

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

ERIC ESSHAKI, as candidate for United States Congress and in his individual capacity,

Plaintiff,

and

MATT SAVICH, DEANA BEARD,
and SHAKIRA L. HAWKINS,

Intervenors-Plaintiffs,

vs.

GRETCHEN WHITMER, Governor of Michigan, JOCELYN BENSON, Secretary of State of Michigan, and JONATHAN BRATER, Director of the Michigan Bureau of Elections, in their official capacities,

Defendants.

**INTERVENING-PLAINTIFF LYNN M. MAISON'S
EMERGENCY MOTION TO INTERVENE**

Pursuant to Federal Rule of Civil Procedure 24(a) and 24(b), Intervening Plaintiff Lynn M. Maison hereby moves this Honorable Court to grant her request to intervene in this case.

In accordance with LR 7.1(a)(2)(A), counsel sought the concurrence of counsel for Plaintiff, Plaintiff-Intervenors, and Defendants. Counsel for Shakira Hawkins,

Counsel for the State does not concur.

In support of this motion, the movant relies upon the attached Brief and proposed Complaint in Intervention.

Respectfully submitted,

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Dated: May 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing opposing counsel.

By: */s/ Jean E. Kordenbrock*
Jean E. Kordenbrock

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**BRIEF IN SUPPORT OF
INTERVENING-PLAINTIFF LYNN M. MAISON'S
EMERGENCY MOTION TO INTERVENE**

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STATEMENT OF ISSUES PRESENTED

1. Whether the Court must grant Maison's request to intervene under Fed. R. Civ. P. 24(a) because she has promptly and timely filed this Motion; she personally has substantial constitutional rights to ballot access which the Parties are litigating here; none of the Parties share her same interest in challenging a particular State election requirement/ accommodation that imposes an arbitrary deadline for creating a campaign finance committee; and as a result the Parties might not protect and are not protecting her legal interests.

2. Whether the Court should exercise its discretion to allow Maison to intervene under Fed. R. Civ. P. 24(b) because she has promptly and timely filed this Motion; she has a claim or defense that shares with the main action a common question or law or fact; and her intervention will not unduly delay or prejudice the adjudication of the original parties' rights.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

The issues in this Motion are governed by Federal Rule of Civil Procedure 24(a),(b), as most helpfully interpreted by *Michigan State AFL-CIO v. Miller*, 103 F.3rd 1240, 1245 (6th Cir. 1997).

The movant, Lynn M. Maison, respectfully submits this brief in support of her motion to intervene. Maison is a judicial candidate and a voter with direct interests in this important constitutional case. Under the facts alleged in her proposed Complaint (**Exh. A: Compl. in Intervention**), Federal Rule of Civil Procedure 24(a) grants her a right to intervene. Alternatively, she presents compelling reasons for the Court to permit intervention under Rule 24(b). For the reasons below, Maison respectfully asks the Court to grant her request.

BACKGROUND

On March 31, 2020, U.S. Congressional candidate, Eric Esshaki, filed a two-count Complaint that initiated this election rights case. (Compl., ECF No. 1, Page ID.1.) In his capacity as a candidate, Esshaki challenged the infringement of his right to have his name on the ballot. (*Id.* Page ID.11) In his capacity as a voter, he challenged the infringement of his ability to vote for the candidate of his choice. (*Id.* Page ID.12.) In both counts, he relied upon the First and Fourteenth Amendments, which preserve fundamental political, associational and voting rights to ballot access. Since then, three judicial candidates who also faced similar impediments and infringements – Matt Savich, Deana Beard, and Shakira Hawkins – have successfully intervened in this action.

