

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:24cv547**

REPUBLICAN NATIONAL COMMITTEE;
and NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
ALAN HIRSCH, in his official capacity as
Chair of the North Carolina State Board of
Elections; JEFF CARMON, in his official
capacity as Secretary of the North Carolina
State Board of Elections; STACY EGGERS
IV, KEVIN N. LEWIS, and SIOBHAN
O'DUFFY MILLEN, in their official
capacities as members of the North Carolina
State Board of Elections,

Defendants,

and

DEMOCRATIC NATIONAL COMMITTEE,

Intervenor-Defendant.

**MEMORANDUM OF LAW IN SUPPORT
OF AMENDED MOTION TO
INTERVENE AS DEFENDANTS**

Proposed Intervenor North Carolina State Conference of the NAACP (“North Carolina NAACP”), Jackson Sailor Jones, and Bertha Leverette (collectively, “Proposed Intervenor”) seek to protect their unique interests and to ensure that neither they, nor (in the case of North Carolina NAACP) their members, nor any similarly-situated voter be denied their fundamental right to vote or to vote on an equal basis in the upcoming 2024 General Election. Accordingly, Proposed

Intervenors respectfully request intervention as of right, pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure, or in the alternative, move for permissive intervention pursuant to Rule 24(b).¹

INTRODUCTION AND BACKGROUND

Plaintiffs seek to quickly force Defendants to identify and remove approximately 225,000 North Carolinian voters from the state's voter registration rolls. At the time Plaintiffs filed the Complaint, they sought this drastic relief fewer than 65 days before the 2024 presidential election, which is now fewer than 40 days away. Plaintiffs' request, on the eve of the impending General Election, is unprecedented and improper. The action is founded on the unsupported belief that every one of these 225,000 voters is "ineligible" because they allegedly did not include their driver's license number or Social Security number on their voter registration forms when registering to vote. The notion that these voters are "unlawfully" registered to vote and therefore must be purged is patently false. The exclusion of this information from many individuals' voter registration forms is largely due to a simple fact—until December 2023, North Carolina's voter registration forms made this information *optional* rather than *mandatory*. This cannot and does not justify purging individual voters, who would find themselves kicked off of the rolls through no fault of their own.

Proposed Intervenor North Carolina NAACP seeks to intervene on behalf of its members, some of whom are also directly implicated by the present Complaint. Plaintiffs' requested relief would not only deny these members of their right to vote, it would also impair the North Carolina

¹ As set forth in the Amended Motion, this Memorandum of Law amends the Motion to Intervene filed with the Wake County Superior Court on September 4, 2024, before this case was removed to this Court on September 23, 2024, to (1) explain the grounds for intervention under the Federal Rules of Civil Procedure and federal law consistent with Local Rule 5.3(c)(2); and (2) add an additional Proposed Intervenor, Bertha Leverette.

NAACP's core mission, forcing the organization to divert resources from its voter mobilization and election protection efforts to identify, contact, and assist already-registered voters affected by the Complaint in time to participate in the upcoming 2024 General Election. Proposed Individual Intervenors Jackson Sailor Jones and Bertha Leverette are eligible North Carolina voters directly implicated by the present Complaint, by which Plaintiffs' requested relief may well strip them of their right to vote.

The existing Defendants do not adequately represent Proposed Intervenors' interests here. They necessarily represent the interests of the government, which has a wide array of constituents who may not have the same needs as the 225,000 vulnerable voters targeted by Plaintiffs' requested purge. Furthermore, the Democratic National Committee ("DNC"), intervening on behalf of the Democratic Party to defend the specific interests of Democratic voters and candidates, cannot adequately represent Proposed Intervenors' interests. Proposed Intervenors (who include a registered unaffiliated voter) seek to protect their own fundamental right and the right of North Carolina NAACP's members and the voters it has engaged in the political process on a nonpartisan basis, to have their voices heard on Election Day.

In sum, Plaintiffs' assertion that Defendants' actions will "jeopardize the individual right to vote that is guaranteed to every qualified voter in North Carolina," Compl. ¶ 9, is unjustified and clearly false. In fact, it was Plaintiffs, not Defendants, who jeopardized the fundamental right to vote of eligible citizens of this state when they filed a request for *en masse* removal of voters from North Carolina's voter rolls on the eve of the 2024 General Election and mere days before voting began. Eligible North Carolina voters, including Proposed Intervenors Jones and Leverette and members of the North Carolina NAACP, now risk having their registrations canceled and their

right to vote denied or unlawfully subject to casting provisional ballots. For these reasons, Proposed Intervenors also request the Court expedite review of the motion to intervene.

