UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA, RISE, INC., and THE DETROIT/DOWNRIVER CHAPTER OF THE A. PHILIP RANDOLPH INSTITUTE,

Plaintiffs,

v.

DANA NESSEL, in her official capacity as the Attorney General of the State of Michigan,

Defendant.
_____/

Case No. 3:19-CV-13341

HON. STEPHANIE DAWKINS DAVIS
MAGISTRATE R. STEVEN WHALEN

THE MICHIGAN SENATE AND MICHIGAN HOUSE OF REPRESENTATIVES' MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24, the Michigan Senate and Michigan House of Representatives ("the Legislature") respectfully request that they be permitted to intervene as Defendants in this matter.

In support, the Legislature relies on the attached brief. The Legislature also submits as Exhibit 1 a proposed Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, in accordance with Rule 24(c).

In compliance with Local Rule 7.1(a), counsel for the Legislature conferred by email with Plaintiffs' and Defendant's counsel. All oppose this motion.

Respectfully submitted,

BUSH SEYFERTH PLLC
Attorneys for the Michigan Senate and the Michigan House of Representatives

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Dated: February 27, 2020

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Case No. 3:19-CV-13341

HON. STEPHANIE DAWKINS DAVIS
MAGISTRATE R. STEVEN WHALEN

BRIEF IN SUPPORT OF THE MICHIGAN SENATE AND MICHIGAN HOUSE OF REPRESENTATIVES' MOTION TO INTERVENE

STATEMENT OF ISSUE PRESENTED

1. The Michigan Legislature has a compelling interest in both the defense of duly enacted statutes and preserving the integrity of Michigan's elections through the same, including the prohibitions on paid voter transportation and absentee ballot collection challenged here. This case is brought by the fundraising arm of the nation's largest Democratic Party Super PAC, as well as two other Democratic-Party-affiliated organizations against Michigan Attorney General Dana Nessel, another Democrat. Nessel has made public statements expressing hostility to similar laws, casting doubt on her willingness to defend the laws at issue in this case and other Michigan laws with which she does not agree. Under these circumstances, should the Michigan Legislature be granted intervention as a matter of right under Rule 24(a)(2), or alternatively permissive intervention under Rule 24(b), to ensure vigorous representation in this case?

   The Legislature answers "Yes."

   Plaintiffs answer "No."

   Defendant answers "No."

   This Court should answer "Yes."

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Fed. R. Civ. P. 24

Michigan Constitution, Art. II, § 4(2)

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

Grutter v. Bollinger, 188 F.3d 394 (6th Cir. 1999)

INS v. Chadha, 462 U.S. 919 (1983)

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

Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006)

INTRODUCTION

The Michigan Legislature seeks to intervene in this lawsuit to protect Michigan's election-law infrastructure from dismantling by a partisan, out-of-state Super PAC. One of the nation's largest Democratic-Party-affiliated organizations filed this lawsuit (and two related lawsuits filed separately in a transparent display of forum- and judge-shopping) against the Democratic Attorney General, who has made public statements suggesting a lack of genuine opposition to Plaintiffs' positions. That, and the executive branch's growing track record of coordinating with like-minded plaintiffs to settle litigation for partisan gain, contrary to law and the State's interests, casts justifiable doubt on the vigor with which these claims will be defended. Thus, the Michigan Legislature must intervene to restore the adversarial nature of this litigation and to protect the integrity of Michigan's elections.

On November 12, 2019, Plaintiff Priorities USA—a Washington, DC, 501(c)(4) political action committee closely affiliated with the Democratic Party—filed this lawsuit against Attorney General Dana Nessel, in her official capacity, alleging that two long-enshrined protections of Michigan's elections (prohibitions on paid voter transportation and absentee ballot collection) are unconstitutional. (ECF No. 1). An amended complaint, filed on January 27, 2020, added Rise, Inc.,

and the Detroit/Downriver Chapter of the A. Philip Randolph Institute as Co-Plaintiffs. (ECF No. 17).

