

ERIC ESSHAKI, as candidate
For U.S. Congress and in his
Individual capacity;
MATT SAVICH, as candidate for
the Forty-Seventh District Court,
Oakland County, Michigan and
in his individual capacity;
DEANA BEARD, as candidate for
the Third Circuit Court Judge,
Regular Term, Non-Incumbent
Position, Wayne County and in
her individual capacity;

Case No. 2:20-CV-10831-TGB-EAS
HON. TERRENCE G. BERG
Magistrate: Elizabeth A. Stafford

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.

vs.

BRENDA K. SANDERS,

Pro Se Intervenor,

vs.

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

EMERGENCY MOTION TO INTERVENE WITH SUPPORTING BRIEF

Pursuant to Fed. R. Civ. P 24(b)(1)(B), Brenda K. Sanders (“Sanders”), in pro se, hereby moves this Court for an order allowing her to immediately intervene in the above-captioned case in support of this motion, Sanders, states as follows:

In accordance with E.D. Mich L.R. 7 1(a), the undersigned movant has contacted attorneys of record for Plaintiff and Defendants to ascertain whether this motion was opposed.

MOVANT’S INTEREST

1. Sanders seeks nomination as an Independent Candidate for U.S. Congress in the 13th Congressional District of Michigan.
2. That on or about August 19, 2019, Sanders filed her Statement of Organization with the Federal Election Commission. Sanders filed an Amended Statement of Organization with the Federal Election Commission in June, 2020. To date, Sanders has collected approximately 1722 signatures.
3. That to file as an Independent Candidate, a person is required to attain a minimum of 3000 signatures and a maximum of 6000 to access ballot qualification.
4. That the movant started a signature campaign in late March after her bid for U.S. Congress in South Carolina ended with a failure to pay an option fee to access the ballot. The South Carolina deadline to pay the option fee was March 30, 2020.
5. That the movant returned to her home state, Michigan, and began collecting signatures after she ascertained that she was not going to be able to pay the option fee in South Carolina.
6. That the filing deadline for Sanders to submit her signed petitions with the Wayne County Clerk located at 2 Coleman Young Center, Room 502, Detroit, Michigan 48226 was July 16, 2020.

7. That Sanders is qualified to seek nomination to the office of U. S. House of Representatives for the 13th Congressional District of Michigan.

8. That due to the COVID-19 shutdown and subsequent Emergency Orders issued by Governor Gretchen Whitmer, Sanders was stymied in gathering the requisite signatures by the present permitted methods under MCL 168.133.

9. That furthermore, Sanders as an Independent Candidate for U.S. Congress was required to collect three times more signatures under normal circumstances than the designated “Party Affiliated” Candidates.

10. That therefore, Intervenor Sanders had an even greater burden to collect 3000 to 6000 nominating signatures and under more restrictive circumstances due to the COVID-19 pandemic.

12. That Sanders was apprised of the existence of this instant case after this Honorable Court issued its Order on April 20, 2020.

13. That Sanders is similarly situated to Plaintiff Eshaki, who is a “Party Affiliated” Candidate running for U.S. House of Representatives in Michigan.

14. That Eshaki was initially only required to collect at a minimum, 1000 signatures and his burden was unreasonably decreased because of the COVID-19 crisis and consequently, Eshaki was able to meet his burden.

15. That Sanders is required to collect at a minimum of 3000 signatures and a maximum 6000 signature ceiling, and therefore Intervenor Sanders’ burden was magnified even more in the midst of the COVID 19 crisis.

16. That Sanders has already collected 1722 signatures in her quest to gain ballot access to the November 3, 2020 general election. That 1722 signatures represent approximately fifty percent of the 3000 minimally signatures required by Michigan law.

17. That this is a significant case because the outcome effects and has broad and policy implications on all votes in Michigan and many candidates seeking to get on both the August 4, 2020 primary ballot and the November 3, 2020 general election ballot in the case.

18. This lawsuit seeks the remedy of extending the filing deadline or decreasing the number of requisite signatures for the November 3, 2020 general election ballot.

