

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:73-CV-26

and

HON. PAUL L. MALONEY

BAY MILLS INDIAN COMMUNITY, SAULT
STE. MARIE TRIBE OF CHIPPEWA
INDIANS, GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS,
LITTLE RIVER BAND OF OTTAWA
INDIANS, and LITTLE TRAVERSE BAY
BANDS OF ODAWA INDIANS,

Plaintiffs-Intervenors,

v.

STATE OF MICHIGAN, et al.,

Defendants.

**DEFENDANTS' RESPONSE IN OPPOSITION TO COALITION TO
PROTECT MICHIGAN RESOURCES' AND BAY DE NOC GREAT LAKES
SPORTS FISHERMEN'S MOTION TO INTERVENE**

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Are the Coalition to Protect Michigan Resources and Bay de Noc Great Lakes Sports Fishermen entitled to intervene as of right?
2. Are the Coalition to Protect Michigan Resources and Bay de Noc Great Lakes Sports Fishermen entitled to permissive intervention?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: Fed. R. Civ. P. 24

INTRODUCTION

The Coalition to Protect Michigan Resources (CPMR) and the Bay de Noc Great Lakes Sports Fishermen (GLSF) (jointly, Proposed Intervenor) move to intervene in negotiations for a successor to the 2000 Great Lakes Consent Decree (2000 Decree). Although Proposed Intervenor has participated in the negotiations as *amici curiae*, they now claim—nearly three years in—that the State of Michigan¹ no longer represents their interests. They assert without support that the State has abandoned its duty to protect the Great Lakes and the rights of its citizens to use that resource, and they imply that the parties are nearing agreement on a new decree that would harm those interests, then avoid having to defend these allegations by pointing to the limitations imposed by the parties’ confidentiality agreement. These tactics threaten to undermine public confidence in both the State and an eventual agreement. But they are also intended to hide Proposed Intervenor’s real motivation for this motion: their disagreement with certain positions the State has taken in recent negotiations. Proposed Intervenor seeks party status so they have additional leverage to control the State’s positions and ultimately sway the negotiation outcome through a unilateral veto power. These are inappropriate grounds for intervention.

Granting intervention would derail years of hard-fought progress when the parties are on the threshold of a new agreement. The motion should be denied

¹ “State of Michigan” or “State” will be used to refer to Defendants collectively.

because Proposed Intervenorors have not demonstrated that the State does not adequately represent their interests and because the motion is untimely.

STATEMENT OF FACTS

On May 7, 1979, Judge Noel Fox ruled in this case that the Plaintiff-Intervenorors, which at the time were the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians, had a treaty-guaranteed right to fish in the areas of the Great Lakes ceded to the United States in the Treaty of Washington, 7 Stat. 491 (Mar. 28, 1836). 471 F. Supp. 193 (W.D. Mich. 1979). Shortly thereafter, the Grand Traverse Band of Ottawa and Chippewa Indians intervened as Plaintiff. On July 10, 1981, the United States Court of Appeals for the Sixth Circuit affirmed the treaty right and held that the State may not regulate the exercise of tribal fishing except as necessary as a conservation measure. 653 F.2d 277 (6th Cir. 1981).

Since the mid-1980s, the regulation, allocation, and management of the fisheries in the 1836 Treaty waters have been governed by consent decrees. The first was entered in 1985 and had a fifteen-year term that expired May 31, 2000 (1985 Decree). (Docket Entry 833.) During the pendency of that decree, two additional tribes intervened as Plaintiffs: the Little River Band of Ottawa Indians in 1998 and the Little Traverse Bay Bands of Odawa Indians in 1999. (Docket Entries 1371, 1412.)

The parties negotiated a successor to the 1985 Decree that was entered on August 8, 2000. (Docket Entry 1458.) The 2000 Decree had a twenty-year term

that has been extended by this Court. (ECF Nos. 1892, 1903, 1912, 1945, 1963.)

That decree is set to expire September 30, 2022.

