

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Michael Gonidakis, <i>et al.</i> ,	:	
	:	Case No. 2:22-cv-773
Plaintiffs,	:	
	:	
v.	:	Chief Judge Algenon Marbley
	:	
Frank LaRose,	:	Magistrate Judge Elizabeth Deavers
	:	
Defendant.	:	
	:	Three-Judge Panel Requested
	:	

---

---

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO SIMON PARTIES'  
MOTION TO INTERVENE**

---

---

Plaintiffs Michael Gonidakis, Mary Parker, Margaret Conditt, Beth Vanderkooi, Linda Smith, Delbert Duduit, Thomas W. Kidd, Jr. and Ducia Hamm (collectively, "Plaintiffs") alleged that they currently live in malapportioned or nonexistent state legislative districts, depriving them of their right to participate fully in the political process.

As evident from their proposed intervening complaint, proposed intervenors Kenneth L. Simon, Lewis Macklin, and Helen Youngblood (collectively, "Simon parties") raise significantly different interests, claims, and arguments. The Simon parties do *not* challenge current state legislative districts or malapportionment, as Plaintiffs do. Instead, the Simon parties raise race discrimination claims challenging proposed Congressional and State Senate districts. Additionally, those proposed districts are outlined in redistricting proposals that Plaintiffs neither challenge nor advocate. Accordingly, the Simon parties are not entitled to intervention as a matter of right and should not be permitted to expand and muddle the issues in this case.

## I. SUMMARY OF RELEVANT FACTS

### A. Plaintiffs challenge the constitutionality of their current state legislative districts based on malapportionment.

This case concerns the malapportionment of the Plaintiffs' *current* respective state legislative districts or, alternatively, the lack of such legislative districts altogether. (ECF No. 8, First Amended Complaint, ¶ 5.) The current districts (2010 Districts) were established in 2011, based on the 2010 census. (*Id.*, ¶¶ 19-21.) *See also Wilson v. Kasich*, 134 Ohio St.2d 221, 2012-Ohio-5367, 981 N.E.2d 814, ¶ 4. In 2021, the Ohio Redistricting Commission met to draw new state legislative districts based on data from the 2020 census. (*Id.*, ¶¶ 35-36.) The Redistricting Commission adopted a state legislative districting plan in September 2021 ("First Plan"). (*Id.*, ¶ 37.) The Ohio Supreme Court invalidated the First Plan in January 2021. (*Id.* ¶ 41.)

Following the Ohio Supreme Court's ruling, the Redistricting Commission adopted a new state legislative districting plan ("Second Plan"). (*Id.* ¶ 43.) The Ohio Supreme Court also rejected that plan. (*Id.* ¶¶ 52-53.) As of the time of this filing, there are no Ohio state legislative districts based on the 2020 census. (*Id.* ¶¶ 55-58.) As a result, Plaintiffs either still live in their 2010 Districts or, if those districts have expired, no state legislative districts at all. (*Id.*, ¶¶ 61, 64.) Each of Plaintiffs' respective 2010 districts have grown substantially in population since the 2010 census, diluting Plaintiffs' ability to meaningfully participate in elections. (*Id.* ¶ 61.) Accordingly, Plaintiffs are asking the Court to: declare the 2010 Districts (or lack of state legislative districts altogether) unconstitutional; prohibit the Ohio Secretary of State from conducting elections under the 2010 Districts; and order the adoption and implementation of the Redistricting Commission's Second Plan. (*Id.*, Prayer for Relief.)

**B. The Simon parties challenge the constitutionality of a proposed Congressional district and proposed Senate District 33 based on racial discrimination.**

Before the Ohio Supreme Court invalidated the Redistricting Commission’s First Plan, the Simon parties filed a lawsuit in the Northern District of Ohio challenging the constitutionality of that plan. (ECF No. 7, Motion to Intervene, PAGEID# 446; ECF No. 7-1, Proposed Intervenor-Plaintiff’s Proposed Complaint, ¶¶ 4, 12.) The Simon parties challenged proposed Senate District 33, where all Simon parties currently live. (ECF No. 7-1, Proposed Intervenor-Plaintiff’s Proposed Complaint, ¶ 5.) None of the Plaintiffs live in either the current or proposed Senate District 33, (ECF No. 8, Amended Complaint, ¶ 7)

In addition to challenging Senate District 33 under the First Plan, the Simon parties also challenged the constitutionality of a Congressional redistricting plan adopted by the Ohio General Assembly in November 2021 and the constitutionality of “the use of at large elections in Mahoning County, Ohio.” (ECF No. 7-1, Proposed Intervenor-Plaintiff’s Proposed Complaint, ¶ 4.)

