

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ERIC ESSHAKI, as candidate
for US Congress and in his
Individual capacity,

Plaintiff,

vs.

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

Hon. TERRENCE G. BERG

Ma. 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.

EMERGENCY MOTION TO INTERVENE WITH SUPPORTING BRIEF

Pursuant to Fed. R. Civ. P. 24(b)(1)(B), Matt Savich ("Savich"), through his undersigned counsel, hereby moves this Court for an order allowing him to immediately intervene in the above-captioned case. In support of this motion, Savich, through counsel, states:

In accordance with E.D. Mich. L.R. 7.1(a), the undersigned attorney or Savich himself has contacted the attorneys of record for Plaintiff and Defendants to ascertain whether this motion will be opposed. The attorney for the Defendant would not agree to the relief sought by Savich. The attorney for the Plaintiff concurred in the relief sought by Savich.

MOVANT'S INTEREST

1. Savich seeks nomination to the 47th District Court Judge incumbent position. Per MCL168.544f, Savich is required to gather 400 petition signatures, of qualified and registered voters, in order to be listed on the August 4, 2020 primary election ballot for the 47th District Court Judgeship position.
2. On January 10, 2020, Savich filed his "Statement of Organization" with the State of Michigan. To date Savich has collected roughly 200 petition signatures.
3. The present filing deadline for Savich to submit his signed petitions with the Michigan Department of State, Bureau of Elections, located at the Richard H. Austin Building, 1st Floor, 430 West Allegan Street, Lansing, MI 48918 is April 21 at 4:00 p.m.

4. Savich is a licensed attorney and active member in good standing with the State Bar of Michigan. Savich has been active and in good standing since 1994.
5. Savich is a registered and qualified voter in Farmington Hills, Oakland County, Michigan.
6. Savich has been domiciled in Farmington Hills for 25 plus years.
7. Savich was born in Rockville Centre, NY (USA) on September 15, 1961, making him 58 years old.
8. Therefore, Savich is qualified to seek nomination to the office of judge of the 47th District Court under MCL 168.411, the Michigan Constitution of 1963, and rules of the Michigan Supreme Court.
9. Due to the COVID-19 shutdown, Savich has been stymied in gathering the requisite signatures by the present permitted methods under MCL 168.133.
10. Savich has a strong interest in the outcome of this case.
11. This is a significant case because the outcome effects and has broad legal and policy implications on all voters in Michigan and many candidates seeking to get on the August 4, 2020 primary ballot.

12. This lawsuit seeks the remedy of, inter alia, extending the filing deadline, accepting alternative way to collect signatures, or decreasing the number of requisite signatures.

13. It is understood that on April 10, 2020, this Honorable Court granted Attorney Finlay's Motion to Intervene with a Brief in Support which provides relevant information about viable solutions to the COVID-19 dilemma for obtaining the required nominating petition signatures. For example: A detailed discussion about the Arizona E-QUAL collection of online signatures and similar actions by other states that permit collection of online signatures for nominating petitions from voters.

14. Attorney Savich shares a common question of law and fact with Plaintiff in the Original Complaint filed by Eric Esshaki. Savich also shares the same factual and legal issues raised by Esshaki's Motion for a Temporary Restraining Order and or a Preliminary injunction. In addition, Savich shares the same issues raised in the brief provided by Attorney Finlay.

WHEREFORE, Savich asks this Honorable Court to grant his Motion to Intervene accepting his proposed Intervening Complaint and permit him to adopt the factual and legal position that both Esshaki and Finlay are

making. See FRCP 24(b)(1)(B). Attached is a copy of Savich's Proposed Intervening Complaint.

Respectfully submitted,

Michael S. Cafferty & Associates, P.C.

By: /s/ Michael S. Cafferty
Michael S. Cafferty (P36613)
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April 14, 2020

BRIEF IN SUPPORT OF MOTION TO INTERVENE

Statement of question presented

Whether Savich should be allowed to intervene in this action under Fed. R. Civ. P. 24(b)(1)(B) where his claim against the Defendants shares common questions of law and fact with the Plaintiff.

Controlling Authority

Fed. R. Civ. P. 24(b)(1)(B)

Statement of Facts and Argument

Savich's proposed intervening complaint is attached as Exhibit 1. As the court can see from that document, Savich is in the same position as Plaintiff Esshaki. Savich was in the process of gathering the requisite 400 petition signatures when the COVID-19 pandemic occurred, resulting in the Governor's Emergency Orders, which, brought Savich signature gathering efforts to a premature and complete halt. In fact, continuing to gather signatures on Savich's nominating petitions could subject Savich or his canvassers to potential criminal liability.