19. That Sanders shares a common question of law and fact with Plaintiff in the original Complaint filed by Eric Esshaki. Sanders also shares the same factual and legal issues raised by Esshaki's Motion for a Temporary Restraining Order and or a preliminary injunction.

WHEREFORE, Sanders requests that this Honorable Court grant her Motion to Intervene and accept her proposed Intervening Complaint and permit her to adopt the factual and legal position that both Esshaki and other similarly situated Plaintiffs have made in this instant case. See FRCP 24(b)(1)(B). Attached is a copy of Sanders' Proposed Intervening Complaint.

Respectfully Submitted,

BY: /s/ Brenda K. Sanders

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Intervenor in Pro Se
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Dated: July 25, 2020

ERIC ESSHAKI, as candidate
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BRIEF IN SUPPORT OF MOTION TO INTERVENE

Statement of Question Presented

Whether Intervenor Sanders should be allowed to intervene in tis action under Fed. R. Civ. P. 24(b)(1)(B) where her claim against the Defendants share common questions of law and fact with the Plaintiff, Esshaki?

Controlling Authority

Fed. R. Civ. P. 24(b)(1)(B) which provides that:

(b) Permissive Intervention.

- (1) In General. On timely motion, the court may permit anyone to intervene who:
 - (A) is given a conditional right to intervene by a federal statute; or
 - (B) has a claim or defense that shares with the main action a common question of law or fact.

Statement of Facts and Argument

Sanders' proposed Intervening Complaint is attached as Exhibit 1. As the court can see from that document, Sanders is in the same position as Plaintiff, Esshaki. Sanders was in the process of gathering the requisite 3000 (minimum) signatures up to the maximum of 6000 signatures, when the COVID-19 pandemic occurred, resulting in the Governor's Emergency Orders, which, brought Sanders signature gathering efforts to a premature and complete halt. In fact, Sanders risked being criminally charged in an attempt to collect the voluminous three thousand minimum signature requirements for Independent Candidates for the U. S. House of Representatives. (13th Congressional District)

Sanders joins in the Plaintiff's request for relief to protect her most precious constitutional rights, namely, her right to run for elected office. The actions of the Defendants in refusing to extend the deadline or reduce the amount of signatures to gain access to the ballot for

nominating petitions in light of the pandemic and the Governor's Stay at Home orders are unconstitutional, as applied to Intervenor Sanders as an Independent Candidate for Congress. Intervenor Sanders relies on the briefs already submitted to this Court by the Plaintiff and the other intervening parties.

Given that the claim of Sanders is identical to the that of the Plaintiff, Sanders should be allowed to intervene per Fed. R. Civ. P. 24(b)(1)(B) and benefit from any rulings by this Court with regard to the relief granted to the Plaintiff and where Intervenor Sanders desires to join.

Conclusion/Relief Requested

Sanders should be permitted to intervene in this action per Fed. R. Civ. P. 24(b)(1)(B) and obtain the same relief as the Court saw fit to grant the Plaintiff Esshaki in his case in chief. Intervenor Sanders is seeking the specific remedy that the Wayne County Clerk be ordered to accept her digital filing of July 16, 2020 which included her Affidavit of Identity and 123 Nominating Petitions as support of Independent Candidacy for the Office of U.S. House of Representatives in the 13th Congressional District of Michigan.

Respectfully Submitted,

BY: _____/s/ **Brenda K. Sanders**

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**PRO SE INTERVENOR'S COMPLAINT FOR EMERGENCY
DECLARATORY AND INJUNCTIVE RELIEF**

FACTS OF THE CASE

1. This is an action to declare unconstitutional, enjoin and/or modify Michigan's in-person signature collection and witnessing requirements for Independent and Third-Party Candidates in Michigan seeking to qualify for the November 3, 2020 general election in light of the current public health emergency caused by the pandemic, COVID 19 and the Governor's Emergency Orders effectively shutting down the State of Michigan.