While their political interests might differ, Esshaki, Savich, Beard, Hawkins, and Maison share a number of common legal interests. They each are active

candidates for office in Michigan's 2020 elections. (See Exhibit A, Paragraph 2). They were each impacted by the unusual national and statewide emergencies that COVID-19 caused, as well as by the substantial restrictions that the related gubernatorial Executive Orders imposed on their respective campaigns. (See Exhibit A, Paragraphs 17-20). Nonetheless, during a global pandemic and while under a Stay-At-Home Order, each gathered a significant showing of public support for their campaigns. Under normal circumstances, each could have been expected to comfortably surpass Michigan's ordinary signature requirements. Yet, as a result of the imposition of arbitrary and unconstitutional deadlines, some face disqualification which might suit ordinary times but are unsupportable during the current emergency.

Maison differs from Esshaki and the other Intervenor-Plaintiffs in one respect, namely, she has been excluded from the ballot despite having complied with the requirements articulated in this Honorable Court's April 20, 2020 Order and with the requirements articulated on the Secretary of State website as of May 8, 2020, the extended deadline for filing signature petitions. While Ms. Maison's candidate committee was formed prior to March 10, 2020, and she filed a sufficient number of signatures by the May 8, 2020 extended filing deadline, her candidacy has not been approved due to a perceived lack of compliance by the Macomb County Clerk. Indeed, the denial of Maison's certification for the August 4, 2020 primary election

has been based upon a failure to “file” a statement of organization by March 10, 2020, a requirement never before articulated by this Court or by the Secretary of State for any candidate seeking a state office.

As affirmed by the Sixth Circuit, this Court has already determined that the State’s jointly imposed requirements violate the Constitution as applied during these unusual and difficult times. The State’s accommodations to remedy the unconstitutional burden, however, currently include an arbitrary campaign finance committee creation deadline of March 10, 2020 (“Arbitrary Finance Committee Deadline”). Although Maison obviously has more than a modicum of support, she is being denied the benefit of the State’s relaxed signature requirement and the extension of its filing deadline because she had not filed a Statement of Organization by March 10, 2020. (Exhibit A, Paragraph 29). Application of the Arbitrary Finance Committee Deadline threatens to keep Maison off the ballot and deprives her supporters of the ability to vote for their desired candidate.

When the Secretary of State issued new accommodations on its website on May 8, 2020, it included the arbitrary March 10, 2020 deadline for state candidates to have “established” a candidate committee. An expanded interpretation of this arbitrary deadline by the Macomb County Clerk has deprived Maison of the benefit from the relaxed requirements and prevented her from being included on the ballot for the August 4, 2020 election, absent intervention by this Court.

Neither the Plaintiff nor the Plaintiff-Intervenors have been impacted by the overly broad reading of this Honorable Court's April 20, 2020 Order and the Secretary of State's Special Announcement of May 8, 2020. Accordingly, as argued below, Maison is entitled to intervention as of right. Alternatively, she seeks leave to intervene.

ARGUMENT

Ms. Maison seeks to intervene to assert her fundamental rights to ballot access under the First and Fourteenth Amendments, which, in all likelihood, will be impeded if her request is denied. The Court has amply described the nature of those rights in its recent April 20, 2020 Order. (ECF No. 23, PageID.330-333). Matters relating to the election are moving quickly, this Court is experienced with the facts and issues, and Maison will lose valuable time during which her rights will be impeded if she is forced to initiate a separate cause of action. For the following reasons, Maison respectfully requests that this Honorable Court grant her request to intervene.

I. APPLICABLE STANDARDS

This Court is familiar with the standards that govern motions to intervene. *See, e.g., Baker v. Iron Wkrs.' Local 25 Vacation Pay Fund*, E.D. Mich. Case No. 19-12963, 2020 U.S. Dist. LEXIS 27324, at *4 (E.D. Mich February 18, 2020) (Berg, J.) (granting intervention).

Under Federal Rule of Civil Procedure 24, intervention can be mandatory or permissive. The Court “must permit” Maison to intervene as long as the motion is “timely” and the parties do not adequately represent her interests, because she “claims an interest relating to the...transaction[s involved in this case], and ...disposing of the action [without her] may as a practical matter impair or impeded [her] ability to protect [her] interest.” Fed. R. Civ. P. 24(a)(2). Alternatively, the Court has discretion to allow Maison to intervene because she “has a claim or defense that shares with the main action a common question or law or fact,” and her intervention will not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(1)(B)(3).