Savich joins in the Plaintiff's request for relief to protect his most precious constitutional rights, namely his right to run for elected office. The actions of the Defendants in refusing to extend the deadline for nominating petitions in light of the pandemic and the Governor's "Stay at Home" orders are unconstitutional, as applied to Savich. Savich relies on the briefs already submitted to the Court by the Plaintiff and the other intervening party.

Given that the claim of Savich is identical to that of the Plaintiff, he should be allowed to intervene per Fed. R. Civ. P. 24(b)(1)(B) and benefit

from any rulings by this Court in the pending Motion filed by Plaintiff, in which Savich wished to join.

Conclusion/Relief Requested

Savich should be permitted to intervene in this action per Fed. R. Civ. P. 24(b)(1)(B) and obtain the same relief as the Court sees fit to grant the Plaintiff in the case in chief, including a reasonable extension of the filing deadline for his nominating petitions. At a minimum, there should be a tolling of the deadline that is at least equal to the time that the "Stay at Home" orders are in effect.

Respectfully submitted,

Michael S. Cafferty & Associates, P.C.

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Michael S. Cafferty (P36613)
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April 14, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants.

Michael S. Cafferty

/s/ Michael S. Cafferty

INDEX OF EXHIBITS

1. Proposed Intervening Complaint

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

MATT SAVICH, as candidate for
47TH District Court, Oakland County,
Michigan and in his Individual capacity,

Case No. 2:20-cv-10831

Plaintiff,
vs.

Hon. Terrence G. Berg

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 COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF**

NOW COMES the Plaintiff, Matt Savich, through his attorney Michael S. Cafferty, and in his capacity as a candidate for Michigan's 47th District Court and as a registered voter in Michigan, files this Complaint against Defendants 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 (collectively "Defendants").

Summary of this Civil Action

1. Matt Savich ("Savich") alleges that Michigan's ballot access procedure in combination with Governor Whitmer's March 24, 2020

Executive Order No. 2020-21 (the "Stay-at-Home Order"), violates rights guaranteed to him by the First and Fourteenth Amendments of the United States Constitution.

2. Savich is running for Michigan's 47th District Court Judge and filed his Statement of Organization with the State of Michigan's Election Commission on January 10, 2020. Savich is currently a practicing attorney.

3. Pursuant to Michigan election law, to appear on the official primary ballot, Savich and other non-incumbent candidates are required to file with the Michigan Secretary of State's office by April 21, 2020 (the "Filing Deadline" or "Deadline"), a nominating petition must include 400 and up to 800 signatures of qualified and registered electors residing in the City of Farmington or the City of Farmington Hills.

4. Pursuant to Governor Whitmer's Stay-home Order, and in light of a global pandemic, Michigan residents are required to stay in their homes until at least April 30, 2020. All public gatherings are prohibited. Additionally, workers who are deemed essential and permitted to leave their homes must maintain a distance of six feet from other people.

5. Savich, sand his campaign staff, and several volunteers were diligently collecting signatures prior to the issuance of the Stay-home Order. Although Savich has collected a substantial number of signatures from

qualified and registered electors, he has not yet obtained enough signatures to meet the statutory threshold to have his name placed on the August 4, 2020 primary ballot.

6. Through the enforcement of Michigan election law in conjunction with the Stay-at-Home Order, Defendants have effectively precluded Savich and other similarly situated candidates throughout the state from qualifying to have their name on the August 4, 2020 primary ballot.

7. Defendants have indicated that the current filing deadline on April 21, 2020 will be strictly enforced, notwithstanding that they have the power to extend the Deadline or decrease the number of signatures required, and notwithstanding that Defendant Benson has already closed all Secretary of State offices until April 23, 2020 and has indicated that the local May, 2020 election will be conducted by mail, and not in person.

8. Defendants' refusal to extend the Deadline places candidates in the position of either having to violate the law and cause electors to violate the law under threat of criminal prosecution or forgo running for public office altogether.

9. Savich seeks prospective declaratory relief and injunctive relief as necessary to ensure his placement on Michigan's August 4, 2020, ballot.

The Parties, Jurisdiction, and Venue

10. Savich resides in Michigan and files suit in his capacity as candidate for 47th District Court Judge and as a registered voter in Michigan. Savich has filed his Statement of Organization with the State of Michigan. Further, Savich is a registered voter in Farmington Hills, Michigan and he has consistently voted in past primary and general elections.

11. Defendant Gretchen Whitmer is the Michigan Governor. Governor Whitmer has authority over the enforcement of the Michigan Election Code during a state of emergency and otherwise. Savich asserts claims against Governor Whitmer in her official capacity. Governor Whitmer's official address is P.O. Box 15282, Lansing, MI 48901.

