UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE MACKINAC CENTER, Plaintiff, v. JOCELYN BENSON, in her official capacity as Michigan Secretary of State, *et al.*, Defendants.	Case No: 1:26-cv-3154 Judge Paul L. Maloney

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

TABLE OF CONTENTS

Table of Contents ii

Table of Authorities iii

Introduction 1

Statement of Facts 1

Argument 3

I. Proposed intervenors lack any legal interest in this case that Michigan does not already adequately represent. 3

A. The four proposed intervenors bear the burden of demonstrating their right to intervene and overcoming the presumption of adequate representation. 3

B. The proposed intervention is untimely, as the four entities filed it before any evidence of the state's actions could possibly be marshalled. 4

C. The proposed intervenors have no substantial impaired interest that is not shared by numerous other Michigan citizens. 5

D. Michigan already adequately represents the proposed intervenor's interests. 8

II. Permissive intervention would be highly prejudicial and add nothing to the case that could not be achieved through an amicus brief. 10

Conclusion 12

Certificate of Compliance 13

TABLE OF AUTHORITIES

CASES

Berger v. N.C. State Conference of the NAACP,
597 U.S. 179 (2022) 3, 11

Blount-Hill v. Zelman,
636 F.3d 278 (6th Cir. 2011) 3, 4, 12

C*ameron v. EMW Women's Surgical Ctr., P.S.C.*,
595 U.S. 267 (2022) 4, 5

Coal. to Defend Affirmative Action v. Granholm,
501 F.3d 775 (6th Cir. 2007) 5, 7, 11

Est. of Lewis v. City of Columbus,
158 F.4th 814 (6th Cir. 2025) 7

Friends of Tims Ford v. TVA,
No. 4:06-cv-66, 2007 U.S. Dist. LEXIS 116735
(E.D. Tenn. July 5, 2007) 4

Hardwick v. 3M Co.,
87 F.4th 315 (6th Cir. 2023) 3

Kalbers v. United States DOJ,
22 F.4th 816 (9th Cir. 2021) 4

League of Women Voters of Mich. v. Johnson,
902 F.3d 572 (6th Cir. 2018) 11

League of Women Voters of Mich. v. Sec'y of State,
957 N.W.2d 731 (Mich. 2020) 9

Lucas Cty. Bd. of Comm'rs v. United States EPA,
169 F.4th 689 (6th Cir. 2026) 8, 10, 11, 12

Mich. State AFL-CIO v. Miller,
103 F.3d 1240 (6th Cir. 1997) 6, 7

Northland Family Planning Clinic, Inc. v. Cox,
487 F.3d 323 (6th Cir. 2007) 5, 11, 12

Providence Baptist Church v. Hillandale Comm., Ltd.,
425 F.3d 309 (6th Cir. 2005) 6, 11

Sierra Club v. Espy,
18 F.3d 1202 (5th Cir. 1994) 4

United States v. Michigan,
424 F.3d 438 (6th Cir. 2005) 3, 5, 10

United States v. Michigan,
68 F.4th 1021 (6th Cir. 2023) 4

Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula,
41 F.4th 767 (6th Cir. 2022) 8

STATUTES AND RULES

26 U.S.C. § 501(c)(3) 6

26 U.S.C. § 501(c)(4) 1, 2, 6, 7, 12

42 U.S.C. § 1988 2

Fed. R. Civ. P. 24(a)(2) 3

Fed. R. Civ. P. 24(b)(3) 10

Fed. R. Civ. P. 24(c) 10

Proposal 2 ..... 1, 2, 5, 6, 7, 8, 9, 10, 12

Introduction

Intervention exists so that third parties might defend their own private financial, contractual, or personal interests, which would otherwise go undefended if the parties were to proceed with the litigation alone. It does not exist to let a small group deputize itself as the guardian of the rights and interests of millions of state citizens. Those same citizens already have a far better protection for their common interests—the people's control over state government through the democratic process.