Previous Court Orders in Michigan Reducing Signature Requirements for 2020 Candidates

2. The State of Michigan requires 3000-6000 nominating signatures for an Independent U.S. Congressional Candidate to be placed on the November 3, 2020 general election ballot. On December 22, 2019, U.S. District Court Judge Victoria A. Roberts struck down the 30,000 signature requirement for Independent Presidential Candidates. Judge Roberts replaced the 30,000 signature requirement with a reduced signature requirement of 12,000. (Graveline v. Benson, e.d., 2:18-cv-12354)

3. Additionally, this instant Honorable Court issued an Order dated April 20, 2020, allowing for a reduction of signature requirements for “Party Affiliated” Candidates seeking to gain access to the August 4, 2020 primary election ballot.

PARTIES

4. Pro Se Intervenor, Brenda K. Sanders, is an Independent Candidate for the U. S. House of Representatives for the 13th Congressional District in Michigan and is seeking to gain access to the November 3, 2020 general election ballot.

5. Intervenor-Defendants, Gretchen Whitmer, Governor of Michigan; Jocelyn Benson, Secretary of State for the State of Michigan, and Jonathan Brater, Director of the Michigan Bureau of Elections, in their official capacities, hereinafter referred to as “Defendants”.

6. At all times relevant to this action, Defendant’s were engaged in state action under color of state law.

7. Defendants are being sued in their official capacities for declaratory and injunctive relief under 42 U.S.C. Sec. 1983 and 28 U.S.C. Sec. 2201, as well as costs pursuant to 42 U.S.C. Sec. 1988(b).

JURISDICTION

8. Jurisdiction in this case is predicated on 28 U.S.C. Sec. 1331, this being a case arising under the Constitution of the United States and 42 U.S.C. Sec. 1983.

VENUE

9. Venue is proper in this District under 28 U.S.C. 1391(b) because a substantial part of the events giving rise to Plaintiffs’ claims occurred in the Eastern District of Michigan.

FACTS

10. Pro Se Intervenor realleges each and every paragraph in the Plaintiff's Complaint as valid and as though fully set forth herein.

IMPOSSIBILITY OF CIRCULATION BY INTERVENOR

11. As of July 16, 2020, over 5,000 citizens of the State of Michigan have died during the Covid-19 pandemic.

12. That on March 23, 2020, Governor of the State of Michigan, Gretchen Whitmer, issued a Stay At Home order which required that residents of Michigan could not go into other homes or residences and requiring that they stay inside, unless a citizen was going to work in essential areas. Such a Stay at Home Order significantly hampered and discouraged signature collection for the purpose of complying with nominating petition requirements.

13. That Governor Whitmer extended the Michigan stay at home order to May 15, 2020 banning the non-essential sales of goods which closed many businesses.

14. That Governor Whitmer's stay at home order dated May 15, 2020, required that individuals visiting grocery stores wear a face mask.

15. That Governor Gretchen Whitmer extended her stay at home order which was scheduled to expire on May 28, 2020, until June 12, 2020.

17. That as a result of the extension Governor Whitmer's stay at home orders, large gatherings and many businesses, such as barbershops, sporting and entertainment venues, gyms and casinos remained closed which are traditional and convenient places to collect signatures were not available to Independent candidates whose signature filing deadline was July 16, 2020.

18. That on June 1, 2020, Governor Whitmer also modified the state of emergency that enabled executive orders, including stay at home orders that were extended through June 15, 2020.

19. That to support the extension of the stay at home orders, Governor cited that the coronavirus has sickened more than 54,000 Michigan residents and killed more than 5,100 since March, 2020. Governor Whitmer stated that the virus was still spreading.

18. That on June 1, 2020, Governor Gretchen Whitmer partially lifted Michigan's stay at home order by loosening restrictions on the operations of business and workplaces and allowed larger outdoor gatherings and outside sporting events with certain restrictions, however it was acknowledged that Wayne County was and still is one of the hardest hit areas in the State of Michigan.

19. That indoor gatherings of more than 10 people remained prohibited and the stay at home order required that people continue to wear face coverings when in enclosed spaces.

