

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

ROBERT DAVIS, VENIAS JORDAN
JR., and LEIGH REED-PRATT,

Plaintiffs,

vs.

Case No. 20-cv-12127
Hon. Nancy G. Edmunds

WAYNE COUNTY BOARD OF
CANVASSER,

Defendants.

and

KYM WORTHY

Intervenor-Defendant.

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PROSECUTOR KYM L. WORTHY'S
MOTION TO INTERVENE

Wayne County Prosecutor Kym L. Worthy (“Prosecutor Worthy”), by and through her attorneys, moves to intervene as a defendant in this matter pursuant to MCR 2.209(A) and MCR 2.209(B), relies upon the attached Brief in Support of her Motion to Intervene, and states as follows:

1. The heart of this litigation arises out of the Wayne County Third Circuit Court Case No. 20-007116-AW, where Prosecutor Worthy was a candidate for re-election to the position of Wayne County Prosecuting Attorney and her candidacy was unsuccessfully challenged.

2. Plaintiff Robert Davis unsuccessful in his attempt to intervene in that case and his motion was denied as competing candidate for Wayne County Prosecutor was already a party and was vigorously represented by legal counsel.

3. Plaintiff is currently challenging Prosecutor Worthy’s candidacy in this matter for the August 4, 2020 Primary and November 4, 2020 General Election.

4. Plaintiff has filed similar challenges arising out of the same facts in Wayne County Circuit Court, Michigan Court of Appels, Michigan Supreme Court, and the U.S. Eastern District of Michigan before Judge Leitman which was recently dismissed.¹

¹ On August 17, 2020 Judge Letiman declined to exercise supplemental jurisdiction and dismissed the state law claim. The federal claims are pending in Case Number 20-cv-11991.

5. Prosecutor Worthy seeks to intervene as a matter of right in this action pursuant to MCR 2.209(A) and permissively under MCR 2.209(B).

6. Prosecutor Worthy, as candidate for office, is a party with an interest relating to the subject of the action whose rights cannot be adequately represented by the parties in this matter.

7. MCR 2.209 should be liberally construed to allow intervention when the applicants interest otherwise may be inadequately represented. *Precision Pipe & Supply, Inc. v. Meram Construction, Inc.*, 195 Mich. App. 153, 156; 489 N.W.2d 166 (1992).

8. Prosecutor Worthy's Motion is timely and permitting her invention will, in no way, unduly delay or prejudice the adjudication of the rights of the original parties because this suit is in its initial phase.

WHEREFORE, for the foregoing reasons, Intervening Defendant Prosecutor Worthy requests that this Honorable Court grant the instant Motion to Intervene pursuant to MCR 2.209(A) and MCR 2.209(B).

Respectfully Submitted,

/s/ Angela L. Baldwin
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Dated: August 21, 2020

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**PROSECUTOR KYM L. WORTHY’S BRIEF IN SUPPORT
OF HER MOTION TO INTERVENE**

Around June 3, 2020 Victoria Burton-Harris (“Burton-Harris”) submitted a letter to the Wayne County Clerk (“County Clerk”) challenging the candidacy of Prosecutor Worthy for the Office of Wayne County Prosecutor in the August 4, 2020 Primary Election. On June 4, 2020 Prosecutor Worthy filed her response with the County Clerk. At its June 5, 2020 meeting, the Wayne County Election Commission rejected the challenge. Under advice of County Corporation Counsel and after oral argument, the County Clerk properly determined that Prosecutor Worthy had complied with the mandatory statute. As a result, Prosecutor Worthy’s candidacy was approved to appear on the August 4, 2020 Primary Election ballot.