Here, two 501(c)(4) advocacy organizations, an unincorporated committee, and a recent political candidate wish to intervene in a suit about the constitutionality of a newly enacted state law. But Michigan already empowers its officials to defend the state law, and the proposed intervenors have given no reason to believe that state officials will fail to do so here. Their putative concerns about the law are no different than those shared with hundreds (if not thousands) of other candidates, associations, and nonprofits who support the policy challenged in this suit. But absent evidence that Michigan is unable or unwilling to adequately defend its laws from constitutional challenge, the proposed intervenors cannot overcome the presumption against intervention. None of the four proposed intervenors has demonstrated a substantial legal interest in this case that the state defendants will not adequately represent. This Court should deny the motion for intervention.

Statement of Facts

On November 3, 2026, the Mackinac Center filed this lawsuit challenging the constitutionality of Proposal 2, a newly adopted Michigan law regulating campaign finance. *See* ECF No. 1 at PageID.1-3. Mackinac contends that Proposal 2 imposes an unconstitutionally vague and expansive disclosure regime that cannot survive First Amendment scrutiny. *Id.* at PageID.18-26. Mackinac seeks injunctive and declaratory relief, preventing Michigan from enforcing these new reporting

requirements. *Id.* at PageID.26-27. To that end, Mackinac named Michigan's Secretary of State and Attorney General, the officials responsible for enforcing Michigan's campaign-finance laws, as defendants. *Id.* at PageID.3.

On November 9—before the defendants answered the complaint, filed a motion, or even appeared before this Court—four private parties moved to intervene in defense of the new law. *See* ECF No. 5 at PageID.39-42. Two of these entities—Clean Water Action (CWA) and Voters Not Politicians (VNP)—are nonprofit advocacy organizations organized under 26 U.S.C. § 501(c)(4) that putatively participated in the campaign to pass Proposal 2. *Id.* at PageID.40-41; ECF No. 9 at PageID.141; ECF No. 10 at PageID.143. One, Michiganders for Money Out of Politics (MMOP), is an unincorporated ballot committee, made of various groups (including CWA and VNP), that drafted and sponsored Proposal 2. *See* ECF No. 5 at PageID.39-41; ECF No. 8 at PageID.139. The last potential intervenor is a Michigan politician who was a candidate in the 2026 election and will take office as a state representative in January 2027. ECF No. 5 at PageID.41.

The four parties tendered a jointly proposed answer with their motion. The tendered answer contains no counterclaims or crossclaims, and it states no affirmative defense other than asserting that attorney fees are not ordinarily recoverable under 42 U.S.C. § 1988 against intervenors. *See id.* at PageID.96-97.

Prior to the motion's filing, the defendants informed the four proposed intervenors that, as is custom, Michigan takes no position on the motion to intervene but does not concur. *See* ECF No. 7 at PageID.137. The Mackinac Center stated that it opposes intervention. *Id.*

ARGUMENT

I. PROPOSED INTERVENORS LACK ANY LEGAL INTEREST IN THIS CASE THAT MICHIGAN DOES NOT ALREADY ADEQUATELY REPRESENT.

A. The four proposed intervenors bear the burden of demonstrating their right to intervene and overcoming the presumption of adequate representation.

A person claiming the right to intervene must prove that "(1) the motion to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the case; (3) the proposed intervenor's ability to protect that interest may be impaired in the absence of intervention; and (4) the parties already before the court may not adequately represent the proposed intervenor's interest." *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005); *see also* Fed. R. Civ. P. 24(a)(2). "Each of these elements is mandatory, and therefore failure to satisfy any one of the elements will defeat intervention under the Rule." *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011). Moreover, the Sixth Circuit requires applicants for intervention to rebut a "presumption of adequate representation" if they "share the same ultimate objective as a party of the suit." *Michigan*, 424 F.3d at 444.