12. Defendant Jocelyn Benson is the Michigan Secretary of State. Secretary Benson is the State's chief elections official and has ultimate authority over the enforcement of the Michigan Election Code, including the provisions challenged herein. Savich asserts his claims against Secretary Benson in her official capacity only. Secretary Benson's official address is 430 W. Allegan, Lansing, Michigan 48933.

13. Defendant Jonathan Brater is the Director of the Michigan Bureau of Elections. Director Brater accepts and reviews candidate petition filings, assists county and local election officials with their administrative

duties, and administers the State's electoral process and Campaign Finance Act. Savich asserts his claims against Director Brater in his official capacity only. Director Brater's official address is Bureau of Elections, 430 W. Allegan, Lansing, Michigan 48933.

14. Venue is proper in this Court because Savich is a resident of Michigan, and because the Defendants are state officials who maintain offices throughout the State of Michigan. *See Bay County Democratic Party v. Land*, 340 F.Supp.2d 802 (E.D. Mich. 2004). This Court has personal jurisdiction over the Defendants because they are public officials of the State of Michigan and they are residents of Michigan. This Court is a proper venue for this civil action under 28 U.S.C. 1391.

15. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, because Savich's claims arise under the First and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

16. Declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, and Rule 65 of the Federal Rules of Civil Procedure.

General Allegations

17. Savich is a candidate for a judgeship in the 47th District Court, in Farmington Hills, Oakland County, Michigan.

18. On January 10, 2020, Savich filed his "Statement of Organization" with the State of Michigan.

19. Savich has been diligently campaigning since late January 2020.

20. Pursuant to Michigan election law, to appear on the official primary ballot, Savich and other candidates are required to file with the Michigan Secretary of State's office by April 21, 2020, a nominating petition with at four hundred (400) and up to eight hundred (800) signatures of qualified and registered electors residing in the district. M.C.L. §§ 168.133; 168.544(f).

21. Savich and his campaign team implemented a plan to collect the required number of signatures early on in his campaign.

22. Savich, his campaign team, and several volunteers and supporters have been working diligently, and have already collected nearly two hundred (200) valid signatures.

23. On or around March 15, 2020, President Trump rolled out his "15 days to slow the spread" initiative (the "Initiative"). This Initiative, which was recently extended to April 30, 2020, asks people to practice social distancing and take other measures to prevent the spread of the novel SARS-CoV-2 virus ("Covid-19").

24. To comply with this Initiative and protect Michigan's citizens, Savich and his campaign postponed some of its efforts to collect signatures.

25. On March 23, 2020, in response to the unprecedented Covid-19 pandemic, which has disrupted nearly every aspect of American life, Governor Whitmer issued Executive Order 2020-21 (the "Stay-at-Home Order" or the "Order"). The Order went into effect On March 24, 2020 and originally was to be in effect until at least April 13, 2020.

26. The Order has been extended to April 30, 2020 and more importantly, beyond the April 21 Deadline.

27. Whitmer's Stay-home Order is to be construed broadly. The Order makes it a misdemeanor for a person to leave his home or residence unless that person is a worker "necessary to sustain or protect life or to conduct minimum basic operations" ("Essential Worker").

28. The Stay-home Order further requires that Essential Workers who leave their homes must maintain social distancing standards by remaining at least six feet away from others.

29. The Stay-home Order does not create an exception for candidates or campaign staff.¹

¹ Even if the Stay-at-Home Order created an exception for candidates, it would be impossible to collect signatures from supporters and other electors without causing those individuals to violate the Order.

30. On or around March 25, 2020, the Michigan Secretary of State informed Savich staff that the April 21, 2020 deadline to obtain and submit the required signatures would be strictly enforced.

31. The Michigan Bureau of Elections ("BOE") posted the following notice on its website, which has remained on its website as of the filing of this Complaint:

"The Bureau of Elections has received inquiries regarding the ability of petition gatherers to collect and submit signature petitions, including candidates with an April 21 filing deadline. As of now, all statutory requirements remain in place. Evaluation of the applicability of statutory deadlines and signature requirements in light of COVID-19 is ongoing, and we will share an update on any changes to requirements and procedures as soon as they are announced."

32. The Defendants' enforcement of the deadline is inconsistent with other actions the Secretary of State has taken in these unprecedented times. Indeed, the Secretary of State offices are closed and not expected to reopen until after the filing deadline. Additionally, the Secretary of State has indicated that it will conduct local elections in May 2020 through mail ballots, and not in person.

33. These extraordinary measures underscore the challenges we face as a state and nation during this pandemic. There is, under these unprecedented circumstances, no compelling or legitimate state interest to enforce the Filing Deadline, and to do so is unconstitutional.

