

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
Docket #226-2022-CV-00233
Docket #226-2022-CV-00236

603 Forward;
Open Democracy Action;
Louise Spencer;
Edward R. Friedrich; and
Jordan M. Thomson;

and

Manuel Espitia, Jr.; and
Daniel Weeks

v.

David M. Scanlan,
Acting New Hampshire Secretary of State

and

John Formella
New Hampshire Attorney General

MOTION TO INTERVENE

The New Hampshire Republican State Committee (“NHRSC”), a New Hampshire voluntary corporation, respectfully moves the court, pursuant to N.H. Super. Ct. R. 15, for permission to intervene in this action. The plaintiffs object to the relief sought by this motion. The Attorney General and Secretary of State take no position on the relief sought by this motion.

I. Introduction

Plaintiffs seek to overturn a newly passed law, Senate Bill 418 (“SB 418”), which enacts measures to improve the state’s elections by increasing the reliability of the state’s voter registration procedures, thereby helping to ensure that only New Hampshire residents vote in the

state's elections. The NHRSC wishes to intervene to defend the law and represent the distinct rights and interests of the organization and its members in maintaining the integrity of state elections. While the State of New Hampshire will defend the law, the state has interests in this case that are distinct and separate from the NHRSC's right to protect its own interests, as well as the interests of its members, candidates, and voters, which will be adversely affected if SB 418 is invalidated. Because the NHRSC has rights and interests at issue in this action that differ from those of the defendants, it moves the court for intervention.

II. Statement of Facts

The right to free and fair elections is enshrined in the New Hampshire Constitution. N.H. Const. pt.1, art 11. On June 17, 2022, Governor Sununu signed SB 418 into law. SB 418 furthers the guaranty of fair elections by improving the methods by which the state ensures that only New Hampshire residents vote in the elections deciding who will govern them. SB 418 will take effect on January 1, 2023. It creates a procedure by which state and local election officials can designate and identify ballots cast by those who register on election day and fail to provide documentary proof of their residency, identity, or state citizenship – each of which is indisputably an essential qualification for exercising the right to vote in New Hampshire. The bill aims to prevent opportunities for wrongful voting and boost voter confidence in the integrity of elections in a state where even a single ballot can determine the outcome of an election and an unlawfully cast ballot will necessarily negate a ballot that was properly cast.¹ *See* S.B. 418-FN, 2022 Leg., I (“Over the past 45 years, New Hampshire has had 44 state elections that ended in a tie or in a one-vote victory.”). Even without the many documented examples of convictions for wrongful voting in New Hampshire, the legislature has the right and obligation to anticipate the ways in which

¹ The net effect of each instance of wrongful voting is to deprive a lawful voter of his or her vote.

unqualified voters may be able to obtain and cast a ballot and to enact measures to prevent them from doing so.

The NHRSC is a political committee dedicated to advancing the interests of the Republican Party and Republican voters and protecting the rights of its members, including its members' right to fair elections. The members of the NHRSC are selected by delegates who are, in turn, popularly elected by ballot at the state primary. RSA 653:6. The NHRSC manages the Republican Party's business in New Hampshire, supports Republican candidates for public office in New Hampshire at all levels, coordinates fundraising and election strategy, develops and promotes the state Republican platform, and communicates the Republican Party's position and priorities to voters. The NHRSC works to persuade and organize prospective New Hampshire voters to register as Republicans and to vote for Republican candidates. The NHRSC conducts fundraising and assists Republican candidates with communication, strategy, and planning, and expends resources on voter outreach, education, and mobilization. The NHRSC is the only organization in the state that is designed to represent and promote the common interests of New Hampshire's registered Republican voters. The NHRSC represents registered Republicans, its members, elected officials, and candidates, each of whom may be directly affected by an episode of wrongful voting. By intervening in this case, the NHRSC seeks to represent itself, registered Republicans, and its members, in preventing the loss of the protections of fair elections that would result from the invalidation of SB 418.

III. Argument

“The right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice.” *Brzica v. Trustees of Dartmouth Coll.*, 147 N.H. 443, 446 (2002) (quoting *Scamman v. Sondheim*, 97 N.H. 280, 281 (1952)). “[T]he right to intervene has been

usually determined as a matter of discretion by the Trial Court.” *Snyder v. N.H. Sav. Bank*, 134 N.H. 32, 34 (1991) (quoting *Scamman v. Sondheim*, 97 N.H. 280, 281 (1952)). A party that “seeks to intervene in a case must have a right involved in the trial and [its] interest must be direct and apparent.” *In re Goodlander*, 161 N.H. 490, 506 (2011) (quotation omitted). An intervenor’s interest must be one that “would suffer if not indeed be sacrificed were the court to deny the privilege.” *Id.* An interested party may intervene either by filing an appearance and pleading or by motion to the court. *See* N.H. Super. Ct. R. 15.

As courts around the nation acknowledge, “political parties usually have good cause to intervene in disputes over election rules.” *Issa v. Newsom*, Doc 23 at 2, No. 2:20-cv-1044 (E.D. Cal. June 8, 2020). *See, e.g., Mi Familia Vota v. Hobbs*, 2021 WL 5217875 (D. Ariz. Oct. 4, 2021) (granting intervention to RNC, NRSC, DSCC, and DCCC); *New Georgia Project v. Raffensperger*, 2021 WL 2450647 (N.D. Ga. June 4, 2021) (granting intervention to RNC, NRSC, Georgia Republican Party, and NRCC); *Black Voters Matter Fund v. Raffensperger*, No. 1:20-cv-4869-SCJ, Doc. 36 (N.D. Ga. Dec. 9, 2020) (granting intervention to RNC and Georgia Republican Party); *Alliance for Retired Americans v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, 2020 WL 6559160 (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa*

v. Newsom, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same).