This matter is part of a concerted course of judge- and forum-shopping. Instead of one action, Plaintiff Priorities USA intentionally divided its allegations about Michigan's election-law system into three different lawsuits, of which this was the second:

- On October 30, 2019, Plaintiff filed its first action in the Eastern District of Michigan, asserting that Michigan's signature-matching requirement for absentee ballots is unconstitutional. The first-filed action, which names as the defendant Secretary of State Jocelyn Benson (represented in her official capacity by Attorney General Nessel), is pending before Judge Cleland. (Case No. 3:19-CV-13188, ECF No. 1); and
- On November 22, 2019, Plaintiff filed its third action in the Michigan Court of Claims, alleging that various registration requirements in Michigan's election laws violate the Michigan Constitution. (Case No. 19-000191-MZ; Docket No. 1).

Plaintiffs' decision to bring this action against the Attorney General instead of the Secretary of State, which is the typical process in lawsuits concerning election law

and which Plaintiffs' did in the other two connected lawsuits,[1] is further evidence of forum- and judge-shopping, and a hollow effort to avoid proper consolidation of these interrelated actions.

On November 27, 2019, the Legislature filed a Motion to Intervene in the first-filed action before Judge Cleland, believing that procedural comity entitled that court to decide the question of intervention first. (Case No. 3:19-CV-13188, ECF No. 7). That motion is currently set for hearing on April 8, 2020. However, Plaintiffs' strategic machinations—i.e., attempting to "expedite" the second-filed companion case while taking no similar action in the other cases—require the Legislature's immediate intervention in all the related cases.

That the three lawsuits are a connected, concerted effort by a partisan organization to dismantle Michigan's election laws is beyond debate. Indeed, in all three suits, Plaintiff Priorities USA relies on overlapping or even identical allegations, such as that it is challenging Michigan's duly enacted laws because Priorities USA "will have to expend and divert additional funds . . . at the expense of its efforts in other states and its other efforts in Michigan." (ECF No. 1, ¶ 6; Case

[1] *See, e.g., League of Women Voters v. Secretary of State*, ---NW2d---, 2020 WL 423319 (Mich Ct App, January 27, 2020); *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich. App. 561 (2018); *Graveline v Secretary of State Jocelyn Benson*, ---F Supp 3d---, 2019 WL 7049801 (E.D. Mich. December 22, 2019); *Michigan State A. Philip Randolph Institute v. Secretary of State Ruth Johnson*, Case No. 16-cv-11844 (E.D. Mich. 2016).

No. 3:19-CV-13188, ECF No. 1, ¶ 19; Case No. 19-000191-MZ, Docket No. 1, ¶ 17). All three actions are brought by the same lead counsel, Marc E. Elias of Perkins Coie. And, if any doubt could remain, it would be dispelled by the public statements of Priorities USA's chairman, Guy Cecil. After filing this first action, Mr. Cecil promised that it was "the first shoe to drop" in Michigan and that there were "[m]ore to come."[2] And, upon the completion of the trilogy, Mr. Cecil released a statement calling the Court of Claims action the "third and final suit in Michigan."[3]

Plaintiff justifies its assault on Michigan law by reference to the purported goal of combatting disenfranchisement. In so doing, however, it unreasonably discounts the critical importance of ensuring that Michigan's elections are free of the taint of actual or even perceived fraud. It is to fulfill its constitutional mandate of preserving the purity of those elections that the Legislature passed the statutes at issue in this and the companion cases. *See* 1963 Mich. Const., Art. II, § 4(2).

Yet, the Legislature's interests are not genuinely represented in this action. Indeed, Attorney General Nessel actively campaigned, in part, on the promise that she would not defend Michigan laws that she deemed unconstitutional.[4] And though

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[2] https://www.detroitnews.com/story/news/politics/2019/10/30/group-sues-michigan-over-checking-absentee-voter-signatures/4097771002/

[3] https://www.mlive.com/public-interest/2019/11/democratic-pac-files-third-lawsuit-challenging-michigan-voting-laws.html

