IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JONATHAN LINDSEY, et al., Plaintiffs, v. GRETCHEN WHITMER, et al., Defendants.	CIVIL ACTION Case No. 1:23-cv-01025-JMB-PJG Hon. Jane M. Beckering

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO INTERVENE

The motion to intervene filed by Proposed Intervenor-Defendents Jim Peterson, Andrea Hunter, the Michigan Alliance for Retired Americans, the Detroit Downriver Chapter of the A. Philp Randolph Institute and Detroit Disability Power (jointly "Proposed Intervenors") should be denied. The Proposed Intervenors have failed to explain why the governmental defendants' interests are different from their own, or that the particular governmental defendants would be unable to defend any interests the Proposed Intervenors may have in the underlying litigation. Moreover, the Proposed Intervenors' intervention injects unnecessary factual claims in a case involving pure legal questions of law that do not prejudice Proposed Intervenors. The proposed intervention threatens to prejudice the parties, as well as to lengthen the litigation. Finally, the proposed intervention will cause unneeded expense, time, and complication to the parties and this Court.

The first legal question before this Court involves whether the Plaintiff Legislators' civil rights and duties as elected officials are specifically preserved under the U.S. Constitution, Article I, Elections Clause, to regulate the time, place, and manner of *federal elections*. The second legal question is whether the Plaintiff Legislators' civil rights and duties are violated when the citizen-initiated ballot petition and referendum process completely bypasses the legislature to regulate the time, place, and manner of *federal elections*.

The right to petition to alter the Michigan Constitution is not at issue. The Proposed Intervenors erroneously suggest in their memorandum that it is at issue; but, even if true, the Proposed Intervenors' ultimate objective is the same as that of the Defendants—to preserve the right to petition to alter the Michigan Constitution to regulate the time, place, and manner of *federal elections*. Although the Defendants have not yet answered or otherwise decided their litigation strategy to defend the lawsuit, the Defendants are well suited, without the assistance of the Proposed Intervenors, to defend the interests of all Michigan citizens and entities.

So, the Proposed Intervenors are not welcome as intervening parties. But, the Plaintiffs do welcome the Proposed Intervenors to participate as amici curiae for whatever contributions they may make.

I. Proposed Intervenors are not entitled to intervene as a matter of right.

Under the Federal Rules of Civil Procedure, Rule 24(a), governing intervention as-of-right, proposed intervenors must show that they satisfy four elements to be entitled to intervene as-of-right: "(1) that the motion to intervene was timely; (2) that they have a substantial legal interest in the subject matter of the case; (3) that their 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 their interest." *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999). "Failure to meet [any] one of the [four] criteria will require that the motion to intervene be denied." *Stupak-Thrall v. Glickman*, 226 F.3d 467, 471 (6th Cir. 2000) quoting *Grubbs v. Norris,* 870 F.2d 343, 345 (6th Cir.1989).

A. Although Proposed Intervenors' motion to intervene may be timely, their motion to dismiss reveals intent to control the litigation strategy of the Attorney General whose statutory duty is to defend against the claims on behalf of the public.

Proposed Intervenors satisfy only one element (1) timely filing.[1] Indeed, with Proposed Intervenors' filing and accompanying motion to dismiss, it has already shown how it would interfere with the Defendants' litigation strategy.

"'[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 'because official-capacity actions for prospective relief are not treated as actions against the State.'" *Zynda v. Arwood*, 175 F. Supp. 3d 791, 801 (E.D. Mich. 2016) quoting *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 n. 10 (1989) (citing *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985)). Although there is no entry in this Court's docket to date, waivers of service have been received by local counsel signed by Heather Meingast, the Attorney General for Michigan. Meingast or another attorney in the office will represent the named Defendants, Governor Gretchen Whitmer, Secretary of State Jocelyn-

[1] *Coalition to Defend Affirmative Action v. Granholm,* 501 F.3d 775, 787 (6th Cir. 2007) ("The absolute measure of time between the filing of the complaint and the motion to intervene is one of the least important ... circumstances" to consider. *Stupak–Thrall v. Glickman,* 226 F.3d 467, 475 (6th Cir.2000).

