No. 18-2383

In the United States Court of Appeals
for the Sixth Circuit

League of Women Voters of Michigan *et al.*,

Plaintiffs – Appellees,

v.

Ruth Johnson, in her official capacity as Michigan Secretary of State, *et al.*,

Defendants,

and

Rep. Lee Chatfield, in his official capacity as Speaker Pro Tempore of the Michigan House of Representatives, and Rep. Aaron Miller, in his official capacity as Chairman of the Elections and Ethics Committee of the Michigan House of Representatives,

Proposed Intervenors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
Civ. No. 17-cv-14148, Hon. Eric L. Clay, Denise Page Hood, Gordon J. Quist

---

RESPONSE BRIEF OF PLAINTIFFS-APPELLEES

Joseph H. Yeager
Harmony Mappes
Jeffrey P. Justman
FAEGRE BAKER DANIELS LLP
300 N. Meridian Street, Suite 2700
Indianapolis, Indiana 46204
(317) 237-0300 (phone)
(317) 237-1000 (fax)
Jay.Yeager@FaegreBD.com
Ryan.Hurley@FaegreBD.com
Harmony.Mappes@FaegreBD.com

Mark Brewer
GOODMAN ACKER P.C.
17000 W. Ten Mile, Second Floor
Southfield Michigan 48075
(248) 483-5000 (phone)
(248) 483-3131 (fax)
mbrewer@goodmanacker.com

Counsel for Plaintiffs-Appellees

CORPORATE DISCLOSURE STATEMENT

As required by Fed. R. App. P. 26.1(a) and Sixth Circuit Local Rule 26.1, Plaintiffs-Appellees certify that none of them is a subsidiary or affiliate of a publicly owned corporation, and that to the best of their knowledge, no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome of this appeal. Plaintiffs-Appellees are eleven individuals and the League of Women Voters of Michigan ("Voters"), a private nonpartisan community-based statewide nonprofit organization founded in 1919.

/s/ Harmony Mappes
Harmony Mappes
Counsel for Plaintiffs-Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL STATUTES

STATE STATUTES

RULES

CONSTITUTIONAL PROVISIONS

STATEMENT REGARDING ORAL ARGUMENT

Voters agree with Michigan Representatives Lee Chatfield and Aaron Miller (together, the "Legislative Intervenors") that the case can be decided expeditiously without oral argument.[1]

JURISDICTIONAL STATEMENT

Voters' complaint asserts violations of the First and Fourteenth Amendments to the U.S. Constitution, and invokes the district court's subject-matter jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. §§ 1343(a)(3) & (4); 28 U.S.C. § 1357; 28 U.S.C. § 2201; 28 U.S.C. § 2202; 28 U.S.C. § 2284; 42 U.S.C. § 1983; and 42 U.S.C. § 1988. (*See* Compl., RE 1 ¶ 12, 9.) Because Voters challenged congressional and legislative redistricting maps as unconstitutional partisan gerrymanders, they requested appointment of a three-judge panel pursuant to 28 U.S.C. § 2284(a). (*Id.* at ¶ 13, 9.) Chief Judge Cole designated the following three judges to serve as the three-judge district court: Hon. Eric L. Clay, United States Circuit Judge from this Court; Hon. Gordon J. Quist, District Judge for the United States District Court for the Western District of Michigan; and Hon. Denise Page Hood, Chief Judge for the United States District Court for the Eastern District of Michigan. (*See* Order, RE 9, 71.)

[1] Even the most optimistic timetable for final decision on the merits by the district court and by the Supreme Court leaves no margin for delay with respect to the adoption of remedial maps in Michigan. Voters calculate that under the current trial schedule a Supreme Court decision could not reasonably occur before **January 2020.** Michigan's statutes require maps to be in place by **March 20, 2020**, so that candidates can gather signatures and file no later than **April 21, 2020**.

On August 14, 2018, the district court denied a motion to intervene filed by the Legislative Intervenors. (Order, RE 91, hereinafter the "Original Order") In pertinent part, the panel concluded that "[g]ranting Applicants' motion to intervene could create a **significant likelihood of undue delay and prejudice to the original parties**," and that "[a]ny delay caused by Applicants' intervention would be undue in light of Applicants' lack of cognizable interest in this matter." (*Id.* at Page ID #2063-64, emphasis added.)

On September 5, 2018, the Legislative Intervenors appealed the Original Order. (*See* Opening Br. of Appellants, ECF No. 11, *League of Women Voters of Mich. v. Johnson*, No. 18-1946 (6th Cir. Sept. 5, 2018), hereinafter the "Appellants' Original Brief.") Voters, recognizing that "[a]lmost any alteration of the trial date would result in the practical impossibility of implementing revised, non-gerrymandered maps in time for the November 3, 2020 election," and in light of this Court's recent decision permitting another group of intervenors to join the case, asked the Court to remand the matter so that the district court could evaluate intervention in light of *League of Women Voters v. Johnson*, 902 F.3d 572 (6th Cir. 2018) ("*League of Women Voters I*"). (*See* Corrected Response Br. of Plaintiffs-Appellees, No. 18-1946, ECF No. 30 (6th Cir. Oct. 9, 2018), hereinafter the "Voters' Original Brief"; *see also* Mot. to Remand, No. 18-1946, ECF No. 19 (6th Cir. Sept. 18, 2018).)

On October 25, 2018, this Court entered its order granting the Voters' motion to remand. (Order, ECF No. 32-1, No. 18-1946 (6th Cir. Oct. 25, 2018).) The Legislative Intervenors renewed their motion to intervene in the district court. (*See*

Legislative Intervenors' Renewed Mot. to Intervene, RE No. 136 at Page ID #5083-5134, hereinafter the "Renewed Motion.") The district court denied the Renewed Motion on November 30, 2018, finding, *inter alia*, that

> The Legislative Intervenors' Motion is not timely, even if this Court construes it as having been filed on the date when the Legislative Intervenors filed their Original Motion. The Legislative Intervenors filed their Original Motion on July 12, 2018 (*see* ECF. No. 70), nearly two months after the [district court] decided the motion to dismiss (*see* ECF No. 54) and approximately four-and-a-half months after the Congressional Intervenors filed their motion to intervene. (*See* ECF No. 21.)
>
> The Legislative Intervenors also fail to satisfy the other three elements for intervention as of right, as [the district court] previously articulated in denying the Legislative Intervenors' Original Motion. (*See* ECF No. 91.)

(*See* Order Denying the Legislative Intervenors' Renewed Motion to Intervene, RE No. 144 at Page ID #5346-47, hereinafter the "Second Order.") The district court also exercised its discretion to deny permissive intervention. (*See id.* at Page ID #5348-49.)

Pursuant to Federal Rule of Civil Procedure 4(a)(1)(A), the Legislative Intervenors timely filed their notice of appeal on November 30, 2018. (*See* Notice of Appeal, RE No. 146 at Page ID #5353.)

The district court's order denying Legislative Intervenors' motion to intervene is immediately appealable under the collateral-order doctrine. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377 (1987) ("[W]hen an order prevents a putative intervenor from becoming a party in *any* respect, the order is subject to immediate review" under the *Cohen* collateral-order exception); *Bhd. of R.R. Trainmen v. Balt. &*

Ohio R.R. Co., 331 U.S. 519, 524 (1947) (as to orders denying intervention as of right, "the order denying intervention becomes appealable"); *Purnell v. City of Akron*, 925 F.2d 941, 944-45 (6th Cir. 1991) (order denying motion to intervene under both Rule 24(a) and 24(b) was appealable under the collateral-order doctrine).

STATEMENT OF THE ISSUES

1. Whether, in light of Voters' position not to object to intervention so long as the trial date is not moved, the Court should summarily decide the appeal and remand the case so that the Legislative Intervenors may intervene, while keeping the current trial schedule.

2. Alternatively, if the Court chooses to address intervention on the merits, whether the district court abused its discretion in denying Legislative Intervenors' motion to intervene under Fed. R. Civ. P. 24.

STATEMENT OF THE CASE

A. In 2011, Michigan's Republican-controlled legislature gerrymanders Michigan's state and federal legislative districts for partisan advantage.

In 2011, Michigan's Republican-controlled legislature enacted state legislative and federal congressional districting plans (the "Plans") following the 2010 census. (Compl., RE 1 ¶ 20, 11.) The Plans maximized Republicans' partisan advantage by tilting already-gerrymandered legislative and congressional maps to favor the Republican party still more. (*Id.*) The Republican-controlled legislature intentionally, effectively, and severely gerrymandered the State House, State Senate, and federal

congressional maps to benefit Republicans and diminish the voting strength of Democratic voters throughout the 10-year life of the maps. (*Id.* at ¶ 21, 11-12.)