[4] https://www.bridgemi.com/michigan-government/michigan-attorney-general-candidate-dana-nessel-attacked-her-own-

she has so far adopted a position adverse to Plaintiffs, this case has all the hallmarks of the types of "sue-and-settle" actions engaged in by Attorney General Nessel in her representation of Secretary Benson. (For example, in *College Democrats at the University of Michigan, et al. v. Johnson* (Case No. 3:18-CV-12722), Secretary Benson, represented by Attorney General Nessel, took over a case that had to that point been actively defended, and then promptly entered a settlement that required accommodations around long-standing protections on Michigan's elections.) Furthermore, any attempted settlement of this action without the Legislature's participation and approval would violate the Michigan Constitution, which gives the Legislature authority to enact laws to regulate the "time, place and manner of all . . . elections." 1963 Mich. Const., Art. II, § 4(2); *see also* Case No. 2:17-cv-14148, ECF No. 235, Order Denying Motion to Approve Consent Decree ("[Secretary] Benson lacks the authority—absent the express consent of the Michigan Legislature, which she lacks—to enter into the Proposed Consent Decree.") Against this backdrop, the reasons to doubt the adequacy of Attorney General Nessel's representation are unavoidable, and the necessity for the Michigan Legislature's intervention is apparent.

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Accordingly, the Legislature respectfully requests that the Court grant its Motion to Intervene because:

(1) The Legislature's intervention is timely, with this motion filed before any scheduling order has been set;

(2) The Legislature has a substantial and particular legal interest in preserving the integrity of duly enacted Michigan statutes and the integrity of Michigan's election system;

(3) The Legislature's ability to protect its interest will be impaired if it does not intervene, particularly given the credible prospect of a rapid capitulation or similar failure to vigorously defend the merits; and

(4) Attorney General Nessel does not adequately represent the Legislature's interests because she is unlikely to provide the full-throated defense that Michigan law deserves.

The Legislature attaches its proposed Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief, as required by Rule 24(c). However, if permitted to intervene, the Legislature intends to file promptly its dispositive motion under Rule 12(c). The Legislature also believes that reassignment of this case is appropriate under Local Rule 83.11(b) to promote judicial efficiency and intends to request such a reassignment if permitted to intervene.

ARGUMENT

The Legislature seeks to intervene in this action under Federal Rule 24(a)(2) or, alternatively, under Rule 24(b)(1). Those rules state, in relevant part:

> (a) **Intervention of Right**. On timely motion, the court must permit anyone to intervene who: . . . (2) claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represented that interest.
>
> (b) **Permissive Intervention**. (1) On timely motion, the court may permit anyone to intervene who: . . . (B) has a claim or defense that shares with the main action a common question of law or fact.

"Rule 24 traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). Because the Legislature's participation is necessary for a full and fair adjudication of this case, the Court should allow the Legislature to intervene as Defendant.

A. The Legislature Should be Granted Intervention as a Matter of Right.

The Sixth Circuit recognizes an "expansive notion of the interest sufficient to invoke intervention of right." *Mich State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). To be entitled to intervene as a matter of right, an applicant must show:

(1) the application was timely filed;

(2) the applicant possesses a substantial legal interest in the case;

(3) the applicant's ability to protect its interest will be impaired without

intervention; and

(4) the existing parties will not adequately represent the applicant's interest.

Blount-Hill v. Zelman, 636 F.3d 278, 283 (6th Cir. 2011); *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999). These rules must be "construed broadly in favor of potential intervenors." *Michigan State AFL-CIO*, 103 F.3d at 1246.

1. *The Legislature's Motion to Intervene is timely filed.*

The five factors set forth by the Sixth Circuit in weighing the timeliness of a motion to intervene entirely favor the Legislature. Those factors are:

(1) the stage of the proceedings;

(2) the purpose of the intervention;

(3) the length of time between when the proposed intervenor knew (or should have known) about his interest and the motion;

(4) the prejudice to the original parties by any delay; and

(5) any unusual circumstances militating in favor of or against intervention.

Jansen v. Cincinnati, 904 F.2d 336 (6th Cir. 1990).

These proceedings are in their infancy. Indeed, no scheduling conference (much less schedule) has been set and no development beyond initial motion practice has taken place. Therefore, the Legislature is positioned to participate fully throughout the duration of this case. Moreover, as discussed throughout this motion, the Legislature has a compelling purpose in ensuring vigorous litigation of the

disputed issues, in the face of strong reasons to doubt the true adversity of the original parties. And the Legislature has not delayed, electing to file promptly rather than adopting a wait-and-see approach. Because the Legislature is requesting permission to participate from the inception of this matter, there is no possible delay or prejudice. Thus, no party can seriously contest this motion's timeliness.