Benson, and Director of Elections, Jonathan Brater—all sued in their respective official capacities. With personal service established, the Attorney General, as the state's chief law enforcement officer, has a duty to ensure that the laws of the State of Michigan are followed, and has a duty to defend those laws, when those laws are valid and constitutional. Mich. Const. 1963, art. V, §§ 3, 21; Mich. Comp. Laws § 14.28. In addition, "the attorney general has a wide range of powers at common law." *Mundy v. McDonald,* 216 Mich. 444, 450, 185 N.W. 877 (1921). Thus, the Attorney General "has statutory and common law authority to act on behalf of the people of the State of Michigan in any cause or matter, such authority being liberally construed." *Michigan State Chiropractic Ass'n v. Kelley,* 79 Mich. App. 789, 262 N.W.2d 676, 677 (1977) (citations omitted).

But, here, before the Attorney General has filed an answer or even a motion to dismiss, the Proposed Intervenors have asserted a legal strategy, the motion to dismiss, in public interest litigation matter that is within the Attorney General's sole discretion to determine how to proceed on behalf of the Defendants. "It is axiomatic that the Attorney General must retain considerable discretion in controlling government litigation and in determining what is in the public interest." *U.S. v. Associated Milk Producers, Inc.*, 534 F.2d 113, 117 (8th Cir. 1976). Indeed, Proposed Intervenors have not asserted or otherwise provided any evidence that the attorney general has abrogated any duty by "bad faith or malfeasance on the part of the government." *Id.* (citation omitted). Proposed Intervenors' filing of a motion to dismiss reflects *belief* that their interests are different than that of the Defendants. For example, the Attorney General may decide to answer the complaint and not to file a motion to dismiss as a litigation strategy, which "[falls] well within the range of reasonable

litigation strategies." *Berger v. N. Carolina State Conf. of the NAACP*, 142 S. Ct. 2191, 2208 (2022).

In *Perry v. Proposition 8 Off. Proponents,* 587 F.3d 947, 954–55 (9th Cir. 2009), "mere [ ] differences in [litigation] strategy ... are not enough to justify intervention as a matter of right." *United States v. City of Los Angeles,* 288 F.3d 391, 402–03 (9th Cir.2002); *Nw. Forest Res. Council v. Glickman,* 82 F.3d 825, 838 (9th Cir.1996) (holding that "minor differences in opinion" between the parties and proposed intervenor "fail[ ] to demonstrate inadequacy of representation"); *see also Daggett v. Comm'n on Governmental Ethics and Election Practices,* 172 F.3d 104, 112 (1st Cir. 1999) (noting that "[o]f course, the use of different arguments as a matter of litigation judgment is not inadequate representation *per se* "). So, whatever the Attorney General decides to do, it is the Attorney General's decision, not the Proposed Intervenors' decision.

Here, Proposed Intervenors' motion to dismiss shows that it is attempting to direct how the underlying litigation should proceed from the time the lawsuit was started. In this way, the Proposed Intervenors' motion to dismiss undermines the Attorney General's authority to represent the Defendants and undermines the Attorney General's litigation decisions on behalf of the public in a case where the Attorney General has the statutory duty to defend.

Further, the Proposed Intervenors' motion to dismiss establishes a procedural morass. Proposed Intervenors seek to first intervene, and immediately move to dismiss—raising a significant question: who is representing the Defendants' interests—the Attorney General or the Proposed Intervenors? Proposed Intervenors' legal strategy takes the

Attorney General out of the litigation process before the Attorney General has had time to respond in the first instance.

In other words, while the Proposed Intervenors' motion is timely, it is still *premature.* Until the Attorney General weighs in, the Proposed Intervenors' arguments are *all* speculative. Therefore, from the outset, Proposed Intervenors' motion should be denied.[2]

B. Proposed intervenors have not established a direct and substantial interest in the litigation.

"The second prong of the Rule 24(a)(2) requirements is that the proposed intervenor must have a direct and substantial interest in the litigation. *Brewer v. Republic Steel Corporation,* 513 F.2d 1222 (6th Cir.1975). The interest must be significantly protectable." *Grubbs v. Norris*, 870 F.2d 343, 346 (6th Cir. 1989).

1. The individual proposed-intervenors have so generalized an interest that it cannot support a motion to intervene as a matter-of-right.