This four-prong standard applies to "anyone," Fed. R. Civ. P. 24(a)(2), to each "applicant," *Blount-Hill*, 636 F.3d at 283, seeking to intervene. The four different proposed intervenors cannot satisfy their burdens as a group. *Cf. Hardwick v. 3M Co.*, 87 F.4th 315, 320 (6th Cir. 2023) ("standing is not dispensed in gross . . . by lumping [proposed parties] all together"). Each of the four parties must demonstrate its own legal interest, impairment, and lack of adequate representation. Indeed, the Supreme Court has recognized that the "proliferation" of intervenors is "a cause for caution" that "could make trial management impossible." *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 199 (2022) (internal quotation marks omitted). As soon as "the interests of existing parties"—including any intervenor already added—"come[s] to overlap fully with the interests of any remaining proposed intervenor," *id.*, remaining intervenors fail to satisfy the standard. Each of

the four proposed intervenors must therefore overcome the presumption of adequate representation. None can meet this burden.

B. The proposed intervention is untimely, as the four entities filed it before any evidence of the state's actions could possibly be marshalled.

A court evaluating a motion for intervention "must *first* be satisfied as to timeliness." *Blount-Hill*, 636 F.3d at 284 (internal quotation marks omitted). "Timeliness" for intervention purposes is not about moving as early as possible. Rather, "[t]he most important circumstance relating to timeliness" is that a third party moves "as soon as it became clear" that its interests "would no longer be protected by the parties in the case." C*ameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 279-80 (2022) (citation modified). The Sixth Circuit has recognized that "timeliness" includes consideration of whether "intervention would be premature." *United States v. Michigan*, 68 F.4th 1021, 1027 (6th Cir. 2023).[1] "Courts should discourage premature intervention that wastes judicial resources." *Sierra Club v. Espy*, 18 F.3d 1202, 1206 (5th Cir. 1994); *see also Kalbers v. United States DOJ*, 22 F.4th 816, 823 (9th Cir. 2021) (similar).

Here, the proposed intervenors moved before the defendants responded to the complaint or even entered an appearance. Michigan has not yet asserted its defenses—let alone taken any other action indicating that it does not intend to champion its law fully and vigorously. Thus, presently, it is impossible to assess the overlap between Michigan's (undeclared) position and that of the proposed intervenors.

Absent evidence supporting their argument, the proposed intervenors merely speculate that Michigan "may seek limiting constructions or endorse other

[1] Some courts evaluate prematurity as part of the "substantial interest" prong of Rule 24, rather than the "timeliness" prong. *See, e.g., Friends of Tims Ford v. TVA*, No. 4:06-cv-66, 2007 U.S. Dist. LEXIS 116735, at *13 (E.D. Tenn. July 5, 2007). Regardless of the prong, however, prematurity defeats a proposed intervention.

interpretations of Proposal 2 that Proposed Intervenors reject" and thus "may not adequately represent them." ECF No. 6 at PageID.124-125; *see also id.* at PageID.132-133. Evidence-free hypotheticals about "future issues" that "are not now, and possibly never will be" raised cannot satisfy the burden of proof. *Michigan*, 424 F.3d at 444.

If, at some point in the future, Michigan stops defending its law, third parties would have the ability to seek intervention then—potentially even once the case is on appeal. *See, e.g., Cameron*, 595 U.S. at 280-81. Right now, the proposed intervention is premature and therefore untimely.

C. The proposed intervenors have no substantial impaired interest that is not shared by numerous other Michigan citizens.

Even if proposed intervention were not premature, none of the four parties have a substantial legal interest in this lawsuit. The Mackinac Center challenges the constitutionality of a recently approved state law that is generally applicable to all "expenditures" and "electioneering communications" made within the state. "[I]n a challenge to the constitutionality of an already-enacted statute . . . the public interest in its enforceability is entrusted for the most part to the government," not to private advocacy organizations such as the proposed intervenors. *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 345 (6th Cir. 2007).

MMOP, CWA, and VNP insist they all have a substantial interest because they were supposedly instrumental in the drafting and passage of Proposal 2. ECF No. 6 at PageID.130. That is immaterial. The Sixth Circuit has repeatedly rejected intervention by advocacy organizations in similar situations and held that "an organization involved in the process leading to the adoption of a challenged law, does not have a substantial legal interest in the subject matter of a lawsuit challenging the legality of that already-enacted law." *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 781-82 (6th Cir. 2007); *see also Northland*

Family, 487 F.3d at 345-46 (similar); *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 317 (6th Cir. 2005).

