Fulton County Superior Court
EFILEDMH
Date: 10/2/2024 11:00 AM
Che Alexander, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ETERNAL VIGILANCE ACTION, INC., SCOT TURNER, and JAMES HALL, Plaintiffs, v. STATE OF GEORGIA, Defendant,	Civil Case No. 24CV011558

UNOPPOSED EXPEDITED MOTION TO INTERVENE BY THE REPUBLICAN NATIONAL COMMITTEE AND GEORGIA REPUBLICAN PARTY

RETRIEVED FROM DEMOCRACYDOCKET.COM

Thomas R. McCarthy*
Gilbert C. Dickey*
Conor D. Woodfin*
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Ste. 700
Arlington, VA 22209

Alex B. Kaufman
Georgia Bar No. 13607
CHALMERS, ADAMS, BACKER & KAUFMAN, LLC
11770 Haynes Bridge Road #205-219
Alpharetta, GA 30009-1968

William Bradley Carver, Sr.
Georgia Bar No. 115529
HALL BOOTH SMITH, P.C.
191 Peachtree Street NE, Ste. 2900
Atlanta, GA 30303

Baxter D. Drennon
Georgia Bar No. 241446
HALL BOOTH SMITH, P.C.
200 River Market Avenue, Ste. 500
Little Rock, AR 72201

**pro hac vice* forthcoming

INTRODUCTION

The Republican National Committee and the Georgia Republican Party, Inc. move to intervene as Defendants pursuant to O.C.G.A. §9-11-24. No party objects to intervention by the RNC and GA GOP in this matter. Given the expedited schedule in this matter and the absence of objection, the Proposed Intervenors request expedited consideration of the intervention motion.

Plaintiffs filed suit to challenge the constitutionality of every single rule promulgated by the State Election Board less than a month before voting starts in the General Election. Two of the rules that Plaintiffs challenge in this case are the subject of another lawsuit, *Abhiraman v. State Election Board*. *Cf.* Pls.' Compl. at 23-27 *with* Petition, *Abhiraman v. State Election Board*, No. 24CV010786, at 34-38 (Fulton Cnty. Super. Ct. Aug. 26, 2024). In *Abhiraman*, this Court has already approved intervention by both the RNC and GA GOP. *See* Preliminary Scheduling Order, *Abhiraman*, No. 24CV010786, at 1-2. In its order approving intervention, the Court recognized that political parties have "additional interests" that are not protected by the "apolitical' involvement of the State. *Id.* at 2. And applying nearly identical intervention standards, the Northern District of Georgia has consistently allowed political parties to intervene to protect their interest in the rules affecting Georgia's elections.[1]

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] *E.g.*, *Int'l All. of Theater Stage Emps. Local 927 v. Lindsey*, Doc. 84, No. 1:23-cv-4929 (N.D. Ga. May 3, 2024) (granting intervention to the RNC and GA GOP); *United States v. Georgia*, Minute Order, No. 1:21-cv-2575 (N.D. Ga. July 12, 2021) (granting intervention to the RNC, NRSC, NRCC, and GA GOP); *Coal. for Good Governance v. Raffensperger*, Minute Order, No. 1:21-cv-2070 (N.D. Ga. June 21, 2021); *New Ga. Project v. Raffensperger*, Doc. 39, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021); *Concerned Black Clergy of Metro. Atlanta v. Raffensperger*, Minute Order, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021); *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, Minute Order, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021); *Ga. State Conf. of NAACP v. Raffensperger*, Doc. 40, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021); *Vote Am. v. Raffensperger*, Doc. 50, No. 1:21-cv-1390 (N.D. Ga.

This Court should grant the RNC and GA GOP's motion to intervene in this case for the same reason it did in *Abhiraman*. The RNC and GA GOP have the same crucial interest at stake that the State of Georgia does not: "the election of their candidates and advancement of their party platform, both of which are arguably affected by the implementation (or invalidation)" of the challenged rules. *Id.* Alternatively, this Court should grant the RNC and GA GOP permissive intervention because their defense and the main action share common questions of law and fact, and intervention would not unduly burden any party.

The RNC and GA GOP attach to this motion their Answer to the Amended Complaint. The Answer asserts the defenses for which intervention is sought pursuant to O.C.G.A. §9-11-24(c), including that the Amended Complaint fails to state a claim upon which relief can be granted and should therefore be dismissed under O.C.G.A §9-11-12(b)(6), and that Plaintiffs' requested relief is barred this close to an election, *see Purcell v. Gonzalez*, 549 U.S. 1 (2006).

RETRIEVED FROM DEMOCRACYDOCKET.COM

ARGUMENT

I. Applicants have an unconditional right to intervene.

The RNC and GA GOP are entitled to intervene as a matter of right as they can make a "timely" showing of an "interest" that is subject to "potential impairment" and currently "inadequate[ly] represent[ed]" by the parties to this case. *DeKalb Cnty. v. Post Properties, Inc.*, 245 Ga. 214, 219 (1980). When a prospective party meets these

June 4, 2021); *Asian Ams. Advancing Justice-Atlanta v. Kemp*, Doc. 39, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021); *Wood v. Raffensperger*, Doc. 14, No. 1:20-cv-5155 (N.D. Ga. Dec. 28, 2020) (order granting intervention to the Democratic Party of Georgia and the DSCC); *Black Voters Matter Fund v. Raffensperger*, Doc. 42, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020).

requirements, the court must permit intervention. O.C.G.A. §9-11-24(a). The RNC and GA GOP satisfy all these requirements for intervention by right.

A. Intervention is timely.

The RNC and GA GOP have moved to intervene in a speedy manner. Plaintiffs filed their lawsuit just over two weeks ago on September 11, 2024. This Court entered an initial scheduling order only yesterday, and that scheduling order directed that Plaintiffs had until tomorrow to complete service on the State of Georgia. "[W]hether a motion to intervene is timely is a decision entrusted to the sound discretion of the trial court." *AC Corp. v. Myree*, 221 Ga. App. 513, 515 (1996). But Georgia courts have found much later motions than this one to be timely. *See e.g., Liberty Mut. Fire Ins. v. Quiroga-Saenz*, 343 Ga. App. 494, 499 (2017) (intervention timely "a month after hiring counsel to move to intervene"); *Stephens v. McGarrity*, 290 Ga. App. 755, 758 (2008) (intervention timely three weeks after learning of a proposed settlement in the case). Intervention may be allowed even "after final judgment." *Sta-Power Indus., Inc. v. Avant*, 134 Ga. App. 952, 959 (1975) (intervention timely almost five months after judgment). Therefore, this motion, filed a mere sixteen days after Plaintiffs' complaint, is timely.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Further, intervention by the RNC and GA GOP will not prejudice any party. *AC Corp.*, 221 Ga. App. at 515. This litigation is just getting started. No party has filed any briefs or dispositive motions, Defendants have not even filed an answer or motion to dismiss, and this Court has not issued any substantive orders. This Court recently issued a scheduling order yesterday, and he RNC and GA GOP will comply with the deadlines in that order and all deadlines established by the Court for this case, will work to prevent duplicative briefing, and will coordinate with the parties on discovery. If the RNC and GA GOP are not allowed to intervene, however, their interests may be irreparably

harmed by an order invalidating all election rules approved by the State Election Board undermining the integrity of Georgia's elections and disrupting the ability of Republican candidates to effectively campaign. There are no extraordinary circumstances. Applicants are filing at the earliest possible opportunity. The motion is timely.

B. Applicants have unique interests in this case.

The RNC and GA GOP have three unique and substantial interests in this case that are not currently represented: (1) the right of their members to vote in a fair and orderly election process that is maintained with integrity, (2) the advancement of their overall electoral prospects, and (3) the diversion of limited resources to educate party members on the challenged election procedures. Such interests are routinely found to constitute significant protectable interests when asserted by political parties seeking to intervene in challenges to election rules. *See, e.g.*, *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586-87 (5th Cir. 2006); *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023); *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007); *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001).

RETRIEVED FROM DEMOCRACYDOCKET.COM

The RNC and GA GOP have a "direct and substantial interest in the proceedings" of this case because this case "affect[s]" their "ability to participate in and maintain the integrity of the election process in [Georgia]." *La Union del Pueblo Entero*, 29 F.4th at 306. Rules like the ones Plaintiffs challenge here protect "the integrity of [the] election process," *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and the "orderly administration" of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008). Indeed, voters are more likely to vote and to trust the outcome of elections when the provisions of the administrative code that provides order to a state's election

system are not dumped via judicial order in the final days preceding the election, as Plaintiffs request.

Further, Applicants have an interest in this case because it concerns rules that will affect the overall electoral prospects of Republican candidates. As the *Abhiraman* Court recognized, the RNC and the GA GOP "undoubtedly" have "an additional interest at stake," namely, the "election of their candidates and advancement of their party platform, both of which are arguably affected by the implementation (or invalidation) of the two challenged rules." *See* Preliminary Scheduling Order, *Abhiraman*, No. 24CV010786, at 2. In *Abhiraman*, the unique interest of Applicants in their overall electoral prospects justified intervention when *just two rules* promulgated by the State Election Board were being called into question. *Id.* In this case, Plaintiffs challenge the SEB's authority to issue any rules. Pls.' Compl. ¶¶23, 68. Therefore, the RNC and GA GOP's interest is even greater here than in *Abhiraman* where intervention was permitted.

If Plaintiffs were to succeed on their claims, Applicants would consequently have to devote substantial resources to assisting their members with guidance concerning everything from poll-watching to absentee voting absent the guidance provided by the rules approved by the State Election Board. Therefore, Plaintiffs' claims raise substantial resource interests of Applicants further justifying intervention. *See, e.g.*, *Crawford*, 472 F.3d at 951 (concluding that election law reform that "compel[s] the party to devote resources" justifies intervention of that party), *aff'd*, 553 U.S. 181 (2008); *see also Issa*, 2020 WL 3074351, at *3 (political party diverting resources to educating members on voting-by-mail system rule change justifies intervention).

RETRIEVED FROM DEMOCRACYDOCKET.COM

C. Resolution of this case will potentially impair Applicants' interests.

Proceeding without the RNC and GA GOP "may as a practical matter impair or impede [Applicants'] ability to protect [their] interest." O.C.G.A. §9-11-24(a)(2). To prove potential impairment, the RNC and GA GOP "need only show that if they cannot intervene, there is a possibility that their interest could be impaired or impeded." *La Union del Pueblo Entero*, 29 F.4th at 307 (interpreting equivalent federal standard). This is easily accomplished. Plaintiffs' request for relief, if partially or fully granted, would "change the entire election landscape for those participating" in the upcoming election. *Id.* It would "change what [Applicants] must do to prepare for upcoming elections." *Id.* If Plaintiffs get their way, Applicants would no longer be able to rely on the guidance of rules promulgated by the State Election Board. And they will be forced to expend "resources to educate their members on the shifting situation in the lead-up to the 202[4] election." *Id.* Each of these potential practical impairments standing alone are enough to justify intervention.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Under Georgia law, the potential invalidation of two amendments approved by the State Election Board concerning election certification is enough to create a practical impairment to justify intervention by the RNC and GA GOP. *See* Preliminary Scheduling Order, *Abhiraman*, No. 24CV010786, at 2. Here, Plaintiffs attempt to invalidate dozens of rules approved by the State Election Board concerning the upcoming election. Pls.' Compl. at 23, 26. Plaintiffs' demands, if granted, would create confusion for Republican candidates running for federal or state election in Georgia. The State Election Board's rules concern every aspect of the upcoming election from what ballots look like to poll watching to absentee voting to voting machines to election certification. *See generally* Ga. Comp. R. & Regs. 183-1-1-.01–183-2-13-.02. Consequently, the potential impairment to the RNC and GA GOP's interests in this case is far greater than in

Abhiraman. Plaintiffs' complaint concerns the validity of far more election rules. The potential for confusion that a ruling in Plaintiffs favor would precipitate upon Republican candidates justifies granting intervention.

Further, because the upcoming election will only happen once, failing to allow the RNC and GA GOP to intervene now could result in irreversible damage to their interests. Applicants are "not assured of an opportunity" to defend their interests "in any future action" if this Court issues a substantive ruling before the election. *Liberty Mut. Fire Ins.*, 343 Ga. App. at 500. Given the timing of Plaintiffs' challenge, this Court's decision could very well be the last word on the State Election Board's rules governing the next election. Therefore, intervention is justified as this case has the potential to impair numerous unique interests of the RNC and GA GOP, who have a personal stake "in the result of the pending litigation." *AC Corp.*, 221 Ga. App. at 515.

RETRIEVED FROM DEMOCRACYDOCKET.COM

D. Applicants are not adequately represented by the State of Georgia.

No current party to this case adequately represents Applicants' interest in promoting Republican electoral outcomes. "The issue of inadequacy of representation presents a question of fact for the court[.]" *Buckler v. DeKalb Cnty.*, 290 Ga. App. 190, 194 (2008) The Defendant in this case is the State of Georgia. Pls.' Compl. ¶26. The *Abhiraman* Court recognized that the State Election Board does not adequately represent the interests of the RNC or GA GOP in a case concerning the validity of rules approved by that Board. *See* Preliminary Scheduling Order, *Abhiraman*, No. 24CV010786, at 2. This is because "the State Election Board, is a theoretically apolitical State agency tasked with ensuring that Georgia's elections are fair and their results accurate. The RNC and the GA GOP undoubtedly share those aims but have an additional interest at stake that the State Election Board does not: the election of their candidates" and "while the

Attorney General of Georgia is an elected official with the same party affiliation as the intervenors, he is not their lawyer but rather the lawyer for all Georgians in this litigation." *Id.* This reasoning should apply with full force to the present case.

The RNC and the GA GOP need their own representation here just as in *Abhiraman*. While the State's interests are defined by its apolitical duties, Applicants' interests are inherently political and lie in their members, voters, and candidates. While Georgia courts sometimes "assume[] that the intervenor's interests are adequately represented" when "the interest of the intervenor is identical to that of a governmental body or officer," *DeKalb Cnty*, 245 Ga. at 219, by its own terms that test "applies only when the interests of the governmental body and the [intervenor] are identical," *Cleland v. Gwinnett Cnty.*, 226 Ga. App. 636, 638 (1997). Here, Applicants' interests are "partisan—if for no other reason than that they are brought on behalf of a partisan group, representing its members to achieve favorable outcomes. Neither the State nor its officials can vindicate such an interest while acting in good faith." *La Union del Pueblo Entero*, 29 F.4th at 309. Therefore, Applicants are inadequately represented by the State of Georgia and this Court should grant the motion to intervene by right.

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. Alternatively, Applicants are entitled to permissive intervention.

Regardless of whether the Court finds that the requirements of intervention by right have been met, the RNC and GA GOP satisfy the statutory requirements for permissive intervention. Their "claim or defense and the main action have a question of law or fact in common." O.C.G.A. §9-11-24(b)(2). And their intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* These requirements only set up a "low bar." *New England Sports Network v. Alley Interactive*, No. 22-CV-10024-ADB, 2023 WL 2140474, at *2 n.3 (D. Mass. Feb. 21, 2023)

(cleaned up) (interpreting equivalent federal standard). "[W]hether permissive intervention should be granted is a question addressed to the sound discretion of the trial court." *Allgood v. Georgia Marble Co.*, 239 Ga. 858, 859 (1977). If this Court finds permissive intervention is appropriate, "the court need not address whether [Applicants] may intervene as a matter of right." *New Ga. Project v. Raffensperger*, 2021 WL 2450647, at *2 n.3 (N.D. Ga. June 4, 2021).

The requirements for permissive intervention are met here. Applicants will raise defenses that share common questions with the parties' claims and defenses. Plaintiffs allege that the State Election Board "lacks the constitutional authority to promulgate any rules" and that consequently, "[a]ll" of the Board's rules are null and void. Pls.' Compl. at 23. Applicants deny each of these allegations. Further, Applicants "share a number of common defenses with Defendants" and "these defenses ultimately turn on the same legal issue — the constitutional validity of the [challenged rules]." *Greene v. Raffensperger*, No. 22-CV-1294-AT, 2022 WL 1045967, at *4 (N.D. Ga. Apr. 7, 2022). Thus, Applicants and Defendants have questions of law and fact in common.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Applicants' involvement will also not delay the adjudication of this case or prejudice any party. Applicants filed this motion just over two weeks after Plaintiffs submitted their complaint. This Court has just issued a scheduling order, and Applicants will abide by the deadlines set in that order. *Contra. Cawthorn v. Circosta*, No. 5:22-CV-00050-M, 2022 WL 511027, at * (E.D.N.C. Feb. 21, 2022) (no permissive intervention where "briefing on the motion by the parties is now complete"). There is no undue delay or prejudice where proposed intervenors file their motion within "two weeks after the complaints were filed" in an election case. *Greene*, 2022 WL 1045967, at *4 (internal citation omitted); *see also Ga. Aquarium, Inc. v. Pritzker*, 309 F.R.D. 680, 691 (N.D. Ga.

2014) (when "litigation is in a relatively nascent stage" there is no undue delay or prejudice).

Federal courts in Georgia have held that these conditions justify permissive intervention in similar election disputes. *E.g.*, *New Ga. Project v. Raffensperger*, 2021 WL 2450647, at *2 (N.D. Ga. June 4, 2021) (granting intervention to the same Movants here); *Greene v. Raffensperger*, 2022 WL 1045967, at *5 (N.D. Ga. Apr. 7, 2022). That's often the simplest path, since "the Court need not determine whether [Movants] are entitled to intervene as a matter of right under the more stringent standard" when Movants "meet the standard for permissive intervention under Rule 24(b)." *Ga. Aquarium*, 309 F.R.D. at 690. This Court should thus grant permissive intervention. Therefore, this Court should grant permissive intervention.

CONCLUSION

For these reasons, the Court should grant the RNC and GA GOP's motion to intervene as a matter of right under O.C.G.A. §9-11-24(a) or, alternatively, for permissive intervention under O.C.G.A. §9-11-24(b).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Respectfully submitted this 27th day of September, 2024.

/s/ *William Bradley Carver, Sr.*

Thomas R. McCarthy*
Gilbert C. Dickey*
Conor D. Woodfin*
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard, Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com

Alex B. Kaufman
Georgia Bar No. 13607
CHALMERS, ADAMS, BACKER & KAUFMAN, LLC
11770 Haynes Bridge Road #205-219
Alpharetta, GA 30009-1968
(404) 964-5587
AKaufman@chalmersadams.com

William Bradley Carver, Sr.
Georgia Bar No. 115529
HALL BOOTH SMITH, P.C.
191 Peachtree Street NE, Ste. 2900
Atlanta, GA 30303
(404) 954-5000
BCarver@hallboothsmith.com

Baxter D. Drennon
Georgia Bar No. 241446
HALL BOOTH SMITH, P.C.
200 River Market Avenue, Ste. 500
Little Rock, AR 72201
(501) 319-6996
BDrennon@hallboothsmith.com

**pro hac vice* forthcoming

Counsel for Applicants

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2024, a true and correct copy of the foregoing **MOTION TO INTERVENE** was electronically filed with the Court using the Court's eFileGA electronic filing system, which will automatically send an email notification of such filing to all attorneys of record, and was additionally served by emailing a copy to the currently known counsel of named parties and proposed intervenors as listed below:

Christopher S. Anulewicz
Georgia Bar No. 020914
canulewicz@bradley.com

Jonathan R. DeLuca
Georgia Bar No. 228413
jdeluca@bradley.com

Wayne R. Beckermann
Georgia Bar No. 747995
wbeckermann@bradley.com

Marc James Ayers
Pro hac to be applied for
mayers@bradley.com

BRADLEY ARANT BOULT CUMMINGS LLP

Counsel for Plaintiffs

Wright Banks
Chief Deputy of the Office of the Attorney General
wbanks@law.ga.gov

Kristyn Long
Executive Counsel in the Office of Governor Brian Kemp
kristyn.long@georgia.gov

Elizabeth Young
Senior Assistant Attorney General
eyoung@law.ga.gov

Attorneys for Defendant

RETRIEVED FROM DEMOCRACYDOCKET.COM

/s/ William Bradley Carver, Sr.