Almost since the beginning of this litigation, Proposed Intervenor or their predecessor organizations have sought a role. Michigan United Conservation Clubs, a CPMR member, first sought intervention in 1975. (Docket Entry 34.) As described in other filings, Proposed Intervenor or their predecessors have moved to intervene seven previous times, most recently in 2007. (ECF No. 1748.) Intervention was denied, and those rulings were affirmed on appeal multiple times.

However, Proposed Intervenor or their predecessor organizations have participated in this case as amici curiae for decades: CPMR member MUCC was granted amicus curiae status in 1976 (Docket Entry 80) and GLSF in 1999. (ECF No. 1388.) In that role, they have participated for the past three years in the parties' negotiations for a successor to the 2000 Decree. As the parties near completion of a new agreement, Proposed Intervenor now seek intervention for an eighth time.

ARGUMENT

I. Proposed Intervenor are not entitled to intervene as of right.

To intervene as of right under Fed. R. Civ. P. 24(a)(2), Proposed Intervenor must demonstrate that:

(1) the motion to intervene is timely; (2) the proposed intervenors have a significant legal interest in the subject matter of the pending litigation; (3) the disposition of the action may impair or impede the proposed intervenors' ability to protect their legal interest; and (4) the

parties to the litigation cannot adequately protect the proposed intervenors' interest.

Jansen v. City of Cincinnati, 904 F.2d 336, 340 (6th Cir. 1990). “The proposed intervenor must prove each of the four factors; failure to meet one of the criteria will require that the motion to intervene be denied.” *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005) (quoting *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). Because Proposed Intervenors cannot satisfy all four factors, the motion must be denied.

A. Proposed Intervenors' interests are adequately represented by the State.

Proposed Intervenors bear the burden of proving that their interests are inadequately represented by the State.² *Michigan*, 424 F.3d at 443 (citing *Meyer Goldberg, Inc. v. Goldberg*, 717 F.2d 290, 293 (6th Cir. 1983)). “This burden has been described as minimal because it need only be shown ‘that there is a *potential* for inadequate representation.’” *Michigan*, 424 F.3d at 443 (quoting *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999)). However, Proposed Intervenors must also “overcome the presumption of adequate representation that arises when they share the same ultimate objective as a party to the suit.” *Michigan*, 424 F.3d at 443–44. Proposed Intervenors cannot satisfy this factor.

² Timeliness is a threshold issue for intervention. *Blount-Hill v. Zelman*, 636 F.3d 278, 284 (6th Cir. 2011) (citing *NAACP v. New York*, 413 U.S. 345, 365 (1973)). However, the State will address adequate representation first, as Proposed Intervenors did in their brief. (PageID.10960-10963.)

Proposed Intervenor identify their interest in negotiations as seeking “to conserve and protect the Great Lakes fishery,” and they claim that the State no longer represents that interest because of a purported recent breakdown in the relationship. (PageID.10952.) As an initial matter, these claims are unsubstantiated. As Proposed Intervenor note, a confidentiality agreement among the parties, which amici curiae also signed, bars them from disclosing positions the State, or any party, has taken in negotiations. (PageID.10952 n.5; *see also* PageID.10973-10977 (Confidentiality Agreement).) Without the ability to disclose what is happening in negotiations, Proposed Intervenor cannot establish that the State is not representing their interests in those negotiations. That should have been the end of the discussion, as bald assertions would not support intervention.

But instead, Proposed Intervenor breached the confidentiality agreement and identified matters on which they feel the State does not “share [their] concern[.]” (PageID.10951.) They claim that the purported breakdown in their relationship with the State has led them to “believe that the Great Lakes fishery resources are threatened” by the State’s positions in negotiations, including “abandonment of sound biological principles that we believe should guide decisions related to the fishery.” (*Id.*) The State will remain faithful to the confidentiality agreement and, therefore, cannot respond directly to Proposed Intervenor’s specific allegations. However, it is unnecessary to do so because Proposed Intervenor still have not demonstrated inadequate representation and denial of their motion is still warranted.

