

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

UNITED STATES STUDENT ASSOCIATION
FOUNDATION, as an organization and representative of
its members, AMERICAN CIVIL LIBERTIES UNION
OF MICHIGAN, as an organization and representative of
its members, AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN, as an organization and
representative of its members, and MICHIGAN STATE
CONFERENCE OF NAACP BRANCHES, as an
organization and representative of its members

Case No. 2:08-cv-14019-SJM-RSW

Hon. Stephen J. Murphy

Plaintiffs,

v.

TERRI LYNN LAND, Michigan Secretary of State, and
CHRISTOPHER M. THOMAS, Michigan Director of
Elections, FRANCES MCMULLAN, City Clerk for the
City of Ypsilanti, Michigan, in their official capacities,

Defendants.

MOTION OF LISA A. BLEHM TO INTERVENE

For the reasons set forth in the accompanying Brief, Plaintiff Lisa A. Blehm (“Plaintiff”), by and through her undersigned attorneys, hereby moves to intervene in the above-caption litigation as a matter of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, in the alternative, Plaintiff requests that the Court grant her permissive intervention pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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Dated: January 29, 2009

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UNITED STATES STUDENT ASSOCIATION
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Defendants.

**BRIEF IN SUPPORT OF MOTION OF
LISA A. BLEHM TO INTERVENE**

Plaintiff Lisa A. Blehm (“Blehm”), by and through her undersigned attorneys,
hereby submits this Memorandum of Law in Support of her Motion to Intervene in the above-
captioned matter, *United States Student Assoc. Foundation v. Land, et al.*, Case No. 2:08-cv-
14019 (the “Action”), pursuant to Rule 24(a) and/or Rule 24(b) of the Federal Rules of Civil
Procedure.

I. INTRODUCTION

The current Plaintiffs¹ in the Action allege that the Secretary of State of the State of Michigan, the Director of Elections in the State of Michigan and the City Clerk for the City of Ypsilanti, Michigan (collectively the “Defendants”) have engaged in actions violating both federal and state laws protecting the voting rights of Michigan residents. Specifically, Plaintiffs allege (*inter alia*) that Defendants in are immediately cancelling voters’ registrations and removing voters’ names from the eligible voting lists upon notice from a cooperating state motor vehicle licensing bureau that an individual has surrendered his or her Michigan driver’s license and applied for a driver’s license in another state (the “Purging Procedure”) in violation of federal and state law.² Blehm, a resident of Standish, Michigan was a victim of this very practice and was improperly and unlawfully disfranchised in the November 4, 2008 Election. For the reason set forth below, Blehm seeks to intervene in the above-referenced litigation currently pending before this Court.

II. STATEMENT OF FACTS

Blehm is a lifelong resident of Standish, Michigan, located in Arenac County. She has resided with her husband at her current residence in Standish since August 2006. *See* Blehm Declaration at ¶ 1, attached as Exhibit A. In or around September 2006, Blehm registered to vote using her home address in Standish, Michigan, and shortly thereafter, received her voter identification card in the mail. *Id.* at ¶ 2 (Ex. A). In 2007, Blehm’s husband, a member of the

¹ The United States Student Association Foundation, the American Civil Liberties Union of Michigan, the American Civil Liberties Union Fund of Michigan and the Michigan State Conference of NAACP Branches are the Plaintiffs in the Action currently pending before the Eastern District of Michigan and will be collectively referred to hereafter as “Plaintiffs.”

² Plaintiffs also challenge Defendants’ practice of rejecting voter’s registrations upon notice that original voter identification cards have been returned as undeliverable. Blehm’s Complaint relates only to the Purging Procedure.

United States Marine Corps, received orders to report to Dobbins Air Reserve Base in Marietta, Georgia. *Id.* at ¶ 3 (Ex. A). At that time, Blehm temporarily relocated to Marietta to be with her husband during his assignment. *Id.* at ¶ 3 (Ex. A). Blehm and her husband were only in Georgia because of her husband's military orders. *Id.* at ¶ 4 (Ex. A). At all times, both Blehm and her husband kept their home and permanent residence in Standish, Michigan and rented an apartment in Marietta, Georgia. *Id.* at ¶ 3 (Ex. A).

Shortly after Blehm arrived in Georgia, she obtained a Georgia driver's license. *Id.* at ¶ 4 (Ex. A) Blehm understood that she needed a local license for the job she obtained in Georgia. *Id.* at ¶ 4 (Ex. A). While applying for a Georgia driver's license, Blehm specifically declined to register to vote in Georgia because she fully intended to maintain her permanent residency and voting status in Standish, Michigan. *Id.* at ¶ 4 (Ex. A).

