

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

v.

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

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 SHAKIRA L. HAWKINS'S
EMERGENCY MOTION TO INTERVENE**

Pursuant to Federal Rule of Civil Procedure 24(a) and 24(b), Intervening Plaintiff Shakira L. Hawkins hereby moves the Court to grant her request to intervene in this case. Counsel for Plaintiff Esshaki, for Plaintiff-Intervenor Matt Savich and for amici ACLU of Michigan, Daniel Finley and Whitney Williams concur in the relief sought.

In accordance with LR 7.1(a)(2)(A), counsel conferred by phone with Plaintiff-Intervenor Deana Beard, Esq. and by email with counsel for the State Defendants, but both declined to concur.

With respect to amicus Michigan Republican Party, counsel conducted reasonable efforts under the emergency circumstances but was not able to obtain concurrence in this motion. *See* LR 7.1(a)(2)(B). The moving party did not know that intervention would be necessary until Friday, May 8, 2020, when the Defendants published unreasonable accommodations relating to their unconstitutional application of state election laws. She promptly engaged counsel on Sunday, May 10, 2020. Due to the emergency nature of the relief, counsel must file this motion on Monday, May 11, 2020 to avoid prejudicing the intervenor's rights. On Monday, May 11, 2020, undersigned counsel contacted counsel for the amicus via his phone and email identified on the docket, but a response has not yet been received.

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

Respectfully Submitted,

May 11, 2020

CLANCY ADVISORS PLC
By: /s/Saura J. Sahu (P69627)
Saura J. Sahu
Attorneys for Shakira L. Hawkins
230 Nickels Arcade
Ann Arbor, MI 48104
(734) 780-7595
sahu@clancyadvisors.com

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

v.

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

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.

**BRIEF IN SUPPORT OF
INTERVENING-PLAINTIFF SHAKIRA L. HAWKINS'S
EMERGENCY MOTION TO INTERVENE**

STATEMENT OF ISSUES PRESENTED

1. Whether the Court must grant Hawkins'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 Hawkins 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 of 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.3d 1240, 1245 (6th Cir. 1997).

The movant, Shakira Lynn Hawkins, respectfully submits this brief in support of her motion to intervene. Hawkins 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, Hawkins respectfully asks the Court to grant her request.

BACKGROUND

This case is relatively new. Less than six weeks ago, on March 31, 2020, U.S. Congressional candidate Eric Esshaki filed the two-count Complaint that initiated this election-rights case. (Compl., ECF No. 1, PageID.1.) In his capacity as a candidate, Esshaki challenged the infringement of his right to have his name on the ballot. (*Id.* PageID.11.) In his capacity as a voter, he challenged the infringement of his ability to vote for the candidate of his choice. (*Id.* PageID.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, two judicial candidates who also face similar impediments and infringements – Matt Savich and Deana Beard – successfully intervened as of April 20, 2020. (Order, ECF No. 22, PageID.318.)

While their political interests might differ, Esshaki and Hawkins share a number of common legal interests along with Savich and Beard. They are each active candidates for office in Michigan's 2020 elections. (*E.g.*, PageID.2; Exh. A ¶ 3.) 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. (*E.g.*, PageID.3, 7-8; Exh. A at 6-10.) Despite headwinds, they each gathered a significant showing of public support for their campaigns. And absent the emergency and the resulting Stay-At-Home Orders, both could be expected to comfortably surpass Michigan's ordinary signature requirements. (*E.g.*, PageID.6; Exh. A at 9-10.) Yet as a result of the Executive Orders, they each face disqualification by relatively arbitrary deadlines and quantitative election-law requirements, which might suit ordinary times but are unsupportable during the current emergency.

Hawkins differs from Esshaki, however, in two key respects; namely, she presents an even more meritorious claim to the ballot while facing an additional technicality. Whereas Esshaki had "nearly seven hundred" of the 1000 signatures otherwise required for his candidacy, (PageID.6, ¶ 22), Hawkins already gathered 4283 signatures – more than the 4000 usually required to secure a place on the ballot. (Exh. A ¶¶ 13-14, 30.) On April 29, 2020, and after the usual time for filing signatures elapsed, however, Hawkins learned that an opposing candidate

challenged 398 signatures, now leaving her 115 signatures short (that is, less than 3% shy). (*Id.* ¶ 33.)

That 3% shortfall could have found an easy solution through this Court’s April 20, 2020 Preliminary Injunction Order and the State’s resulting accommodations, were it not for one key distinction. (*See generally* ECF No. 23, PageID.321.) Unlike Esshaki, Hawkins did not engage in early fundraising efforts. Instead, she worked to achieve substantial direct public support through a signature-gathering campaign rather than through campaign contributions. As a result, she did not form a campaign committee until May 1, which like many candidates was within ten days after she filed her nominating petitions on April 21. (Exh. A ¶¶ 18, 34.)

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 Hawkins obviously has more than a modicum of support, she is being denied the benefit of the State’s relaxed signature requirement and its relaxed signature-filing deadline because she had not formed her campaign committee by the Arbitrary Finance Committee Deadline. (Exh. A at 9-12.) Now,

the deadline threatens to keep Ms. Hawkins off the ballot and deprives her supporters from being able to vote for their desired candidate.

The March 10 cutoff has already been discussed and addressed in this case. When the Sixth Circuit remanded the matter, this Court ordered the State to submit proposed accommodations and gave plaintiffs and the amici an opportunity to respond. Two amici raised the issue of the March 10 deadline and, in support, the ACLU of Michigan submitted two declarations, including Ms. Hawkins' declaration. Although this Court did not believe it had the power to institute a remedy in light of the Sixth Circuit's opinion, the Court made it clear that it believed the March 10 cutoff was constitutionally problematic and urged the State to take that into account when issuing new accommodations.

When the Secretary of State issued new accommodations on its website on May 8, it ignored this Court's admonition and refused to alter the March 10 cutoff. As a result, Ms. Hawkins cannot currently benefit from the 50% reduction in signatures and could not benefit from the extension of the signature-filing deadline until last Friday (May 8). She will not be on the August 4 ballot absent this Court's intervention.

Neither Mr. Esshaki nor the other intervening plaintiffs are impacted by the March 10 cutoff and will not be seeking relief from this portion of the State's new

rules. Accordingly, as argued below, Ms. Hawkins, is entitled to intervention as of right. Alternatively, she seeks leave to intervene.

ARGUMENT

Ms. Hawkins seeks to intervene to assert her fundamental rights to ballot access under the First and Fourteenth Amendments, which will probably 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 Hawkins will lose valuable time during which her rights will be impeded if she is forced to start afresh. For the following reasons, Hawkins respectfully asks the Court to 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. Feb. 18, 2020) (Berg, J.) (granting intervention).

Under Federal Rule of Civil Procedure 24, intervention can be mandatory or permissive. The Court “must permit” Hawkins 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 impede [her] ability to protect [her] interest.” Fed. R. Civ. P. 24(a)(2). Alternatively, the Court has discretion to allow Hawkins to intervene because she “has a claim or defense that shares with the main action a common question of 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[1][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 at *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 APPLICANT IS ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a)(2).