First, the State not only shares Proposed Intervenor's interest in protecting the Great Lakes, but the State has a common-law and statutory duty to protect that resource and the public's right to use it. "Under longstanding principles of Michigan's common law, the state, as sovereign, has an obligation to protect and preserve the waters of the Great Lakes and the lands beneath them for the public." *Glass v. Goeckel*, 703 N.W.2d 58, 64 (Mich. 2005). "The state serves, in effect, as the trustee of public rights in the Great Lakes for fishing, hunting, and boating for commerce or pleasure." *Id.* at 64–65 (citations omitted). The Michigan Department of Natural Resources (DNR) is the state agency charged with the duty to "protect and conserve the natural resources of this state," including "foster[ing] and encourag[ing] the protection and propagation of game and fish." Mich. Comp. Laws § 324.503(1).

Claiming that the State is not adequately representing these interests is tantamount to accusing the State of abandoning its public trust duty to protect the Great Lakes resource and the principles of sound biological management that guide the State in carrying out that duty. The State does not take accusations of dereliction of duty lightly, and it refutes any such allegations in the strongest terms. Proposed Intervenor's interests are aligned with the State's. Proposed Intervenor has offered no proof otherwise.

Second, Proposed Intervenor's assertions are meant to obscure the real impetus for their motion. The list of areas where they claim disagreement with the

State is telling. They assert that they have a “substantial belief” that the State does not “share [their] concern” on the following subjects:

the roughly 50-50 allocation of the fishery through a zonal-approach that balances recreational fishing and commercial fishing interests within the same waters by creating recreational and commercial fishing zones, a structure for the usage, times and places of gear types and effort, and protection of Great Lakes spawning areas, refuges, and certain fishing practices through sound biological considerations.^[3]

(PageID.10951.) In effect, Proposed Intervenor claim to disagree with the State about nearly every major topic to be addressed in a successor decree. If that were the case, it should have been apparent that the State was not representing Proposed Intervenor’s interests in these negotiations from the beginning, not just in the past few weeks. But Proposed Intervenor deny this: “While Intervenor have participated in the current negotiations through the State, *only recently* did Intervenor’s relationship with the State deteriorate to the extent that Intervenor’s interests are now divergent and unrepresented.” (PageID.10963 (emphasis added); *see also* PageID.10962 n.2 (“This is not to say that the State and its Department of Natural Resources (‘MDNR’) and Intervenor disagree on every point.”).)

This acknowledgment shows that Proposed Intervenor and the State do not diverge on broad interests, but rather that Proposed Intervenor disagree with the State regarding specific, narrow issues that have been addressed in negotiations in

³ Proposed Intervenor at times claim to seek intervention to protect “rights” agreed to in the 2000 Decree. (*See, e.g.*, PageID.10937.) But the 2000 Decree did not convey rights—to amici curiae or the parties—and its terms are not binding for future decrees. (2000 Decree, § XXIII (“nothing in this Decree shall . . . create precedent for future allocation or regulation”).)

recent weeks. The timing of the motion, after nearly three years of negotiations, supports this conclusion. Tellingly, Proposed Intervenor's phrase their concern about the State's representation of their interests in terms of negotiating positions: "Intervenor's and the State diverge on a number of *their positions*[" (PageID.10961 (emphasis added).) Rather than fear that their interests are not being represented, Proposed Intervenor's instead are displeased with the State's positions on narrow issues. The only "breakdown" in the relationship is Proposed Intervenor's frustration that the State's positions, following years of negotiation, do not perfectly align with their preferred outcomes.

Through intervention, Proposed Intervenor's seek a role equal to the State's and the other parties' in the negotiations so they would be able to prevent the parties from reaching agreement. But just as disagreement about litigation strategy "does not, in and of itself, establish inadequacy of representation," *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987), disagreement on negotiating positions does not demonstrate that Proposed Intervenor's interests are not adequately represented by the State. In any negotiation, no party attains everything it wants. That truth is perhaps amplified when seven sovereign governments are trying to reach agreement. But the give and take of negotiations does not mean that Proposed Intervenor's interests are not being represented.