B. Secretary Ruth Johnson attempts to derail the case.

The individual Plaintiffs include Democrats who vote for Democratic candidates and assist them in their election efforts. (*Id.* at ¶ 10, 6-9.) These individual voters, along with the League of Women Voters of Michigan, brought the lawsuit against Ruth Johnson, Michigan's Secretary of State, in her official capacity, because she is the "chief election officer" in Michigan and is thus responsible for the conduct of Michigan elections. (*Id.* at ¶ 11, 9.) She is specifically charged with enforcing the gerrymanders described in the Complaint. (*Id.*)

In January, Secretary Johnson moved to dismiss Voters' claims for lack of standing, and to stay proceedings until the Supreme Court decided *Gill v. Whitford* and *Benisek v. Lamone*, which cases address similar partisan-gerrymandering issues.[2] (Mot. to Stay and to Dismiss, RE 11, 92-97.) On March 14, 2018, the district court denied the motion to stay, in large part because of its concern that a stay of even a few months would delay proceedings so as to impair Voters' effort to vindicate their rights. In an analysis that also applies here, the district court wrote:

> Defendants' argument fails because **there exists a fair possibility that a stay would prejudice Plaintiffs as well as the public interest.** The parties are operating under the reasonable assumption that, if Plaintiffs succeed on the merits, 'a 2020 remedial plan must be in place no later than March of 2020 to be effective for the November 2020 election. [RE 22 at Page ID #279.] **Voting rights litigation is notoriously**

[2] *Whitford* and *Lamone* were decided on June 18, 2018. *See Whitford*, 138 S.Ct 1916; *Lamone*, 138 S. Ct. 1942 (per curiam).

> **protracted.** *See, e.g., McCain v. Lybrand*, 465 U.S. 236, 243 (1984) (discussing litigation delays as an impetus for Voting Rights Act of 1965). **Indeed, Congress took extraordinary measures—providing for this Court to sit as a three-judge panel and for any appeal to be taken directly to the Supreme Court—precisely so that voting rights cases could be decided more quickly.** *See Swift & Co. v. Wickham*, 382 U.S. 111, 124 (1965) ("The purpose of the three-judge scheme was in major part to expedite important litigation.") Based on this history of voting rights litigation, **there is a risk that this case will not be resolved by March 2020 even in the absence of a stay.** Defendants' argument incorrectly minimizes the possible duration of this case as well as the prejudice to Plaintiffs and the public interest that would arise if this case were to persist through three election cycles.

(Order Denying Def.'s Mot. to Stay, RE 35 at Page ID #613-14, emphases added.) The district court held a hearing on the Secretary's first motion to dismiss on March 19, 2018. On May 16, 2018, the district court granted the motion to dismiss in part and denied it in part. (Order, RE 54, at Page ID #942-58.)

While these motions were pending, Voters began the discovery process in earnest by serving many non-party subpoenas and requests for production.[3] (*See* Resp. to Mot. to Intervene, RE 37, 632-33.)

C. Members of Michigan's Congressional delegation move to intervene, and the district court denies their motion.

On February 28, 2018, eight Republican members of Michigan's Congressional delegation (the "Congressional Intervenors") moved to

[3] Ironically, though the Legislative Intervenors claim that being subjected to routine third-party discovery was what "made [their requested] intervention necessary," *see* Opening Br. of Appellants, ECF No. 18 at Page ID #33, hereinafter "App. Br.," they waited until *two months* after the district court denied a motion to quash that discovery before requesting intervention. (*See generally* RE 58 (May 23, 2018 Order on Mot. to Quash); RE 70 (July 12, 2018 Mot. to Intervene).)

intervene. (RE 21.) Voters opposed their motion. (RE 37.) On April 5, 2018, the district court denied the motion to intervene. (RE 47.)

D. Legislative Intervenors move to intervene, and the district court denies their motion.

On July 12, 2018, Representatives Lee Chatfield and Aaron Miller (purporting to act in their official capacities as, respectively, Speaker Pro Tempore and Chairman of the Elections and Ethics Committee of the Michigan House of Representatives) sought intervention as of right under Rule 24(a)(2) and permissive intervention under Rule 24(b). (Mot. to Intervene, RE 70 at Page ID# 1204.) Generally, they argued that they had a significant interest in the litigation, and that Secretary Johnson would not adequately represent their interest.[4] (*Id.*) Voters opposed intervention as of right and argued that the district court should exercise its discretion to deny permissive intervention as well. (Opp. to Mot. to Intervene by Republican Legislative Intervenors, RE 78, 1779-99.)

Legislative Intervenors argued that "[a]ny potential delay is ameliorated by" the district court's ability to "set reasonable limits on intervenors in order to avoid any prejudice or delay[.]" (Reply in Support of Mot. to Intervene, RE 85, 2033-34.) They also represented that they were "prepared to work in any

[4] That position is at odds with their new position, taken after the election of a Democratic successor to Secretary Johnson, that, actually, Secretary Johnson did adequately represent their interests, but that "no existing party [would have] standing to defend the Legislative maps *if and when the Secretary abandons that defense*." (App. Br., ECF No. 18 at Page ID #32, original emphasis omitted and emphasis added.)

expedited schedule the Court may order to prevent any such prejudice," and insisted that "there is no significant delay or prejudice that would result by allowing intervention." (*Id.* at Page ID #2034.)

On August 14, 2018, in an order signed by Judge Quist, the district court denied Legislative Intervenors' motion to intervene. (Original, RE 91.) The court found that "[i]nsofar as Applicants claim an official interest in this litigation, Applicants' interest is a component of the state's overall interest and is exclusively represented by the executive." (*Id.* at Page ID #2059-60.) The district court also found that Legislative Intervenors "attempt[ed] to assert non-official interests in support of intervention"—interests that are foreign to "Michigan's republican form of government," in which "members of the legislature serve at the will of the people and have no official interest in maintaining their elective offices." (*Id.* at Page ID #2062.) To the extent that Legislative Intervenors "attempt[ed] to assert an interest in maintaining their 'or their successors' reelection chances," the court found that "[t]his purported interest is grounded in either partisanship, notions of elective office as property, or both," and "is not cognizable for purposes of Applicants' motion to intervene." (*Id.*) Rejecting Legislative Intervenors' argument that they have an "economic interest" in the Plans, the district court found that "such interest belongs to the state and is adequately represented by the executive." (*Id.* at Page ID #2063.) The district court also held that the Legislative Intervenors could

"file a second motion to intervene *if the executive abandons its participation in this matter*." (*Id.* at Page ID #2064, emphasis added.)

Crucially, the district court found that "[g]ranting the Applicants' motion to intervene **could create a significant likelihood of undue delay and prejudice to the original parties**. Any delay caused by Applicants' intervention would be undue in light of Applicants' lack of cognizable interest in this matter." (*Id.* at Page ID #2063-64, emphasis added.) The district court thus denied intervention under both Fed. R. Civ. P. 24(a)(2) and 24(b).

E. This Court reverses the district court's denial of the Congressional Intervenors' motion to intervene.

Two weeks after the district court denied Legislative Intervenors' motion to intervene, this Court reversed the district court's earlier denial of the Congressional Intervenors' motion to intervene. *See League of Women Voters I.* On August 20, Legislative Intervenors filed a notice of appeal of the district court's denial of their request to intervene. (RE 96.)

F. The district court sets and enforces an aggressive discovery and dispositive motion schedule.

The district court's case management order contains an aggressive discovery and trial schedule. (*See* Case Mgmt. Order, RE 53 at Page ID #939-41.) On September 4, 2018, the district court "order[ed] that the Congressional Intervenors, as Intervenor, must comply with the [case management] deadlines already in place[.]" (RE 108 at Page ID #2188.) The Congressional Intervenors filed an "Emergency Mot. to Alter Case Management Order #1," seeking,

among other relief, to "[a]djust all dates in the Scheduling Order," ***including moving the trial to April 8, 2019*** (from February 5, 2019), with proposed findings of fact and conclusions of law due April 23, 2019. (*See* Emergency Mot. to Alter Case Mgmt. Order, RE 111 at Page ID #2231-32.)

On September 11, 2018, the district court ordered the Congressional Intervenors to "comply with the deadlines already in place in the Case Management Order, but allowed them to "seek additional discovery on a case-by-case basis." (*See* RE 115 at Page ID #2308-09.) The Congressional Intervenors then sought relief from this Court, filing an Emergency Motion to Enforce the Court's ruling allowing intervention, and seeking a sixty-day extension of all deadlines. (No. 18-1437, ECF No. 38.) This Court denied that motion. (No. 18-1437, ECF No. 39.) Accordingly, the Congressional Intervenors (and the Secretary) moved for summary judgment on September 21, 2018. (RE 121.)

G. Legislative Intervenors appeal the district court's denial of their Original Motion to intervene.

Legislative Intervenors filed their Appellant's Brief on September 5, 2018. (*See* ECF No. 11.) They also filed a motion to stay the district court's proceedings pending this appeal. (*See* ECF No. 16.) Voters opposed the motion to stay, *see* ECF No. 20, and filed a motion to remand this case, explaining that "[g]iven the timing of" the district court's denial of Legislative Intervenors' motion to intervene and *League of Women Voters I*, "and the current posture of

the case, remanding for further proceedings in light of this Court's first ruling on intervention is the most efficient and practical outcome for the parties and preservation of judicial resources." (ECF No. 19.)

H. This Court grants Voters' motion to remand, Legislative Intervenors renew their motion to intervene, and the district court denies the same.