Under the Sixth Circuit’s analysis of Rule 24, Hawkins 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 Applicant's Motion is Timely.

Although standards of timeliness are flexible,¹ there is no question that a motion filed within weeks of the Complaint and during the early stages of the litigation is timely. *Miller*, 103 F.3d at 1245.

Here, Hawkins filed her application in the early weeks of this fast-moving 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. Hawkins had been involved in this case through amicus ACLU of Michigan and did not think intervening would be necessary when this Court admonished the State to change the March 10 Arbitrary Finance Committee Deadline. However, when the State ignored that admonition last Friday, Hawkins filed her motion to intervene the next business day. Her application is timely for both mandatory and permissive intervention (below).

¹ Courts "evaluate timeliness in the context of all relevant circumstances and consider the following five factors" in determining whether a motion to intervene is timely: (1) the stage of the litigation; (2) the purpose for which intervention is sought; (3) the length of time preceding the motion during which the potential intervenors knew or should have known of their interest in the litigation; (4) the prejudice to the original parties due to the potential intervenors' failure to promptly move to intervene; and (5) the existence of unique circumstances militating against or in favor of intervention. *Kirsch v. Dean*, 733 Fed. App'x 268, 274-75 (6th Cir. 2018).

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

When identifying the movant’s legal interest, the term “‘interest’ is to be construed liberally.” *Bradley v. Milliken*, 828 F.2d 1186, 1192 (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, Hawkins’s hurdle is low. She does not need to demonstrate any “specific legal or equitable interest,” *Purnell v. Akron*, 925 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)).

Here, Hawkins is a candidate for state judicial office who is being deprived of the same First and Fourteenth Amendment rights that the Court described at PageID.30-33. She not only has the same standing as the other Plaintiffs to initiate a lawsuit, but also, as this Court apparently suggested at oral argument on Thursday, she is likely to prevail.

In addition, she also has a substantial likelihood of prevailing on issues that are not now adequately represented. While the Governor’s Stay-At Home Orders and the State’s ordinary election laws jointly hamstrung Hawkins’s ability to timely

and comfortably surpass the minimum filing requirements, a unique burden now treats her differently than the other similarly situated parties. The State insists upon imposing and enforcing the Arbitrary Finance Committee Deadline. Unlike other candidates, Hawkins's wholly grassroots campaign did not need to rely on fundraising, and the formation of a campaign finance committee under Mich. Comp. L. § 169.221(1) was not previously required to qualify for her to access to the ballot. The irony of the State's enforcement scheme is that Hawkins – through sheer grassroots organization – had enough signatures by the ordinary deadline, still would have had enough additional signatures if late-filing were allowed (Exh. A ¶ 36), and obviously has enough signatures under a relaxed quota. She is a preexisting and serious candidate with substantial voter support. Yet unlike the other parties, she is the one who will otherwise be excluded from the ballot because of the Arbitrary Finance Committee Deadline.

Where, as here, an intervenor's rights *could* be affected by the litigation, Hawkins 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 intervenors' chances of gaining admission could be impacted by plaintiffs' lawsuit).

C. The Applicant'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. Hawkins 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 of the State's proposed accommodations, Hawkins almost certainly *will* be denied access to the ballot. That near-certainty far exceeds the lenient potential impact that Rule 24 requires.

D. Mr. Esshaki and Other Litigants Do Not Adequately Represent the Applicant's Interest.

Finally, Hawkins'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 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.

Although amici and the Court have raised the constitutional problems with the Arbitrary Finance Committee Deadline, neither Plaintiff Esshaki nor the other intervening plaintiffs are impacted by the March 10 cutoff. They will not be seeking relief from this portion of the State’s new rules. It is not only possible but also likely that the parties’ arguments may be inadequate to protect Hawkins’s interests. Accordingly, Ms. Hawkins is entitled to intervention as of right.

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

Alternatively, the Court should allow Ms. Hawkins 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).

Hawkins’s claims involve all the same First and Fourteenth 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. Common issues exist.

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 Hawkins will significantly delay the proceedings. To date, she has participated with amici and remained informed about the case. She promptly presents a clear question that can be resolved amid existing and ongoing disputes over the State's accommodations. Her new counsel is and can be adequately and quickly informed. Moreover, there is no other apparent prejudice that could result from her participation. Hawkins respectfully submits that she has abundantly met the Rule's requirements.

CONCLUSION

For each of the reasons above, Hawkins submits that under the circumstances, her timely motion entitles her to intervene as of right under Rule 24(a) and firmly supports 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,

May 11, 2020

CLANCY ADVISORS PLC
By: /s/Saura J. Sahu (P69627)
Saura J. Sahu
Attorneys for Shakira L. Hawkins
230 Nickels Arcade
Ann Arbor, MI 48104
(734) 780-7595
sahu@clancyadvisors.com

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2020, I electronically filed the foregoing paper and attached exhibits with the Clerk of the Court using the ECF system, which will send notification and copies of these filings to all counsel of record.

Respectfully Submitted,

May 11, 2020

CLANCY ADVISORS PLC
By: /s/Saura J. Sahu (P69627)
Saura J. Sahu
Attorneys for Shakira L. Hawkins
230 Nickels Arcade
Ann Arbor, MI 48104
(734) 780-7595
sahu@clancyadvisors.com

EXHIBIT A

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

v.

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.

**VERIFIED COMPLAINT IN INTERVENTION
OF SHAKIRA L. HAWKINS**

Intervening Plaintiff Shakira L. Hawkins – as a candidate for the Third Circuit Court Judge, Regular Term, Non-Incumbent Position in Wayne County and individually as a voter – alleges for her Complaint in Intervention as follows:

Parties, Jurisdiction, and Venue

1. Intervening Plaintiff Shakira L. Hawkins is a resident of, and has

resided and been domiciled in, Wayne County, Michigan for the past 20 years.

2. Hawkins is also a judicial candidate running for one of two non-incumbent, full-term positions on the Wayne County Circuit Court in the primary election on August 4, 2020. Both open positions are in the criminal division.

3. Hawkins is a registered voter and will be voting in the August 4, 2020 primary elections for the judges of the Wayne County Circuit Court. She wishes to vote for herself on August 4, 2020.

4. Defendants are statewide governmental officials in Michigan, who have been sued in their official capacities. Hawkins accepts and adopts the other parties' allegations about Defendants' duties and role in the election process.

5. As set forth more fully below, Hawkins alleges under 42 U.S.C. § 1983 that Defendants' joint application of certain election-law rules and certain emergency measures responding to the COVID-19 pandemic violates her rights to ballot access under the First and Fourteenth Amendments.

6. This Court has federal question jurisdiction and supplemental jurisdiction to address the federal constitutional and statutory issues in this case. 28 U.S.C. § 1331.

7. Venue is proper in the Eastern District of Michigan because most of the facts and events giving rise to Hawkins's claim occurred here, 28 U.S.C.