Because Proposed Intervenors satisfy each requirement for intervention as a matter of right under Federal Rule of Civil Procedure 24(a)(2), the Court should grant their motion to intervene. Alternatively, the motion should be granted on a permissive basis under Rule 24(b).

ARGUMENT

I. Proposed Intervenors Are Entitled to Intervene as a Matter of Right.

Proposed Intervenors meet all the requirements under Rule 24(a)(2) of the Federal Rules of Civil Procedure, which requires district courts to grant intervention as of right upon “timely motion,” if the proposed intervenor “can demonstrate (1) an interest in the subject matter of the action; (2) that the protection of this interest would be impaired because of the action; and (3) that the applicant’s interest is not adequately represented by existing parties to the litigation.” *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013) (citing *Teague v. Bakker*, 931 F.2d 259, 260–61 (4th Cir. 1991)). The Fourth Circuit has stated that “liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process.” *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (quotation marks omitted). Proposed Intervenors meet each of Rule 24(a)(2)’s requirements and are thus entitled to intervene in this case.

A. The Motion to Intervene Is Timely.

First, the Motion is timely. In determining the timeliness of a motion to intervene, the trial court must consider “first, how far the underlying suit has progressed; second, the prejudice any resulting delay might cause the other parties; and third, why the movant was tardy in filing its motion.” *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014).

Proposed Intervenors have not delayed in moving to intervene. The Complaint in this action was filed on August 23, 2024, in the North Carolina Superior Court for Wake County. Proposed Intervenors moved to intervene fewer than two weeks later on September 4, 2024. Proposed Intervenors now file this amended motion to intervene just four days after the action was removed on September 23, 2024. To date, no hearings have occurred nor have any briefs on the merits of Plaintiffs' claims been filed. Indeed, as described in further detail below, granting the proposed Motion would not prejudice the existing parties whereas denying the proposed Motion would prejudice Proposed Intervenors' interests.

B. The Disposition of This Case Will Impede the Ability of Proposed Intervenors to Protect Their Fundamental Voting Rights.

Second, Proposed Intervenors have a direct interest in the subject matter of this action. An intervenor's interest is sufficient for intervention purposes if the proposed intervenor "stand[s] to gain or lose by the direct legal operation of the district court's judgment[.]" *Teague*, 931 F.2d at 261. Proposed Intervenors Jones and Leverette and those members of North Carolina NAACP who purportedly lack a driver's license or Social Security number in their voter files are directly implicated by the present Complaint.

North Carolina NAACP has 70 adult branches and numerous student and youth branches composed of well over 10,000 members across the State. North Carolina NAACP engages in educational advocacy to ensure that communities of color and other marginalized communities throughout North Carolina can exercise the right to vote. This advocacy includes registering eligible individuals to vote, engaging in election protection, and mobilizing voters to the polls, such as through its Souls-to-the-Polls events hosted by branches of the State Conference. In addition, North Carolina NAACP conducts voter education events and educational campaigns intended to inform voters about the requirements to register and vote, as well as any legal changes

that might affect how, where, or when they are able to vote. The list of voters identified by Plaintiffs includes current North Carolina NAACP members. These members were not aware that their names were identified by Plaintiffs and alleged to be unlawfully registered to vote and thus subject to immediate removal from the rolls. Through no fault of their own, these voters are at risk of disenfranchisement. North Carolina NAACP has a direct interest in protecting the interests of its members who are predominantly Black. Upon information and belief, Black voters comprise at least 22 percent of those registrants on the list who have demographic information included in their registration file, and Black voters are disproportionately more likely than white voters to appear on the list. **Exhibit B** (Declaration of Deborah Dicks Maxwell) ¶ 12. Thus, Black voters are more likely than voters of any other race to be impacted by the disposition of this action. Consequently, North Carolina NAACP has a strong interest in protecting the right to vote of Black voters and especially of its members.

Jackson Sailor Jones has voted in North Carolina for more than three decades. **Exhibit C** (Declaration of Jackson Sailor Jones) ¶ 4. He re-registered to vote on July 8, 2022, after changing residences. *Id.* Despite presenting his driver's license when voting in the 2024 Primary Election and having provided his Social Security number to election officials in the past, Mr. Jones appears as not having either number in the list generated in response to Carol Snow's Public Records Request 24-16. *Id.* ¶ 9.