Following her husband's completion of his assignment in Georgia, Blehm returned to Standish, Michigan in or around June 2008. *Id.* at ¶ 5 (Ex. A). On November 4, 2008, Blehm went to her assigned polling place at Standish City Hall to vote in the Presidential Election. *Id.* at ¶ 6 (Ex. A). After Blehm completed her application to vote, the poll worker told her that she was not registered to vote, and therefore, would not be permitted to vote in the election. *Id.* at ¶ 6 (Ex. A). Blehm showed the poll worker her voter registration card and explained that she should, in fact, be on the voting rolls. *Id.* at ¶ 6 (Ex. A). Nevertheless, the poll worker would not allow Blehm to vote because her name did not appear on the precinct list. *Id.* at ¶ 6 (Ex. A). Blehm was not offered the opportunity to vote a provisional ballot and, at the time, was unaware of her right to vote a provisional ballot under such circumstances. *Id.* at ¶ 7 (Ex. A).

Blehm returned home, extremely disappointed and upset that she was not permitted to vote despite the fact that she had previously registered in 2006. *Id.* at ¶ 8 (Ex. A). Blehm called the Election Protection Hotline and learned about the possibility of casting a provisional ballot. *Id.* at ¶ 8 (Ex. A). She called City Clerk Rebecca Lakin's office to inquire about possibly casting a provisional ballot, but the representative told Blehm that it would be of no use to cast a provisional ballot because she was not registered to vote, and therefore, her provisional ballot would not count. *Id.* at ¶ 8 (Ex. A).

On November 4, 2008, Blehm had in her possession and at her disposal a valid United States Passport, her voter registration card, and a current utility bill bearing her name and home address in Standish, Michigan. *Id.* at ¶ 9 (Ex. A). At no time did Blehm ever authorize, either orally or in writing, the cancellation of her Michigan voter registration. *Id.* at ¶ 10 (Ex. A). At no time after applying for her out-of-state driver's license in Georgia does Blehm ever recall receiving any notice from any Michigan election official requesting confirmation of her Michigan voter registration or notifying her of the cancellation of her Michigan voter registration. *Id.* at ¶ 11 (Ex. A).

On or about November 19, 2008, Blehm visited a Secretary of State Branch Office and obtained a replacement Michigan driver's license. At that time, Blehm also re-registered to vote and was issued a registration receipt. *Id.* at ¶ 12 (Ex. A).

III. PROCEDURAL BACKGROUND

Plaintiffs in the Action filed their Original Complaint on September 17, 2008, alleging both that Defendants' Purging Procedure violates both state and federal law and that Defendants' practice of rejecting voter's registrations upon notice that original voter identification cards have been returned as undeliverable violates federal and state law. In

conjunction with filing their Complaint, Plaintiffs requested the entry of a preliminary injunction requiring Defendants to cease the above two practices and an expedited hearing on the matter.

Defendants filed a brief opposing Plaintiffs motion for a preliminary injunction on September 26, 2008, and the Plaintiffs filed a reply brief on September 29, 2008. On September 30, 2008, the Court held a hearing on the Plaintiffs' motion for a preliminary injunction, and on October 13, 2008, the Court granted in part and denied in part Plaintiffs' motion. *See Opinion, Docket No. 27*. The Court ordered that Defendants immediately discontinue their practice of cancelling or rejecting a voter's registration based upon the return of the voter's original voter identification card as undeliverable. The Court declined, however, to issue a preliminary injunction with respect to the Purging Procedure, holding "that there is only a questionable likelihood that any of plaintiffs' members will suffer an injury in fact, and thus that plaintiffs have only a questionable likelihood of success on the merits on the issue of their standing to sue." *See Court's 10/13/08 Order at page 40*.

Defendants filed their First Amended Complaint on October 7, 2008 seeking a preliminary injunction, a permanent injunction and a declaratory judgment. Defendant McMullen filed her Answer on October 22, 2008 and Defendants Land and Thomas filed their Answer on October 27, 2008.

IV. **ARGUMENT**

A. **Standard**

The Court may grant Blehm's Motion to Intervene either as a matter of right under Fed R. Civ. P. 24(a) or, alternatively, in its discretion, permit Blehm to intervene under Rule 24(b). *See Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006). Fed R. Civ. P. 24(a) provides as follows:

(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 the existing parties adequately represent that interest.³

In interpreting this rule, the Sixth Circuit has held that a party seeking to intervene as a matter of right must satisfy the following four elements:

(1) timeliness of application; (2) a substantial legal interest in the case; (3) impairment of the applicant’s ability to protect that interest in the absence of intervention; and (4) inadequate representation of that interest by parties already before the court.

