

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MARY T. THOMAS, NEA RICHARD,)
JEREMY RUTLEDGE, TRENA WALKER,))
DR. BRENDA WILLIAMS, and)
THE FAMILY UNIT, INC.,)

Case No.: 3:20-cv-01552-JMC

Plaintiffs,)

v.)

**SOUTH CAROLINA REPUBLICAN
PARTY’S MOTION TO INTERVENE**

MARCI ANDINO as Executive Director of)
the State Election Commission,)
JOHN WELLS in his official capacity as)
Chair of SC State Election Commission,)
CLIFFORD J. EDLER and)
SCOTT MOSELEY in their official)
capacities as Members of the South Carolan)
State Election Commission, and)
HENRY D. MCMASTER in his official)
capacity as Governor of South Carolina)

Defendants.)

Pursuant to Federal Rule of Civil Procedure 24(a)–(b), the South Carolina Republican Party (the Republican Party) moves to intervene in the above-referenced matter as a matter of right or, in the alternative, permissively. For the reasons set forth below, the Court should grant the Republican Party’s motion to intervene in this matter of public importance.¹

Under Federal Rule of Civil Procedure 24(a), on timely motion, the Court must permit anyone to intervene who “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 existing parties adequately represent that

¹ Pursuant to Local Civil Rule 7.04, DSC, a memorandum is not submitted because a full explanation of the argument is contained within the motion and a memorandum would serve no useful purpose.

interest.” Fed. R. Civ. P. 24(a)(2). The U.S. Court of Appeals for the Fourth Circuit has interpreted this rule as requiring a party seeking to intervene to meet the following requirements:

(1) the application to intervene must be timely; (2) the applicant must have an interest in the subject matter of the underlying action; (3) the denial of the motion to intervene would impair or impede the applicant’s ability to protect its interest; and (4) the applicant’s interest is not adequately represented by the existing parties to the litigation.

Houston Gen. Ins. Co. v. Moore, 193 F.3d 838, 839 (4th Cir. 1999). Further, the party seeking to intervene “bears the burden of demonstrating to the court a right to intervene.” In re Richman, 104 F.3d 654, 658 (4th Cir. 1997).

Additionally, Federal Rule of Civil Procedure 24(b) provides that the Court may permit, on timely motion, “anyone to intervene 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). Although “some standards have been developed to guide the courts in making intervention determinations,” the Court’s decision to allow permissive interventions under Rule 24(b) “lies within [its] sound discretion.” Hill v. W. Elec. Co., 672 F.2d 381, 386 (4th Cir. 1982).

In the Fourth Circuit, a movant seeking permissive intervention as a plaintiff must satisfy four criteria. First, the motion must be timely. Second, the movant must have “a claim or defense that shares with the main action a common question of law or fact.” Third, there must be an independent ground of subject matter jurisdiction. Finally, the proposed intervention must not “unduly delay or prejudice the adjudication of the rights of the original parties.”

S.C. Coastal Conservation League v. Pruitt, No. 2:18-cv-330-DCN, 2018 WL 2184395, at *3 (D.S.C. May 11, 2018) (internal citations omitted) (quoting Fed. R. Civ. P. 24(b)(1)(B), (b)(2) & (b)(3)). “Rule 24(b) is to be liberally construed in favor of intervention.” Backus v. South Carolina, No. 3:11-cv-03120, 2012 WL 406860, at *2 (D.S.C. Feb. 8, 2012).

“Both intervention of right and permissive intervention require timely application.” Gould v. Alleco, Inc., 883 F.2d 281, 286 (4th Cir. 1989). In analyzing this factor, the Fourth Circuit generally considers how far the suit has progressed, the prejudice that delay might cause other parties, and the reason for the tardiness in moving to intervene. See id. Because the plaintiffs filed their complaint in this Court on April 22, 2020, this motion undoubtedly is timely under either method of intervention. The lawsuit has just begun, no responsive pleadings have been filed, no motions have been argued or decided, and allowing the Republican Party to intervene would not cause any delay. Therefore, under either intervention standard, this motion is timely.

Further, to support a right to intervene, the potential intervenor’s interest in the dispute “must be direct, rather than remote or contingent.” Dairy Maid Dairy, Inc. v. United States, 147 F.R.D. 109, 111 (E.D. Va. 1993). The Republican Party has a direct interest in the subject matter of this litigation because the law the plaintiffs are challenging as unconstitutional governs the absentee voting process currently being encouraged by the Republican Party to increase voter participation. Not allowing the Republican Party “to intervene would impair or impede the [Republican Party’s] ability to protect its interest” in electing Republicans—especially in 2020 with important races up and down the ballot in both the primary and general election—while maintaining ballot integrity and preventing voter fraud. The plaintiffs are asking the Court to implement changes prior to the June 9, 2020 primary. Any changes to the state’s election laws at this late date will have a significant effect on the Republican Party’s ability to elect Republican candidates.² Thus, the Republican Party wants an opportunity to weigh in on this matter.