On October 25, 2018, this Court granted Voters' motion to remand, noting that "[i]t is undisputed that the district court denied the Legislative Intervenors' motion to intervene prior to, and without the benefit of, this Court's decision in *League of Women Voters I*. Consequently, a remand is appropriate so that the district court panel may evaluate the Legislative Intervenors' now-unopposed motion in light of the standards articulated in *League of Women Voters I*." (ECF No. 32-1 at Page ID #2.)

The Legislative Intervenors renewed their motion to intervene on November 1, 2018. (RE 136 at Page ID #5083.) The district court denied the renewed motion. (*See* Second Order, RE No. 144 at Page ID #5346) The district court found that:

(1) the Legislative Intervenors' motion was not timely;

(2) the Legislative Intervenors' "claimed interest in the litigation is a component of the state's overall interest and is exclusively represented by the executive";

(3) the Legislative Intervenors' argument regarding the potential future inadequacy of the Secretary's representation was premature in that it "merely speculate[s] about the 'possibility' that the executive branch will end its participation in this matter";

(4) the Legislative Intervenors "have no official interest in maintaining their elected offices";

(5) "any purported interest in maintaining their or their successors' chances of re-election is grounded in either partisanship, notions of elected office as property, or both," and therefore is not cognizable; and

(6) (6) to the extent that the Legislative Intervenors have *any* legitimate interest in the litigation, "such interest belongs to the state and is adequately represented by the executive."

(RE 144 at Page ID #5347.) Judge Quist dissented. (*See generally* RE 144-1.)

Legislative Intervenors also moved to stay the district court's proceedings pending this appeal, both in the district court, *see* RE 151 at Page ID #6139, and in this Court, *see* ECF No. 17-1. The district court has not yet ruled on that motion, and the Voters' response to that motion in this Court is due on December 20, 2018—the day after this brief is filed.

Summary of Argument

The Voters' imperative is to protect the February 5, 2019 trial date so that the issues of critical constitutional importance at stake in this case can be fully litigated, and so Voters can vindicate their rights and obtain effective meaningful relief. Legislative Intervenors have represented that they can and intend to participate in the trial without disrupting the existing trial schedule. Accordingly, as a practical matter, Voters no longer oppose Legislative Intervenors' intervention, provided that the trial date does not change as a result of intervention.[5] If this Court determines that

[5] Legislative Intervenors overstate the parties' agreement when they write that "[t]he parties request that this Court grant intervention as soon as is practicable." (*See* App. Br., ECF 18 at Page ID #18.) Voters agree not to object to intervention so long as the

intervention may occur without disturbing the trial date, the Court should simply remand the case for that eventuality.

But if the Court concludes that a change in the trial date would be required if intervention were allowed, it should reject the Legislative Intervenors' arguments and affirm the district court's Second Order. Neither the district court's Original Order denying intervention, nor the district court's Second Order denying intervention, was erroneous. The Legislative Intervenors are not entitled to intervention as of right; neither was it an abuse of discretion to deny permissive intervention. The district court properly evaluated these questions when it originally denied intervention, and it properly evaluated these questions again, when it denied Legislative Intervenors' renewed motion for intervention in light of *League of Women Voters I*.

I. Because it is critically important to protect the February 5, 2019 trial setting, Voters and the Legislative Intervenors agree that intervention may be granted as long as the trial date remains the same.

Almost any alteration of the trial date would result in the practical impossibility of implementing revised, non-gerrymandered maps in time for the November 3, 2020 election. This matter is set for trial on **February 5, 2019**. (*See* RE 53 at Page ID #940.) Proposed Findings of Fact and Conclusions of Law are due by **February 22, 2019**. (*Id.*) Even assuming the district court enters judgment a mere three weeks later, on March 15, 2019, that would allow *just* enough time for the Supreme Court to decide, by the end of its current Term in June, whether to set the case for full briefing

---

trial date remains the same. But if this Court determines that allowing intervention would require a change in the trial date, the Voters oppose intervention.

and argument early in October Term 2019. That, in turn, would allow a decision from the Supreme Court in early 2020.

An early January 2020 Supreme Court decision would leave **just over a month and a half** to implement any remedial maps ordered by the district court. That is critically important in view of Michigan's primary schedule in 2020:

- The Michigan primary election for the 2020 election will be held on **August 4, 2020**. MICH. COMP. LAWS § 168.534.
- The filing deadline for congressional and legislative candidates for the 2020 election is **April 21, 2020**. MICH. COMP. LAWS § 168.551.
- Legislative candidates can file for the primary either by paying a $100 fee or by filing petition signatures by the April 21 deadline. MICH. COMP. LAWS § 168.163. Congressional candidates, by contrast, must file a minimum of 1,000 petition signatures. MICH. COMP. LAWS §§ 168.133; 168.544f.
- In order to gather signatures, candidates must know the district boundaries. A diligent candidate can gather the requisite signatures in 30 days.
- So, remedial maps must be in place by **March 20, 2020**.

Any alteration of the trial date would require the Supreme Court either to (1) take significant action during the Court's summer recess, or (2) significantly expedite the typical briefing and argument schedule. The Court, of course, has discretion to do either of those things. But it would be highly presumptuous to plan on the Court's doing either.

Legislative Intervenors represent that, if they are allowed to intervene on the existing trial schedule, they will have no difficulty in participating in the litigation and defending their interests. (*See* App. Br., ECF 18 at Page ID #18.) They could hardly argue otherwise, because they are represented by the same counsel who represent the

Congressional Intervenors. (*Compare* ECF No. 3, No. 18-1437 (appearance of attorney Jason Torchinsky on behalf of the Congressional Intervenors), *with* ECF No. 5, No. 18-1946 (appearance of Mr. Torchinsky on behalf of Legislative Intervenors).)

Voters thus do not oppose intervention, so long as the trial date remains the same. If this Court agrees that intervention may be granted without altering the current trial schedule, Voters respectfully request that the Court do so summarily, and as quickly as is practicable.

II. If the Court concludes that ordering intervention would require a change in the trial date, or otherwise decides to consider Legislative Intervenors' position on the merits, the Court should affirm the district court.

Voters' decision not to further contest Legislative Intervenors' attempt to intervene was driven by a pragmatic reading of *League of Women Voters I* and their interest in obtaining timely relief. Nevertheless, Legislative Intervenors' request to intervene is materially different from the Congressional Intervenors', and the district court's decision was not erroneous. To the extent that this Court concludes that allowing the Legislative Intervenors to intervene would require a change in the trial date, or otherwise evaluates the merits, Voters respectfully request that the Court affirm the district court.

a. Standard of Review.

Legislative Intervenors seek intervention as of right under Fed. R. Civ. P. 24(a)(2). This Court applies a four-part test to evaluate intervention motions under that Rule: "(1) **timeliness** of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect

that interest in the absence of intervention, and (4) inadequate representation of that interest by the parties already before the court." *Mich. State. AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (emphasis added). Unless the putative intervenor satisfies *each* criterion, intervention as of right will be denied. *See Stupak-Thrall v. Glickman*, 226 F.3d 467, 471 (6th Cir. 2000). This Court reviews the district court's decision regarding intervention as of right *de novo*, except for the timeliness element, which is reviewed for abuse of discretion. *United States v. Tennessee*, 260 F.3d 587, 592 (6th Cir. 2001).

b. The district court did not "disregard[] the[] instructions" of this Court.

The Legislative Intervenors' accusation that the district court "disregarded the[] instructions" of this Court on remand, App. Br., ECF 18 at Page ID #22, is incorrect. The specific action this Court required when it granted Voters' motion to remand, *see* ECF No. 19, No. 18-1946, was for the district court to "evaluate the Legislative Intervenors' now-unopposed motion in light of the standards articulated in *League of Women Voters I*." (Order, RE 131 at Page ID #5039.)

The district court's order held specifically that:

> After *further consideration* and review of the factual background of the case, the Court's denial of the Original Motion, and the Motion currently before the Court, the Court *finds that its previous decision did not violate the standards articulated in* League of Women Voters I. Because the same reasons for denying the Original Motion apply with equal force to their current Motion, the Legislative Intervenors' Renewed Motion to Intervene (ECF No. 136) is **DENIED**.

(Second Order, RE 144 at Page ID #5346, emphasis added.) The substantive basis of Judge Quist's dissent was not that Circuit Judge Clay and Judge Hood "disregarded [this Court's] instructions," as Legislative Intervenors accuse. (*See* App. Br., ECF 18 at Page ID #22.) Instead, the basis was that in Judge Quist's "judgment, the political landscape completely changed with the November 6 election—a Democrat was elected Michigan Secretary of State and will assume office as of January 1." (Dissent, RE 144-1 at Page ID #5351.)

c. Legislative Intervenors' request to intervene was untimely.

The district court found that the "Legislative Intervenors' Original Motion [to intervene] was untimely, and therefore would prejudice the existing parties." (Second Order, RE 144 at Page ID #5348-49 (citing *Blount-Hill v. Zelman*, 636 F.3d 278, 287 (6th Cir. 2011).) "Given that the Legislative Intervenors moved to intervene two months after the Court had decided the motion to dismiss, and fail to articulate a cognizable legal interest in the proceedings," the district court declined to "exercise its discretion to allow them to join as permissive intervenors." (*Id.*) The district court also held that the Legislative Intervenors' *argument* about the inadequacy of the current defendants to represent their interests—not, as Legislative Intervenors misleadingly argue, the motion as a whole—was premature because the Legislative Intervenors "merely 'speculate about the 'possibility' that the executive branch will end its participation in this matter.'" (*Id.* at Page ID #5347, citing Original Order, RE 91 at Page ID #2061.)

