

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>MICHAEL GONIDAKIS, et al.,</b>	:	
	:	Case No. 2:22-cv-773
Plaintiffs,	:	
	:	
v.	:	Chief Judge Algenon Marbley
	:	
<b>FRANK LAROSE, in his official capacity,</b>	:	Magistrate Judge Elizabeth Deavers
	:	
Defendant.	:	
	:	Three-Judge Panel Requested

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**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO  
SYKES AND RUSSO MOTION TO INTERVENE**

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Plaintiffs Michael Gonidakis, Mary Parker, Margaret Conditt, Beth Vanderkooi, Linda Smith, Delbert Duduit, Thomas W. Kidd, Jr., and Ducia Hamm (collectively, "Plaintiffs") continue to be deprived of their rights to participate in the political process as deadlines for the Ohio primary election come and go.

The Court should not grant the Motion of State Senator Vernon Sykes and State House of Representatives Minority Leader Allison Russo to intervene in this case in their capacities as members of the Ohio Redistricting Commission because:

1. A single judge lacks authority to grant or deny a motion to intervene before complying with 28 U.S.C. § 2284;
2. The Sykes and Russo Motion to Intervene fails to attach a proper pleading as required by Civil Rule 24.
3. Senator Sykes and Leader Russo's official capacity interests are already adequately represented by existing parties; and
4. Permitting the Sykes and Russo intervention would unnecessarily delay resolution of this time-sensitive case and waste taxpayer money advancing redundant interests.

A. **A single Judge of this Court lacks authority to rule on a motion to intervene before notifying the Chief Judge of the 6th Circuit to appoint a three-judge panel.**

Plaintiffs' Complaint and Amended Complaint challenge the apportionment of the Ohio general assembly, and request the appointment of a three-judge panel pursuant to 28 U.S.C. § 2284.

28 U.S.C. § 2284(b)(1) states that when such an action is filed, the Chief Circuit Judge must be immediately notified:

Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, *immediately* notify the chief judge of the circuit, who shall designate two other judges . . . . (emphasis added.)

It is Plaintiffs' understanding that, to date, this has not been done.

At the February 25, 2022, status conference, the court expressed the view that it might not need to appoint a three-judge panel if it determines that the case is not ripe for consideration given the state court proceedings. However, the United States Supreme Court has held that unless a claim is "wholly insubstantial and frivolous," that "the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Shapiro v. McManus* (2015), 577 U.S. 39 at 45. Thus, the United States Supreme Court held that "the District Judge should not have dismissed the claim as constitutionally insubstantial . . . . Perhaps petitioners will ultimately fail on the merits of their suit, but [28 U.S.C.] § 2284 entitles them to make their case before a three-judge district court." *Shapiro, supra*, at 46. (quotation marks omitted).

28 U.S.C. § 2284 prohibits a single judge from making certain orders, and provides that "[a]ny action of a single judge may be reviewed by the full court at any time before final judgment." "Any action" includes rulings granting or denying motions to intervene. Thus, 28 U.S.C. § 2284 prohibits this Court from granting or denying motions to intervene without having

notified the Chief Judge of the 6th Circuit to designate two other judges. Otherwise, the right of any party to have that action reviewed by the full three-judge court would be denied.

**B. The Sykes and Russo Motion to Intervene fails to attach a proposed pleading, as required by Civil Rule 24.**

Senator Sykes and Leader Russo have not yet submitted proposed pleadings as required by Fed. R. Civ. P. 24(c), despite stating that they would do so “shortly” after filing their motion to intervene over a week ago. Thus, Plaintiffs have not yet had the opportunity to consider and formulate a response to any fully developed arguments from Senator Sykes and Leader Russo, despite the time-sensitive nature of this case. While a non-prejudicial failure to comply with Rule 24(c) may provide grounds for leniency, such a prejudicial failure does not. *See Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314-315 (6th Cir. 2005).

**C. Senator Sykes and Leader Russo are not entitled to intervene.**

To intervene as a matter of right, a party must claim “an interest relating to the property or transaction that is the subject of the action” *and* be “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) (emphasis added). When an existing party has the same interests as the party seeking to intervene, it is incumbent upon the proposed intervenor to show that the representation of those interests may be inadequate. *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006).