Proposed Intervenor's accusations against the State and disregard of their obligations under the confidentiality agreement suggest that they may be seeking to advance goals other than their case for intervention. *See, e.g.,* Sheri McWhirter,

Conservation groups want to intervene in state, tribal treaty negotiations over Great Lakes fishing, MLive (July 25, 2022), <https://www.mlive.com/public-interest/2022/07/conservation-groups-want-to-intervene-in-state-tribal-treaty-negotiations-over-great-lakes-fishing.html>; Zahra Ahmad & Kelly House, *Michigan anglers fear fishing deal with tribes could hurt their interests*, Bridge Magazine (July 14, 2022), <https://www.bridgemi.com/michigan-environment-watch/michigan-anglers-fear-fishing-deal-tribes-could-hurt-their-interests>. It appears Proposed Intervenor are attempting to sway public opinion regarding the parties' nascent decree, knowing that the parties are unlikely to violate the confidentiality agreement to refute any mischaracterizations. The proper forum for Proposed Intervenor to express their concerns and make their positions known is in negotiations, as they have done effectively for nearly three years as amici curiae.

Because the State adequately represents Proposed Intervenor's interests, this Court should deny intervention as of right.

B. The motion to intervene is untimely.

When considering the timeliness of an intervention motion, the court should consider all the circumstances, including:

(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 their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Jansen, 904 F.2d at 340. An untimely motion must be denied. *United States v. City of Detroit*, 712 F.3d 925, 930 (6th Cir. 2013). Timeliness is a matter within the court’s discretion. *See In re Auto. Parts Antitrust Litig., End-Payor Actions*, 33 F.4th 894, 900 (6th Cir. 2022) (citing *Grutter*, 188 F.3d at 398).

Intervention toward the end of a three-year negotiation is inherently untimely. The circumstances here warrant the motion’s denial.

1. Negotiations have progressed to a point that warrants denying intervention.

Proposed Intervenor’s motion comes nearly three years into these negotiations. The parties began discussions toward a successor decree in September 2019. Aside from a temporary disruption at the beginning of the Covid-19 pandemic, those discussions have continued either in person or virtually since then. But more important than how long the negotiations have been underway is how close they are to conclusion. *Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000) (noting that the “absolute measure of time” between the filing of the action and the intervention motion is less important than how close the case is to resolution). Just a month ago, the parties indicated they were close to wrapping up their discussions and were entering the final drafting stage for a successor decree. (PageID.10929-10931.) By any measure, Proposed Intervenor seeks intervention at the final stage of the “litigation continuum.” *See Stupak-Thrall*, 226 F.3d at 475. At this late phase, adding new parties to the negotiations threatens to disrupt the progress that has been made, which counsels against intervention.

2. The purpose for the motion does not support intervention.

Proposed Intervenors seek intervention “to address matters directly affecting their interests in the current negotiation discussions” that they claim the State is no longer adequately representing. (PageID.10963.) But Proposed Intervenors have had a role in the negotiations as amici curiae since the beginning of these negotiations—and even earlier, as the State engaged with them about a successor decree years before negotiations began. Since 2019, Proposed Intervenors as amici curiae have attended in-person and virtual negotiation sessions, caucused with the State during negotiation sessions, met and talked by phone with the State outside negotiation sessions, met and talked by phone with other parties, and met and talked by phone with the mediator. The Sixth Circuit has recognized that serving as amici curiae allows a party to address matters affecting its interests and negates the need for it to intervene for that purpose. *See Blount-Hill*, 636 F.3d at 287–88 (affirming denial of intervention but finding that proposed intervenors “are not without a voice” because the district court permitted them to appear as amici curiae); *Stupak-Thrall*, 226 F.3d at 475 (finding that participation as amici curiae sufficiently allowed appellants to make known their concerns and noting “that the concerns of an entity seeking intervention can be presented with complete sufficiency through such participation”). Proposed Intervenors retain their status as amici curiae and as such already have an avenue for expressing their concerns and making their interests known.

