

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN**

PUBLIC INTEREST LEGAL  
FOUNDATION,

Plaintiff,

v.

JOCELYN BENSON, in her official  
capacity as Michigan Secretary of State,

Defendant.

CIVIL ACTION

No. 1:21-cv-00929

**PROPOSED INTERVENOR-DEFENDANTS' MOTION FOR LEAVE TO  
FILE A REPLY BRIEF IN SUPPORT OF PROPOSED INTERVENOR-  
DEFENDANTS' MOTION TO INTERVENE**

Pursuant to Local Civil Rule 7.3(c), by this motion Proposed Intervenor-Defendants the Detroit/Downriver Chapter of the A. Philip Randolph Institute ("APRI"), the Michigan Alliance for Retired Americans ("MiARA"), and Rise, Inc. ("Rise" and, together with APRI and MiARA, "Proposed Intervenor") seek leave to file a reply brief in support of their motion to intervene.

For the reasons discussed in the memorandum in support, filed concurrently herewith, Proposed Intervenor request that the Court grant them leave to file the reply brief attached to this motion as Exhibit 1.

Respectfully submitted, this 15th day of February, 2022.

/s/ Uzoma Nkwonta

Uzoma N. Nkwonta

Joshua L. Harris

Noah B. Baron

Joel J. Ramirez

**ELIAS LAW GROUP LLP**

10 G Street NE

Suite 600

Washington, DC 20002

Telephone: (202) 968-4654

Facsimile: (202) 968-4498

unkwonta@elias.law

jharris@elias.law

nbaron@elias.law

jramirez@elias.law

Sarah S. Prescott

Salvatore Prescott & Porter, PLLC

105 E. Main Street

Northville, Michigan 48167

sprescott@spplawyers.com

Telephone: (248) 679-8711

Facsimile: (248) 773-7280

sprescott@spplawyers.com

*Counsel for Proposed Intervenors*

### **CERTIFICATE OF SERVICE**

Uzoma Nkwonta certifies that on the 15th day of February 2022, he served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

/s/ Uzoma Nkwonta

Uzoma Nkwonta

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**PROPOSED INTERVENOR-DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION FOR LEAVE TO FILE A REPLY**

## **I. INTRODUCTION**

Pursuant to Local Civil Rule 7.3(c), Proposed Intervenor-Defendants the Detroit/Downriver Chapter of the A. Philip Randolph Institute (“APRI”), the Michigan Alliance for Retired Americans (“MiARA”), and Rise, Inc. (“Rise” and, together with APRI and MiARA, “Proposed Intervenors”) seek leave to file a reply brief in support of their motion to intervene in this action.

The Court should grant Proposed Intervenors’ motion because (1) the motion is dispositive as to Proposed Intervenors’ participation in this matter, making it analogous to circumstances under which the Local Rules permit parties to file reply briefs as of right, and (2) the parties raise new facts and arguments in their opposition briefs to which Proposed Intervenors should have an opportunity to respond. Should the Court grant Proposed Intervenors’ motion for leave, a proposed reply brief is attached as Exhibit 1.

## **II. ARGUMENT**

### **A. The Court should grant leave to file a reply because a motion to intervene is dispositive as to Proposed Intervenors.**

Under the local rules, a movant may file a reply brief without leave of court in support of a “dispositive motion” as set forth in W.D. Mich. L. Civ. R. 7.2(c); however, as to “nondispositive motions,” the rules require leave of court. W.D. Mich. L. Civ. R. 7.3(c). Although a motion to intervene is not expressly included in Rule 7.2, the Court’s ruling will determine whether APRI, MiARA, and Rise can be

parties to this action. For Proposed Intervenor, it has the “practical effect” of a dispositive motion if their request is denied. That is in part the reason why the denial of motions to intervene are immediately appealable. *See, e.g., Purnell v. City of Akron*, 925 F.2d 941, 945 (6th Cir. 1991) (recognizing that the denial of motion to intervene is an appealable final order because it “prevents a putative intervenor from becoming a party in *any* respect”). Accordingly, some courts “have treated the denial of motions to intervene as being functionally equivalent to a dispositive motion.” *Sawyers v. Atlas Logistics, Inc.*, No. 3:20-CV-0393, 2020 WL 6383637, at \*2 (M.D. Tenn. Oct. 30, 2020). *See also Wash. Mut. Bank v. Chiapetta*, No. 1:07CV00683, 2011 WL 1743389, at \*1 (N.D. Ohio May 6, 2011) (finding that, in context of 28 U.S.C. § 636(b)(1)(A), a motion to intervene was dispositive as to the movant); *Meeks v. Schofield*, No. 3:12-CV-545, 2013 WL 1826438, at \*2 (M.D. Tenn. Apr. 30, 2013) (same).