§ 1292(b)(2), and the Defendants are statewide officials who maintain offices throughout Michigan, reside in Michigan, conduct their relevant business in this District, and are subject to this Court's personal jurisdiction. 28 U.S.C. § 1292(b)(1),(c)(2); *Bay County Democratic Party v. Land*, 340 F. Supp. 2d 802, 808 (E.D. Mich. 2004).

Background Facts

8. Hawkins is a member in good standing with the State Bar of Michigan. She has practiced criminal law for over 10 years.

9. Hawkins began her legal career at Legal Aid in the Civil Division in 1999 and then briefly served as executive director of My Sisters Place, a domestic violence shelter for women.

10. After family reasons compelled her to adjourn her legal practice for several years, Hawkins returned to the practice in 2010 focusing primarily on criminal defense. The vast majority of her cases are assignments from the Third Circuit Court as a member of the Wayne County Criminal Defense Bar Association, where she advocates forcefully on behalf of indigent clients. Hawkins is passionate about the law, justice and her work in defending the Constitutional rights of the accused.

11. In light of Hawkins's residency and voting eligibility in Wayne County – and being less than 70 years old – Hawkins is qualified to seek nomination for the office of Judge of the Third Circuit Court. Mich. Comp.

Laws § 168.411.

12. Hawkins has a broad base of community support and was very excited about the opportunity to serve the community as a circuit court judge.

13. Like the other parties in this case, Hawkins observed certain population-based signature filing quotas to run for office. Under Michigan election law, candidates for non-partisan offices within her geographical area (such as judges of the Third Circuit Court) must file at least 4000 signatures of registered and qualified electors to be listed on the August 4, 2020 primary election ballot. Mich. Comp. Laws §§ 168.413 and 168.544.

14. The original filing deadline for Hawkins to submit her signed petitions with the Michigan Department of State, Bureau of Elections was the fifteenth Tuesday before the primary election, which equated to April 21, 2020 at 4:00 p.m. *Id.*

15. Hawkins decided early in the current election cycle that she wanted to run for judge. She began gathering signatures in November 2019.

16. Over the next few months, she collected signatures at work and other busy public places. During the winter months when signatures are often difficult to collect, she asked family, friends and co-workers, as well as strangers, to circulate her petitions. She and her volunteers collected signatures during the March 10, 2020 presidential primary election by standing outside of polling places. She also stood outside busy businesses with the owners'

approval and solicited signatures from patrons.

17. By on or about March 10, 2020, Hawkins had gathered approximately 3000 signatures. As the weather thawed and her campaign ramped up, she was on schedule to easily meet her goal of collecting 5000 signatures by the original April 21 filing deadline.

18. For the purpose of regulating campaign fundraising and expenditures, the Michigan Campaign Finance Act, Mich. Comp. Laws §§ 169.201-.282, imposes additional requirements on “candidates.” For example, a candidate must form a committee within 10 days of becoming a candidate. Mich. Comp. Laws § 169.221(1). Defendant Secretary of State has authority to promulgate rules to implement the Act. Mich. Comp. Laws § 169.215(1)(e). According the Michigan Bureau of Elections:

An individual does not legally become a candidate under the Michigan Campaign Finance Act until he or she:

- Files a fee, Affidavit of Incumbency or nomination petition for elective officer; **OR**
- Is nominated as a candidate for elective office by a political party convention or caucus and certified to the appropriate filing official; **OR**
- Gives consent to someone else to receive a contribution or make and expenditure in an attempt to be nominated or elected to office.

See Bureau of Elections Publication,

<https://mertsplus.com/mertsuserguide/index.php?n=MANUALCAN.TheState>

[mentOfOrganizationFormingAndRegisteringACandidateCommittee#candef.](#)

(Emphasis in original). As a result, many candidates do not form their candidate committee until after they have filed their nomination petitions.

19. As of March 10, 2020, Hawkins had not raised campaign money, she had not yet gathered 4000 signatures for her nominating petition to secure a place on the ballot, and she had not consented to have anyone else make an expenditure on her behalf. As far as she knew, she was not officially a “candidate” for purposes of campaign finance. Instead, she was conducting a grassroots campaign.

20. As of March 10, 2020, nothing in the Michigan Campaign Finance Act disqualified Hawkins yet from being a candidate on the August 2020 primary ballot. *See generally* Mich. Comp. Laws § 169.220. Moreover, Defendants had not provided any guide, pamphlet or similar digestible material to inform a grassroots candidate that a committee must or should already have been formed by then.

21. On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. The pandemic had begun. In the initial stages of the pandemic, and consistent with the Governor’s cautionary admonishments, Hawkins stopped collecting signatures.

22. On March 23, 2020, in response to the pandemic, Governor

Whitmer imposed major limitations through Executive Order 2020-21 (the first “Stay-At-Home Order”), which went into On March 24, 2020. Since then, the Order has been extended and has continued uninterrupted through a series of Executive Orders that are each the same with respect to campaign activities. In particular, the Stay-At-Home Orders do not create an exception for candidates or campaign staff.

23. During the early stages of the pandemic, Hawkins regularly called the Bureau of Elections at the Secretary of State to ask about accommodations for those seeking access to the ballot. Officials in that office told her that the matter was being discussed but no decisions had been made, and any changes would be posted on the Secretary of State’s website.

24. During this same early-pandemic period, Hawkins checked online daily and even called to ask how she could – or would be expected to – solicit signatures during the pandemic. Officials in the Secretary of State’s office told her to try collecting signatures by mail. Having run a grassroots campaign rather than fundraising, however, she could not afford to gather signatures that way.

25. When Hawkins realized the Defendants would not voluntarily make any timely accommodations, she renewed her campaign efforts utilizing any free and lawful means available to gather signatures.

26. Just as with the other parties to this case, the Defendant

Governor's Stay-at-Home Orders and the social distancing rules severely hampered Hawkins's efforts to gather nominating signatures.

27. The Defendant Governor's Stay-at-Home Orders, however, allowed individuals to go outside for recreation and exercise. Hawkins regularly took long daily walks on which she asked anyone outside who she encountered if they would sign and help her get on the ballot. Some of her volunteers collected signatures when using public transportation. One volunteer who lives in an apartment complex asked those passing through the lobby or doing laundry in a shared community room to sign petitions.

28. On April 20, 2020, this Court entered its Preliminary Injunction order, determining that the joint and collective application of the state's rules – namely, the same rules under which Hawkins labored – imposed an unconstitutional burden upon the right to ballot access. For candidates who formed finance committees on or before the pandemic began on March 10, 2020, the Court ordered particular relief from the signature requirements. In particular, it relaxed the signature requirements of candidates for state office who “established a candidate committee under the Michigan Campaign Finance Law, Mich. Comp. Laws, §§ 169.201 et seq., before March 10, 2020.” (ECF No. 23, PageID.359.)