Setting aside for the moment that the underlying action is focused on the *federal*

[2] *See e.g.,* "Although courts should not encourage premature motions to intervene, *see Stallworth v. Monsanto Co.,* 558 F.2d 257, 265 (5th Cir.1977), such timing defects are not fatal to subsequent motions. *U.S. v. Yonkers Bd. of Educ.*, 801 F.2d 593, 597 n.6 (2d Cir. 1986) (discussing, with approval, the district court's grant of a motion to intervene after denying, without prejudice, an earlier motion as premature when the movant's interests were too speculative); *U.S. v. Pitney Bowes, Inc.,* 25 F.3d 66, 71 (2d Cir. 1994) (suggesting that, although the applicant's interests were uncertain, applicant could have moved to intervene "as an anchor to windward ... to guard against the possibility" that its interests would be impacted); *Hickerson v. City of New York,* 932 F.Supp. 550, 559 (S.D.N.Y.1996). However, "A court cannot squeeze a proposed intervenor from both ends by first ruling a motion to intervene premature and then ruling a second motion to intervene too late." *Davis v. Lifetime Capital, Inc.,* 560 Fed. Appx. 477, 493 (6th Cir. 2014)(unpublished) quoting *Grubbs v. Norris,* 870 F.2d 343, 346 (6th Cir. 1989).

election process, the individual proposed-intervenors, Jim Pederson and Andrea Hunter, have identified themselves as Michigan voters. Proposed Intervenors Mot. to Intervene at 3. Both identified their interest to exercise their fundamental right to vote. *Id.* Each also assert, albeit incorrectly, that the Plaintiffs seek to strip away those rights. *Id.* Regardless, all that Pederson and Hunter have done is identify the interests of *all* Michigan citizens regarding the protection of voting rights. The Sixth Circuit requires an intervenor to have a "direct, substantial interest in the litigation, which must be significantly protectable." *Purnell, supra*, 925 F.2d at 947. A generalized interest or concern will not suffice. *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007) (no substantial legal interest where there is only "a generic interest shared by the entire Michigan citizenry"). They have expressed an "interest so generalized [it] will not support a claim for intervention as of right." *Id.* (citation omitted). Therefore, the motion of Jim Pederson and Andrea Hunter as proposed-intervenors as a matter of right must be denied.

2. The Proposed Intervenors' interests are generalized regarding voting processes for citizens to ensure access to the ballot; and, thus the Proposed Intervenors have no right to intervene as a matter-of-right.

While the Sixth Circuit has adopted a rather expansive notion of the interest sufficient to invoke intervention of right, this does not mean that any articulated interest will do. *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 772 (6th Cir. 2022). Establishing a substantial legal interest is "necessarily fact-specific." *Id.*

The organizational, associational Proposed Intervenors include the Michigan Alliance for Retired Americans, the Detroit Downriver Chapter of the A. Philp Randolph Institute and Detroit Disability Power. As they admit, their objective is to "maintain[ ] their and their

members' constitutional rights, protecting their ability to further amend the Michigan Constitution by ballot initiative, safeguarding the ability to enforce their fundamental voting rights in court." Mot. to Intervene at 12. They also admit that their respective organizations exist to "promot[e] the franchise and ensure the full constitution rights of their members." *Id.* at 5.

There is no evidence that the Attorney General, in defending the underlying lawsuit, is not seeking the same objective as Proposed Intervenors. The Proposed Intervenors assert that an interest in the litigation exists because of pending separate state litigation against the Attorney General challenging a law they claim, "interferes with the fundamental right to vote." *Id.* at 12. In *Babb v. Nessel,* No. 2023-202028-CZ (Mich. Cir. Ct. Oakland Cnty), the action was brought under the Michigan Constitution, Article II, § 4. But, the Proposed Intervenors' lawsuit does not rise to the level of qualifying as an "interest" in the present case. The Plaintiff Legislators' lawsuit is not focused on the cause of action in Article II, § 4, of the Michigan Constitution. Instead, the Plaintiff Legislators' lawsuit is focused on the violation of their own civil rights and duties as legislators under the "Elections Clause" of the U.S. Constitution, Article I, § 4. The Plaintiff Legislators' lawsuit only indirectly involves the cause-of-action of Proposal 2 of 2022, found in Article II, § 4, of the Michigan Constitution. Thus, any interest Proposed Intervenors allege in Plaintiff Legislators' lawsuit based on a connection to their separate litigation is not direct and substantial enough to qualify as an "interest' under Rule 24(a)(2). *See U.S. v. Michigan*, 424 F.3d 438, 444 (6th Cir. 2005); *Public Interest Legal Foundation, v. Jocelyn Benson*, No. 1:21-CV-929, 2022 WL 21295936, at *11 (W.D. Mich. Aug. 25, 2022).