Recognizing that involvement in the law's passage is insufficient under binding precedent, MMOP, CWA, and VNP attempt to analogize themselves to the Chamber of Commerce when it successfully intervened in *Miller*. ECF No. 6 at PageID.129 (quoting *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)). But as the Sixth Circuit warned, the intervention issue there was "a close one," tied to "facts unique to [the] particular case." *Id.* The Chamber was much more than just key participant in the challenged law's adoption. It was also "a repeated player in . . . litigation" under the statute; an "entity also regulated" by that statute; and "a party which is adverse to [the plaintiff] in the political process surrounding" campaign finance. *Id.* Because intervention was "a close" issue, all four of these characteristics mattered.

Proposed intervenors supply no evidence that MMOP, CWA, or VNP are repeat litigators under Proposal 2 (which is impossible, because the law was only just adopted), or even under the Michigan Campaign Finance Act more generally. *See* ECF No. 6 at PageID.129-131. Likewise, there is no evidence that they are adverse to the Mackinac Center in the political process (rather than just in this litigation). And of these three entities, only CWA maintains that Proposal 2 specifically regulates it. *See id.* at PageID.130.

CWA, however, is a 501(c)(4) advocacy organization. ECF No. 5 at PageID.40; ECF No. 9 at PageID.141. While Proposal 2 regulates 501(c)(4)s, its impact on them is far different and more limited than its impact on 501(c)(3)s such as Mackinac (which cannot participate in campaigns or advocate for candidates, unlike 501(c)(4)s). *See* ECF No. 1 at PageID.3, 10. Mackinac's whole lawsuit exists because Proposal 2's disclosure requirements cover much more than just 501(c)(4)-type campaign speech but instead apply to 501(c)(3)-type issue advocacy. *See id.* at

PageID.2, 10, 15. Proposal 2 may regulate both Mackinac and CWA, but it does not regulate them in the same way, and a court may grant as-applied relief to Mackinac that would not affect 501(c)(4)s like CWA.

Therefore, MMOP, CWA, or VNP are not analogous to the Chamber of Commerce in the *Miller* case. If the Chamber's interests—much greater than MMOP, CWA, or VNP for the reasons just discussed—was "a close one," then MMOP, CWA, and VNP should not be able to intervene.

Finally, Whaley and the three associations also claim an interest because they intend to use the disclosures generated by Proposal 2 in their future work. ECF No. 6 at PageID.130-131. However, "a generic interest shared by the entire Michigan citizenry" will not support a claim for intervention of right. *Granholm*, 501 F.3d at 782. Instead, "[p]roposed intervenors' interest in the litigation they seek to join must be both direct and substantial." *Est. of Lewis v. City of Columbus*, 158 F.4th 814, 823 (6th Cir. 2025) (citation modified).

To the extent that Whaley contends her status as an elected official differentiates her from the masses, her declaration fails to substantiate any interest in the disclosure provisions that Mackinac challenges here. Whaley describes negative advertisements directed at her that fell short of express advocacy during the five weeks leading up to the election. ECF No. 5-6 at PageID.118. But according to Whaley, the source of those advertisements were her opponents in the primary and general elections. *Id.* at PageID.118-19. Proposal 2 does nothing to change the disclosure obligations in such circumstances, and this lawsuit does not challenge the disclosure requirements imposed on candidates and candidate committees. So Whaley's interest in defending against Mackinac's lawsuit rests only on speculation about a future harm that did not materialize during her campaign.

Proposal 2 gives everyone in Michigan the right to use the disclosures generated, and undoubtedly many candidates and advocacy organization (along with

government officials, reporters, researchers, and interested members of the public) will use these disclosures once they start getting reported. If proposed intervenors can join this case merely because they desire to use disclosures in the future, then so could almost anyone in Michigan. That is exactly the sort of generalized interest that cannot support intervention.