2. *The Legislature has a sufficient interest that may be impaired by the disposition of this case.*

"To satisfy [the impairment] 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. This burden is minimal." *Michigan State AFL-CIO*, 103 F.3d at 1247. The Legislature need not demonstrate "that impairment will inevitably ensue from an unfavorable disposition; the would-be intervenors need only show that the disposition may impair or impede their ability to protect their interest." *Purnell v. Akron*, 925 F.2d 941, 948 (6th Cir. 1991). And the presumption is in favor of intervention—"close cases should be resolved in favor of recognizing an interest under Rule 24(a)." *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999).

Cases recognizing a legislative body's interest in defending the constitutionality of statutes are legion. *See Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006) (recognizing Ohio Legislature's right to intervene and defend Voter ID statute when interest "potentially" diverged from defendant Secretary of State); *Adolph Coors Co.*

v. Brady, 944 F.2d 1543, 1546 (10th Cir. 1991) (recognizing House of Representatives' ability to intervene to defend alcohol-labeling statutes); *In re Benny*, 812 F.2d 1133, 1135 (9th Cir. 1987) (recognizing Congress's right to intervene to defend Bankruptcy Act); *Ameron, Inc. v. United States Army Corps of Engineers*, 787 F.2d 875, 888 (3d Cir. 1986) ("There is no dispute that the Congressional intervenors were proper parties for the purpose of supporting the constitutionality of the CICA stay provision."); *Windsor v. United States*, 797 F. Supp. 2d 320, 324 (S.D.N.Y. 2011) ("[C]ourts have permitted Congress to intervene as a full party in numerous cases where the Executive Branch declines to enforce a statute that is alleged to be unconstitutional.")

The Legislature here is situated similarly to the legislative bodies granted intervention as a matter of right in the caselaw above. It seeks to intervene to defend the constitutionality of duly enacted Michigan statutes, in the face of circumstances in which the representation of the defendant charged with enforcement has been called into doubt by prior actions and public statements. Indeed, there are sufficient hallmarks of a conflict of interest in this and the companion cases—actions brought by partisan organizations against members of the same political party, aimed squarely at advancing stated policy goals of that party—to erode public confidence in the outcome unless genuine adverse representation is assured.

The nature of the statutes under attack further demonstrates the Legislature's

interest in intervention. The Legislature is constitutionally obligated to "enact laws . . . to preserve the purity of elections." 1963 Mich. Const., Art. II, § 4(2). The Legislature has fulfilled that mandate and now seeks to defend the integrity of the very voting laws—in this case, the prohibitions on paid voter transportation and absentee ballot collection—under which its members will be elected. Undoubtedly, the members of the Legislature, who all must be elected, have an interest in preserving and protecting the integrity of the elected body. *See Powell v. McCormack*, 395 U.S. 486, 548 (1969) ("Unquestionably, Congress has an interest in preserving its institutional integrity."). That is especially so where the Michigan Constitution expressly requires the Legislature to enact laws to preserve the purity of elections. Plaintiff seeks to dismantle those statutory protections just before what Plaintiff itself predicts will be a tidal wave of new absentee voting. Absent intervention, the Legislature's strong interest in ensuring that Michigan votes are cast without the taint of fraud would be irreparably harmed.

3. *No current party adequately represents the Legislature's interests*.

Finally, the Sixth Circuit's intervention analysis requires an examination of whether the "present parties . . . adequately represent the applicant's interest." *Grubbs v. Norris*, 870 F.2d 343 (6th Cir. 1989). Once again, the requirement is not onerous. The prospective intervenor need only show that the representation of its interest "may be inadequate." *Trbovich v. UMW*, 404 U.S. 528, 538, n.10 (1972);

Michigan State AFL-CIO, 103 F.3d at 1247. This requirement "underscores both the burden on those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention." *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967).

As previewed above, there are strong indications that Attorney General Nessel will not, in the end, adequately represent the Legislature's interests by vigorously defending the challenged statutes. "It has been said that, given this standard, *the applicant* should be treated as the best judge of whether the existing parties adequately represent his or her interests, and that any doubt regarding adequacy of representation should be resolved in favor of the proposed intervenors." 6 MOORE'S FEDERAL PRACTICE § 24.03[4][a], at 24-42 (3d ed.) (footnote omitted) (emphasis added).

The Sixth Circuit has held that even a potential divergence in interest satisfies this factor of the analysis. "The [Legislature's] burden with respect to establishing that its interest is not adequately protected by the existing party to the action is a minimal one." *Blackwell*, 467 F.3d at 1008. In a voting-law case similar to this one, the Sixth Circuit recognized that the Ohio Secretary of State's "primary interest is in ensuring the smooth administration of the election, while the State and General Assembly have an independent interest in defending the validity of Ohio laws and ensuring that those laws are enforced." *Id.* This dichotomy and the Ohio Secretary

of State's desire not to defend the Ohio law satisfied the Sixth Circuit that "the interests of the Secretary and the State of Ohio *potentially* diverge," such that intervention was warranted. *Id.* (emphasis added); *see also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 824 (9th Cir. 2001) ("It is sufficient for Applicants to show that, because of the difference in interests, it is *likely* that Defendants will not advance the same arguments as Applicants") (emphasis added).

So too here. Attorney General Nessel has been outwardly hostile to Michigan's protections against voter fraud and, in general, the notion of defending laws that she does not agree with, demonstrating the need for intervention. Attorney General Nessel's statements on closely linked matters and the related underlying policies reasonably can be extrapolated for this case. Below is just a sampling of her public statements on these matters:

- "Our democracy in Michigan restricts the rights of the voters." – Attorney General Nessel, March 12, 2019[5]
- "I will not waste taxpayer money and embarrass our state by defending flagrantly unconstitutional laws which are summarily overturned by the courts." - Attorney General Nessel, May 29, 2018[6]

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5 https://www.facebook.com/plugins/post.php?href=https%3A%2F%2Fwww.facebook.com%2FDanaNesselAG%2Fposts%2F2235038193491842

6 https://www.facebook.com/plugins/post.php?href=https%3A%2F%2Fwww.facebook.com%2FDanaNesselAG%2Fposts%2F2012274382434892

These statements mirror the allegations in the Complaint itself. They evidence hostility to the framework of voting laws enacted to protect the integrity of Michigan elections, suggesting that any restrictions on voting (even those that target fraud) are attacks on democracy itself, and arrogate to the Attorney General the authority to decide which laws they will enforce and which they will deem—without the need for judicial review—unconstitutional or simply undesirable. Such statements do not reflect a party that will vigorously defend this lawsuit, and they emphasize the need for the Legislature's intervention.

The Legislature's concerns are further reinforced by the actions taken by Attorney General Nessel and Secretary Benson in recent voting-related cases. In *College Democrats*, for instance, Secretary Benson (represented by Attorney General Nessel) took over the litigation when she assumed office and fundamentally changed the trajectory of the case. Instead of a fulsome defense of Michigan laws that had been on the books for almost 20 years, Secretary Benson stipulated to a dismissal and letter agreement in which she consented to myriad concessions to valid Michigan statutes. In the recent litigation concerning Michigan's congressional districts, the Legislature gave Secretary Benson (again represented by Attorney General Nessel) the benefit of the doubt, waiting to intervene until her positions in that action were explicitly stated in the pleadings. But that restraint backfired, and

the Legislature's interests were impaired on the eve of trial with a proposed settlement and consent judgment.