Bertha Leverette has been a registered voter in North Carolina since 1972 and last updated her registration in Granville County, North Carolina in 2016. **Exhibit D** (Declaration of Bertha Leverette) ¶ 4. Despite presenting her driver's license when voting in the 2024 Primary Election and having provided her Social Security number to election officials in the past, Ms. Leverette

appears as not having either number in the list generated in response to Carol Snow's Public Records Request 24-16. *Id.* ¶¶ 6–9.

Furthermore, Plaintiffs have not plead any facts to support the allegation that 225,000 North Carolina voters are actually ineligible to vote. By all accounts, these voters are lawfully registered and could not have voted in past elections without furnishing proof of identity in some way. Moreover, in addition to this lack of evidentiary support, Plaintiffs' requested relief is precluded under both the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (Oct. 29, 2002) (codified at 52 U.S.C. §§ 20901-21145) ("HAVA"), and the National Voter Registration Act, Pub. L. No. 103-31, 107 Stat. 77 (May 20, 1993) (codified as 52 U.S.C. §§ 20501-20511) ("NVRA"). There is no appeal of HAVA determinations under state law per N.C.G.S. § 163-91 and subsequent State Board rulemaking; there is no private right of action to enforce the provisions of HAVA on which Plaintiffs rely; and the relief sought would violate other federal protections and state law. *See Exhibit A* ¶¶ 33–40.

If Plaintiffs prevail, then Proposed Intervenors will have their right to vote and their members' right to vote stripped away. *See League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 229, 247 (4th Cir. 2014) (explaining that "[t]he right to vote is fundamental" and that "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury"); U.S. Const. amend. XV; N.C. Const. art. I, §§ 9, 10, 11, 19. Indeed, "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see also Textfi Indus., Inc. v. City of Fayetteville*, 301 N.C. 1, 13, 269 S.E.2d 142 (N.C. 1980) ("[t]he right to vote is the right to participate in the decision-making process of government" among all persons "sharing an identity with the broader humane, economic, ideological, and

political concerns of the human body politic”). And, recognizing the importance of the right to vote, the Supreme Court has made clear “[i]n decision after decision” that “a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (collecting cases). Proposed Intervenors’ ability to exercise their fundamental rights to vote hinges on the disposition of this action, and thus they meet the second requirement for intervention by right.

C. Defendants Do Not Adequately Represent the Proposed Intervenors’ Interests.

Third, the existing parties do not adequately represent the interests of Proposed Intervenors. A prospective intervenor seeking intervention as a matter of right under Rule 24(a)(2) must show that “the applicant’s interest is not adequately represented by existing parties to the litigation.” *Stuart*, 706 F.3d at 349; *see also N. Carolina All. for Retired Americans v. Hirsch*, No. 23-CV-837, 2023 WL 9422596, at *2 (M.D.N.C. Dec. 15, 2023) (granting intervention by right and highlighting that “[t]he burden of making this showing for Proposed Intervenors should be treated as minimal”) (citing *Trbovich v. Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (internal quotation marks omitted), *report and recommendation adopted*, No. 23-CV-837, 2024 WL 308513 (M.D.N.C. Jan. 26, 2024).

Where a proposed intervenor holds a similar ultimate objective as an existing party in a suit and where that existing party is a governmental agency, the “putative intervenor must mount a strong showing of inadequacy.” *Stuart*, 706 F.3d at 352. The Proposed Intervenors are able to make that showing here.

By law, Defendants’ interests are to protect the public welfare at large and to fulfill the supervisory powers and duties required under North Carolina law. *See Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179, 197 (2022) (reasoning that “North Carolina has authorized

different agents to defend its practical interests precisely because, thanks to how it has structured its government, each may be expected to vindicate different points of view on the State's behalf"); *Letendre v. Currituck Cnty.*, 261 N.C. App. 537, 2018 WL4440587, at *4 (N.C. Ct. App. Sept. 18, 2018) (unpublished) (noting that public officials' "sole litigation interests are to protect the public welfare and the interests of [the] general citizenry") (internal quotation marks omitted), *writ denied, temporary stay dissolved*, 372 N.C. 59, 822 S.E.2d 638 (N.C. 2019) (mem.); N.C.G.S. § 163-22 (setting forth the "[p]owers and duties of the State Board of Elections" including general supervision over elections, advising the county board of elections as to the proper methods of conducting elections, determining the form and content of election ballots, among others). Thus, the Board may assert its own interests, but it cannot assert the interests of individual voters.