D. Michigan already adequately represents the proposed intervenors' interests.

Finally, even if the four proposed intervenors had substantial interests, they cannot meet the standard for intervention because the government defendants adequately represent those interests.

"When, as here, the proposed intervenor and party to the suit currently share the same ultimate objective . . . a presumption of adequate representation arises." *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022) (internal quotation marks omitted). Overcoming this presumption requires showing "that the existing party will not make all of the prospective intervenor's arguments," that there is "collusion between the existing party and the opposition," or "that the existing party has interests adverse to the intervenor." *Lucas Cty. Bd. of Comm'rs v. United States EPA*, 169 F.4th 689, 697, 701 (6th Cir. 2026) (cleaned up). If a proposed intervenor hopes to rebut the presumption "via reference to particular arguments," it must show "at least . . . that the existing party or parties may not or will not make those arguments because of a conflict of interest." *Id.* This requires demonstrating a "likelihood that [existing parties] will not raise similar defenses" or arguments." *Id.* at 703-704.

Here, the proposed intervenors' speculation about what the state defendants may do is not enough to defeat the presumption of adequate representation. Although the state defendants have not yet entered an appearance, it is "incredibly rare" for the attorney general to "refuse to defend a statute." *See League of Women Voters of Mich. v. Sec'y of State*, 957 N.W.2d 731, 763 (Mich. 2020) (Markman, J.,

dissenting) (quotations omitted). There is no reason to believe that the state will decline to do so here.

Absent such an abdication, the four proposed intervenors have the same objective as the state defendants: to defend Proposal 2 against Mackinac's constitutional claims. See ECF No. 5-1 at PageID.95-97. The proposed intervenors do not intend to bring any counterclaims or crossclaims, and they have not identified any unique affirmative defenses, other than denying liability for attorney fees. *See id.* at PageID.96-97. By their own admission, their only claim or defense is "that Proposal 2 is constitutional." ECF No. 6 at PageID.133. Presumably, the state defendants will also argue that "Proposal 2 is constitutional," and so the proposed intervenors' interest here will be adequately represented.

Proposed intervenors do not even attempt to offer evidence of collusion or conflict of interest, *see* ECF No. 6 at PageID.132-133, for no such collusion or conflict exists. Michigan is not adverse to the proposed intervenors—it has not even opposed intervention. ECF No. 7 at PageID.137. And because Michigan has not filed an answer or responsive motion yet, the proposed intervenors cannot point to any argument or defense that they wish to make that the state defendants are neglecting. The Court must presume that Michigan will ably and adequately defend the constitutionality of its new statute, and nothing in the record undermines that presumption.

The only thing the proposed intervenors offer in support of their allegation of inadequate representation is that Michigan "represent[s] the public at large and must weigh considerations" like "enforcement priorities and resource limits." ECF No. 6 at PageID.133. That argument proves too much. The government always represents the "public at large" and it must always consider "enforcement priorities and resource limits." If those general concerns are enough here, it would mean the government is unable to adequately represent itself in defense of its own statutes as

a matter of law *in every case*. Not only does this make no sense—it is contrary to the Sixth Circuit's presumption of adequate representation. *See Michigan*, 424 F.3d at 444-45.

The presumption of adequate representation remains unrebutted and requires that this Court deny the intervention as of right.

II. PERMISSIVE INTERVENTION WOULD BE HIGHLY PREJUDICIAL AND ADD NOTHING TO THE CASE THAT COULD NOT BE ACHIEVED THROUGH AN AMICUS BRIEF.

As something of an afterthought, the four proposed intervenors suggest that—if this Court denies intervention of right—it should use its discretion to allow permissive intervention. ECF No. 6 at PageID.134-135. The federal rules require applicants for permissive intervention to "state the grounds for intervention" and "sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Here, the four entities state that they have exactly one defense (and no claims at all): "that Proposal 2 is constitutional." ECF No. 6 at PageID.133.