21. That Intervenor Sanders, who is an Independent Candidate for the U.S. House of Representatives in the 13th Congressional District, was charged with a significantly higher and a more ponderous burden to collect nominating signatures. Sanders was very restricted in her attempts to collect signatures because of the various stay at home orders and emergency orders.

22. That the Intervenor Sanders actually witnessed prospective voters that believed their lives were in danger if anyone at all approached them and as a result, the prospective voters shunned any contact whatsoever.

23. That due to the COVID-19 outbreak, Intervenor Sanders asserts that she was not able to meet the requirement that she collect the 3000 minimum signatures to 6000 maximum signatures required by Michigan law.

INJURY-IN-FACT RESULTED TO THE INTERVENOR

24. That Michigan, together with COVID-19 outbreak, and the Governor's orders, directly caused injury-in-fact to Intervenor Sanders and her First and Fourteenth Amendment rights.

25. That Intervenor Sanders' injuries are related to the Michigan laws requiring in person signature collection for candidates.

26. That this Honorable Court has the power to properly redress Intervenor's injuries by issuing prospective injunctive and declaratory relief prohibiting enforcement of Michigan's signature requirements for Independent Candidates for office for the November 3, 2020 general election.

27. That this Honorable Court may redress Intervenor Sanders' injuries by directing Defendants to accept the 123 nominating petitions digitally filed by Intervenor Sanders with the Office of the Wayne County Clerk on July 16, 2020.

28. That to date, the Intervenor has not received notice that the 1722 nominating petitions she filed with the Wayne County Clerk's Office were accepted and her name placed on the November 3, 2020 general election ballot.

32. That Intervenor Sanders' position is that the COVID 19 pandemic has hindered and discouraged signature collection for the total six months preceding the nomination petition deadline submissions and Independent candidates have been prejudiced more than the other party affiliated candidates.

33. That the Governor's rescission of stay at home orders on June 1, 2020 did not stop the spread of the coronavirus nor the fear of contracting the virus among the prospective voters that may have been asked to sign a nominating petition.

34. That the usual opportunities to collect signatures for nominating petitions during the spring and summer months have been significantly and substantially curtailed.

35. That additionally, many of the venues frequented by Intervenor Sanders to acquire signatures, such as churches, barbershops, concert venues and sports events are still prohibited from opening for business or allowing crowds to gather.

36. That even the Free Press marathon has been cancelled in Detroit, Michigan due to the coronavirus outbreak.

37. That political conventions, a normal venue to collect nominating signatures, have been cancelled in the State of Michigan and in the United States at large.

38. That Intervenor Sanders is a musician and ALL of the usually relied upon and scheduled music related events were cancelled until 2021 in Metro-Detroit due to the COVID-19 outbreak.

39. That after this Honorable Court's April 20, 2020 Order, Intervenor Sanders actually attempted to solicit signatures via emails and on other social media platforms, however, the process was slow and complicated and hence, unsuccessful.

40. That on June 1, 2020, the Intervenor personally petitioned Governor Whitmer to amend her executive order to allow the Wayne County Clerk to accept a reduced number of signatures in order to qualify for the November 3, 2020 general election ballot.

41. That despite Governor's Gretchen Whitmer's attempts to reopen the State of Michigan and rescind stay at home orders, Michigan reported 699 new coronavirus cases on July 24, 2020.

42. That as of July 24, 2020, a total of 6,141 deaths were calculated at the end of the period for Intervenor to file her nominating petitions and therefore, signature collection has been hampered and hindered by fear of contracting the coronavirus.

FIRST CAUSE OF ACTION

First Amendment

43. That each and every paragraph listed above is incorporated herein as though fully set forth herein.

44. Under present circumstances, Michigan's ballot-access requirements for Independent Candidates and new party candidates for U.S. House of Representatives violate rights guaranteed to Intervenor Sanders by the First and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. Sec. 1983.