29. At the time, the reference to March 10 may have been unremarkable for two reasons. First, because the original Plaintiff formed a

campaign committee for federal office by October 2019, he is not impacted by a March 10, 2020 deadline for forming a candidate committee. Second, by April 20, Hawkins seemed to have enough signatures without an accommodation.

30. By April 21, 2020, Hawkins had gathered approximately 4283 signatures to support her nonpartisan nominating petitions, which she timely filed. At first, therefore, it seemed as if she would not need to avail herself of a constitutional challenge.

31. But for the pandemic and this state's Stay-at-Home Orders, Hawkins would have collected at least 5000 signatures and would have easily qualified for the ballot and would have likely submitted at least 5000 signatures.

32. As a result of her steadfast, prompt and compliant efforts in the face of the pandemic, Hawkins's name was placed on the 2020 Michigan candidate unofficial primary ballot where it currently remains.

33. On April 29, 2020, the Secretary of State notified Hawkins that a sworn complaint had been filed challenging her candidacy and stating that of the 4283 petition signatures she submitted, only 3885 were valid, causing her to fall short of the required minimum by 115 signatures.

34. Hawkins formed her candidate committee on May 1, 2020, ten days after filing her petition signatures. She filed her statement of organization

on May 6, 2020, six days after forming her candidate committee.

35. As of today, Hawkins has collected an additional 231 signatures to surmount the 115-signature gap, 70 of which were acquired before April 21, 2020 but were not filed because volunteer canvassers had difficulty returning them to Hawkins before the deadline. These signatures further support that she has actual, substantial, public support for her campaign.

36. On May 5, 2020, the United States Court of Appeals issued an opinion in this case holding that this Court properly enjoined the Defendants from enforcing the ballot-access provisions unless it provides reasonable accommodations to aggrieved candidates.

37. Following appellate review of the Court's earlier order, Defendants submitted to the Court their proposed accommodations to ameliorate the unconstitutional impact of their rules on the candidates.

38. The Defendants' proposed accommodations initially would have allowed candidates to submit 70% of the ordinary number of required signatures and to submit additional signatures until May 11, 2020. They also included a requirement that a campaign finance committee must have been formed by March 10, 2020 (the "Arbitrary Finance Committee Deadline"). During a hearing on May 7, 2020, the Court expressed the firm view that both the 70% threshold and the Arbitrary Finance Committee Deadline would likely be unconstitutional.

39. As a result of the hearing, Defendants published on its website the new signature requirements on May 8, 2020, which now allow candidates to submit 50% of the ordinary number of required signatures (“Relaxed Signature Requirement”) and to have submitted additional signatures by that same day, i.e., May 8, 2020 (“Relaxed Deadline”). The State’s published accommodations also reaffirm and impose the Arbitrary Finance Committee Deadline despite the Court’s admonitions, thus denying the benefit of the relaxed requirements to individuals who had not formed a campaign finance committee by March 10, 2020.

40. The Arbitrary Finance Committee Deadline lacks any rational basis in relation to the statutes and purposes that it serves, let alone being narrowly tailored to any compelling governmental interest.

41. Defendants lack sufficient statutory or other authorization to impose the Arbitrary Finance Committee Deadline. Neither the Michigan legislature nor the governor, acting pursuant to emergency powers, authorized the Arbitrary Finance Committee Deadline. Defendants’ enforcement of this unauthorized Arbitrary Finance Committee Deadline constitutes unconstitutional and ultra vires state action. Regardless of each State’s authority to prescribe its own rules for elections, the Court has authority to prohibit agency officials from acting of their own accord to impose unauthorized and unconstitutional rules.

42. As a direct and sole result of the Arbitrary Finance Committee Deadline, Defendants are preventing Hawkins from gaining the benefit of the Relaxed Signature Requirement and the Relaxed Deadline, even though she is more prepared than other similarly situated parties to meet both qualifications.

43. The Arbitrary Finance Committee Deadline does not reasonably accommodate serious candidates or differentiate them from late-joiners who might seek to reap a windfall through the Relaxed Signature Requirement or Relaxed Deadline.

44. The Stay-At-Home Order that existed on April 20 when this Court issued its original preliminary injunction was, at the time, set to expire on April 30, but it has since been extended to May 28. In reality, there is no significant or meaningful risk that candidates who lacked a preexisting candidacy or a reasonable modicum of support could somehow collect the signatures necessary during the less-than-three-week period between the Court's Order on April 20 and the Relaxed Deadline of May 8.

45. Hawkins was working diligently to qualify for the August 4 ballot long before this Court's order of April 20, 2020, and her decision to run was wholly independent from that Order. By April 21, 2020, she had gathered approximately 4000 valid signatures – nearly twice the amount necessary under the Relaxed Signature Requirement.

46. Absent this Court's action to fashion an injunction that enables

Hawkins to gain the benefit of this Court's Order or Defendants' proposed accommodations, Hawkins will not qualify for the ballot.

47. Preventing Hawkins from gaining the benefit of the relaxed signature requirement based on the arbitrary March 10 deadline for forming a candidate committee and filing a Statement of Organization creates a severe burden on her rights to ballot access and to association.

**COUNT I - VIOLATION OF FIRST
AND FOURTEENTH AMENDMENT RIGHTS
(As applied to Hawkins as a candidate)**

48. Hawkins incorporates the preceding Paragraphs by reference.

49. Considering the existence of an unprecedented viral pandemic and Governor Whitmer's Stay-At-Home Orders, the concurrent application and enforcement of Michigan's election laws including Mich. Comp. Laws §§ 168.413; 168.544, as well as the Defendants' proposed accommodations including the Arbitrary Finance Committee Deadline, is unconstitutional as applied to Hawkins.

50. Enforcement of the statutes as written unconstitutionally required Hawkins to collect and submit 4000 signatures by April 21, 2020, while Defendants simultaneously ordered her to not leave her home. Defendants' actions actually prevented Hawkins from gathering enough signatures to insulate her from an opponent's challenge.

51. Defendants' enforcement of the Arbitrary Finance Committee

Deadline unconstitutionally and arbitrarily treats Hawkins differently from similarly situated parties and candidates. While she was more prepared and closer to compliance than other candidates who now receive relief under the accommodations, that arbitrary deadline prevents her from availing herself of the same Relaxed Signature Requirement or Relaxed Deadline.

52. Defendants' actions effectively prohibit Hawkins from getting the required number of signatures, and in turn, prevent her from having her name placed on the August 4, 2020 primary ballot, which violates Hawkins's freedom of speech and association, equal protection, and due process rights as guaranteed by the First and Fourteenth Amendments and enforced through 42 U.S.C. § 1983.

53. Under the circumstances, Defendants' actions and requirements are burdensome, unreasonable, and are not narrowly tailored to meet any compelling or legitimate state interest.

49. These violations immediately injure Hawkins and will continue to injure her in the future in the absence of relief from this Court.

