IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER,

Plaintiffs,

vs.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendants,

Civil Action No. 20-cv-457

PLAINTIFFS' OPPOSITION TO PROPOSED INTERVENORS REPUBLICAN COMMITTEES' MOTION TO INTERVENE

PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES,

Defendant-Intervenors.

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INTRODUCTION

Plaintiffs brought this action to mitigate the impact of the COVID-19 crisis on North Carolina's upcoming general election and safeguard the constitutional and voting rights of *all* North Carolina voters. The Proposed Intervenors the Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, and North Carolina Republican Party (the "Republican Committees") claim to assert an interest in "fair, secure, and orderly administration of the November 3, 2020 general election" Mem. in Support of the Republican Committees' Mot. to Intervene, ECF No. 34 at 2, but this is no different than a general interest in the enforcement of North Carolina's laws, which is adequately protected by the current Defendants and Defendant-Intervenors. The only specific interest asserted by the Republican Committees is their assertion that this lawsuit "threatens the Republican Committees' interest in maintaining the lawfully enacted structure of the upcoming election as they seek *to support Republican candidates*." *Id.* (emphasis added). But this partisan concern is not a significant protectable interest in this matter, which concerns election procedures that affect all candidates

equally. The Republican Committees make unsubstantiated claims of how they will be impacted by the changes in election law sought by Plaintiffs. Furthermore, the Republican Committees have admitted their positions are "in harmony" with existing parties, and have failed to show how their interests would be impaired if intervention is denied. Finally, their intervention would cause undue delay and prejudice to Plaintiffs. Accordingly, the motion to intervene should be denied.

FACTUAL BACKGROUND

Plaintiffs filed the instant action on May 22, 2020, alleging that certain provisions of North Carolina's election code present an undue burden to the right to vote in violation of the First and Fourteenth Amendments, and further additional provisions of the U.S. Constitution and Federal law. Compl., ECF No. 1. Plaintiffs amended their complaint and filed a motion for Preliminary Injunction on June 5, 2020, ECF Nos. 8, 9, for which the Court granted expedited consideration. June 11, 2020, Order, ECF No. 29. On June 12, 2020, the Court granted permissive intervention to Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his

official capacity as Speaker of the North Carolina House of Representatives, on behalf of the North Carolina General Assembly (the "NCGA Intervenors"). June 12, 2020, Order, ECF No. 26.

In the motion before the Court, Republican Committees seek to intervene in this case as of right or, in the alternative, with permission from the Court, pursuant to Rule 24 of the Federal Rules of Civil Procedure. Republican Committees' Mot. to Intervene, ECF No. 32. In support of their motion, the Republican Committees have submitted four declarations from representatives of each organization, all of which contend they will be "supporting" Republican candidates in the upcoming election and therefore have a "strong interest" in protecting "the integrity, fairness and security of election procedures throughout the United States, including in North Carolina, and in insuring that properly enacted statutes are respected, enforced, and followed." ECF No. 34-1 at ¶ 7 ("White Decl."); ECF No. 34-2 at ¶ 7 ("Dollar Decl."); ECF No. 34-3 at ¶ 7 ("Clark Decl."); ECF No. 34-4 at ¶ 7 ("Thomas Decl.").

None of these declarations state how the relief sought by Plaintiffs would cause detriment to the efforts of the

Republican Committees to support Republican candidates or further Republican interests. They also do not describe the Republican Committees' efforts to "support" candidates or state these efforts would change if Plaintiffs were to prevail in this matter.

ARGUMENT

I. The Republican Committees are not entitled to intervene as of right.

The Republican Committees do not satisfy the requirements to intervene as of right in this matter. A party seeking to intervene under Federal Rule of Civil Procedure 24(a) must demonstrate "(1) timeliness, (2) an interest in the litigation, (3) a risk that the interest will be impaired absent intervention, and (4) inadequate representation of the interest by the existing parties." *Scott v. Bond*, 734 F. App'x 188, 191 (4th Cir. 2018). Here, the Republican Committees have not substantiated an identifiable interest that would be impaired absent intervention and that would be inadequately represented by the current Defendants and the existing NCGA Intervenors.

a. The Republican Committees have not shown a significantly protectable interest that would be inadequately represented by the current parties.