The NHRSC has “a direct and apparent interest to be vindicated through the court process.” *American Federation of Teachers, et al. v. Gardner, et al.*, Docket No. 218-2020-CV-0570, at 2, N.H. Super. Ct. (Sept. 4, 2020). Specifically, the registered Republican voters the NHRSC represents have the constitutionally guaranteed interest in “an equal right to vote” in elections that are “free.” N.H. Const. pt.1, art 11. Each member of the NHRSC, moreover, is selected at biennial caucuses by delegates who are popularly elected in the state primary election, making their membership directly dependent upon the fairness of those elections. RSA 653:6. Similarly, qualified candidates the NHRSC supports for elected office also have a right under the New

Hampshire Constitution to an “equal right to be elected into office.” *Id.* The Constitution also explicitly mandates that only those who are “domicile[d]” in the state are eligible to participate in those elections. *Id.* By imposing this qualification, the constitution contemplated the enactment of measures to enforce it. Plaintiffs’ challenge to SB 418 seeks to deprive the NHRSC, registered Republicans, NHRSC members, and Republican candidates, of important safeguards that New Hampshire’s elected representatives and governor saw fit to enact to promote the constitutional requirement of fair elections. Plaintiffs’ success would also force the NHRSC, its volunteers, staff, and candidates, to reeducate their members about the changes in the law applicable to voter registration and election day voting requirements necessitated by the court’s judgment. Whether considered individually or together, these impacts would directly affect the NHRSC’s interest in advancing its “overall electoral prospects.” *American Federation of Teachers*, No. 218-2020-CV-0570, at 5.

In *American Federation of Teachers*, the superior court addressed the issue of adequacy of representation and found in favor of the party intervenor. The court “acknowledge[d] that there will likely be shared positions and arguments between the intervenors and the defendants, [but] it d[id] not find that this overlap serves as a basis to deny intervention.” *Id.* at 6-7. Indeed, it is inevitable that an intervenor will, to some extent, support the position of one or more of the named parties, but that does not mean that the intervenor’s interest is identical to that of the named party. Specifically, the NHRSC represents the distinct interests of Republicans in New Hampshire, many of whom will vote in future elections and be subject to the state’s election laws and procedures, like SB 418. That alone is a sufficiently distinct interest to warrant intervention. *See generally New Hampshire Democratic Party v. Gardner, et al.*, Docket No. 2017-CV-00432, at 7, N.H. Super. Ct. (Sept. 11, 2017) (holding that “political parties have standing to assert, at least, the

rights of its members who will vote in an upcoming election”) (internal quotations omitted). By contrast, the defendants are bound to protect the rights and interests of the entire state and each citizen, regardless of his affiliation with any political party and interest. It would be improper for the defendants to attempt to vindicate the rights of Republicans alone; only the NHRSC has the right and motive to do so.

The U.S. Supreme Court and federal appellate courts have recently acknowledged the relatively low bar an intervenor must meet to demonstrate that the current party does not adequately represent its interests. In June, the U.S. Supreme Court in *Berger v. North Carolina*, held that intervening parties, even if sharing similar interests in litigation, should not be presumed to be adequately represented by existing parties where they have distinct interests in the litigation. *See* 142 S.Ct. 2191, 2205-06 (2022). Although *Berger* involved the *state legislature’s* intervention in a challenge to the state’s voter identification requirements, in *La Union Del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022), the 5th Circuit Court of Appeals held that *political party organizations* were not adequately represented by the state in a challenge to its election integrity reform legislation because, *inter alia*, their “interests are different in kind from the public interests of the State or its officials. The Committee’s interests primarily rely on the expenditure of their resources to equip and educate their members, along with relying on the rights of the Committees’ members and volunteers” *Id.* at 309. If its intervention is denied, the NHRSC’s obvious and distinct rights would suffer and even be sacrificed.

Considerations of timeliness and prejudice do not present any bar to the NHRSC’s intervention. This litigation is in its early stages, as the action was filed in June, and the Defendants have only recently filed a responsive pleading. The NHRSC will abide by the court’s scheduling order and does not intend to request a continuance of the action. SB 418 does not take effect until

January 1, 2023. Since NHSRC's intervention will not delay the case or result in any prejudice to the parties, the court should grant this motion so the NHRSC can defend its rights and interests in this litigation.

IV. Conclusion

Because the relief Plaintiffs seek would directly harm the legal rights and interests of the NHRSC and its registered voters and members, the NHRSC respectfully requests permission to intervene in this action.

Respectfully submitted,

NEW HAMPSHIRE REPUBLICAN STATE
COMMITTEE,
By Its Attorneys.

Date: September 1, 2022

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CERTIFICATE OF SERVICE

I hereby certify that the within pleading is being served electronically through the court's ECF system upon counsel of record and all other parties who have entered electronic service contacts in this case.

Date: September 1, 2022

/s/ Morgan G. Tanafon
Morgan G. Tanafon, Esq.