Because denying Proposed Intervenor’s motion to intervene would preclude them from participating as parties to this action, they should be permitted leave to file a reply pursuant to Local Rule 7.2(c) or Local Rule 7.3(c).

**B. The briefs in opposition to the motion to intervene raise new facts and arguments to which Proposed Intervenor should be permitted to respond.**

Proposed Intervenor also seek to respond to several claims and new factual assertions raised in the parties’ oppositions to the motion to intervene.

*First*, Plaintiff Public Interest Legal Foundation (“PILF”) makes legal contentions and cites cases which Proposed Intervenor could not reasonably have anticipated. For example, PILF relies heavily on *Judicial Watch v. Logan*, No. 2:17-cv-08948 (C.D. Cal., July 12, 2018), an unpublished order that was vacated as moot by the Ninth Circuit. Proposed Intervenor were not able to anticipate that any party would cite this decision and should be permitted to respond to PILF’s reliance on this case and its corresponding arguments.

*Second*, PILF’s brief relies on facts of which Proposed Intervenor were not previously aware and had no way of knowing. For example, PILF reveals that “[t]he parties will be conferring shortly after the filing of this response for the requisite joint report . . .” which suggests that the parties had not even conducted an initial discovery conference before Proposed Intervenor filed their motion. PILF’s Resp. in Opp. to Mot. to Intervene, ECF No. 28 (“Pl. Br.”) 11.

Similarly, PILF insists that granting Proposed Intervenor’s motion would “more than double the number of parties” in the case. While technically true, the assertion is deceptive: Proposed Intervenor “filed a single motion to intervene” and “would be litigating as if they were a single party.” *City of Chi. v. Fed. Emergency Mgmt. Agency*, 660 F.3d 980, 986 (7th Cir. 2011).

Proposed Intervenor also wish to identify instances where the opposition briefs misconstrue the relevant legal standards. For example, in attempting to dispute

the timeliness of intervention, PILF’s opposition focuses narrowly on the progress of the suit thus far—which it incorrectly measures from the initiation of its *correspondence* with Defendant Benson (“the Secretary”)—and its contention that the case is “highly publicized.” Pl. Br. 11. Meanwhile, the Secretary concedes that the case is “still in the early stages” but proceeds to ruminate exclusively on its pending motion to dismiss. Def.’s Resp. in Opp. to Mot. to Intervene, ECF No. 27 (“Def. Br.”) 4. Neither party attempts to reconcile their arguments with other court decisions that found intervention timely under similar circumstances, or in some cases during later stages of litigation. *See* Ex. 1, Proposed Interveners’ Br. 3.

### III. CONCLUSION

For the foregoing reasons, Proposed Interveners respectfully ask this Court to grant their motion for leave to file a reply brief in support of their motion to intervene.

Respectfully submitted, this 15th day of February, 2022.

/s/ Uzoma Nkwonta

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unkwonta@elias.law



jharris@elias.law  
nbaron@elias.law  
jramirez@elias.law

Sarah S. Prescott  
Salvatore Prescott & Porter, PLLC  
105 E. Main Street  
Northville, Michigan 48167  
sprescott@spplawyers.com  
Telephone: (248) 679-8711  
Facsimile: (248) 773-7280  
sprescott@spplawyers.com

*Counsel for Proposed Intervenors*

### **CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.3(b)(ii), counsel for Proposed Intervenor certify that this brief contains 866 words, as indicated by Microsoft Word 2021, inclusive of any headings, footnotes, citations and quotations, and exclusive of the caption, cover sheets, table of contents, table of authorities, signature block, any certificate, and any accompanying documents.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta