implementing a General Assembly plan—the Commission’s revised plan—that the OOC Petitioners successfully challenged in state court due to ongoing violations of the Ohio Constitution. If this Court were to order the Gonidakis Plaintiffs’ requested relief, the OOC Petitioners’ substantial interest in this state court-based litigation would therefore be impaired.

Finally, applicants for intervention must establish that their interests are not adequately represented, a burden that once again is de minimis. *Zeeb Holdings*, 338 F.R.D. at 379 (citing *Miller*, 103 F.3d at 1247). As evidenced by the discussion above, the OOC Petitioners oppose the remedy requested by the Gonidakis Plaintiffs. That those plaintiffs will not adequately represent the OOC Petitioners’ interest is consequently beyond dispute.

For the foregoing reasons, the OOC Petitioners respectfully request this Court grant their application to intervene as of right.

## **II. Alternatively, this Court Should Permit the OOC Petitioners to Intervene**

Even if the OOC Petitioners are not entitled to intervene as a matter of right, they should be allowed to intervene under Rule 24(b)’s permissive intervention provision.

Under Fed. R. Civ. P. 24(b), the OOC Petitioners may intervene in this action if they have “a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). The OOC Petitioners meet this standard because, while they contend that this Court should stay this action pending potential further review and/or action by Ohio Supreme Court, if this action were ever to proceed on the merits, then the OOC Petitioners would

have an apportionment claim that shares questions of law and fact with claims asserted by the Gonidakis Plaintiffs.

In particular, the OOC Petitioners have a claim for malapportionment, if the Ohio Redistricting Commission does not adopt a *constitutional* General Assembly district plan (which is yet to be determined). Thus, if this case were to go forward, the OOC Petitioners' claim and the Gonidakis Plaintiffs' malapportionment claim would raise common questions of law and fact concerning the nature of the violation and the appropriate remedy. The Gonidakis and OOC parties are diametrically opposed as to whether this case should move forward now, and if it did, what remedy would be appropriate, but they are both raising questions of law and fact relating to the State of Ohio ongoing redistricting process. Permissive intervention is appropriate in these circumstances. *See Hunter v. Bostelmann*, Nos. 21-cv-512, 21-cv-534, 2021 WL 4206654, at \*1 (W.D. Wis. Sept. 16, 2021) (allowing permissive intervention where intervenor-plaintiffs raised malapportionment claims that were "virtually identical" to those raised by plaintiffs, had filed a petition for an malapportionment action in the Wisconsin Supreme Court concerning the state's redistricting maps, and sought a stay of federal proceedings pending disposition of the state supreme court case).

Once proposed intervenors satisfy the requirements of Rule 24(b)(1)(B), the court, when exercising its discretion to permit intervention, "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). No discernible delay or prejudice would arise from allowing the OOC Petitioners to intervene. If anything, prejudice would accrue to OOC Petitioners in not allowing them to prevent the Gonidakis Plaintiffs from seeking an end run around the Ohio Supreme Court.



In sum, this Court should grant the OOC Petitioners' application to intervene under Rule 24(b) if it does not otherwise conclude that they can intervene under Rule 24(a).

### CONCLUSION

For the reasons set forth above, the OOC Petitioners respectfully request that this Court enter an order granting their Motion to Intervene in this proceeding and directing them to file their complaint in intervention.

Dated: February 24, 2022

Alicia L. Bannon\*  
Yurij Rudensky\*  
Michael Li\*  
Harry Black\*  
Brennan Center for Justice  
at NYU School of Law  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
(212) 463-7308 (Facsimile)  
alicia.bannon@nyu.edu

*Attorneys for Proposed Intervenor-  
Plaintiffs The Ohio Organizing  
Collaborative, et al.*

*\*Pro Hac Vice Motion  
Forthcoming*

Respectfully submitted,

/s/ Peter M. Ellis  
Peter M. Ellis (Ohio Bar No. 0070264)  
*Counsel of Record*  
Reed Smith LLP  
10 South Wacker Drive, 40th Floor  
Chicago, IL 60606  
(312) 207-1000  
(312) 207-6400 (Facsimile)  
pellis@reedsmith.com

Brian A. Sutherland\*  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
(415) 543-8700  
(415) 391-8269 (Facsimile)  
bsutherland@reedsmith.com

Ben R. Fliegel\*  
Reed Smith LLP  
355 South Grand Avenue, Suite 2900  
Los Angeles, CA 90071  
(213) 457-8000  
(213) 457-8080 (Facsimile)  
bfliegel@reedsmith.com

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on February 24, 2022.

s/ Peter M. Ellis

Peter M. Ellis (Ohio Bar No.  
0070264)