But even if Proposed Intervenors did not have the ability to represent their own interests as amici curiae, they have not demonstrated that the State does not adequately represent their interests, as discussed in detail above. It is clear that Proposed Intervenors' real motivation in seeking party status is their desire to exert additional influence over the State's negotiating positions and their frustration with such positions taken recently. It is also obvious that Proposed Intervenors do not seek intervention so that they may endorse the agreement the parties have nearly completed. After all, Proposed Intervenors signed prior consent decrees in their amici curiae role. (PageID.10967 n.9.) Instead, Proposed Intervenors want to intervene because with party status they could prevent the parties from reaching agreement or litigate if they are dissatisfied with the negotiated outcome. These are not proper purposes for intervention.

3. Proposed Intervenors have known of their interest in this case since before negotiations began.

Proposed Intervenors have participated in these negotiations for nearly three years as amici curiae. The interests they cite in their motion have existed that entire time, and they have known from the beginning that those interests would be implicated in these negotiations. That is why CPMR moved to confirm its amicus curiae status before these negotiations began, stating, "The outcome of this case will have a direct and immediate impact on hundreds of thousands of current and future members of CPMR and its member organizations, so CPMR has a substantial interest in the outcome of this litigation." (PageID.2065, ¶ 5.)

Proposed Intervenors claim they only recently became aware of the need to intervene because of a recent change in their relationship with the State. But as discussed above, that assertion is belied by the nature of the disagreement they cite. Proposed Intervenors' real concern is not that the State is suddenly failing to represent their interests. Instead, they are displeased with certain of the State's positions and are seeking the ability to prevent the parties from reaching a negotiated agreement that reflects such positions. That does not justify intervention at this point in the process.

4. Intervention at this stage would gravely prejudice the parties.

Granting Proposed Intervenors party status would threaten to disrupt the significant progress already made toward a successor decree. *See Detroit*, 712 F.3d at 932 (noting as a "major concern" that intervention "could disturb the settled progress in this case"). After nearly three years of negotiations, the parties have two months remaining to resolve outstanding issues and finalize language. (ECF No. 1962.) Inserting new parties into the mix now would call into question everything the parties have worked so long and hard to achieve, likely sending these negotiations nearly back to the starting point. Again, Proposed Intervenors obviously do not seek intervention so that they may endorse the agreement the parties are finalizing.

Moreover, allowing intervention could subject the parties to unnecessary and unwanted motion practice. Proposed Intervenors acknowledge (albeit in the

permissive intervention discussion) that they would not have “the right to relitigate matters already determined in the case, unless those matters would otherwise be subject to reconsideration.” (PageID.10968.) However, they make no promises about issues not already litigated. The parties worked out among themselves, for purposes of the 1985 and 2000 Decrees, certain issues that this Court has never resolved. So far, the parties have made it through almost three years of negotiations and are approaching a final agreement without requesting this Court’s assistance in resolving those issues. But Proposed Intervenors make no promise that they will not file motions on those or other issues and force the parties into litigation they do not seek.

Also, this is not a situation where prejudice to the parties can be mediated by limiting the scope of intervention. *Contra Detroit*, 712 F.3d at 932 (noting that limiting intervention on a prospective basis would prevent proposed intervenors from re-litigating issues). Intervention could not be limited, either in terms of issues or Proposed Intervenors’ role, to avoid prejudice to the parties here because intervention of any scope would give new parties a unilateral veto over a successor agreement.

5. Unusual circumstances militate against intervention.

Finally, granting this motion would grant party status to a non-governmental entity for the first time in the nearly fifty years since this case was filed. To date, only federal and tribal governments and the State of Michigan and its bodies and officials have been parties to this case. Simply put, granting intervention would

have the effect of elevating Proposed Intervenor's interests and concerns over those of all other Michigan citizens, who have an equal right to the Great Lakes resource and the fishery at issue in these negotiations.

For all these reasons, Proposed Intervenor's motion is untimely. On that basis alone, it must be denied. *See Detroit*, 712 F.3d at 930.