In deciding the motion, “the court will accept as true all well-pleaded, nonconclusory allegations in the motion to intervene, in the proposed complaint or answer in intervention, and in declarations supporting the motion...” 6 James Wm. Moore, Moore’s Federal Practice, § 24.03[a][a] (3d ed. 2005); *see also Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995); *Horrigan v. Thompson*, No. 96-4138, 145 F.3d 1331 *2 [published in full-text format at 1998 U.S. App. LEXIS 9506] 6th Cir. 1998) (Table) (quoting *Lake Investors Dev. Group v. Egidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir. 1983)).

II. THE MOVANT IS ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a) (2).

Under the Sixth Circuit’s analysis of Rule 24, Maison has a right to intervene because: (1) her application is timely; (2) she has a “substantial legal interest in the case; (3) her “ability to protect that interest [is impaired] in the absence of intervention”; and (4) the current parties do not adequately represent her interests. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). The motion must be granted.

A. The Movant’s Motion is Timely.

A motion filed within weeks of the Complaint and during the early stages of the litigation is considered timely. *Miller*, 103 F.3d at 1245.

Here, Maison filed her motion still in the early weeks of this case and at the first practicable time when it became clear both that the Court’s rulings impact her access to the ballot and that the current parties are not in a position to adequately protect her interests. Maison has monitored this case since its inception, but did not believe that intervening would be necessary until the March 10, 2020 arbitrary deadline for establishment of a candidate committee was wrongfully applied to her candidate filing. When the Macomb County Clerk failed to approve to her counsel’s demand for ballot access for three (3) days, it became clear that intervention would be necessary.

B. The Movant Has a Substantial Legal Interest in the Case.

When identifying a movant's legal interest, the term "interest" is to be construed liberally. *Bradley v. Milliken*, 828 F.2d 1186, 1992 (6th Cir. 1987); *see Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (court "subscribe[s] to a 'rather expansive notion of the interest sufficient to invoke intervention of right.'" (quoting *Miller*, 103 F.3d at 1245). Although every movant's request is fact-specific, Maison clearly meets the threshold. She does not need to demonstrate any "specific legal or equitable interest," *Purnell v. Akron*, 924 F.2d 941, 948 (6th Cir. 1991) (citing *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 132-36; 87 S. Ct. 932 (1967)), and she need not even show standing to initiate a separate lawsuit. *Miller*, 103 F.3d at 1245 (discussing *Purnell*, 925 F.2d at 948), in turn citing *Trbovich v. United Mine Wkrs.*, 404 U.S. 528, 536-39; 92 S. Ct. 630 (1972)).

In the case at bar, Maison is a candidate for state judicial office who is being deprived of the same First and Fourteenth Amendment rights that Court described at Page ID.30-33. She not only has the same standing as the other Plaintiffs to initiate a lawsuit, but she also has a likelihood to prevail.

Maison also has a substantial likelihood of prevailing on issues that are not now adequately represented. While the Governor's Stay-At-Home Orders and Michigan's election laws significantly impaired Maison's ability to timely and

comfortably surpass the minimum filing requirements, she is now receiving disparate treatment as the result of an expanded interpretation of an arbitrary deadline imposed by the Secretary of State. The Defendants now appear to be narrowing the already arbitrary March 10, 2020 deadline by requiring the filing of Statement of Organization rather than merely requiring the establishment of a candidate committee. By gathering approximately 1,600 signatures between March 4, 2020 and May 8, 2020, Maison has demonstrated that she was a serious candidate prior to the issuance of any Executive Order, and a modicum of support has been exhibited despite the existence of a pandemic.

Where, as here, the intervenor's rights *could* be affected by the litigation, Maison has amply satisfied this factor. *Compare Usery v. Brandel*, 87 F.R.D. 670, 676 (W.D. Mich. 1980) (“It is well-established that an applicant has ‘a significant protectable interest’ in rights which may be affected by interpretation in a pending case ...”); *Grutter*, 188 F.3d at 399-400 (finding that prospective minority applicants to the University of Michigan had a “direct, substantial, and compelling” legal interest to support intervention as of right where the proposed intervenor's chances of gaining admission could be impacted by plaintiffs' lawsuit).