The Legislative Intervenors take issue with these holdings, arguing that a "motion cannot be both premature and untimely at the same time." (App. Br., ECF 18 at Page ID #36.) Legislative Intervenors misapprehend the district court's order. Their *motion* was untimely, in that it was brought, as they admit, "nearly two months after the [district court] decided the [Secretary's] motion to dismiss and approximately four-and-a-half months after Congressional Intervenors' field their motion to intervene." (*Id.* at Page ID #30, quoting RE 144 at Page ID #5347, and admitting that those statements are "factually true.") The motion to dismiss was decided almost five months after the Complaint was filed. By any measure, the *motion* was untimely.

This Court has identified five factors to weigh in determining the timeliness of an application to intervene:

> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Jansen v. City of Cincinnati, 904 F.2d 336, 340 (6th Cir. 1990). Again, the district court's holdings with respect to timeliness are reviewed for abuse of discretion. *See Tennessee*, 260 F.3d at 592.

Here, Legislative Intervenors' lack of justification for their lengthy delay in seeking intervention (*Jansen* factor 3) and the prejudicial impact intervention would cause in this time-sensitive case (factor 4) weigh heavily against a finding of timeliness.

A request to intervene is timely only if the proposed intervenors apply to the court "promptly after discovering their interest" in the case. *Zelman*, 636 F.3d at 285. Legislative Intervenors did not act promptly. Voters' impending lawsuit has received significant public attention since early 2017—almost a year, in fact, before Voters' lawsuit was filed.[6]

Whatever Legislative Intervenors' interest in the case may be—and, as discussed below, there are ample reasons to conclude that Legislative Intervenors have no separately cognizable interest—it undeniably was apparent by December 2017 when the Complaint was filed. Indeed, it was so apparent that the *Congressional* Intervenors (who, again, are represented by the same counsel) requested to intervene in February 2018—*six months before Legislative Intervenors' request.* The Congressional Intervenors alleged purported interests that are substantially similar to those that Legislative Intervenors eventually raised. (*Compare* Mot. to Intervene by Republican Congressmen, RE 21 at Page ID #219-221 ("Applicants, as current members of Congress, … are currently attempting to run for reelection in districts that will be directly impacted by any change in the congressional districts as they are currently drawn"), *with* Mot. to Intervene by Individual Michigan Legislative Intervenors, RE 70 at Page ID #1210 (noting that Applicants' "reelection or their successors' chances of election may be reduced as a result of redrawing the Current Apportionment Plan"); *see also* App. Br., ECF No. 18 at Page ID #37 (arguing that the "Legislators have *the*

[6] *See, e.g.*, "Democrats Challenge Gerrymandered Michigan Districts," DETROIT FREE PRESS (Jan. 31, 2017), https://www.freep.com/story/news/politics/2017/01/31/democrats-challenge-gerrymandered-michigan-districts/97254240/.

exact same type of interest in their legislative districts as the Congressmen have in their congressional districts.").)[7]

Legislative Intervenors offered no justification for their seven-month delay in seeking leave to intervene, and they did not contend that anything occurred since December 2017 that revealed to them an interest that previously was hidden. In this Court, they argued only that their "motion was timely as it was filed not long after the Answer and the Order Denying Legislative Privilege," No. 18-1946, ECF No. 11 at Page ID #12, "when there were still 43 days left in the discovery period, over two months before summary judgment motions were due, and over seven months left before trial", (*id.* at Page ID #18). They fail to mention that by the time they finally sought to intervene, (1) the parties had briefed, and the district court had denied, the Secretary's motion to dismiss or stay the action, ECF Nos. 11, 15, 20, 35; (2) the Congressional Intervenors had, through the same counsel who represent the Legislative Intervenors, sought and been denied leave to intervene, ECF Nos. 21, 37,

[7] As this Court noted with respect to the Congressional Intervenors:

> The "question is whether it was an abuse of discretion for the district court to deny permissive intervention as the case stood in February 2018, when the Congressmen moved to intervene. At that time, no scheduling order was in place and discovery had not yet begun. The district court had not ruled on Johnson's motion to stay or her motion to dismiss. Put simply, the case was in its infancy. If the Congressmen had been allowed to intervene from the outset, they would have been allowed input into scheduling matters, and duplicative discovery and motion practice would have been unnecessary. Any delay attributable to the Congressmen's presence in the case would have been minimal at best, *especially since they are all represented by the same attorney*.

League of Women Voters I at Page ID #7 (emphasis added).

40, 47; (3) both parties had served a total of 8 expert reports; (4) Voters had served dozens of third-party subpoenas (including subpoenas to numerous Michigan State Representatives and the Clerk of the Michigan House of Representatives); and (5) the parties had exchanged two rounds of discovery, and had scheduled numerous depositions, with discovery nearly complete, *see* Case Mgmt. Order, RE 53.

The non-party subpoenas, and the partially successful effort to quash those subpoenas launched in March, demonstrate Legislative Intervenors' full awareness of this case and the tardiness of their attempt to intervene. As Defendant noted, "Plaintiff's Counsel issued *subpoenas duces tecum* … on dozens of non-party, former and current legislative officials and staff, seeking production of certain documents relating to the introduction, consideration, or passage of Michigan's current apportionment plan[.]" (*See* Mot. to Quash Subpoenas and for Protective Order, RE 27 at Page ID #319.) Legislative Intervenors admit that they were "already covered parties under various third-party discovery requests." (RE 70 at Page ID #1214.) And they argue that "***[i]ntervention was made necessary once the state legislature was fully and improperly made subject to civil discovery***." (App. Br., ECF No. 18 at Page ID #33; emphasis added.) Yet this argument fails even on its own terms, because they waited until *two months after the motion to quash had been decided* before they requested to intervene. (*See* RE 58 (May 23, 2018 Order on Mot. to Quash); RE 70 (July 12, 2018 Mot. to Intervene).) They offer no excuse for this failure; there is none to consider.

The district court has emphasized repeatedly that time is of the essence. In March 2018 (four months before Legislative Intervenors sought to intervene), the

court denied the Secretary's motion to stay because if Voters prove their case, "a 2020 remedial plan must be in place no later than March of 2020 to be effective for the November 2020 election." (RE 35 at Page ID #613.) In May 2018 (two months before Legislative Intervenors sought to intervene), the district court denied the Congressional Intervenors' bid to intervene, noting the need for "expeditious resolution" of the case in light of the public interest at stake. (RE 47 at Page ID #903.) And in August 2018, the district court noted that "[g]ranting Applicants' motion to intervene could create a significant likelihood of undue delay and prejudice to the original parties." (RE 91 at Page ID #2063.) What was true then is truer now: permitting intervention in a way that delays the case would be highly prejudicial. *See Zelman*, 636 F.3d at 285 (delay caused by intervention would be prejudicial where the existing parties and the public had an "interest in the expeditious and efficient disposition" of a lawsuit "seek[ing] to invalidate a significant statutory scheme").

Because Legislative Intervenors' months-long delay in bringing their motion was unjustified, they may not intervene. *See Zelman*, 636 F.3d at 284 (noting that the "timeliness of a motion to intervene is a threshold issue") (citations omitted).

d. The Secretary and Congressional Intervenors are presumed to, and do, adequately represent any interests Legislative Intervenors may have.

Legislative Intervenors may intervene as of right only if they prove that the existing parties to the litigation do not "adequately represent" their interests. *See Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989). They cast this as a "minimal" burden, *see* Appellant's Brief, ECF No. 18 at Page ID #37, and say they meet it

because "no existing party has standing to defend the Legislative maps *if and when the Secretary abandons that defense*." (*Id.* at Page ID #21, emphasis added.)