By contrast, Proposed Individual Intervenors Jones and Leverette seek to protect their individual rights to vote in the upcoming election. Proposed Intervenor North Carolina NAACP seeks to protect its members, who are predominantly Black, from being removed from the voter rolls prior to the General Election, as well as its ability to fulfill organizational objectives through voter engagement, which will be threatened by the relief requested by Plaintiffs. These unique interests are distinct from those advanced by Defendants or the DNC.

Furthermore, Proposed Intervenors' interests in this litigation are distinct from Defendants', as Proposed Intervenors have a personal and unique interest in the outcome of this litigation, which directly implicates their and their members' right to vote. Courts have allowed voters to intervene in cases implicating their right to vote, even when they are on the same side as a government entity. *See, e.g., Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 570 n.2, 571 (6th Cir. 2004) (per curiam) (noting that voters were granted permissive intervention by the district court shortly before hearing on motion for preliminary injunction); *League of Women*

Voters of Ohio v. Blackwell, 235 F.R.D. 388, 389-90 (N.D. Ohio 2005) (permitting individual voter to intervene in action challenging problems with electronic voting machines). Here, the Proposed Intervenors seek to intervene for the purpose of challenging Plaintiffs' claims and to ensure that no unreasonable measures are adopted that could pose an elevated risk of removing or impeding their right to vote and that of the members of the North Carolina NAACP. These interests are sufficiently distinct from those of election officials, who have a larger obligation to all constituents that may not align with the vulnerable 225,000 voters whose voting rights are at stake, to warrant intervention by those who could be impacted by any relief that is ordered in this Court.

Nor are the interests asserted by the DNC sufficient to cover those of Proposed Intervenors here. The DNC intervenes on behalf of the Democratic Party and seeks to protect the specific interests of Democratic voters and candidates. Conversely, Proposed Intervenors represent the interests of not only themselves, but all potentially impacted voters regardless of their partisan affiliation. North Carolina NAACP has another unique interest in its focus on the harms to Black voters who make up a disproportionate share of the list that forms the basis of Plaintiffs' allegations. By intervening in this case, it seeks to mitigate any disproportionate harm to Black voters who may find themselves purged from the voter rolls depending on the disposition of this lawsuit. It is crucial that this Court hear directly from those North Carolinians who are eligible voters in this state and who would be directly threatened by the instant lawsuit. It is at best unclear whether, without such intervention, the Court would have opportunity to hear directly from voters in this matter.

II. In the Alternative, the Court Should Grant Permissive Intervention.

Alternatively, Proposed Intervenors and the Proposed Class also meet the requirements for permissive intervention pursuant to Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure. The Court may grant permissive intervention where an applicant shows that it 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). As discussed above, Proposed Intervenors’ defenses—that Plaintiffs’ claims are unconstitutional, invalid, and violate the rights of voters—present clear questions of law and fact in common with the pending action. And because Proposed Intervenors are representative of the voters who stand to be most harmed by the relief Plaintiffs seek, they will aid the Court in developing a full record of the relevant considerations—including the impact of this litigation on those 225,000 voters whose rights it threatens. Proposed Intervenors stand to be directly harmed if Plaintiffs’ requested relief is granted. Those realities should be at the forefront of the Court’s consideration as to whether to grant Plaintiffs’ requested relief.

Finally, “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). This intervention will neither unduly delay nor prejudice any other parties’ rights given the common questions of law and fact and because Proposed Intervenors initially sought intervention shortly after the case was filed and now seek it shortly after the case has been removed, before any dispositive motion practice or Court orders establishing briefing deadlines and setting hearing dates.

Proposed Intervenors also represent that they are willing and able to meet any Scheduling Order set forth by this Court in this matter.

CONCLUSION

For these reasons, Proposed Intervenors respectfully request that the Court grant its motion to intervene as a matter of right under Federal Rule of Civil Procedure 24(a), or in the alternative, permit it to intervene under Federal Rule of Civil Procedure 24(b).

Respectfully submitted this 27th day of September 2024.

By: /s/ Hilary Harris Klein

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CERTIFICATE OF SERVICE

I hereby certify that September 27, 2024, I electronically filed the foregoing **MEMORANDUM IN SUPPORT OF AMENDED MOTION TO INTERVENE AS DEFENDANTS** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Defendants and Intervenor-Defendant Republican National Committee. I also hereby certify that I have transmitted via mail and electronic mail the document to the following non-CM/ECF participants:

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