The argument that Proposed Intervenors are now, and have been at odds with members of Michigan's government, some of Plaintiffs, and the Attorney General, does nothing to explain how the specific governmental defendants in this case do not share, and would not defend whatever interests Proposed Intervenors say are threatened by this litigation. *See Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (quoting *United States v. Perry County Bd. of Educ.*, 567 F.2d 277, 280 (5th Cir.1978)) ("Appellants are not entitled to intervention of right simply because they would have voted differently had they been members of these representative bodies.") The fact that the proposed-intervenors have previously sued one of the Defendants on another matter is irrelevant to the present litigation.

In fact, establishing a substantial legal interest is "necessarily fact-specific." *Id.* (citation omitted). *Wineries*, 41 F.4th at 772. While Rule 24(a)(2) uses the words "may have" in describing the type of interest that qualifies for intervention, *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991), interests cannot be speculative. *See Michigan*, 424 F.3d at 444 ("Rather than identifying any weakness in the state's representation in the current phase of the proceedings, the proposed intervenors seem more concerned about what will transpire *in the future* should the district court determine that the Tribes' inland treaty rights continue to exist.... While the proposed intervenors may be legitimately concerned about these future issues, they are not now, and possibly never will be, before the district court.") (emphasis in original). The proposed-intervenors seek to "prevent[ ] the nullification of their and their members' individualized constitutional rights. At stake in this litigation are more than a dozen voting-related laws and the right to amend the constitution by petition." Mot. to

Intervene at 8. While these statements may reflect a legitimate concern about what might happen in the future, such speculation is not direct and substantial enough to qualify as an "interest" under Rule 24(a)(2).

Moreover, as Plaintiffs suggest, the proposed-intervenors retain options for expressing their interests outside of intervention in this case by requesting this Court allow for amicus curiae filings.

Meanwhile, in further support, the proposed-intervenors point to a second lawsuit in which some of the Proposed Intervenors previously sued Secretary of State Benson, challenging absentee voting restrictions. *Michigan All. for Retired Americans v. Sec. of State*, 964 N.W.2d 816, 831 (Mich. App. 2020) (reversed and remanded for the immediate entry of summary disposition in favor of defendants.) Both lawsuits are different and *unrelated* cases to the present litigation. In essence, the Proposed Intervenors seem to suggest the Attorney General is not interested in this lawsuit in protecting the Proposed Intervenors' right to petition to alter the Michigan Constitution. However, this lawsuit does not challenge the general right to petition to amend the Michigan state constitution, but, this lawsuit only challenge petitions for amendments to the state constitution, without state legislative approval, which regulate the time, place, and manner of *federal elections*. Thus, the Plaintiff Legislators claim is narrowed to *federal elections* because the Elections Clause is narrowed to *federal elections*. U.S. Const., Art. I, § 4. Whether the Plaintiff Legislators have these constitutional rights and duties regarding *federal elections* has little to do with Proposed Intervenors' other lawsuits.

In addition, proposed-intervenors claim they have an interest in "maintaining the ballot-initiative process." This argument is nearly identical to a portion of the first claimed interest. Again, the present lawsuit does not threaten the existence of the ballot-initiative process. generally, but only specifically regarding amendments to the state constitution that bear on "The Times, Places, and Manner of holding [federal] Elections for Senators and Representatives." In other words, this lawsuit is about *federal elections*, which "shall be prescribed in each state by the Legislature thereof." U.S. Const., Art. I, § 4.

Essentially, the interests of organizational and associational Proposed Intervenors are "so generalized [they] will not support a claim for intervention as of right." *Coal. to Defend Affirmative Action,* 501 F.3d 775 at 782. While each organization may represent within their membership a particular sub-group of the general public, the interests are the same as the Michigan citizenry. To be sure, citizens are interested in the following matters: the right to amend the state constitution; voting rights; access to ballots; being able to vote in person and absentee; and protecting ballot access to the disabled. But, importantly, the underlying litigation is not challenging these generalized interests because it is only about the specific rights of legislators under the federal Constitution in regulating *federal elections*.

Proposed Intervenors erroneously claim that Plaintiff's requested relief would "frustrate the missions" of the organizational, associational Proposed Intervenors who "seek to erect structural changes." But, this claim is misleading. Proposed Intervenors did not, and do not have the right they claim, that the public, without the state legislature, can prescribe the times, places, and manner of *federal elections*. The Elections Clause does not allow it. Proposed Intervenors cannot possibly lose a right that was not theirs to begin with.