The Simon parties challenged the First Plan and proposed Senate District 33, the Congressional redistricting plan, and Mahoning County at-large elections on the basis of racial discrimination. (*Id.*, ¶ 12.) The Simon parties alleged that, when adopting the First Plan and the Congressional redistricting plan, the Redistricting Commission and the General Assembly intentionally disregarded race and evidence of race discrimination, resulting in proposed State Senate and Congressional districts that unlawfully diluted the votes of Black voters. (*Id.*, ¶¶ 32, 35.) With their complaint, the Simon parties asked Judge John Adams to invalidate the proposed State Senate districts and Congressional redistricting plan pursuant to the Constitution and the Voting Rights Act and to order the implementation of a compliant “election system for Mahoning County.” (*Id.*, Prayer for Relief.)

The Northern District, however, stayed the Simon parties' lawsuit while challenges to the First Plan and the Congressional redistricting plan went forward in the Ohio Supreme Court. (ECF No. 7, Motion to Intervene, PAGEID# 448.)

Having their case stalled in the Northern District of Ohio, the Simon parties now move to intervene in this case as a matter of right or, alternatively, through permissive intervention, and interject their unrelated Mahoning County-based claims in the Southern District of Ohio. (ECF No. 7, Motion to Intervene, PAGEID# 448-450.) This, they cannot do.

## **II. LAW AND ARGUMENT**

The Simon parties have no basis to intervene in this case. They raise distinct claims with different legal questions and factual bases than Plaintiffs' claims. Accordingly, the Simon parties are not entitled to and should not be permitted to intervene in this matter.

### **A. The Simon parties are not entitled to intervene as a matter of right.**

Upon a timely motion, the Federal Rules of Civil Procedure require a court to permit the intervention of anyone who "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).

To intervene as a matter of right, a proposed intervenor must establish: "(1) the motion to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the case; (3) the proposed intervenor's ability to protect their interest may be impaired in the absence of litigation; and (4) the parties already before the court cannot protect the proposed

intervenor’s interest.” *Coalition to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 779 (6th Cir. 2007), citing *Grutter v. Bollinger*, 188 F.3d 394, 397-398 (6th Cir. 1999). Although the Sixth Circuit has opted for an expansive notion of the interest sufficient to invoke intervention of right “this does not mean that any articulated interest will do.” *Coalition to Defend Affirmative Action*, 188 F.3d at 780. The existence of a substantial legal interest is a “necessarily-fact-specific” inquiry. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997).

The Simon parties lack a substantial legal interest in the outcome of this case, as the Plaintiffs’ claims concern different legal questions, different redistricting plans, and different voting districts than the Simon parties’ claims. Unlike the Simon parties, the current parties to this case have not raised any issues regarding Congressional districts or county-wide elections. To the extent that both Plaintiffs and the Simon parties raised issues about state legislative districts, the Plaintiffs challenge only the numerical malapportionment *current* 2010 Districts and the lack of any Districts based on the 2020 census data. Plaintiffs do not challenge the Redistricting Commission’s First Plan.

In contrast, the Simon parties raise racial discrimination claims based on the Redistricting Commission’s procedures for adopting its First Plan and how those procedures impacted proposed Senate District 33 under that plan.<sup>1</sup> The Simon parties’ interests are separate and distinct from those asserted herein and will not be impaired if this Court refuses to allow them to intervene. The Simon parties’ interest remain alive and can be litigated whenever the stay is lifted. In light of the clear distinction between the Simon parties’ interests and the facts and claims at issue in the

---

<sup>1</sup> Although proposed Senate District 33 is the same under both the First Plan and the Second Plan, the Simon parties’ proposed pleading specifically alleges that the Redistricting Commission intentionally ignored evidence related to race and race discrimination when it adopted its First Plan in September 2021. (ECF No. 7-1, Proposed Intervenor-Plaintiff’s Proposed Complaint, ¶ 8.) The pleading makes no mention of the process for adopting the Second Plan.