A proposed intervenor must hold a "significantly protectable interest" in the litigation it moves to join. *JLS, Inc. v. Pub. Serv. Comm'n of W.Va.*, 321 F. App'x 286, 289 (4th Cir. 2009) (quoting *Teague v. Bakker*, 931 F.2d 259 (4th Cir. 1991)). This exists when an intervenor "stand[s] to gain or lose by the direct legal operation" of the judgment in the case. *Teague*, 931 F.2d at 261.

Here, the Republican Committees assert an interest in the laws challenged by Plaintiffs because "[i]f granted Plaintiffs' request for judicial modification of the Voting Laws will interfere with the Republican Committees' interest by upsetting its current plans for voter outreach, and by jeopardizing the ability of the State to run a fair, secure, and orderly election." ECF No. 34 at 5–6. These stated interests are insufficient for several reasons.

First, the Republican Committees provide no information on how their current plans might change and, as noted above, there is no support in the Republican Committees' submitted declarations for the contention that such plans would be "upset"–indeed, their declarations do not describe any such

plans at all. The Republican Committees assert that in their brief they "will be required to spend substantial resources informing their Republican voters of changes in the law," ECF No. 34 at 6, but make no such similar claims in any declarations and, further, provide no explanation of how the relief Plaintiffs seek—which reduce barriers to voting-will require any expenditure of resources that is greater or different than what the Republican Committees were already intended to spend. As "[i]t is well-established that statements in a brief are not evidence," *N.C. Democratic Party v. Berger*, No. 1:17-CV-1113, 2018 WL 7982918, at *3 n.3 (M.D.N.C. Feb. 7, 2018) (collecting cases), the Republican Committees have failed to show this purported interest in "current plans" to be a significantly protectable interest.[1]

[1] The Republican Committees argue that "voters will be confused by the changes," citing *Purcell v. Gonzalez*, but notably omit that the Court in *Purcell* was primarily concerned about the conflicting natures of the district and appellate courts' orders as it applied to voter confusion. *See* 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion"). There is no indication that the requested changes in voting procedures will cause North Carolina voters so much confusion that the "[n]ational party committees, in turn, will be required to spend substantial resources," especially in light of the new legislation enacted less than 2 weeks prior.

Second, even construing their interest in "current plans" as part of a broader interest in supporting Republican candidates for office, the Republican Committees fail in both their declarations and supporting brief to articulate how Republican candidates would be harmed by Plaintiffs' requested relief. Such a presumption would in fact be illogical: Plaintiffs' requested relief aims to ensure that *all* North Carolina voters (including voters supporting Republican candidates) are able to safely, securely, and fairly vote in the upcoming election, and further to allow organizations to assist voters to do so.

Third, the Republican Committees' sweeping statement that "[c]ourts generally recognize that political parties and voters have an interest in litigation that might impose changes in voting procedures affecting candidates in a particular party, as well [as] the voters who are associated with that party," ECF No. 33 at 6, does not support their claim that they have a significant protectable interest warranting intervention by right here. In the lone case cited in support of this proposition, *Ohio Democratic Party v. Blackwell*, No. 2:04-CV-1055, 2005 WL 8162665, at *1 (S.D. Ohio Aug. 26, 2005), the court granted the Ohio Republican

Party's *unopposed* motion for *permissive* intervention in a case brought by a *rival political party* to change the state's election code. This hardly supports that political parties have a significant protectable interest supporting intervention *by right* in a matter brought by *non-partisan plaintiffs* to ensure all voters, regardless of political affiliation, are given the right to vote, as is the case here.[2]

By contrast, other courts have explained in the analogous context of standing that the cognizable interest that candidates possess is not an interest in preventing *any* change in the competitive political environment, but in preventing

[2] Nor do the other cases relied upon by the Republican Committees support intervention by right here. In *Democratic National Committee v. Bostelmann* No. 20-CV-249-WMC, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020), *modified on reconsideration*, No. 20-CV-249-WMC, 2020 WL 1638374, at *5 (W.D. Wis. Apr. 2, 2020), the court permitted the Republican Committees to *permissively* intervene in a suit brought by the Democratic National Committee. The cited portions of the decisions in *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008), discuss states' interests in protecting the integrity and orderly administration of elections, not any motion to intervene by a political party. And *Hill v. Skinner*, 169 N.C. 405 (1915) is a 105-year-old North Carolina case that has nothing to do with the rights of political parties as intervenors under Federal Rule of Civil Procedure 24.

allegedly *illegal* changes to otherwise lawful competitive environments. *See Shays v. Federal Election Commission*, 414 F.3d 76, 85 (D.C. Cir. 2013); *Nader v. Federal Election Commission*, 725 F.3d 226, 228 (D.C. Cir. 2013). The Republican Committees have nowhere alleged that the relief requested by Plaintiffs would create an illegal competitive environment for Republican candidates.

Accordingly, the Republican Committees have not articulated a "significantly protectable interest" with respect to their current plans to support Republican candidates for office, *JLS*, 321 F. App'x at 289, nor have they shown how they would stand to "gain or lose" from this litigation. *Teague*, 931 F.2d at 261.

As for the Republican Committees' stated interest in the "ability of the State to run a fair, secure, and orderly elections," ECF No. 34 at 6, this is "too general an interest to form the basis of a rule 24(a) motion." *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 253, 258 (D.N.M. 2008) (denying intervention by individuals and the Republican Party of New Mexico).[3] Furthermore, and as explained below,

[3] The court in *Herrera* only found that the Republican Party of New Mexico had a distinct interest because it had specified how changes to New Mexico's voter registration

they cannot show that these interests would be inadequately represented by the existing Defendants and NCGA Intervenors.

b. The existing Defendants adequately represent the interests asserted by the Defendants and the NCGA Intervenors.

When a proposed intervenor and an existing party have the same goal, a presumption of adequate representation attaches, "which can only be rebutted by a showing of adversity of interest, collusion, or nonfeasance." *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013) (internal quotation marks omitted); *Commonwealth of Va. v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976). Furthermore, when the existing party is a government agency, "a very strong showing of inadequacy is needed to warrant intervention." *Huff*, 706 F.3d at 349 (internal quotation marks omitted).

Here, the Republican Committees have failed to show any inadequacy, much less the "strong" showing needed to warrant intervention where several government agencies and the legislature are defending the action. To the contrary, they concede that they are "in harmony with the Defendants' and

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laws could subject their candidates to voter and registration fraud. *Herrera*, 257 F.R.D. at 257. Here, the Republican Committees have made no such claims.

the intervening legislators' positions." ECF No. 34 at 8. The Republican Committees assert, without support, that they "have a distinct interest in 'demand[ing] adherence' to the current lawfully enacted requirements," but do not explain how their distinct purpose of electing Republican candidates would be harmed by Plaintiffs' requested relief. Mem. in Support of the Republican Committees' Mot. to Intervene, ECF No. 34 at 7. By contrast, there are several reasons that the existing parties will more than adequately represent the Republican Committees' states interests.

First, Defendants have already rebutted (in response to the NCGA's motion to intervene) any suggestion they would inadequately defend this suit, including the challenges to the Constitutionality of certain laws. ECF No. 23. And in seeking intervention in this matter, the NCGA Intervenors asserted an interest in "defending the State's laws from attack in federal court in cases like this one," ECF No. 17 at 9, and in the "continued enforceability of the numerous laws challenged here." *Id.* at 10. For purposes of Rule 24, the NCGA Intervenors have therefore demonstrated they will adequately protect the Republican Committees' purported "distinct interest in 'demand[ing]' adherence to the current

lawfully enacted requirements." ECF 33 at 7 (citing *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005)).

Second, the NCGA Intervenors also specifically noted their interest in passing law that would "safeguard . . . the integrity of North Carolina's elections." *Id.* at 11. This is "essentially the same interest," *Herrera*, 257 F.R.D. at 253, that the Republican Committees assert in the supporting declarations to protect "the integrity, fairness and security of election procedures" and ensure the election code is enforced, *see, e.g.*, ECF No. 34-1 at ¶ 7, and thus is adequately represented by the NCGA Intervenors' in this matter.

This point is further supported by the case cited by the Republican Committees. In *Chiles v. Thornburgh*, the court rejected the Homeowners' Associations' appeal on their denial of intervention after determining that the associations "have an interest which is *identical* to [the plaintiffs'] interests." 865 F.2d 1197, 1215 (11th Cir. 1989). As a result, "[t]here is no indication whatsoever that the representation rendered by [plaintiffs] would be inadequate." *Id.* However, the court reversed the denial of a separate motion to intervene filed by detainees held at the detention center in

question only after finding that their interests diverged from the plaintiff-intervenor county: the county, was representing "the effect that [the federal facility at which immigrants were detained] has on those who lived outside its walls," while the detainees-intervenors would be representing their own interests. *Id.* In this case, the Republican Committees, the Defendants, and the NCGA Intervenors all have the identical interest to safeguard the integrity of the North Carolina elections and ensure the orderly administration of elections.

The Republican Committees' reliance on *Shays v. Federal Election Commission*, 414 F.3d 76 (D.C. Cir. 2005) is misplaced. In *Shays*, the challenged rule would have affected directly the amount of donations the candidates would have received. 414 F.3d at 79. Here, the challenged statutes govern the ability of all voters, regardless of political affiliation, to vote, and do not pertain to candidate campaign conduct. *Id.* at 79 (D.C. Cir. 2005). The Republican Committees' reliance on *Meek v. Metro. Dade Cty*, 985 F.2d 1471 (11th Cir. 1993) and *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 (1972) is similarly misplaced. In *Meek*, the proposed intervenors stated that "[t]he sole purpose of the

requested leave to intervene is to pursue the appeal which has not been taken by [defendant] Dade County." 985 F.2d at 1476. The 11th Circuit found that the interests of the proposed intervenors diverged from those of Dade County "once [Dade County] decided not to appeal." *Id.* at 1478. There is no such demonstrated divergence here. In *Trbovich*, the Supreme Court permitted intervention by a union member in a lawsuit filed by the Secretary of Labor acting on his behalf, 404 U.S. at 539, a unique procedural posture also not present here.

Additionally, the Republican Committees have failed to contend, much less show, any adversity of interest, collusion, or nonfeasance that would overcome the presumption of adequate representation here. *See Huff*, 706 F.3d at 349. Accordingly, they have failed to make the requisite strong showing that the current Defendants and Intervenors would inadequately protect any significantly protectable interest.

Finally, as the Republican Intervenors have failed to show a significant protectable interest that differs from the interests protected by the current parties, this case is also markedly different from the recent decision *Issa v. Newsom*, No. 2:20-cv-01055-MCE-CKD, 2020 WL 3074351 (E.D. Cal. Jun.

10, 2020) (cited by Republican Committees as *Republican Nat'l Committee*). In *Newsom*, the Democratic National Party intervenors cited three interests that were not represented by the Government defendants;[4] but, as noted above, the two interests listed by the Republican Committees here are already protected by the Defendants and the NCGA Intervenors.

As the Republican Committees' have failed to show the required elements for intervention by right under Rule 24(a), their motion on these grounds should be denied.

II. Permissive intervention is not warranted.

Permissive intervention should similarly be denied here, as it would be prejudicial to Plaintiffs and would be incompatible with efficiency and due process.

Permissive intervention is only appropriate when the motion is timely, when intervenors have shown a question of law or fact in common with the main action, and when intervention will not result in any undue delay or prejudice to the existing parties. *Carcano v. McCrory*, 315 F.R.D. 176,

[4] *Newsom*, 2020 WL 3074351, at *3 ("The Proposed Intervenors cite three protectable interests. . .: (1) asserting the rights of their members to vote safely without risking their health; (2) advancing their overall electoral prospects; and (3) diverting their limited resources to educate their members on the election procedures.").

178 (M.D.N.C. 2016); Fed. R. Civ. P. 24(b). Furthermore, the decision to grant or deny permissive intervention "lies within the sound discretion of the trial court."

Here, permissive intervention should be denied at the discretion of the Court on three grounds: (*i*) any purported interests that the Republican Committees have in this litigation will already be vociferously defended by the State Defendants as well as the NCGA Intervenors; (*ii*) permitting intervention will further delay and complicate a matter of pressing public importance in which time is of the essence, a point on which all parties (and the Court) appear to agree; and (*iii*) permitting intervention will prejudice Plaintiffs.

As to the first reason, the Republican Committees have conceded they are "in harmony" with Defendants' and the NCGA Intervenors' positions. As discussed above, the Republican Committees have otherwise failed to show that their interests will not be protected or how they will be prejudiced should permissive intervention be denied.

Second, permitting intervention would seriously risk imposing undue delay in this matter. The existing parties have worked hard to expedite and streamline the briefing and required for the proposed hearing on Plaintiffs' Motion for

Preliminary Injunction. *See* ECF No. 18 (Joint Status Report noting the parties' agreement to limit necessary evidentiary hearing in the interest of expediting consideration of Plaintiffs' Motion); ECF No. 28 (Plaintiffs' status update noting that "all Parties now consent to the requests made in the Motion for Leave").

But if intervention is permitted to four additional parties, and those parties are permitted to participate in the hearing on Plaintiffs' Motion, this could require extended hearing time beyond the single day agreed upon between Plaintiffs and Defendants and thus further delay calendaring the motion. Furthermore, if granted permission to participate and submit briefing, the additional (and likely duplicative) evidence and argument of the Republican Committees may further require additional time for the Court's consideration and overall delay the disposition of Plaintiffs' Motion. In short, permitting intervention here would result in an "intractable procedural mess" by allowing four additional entities to represent the same interests. *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 801 (7th Cir. 2019).

And as Plaintiffs have discussed in their Memorandum in Support of their Motion for Preliminary Injunction, ECF No. 10 at 12, any such delay could have dangerous consequences for the fall general election.

Third, there would also be a clear prejudice to Plaintiffs in permitting additional intervenors in this matter. Plaintiffs already expect to be required to respond to two briefs, each up to 15,000 words, within six days of their filing. *See* ECF No. 29. But if intervention is further granted here to the four additional proposed intervenors and they are permitted to submit briefing and evidence, Plaintiffs will face an overwhelming burden at both the briefing and hearing stages. *See, e.g., Chiles*, 865 F.2d at 1215 (finding the district court did not abuse its discretion with regards to denying permissive intervention and that "[t]he duplicative nature of the claims and interest [proposed intervenors] asserted threatens to unduly delay the adjudication of the rights of the parties in the lawsuit and makes it unlikely that any new light will be shed on the issues to be adjudicated").

Finally, this likely delay and prejudice to Plaintiffs would have no discernable benefit to this matter. The

Republican Committees have failed to show or even allude to what benefit they could provide to the disposition of the factual and legal questions at issue, or how their input and advocacy would assist the Court's consideration of Plaintiffs' Motion at all. ECF No. 34 at 8. To the extent their objective is to introduce partisan politics into this case, that does not serve the purpose of Rule 24. *See, e.g., One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015) ("Rule 24 is not designed to turn the courtroom into a forum for political actors who claim ownership of the laws that they pass.").

The cases cited by the Republican Committees in support of permissive intervention are plainly distinguishable from this case. For example, *Bostelmann* was a Wisconsin case brought by the partisan Democratic National Committee. No. 20-CV-249-WMC, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020). The Republican National Committee was granted permissive intervention because "they are uniquely qualified to represent the 'mirror-image' interests of the plaintiffs, as direct counterparts to the DNC/DPW." *See also*, *Newsom*, 2020 WL 3074351, at *3 (permitting Democratic Party intervenors in

case brought by the Republican National Committee). Such mirror-image interests are not at issue here.