Finally, when applicants for intervention share the same ultimate objective as defendants, it is presumed that there is adequate representation. *United States v. Michigan*, 424 F.3d 438, 443–44 (6th Cir. 2005) (citing *Bradley v. Milliken,* 828 F.2d 1186, 1192 (6th Cir.1987)). Here, the Defendants and the Proposed Intervenors have the same objective, which is to uphold the state constitutional amendments from Proposal 3 of 2018 and Proposal 2 of 2022. Their legal position is identical. They believe that the times, places, and manner of federal elections can be altered without state legislative approval. Proposed-intervenors' "additional objectives" are subsumed by that objective. The Proposed Intervenors have not "identify[ed] any weakness in the state's representation in the current phase of the proceedings," but only assert that their rights would be violated if Plaintiffs are successful in their suit. *See id.* at 44.

C. The proposed-intervenors' stated interests will not be impaired by the disposition of this action.

As to the third factor, this Court must consider whether "the disposition of the action may impair or impede the proposed intervenors ability to protect their legal interest." *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). To meet their burden, proposed intervenors "must show only that impairment of [their] substantial legal interest is possible if intervention is denied," and that such "burden is minimal." *Grutter*, 188 F.3d at 399. Proposed intervenors "need not show that substantial impairment of their interest will result, nor from the language of Rule 24(a), that impairment will inevitably ensue from an unfavorable disposition." *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1001) (citing Fed. R. Civ. P. 24(a)).

Here, Proposed Intervenors will not lose any state constitutional rights. Proposed Intervenors' right to petition to alter the state constitution will not be denied. Their right to protect voting rights or processes will not be denied. However, the Proposed Intervenors do not have the right under the federal Elections Clause to supersede the state legislature prescribing times, places, and manner of federal elections. Because Proposed Intervenors never had that right in the first instance, they cannot lose that right in this case. There is no relationship between Proposed Intervenors' interests and the Plaintiff Legislators' claims asserted in this case. Any success Plaintiff Legislators have in asserting their *federal* right under the *federal* Elections Clause regarding *federal* elections will not have a direct and substantial effect on the Proposed Intervenors' interests.

D. Proposed Intervenors' interests are adequately represented by the current parties.

"[P]roposed intervenors bear the burden of demonstrating inadequate representation." *Purnell*, 925 F.2d at 949. In determining whether representation is adequate, the Sixth Circuit looks to several factors: (1) whether there is collusion between the representative and an opposing party; (2) whether the representative fails in the fulfillment of its duty; and (3) whether the representative has an interest adverse to the proposed intervenor. *Id.* at 949–50 (citing *Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227–28 (6th Cir.1984)). When a proposed intervenor and an existing party to the suit share the same ultimate objective in the litigation, courts presume that the existing party adequately represents the intervener's interests. *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir.1987); *Bds. of Trs. of the Ohio Laborers' Fringe Benefit Programs v. Ford Dev. Corp.*, No. 2:10–cv–140, 2010 WL 3365927, at *4 (S.D.Ohio Aug. 20, 2010). A proposed intervenor can overcome this

presumption of adequacy by showing "that there is substantial doubt about whether [the intervener's] interests are being adequately represented by an existing party." *Ford Dev. Corp.*, 2010 WL 3365927, at *4 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *see also Jansen v. City of Cincinnati*, 904 F.2d 336, 343 (6th Cir.1990) (" '[T]hat there is a slight difference in interests between the [proposed intervenors] and the supposed representative does not necessarily show inadequacy, if they both seek the same outcome.... However, interests need not be wholly "adverse" before there is a basis for concluding that existing representation of a "different" interest may be inadequate.'" (quoting *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C.Cir.1967))). "[I]t may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervener's arguments." *Mich. State AFL–CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997).

However, as previously explained, disagreement over litigation strategy alone does not establish inadequate representation. *Bradley*, 828 F.2d at 1192. Likewise, any concern regarding a failure to make all of the proposed-intervenors' arguments is cured by this Court inviting the Proposed Intervenors to file amici curiae briefs. All of Plaintiffs' previous arguments are applicable here, including the argument that the Proposed Intervenors' motion to dismiss is displacing the Attorney General's authority and obligation to control Defendants' litigation strategy.

II. Permissive intervention is inappropriate.

Rule 24(b) grants the district court discretionary power to permit intervention only if the motion is timely, and if the "applicant's claim or defense and the main action have a question of law or fact in common." Fed.R.Civ.P. 24(b)(2). In exercising its discretion, the

court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. *Purnell,* 925 F.2d at 951. There is no disagreement that Proposed Intervenors' motion was timely (albeit, possibly premature as argued above).