C. The Movant's Ability to Protect Her Interests Will be Impaired Absent Intervention.

The Court's inquiry into the degree of potential impairment absent intervention is also lenient. To be entitled to intervene, Ms. Maison need not face

“substantial” or inevitable impairment of her interests. *Purnell*, 925 F.2d at 948. Instead, she “must show only that impairment ... is possible if intervention is denied.” *Miller*, 103 F.3d at 1247 (citation omitted). Her “burden is minimal,” *Id.*, and “is not an onerous task.” *Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by any Means Necessary v. Granholm*, 240 F.R.D. 368, 375 (E.D. Mich. 2006).

Here, without an alteration or limitation of the State’s proposed accommodations, Maison almost certainly will be denied access to the ballot. The near-certainty far exceeds the potential impact required by Rule 24.

D. Mr. Eshaki and Other Litigants Do Not Adequately Represent the Movant’s Interest.

Finally, Maison’s burden is likewise “minimal” on the factor of inadequate representation “because it is sufficient that the movant[] prove that representation *may be* inadequate.’ One is not required to show that the representation *will in fact be* inadequate.” *Miller*, 103 F.3d at 1247 (quoting *Linton v. Commissioner of Health & Env’t*, 973 F.2d 1311, 1319 (6th Cir. 1992)) (emphasis added); *See Grutter*, 188 F.3d at 400 (all that is required is that the “representation *might be* inadequate”) (emphasis in original). “For example, it may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor’s arguments.” *Miller*, 103 F.3d at 1247.

Upon information and belief, neither the Plaintiff nor any of the Plaintiff-Intervenors have been denied candidacy based on a late filing of a Statement of Organization, which statement documented formation of a candidate committee prior to the arbitrary March 10, 2020 deadline. Indeed, the expanded reading of this Court's April 20, 2020 Order and the Secretary of State's vague and fluid requirement of the "establishment" of a candidate committee is preventing Maison access to the ballot. The other parties will not be seeking relief from the application of the State's "new" rules. There exists a likelihood that the parties' arguments may be inadequate to protect Maison's interests. Accordingly, Maison is entitled to intervention as of right.

II. IN THE ALTERNATIVE, THIS COURT SHOULD PERMIT THE MOVANT TO INTERVENE UNDER RULE 24(b)(1)(B).

In the alternative, this Honorable Court should allow Maison to intervene under the permissive intervention provisions of Federal Rule of Civil Procedure 24(b). Where, as here, "the motion for intervention is timely and there is at least one common question of law or fact," the Court has broad and abundant discretion to grant the request. *Miller*, 103 F.3d at 1248 (citing *Purnell*, 925 F.2d at 950-51).

Maison's claims involve all the same First and Fourth Amendment rights to ballot access that Plaintiffs' invoke as applied to the same 2020 election, the same Michigan election rules governing her candidacy, and the same proposed

accommodations to remedy the unconstitutional burden. There are common issues among the claims of Ms. Maison and the remaining parties.

As for whether the existing parties would suffer any undue burden from intervention, the Court has broad discretion. *Id.*, see *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 578 (6th Cir. 2018). There is no actual likelihood that Maison will significantly delay proceedings. She has remained informed about the case and promptly presents a clear question that can be resolved amid existing and ongoing disputes over the State's accommodations. Her new counsel is likewise adequately informed. Furthermore, there is no other apparent prejudice that could result from her participation. Maison respectfully submits that she has adequately met the requirements of the Federal Rules.

CONCLUSION

For the reasons set forth above, Maison submits that her timely motion entitles her to intervene as of right under Rule 24(a), while supporting an exercise of the Court's discretion to permit her to intervene under Rule 24(b). The request to intervene should be granted.

Respectfully submitted,

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