Multiple existing parties, including a State official, share Senator Sykes and Leader Russo’s stated interest in this case, and there is no reason to believe that the representation of that interest is or will be inadequate. Senator Sykes and Leader Russo purportedly wish to intervene to ask the Court to stay this case pending the resolution of related proceedings in the Ohio Supreme Court. (ECF No. 6, Motion to Intervene, PAGEID# 396.) Existing parties have already asked the

Court to delay proceedings to give the Ohio Supreme Court an opportunity to rule.

Counsel for Ohio Secretary of State Frank LaRose, the named Defendant, affirmatively asked the Court to set the Local Rule 65.1 conference in this case to a later date than Plaintiffs requested, specifically for the purpose of giving the Ohio Supreme Court more time. To the extent Senator Sykes and Leader Russo contend their interests diverge from Secretary LaRose's because the respective parties staked opposing positions in the Ohio Supreme Court, that divergence is irrelevant here. Whatever their respective positions in the Ohio Supreme Court suit, both want to delay this case pending the resolution of that action. Additionally, Intervenor-Defendants League of Women Voters of Ohio filed a motion to continue the Local Rule 65.1 conference another week to give the Ohio Supreme Court even more time. Counsel for Secretary LaRose did not oppose that motion. Additionally, other parties have already moved this Court to stay this case pending the outcome of the matter in the Ohio Supreme Court. (ECF No. 33, Intervenor-Defendants' Motion for Stay Pending the Outcome of the State Redistricting Process.) Senator Sykes and Leader Russo are not entitled to intervene in this case merely to add another voice to the chorus already seeking delay.

**D. Permitting Senator Sykes and Leader Russo to intervene would delay the restoration of Plaintiffs' rights and waste taxpayer funds.**

When a party is not entitled to intervene as a matter of right, a court may permit intervention if the party "has 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). Upon a timely motion asserting such a common question, "the district court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court's discretion, intervention should be allowed." *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005). Permitting Senator Sykes and Leader Russo to intervene under Fed. R. Civ. P. 24(b) will unduly delay the resolution of this

case and waste taxpayer funds.

Time is of the essence to restore Plaintiffs' political rights. The May 3, 2022, primary is fast approaching, and the deadlines for candidate declarations, challenges to candidate declarations, and the Secretary of State's certification of the official form of ballots have passed while Plaintiffs remain in limbo as to whether they will continue to live in malapportioned legislative districts at that time, or if they will have such districts at all. (Exhibit A, Attached.) Senator Sykes and Leader Russo's intervention would only further delay the resolution of this case and vindication of Plaintiffs' rights by requiring Plaintiffs to "address dueling defendants, purporting to . . . represent the interest of the State, along with their multiple litigation strategies." *N.C. State Conf. of the NAACP v. Berger*, 999 F.3d 915, 921 (4th Cir. 2021) (internal quotations omitted). Additionally, the intervention would waste the money of Ohio taxpayers by adding a second State party with a second group of publicly funded attorneys to advance the same alleged interest: delay.

Finally, to the extent that Senator Sykes and Leader Russo seek to intervene as state governmental officers under Fed. R. Civ. P. 24(b)(2), their arguments are no longer relevant. Senator Sykes and Leader Russo cite their status as members of the Ohio Redistricting Commission, but the Redistricting Commission is no longer a party to this case. Plaintiffs' Amended Complaint challenges the *current* state legislative districts (or lack thereof) in elections administered by Secretary LaRose. In fact, while moving to intervene in this matter based on their status as members of the Ohio Redistricting Commission, Senator Sykes and Leader Russo simultaneously argue that the Commission has sovereign immunity from suit in this Court. (ECF No. 6, Motion to Intervene, PAGEID # 394, 396.) They cannot have it both ways. They are not proper parties to this action, and the Court should deny their intervention motion accordingly.

**CONCLUSION**

**WHEREFORE**, for the foregoing reasons, Plaintiffs respectfully request that the Court either deny or not act on Senator Sykes and Leader Russo's motion to intervene.

Respectfully submitted,

**ISAAC WILES & BURKHOLDER LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Donald C. Brey

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