**COUNT II - VIOLATION OF FIRST
AND FOURTEENTH AMENDMENT RIGHTS
(As applied to Hawkins as a registered voter)**

54. Hawkins incorporates the preceding Paragraphs by reference.

55. As a registered voter, Hawkins has a constitutional right to effectively cast her vote.

56. The unconstitutional exclusion of Hawkins's candidacy through the unconstitutional enforcement of the State's ordinary deadlines and signature requirements deprives her of an effective choice at the ballot, is unreasonable, and fails to be narrowly tailored to any compelling state interest.

57. Defendants' enforcement of the Arbitrary Finance Committee Deadline likewise effectively deprives her of an effective choice at the ballot, is unreasonable, and fails to be narrowly tailored to any compelling state interest.

58. Defendants' enforcement of these statutes and rules, as well as their imposition and enforcement of the Arbitrary Finance Committee Deadline, hinders Hawkins's opportunity to choose among competing alternatives at the ballot, which would otherwise exist.

59. Hawkins is immediately injured by these unconstitutional acts.

Prayer for Relief

WHEREFORE, Hawkins respectfully asks this Honorable Court to enter a judgment in her favor and against Defendants and grant the following relief:

A. Enter declaratory judgment, as authorized by 28 U.S.C. §§ 2201-2202 and Federal Rule of Civil Procedure 65, holding that the above mentioned sections of the Michigan election-law statutes are unconstitutional as applied to Hawkins in her capacity as a candidate for nonpartisan judicial office and as a qualified voter;

B. Enter a temporary restraining order and/or preliminary injunction, and permanent injunction, barring Defendants from enforcing the original deadline and/or signature requirements, as well as the Arbitrary Finance Committee Deadline;

C. Enter an order enjoining Defendants from denying Hawkins the benefit of the Relaxed Signature Requirement and the Relaxed Deadline, or requiring them to otherwise place and confirm Hawkins's name on the ballot;

D. Award attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Award such other relief as the Court deems just and proper.

Respectfully submitted,

May 11, 2020

CLANCY ADVISORS PLC

By: /s/Saura J. Sahu

Saura J. Sahu (P69627)

Attorneys for Shakira L. Hawkins

230 Nickels Arcade

Ann Arbor, MI 48104

(734) 780-7595

sahu@clancyadvisors.com

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, Shakira L. Hawkins, Esq., declare under penalty of perjury that to the best of my knowledge and belief, each and every factual allegation in this Complaint in Intervention is true and correct.

May 11, 2020

/s/Shakira L. Hawkins

Plaintiff-Intervenor Shakira L. Hawkins

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

v.

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

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 HAWKINS'S SUPPLEMENTAL BRIEF IN
SUPPORT OF INTERVENTION (ECF NO. 047)**

STATEMENT OF ISSUES PRESENTED

1. Does Plaintiff-Intervenor Hawkins has standing to bring her claim given that her name is currently on the ballot?

2. Did Plaintiff-Intervenor Hawkins personally make any expenditures as of March 10, 2020 that would have necessitated establishment of a candidate committee under Michigan Election Law? See Mich. Comp. Laws § 169.203(1)(c).

Plaintiff-Intervenor, Shakira L. Hawkins, respectfully submits this response to the Court's 05/12/2020 Text Only Order that she "file supplemental briefing addressing:

(i) whether she has standing to bring her claim given that her name is currently on the ballot, and (ii) whether she personally made any expenditures as of March 10, 2020 that would have necessitated establishment of a candidate committee under Michigan Election Law. See Mich. Comp. Laws § 169.203(1)(c).

In so Ordering, the Court properly anticipates that certain Parties will raise – and indeed have suggested – these same issues although neither issue is material to her intervention under Rule 24, and both issues have an answer that further supports it.

I. Plaintiff Has Standing.

The Court has fairly inquired into Hawkins's standing. Although Rule 24's standards do not require standing, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997), and a case is justiciable whenever, as here, at least one other plaintiff has standing, *see Horne v. Flores*, 557 U.S. 433, 446-47, 129 S. Ct. 2579 (2009), *cited in Parsons v. United States DOJ*, 801 F.3d 701, 710 (6th Cir. 2015), the other parties can be expected to argue the point.

As applied to this ballot-access case, the key issue could be rephrased: Does Hawkins face an actual or imminent denial of access to the ballot if her name is, in fact, on the ballot? The answer is: *Yes* because her name is *not* on the ballot and the State will refuse to put it on the ballot unless this Court takes action. Case authority

for the application of the standing doctrine appears below, *e.g.*, *Parsons*, 801 F.3d at 710, but Hawkins first responds directly to the crux of the Court’s question.

Hawkins’s diligent grassroots work in gathering 4283 preliminary signatures by April 21, 2020 earned her a provisional place on the *unofficial* primary ballot. (ECF No. 47, PageID.698.) Yet no candidate is “on the ballot” until the State’s period for publishing and finalizing the *official* primary ballots is complete. *See, e.g.*, Mich. Comp. Laws §§ 168.565-.568. In this respect, Hawkins is exactly similarly situated to the other parties. In order for Defendants to place her name “as a candidate for nomination for the office of judge of the circuit court upon the *official non-partisan primary ballots*,” Mich. Comp. Laws § 168.413(1) (emphasis added), she must meet the same signature requirements and April 20, 2020 filing deadline held to be unconstitutional in this case, *id.*

Although Hawkins had 4283 signatures on April 21, 2020, (*see* ECF No. 47, PageID.698), on April 28, 2020 someone challenged 398 of those signatures with the assistance of counsel. (**Exh. A**: Def. Sec. of State Pkt.) The challenger maintains that Hawkins neither meets the requirements of §§ 168.413(1) and 168.544f (imposing the 4000-signature requirement) nor is eligible for an accommodation related to this lawsuit because she did not form a candidate committee by March 10. (*Id.*) The challenger relies on the State’s imposition of an unconstitutional and arbitrary March 10 deadline. (*Id.*) If the challenge undermines at least 284 signatures, Defendants

will not place her name on the ballot under the Michigan Election Law. *See* Mich. Comp. Laws § 168.552(8),(11),(14). Hawkins's response was due today. (*Id.*)

Absent a response, at least 284 of the 398 challenged signatures will be stricken. Having consulted with experienced advisors, Hawkins determined that as a practical matter she probably would not be able to rehabilitate enough of the challenged signatures to meet the 4000 minimum. (**Exh. B:** Decl. of S. Hawkins.) Hawkins also lacked the campaign funds and other resources to file a response, which will be a significant, unnecessary expense if the State or the Court grants the relief she requests from the unconstitutional March 10 "deadline." *Id.* Unfortunately, the State refused to relax requirements to allow her to file additional signatures after April 21, 2020. *Id.* To date, Defendants disregarded this Court's admonishment about the constitutional problems of the March 10 deadline. Instead they are strictly enforcing their new, arbitrary March 10 candidate-committee deadline against Hawkins, *id.*, along with their collectively unconstitutional filing requirements and deadlines in §§ 168.413(1) and 168.544f. The State's denial of ballot access to her is actual or imminent.