Northeast Ohio Coalition for the Homeless, 467 F.3d at 1007.

Alternatively Fed R. Civ. P. 24(b) “grants the district court discretionary power to permit intervention if the motion is timely, and if the applicant’s claim or defense and the main action have a question of law or fact in common.” *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991) (internal citations and quotations omitted). In exercising its discretion, a court “must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.* at 951.

The Sixth Circuit has made clear that the rules governing intervention are to be “construed broadly in favor of the applicants.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1246 (6th Cir. 1997) (citations omitted).

³ Fed. R. Civ. P. 24(c) requires a motion to intervene to “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Attached as Exhibit B to Blehm’s Motion to Intervene is the Complaint of Intervening Plaintiff Lisa A. Blehm which has been served upon all parties to the current litigation with a copy of the instant motion.

B. **Intervention as a Matter of Right**

Blehm has timely filed this Motion to Intervene and has a substantial interest in the subject matter of the current action.⁴ Further, Blehm's interest will be impaired if she is not granted intervention, and the current Plaintiffs in the Action are unable to adequately represent Blehm's interest. Accordingly, Blehm satisfies each of the four elements set forth by the Sixth Circuit to intervene in the Action as a matter of right under Fed R. Civ. P. 24(a). A more complete discussion of each element follows below.

1. **Timeliness**

The Sixth Circuit has considered the following factors to determine if a motion to intervene is timely:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Triax Co. v. TRW, Inc., 724 F.2d 1224, 1228 (6th Cir. 1984).

As an initial matter, Blehm had no interest in this matter until she was improperly and unlawfully prevented from voting in the November 4, 2008 Election. Prior to that date, she was unaware of either Defendants' Purging Procedure or this litigation. Blehm now files this motion to intervene just over two months after Defendants improperly and unlawfully disfranchised her in the November Presidential Election. Moreover, Plaintiffs only filed their First Amended Complaint recently. Defendant McMullen filed her Answer on October 22, 2008

⁴ Blehm's complaint which sets forth the claims for which intervention is sought is attached hereto at Exhibit B.

and Defendants Land and Thomas filed their Answer on October 27, 2008. Preliminary injunction proceedings aside, this suit is still in its infancy with the scheduling conference just occurring on December 17, 2008. In that regard, discovery has yet to begin and no dispositive motions have been filed. Given the current procedural posture of the Action, the original parties will suffer no prejudice by Blehm's intervenor.

Further, the purpose of the requested intervention is two-fold: 1) to redress the improper and unlawful disfranchisement of Blehm's right to vote; and 2) to seek a declaratory judgment that the Purging Procedures violate state and federal law, thereby protecting the rights Blehm and the rights of other voting members of military families who are similarly situated and are often required to move temporarily upon receiving orders from the United States Military. Protecting the rights of all citizens to vote, and in particular members of military families who are often required to relocate to defend this Nation, is of paramount importance and outweighs any imaginable prejudice to the original parties, assuming that any such prejudice exists in the first instance.

Consideration of all the above factors establishes that Blehm's Motion to Intervene is more than timely.

2. *Substantial Legal Interest in the Case*

The Sixth Circuit "has opted for a rather expansive notion of the interest sufficient to invoke intervention of right." *Michigan St. AFL-CIO*, 103 F.3d at 1245 (citing *Purnell*, 925 F.2d at 948; *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) ("This court has acknowledged that 'interest' is to be construed liberally.")). Defendants improperly and unlawfully prevented Blehm from voting in the November 4, 2008 Election through operation of the exact Purging Procedures challenged in the Action. Blehm has a strong legal interest in the determination of the legality of the Purging Procedures and in seeking relief for her

disfranchisement. Accordingly, Blehm's motion to intervene satisfies this element by any measure, and particularly in light of the Circuit's "expansive notion" of a sufficient interest.

3. *Impairment of Interest Absent Intervention*

"The Supreme Court has emphasized that the requirement of impairment of a legally protected interest is a minimal one: the requirement is met if the applicant shows 'that representation of his interest 'may be' inadequate.'" *Northeast Ohio Coalition for the Homeless*, 467 F.3d at 1007 (quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972)). To satisfy this element, Blehm must show that "an unfavorable disposition of the action may impair [her] ability to protect [her] interest in the litigation." *Purnell*, 925 F.2d at 948 (emphasis added).