Plaintiffs' Amended Complaint, the Simon parties are not entitled to intervene as a matter of right.

**B. The Court should not permit the Simon parties to intervene because Plaintiffs' claims concern different legal and factual questions than the Simon parties' claims.**

When a party is not entitled to intervene as a matter of right, a court may permit intervention if the party “as 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). “To intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact.” *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005.) “Once these two requirements are established, 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.” *Id.*

Here, the Simon parties do not reach the minimum threshold requirements for permissive intervention. There is no factual commonality between Plaintiffs’ claims and the Simon parties’ claims. Additionally, the two sets of claims involve distinct legal issues. The Simon parties’ claims are based entirely on alleged racial discrimination, while none of Plaintiffs’ claims are related to race. Finally, even if the Simon parties could reach the minimum threshold for permissive intervention, such intervention would cause prejudice and undue delay by adding new and fact-intensive questions about the racial composition and voting patterns of legislative districts that are not at issue in the current litigation and are not located within the Southern District of Ohio, Eastern Division. *See id.* (intervention denied where proposed intervenor’s claims would require adjudication of fact-intensive issues). In essence, the Simon parties want to intervene in the instant action, reassert their claims which currently are stayed, and have this Court decide whether Ohio

Senate District 33, the Congressional redistricting plan adopted by the Ohio General Assembly in November 2021 and “the use of at large elections in Mahoning County, Ohio” pass constitutional muster or are racially discriminatory. Without more, the Court should deny the Simon parties’ alternative motion for permissive intervention.

**C. The “First-In-Time Rule” does not apply here.**

To the extent the Simon parties claim they are entitled to intervene in this matter under the “first-to-file” rule, that rule is inapplicable in this case. The First-in-Time Rule applies only “when actions involving nearly identical parties *and* issues are filed in two different district courts[.]” *Zide Sport Shop of Ohio, Inc. v. Ed Tobergte Assocs.*, 16 Fed. Appx. 433, 437 (6th Cir. 2001) (Emphasis added.). Plaintiffs in this case are not a party to the Simon parties’ case in the Northern District, and as discussed herein, the cases involve substantially different legal issues.

#### IV. CONCLUSION

FOR THE FORGOING REASONS, Plaintiffs respectfully request the Court ensure that this case remains confined to the interests, facts, and issues at hand and deny the Simon parties' motion to intervene.

Respectfully submitted,

**ISAAC WILES & BURKHOLDER LLC**

/s/ Donald C. Brey

Donald C. Brey (0021965)

Brian M. Zets (0066544)

Matthew R. Aumann (0093612)

Ryan C. Spitzer (0093515)

Two Miranova Place, Suite 700

Columbus, Ohio 43215

Tel: 614-221-2121; Fax: 614-365-9516

[dbrey@isaacwiles.com](mailto:dbrey@isaacwiles.com)

[bzets@isaacwiles.com](mailto:bzets@isaacwiles.com)

[maumann@isaacwiles.com](mailto:maumann@isaacwiles.com)

[rspitzer@isaacwiles.com](mailto:rspitzer@isaacwiles.com)

*Attorneys for Plaintiffs Michael Gonidakis,  
Mary Parker, Margaret Conditt, Beth Ann  
Vanderkooi, Linda Smith, Delbert Dudit,  
Thomas W. Kidd, Jr., and Ducia Hamm*

#### **CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 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.

I further certify that a copy of this motion and all other filings in this action have been served upon the adverse party's attorneys, Bridget Coontz, Ohio Attorney General's Office, [bridget.coontz@ohioattorneygeneral.gov](mailto:bridget.coontz@ohioattorneygeneral.gov).

/s/Donald C. Brey

Donald C. Brey (0021965)