Two important conclusions follow logically from those premises. *First*, the Secretary does have standing to defend the Legislative maps. *Second*, "no existing party" will have that standing if—but only if—"the Secretary abandons that defense." As the district court observed, at this point, there are only "musings about the changing political landscape and prognostications about what may or may not occur after the incoming Michigan Secretary of State takes office in January 2019." (Second Order, RE 144 at Page ID #5349 n.2.) So, by the Legislative Intervenors' own logic (the soundness of which the Voters do not address here), they would be entitled to intervene *only* if the Secretary abandons the defense of this case. That comports with the district court's Original Order, which permitted the Legislative Intervenors to renew their intervention request "if the executive abandons its participation in this matter." (Original Order, RE 91 at Page ID #2064.) The executive has not "abandoned its participation in this matter."[8]

[8] Indeed, if the lame-duck legislature has its way, the Secretary will not be able to abandon participation. The Republicans, "led in part by House Speaker Pro Tempore Lee Chatfield and House Elections and Ethics Committee Chairman Representative Aaron Miller," *see* App. Br., ECF No. 18, at Page ID #39, acted swiftly in the wake of the November 6 election in an effort to divest Secretary Benson (along with other incoming Democrats) of statutory authority before she (and they) take office. *See* David Eggert, *Michigan GOP moves to strip Democratic officeholders' power*, Washington Post (Dec. 5, 2018), *available at* https://www.washingtonpost.com/national/michigan-republicans-to-take-up-limits-on-democrats-powers/2018/12/05/2045d1a8-f8b5-11e8-8642-c9718a256cbd_story.html?utm_term=.44b25f546aa0. Pending bills would cripple Secretary Benson's authority with respect to campaign finance reform and investigations of so-called "dark money" donations. *See id.*; *see also* Riley Beggin,

Moreover, Legislative Intervenors' characterization of their burden ignores the "presumption of adequacy of representation that arises when the proposed intervenor and a party to the suit … have the same *ultimate objective*." *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987)(emphasis added; citation omitted); *United States v. Michigan*, 424 F.3d 438, 443-44 (6th Cir. 2005). A proposed intervenor shares the same "objective" as an existing party so long as each seeks the same relief. *See Coal. to Defend Affirmative Action v. Regents of the Univ. of Mich.*, 701 F.3d 466, 491 (6th Cir. 2012), *rev'd on other grounds, Schuette v. Coal. to Defend Affirmative Action*, 134 S. Ct. 1623 (2014) (concluding that the proposed intervenors and the Michigan attorney general "share[d] the same ultimate objective: the validation of [the statute]"); *Moore v. Johnson*, No. 14-11903, 2014 WL 2171097, at *2 (E.D. Mich. May 23, 2014) (finding that because Secretary Johnson shared "the exact same objective in the litigation [as the proposed intervenors]—i.e. securing a holding from the Court that the [challenged state statute] is constitutional," the presumption of adequacy applied).

Here, the Secretary, the Congressional Intervenors, and Legislative Intervenors all share the same objective and seek the same outcome: a holding that the Plans are constitutional. It does not matter that this shared objective might be motivated by marginally different interests, or that there is an alleged difference in "litigation

---

Michigan GOP moves bills that foes say will weaken incoming Democrats' power, Bridge Michigan (Dec. 5, 2018), https://www.bridgemi.com/public-sector/michigan-gop-moves-bills-foes-say-will-weaken-incoming-democrats-power. Speaker-elect Chatfield acknowledges that the timing of the Legislature's efforts presents optics issues. *See* Cheyna Roth, *Republicans Power Through Michigan's Controversial Lame Duck Legislation*, WEMI 89.1 (Dec. 11, 2018), http://www.wemu.org/post/republicans-power-through-michigans-controversial-lame-duck-legislation.

strategy." So long as the proposed intervenors share a desired end result with the existing defendants, the presumption of adequate representation applies. *See Bradley*, 828 F.2d at 1192.

This presumption is even stronger when an existing party is a government official charged with defending a state's law as part of her official duties. "[W]hen a statute comes under attack, it is difficult to conceive of an entity better situated to defend it than the government. It is after all the government that, through the democratic process, gains familiarity with the matters of public concern that lead to the statute's passage in the first place." *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013); *see also Freedom From Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011) (holding, in the context of a challenge to a federal statute, that "th[e] presumption of adequacy is nowhere more applicable" than where the government is defending the statute's constitutionality)(citation omitted). In short, it is "presume[d] that the government entity adequately represents the public." *FTC v. Johnson*, 800 F.3d 448, 452 (8th Cir. 2015) (citation omitted).

Legislative Intervenors identify four purported interests they say they aim to protect through intervention in their official capacities: (1) their "official conduct" would be impacted by an order requiring the Legislature to draw new maps (2) they would suffer "economic harm" from the "increasing costs of election and reelection" imposed by an unfavorable ruling; (3) their reelection chances might be reduced; and (4) they will be "forced to expend significant public funds and resources" to carry out

any remedial orders. (RE 70 at Page ID #1210.) As explained below, none of these interests is cognizable, but to the extent any is, each is adequately represented already.

i. The "economic harm" and reduced reelection chances interests are adequately represented by the Congressional Intervenors.

Legislative Intervenors argue that it is "well established that diminishment [sic] of reelection chances is a cognizable interest." (App. Br., ECF No. 18 at Page ID #40.) Even if that were true,[9] such an interest is not one that Legislative Intervenors could hold in their *official* capacities, in which they purport to be acting in seeking intervention. They could not be clearer that they are "asserting their right to defend themselves from a judicial decree that potentially harms their chances for reelection." (*Id.* at Page ID #41.)

Moreover, the "chances for reelection" of Representatives Chatfield and Miller are *nil*, because they are term-limited. And to the dubious extent that the Legislative Intervenors can act to protect "their successors' reelection chances," *see* Appellants' Br., ECF No. 18 at Page ID #39, those chances are irrelevant because *Voters are not challenging the districts the Legislative Intervenors currently represent.* Representative Chatfield

[9] For this proposition, Legislative Intervenors cite *Tex. Dem. Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006); *Smith v. Boyle*, 144 F.3d 1060, 1061-63 (7th Cir. 1998); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994); *Owen v. Mulligan*, 640 F.2d 1130, 1132-33 (9th Cir. 1981); and *Dem. Party of the U.S. v. Nat'l Conserv. Political Action Comm.*, 578 F. Supp. 797, 810 (E.D. Pa. 1983). (*See* App. Br., ECF No. 18 at Page ID #41.) Legislative Intervenors cited these same cases in their earlier briefing. (*See* App. Br., No. 18-1946, ECF No. 11 at Page ID #25 n.4.) But as Voters explained in *their* earlier briefing, "each of these cases is irrelevant to the facts and issues before this Court." (Voters' Orig. Br., No. 18-1946, ECF No. 30 at Page ID #36.) Voters also explained, for each of those cases, why that was so. (*See id.* at Page ID #36-7.) The Legislative Intervenors chose not to respond. (*See* App. Br., ECF No. 18 at Page ID #41-42.)

represents House District 59, while Representative Miller represents House District 107. Neither District 59 nor district 107 is among those that the Voters are challenging. (*See* RE 129-4 (listing challenged districts).)

With respect to the prospect of reduced reelection chances, as the district court rightly noted, while Legislative Intervenors disclaim any "property interest in their elected positions," RE 91 at Page ID #2062 (quoting RE 70 at Page ID #1215), this "purported interest is grounded in either partisanship, notions of elective office as property, or both," and as such, "is not cognizable for purposes of Applicants' motion to intervene." (*Id.* at Page ID #2062.) While they dispute this characterization, *see* Appellant's Br., ECF No. 18 at Page ID #39, they admit that they assert the "*exact same type of interest* in their legislative district as the Congressmen have in their congressional districts." (App. Br., ECF No. 18 at Page ID #37.) Indeed, as this Court noted, "the contours of the maps affect the Congressmen directly and substantially by determining which constituents the Congressmen must court for votes and represent in the legislature." (*League of Women Voters I*, No. 18-1437, ECF No. 37-2 at Page ID #8.)

With respect to the economic harm Legislative Intervenors supposedly would face from being forced to compete in and represent new districts, that interest, too, is adequately represented by the Congressional Intervenors. (*See* Reply in Support of Mot. to Intervene, RE 39 at Page ID #650-52.) Again, however, Legislative Intervenors *have no* economic interest, because *Voters are not challenging the districts they*

represent, and even if they were, the Legislative Intervenors are term-limited from running again.

The other economic expenditures that the Legislative Intervenors say they want to protect would either be required regardless of where district lines are drawn, or are so trivial as to be effectively irrelevant. For example, Legislative Intervenors say they "will have to expend additional funds becoming familiar with new areas within Michigan and forming relationships with new constituents and voters," App. Br., ECF No. 18 at Page ID #42, and that "[e]ngaging with new voters and new constituents in new districts will necessarily require expenditure of additional public and private funds." (*Id.* at Page ID #43.) But even if Voters were challenging Districts 59 and 107—and again, they are not—a change in the district lines would add only "new areas" that are contiguous to the existing "areas" comprising those Districts. If Representatives Chatfield and Miller could run again (or if their "successors" run) in non-gerrymandered districts, the candidates would "form[] relationships with … constituents and voters" the same way they do now—by speaking, attending events, etc. While there would be costs associated with those activities, they would not be attributable to a judicial decision. In other words, politicians will have to spend money "forming relationships" regardless of where the lines are drawn.

ii. The "official conduct," "public funds," and federal constitutional interests are adequately represented by the Secretary.

With respect to their "public funds" and "official conduct" arguments, Legislative Intervenors argue that "[i]f a special session of the legislature is required,

an already expensive process would become even more so." (App. Br., ECF No. 18 at Page ID #43.) This assertion is particularly ironic, given, as the district court noted recently, that "Republican lawmakers outsourced the drawing of the Congressional Districts to the Michigan Redistricting Resource Institute, which in turn hired Jeff Timmer of Sterling Corporation, a Republican consulting firm." (RE 143 at Page ID #5300.) Moreover, Legislative Intervenors ignore the fact that, as the district court held, "[r]epresenting the State of Michigan in court—whether against a challenge to the validity of a state law or a threat to state resources—is an executive function[.]" (RE 91 at Page ID #2060 (citing Mich. Const. art. 5, §§ 1, 8; Mich. Comp. Laws §§ 14.29, 21.162).) Legislative Intervenors have not established that the Secretary is abdicating this function in a way that might warrant legislative intervention. *Cf. United States v. Windsor*, 570 U.S. 744, 762-63 (2013) (where executive branch declined to defend DOMA, Congressional group intervened).