This present case is also distinguishable from other cases where the Republican Committees had a special interest. For example, in *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, the defendants had agreed to the nonenforcement of the election statute at issue and facilitating all the relief sought by plaintiffs, leading the court to find that the intervenors' interest in enforcing the statute was not adequately represented by defendants. No. 6:20-CV-00024, 2020 WL 2090678, at *4 (W.D. Va. Apr. 30, 2020). Here, however, and as discussed above, the Republican Committees have conceded they are "in harmony" with Defendants' and the NCGA Intervenors' positions. *See Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 249 (D.N.M. 2008) ("While not a required part of the test for permissive intervention, a court's finding that existing parties adequately protect prospective intervenors' interests will support a denial of permissive intervention."). Furthermore, in *League of Women Voters of Virginia*, the Republican Party was tasked with running its own primary elections under Virginia law. *Id.* at *1. As a result, the

court found that it had a special interest in intervening in a case where plaintiffs sought to change voting procedures for primary elections. Here, the Republican Committees are not tasked with running the general elections (Defendant State Board of Elections are), and thus have no similar interest in the November 2020 General Elections.

Furthermore, district courts have allowed Republican Committees to permissively intervene in COVID-19 related voting cases, that do not have the same expedited schedule that this current case has. Plaintiffs, Defendants, and NCGA Intervenors have all agreed to a hearing as early as the week of July 6th, about two weeks from the date of this filing. The court in *Nielsen v. DeSantis* decided the motion to intervene on May 28, 2020, almost two months prior to the preliminary injunction hearing on July 20, 2020 and noted that "[t]he intervenors should expect to comply with the schedule that would be followed in their absence." No. 4:20-cv-00236-RH-MJF, Dkt. 101, at 2 (N.D. Fla. May 28, 2020). *See also Priorities USA v. Nessel*, No. 19-13341, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting the Republican Committees' motion to intervene on May 22, 2020 when the preliminary injunction was filed on January 28, 2020 and a

hearing has not been set as of June 22, 2020 because the Republican Committees asserted that "their defenses are unlikely to require discovery or an evidentiary hearing, and they will submit all filings in accordance with any briefing schedule imposed by the Court").

Any delay therefore risks severe prejudice to all parties, as well as the voters of this State, as it will make it more difficult (or potentially impossible) for Defendants to adapt to any changes ordered by the Court and to properly prepare for the fall general election in accordance with any relief the Court may see fit to grant—a result that ultimately harms voters. By contrast, the Republican Committees cannot articulate any concrete harm it will suffer if it is denied intervention in this case. The Republican Committees, like any other entity, may seek leave to participate as *amici* curiae if they wish to be separately heard. *Huff*, 706 F.3d at 355 (denying appellants' permissive intervention and noting that "[o]ur decision today does not leave appellants without recourse. Appellants retain the ability to present their views in support of the Act by seeking leave to file amicus briefs."). The Republican Committees have put forth no explanation as to why such participation as *amici curiae* is

insufficient to voice their interests. Accordingly, their request for permissive intervention should therefore be denied.[5]

CONCLUSION

For the foregoing reasons, the Republican Committees have not met their burden in showing that they are entitled to intervene as of right, or that their asserted interests merit permissive intervention. Plaintiffs therefore respectfully request that the Court deny its Motion to Intervene.

Dated: June 22, 2020.

Respectfully Submitted,

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/s/ Allison Riggs
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[5] Should the Court decide to grant permissive intervention, Plaintiffs respectfully request that it deny or limit the Republican Committees' participation in the briefing and hearing on Plaintiffs' Motion for Preliminary Injunction, especially because Plaintiffs and Defendants have agreed to a one-day hearing to expedite consideration of the Motion. *See* ECF No. 18 (Joint Status Report noting the parties' agreement to limit necessary evidentiary hearing to one day in the interest of expediting consideration of Plaintiffs' Motion). "When granting an application for permissive intervention, a federal district court is able to impose almost any condition, including the limitation of discovery." *Columbus-America Discovery Grp. v. Atlantic Mut. Ins. Co.*, 974 F.2d 450, 469 (4th Cir. 1992).

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certified that the foregoing Memorandum in Support of Plaintiffs' Opposition to Proposed Intervenors' Motion to Intervene contains 4486 words (including headings and footnotes) as measured by Microsoft Word.

/s/ Allison J. Riggs
Allison J. Riggs

CERTIFICATE OF SERVICE

I certify that on the 22th day of June, 2020, the foregoing Memorandum in Support for Plaintiffs' Opposition to Proposed Intervenors' Motion to Intervene was served upon the parties through the Court's ECF system.

/s/ Allison J. Riggs
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