To support constitutional standing here, a litigant must show she suffers an actual or imminent and particularized injury-in-fact, which traces to the Defendant's actions and is properly redressable by the Court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S. Ct. 2130 (1992), *discussed in Friends of the Earth, Inc. v.*

Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180, 120 S. Ct. 693, 704 (2000).

Where, as here, “the plaintiff’s own constitutional rights were violated” the plaintiff suffers an injury-in-fact and usually has standing, *e.g.*, *United States v. Johnson*, 932 F.3d 965, 967 (6th Cir. 2019) (discussing *Bond v. United States*, 564 U.S. 211, 225, 131 S. Ct. 2355 (2011)), and a sufficient injury can also take the form of the other hardships that might result from the State’s challenged action, *e.g.*, *LULAC v. Bredesen*, 500 F.3d 523, 528 n.4 (6th Cir. 2007) (“ the difficulties, inconvenience or hardship with which the new driver license law allegedly threatens plaintiffs represents an injury-in-fact”).

Here, there is no doubt – based on the Court’s prior rulings – that the Stay-At-Home Orders and strict application of the Michigan Election Law to Hawkins and other parties alike not only created the kind of hardship that supports standing but also actually violated her First and Fourteenth Amendment rights as a candidate and a voter absent an accommodation. As for causation and redressability, there is no serious question that the State is directly causing the disputed harms, or that the requested injunction and remedies under 42 U.S.C. § 1983 will relieve those harms.

II. Campaign Expenditures.

Despite the major constitutional burdens and problems that the Court warned Defendants about on May 7, the State imposed the March 10 cutoff and argues roughly that a person is only a serious candidate if they formed a candidate

committee under the Campaign Finance Act by the arbitrary date of March 10. After Defendants raised the issue, the Court enquires whether Hawkins personally made any expenditures by March 10, 2020 to trigger the committee-formation requirements of Mich. Comp. Laws § 169.203(1)(c).

If Hawkins made early expenditures, they were relatively *de minimus*, which is consistent with her lack of fundraising. But that does not end the controversy. It strains credulity to believe that Hawkins did not spend a dollar or two on copying costs. Under the State's current strict reading of Mich. Comp. Laws § 169.203(1)(c) and § 169.221, the answer is: For purposes of this Motion to Intervene Yes, Hawkins probably committed a technical violation of Mich. Comp. Laws § 169.221, and the Court should assume *arguendo* that she did. She corrected that violation on May 1, within 10 days of submitting her 4283 petition signatures. And rather than supporting Defendants, Sections 203 and 221 of the Campaign Finance Act show why Hawkins should be able to intervene and prevail.

The Michigan Campaign Finance Act is separate from the Michigan Election Law that imposes the unconstitutional signature requirements. It is a once-removed place from which the State tries to derive an unauthorized criterion of candidate legitimacy. Its only relevance here concerns whether it provides a narrowly tailored test to serve the interest in ensuring that only candidates with a modicum of support make it to the ballot. Michigan courts recognize that:

The Campaign Finance Act, like the Internal Revenue Code, is exceedingly complex and detailed. A summary prepared by the Michigan Secretary of State of its provisions and regulations is fifty-three pages in length. *See The Candidate Committee Manual*, Michigan Secretary of State (1984). The occurrence of frequent unintended violations of the regulatory scheme is anticipated by the legislation itself, which establishes a conciliation procedure to be used by the Secretary of State "to correct or prevent further violation."

People v. Weiss, 191 Mich. App. 553, 562, 479 N.W.2d 30, 34-35 (1991). Technical violations of the Act abound in real politics, regardless of good faith. They are so common that the structure of the statute accounts for them. While important to address, they have nothing to do with whether a candidate is serious, well intentioned or well supported by the public.

In addition, nothing in the statute disqualifies someone from being a candidate, imposes a March 10 deadline, or authorizes the Secretary of State to impose an arbitrary March 10 deadline. At a maximum, moreover, the person that violates the committee formation requirement is subject to a civil fine of not more than \$1,000.00. Mich. Comp. Laws § 169.221(13). Importantly, a technical violation should be addressed with informal conciliation aimed to promote compliance while the candidate continues to run:

If the secretary of state determines that there may be reason to believe that a violation of this act occurred, the secretary of state shall endeavor to correct the violation or prevent a further violation by using informal methods such as a conference, conciliation, or persuasion, and may enter into a conciliation agreement with the person involved. Unless violated, a conciliation agreement *is a complete bar to any further civil or*

criminal action with respect to matters covered in the conciliation agreement.

Mich. Comp. Laws § 169.215(10). Ordinary non-compliance is not in any way an excuse to allow or impose unconstitutional burdens on ballot access.

Indeed, *if* the question is whether Hawkins was a “candidate” on March 10 – so that she can avail herself of the protections of her First and Fourteenth Amendment rights burdened by the Stay-At-Home Orders during the COVID-19 pandemic – then the very invocation of Section 221 must mean that she was in fact a candidate. After all, the State cannot even require the formation of a committee under Section 221 unless someone is, in fact, a “candidate” under Section 203(1). Mich. Comp. Laws §§ 203, 221. Put glibly but accurately, the State’s answer is mainly circular. It says she is not a candidate because she did not form a candidate committee, but she *cannot* need a candidate committee unless she is a candidate. The actual definition of a “candidate” is set forth in Section 203(1), and according the State’s position here, Hawkins was one and met that definition on March 10.

The only remaining question is whether she had a modicum of support. Respectfully, her 4000 signatures – more than any other Party – abundantly demonstrate that support and are more narrowly tailored to it than a technical requirement relating primarily to fundraising. More to the point, there is no sense whatsoever in which the State’s March 10, 2020 cutoff is narrowly tailored to any compelling governmental interest. It defies the Court’s May 7 admonishment and is unconstitutional

as applied. At least in American theory and principle, voters – not dollars – choose candidates.

It would be perverse for the Parties and the Court to hold here that one's entitlement to a constitutional right and the protection from its violation turn not upon the will of the public as manifest in voter signatures, but instead upon whether one formed a technical committee necessary for campaign fundraising under the Campaign Finance Act.

CONCLUSION

Plaintiff has standing, and the Defendants' insistence upon an arbitrary March 30, 2020 cutoff despite this Court's admonishments against that measure should not derail intervention.

May 11, 2020

Respectfully Submitted,

CLANCY ADVISORS PLC
By: /s/Saura J. Sahu (P69627)

Saura J. Sahu

Attorneys for Shakira L. Hawkins

230 Nickels Arcade

Ann Arbor, MI 48104

(734) 780-7595

sahu@clancyadvisors.com

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2020, I electronically filed the foregoing paper and attached exhibits with the Clerk of the Court using the ECF system, which will send notification and copies of these filings to all counsel of record.

Respectfully Submitted,

May 12, 2020

CLANCY ADVISORS PLC
By: /s/Saura J. Sahu (P69627)

Saura J. Sahu

Attorneys for Shakira L. Hawkins

230 Nickels Arcade

Ann Arbor, MI 48104

(734) 780-7595

sahu@clancyadvisors.com

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

v.