When evaluating motions for permissive intervention, courts must "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Moreover, the Sixth Circuit has stated that it is "appropriate" for courts to consider the same "factors governing intervention of right when denying permissive intervention." *Lucas Cty.*, 169 F.4th at 706 (citation omitted). Courts, thus, consider factors such as whether the intervenor has "substantial expertise relevant to the underlying subject matter," whether it intends to make new "arguments" not already covered by existing parties, whether intervention is "premature," and whether it would "unnecessarily complicate the case and delay the proceedings." *Id.* at 706-707 (citations and internal quotation marks omitted). The Sixth Circuit has repeatedly upheld denials of permissive intervention by advocacy groups seeking to defend laws they helped to

pass. *See, e.g.*, *Granholm*, 501 F.3d at 784; *Northland Family*, 487 F.3d at 346 (similar); *Providence Baptist*, 425 F.3d at 315 n.2.

Permissive intervention will unnecessarily complicate the case, causing undue delay and prejudice. The proposed intervenors seek to add four new parties to this case, all of which would be involved in discovery, motions practice, and trial. The "proliferation" of intervenors is always "a cause for caution." *Berger*, 597 U.S. at 199. Four new parties would significantly increase time and costs necessary to conduct every stage of the litigation. And none of the proposed intervenors has identified even one reason—"any unique argument[] that would likely go unaddressed without its participation," *Lucas Cty.*, 169 F.4th at 707—that justifies adding such complication at this time. "[I]dentity of interest is one of several relevant criteria under Rule 24(b)" because "the fact that a proposed intervenor's position is [already] being represented counsels against granting permissive intervention." *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (cleaned up).

Proposed intervenors try to assure this Court that they "will meet existing deadlines and coordinate with the defendants to avoid duplication, ECF No. 6 at PageID.133. But they provide no evidence that they have talked with the defendants about "coordinating." Coordination requires effort on both sides, and Michigan has not even consented to intervention—much less promised to take on that extra burden. ECF No. 7 at PageID.137.

The proposed intervenors have not shown that they possess any special expertise about constitutional law or the First Amendment. They are a political candidate and three advocacy groups—one of which focuses on environmental issues, not the First Amendment. ECF No. 5 at PageID.39-42. Nothing differentiates these four entities from other ballot committees, 501(c)(4)s, or political candidates that have an opinion on Proposal 2.

"[P]roposed Intervenors are not without a voice," for this Court has the power to allow the "proposed Intervenors to appear as *amici curiae*." *Blount-Hill*, 636 F.3d at 288. The plaintiff does not oppose the four proposed intervenors filing a brief as *amici*. *See, e.g., Lucas Cty.*, 169 F.4th at 707 (permitting proposed intervenor to participate as amicus instead); *Northland Family*, 487 F.3d at 346 (similar). As *amici*, the proposed intervenors would be able to provide this Court with whatever relevant information about their membership and the 2026 election cycle that they wish to supply, without leading to the delay and undue prejudice that intervention into this case's discovery and motions practice would entail.

CONCLUSION

This Court should deny the motion to intervene with respect to all four proposed intervenors.

Dated: November 19, 2026

Respectfully submitted,

s/ *Brett R. Nolan*
Brett R. Nolan
Alan Gura
Nathan Ristuccia[2]
INSTITUTE FOR FREE SPEECH
1150 Connecticut Ave., NW, Suite 801
Washington, D.C. 20036
(202) 301-3300
bnolan@ifs.org
agura@ifs.org
nristuccia@ifs.org

Counsel for Plaintiff

[2] Not a D.C. Bar Member but providing legal services in the District of Columbia exclusively before federal courts, as authorized by D.C. Ct. App. R. 49(c)(3).

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with LCivR 7.3(b)(i) and as calculated by Microsoft Word (from a continuously updated Office 365 subscription), considering the appropriate exclusions set forth in LCivR 7.3(b)(i), contains 3,549 words.

Executed under penalty of perjury.

Dated: November 19, 2026

s/Brett R. Nolan