C. Proposed Intervenor's ability to protect their interest will not be impaired if intervention is denied.

Fed. R. Civ. P. 24(a)(2) requires a potential intervenor to "claim[] an interest relating to the property or transaction that is the subject of the action[.]" This provision requires a "significant interest." *Coalition to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 779 (6th Cir. 2007). Despite "a rather expansive notion of the interest sufficient to invoke intervention of right," that "does not mean that any articulated interest will do." *Id.* at 780 (quoting *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997)).

Proposed Intervenor's claim that *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994 (8th Cir. 1993), is "directly on point, and instructive" because they have "the property interests identified in" that case. (PageID.10965; PageID.10966.) But *Mille Lacs* involved property owners who anticipated that the litigation might result in treaty rights being exercised on their land or diminish property values. 989 F.2d at 997–98. Proposed Intervenor's hold no such interests here. These negotiations involve only fishing in the Great Lakes. Unlike inland waterbodies, where Michigan law dictates that riparian owners hold fee title to the

centerline, title to Great Lakes bottomlands resides with the State. *West Michigan Dock & Mkt. Corp. v. Lakeland Invs.*, 534 N.W.2d 212, 215 (Mich. App. 1995) (internal citation omitted). Proposed Intervenor also hold no property right in the fish in the Great Lakes. *See Aikens v. Dep't of Conservation*, 198 N.W.2d 304, 308 (Mich. 1972); Mich. Comp. Laws § 324.47301.

Additionally, Proposed Intervenor claim a legal interest based on impacts of this case on “local fisheries, recreational fishing opportunities across the State and industries and interests related to the same.” (PageID.10966.) It is unclear how these interests differ from those of every Michigan citizen, all of whom hold an equal right to use the State’s resources. Allowing intervention here would seem to open the door for any citizen who fishes in the Great Lakes to intervene.

But even assuming this constitutes a “significant interest,” *Coalition to Defend Affirmative Action*, 501 F.3d at 779, Proposed Intervenor have not demonstrated that their ability to protect that interest would be impaired if intervention is denied. As discussed, Proposed Intervenor’s interests are protected not only through the State, but through their amici curiae status. No party has suggested terminating that status. This factor does not support intervention.

In sum, for all these reasons this Court should deny intervention as of right.

II. Proposed Intervenor are not entitled to permissive intervention.

Proposed Intervenor also move for permissive intervention pursuant to Fed. R. Civ. P. 24(b)(1)(B). A court has discretion to grant permissive intervention on a timely motion to anyone who “has a claim or defense that shares with the main

action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “Once these two requirements are established, the district court must then balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court’s discretion, intervention should be allowed.” *Michigan*, 424 F.3d at 445 (citing *Michigan State AFL-CIO*, 103 F.3d at 1248); *see also* Fed. R. Civ. P. 24(b)(3).

As with intervention as of right, timeliness is a threshold issue for permissive intervention. *Blount-Hill*, 636 F.3d at 284 (citing *NAACP*, 413 U.S. at 365). For the reasons discussed above, Proposed Intervenor’s motion was untimely and must be denied.

Further, granting intervention would cause undue delay. The parties are nearing completion of a successor decree and are working on final language. Introducing new parties at this point would almost certainly derail that progress and reopen issues the parties had deemed conditionally resolved, prejudicing the parties who have worked for nearly three years on a new agreement.

For these reasons, this Court should deny permissive intervention.

STATEMENT REGARDING ORAL ARGUMENT

The State views this motion as appropriate for decision without oral argument. *See* W.D. Mich. LCivR 7.3(d). However, if this Court grants oral argument to Proposed Intervenor, the State requests an opportunity to be heard.

CONCLUSION AND RELIEF REQUESTED

For these reasons, Proposed Intervenor's motion should be denied.

Respectfully submitted,

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Dated: July 27, 2022

**CERTIFICATE OF COMPLIANCE
CONCERNING WORD LIMIT**

This brief complies with the word limit for non-dispositive motions established in LCivR 7.3(b)(i). Excluding the parts of the document exempted by LCivR 7.3(b)(i), this brief contains no more than 4,300 words. This document contains 4,292 words as counted by Microsoft Word 2016.

Respectfully submitted,

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