The issue of the Purging Procedure's legality is purely a question of law. The precedential effect of an adverse ruling in this Court, holding that the Purging Procedure is lawful, could impair Blehm's efforts to successfully bring her claim in the future or in a concurrent litigation. In *Michigan St. AFL-CIO*, the Sixth Circuit similarly held that "the precedential effect of an adverse ruling in the district court could hinder [movant's] own efforts to litigate the validity of Michigan's system for regulating campaign finance both in currently ongoing cases and in future challenges." *Michigan St. AFL-CIO*, 103 F.3d at 1246. The Court noted that Sixth Circuit has "acknowledged that potential stare decisis effects can be a sufficient basis for finding an impairment of interest." *Id.* at 1246 (citing *Linton v. Comm'r of Health & Env't*, 973 F.2d 1311, 1319 (1992)); see also *Gertz v. JVC Amercas Corp.*, 339 B.R. 454, 457 (N.D. Ohio 2006) (J. Baxter) (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989) ("Where a party seeking to intervene in an action claims an interest in the very property and very transaction that is the subject of the main action, the potential stare decisis effect may supply that practical disadvantage which warrants intervention as of right."))

4. *Inadequate Representation of Interests by Parties Already Before Court*

Blehm's burden to demonstrate that her "interest is not adequately protected by an existing party to the action is a minimal one; it is sufficient to prove that representation *may* be inadequate." *Northeast Ohio Coalition for the Homeless*, 467 F.3d at 1008 (citing *Linton*, 973 F.2d at 1319) (emphasis in original). The intervenor is "not required to show that the representation will in fact be inadequate." *Michigan St. AFL-CIO*, 103 F.3d at 1247.

The current Plaintiffs in the Action are not in the same factual circumstances as Blehm. Blehm was a member of a military family, and as such, she has had to move temporarily with her husband while he fulfilled his duty to the United State Marine Corps. As a result, she has been disfranchised by the Defendants and prevented from voting in the November 4, 2008 Election. None of the current Plaintiff organizations in the Action are in this same position; and therefore, they cannot adequately represent Blehm's interests and the interests of other voters who are members of military families. *See Michigan St. AFL-CIO*, 103 F.3d at 1247 (acknowledging that "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").

Additionally, the Court noted in its October 13, 2008 Opinion with respect to the Plaintiffs' claims regarding the Purging Procedure, that "there is only a questionable likelihood that any of [the existing P]laintiffs' members will suffer an injury in fact, and thus . . . [P]laintiffs have only a questionable likelihood of success on the merits on the issue of their standing to sue." *See Court's 10/13/08 Order* at page 40. Accordingly, there may be questions as to whether Plaintiffs will ultimately have standing to challenge the Purging Procedures that form the sole basis of Blehm's claims.

Given the facts surrounding Blehm's disfranchisement and her unique position as a member of a military family who is particularly susceptible to disfranchisement as a result of

the Purging Procedure, the Plaintiffs to the current Action are simply unable to adequately represent Blehm's interests. This is particularly true considered the "minimal" proof required by this Circuit to satisfy the inadequate representation element.

C. **Permissive Intervention**

If this Court determines that Blehm is not entitled to intervene as a matter of right, it should grant Blehm permissive intervention under Fed R. Civ. P. 24(b). All considerations required by Rule 24(b) (*see supra*, Sec. IV.A.) weigh heavily in favor of granting Blehm permissive intervention. As discussed in detail above, Blehm's Motion to Intervene is timely. *See supra*, Sec. VI.B.1. Her claim did not accrue until November 4, 2008, before which time she was unaware of either the Purging Procedure or this current Action, and she has brought this Motion to Intervene just over two months thereafter. Also, Blehm's claim, that the Defendants' Purging Procedure violates state and federal law, is identical to the issue before the Court in the Action.

Discovery has yet to begin in the Action and no dispositive motions have been filed. Accordingly Blehm's intervenor will not result in any delay and will cause no prejudice to the current parties to the Action. Further, given that Blehm's claim regarding the Purging Procedure is identical to that of the current Plaintiffs, granting Blehm's intervenor will promote judicial economy and eliminate unnecessary parallel litigation.

V. **CONCLUSION**

For the reasons set forth herein, Blehm respectfully requests that this Court grant her Motion to Intervene as a matter of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, alternatively, grant Blehm permissive intervention in the Action under Rule 24(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

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Dated: January 29, 2009

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

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