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

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.

**EXHIBITS A & B
TO INTERVENING PLAINTIFF HAWKINS'S SUPPLEMENTAL BRIEF
IN SUPPORT OF INTERVENTION (ECF NO. 047)**

EXHIBIT A

Fw: Challenge on Nominating Petitions Filed

detroitsh@aol.com <detroitsh@aol.com>

Tue 5/12/2020 1:36 PM

To: Saura Sahu <sahu@clancyadvisors.com>

■ 1 attachments (86 KB)

Shakira Lynn Hawkins - Challenge of Third Circuit Petitions(34613446_1).pdf;

Sent from my MetroPCS 4G LTE Android device

----- Original message-----

From: SOS, Elections

Date: Wed, Apr 29, 2020 12:22 PM

To: detroitsh@aol.com;

Cc: Malerman, Melissa (MDOS);Fracassi, Adam (MDOS);

Subject:Challenge on Nominating Petitions Filed

This email is to notify you a challenge against your candidacy was filed with the Board of State Canvassers (Board) pursuant to section 552(8) of the Michigan Election Law, 1954 PA 116, MCL 168.552(8). A copy of the challenge, which was timely filed by Peter Ruddell representing Joseph Girardi , is attached to this email.

Please be advised that the Board will tentatively meet during the last week of May or first week of June to address the challenge to your candidacy. You may file a written response to the challenge. Your deadline for rebuttal is on or before May 12 at 5:00 p.m. We recommend receiving the rebuttal as soon as possible to make it easier for us to process it. Please provide 4 copies of your response. Correspondence sent by overnight delivery must be addressed as follows: Board of State Canvassers, 430 West Allegan Street, 18 Floor, Lansing, Michigan 48933.

The Bureau of Elections Staff Report regarding the disposition of the challenges to your nominating petitions will be issued at least two business days prior to the date that the Board convenes. MCL [168.552\(10\)](#). Copies of the Staff Report and public notice of the Board meeting will be emailed to you upon release.

You will receive the attached challenge via overnight mail within the next couple of days.

Please let me know if you have any questions.

Thank you,

Lydia Valles

Bureau of Elections

[1-800-292-5973](tel:1-800-292-5973)

Elections@Michigan.gov

STATE OF MICHIGAN
BEFORE THE BOARD OF STATE CANVASSERS

Jonathan Brater, Secretary)
Board of State Canvassers
Michigan Bureau of Elections
Richard H. Austin Building, First Floor
430 W. Allegan Ave.
Lansing, MI 48918

**CHALLENGE TO THE PETITIONS SUBMITTED ON BEHALF OF
SHAKIRA LYNN HAWKINS FOR 3RD CIRCUIT JUDGE OF THE CIRCUIT COURT
(NON-INCUMBENT)**

Peter B. Ruddell (P63253)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 377-0711
Attorneys for Challenger

Dated: April 28, 2020

I. CHALLENGE

In order to be eligible to be on the ballot as a 3rd Circuit Judge of the Circuit Court (six-year term, non-incumbent), a candidate shall submit a minimum of 4,000 valid petition signatures and may submit a maximum of 8,000 valid petition signatures (MCL 168.544f).

According to the Michigan Bureau of Elections, on April 21, 2020, Ms. Shakira Lynn Hawkins submitted 4,283 petition signatures in order to be eligible to be a candidate for 3rd Circuit Judge of the Circuit Court (six-year term, non-incumbent). As required under Michigan law, Ms. Hawkins submitted the petition signatures to the Secretary of State (MCL 168.413).

On April 20, 2020, Judge Terrence G. Berg issued an order extending the filing deadline to May 8, 2020 and reducing the number of eligible petition signatures by 50% for certain candidates. Those candidates eligible for relief under the order are those candidates who “established a candidate committee under the Michigan Campaign Finance Law, Mich. Comp. Laws, §§ 169.201 et seq., before March 10, 2020.” (*Esshaki v. Whitmer*, No. 2:20-CV-10831-TGB (E.D. Mich, April 20, 2020)). According to the Michigan Bureau of Elections, Ms. Hawkins did not form a candidate committee prior to March 10, 2020. Therefore, the provisions of Judge Berg’s order **do not** apply to the petition signatures filed on behalf of Ms. Hawkins, and she is required to submit 4,000 valid petition signatures prior to the filing deadline.

Ms. Hawkins failed to submit enough valid petitions signatures. After a review and analysis, Ms. Hawkins submitted 3,885 valid petition signatures, failing to meet the minimum number required (MCL 168.544f). Attached as Exhibit 2 is a table identifying the petition signatures that are invalid for the reasons listed below.

A. Not Registered Voter as Petition Signature

Based on a good faith effort to search the qualified voter file, names of petition signatures are not on the qualified voter file. In order to sign a nominating petition, an individual shall be a

registered voter (MCL 168.413). There are petition signatures of individuals who are not registered voters in Michigan (Exhibit 2).

B. Technical Objections to the Petition Signature Line

Based on a review of the petitions submitted on behalf of Ms. Hawkins, there are individuals who signed petitions on duplicate occasions, invalidating both petition signatures; invalid dates on the signature line; no date on the circulator's line; no jurisdiction listed; no street address listed; petitions submitted for incorrect office; petition signatures were dated after the circulator's signature date; and address listed is not in the jurisdiction listed (Exhibit 2).

C. Genuineness of the Signature

In addition to the deficiencies noted above, a routine canvass of the petition signatures will cause the Board of State Canvassers to be in doubt as to the validity of the registration or genuineness of the signature of the circulator or persons signing or purported to have signed the petitions. One need not be a handwriting expert to question the genuineness of many of the petition signatures submitted – particularly those circulated by Cynthia Adams. On behalf of the challenger, we plan to submit additional information questioning the genuineness of additional petitions. We urge the Board of State Canvassers to conduct a thorough canvass and investigation into the validity of the petition signatures submitted.

II. SWORN STATEMENT

As required under Michigan election law, attached as Exhibit 1 is a sworn statement by Joseph Girardi, who is a resident of the City of Grosse Pointe Farms and a registered voter who is a qualified elector in the Third Circuit (MCL 168.552).

III. CONCLUSION

For the reasons set forth above and contained in the sworn statement, it is respectfully requested that Ms. Shakira Lynn Hawkins's name not be included on the list and certified as a

candidate and that her name not be placed on the ballot for the 3rd Circuit Judge of the Circuit Court (six-year term, non-incumbent) for a term, ending January 1, 2027 in the Primary Election on August 4, 2020.