Proposed Intervenors do not argue that the Plaintiffs' claims presents a question of law or fact common to the main action. *See, Miller,* 103 F.3d at 1248. However, while Proposed Intervenors' intervention may not cause any undue prejudice, it will cause undue and unnecessary delay. Indeed, although not argued by Proposed Intervenors, they seek intervention because their interests are more than that of an interested observer. But, the purpose of intervention as a defendant-intervenor is to represent its interest in a different way that the current Defendants will. And, as previously explained, Proposed Intervenors have failed to identify how the current Defendants will fail to represent their interests adequately. The Proposed Intervenors have already revealed in their motion to dismiss that they wish to supersede the Attorney General's statutorily-authorized position to defend the governmental Defendants in the public interest. If intervention is granted, it can be presumed that Proposed Intervenors will interject again with its own set of facts irrelevant to Plaintiff-Legislators' claims, seek discovery, file additional motions seeking to dispose of claims it believes are not supported by law or fact, and, in the event this case goes to trial, seek to call and question witnesses and enter evidence into the record. All of this will require Plaintiffs and the Court to invest a significant amount of time and effort in response. While Proposed Intervenors' *perspective* may be different from that of Defendants, the Proposed Intervenors have offered nothing to indicate that the added costs of the Proposed

Intervenors, being parties as opposed to being amici curiae participants, will add anything of value to this litigation.

In other words, Proposed Intervenors have failed to indicate even their perspective would positively impact the issues currently before the Court. In fact, allowing intervention in this case would result only in the duplication of the efforts of the existing Defendants and cause undue delay of the litigation. Consequently, this Court should deny intervention to the Proposed Intervenors.

League of Women Voters of Michigan v. Johnson, 902 F.3d 572 (Sixth Cir. 2018), a case Proposed Intervenors cite for the proposition that "the interest of the intervenors, for the purposes of permissive intervention, only needs to be 'different' from the defendants" does not help the Proposed Intervenors' cause. As explained above, Proposed Intervenors do not have a cognizable interest; and, whatever they characterize as an interest is shared by the governmental defendants. Based on the record, there is no reason for this Court to believe these particular governmental defendants would not represent the Proposed Intervenors' point of view. Allowing Proposed Intervenors to participate as a party to the case would only incur greater expense, and time expenditure for the parties and Court throughout the litigation, including at this early stage and at later stages. See *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005).

Alternatively, the Plaintiffs do not object to any Court invitation to Proposed Intervenors to participate in an amici curiae role. *See Blount-Hill v. Ohio*, 244 F.R.D. 399, 404 (S.D. Ohio 2005), *aff'd sub nom. Blount-Hill v. Bd. of Educ. of Ohio*, 195 Fed. Appx. 482 (6th Cir. 2006)(unpublished). The Proposed Intervenors may also re-raise their motion if at some

point it becomes apparent that their interests and those of the government defendants diverge. At that point, permissive intervention may be appropriate; but. at this moment, the motion should be denied.

CONCLUSION

The Plaintiffs request this Court deny Proposed Intervenors' motion to intervene either as a matter-of-right or for permissive intervention. However, this Court could invite the Proposed Intervenors to file amici curiae briefs, when appropriate, for the Court to consider. Permitting Proposed Intervenors to participate in the case as amici curiae offers them a venue to raise any unique arguments they develop, and it averts the complications Proposed Intervenors apparently seek to bring to this litigation. *Cf. Stupak–Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir.2000) ("We have held . . . that the concerns of an entity seeking intervention can be presented with complete sufficiency through [amicus] participation."); *Bradley v. Milliken*, 828 F.2d 1186, 1192–1194 (6th Cir. 1987) (affirming the denial of motions to intervene permissively and as of right in part because "the district court has already taken steps to protect the proposed intervenors' interests by inviting [their counsel] to appear as amicus curiae in the case"); *Penick v. Columbus Educ. Ass'n*, 574 F.2d 889, 890–91 (6th Cir.1978) (affirming the district court's denial of a motion to intervene permissively or as of right but allowing the proposed intervenor to participate as amicus curiae); *Brewer v. Republic Steel Corp.*, 513 F.2d 1222, 1225 (6th Cir.1975) (affirming the district court's denial of a motion for permissive intervention, noting that if the proposed intervenor "accepts the District Court's invitation to participate in the litigation as an amicus curiae," it would afford the organization "ample opportunity to give the court the benefit of its expertise"); *Thornton*

v. E. Tex. Motor Freight, Inc., 454 F.2d 197, 198 (6th Cir.1972) (affirming the district court's denial of a motion to intervene permissively or as or right but allowing the proposed intervenor to participate as amicus curiae).

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