² In a similar lawsuit currently pending in the original jurisdiction of the Supreme Court of South Carolina, the petitioners are challenging the state’s absentee ballot voting process. The Republican Party filed a motion to intervene in that case, as well, which the court granted on April 28, 2020. See Ex. A, Order, Bailey v. S.C. State Election Comm’n, App. Case No. 2020-000642 (S.C. Sup. Ct. filed Apr. 28, 2020).

Respectfully, the Republican Party's interests also are not adequately represented by the original parties to this action. As a state agency, the State Election Commission's purpose is to administer the state's elections pursuant to the laws established by the South Carolina General Assembly. Thus, it must remain neutral and cannot adequately represent the interest of any political party, much less the SCGOP. For the same reasons, nor can its executive director. Further, Governor McMaster's interest is to defend the law and take care that the laws be faithfully executed. While the Republican Party certainly wishes to likewise defend the law, its interests are narrower in this case. In other words, the Republican Party may not necessarily share the same objectives as Governor McMaster, who may be confined to a more institutional perspective instead of focusing on electing Republicans. Regardless, the Republican Party simply wants a seat at the table to ensure all stakeholders have a voice in this matter of public interest and importance. To that end, if the Democratic Party wants the same opportunity to intervene to protect its interests, the Republican Party would welcome its participation.

The Complaint makes unsupported allegations of how South Carolina's current absentee ballot process harms specific voters in South Carolina. ECF No. 1 at ¶ 83. Although the plaintiffs have members of the Election Commission, Executive Director Andino, and Governor McMaster in their official capacities, this lawsuit seeks to expand our current voting laws, which could impact the Republican Party. The Court need look no further than the third paragraph of the plaintiffs' complaint, in which they challenge the "requirement setting forth exclusive categories of 'persons qualified to vote by absentee ballot.'" ECF No. 1 at ¶ 3. The Plaintiffs ask this Court to authorize a change in the voting process by doing away with all criteria a voter must meet to cast an absentee ballot. Changing the way South Carolinians vote will have a large impact on the interests of the Republican Party.

Finally, given the very early stages of this lawsuit, the plaintiffs can hardly argue the Republican Party's intervention would "unduly delay or prejudice the adjudication of the rights of the original parties." If granted permission to intervene in this matter, the Republican Party intends to meet the expedited briefing deadline of May 11, 2020 and be ready for a hearing on May 15, 2020.

Based upon the foregoing, the Republican Party respectfully requests that the Court enter an order granting its motion to intervene to defend the constitutionality of South Carolina's absentee ballot procedures either as of right or under the permissive intervention rule. Cf. Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S. Ct. 1205, 1209 (2020) (per curiam) (Ginsburg, J., dissenting) (noting the state and national political "parties intervened as defendants" in a similar dispute over changing absentee ballot requirements in Wisconsin prior to its primary).

Pursuant to Local Civil Rule 7.02, DSC, the undersigned counsel certifies that counsel for all parties were consulted prior to filing this motion. Defendants Marci Andino, John Wells, Clifford Edler, Scott Mosely, and Governor Henry D. McMaster do not oppose the South Carolina Republican Party's motion to intervene. Counsel for Plaintiffs have indicated they will oppose motion.

(Signature Page Follows)

Respectfully submitted,

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Columbia, South Carolina
May 1, 2020

THOMAS, ET AL V. ANDINO, ET AL

CA: 3:20-CV-01552-JMC

EXHIBIT A

SOUTH CAROLINA REPUBLICAN PARTY'S MOTION TO INTERVENE

**ORDER DATED APRIL 28, 2020 FROM
APPELLATE CASE NO.: 2020-000642**

The Supreme Court of South Carolina

Rhodes Bailey, Robert Wehrman, South Carolina
Democratic Party, and DCCC, Plaintiffs-Petitioners,

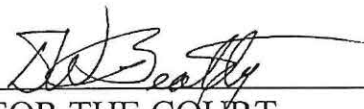
v.

South Carolina State Election Commission and Marci
Andino as Executive Director of the State Election
Commission, Defendants-Respondents.

Appellate Case No. 2020-000642

ORDER

The South Carolina Republican Party moves to intervene in this action. The motion is granted. All returns shall be served and filed by May 1, 2020.



FOR THE COURT C.J.

Columbia, South Carolina
April 28, 2020

cc:

Christopher James Bryant, Esquire
Alan McCrory Wilson, Esquire
Harrison D. Brant, Esquire
Karl Smith Bowers, Jr., Esquire
J. Robert Bolchoz, Esquire
Mary Elizabeth Crum, Esquire
William Grayson Lambert, Esquire
Robert E. Tyson, Jr., Esquire
Vordman Carlisle Traywick, III, Esquire