The need for intervention in this case is even more pronounced than in either of the prior cases. Given the confluence of party allegiance, prior statements sympathetic to Plaintiffs' core positions underlying this litigation, and a track record of noncommittal representation in prior voting litigation, the need for a party truly adverse to Priorities USA is apparent. Likewise, the Legislature's particularized interest as a collection of elected officials in preservation of Michigan's duly enacted election laws favors a finding of inadequate representation here. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) ("Inadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public.") Finally, any attempted settlement of this action without the Legislature's participation and approval would violate the Michigan Constitution, which gives the Legislature authority to enact laws to regulate the "time, place and manner of all . . . elections." 1963 Mich. Const., Art. II, § 4(2); see also Case No. 2:17-cv-14148, ECF No. 235, Order Denying Motion to Approve Consent Decree ("[Secretary] Benson lacks the authority—absent the express consent of the Michigan Legislature, which she lacks—to enter into the Proposed Consent Decree.") The Legislature is therefore entitled to intervene as a matter of right in accordance with Federal Rule 24(a)(2).

B. Alternatively, the Legislature is Entitled to Permissive Intervention.

Even if this Court determines that the Legislature is not permitted to intervene as a matter of right, it should be granted permissive intervention under Federal Rule 24(b). This rule provides for permissive intervention where a party timely files a motion and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B).

Intervention under Rule 24(b) is a "discretionary power" left to the judgment of the district court. *Bradley v. Milliken*, 828 F.2d 1186, 1193 (6th Cir. 1987). In exercising its broad discretion under this Rule, the Court must consider whether intervention will unduly delay or prejudice the adjudication of the original parties' rights. Fed. R. Civ. P. 24(b)(3).

For all the reasons explained above, the Legislature also has a right to intervene in this matter permissively. Because the case is in its infancy, with the pleadings open and no schedule (or scheduling conference) set, the request to intervene is timely and no party will be prejudiced by the Legislature's intervention.

On the other hand, not allowing the Legislature to intervene would prejudice its interests and rights. Plaintiffs—partisan organizations—attack duly enacted Michigan laws generally, which the Legislature has a right to defend. *See Blackwell*, 467 F.3d at 1007. Moreover, Plaintiffs specifically target election laws, which the Legislature is constitutionally obligated to enact to preserve the purity of elections.

1963 Mich. Const., Art. II, § 4(2). In addition, the Legislature has a specific interest in protecting from interference to preserve the integrity of the institution. *Powell*, 395 U.S. at 548. To ensure a full and fair adversarial process, the Legislature should be permitted to intervene in this matter as a defendant.

CONCLUSION

For the foregoing reasons, the Legislature respectfully asks that the Court grant its motion to intervene to protect its interests in the integrity of Michigan's voting laws and to ensure a full and fair adjudication of this matter on the merits, following a truly adversarial process.

Respectfully submitted,

BUSH SEYFERTH PLLC
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Dated: February 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2020, I electronically filed the foregoing with the Clerk of the Court using the ECF System, which will send notification to all ECF counsel of record.

By: /s/ Patrick G. Seyferth
Patrick G. Seyferth (P47575)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIORITIES USA, RISE INC., and the Detroit/Downriver Chapter of the A. Philip Randolph Institute,

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DANA NESSEL, in her official capacity as Attorney General of the State of Michigan,

Defendant.
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Case No. 19-13341

HONORABLE STEPHANIE D. DAVIS
MAGISTRATE R. STEVEN WALEN

THE MICHIGAN SENATE AND MICHIGAN HOUSE OF REPRESENTATIVES' ANSWER TO PLAINTIFFS' AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Proposed Intervenors the Michigan House of Representatives and the Michigan Senate ("the Legislature"), through their counsel, submit the following Answer to Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief. For avoidance of doubt, the Legislature generally denies all allegations except those specifically admitted.

INTRODUCTION

1. The Legislature admits only that this paragraph contains quotes from court opinions but denies the inference of applicability to this case. The Legislature denies the remaining allegations of this paragraph.

2. The Legislature admits Proposal 3 passed in the November 6, 2018 general election. The Michigan Constitution speaks for itself. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

3. The Legislature denies that Michigan law bans efforts to encourage and assist voters. The Legislature further denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize MCL 168.931 and 168.759, which speak for themselves.

4. Denied.

5. Denied.

6. The Legislature admits the Michigan Primary Election is on March 10, 2020, and the 2020 General Election is on November 3, 2020. The Legislature further denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

PARTIES

7. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

8. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

9. The Legislature lacks knowledge or information sufficient to form a

belief as to the truth of the allegations of this paragraph.

10. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

11. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

12. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

13. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

14. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

15. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

16. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

17. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Michigan Constitution speaks for itself. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

18. The Legislature admits Dana Nessel is the Attorney General of the State of Michigan and the top law enforcement official responsible for prosecuting the laws of the State of Michigan. The Legislature otherwise denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

JURISDICTION AND VENUE

19. The Legislature admits only that Plaintiff invokes 42 U.S.C. § 1983 and 28 U.S.C. § 2201 as the basis for this action and denies that Plaintiff's claims have merit.

20. The Legislature admits this Court has subject-matter jurisdiction of the claims arising under 42 U.S.C. §1983 but denies that this Court has subject-matter jurisdiction over Plaintiff's statutory preemption claims.

21. Admitted.

22. The Legislature admits only that this Court has authority to enter judgment ordering declaratory and injunctive relief but denies that exercise of that authority is proper here.

23. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

24. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

25. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

26. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

27. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

28. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

29. Admitted.

30. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

31. The Legislature lacks knowledge or information sufficient to form a

belief as to the truth of the allegations of this paragraph.

32. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

GENERAL ALLEGATIONS[1]

33. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

34. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize MCL 168.931, which speaks for themselves .

35. The Legislature denies the allegations of this paragraph, including Footnote 1, to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

36. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

37. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

38. Denied.

[1] The Legislature declines to restate Plaintiff's argumentative subheadings, which are not allegations to which a response is required.

39. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature specifically denies that provisions of MCL 168.931 are arbitrary.

40. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

41. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

42. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

43. Denied.

44. Denied.

45. Denied.

46. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

47. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

48. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

49. The Legislature admits Proposal 3 passed in the November 6, 2018 general election. The Michigan Constitution speaks for itself. The Legislature denies the remaining allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

50. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

51. The Legislature denies the allegations of this paragraph, including Footnote 2, to the extent they are inconsistent with or attempt to characterize applicable law.

52. The Legislature lacks knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph.

53. Denied

54. Denied.

55. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law. The Legislature specifically denies that other statutes "diminish the need" for MCL 168.759.

COUNT I

56. Denied.

57. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

58. Denied.

59. Denied.

60. Denied.

COUNT II

61. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

62. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

63. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

64. Denied.

COUNT III

65. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

66. Denied.

67. The Legislature denies the allegations of this paragraph to the extent

they are inconsistent with or attempt to characterize applicable law.

68. Denied.

69. Denied.

70. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

COUNT IV

71. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

72. Denied.

73. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

74. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

75. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

76. Denied.

77. Denied.

78. Denied.

COUNT V

79. The Legislature hereby incorporates all other paragraphs as if fully set

forth herein.

80. Denied.

81. Denied.

82. Denied.

COUNT VI

83. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

84. Denied.

85. Denied.

86. Denied.

87. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

88. Denied.

COUNT VII

89. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

90. Denied.

91. Denied.

92. Denied.

COUNT VIII

93. The Legislature hereby incorporates all other paragraphs as if fully set forth herein.

94. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

95. The Legislature denies the allegations of this paragraph to the extent they are inconsistent with or attempt to characterize applicable law.

96. Denied.

97. Denied.

PRAYER FOR RELIEF

WHEREFORE, the Legislature respectfully requests that the Complaint be dismissed with prejudice and that they be awarded costs, reasonable attorney fees, and such further relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

3. Plaintiffs lack standing.

4. Plaintiffs are barred from raising others' rights and generalized grievances under the doctrine of prudential standing.

5. Plaintiff's claims are non-justiciable political questions.

6. Plaintiffs do not allege a cognizable case or controversy.

7. This Court lacks subject-matter jurisdiction over Plaintiffs' preemption claims.

8. Plaintiffs' claims are barred by federal abstention doctrine.

9. Plaintiffs' Associational and Speech claims are multiplicative of their Undue Burden claims.

10. Plaintiffs' claims are not ripe for adjudication.

11. Plaintiffs' claims are barred by the Eleventh Amendment to the United States Constitution.

The Legislature reserves the right to add additional affirmative defenses as the result of discovery or otherwise.

Respectfully submitted,

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