34. Collecting signatures is a time-consuming process, which requires close contact with electors who reside in the congressional district.

35. Governor Whitmer's Order has made it impossible for Savich and other candidates to obtain the required number of elector signatures by April 21, 2020, the deadline imposed under M.C.L. section 168.133.

36. The enforcement of that Deadline under these unprecedented circumstances, considering the Stay-at-Home Order, is unconstitutional because it imposes signature requirements upon Savich and simultaneously strips him of the ability to meet those requirements.

37. This effectively prevents Savich, through no fault of his own, from getting his name on the ballot and running for judge in a meaningful way.

38. Over the last couple of months, Savich has expended countless hours and other resources campaigning. The enforcement of the Deadline severely injures Savich and his supporters, and continues to impose severe burdens on him because if it is enforced, he will not be able to run for judge, or, alternatively, he will be required to spend large sums of money in an attempt to acquire signatures through a mail campaign when there is no evidence that such a strategy would yield even one additional signature or even be accepted as the petition signer's signature will not be witnessed by the circulator.

39. Savich, as well as his supporters, will be further injured and will suffer irreparable harm to their voting, speech, and associational rights because they will not be able to vote for the candidate of their choice if Savich's name is not permitted to be on the ballot.

40. Based on information and belief, there are no other candidates aside from the incumbent running. This goes against the fabric of a democracy to allow an incumbent not to be challenged when there is a qualified challenger.

41. Defendants' enforcement of the deadline will leave voters like Savich forced to vote for the incumbent in his district, and will serve to subvert our constitutional democracy by arbitrarily restricting all voters and his right to support and vote for the candidate of their and his choice.

**COUNT I – VIOLATION OF FIRST AND FOURTEENTH
AMENDMENT RIGHTS**

**(M.C.L. §§ 168.133; 168.544(f) are unconstitutional as applied
to Savich as a candidate)**

42. The preceding Paragraphs 1 – 41 are hereby incorporated by reference.

43. Considering the existence of an unprecedented viral pandemic and Governor Whitmer's Order, the application and enforcement of M.C.L. sections 168.133 and 168.544(f) is unconstitutional as applied to Savich

because the enforcement of the statutes would require Savich to collect and submit up to 800 signatures by April 21, 2020, while simultaneously ordering Savich and his canvassers not leave their homes.

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

45. Defendants' enforcement of the statutory requirements in conjunction with the Stay-home Order make it virtually impossible for Savich to get his name on the ballot without causing both himself and his supporters to violate the Stay-home Order and face potential criminal charges. Under the circumstances, these requirements are burdensome, unreasonable, and are not narrowly tailored to meet any compelling or legitimate state interest.

46. Moreover, these requirements are being enforced by partisan Democratic officials in an obviously partisan manner to provide Democratic incumbents across the state a significant advantage over their challengers.

47. These violations immediately injure Savich and will continue to injure Savich in the future in the absence of relief from this Court.

COUNT II – VIOLATION OF FIRST AND FOURTEENTH
AMENDMENT RIGHTS
(M.C.L. §§ 168.133; 168.544(f) are unconstitutional as applied
to Savich as a registered voter)

48. The preceding Paragraphs 1 – 47 are hereby incorporated by reference.

49. Savich is a registered voter. He has consistently voted in past primary and general elections and has a constitutional right to effectively cast his vote.

50. The unconstitutional exclusion of Savich's candidacy through the unconstitutional enforcement of the Deadline deprives him of an effective choice at the ballot, is wholly unreasonable, and fails to meet any compelling or legitimate state interest.

51. Defendants' enforcement of the deadline hinders Savich's opportunity to choose among competing alternatives at the ballot, which would otherwise exist.

52. Savich is injured by these unconstitutional acts.

Prayer for Relief

WHEREFORE, Savich respectfully requests that this Honorable Court enter a judgment in its favor and against Defendants and grant the following relief:

A. Enter declaratory judgment holding that M.C.L. sections 168.133 and 168.544(f) are unconstitutional as applied to Savich in his capacity as a candidate for 47th District Court and as a qualified voter;

B. Enter an order to restrain Defendants from enforcing the deadline;

C. Enter an order requiring Defendants to either extend the deadline (for at least a number of days equal to the number of days the Stay-at-Home Order is in effect) or place Savich's name on the ballot upon his filing of the nominating petition with fewer than the required number of signatures;

D. Enter an Order requiring the Defendants to extend the deadline date for 60 days or, at a minimum, the number of days the Stay-at-Home Order is in effect, and permit electronic signature(s);

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

F. Award such other relief as the Court deems proper.

Respectfully submitted,

LAW OFFICES OF MICHAEL S. CAFFERTY
AND ASSOCIATES PC

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