45. A real and actual controversy exist between the parties.

46. Intervenor Sanders has no adequate remedy at law other than this action of declaratory and equitable relief.

47. Intervenor Sanders is suffering irreparable harm as a result of the violations complained of herein, and that harm will continue, unless declared unlawful and enjoined by this Court.

SECOND CAUSE OF ACTION

Fourteenth Amendment Equal Protection Clause

48. All previous paragraphs are incorporated and referenced as though fully set forth herein.

49. Under present circumstances, Michigan's ballot-access requirements for Independent Candidates for U. S. House of Representatives violate rights guaranteed to Intervenor

by the Equal Protection Clause of the Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. Sec. 1983.

50. A real and actual controversy exists between the parties.

51. Intervenor Sanders has no adequate remedy at law other than this action for declaratory ad equitable relief.

52. Intervenor Sanders is suffering irreparable harm as a result of the violations complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

DEMAND FOR RELIEF

53. WHEREFORE, the Intervenor respectfully prays that this Court:

(1) Assume original jurisdiction over this case;

(2) Issue a temporary restraining order and/or preliminary injunction (i) prohibiting enforcement of Michigan's supporting signature requirements for Independent candidates for office for Michigan's November 3, 2020 general election; (ii) directing Defendants to accept Intervenor Brenda K. Sanders' nominating petitions for the November 3, 2020 general election without requiring the standard supporting signatures from voters; and (iii) directing Defendants to place Intervenor Sanders' name on the Michigan November 3, 2020 general election ballot.

(3) Issue a declaratory judgment stating that, in light of the current health emergency caused by COVID-19 and executive orders requiring the Michigan citizens to stay at home and to shelter in place, to forego going to church, concerts, sports and other venues, that Michigan's supporting signature requirements for Independent Candidates for office cannot be constitutionally enforced under the First and Fourteenth Amendments, that Defendants must accordingly accept Intervenor Sanders' nominating papers for the November 3, 2020 general election ballot without

requiring supporting signatures from voters, and that Defendants must accordingly place Intervenor Sanders' name on the Michigan November 3, 2020 general election ballot.

(4) Issue a permanent injunction (i) prohibiting enforcement of Michigan's supporting signature requirements for candidates for office for Michigan's November 3, 2020 general election; (ii) directing Defendants to accept Intervenor Sanders' nominating papers for the November 3, 2020 general election without requiring supporting signatures from voters and (iii) directing Defendants to place Intervenor Sanders' name on the Michigan November 3, 2020 general election ballot.

(6) Retain jurisdiction over this matter and order Defendants to provide to Intervenor Sanders any additional relief the Court deems just.

(7) Finally, render relief that is commensurate with this Honorable Court's April 20, 2020 Order as it relates to Intervenor Sanders.

Respectfully Submitted,

BY: /s/ Brenda K. Sanders

Brenda K. Sanders
Independent Candidate for Congress in the
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Intervenor in Pro Se
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CERTIFICATE OF SERVICE

I hereby that on July 25, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF filing system, which will send notification of such filing to all ECF participants and attorneys of record.

_____/s/ Brenda K. Sanders
Brenda K. Sanders

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs

UNITED STATES DISTRICT COURT
for the
Eastern District of Michigan

Plaintiff/Petitioner
v.
Defendant/Respondent
Civil Action No.

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. If incarcerated. I am being held at:
If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. If not incarcerated. If I am employed, my employer's name and address are:

My gross pay or wages are: \$
, and my take-home pay or wages are: \$ per
(specify pay period)

3. Other Income. In the past 12 months, I have received income from the following sources (check all that apply):

- (a) Business, profession, or other self-employment
(b) Rent payments, interest, or dividends
(c) Pension, annuity, or life insurance payments
(d) Disability, or worker's compensation payments
(e) Gifts, or inheritances
(f) Any other sources

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ _____ .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (*describe the property and its approximate value*):

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (*describe and provide the amount of the monthly expense*):

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

8. Any debts or financial obligations (*describe the amounts owed and to whom they are payable*):

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: _____

Applicant's signature

Printed name