On June 5, 2020, Burton-Harris filed a Verified Complaint for a Writ of Mandamus, Injunctive and Declaratory Relief, and an Ex Parte Emergency Motion for Temporary Restraining Order (“TRO”) in Wayne County Third Circuit Court. Chief Judge Kenny denied the Ex Parte Motion for TRO and entered an Order for Defendants to Show Cause why a Writ of Mandamus and Preliminary Injunction should not be issued.² On June 11, 2020, Plaintiff, Robert Davis, (“Plaintiff” or “Davis”) filed an Emergency Motion to Intervene. On June 15, 2020 after extensive

² Burton-Harris filed an Emergency Application for Leave to Appeal Judge Kenny’s Order denying her Ex Parte Motion for TRO, which was also denied by the Court of Appeals. (Docket No. 353770).

briefing and oral arguments, the court denied Davis' Motion to Intervene and denied Burton-Harris' Motion for Writ of Mandamus and Declaratory Judgment. Two weeks later, on June 29, 2020, Davis filed an appeal with the Michigan Court of Appeals not only with respect to the denial of his Motion to Intervene, but also with Chief Judge Kenny's substantive ruling on Burton-Harris' Motion even though he was not a party. This matter remains pending before the Michigan Court of Appeals Docket No. 353999. Simultaneously, Davis filed with the Michigan Supreme Court a bypass application and application to appeal the Michigan Court of Appeals July 1, 2020 Order. This was also denied by the Michigan Supreme Court.

Davis' essentially seeks the same type of relief in the Michigan Court of Appeals as he seeks with this Court, and that is to overturn Wayne County Circuit Court Chief Judge Kenny's ruling and find that Prosecutor Worthy's name should not have appeared on the August 4, 2020 Primary Election ballot nor the November 3, 2020 General Election ballot. It should be noted that on August 4, 2020 the voters elected Prosecutor Worthy over Democratic challenger Burton-Harris with 62.3% of the vote.³ Based on the Complaint, Plaintiff attempts to interfere with the will of the people in selecting the candidate of their choosing.

³ Wayne County Clerk's Office, Elections Division, Elections Summary Report, August 4th, 2020 – Primary Election, Unofficial Results <https://www.waynecounty.com/elected/clerk/election-results.aspx>

Prosecutor Worthy seeks to intervene as a matter of right in this action, as a party with a direct interest relating to the subject of the action and whose rights cannot be adequately represented by the parties in this matter. MCR 2.209 should be liberally construed to allow intervention when the applicants interest otherwise may be inadequately represented. *Precision Pipe & Supply, Inc. v. Meram Construction, Inc.*, 195 Mich. App. 153, 156; 489 N.W.2d 166 (1992). MCR 2.209(A) governs intervention of right and provides:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

- (1) when a Michigan statute or court rule confers an unconditional right to intervene;
- (2) by stipulation of all parties; or
- (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

Prosecutor Worthy is directly named in Count I and II of Plaintiff's Complaint. She has an unconditional right to intervene in this matter because it directly impacts and relates to her candidacy for the Office of Wayne County Prosecutor in the November

3, 2020 General Election and her interests are not adequately represented by the parties in this matter.

In addition, Prosecutor Worthy should be permitted to intervene because her response will raise questions of law and fact in common with the present lawsuit.

MCR 2.209 (B) governs permissive intervention and provides:

(B) Permissive Intervention. On timely application a person has a right to intervene in an action:

* * *

(2) when an applicant's claim or defense and the main action have a question of law or fact in common....

Plaintiff's pleadings in this litigation has many of the same claims, defenses, and questions of law in common with the aforementioned state court actions. Prosecutor Worthy's Motion is timely and permitting her invention will, in no way, unduly delay or prejudice the adjudication of the rights of the original parties because this suit is in its initial phase. Lastly, Prosecutor Worthy sought concurrence in the Motion to Intervene from all parties in this matter. Defendants do not oppose this Motion to Intervene, however Plaintiff did not timely respond to the request for concurrence.

WHEREFORE, for the foregoing reasons, Intervening Defendant Prosecutor Worthy requests that this Honorable Court grant the instant Motion to Intervene pursuant to MCR 2.209(A) and MCR 2.209(B).

Respectfully Submitted,

/s/ Angela L. Baldwin

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Dated: August 21, 2020

PROOF OF SERVICE

I hereby certify that on August 21, 2020, I electronically filed the foregoing document using the ECF system which will send notification of such filing to all attorneys of record.

/s/ Angela L. Baldwin
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