Finally, Legislative Intervenors purport to assert a "federal constitutional interest in their constitutionally prescribed power to reapportion." (Appellant's Br., No. 18-1946, ECF No. 11 at Page ID #27.) This argument fails for the same reason that the "official conduct" argument fails: the task of representing the State of Michigan in court belongs to the executive branch. (*See* RE 91 at Page ID #2060 (citing Mich. Const. art. 5, §§ 1, 8; Mich. Comp. Laws §§ 14.29, 21.162).)

e. Legislative Intervenors do not have a "substantial, legal interest" in the subject of the case.

"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…. The interest must be significantly protectible." *Grubbs*, 870 F.2d at 346 (citation omitted); *see also United States v. Detroit Int'l Bridge Co.*, 7 F.3d 497, 501 (6th Cir. 1993) (explaining that a "direct, significant legally protectable interest" is required). "In cases like this one, where a group of plaintiffs challenge 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 Wisc. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015).

Legislative Intervenors purport to identify four interests they seek to protect by intervening: (1) the regulation of Legislative Intervenors' official conduct; (2) the diminution of their or their successors' reelection chances; (3) the economic harm to Legislative Intervenors caused by increasing costs of election or reelection, constituent services, and mid-decade reapportionment; and (4) the vested power of Michigan's legislative branch under the United States Constitution over the apportionment of congressional districts. (Appellant's Br., ECF No. 18 at Page ID #37-44.) The first and fourth factors are inextricably linked, so will be treated together here.

i. **The regulation of Legislative Intervenors' official conduct/vested power of Michigan's legislative branch under the United States Constitution is not a separately cognizable interest.**

Legislative Intervenors argue that the "Michigan Legislature … will be directly impacted by any order of the district court requiring a redrawing of the current legislative and congressional maps." (Appellant's Br., No. 18-1946, ECF No. 11 at Page ID #14; *see also* App. Br., ECF No. 18 at Page ID #39.) While it is true that if Voters prevail, new maps will have to be drawn, that does not give the *Legislature* a cognizable interest distinct from the *State's* interest, which is currently and adequately being represented by the Secretary. The district court recognized this when it observed that Legislative Intervenors' "attempt to intervene is in tension with the principle of separation of powers." (Order Denying Mot. to Intervene, RE 91 at Page ID #2059.)

Legislative Intervenors called the district court's separation-of-powers ruling "inexplicable." (*See* No. 18-1946, ECF No. 11 at Page ID #12.) To the contrary: the district court's ruling was fully explicated and is correct. (*See* Original Order, RE 91 at Page ID #2059-2061.) Legislative Intervenors devote less than a full page to attacking merits of the district court's ruling. (*See* ECF No. 18 at Page ID #51-52.) In that space, Legislative Intervenors say that *Windsor*, 570 U.S. at 754, "stands for the proposition that individual Legislative Intervenors *may intervene*." (*Id.* at Page ID #52, emphasis in original.) *Windsor* does not stand for that proposition. As the district court properly noted, the Supreme Court in *Windsor* allowed legislative intervention "*where*

the executive decided not to participate in the litigation[.]" (Order, RE 91 at Page ID #2061, emphasis added.) Here, of course, the executive—through the Secretary—is participating fully in the litigation. Though Legislative Intervenors now claim that she might soon decline to do so, they do not cite any specific action on the part of the incoming Secretary with respect specifically to this litigation.

They also claim, without explanation or citation, that "[s]eparation of powers principles are of simply no moment when the legislature wielded powers specifically granted by the Federal Constitution." (Appellant's Br., No. 18-1946, ECF No. 11 at Page ID #35; *see also* App. Br., ECF No. 18 at Page ID #52 (verbatim).) Legislative Intervenors argue that the Constitution "makes a specific grant of authority to … the Michigan State Legislature." (App. Br., ECF No. 18 at Page ID #52.) Article I, § IV, of course, provides that the "times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators." Under Michigan law, the Secretary is the "chief election officer" of Michigan, responsible for the conduct of Michigan's elections and for the enforcement of the gerrymandered Plans. (*See* Compl., RE 1 at Page ID #9 (citing MICH. COMP. LAWS § 168.21).) The Secretary is one of four executive branch officials elected by statewide election. (*See* "Executive Branch," https://www.michigan.gov/som/0,4669,7-192-29701_29702---,00.html (last accessed Dec. 18, 2018).) As the district court explained, "[r]epresenting the State of Michigan in court—whether against a challenge to the validity of a state law or a threat to state

resources—is an executive function." (RE 91 at Page ID #2060 (citing MICH. CONST. art. 5, §§ 1, 8; MICH. COMP. LAWS. §§ 14.29, 21.162).) Put simply, Legislative Intervenors are seeking to interfere in a function the people of Michigan have delegated exclusively to their executive officers. The district court correctly declined to allow this interference.

ii. The alleged interest in avoiding diminution of reelection chances is insufficient under Rule 24(a)(2).

Next, Legislative Intervenors argue that their reduced chances of obtaining reelection under non-gerrymandered maps constitutes a substantial legal interest. (*See* Appellant's Br., ECF No. 18 at Page ID #39-42.) They do not. In their original motion, Legislative Intervenors cited *Wittman v. Personhuballah*, 136 S. Ct. 1732 (2016), for the proposition that "evidence of impairment of reelection prospects can constitute an Article III injury for standing purposes." (*See* RE 70 at Page ID #1218.) As the district court noted, "in *Wittman*, the Supreme Court *rejected* standing for members of the Virginia legislature, explaining that it 'need not decide when, or whether, evidence of the kind of injury they allege [potential harm to reelection prospects] would prove sufficient for purposes of Article III's requirements." (Order, RE 91 at Page ID #2063 (quoting *Wittman*, 136 S. Ct. at Page ID #1734).) (*Wittman* is conspicuously absent from Legislative Intervenors' new brief.) And while Legislative Intervenors say "there is a wealth of authority for the proposition that the diminishment [sic] of election chances is an injury," App. Br., ECF 18 at Page ID #41, as explained in Voters' earlier briefing, *see* Voters' Original Brief, No. 18-1946,

ECF No. 30 at Page ID #36-37, **each of these cases is irrelevant to the facts and issues before this Court**.

iii. The alleged economic interest is unsubstantiated and inadequate under Rule 24(a)(2).

Legislative Intervenors also claim an "economic interest" in "their" districts and say this is "sufficient for intervention." (Appellant's Br., ECF No. 18 at Page ID #42.) Specifically, they argue they must incur "(1) the increased costs of running in new or altered districts; (2) the increased costs of engaging and serving new constituents; and (3) the costs associated with a mid-decade court-ordered reapportionment." (Appellants' Br., No. 18-1946, ECF No. 11 at Page ID #26; *see also* App. Br., ECF No. 18 at Page ID #42 (verbatim).)[10] This argument is flawed for several reasons.

First, Legislative Intervenors' purported economic interest in "their" districts is nonexistent, because Voters seek a remedy for an election that will not affect either of the Legislative Intervenors. Voters seek a remedy for 2020. (*See* Compl., RE 1 ¶ 26, 13.) Representatives Chatfield and Miller each won reelection in November 2018, so each is term-limited from serving in the Michigan House of Representatives ever again. MICH. CONST. art. IV, § 25. Moreover, Voters are not currently challenging the district lines for House districts 59 or 107—the district represented by Messrs. Miller

[10] They also quote *League of Women Voters I* in claiming they "also 'serve constituents and support legislation that will benefit the district and individuals and groups therein.'" (*Id.* at Page ID #25, quoting *League of Women Voters I* at Page ID #8.) (If they have the same interests as the Congressional Intervenors, those interests are *ipso facto* represented by existing parties.)

and Chatfield. (*See* RE 129-4 (listing districts Voters intend to challenge).) So, as an evidentiary matter, whatever economic harm *might* exist at some point as to someone else, such unsubstantiated, speculative harm is no basis for intervention by Legislative Intervenors. *Cf. Wittman*, 136 S. Ct. at 1737 ("[W]e have examined the briefs, looking for any evidence … and have found none…. We need go no further.").

The only case Legislative Intervenors cite in support of a purported "economic" interest is *Benkiser*. In that case, the Texas Democratic Party argued that after the state Republican Party declared Tom DeLay ineligible for election and named a replacement, the Democrats would be forced to spend additional funds to prepare a new campaign on a short timeline. 459 F.3d at 584-85. The Fifth Circuit held, in affirming a ruling on standing under a deferential standard of review, that a "finding of financial injury [was] not *clearly erroneous* because it [was] supported by *testimony in the record*." *Id.* at 586 (emphases added). There is no such testimony here, nor is there other evidence that could support intervention.

Furthermore, despite Legislative Intervenors' repeated citation of standing cases, they have offered no authority (or even an explanation) establishing that *plaintiff standing* cases, such as *Benkiser*, are relevant to a case about *defendant intervention*. Moreover, and to the limited extent that standing doctrine is relevant here, the leading *defendant standing* cases cut against Legislative Intervenors' position here. *See Hollingsworth v. Perry*, 570 U.S. 693, 705-707 (2013) (holding that defendant-intervenors did not have standing to appeal); *see also Wittman v. Personhuballah*, 136 S. Ct. 1732 (2016) (dismissing for lack of defendant-intervenor standing).

Finally, there is significant doubt as to whether an economic interest can *ever* be sufficient to support Rule 24 intervention. *See, e.g.*, *Tennessee*, 260 F.3d at 596 (rejecting asserted economic interest as inadequate to support intervention); *Blount-Hill v. Bd. of Educ. of Ohio*, 195 F. App'x 482, 486 (6th Cir. 2006) (rejecting asserted economic interest and explaining that "White Hat's primary interest is economic. It is not a party to any challenged contract nor is it directly targeted by plaintiff's complaint."). Voters identified these cases in earlier briefing. (*See* Corr. Br. of Plaintiffs-Appellees, No. 18-1946, ECF No. 30 at Page ID #39.) Legislative Intervenors ignore them.

The Court should reject the sort of hypothetical, attenuated economic interest Legislative Intervenors allege. *See Tennessee*, 260 F.3d at 595 (proposed intervenor's "claimed interest does not concern the constitutional and statutory violations alleged in the litigation."); *Blount-Hill*, 195 F. App'x at 488 (explaining that, like Legislative Intervenors, the unsuccessful intervenor in *Tennessee* was concerned that the "implementation of the remedial plan would drain its financial resources").

For these reasons, Legislative Intervenors have not met their burden to establish that their alleged economic interests in their districts are sufficient under Rule 24(a).

f. The speculation regarding hypothetical *future* inadequacy of representation is premature.

In their earlier briefing, Legislative Intervenors took issue with this Court's recognition in the August 30 Decision that, under *Michigan*, 424 F.3d at 444, courts do "not typically allow intervention based upon 'what will transpire in the future.'"

(Appellant's Br. No. 18-1946, ECF No. 11 at Page ID #29 (quoting *League of Women Voters I*, No. 18-1437, ECF No. 37-2 at Page ID #10).) Indeed, they said that "this is a reading of the *Michigan* case that cannot be squared with *Michigan* itself[.]" (*Id.*) They said that putative intervenors need show only "that representation *may be inadequate*" or "that there is *a potential* for inadequate representation." (*Id.*, quotations omitted). As Voters explained, that is a misreading of this Court's holding in *Michigan*: "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* …. 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." 424 F.3d at 444 (emphasis in original).

Legislative Intervenors argued that "[a]t issue here is if the Secretary will, of her own accord, adequately represent all of [the] Legislative Intervenors' interests in either phase of the proceeding. In other words, the only precipitating event in the 'potentially inadequate' analysis here are [sic] the actions of the Secretary herself and *not* any precipitating finding by the Court." (Appellant's Br., No. 18-1946, ECF No. 11 at Page ID #30.) That line of reasoning misapprehends *League of Women Voters I*, which dealt with the fact that Secretary Johnson is not eligible for reelection, and the speculative possibility that "[i]f the new Secretary takes office in January 2019 and decides not to further pursue the state's defense of its apportionment schemes, the district court will have to appoint someone to take the Secretary's place." (*League of Women Voters I*, No. 18-1437, ECF No. 37-2 at Page ID #9.) Despite the hyperbolic

rhetoric in Legislative Intervenors' brief, *see* App. Br., ECF No. 18 at Page ID #44-46, the hypothetical possibility that the Secretary might stop defending the gerrymandered maps is still just that: hypothetical. Moreover, if the mere possibility that the incoming Secretary *might* decline to defend the law equals inadequate representation *now*, that would mean that *no* elected official could *ever* adequately defend a statute, so long as there is a chance that she might lose an election (or resign, or be impeached, etc.) and be replaced by a member of the opposite party while the lawsuit is pending. Merely to state that principle is to refute it. And finally, even if the Secretary might someday fail to defend adequately, the Congressional Intervenors, represented by Legislative Intervenors' own counsel, will still be in the case.

g. None of Legislative Intervenors' supposed interests will be impaired.

As described above, Legislative Intervenors have not asserted a sufficient interest to establish intervention as of right. But even if their claimed economic and speculative interests were sufficient, Legislative Intervenors cannot meet their burden to establish impairment. *Miller*, 103 F.3d at 1247 ("To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied."). Legislative Intervenors "show" nothing of the sort; instead, they argue that they have "interests that will be impaired by the disposition of this case." (App. Br., ECF No. 18 at Page ID #37.) That is not enough.

III. The district court did not abuse its discretion in denying Legislative Intervenors' request for permissive intervention.

In the alternative, Legislative Intervenors argue that the district court should have granted their request for permissive intervention. (Appellant's Br., ECF No. 18 at Page ID #48.) Here, too, they are incorrect.

a. The district court's denial of permissive intervention can be reversed only if it was a clear abuse of discretion.

Rule 24(b)(1)(B), governing permissive intervention, provides that district courts "may" permit anyone to intervene who has a "claim or defense that shares with the main action a common question of law or fact." The Rule requires that the district court "exercis[e] its discretion" by "consider[ing] whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Reversal of a district court's ruling on permissive intervention requires a "clear" abuse of discretion. *Zelman*, 636 F.3d at 287-88; *see also NAACP v. New York*, 413 U.S. 345, 366 (1973) (decision on permissive intervention will be affirmed unless it is an abuse of the district court's "sound discretion"). As this Court has stated, it can "seldom, *if ever*, be shown that the trial court had abused its discretion in denying the permissive right to intervene." *Burger Chef Sys., Inc. v. Burger Chef of Mich., Inc.*, 334 F.2d 926, 927 (6th Cir. 1964) (quotation omitted; emphasis added.) Ultimately, the denial of a request for permissive intervention can be reversed only if this Court is left with a "definite and firm conviction" that the district court acted outside its discretion. *Coal. to Defend Affirm. Action v. Granholm*, 501 F.3d 775, 784 (6th Cir. 2007).

b. The district court did not clearly abuse its discretion in denying Legislative Intervenors' request for permissive intervention.

The district court held that, "[t]o the extent that [Legislative Intervenors] have any legitimate official interest in this litigation, … such interest belongs to the state and is adequately represented by the executive." (RE 91 at Page ID #2063.) That holding is correct for the reasons explained above. Because the Secretary (and now, the Congressional Intervenors) will adequately protect Legislative Intervenors' interests, it was no abuse of discretion for the district court to deny permissive intervention. *See NAACP*, 413 U.S. at 368 (affirming order denying permissive intervention in part because the proposed intervenors' claim of inadequate representation was "unsubstantiated"); *Bay Mills Indian Cmty. v. Snyder*, 720 F. App'x 754, 759 (6th Cir. Jan. 9, 2018) (affirming order denying permissive intervention in part because the putative intervenor's position was "being represented," thus "counsel[ing] against granting permissive intervention"); *Coal. to Defend Affirm. Action*, 501 F.3d at 784 (affirming order denying permissive intervention in part because proposed intervenors were adequately represented by existing parties).

More important, though, the district court also complied with Rule 24(b)(3) by "exercising its discretion [in] consider[ing] whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." (*See* Order, RE 91 at Page #2063-64 ("Granting Applicants' motion to intervene could create a significant likelihood of undue delay and prejudice to the original parties. Any delay caused by Applicants' intervention would be undue in light of Applicants' lack of cognizable

interest in this matter."). This holding is correct for the same reasons that the district court explained in denying Secretary Johnson's earlier motion to stay: voting rights litigation is "notoriously protracted," and based on past cases, there is a "risk that this case will not be resolved" by the time necessary to implement relief if intervention were granted. (*See* Order Denying Def.'s Mot. to Stay, RE 35, 613-14.) The district court's decision to deny permissive intervention reflects the court's expressed commitment to adjudicating Voters' case on the merits so that, if Voters prove their case, there will be sufficient time to implement a remedy. (*See also* Case Mgmt. Order, RE 53 at Page ID #939-41 (setting Feb. 2019 trial date).)

Legislative Intervenors launch two attacks on the Second Order denying intervention: (1) that the district court's supposedly "newly discovered timeliness finding is an abuse of discretion"; and (2) "if the district court had actually drafted its Second Order in compliance with *League of Women Voters I*, it would have found" various disjointed propositions that Legislative Intervenors seem to insist are self-evident.[11] (App Br., ECF No. 18 at Page ID #50.) As discussed above, Legislative

[11] Specifically, Legislative Intervenors write that the district court "would have found that … (2) 'any delay attributable to allowing [intervention] now is surely less than the delay that will occur if [a party] must intervene in January 2019, *compare League of Women Voters I*, 902 F.3d at Page ID #580 *with* Second Order (ECF No. 144) (Page ID #5346-50) (never addressing 'undue delay'); and (3) even 'though the district court operates within a 'zone of discretion' when deciding whether to allow intervention under Rule 24(b), the district court must … provide enough of an explanation for its decision to enable [the Court] to conduct meaningful review.' *Id.* at Page ID #577. Despite all the opportunities the district court had to correct its earlier mistakes, it has declined to do so." (App. Br., ECF No. 18 at Page ID #50-51.) It's impossible to discern from that paragraph what the Legislative Intervenors think the district court

Intervenors' motion was untimely by many months. And with respect to the other assorted truths that the district court "would have found" had the district court read *League of Women Voters I* the way Legislative Intervenors would have preferred, the Legislative Intervenors offer no argument or explanation. (*See* App. Br., ECF No. 18 at Page ID #50-51.) These bare assertions do not merit further discussion.

Finally, under this Court's precedents, the district court's determination to avoid the delay that necessarily would attend intervention was well within the district court's discretion. *See Vasalle v. Midland Funding, LLC*, 708 F.3d 747, 760 (6th Cir. 2013) (affirming order denying permissive intervention, even though there were claims in common with those of the original parties, because intervention "would unduly delay the adjudication of the original parties' rights"); *Coal. to Defend Affirm. Action*, 501 F.3d at 784 (affirming order denying permissive intervention because it was not a clear abuse of discretion for the district court to conclude that intervention would "inhibit, not promote, a prompt resolution")(citation omitted); *Michigan*, 424 F.3d at 445 (affirming order denying permissive intervention because allowing intervention would have "inject[ed] management and regulatory issues into the current phase of the proceedings," thus leading to delay that "would have prejudiced the original parties"); *Penick v. Columbus Educ. Ass'n*, 574 F.2d 889, 891 (6th Cir. 1978) (per curiam) (affirming order denying permissive intervention because it was no abuse of discretion to conclude that intervention would "unduly delay" the proceedings").

"would have found" had it read *League of Women Voters I* in a manner favorable to them.

Likewise, the district court has correctly determined that the current trial schedule is critically important for Voters to have a meaningful opportunity to achieve final judgment and resolution of their claims in time for Michigan's 2020 elections.

The district court properly denied Legislative Intervenors' request to intervene and attempt to delay these proceedings.

IV. Voters are not estopped from maintaining the position they consistently have maintained.

Finally, Legislative Intervenors argue that "Voters are now judicially estopped from opposing the motion for intervention, even if only conditionally. (App. Br., ECF No. 18 at Page ID #55.) Legislative Intervenors claim that "[u]p until their September 18 Motion to Remand, Plaintiffs have been consistent and adamant in their opposition to Legislators' intervention," *id.* at 53, but in that filing, "evidenced their 'intention to relinquish the right'" to continue to oppose intervention in any respect. (*Id.*, citation omitted.) They are wrong. Voters have been consistent that, while Legislative Intervenors are not entitled to intervention under any theory, if this Court is inclined to order intervention, Voters would not oppose it *so long as the trial setting is protected.* (*See, e.g.*, Voters' Original Br., No. 18-1946, ECF No. 30 at Page ID #20 ("Voters have filed a motion to remand this case to the district court so that Legislators may intervene consistent with the Court's August 30 Decision…. If the Court, however, declines to remand this case, or otherwise reaches the merits of Legislators' position, Voters respectfully request that the Court affirm the district court's decision denying intervention.").) That remains Voters' position.

CONCLUSION

The Voters continue not to object to intervention as long as the trial date remains the same. If the Court agrees, it may remand the case for that eventuality without needing to address the merits. If the Court concludes that allowing intervention would require a delay of the trial date, or otherwise decides to consider the merits of the intervention issue, the Voters respectfully request that the district court's November 30, 2018 Order be affirmed.

Respectfully submitted,

/s/ Harmony Mappes

Joseph H. Yeager
Ryan M. Hurley
Harmony A. Mappes
FAEGRE BAKER DANIELS LLP
300 N. Meridian Street, Suite 3700
Indianapolis, Indiana 46204
(317) 237-0300 (phone)
(317) 237-1000 (fax)
Jay.Yeager@FaegreBD.com
Ryan.Hurley@FaegreBD.com
Harmony.Mappes@FaegreBD.com

Mark Brewer
GOODMAN ACKER P.C.
17000 W. Ten Mile, Second Floor
Southfield, Michigan 48075
(248) 483-5000 (phone)
(248) 483-3131 (fax)
mbrewer@goodmanacker.com

Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE WITH RULE 32

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 11,725 words, excluding the parts exempted by Rule 32(f). *See* Fed. R. App. P. 32(a)(7)(B).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010, in 14-point Garamond.

Respectfully submitted,

/s/ Harmony Mappes
Harmony Mappes
Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2018, this Corrected Response Brief of Plaintiffs-Appellees was electronically filed with the United States Court of Appeals for the Sixth Circuit, using the Court's CM/ECF system. A copy of the motion will also be served on the following counsel through the Court's CM/ECF system:

Brian D. Shekell
CLARK HILL
500 Woodward Avenue, Suite 3500
Detroit, MI 48226

Jason Brett Torchinsky
HOLTZMAN VOGEL JOSEFIAK TORCHINSKY
45 N. Hill Drive, Suite 100
Warrenton, VA 20186

/s/ Harmony Mappes
Harmony Mappes
Counsel for Plaintiffs-Appellees

No. 18-1946

In the United States Court of Appeals
for the Sixth Circuit

League of Women Voters of Michigan *et al.*,

Plaintiffs – Appellees,

v.

Ruth Johnson, in her official capacity as Michigan Secretary of State, *et al.*,

Defendants,

and

Rep. Lee Chatfield, in his official capacity as Speaker Pro Tempore of the Michigan House of Representatives, and Rep. Aaron Miller, in his official capacity as Chairman of the Elections and Ethics Committee of the Michigan House of Representatives,

Proposed Intervenors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
Civ. No. 17-cv-14148, Hon. Eric L. Clay, Denise Page Hood, Gordon J. Quist

---

PLAINTIFFS-APPELLEES' DESIGNATION OF DISTRICT COURT DOCUMENTS

Joseph H. Yeager
Ryan M. Hurley
Harmony Mappes
FAEGRE BAKER DANIELS LLP
300 N. Meridian Street, Suite 2700
Indianapolis, Indiana 46204
(317) 237-0300 (phone)
(317) 237-1000 (fax)
Jay.Yeager@FaegreBD.com
Ryan.Hurley@FaegreBD.com
Harmony.Mappes@FaegreBD.com

Mark Brewer
GOODMAN ACKER P.C.
17000 W. Ten Mile, Second Floor
Southfield Michigan 48075
(248) 483-5000 (phone)
(248) 483-3131 (fax)
mbrewer@goodmanacker.com

Counsel for Plaintiffs-Appellees

Document	Description	Page ID Range
Docket No. 1	Complaint	1-34
Docket No. 9	Order Appointing Three-Judge Panel	71
Docket No. 11	Motion to Stay and to Dismiss	92-108
Docket No. 21	Motion to Intervene and Attached Proposed Motions to Dismiss and to Stay	209-75
Docket No. 22	Report from Rule 26(f) Conference and Discovery Plan	279
Docket No. 27	Non-Parties' Motion to Quash Subpoenas and for Protective Order	319
Docket No. 35	Order Denying Motion to Stay	612-14
Docket No. 37	Plaintiffs' Brief in Support of Response to Motion to Intervene	632-33
Docket No. 39	Reply in Support of Motion to Intervene	650-52
Docket No. 47	Order Denying Motion to Intervene	902-04
Docket No. 53	Case Management Order No. 1	939-41
Docket No. 54	Order Granting in Part and Denying in Part Motion to Dismiss	942-58
Docket No. 58	Order Granting in Part and Denying in Part Motion to Quash	985-1004
Docket No. 70	Motion to Intervene	1204-24
Docket No. 78	Opposition to Motion to Intervene	1779-99
Docket No. 88	Order Denying Defendant's Motion to Dismiss	2053
Docket No. 85	Reply in Support of Motion to Intervene	2033-34
Docket No. 91	Order Denying Motion to Intervene	2059-65
Docket No. 96	Notice of Appeal	2079-81
Docket No. 108	Order Directing the Republican Congressional Delegation to Comply With Case Management Order No. 1	2188
Docket No. 110-1	Exhibit A to Response to Motion to Stay	2209
Docket No. 111	Emergency Motion to Alter Case Management Order	2231-32
Docket No. 115	Order Granting in Part Emergency Motion to Alter Case Management Order	2308-09

Document	Description	Page ID Range
Docket No. 119	Brief in Support of Motion for Summary Judgment	2401-13
Docket No. 121	Motion for Summary Judgment	2761-91
Docket No. 129-4	List of Challenged District	3423-25
Docket No. 131	Order from Court of Appeals	5039
Docket No. 136	Legislative Intervenors' Renewed Motion to Intervene	5083-5134
Docket No. 143	Order and Opinion Denying Summary Judgment	5300-18
Docket No. 144	Order Denying the Legislative Intervenors' Renewed Motion to Intervene	5346-49
Docket No. 144-1	Dissent to Order Denying the Legislative Intervenors Renewed Motion to Intervene	5347-51
Docket No. 146	Notice of Appeal	5353
Docket No. 150	Corrected Voters' Motion for Determination of the Existence of Privilege Claims	5931
Docket No. 151	Motion for Stay of Proceedings	6139