Respectfully submitted,

HONIGMAN LLP
Attorneys for Challenger




By: Peter B. Ruddell (P63253)
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 377-0711
pruddell@honigman.com

Dated: April 28, 2020

Exhibit 1

SWORN STATEMENT OF JOSEPH GIRARDI

I file this statement as a challenge to the petition signatures submitted on behalf of Shakira Lynn Hawkins to be a candidate for the 3rd Circuit Judge of the Circuit Court (six-year term, non-incumbent) for a term ending January 1, 2027 based on petition signatures of non-registered voters, petition signatures of registered voters who are not qualified electors in the Third Circuit, and other technical objections to petition signatures. Attached is a table (Exhibit 2) identifying each questionable petition signature. As a result, it is respectfully requested that Shakira Lynn Hawkins's name not be included on the list and certified as a candidate and that her name not be placed on the ballot for the 3rd Circuit Judge of the Circuit Court (six-year term, non-incumbent) for the term ending January 1, 2027 in the Primary Election on August 4, 2020.



Date: 4-27-2020

Joseph Girardi
336 Belanger Ave.
Grosse Pointe Farms, MI 48236

[NOTARY SIGNATURE ON THE FOLLOWING PAGE]

SWORN STATEMENT OF JOSEPH GIRARDI
Challenge of Petition Signatures Submitted on Behalf of
Shakira Lynn Hawkins

In accordance with Michigan Executive Order No. 2020-41, the foregoing instrument was acknowledged before me while I was located in Lansing, Michigan by Joseph Girardi through the use of two-way real-time audiovisual technology which allowed direct simultaneous interaction by sight and sound between me and Joseph Girardi on April 27, 2020, in which Joseph Girardi affirmatively represented that he was physically situated in the state of Michigan and that this instrument is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of Michigan.

Subscribed and sworn to by Joseph Girardi before me on the
27 day of April, 2020

Signature



Printed

name Alison N. Keilen
Notary public, State of Michigan, County

of Clinton
My commission

expires Jan. 22, 2025
Acting in the County

of Ingham
Notarized using electronic/remote technology

<p>ALISON N. KEILEN Notary Public, State of Michigan County of Clinton My Commission Expires Jan. 22, 2025 Acting in the County of <u>Ingham</u></p>

Exhibit 2

Shakira Lynn Hawkins

Petition Challenges

Petition #	Line(s) #	Invalid Reason	# bad
1	1-14	Not Registered	14
2	1-14	Not Registered	14
3	1-14	Not Registered	14
4	1-14	Not Registered	14
5	1-14	Not Registered	14
6	1-14	Not Registered	14
18	1-12	Dated after Circulator	12
22	14	Dated after Circulator	1
23	9-14	Dated after Circulator	6
24	10-13	Dated after Circulator	4
25	8-13	Dated after Circulator	6
29	8,9,11,12,13	Dated after Circulator	5
30	3-8,10-14	Dated after Circulator	11
32	2,4-14	Dated after Circulator	12
33	14	Dated after Circulator	1
37	12	Signature not dated	1
38	9-14	Dated after Circulator	6
53	3-14	Dated after Circulator	12
54	5-14	Dated after Circulator	10
57	6-14	Dated after Circulator	9
59	1-14	Dated after Circulator	14
60	4-14	Dated after Circulator	11
61	9-14	Dated after Circulator	6
64	3-14	Dated after Circulator	12
71	1-12	Circulator signature not dated	12
90	9,10,11,13,14	Dated after Circulator	5
101	3-14	Dated after Circulator	12
102	3-14	Dated after Circulator	12
104	3-14	Dated after Circulator	12
106	7-14	Dated after Circulator	8
107	2-14	Dated after Circulator	13
109	1-14	Dated after Circulator	14
111	14	Dated after Circulator	1
119	1-13	Circulator signature not dated	13
149	2	Signature not dated	1
153	14	Dated after Circulator	1
155	13	Invalid date (1966)	1
156	4,5	Signature not dated	2
157	9	Signature not dated	1
163	1-11	Dated after Circulator	11
174	2-4	Dated after Circulator	3
175	2-9	Dated after Circulator	8
178	3-14	Dated after Circulator	12

Shakira Lynn Hawkins

Petition Challenges

Petition #	Line(s) #	Invalid Reason	# bad
193	12	Signature not dated	1
196	10-14	Dated after Circulator	5
203	1-14	Circulator signature not dated	12
205	13	Dated after Circulator	1
215	1	Invalid date (1974)	1
220	5-14	Dated after Circulator	10
221	13	Invalid date (1983)	1
224	3,8	Signature not dated	2
243	12,13	Dated after Circulator	2
281	14	Invalid date	1
288	10,12	Signature not dated	2
305	10	Signature not dated	1

EXHIBIT B

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

ERIC ESSHAKI,

Plaintiff,

MATT SAVICH and DEANA BEARD,

Plaintiff-Intervenors,

v.

Case No. 2:20-CV-10831-TGB-EAS

Hon. Terrence G. Berg

Mag. J. Elizabeth A. Stafford

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.

**DECLARATION OF SHAKIRA HAWKINS
IN SUPPORT OF INTERVENTION (ECF NO. 047)**

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am a competent adult and have personal knowledge of the facts set forth herein.

2. Exhibit A to my Supplemental Brief (i.e., ECF No. 49) is a true and correct copy of an email that I received on April 29, 2020, together with its attachments.

3. After receiving notice of the challenge to my petition, I promptly consulted with more than three people who are familiar with election law challenges about the process for responding. I also wrote to the Secretary of State to ask about the process and about my petition. One of the consultants received and preliminarily reviewed the challenge to my petition. Based on my discussion with that consultant, I determined that as a practical matter I probably could not rehabilitate enough of the challenged signatures to meet the 4000-signature minimum in Mich. Comp. Laws § 168.544f.

4. To date, I have not engaged in any campaign fundraising activities.

5. When consulting about a potential response to the challenge, I received two estimates for the cost of assisting in filing such a response. One presented a flat fee of \$5,000 and another estimated fees approximating \$6,000. Those are significant costs in a grassroots campaign or a personal budget. I do not currently have campaign money to pay such fees. Moreover, between the April 28 challenge and the May 12 response deadline, the Governor's Stay-At-Home Orders have continued to be in effect, and I have not had any meaningful opportunity to raise funds to pay for such a challenge.

6. On April 20, 2020, I contacted the Secretary of State to inquire whether the reduced signature requirement and extended filing deadlines would apply to my campaign. The Secretary of State told me: No, they would not apply unless I filed a

Statement of Organization on or before March 10, 2020. Since then, either the Court or – after appeal – the State has adopted a requirement that the signature and filing requirements will only be relaxed if I formed a campaign committee by March 10, 2020, and otherwise the statutes will be strictly enforced. While the State might physically take additional signatures, they have not indicated that they would accept them and count them toward my petition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of May, 2020, by:

/s/Shakira L. Hawkins
Shakira L. Hawkins

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2020, I electronically filed the foregoing paper and attached exhibits with the Clerk of the Court using the ECF system, which will send notification and copies of these filings to all counsel of record.

Respectfully Submitted,

May 12, 2020

CLANCY ADVISORS PLC

By: /s/Saura J. Sahu (P69627)

Saura J. Sahu

Attorneys for Shakira L. Hawkins

230 Nickels Arcade

Ann Arbor, MI 48104

(734) 780-7595

sahu@clancyadvisors.com