

**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,

v.

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,

and

Civil Action No. 20-cv-00457

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,

Intervenors,

and

REPUBLICAN NATIONAL COMMITTEE, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, and NORTH CAROLINA REPUBLICAN PARTY,

*Proposed Republican
Committee Intervenors.*

**REPLY IN SUPPORT OF REPUBLICAN COMMITTEES’
MOTION TO INTERVENE**

In their oppositions, Plaintiffs, Defendants, and Intervenors (“Legislative Defendants,” who do not oppose permissive intervention) identify no reasonable grounds for denying the Republican Committees’ motion to intervene. The parties ignore the Republican Committees’ interests in the administration of elections and its knock-on effects for voter education and get-out-the-vote programs that underlie Plaintiffs’ claims, conflate the interests of the parties to argue adequacy of representation, and speculate about delays caused by the Republican Committees, notwithstanding the Republican Committees’ commitment to abide by the schedule entered by the court. *See* Pls’ Resp.

(Dkt. #43), Defs. Resp. (Dkt. #39), and Leg. Def. Resp. (Dkt. #37).¹ Moreover, as evident from their intervention in several cases involving the regulation of voting procedures, the Republican Committees have interests sufficient to justify intervention in this litigation.

First, as explained in their motion and accompanying Declarations, the Republican Committees have substantial interests in supporting Republican candidates through their “voter registration, voter education, and ‘get-out-the-vote’ (‘GOTV’) activities up to and on election day.” Republican Committee Br. 4 (Dkt. # 33). These are core activities of each Republican Committee, and each organization regularly expends substantial resources to execute them in North Carolina. *See id.* *See, e.g.*, Declaration of Christopher White (June 23, 2020), at ¶4 (exhibit attached hereto). With elections up and down the ballot in North Carolina this year, the Committees will be especially active. Abrupt changes in voting procedures create additional, unanticipated expenses that divert funds from other programs focused on voter turnout. *See id.* ¶¶ 6-7.

The Republican Committees’ interests in voting laws and election activities closely resemble those identified by the Plaintiffs themselves in their pleadings. Plaintiffs Democracy North Carolina and the League of Women Voters North Carolina (“LWVNC”) *are also* organizations with interests in increasing voter participation, *see* Am. Compl. ¶14, “educat[ing] voters about the candidates that will be on their ballots,” *id.*, and engaging in “voter registration assistance and get-out-the-vote (GOTV) efforts leading up to elections, including during the early voting period,” *id.* ¶ 15. Plaintiffs’ claims target the

¹ The Legislative Defendants support permissive intervention by the Republican Committees. *See* Leg. Def. 1.

administration of North Carolina’s voting laws and the ways in which those procedures affect election day turnout among the voters Plaintiffs advise. *See* 2d Am. Compl. ¶ 50 (arguing “North Carolina’s election laws and procedures are not designed to facilitate safe, fair, and free elections” during the pandemic), ¶ 57 (arguing election laws are affecting voter registration efforts), ¶ 66 (arguing North Carolina election laws prevent organizations like L WVNC from providing assistance “to navigat[e] the ballot request process during a time when that assistance is crucial to ensuring individuals can vote safely.”). As organizations also focused on election activities, the Republican Committees have the knowledge and experience to respond to Plaintiffs’ arguments about purported impediments to voting caused by North Carolina’s election laws. *See Democratic National Committee, et al., v. Bostelman, et al.*, No. 20-CV-249-WMC, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (citing *Builders Ass’n of Greater Chi. v. Chi.*, 170 F.R.D. 435, 441 (N.D. Ill. 1996) (granting RNC permissive intervention, and denying intervention by Wisconsin legislature, in case involving the effect of COVID-19 on absentee ballot activities because it was “uniquely qualified to represent the ‘mirror-image’ interests of the plaintiffs” (emphasis added))).

Second, and relatedly, Defendants and Legislative Defendants do not adequately represent the Republican Committees’ interests. Although the Republican Committees expect Defendants and the Legislative Defendants also to oppose Plaintiffs’ arguments and demands for relief, the Republican Committees have distinct objectives in this litigation. Defendants’ interests are in “enforc[ing] the election laws of the State,” *see* Def. Resp. 5 (Dkt. # 39), while the Legislative Defendants interests are in “defending the

constitutionality of the challenged laws” and “defending [the General Assembly’s] legislative enactments.” *See* Leg. Def. Mot. to Intervene 8-9 (Dkt. #17). None of the Defendants or Legislative Defendants identify interests in voter education and get-out-the-vote activities that support candidates among a range of different elected offices. Moreover, even though the Defendants are part of a Democratic Administration and the Legislative Defendants ran for office as Republicans, they are litigating in their *official capacities*, not to represent any *partisan* interests of voters, themselves individually, or other candidates. This positions the Republican Committees uniquely among the parties to respond to Plaintiffs’ arguments that the North Carolina voting laws impede voter education and participation.² The national Republican Committees also follow election procedures in all states, and are distinguishable from the Defendants and Legislative Defendants in their ability to assist the Court in evaluating how North Carolina election procedures, and the Legislature’s response to the pandemic, compares with procedures and responses in other states. *See* White Decl. ¶ 5.

Third, there will be no delay in the proceedings or prejudice to the other participants caused by the Republican Committees’ involvement. The Republican Committees moved to intervene the very same day last week that Plaintiffs filed a Second Amended Complaint and Amended Motion for Preliminary Injunction. The Committees are prepared to file

² It is also noteworthy that the Court already granted the Legislative Defendants’ motion to intervene over similar objections by Plaintiffs and Defendants, although Defendants opposed only the Legislative Defendants motion to intervene as of right. *See* Def. Opp. 2 (Dkt. #23).

their response to Plaintiffs' motion for a preliminary injunction and participate in court proceedings in accordance with the schedule set by the Court. *See* Mot. 5. And while it is possible that other parties may attempt to intervene, those issues are not before the Court at this time. Every movant still must meet the criteria identified in Rule 24 in order to participate in the case, which will prevent any prejudice to the current parties.³ Nor will the Committees' participation impose an undue burden on Plaintiffs, who have entered seven counsel of record, including five attorneys yesterday.

Fourth, Republican Committees have standing as organizations with interests in the administration of voting procedures. *See Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824 (D. Az. 2018), *rev'd on other grounds*, *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (Plaintiffs Democratic National Committee, DSCC, and the Arizona Democratic Party have organizational standing under Article III to challenge election restrictions on ballot collection). Indeed, courts routinely grant political party organizations intervention in cases involving election activities and voting procedures, even when state officials and legislators *also* intervene. *See, e.g., id.* at 833 (Arizona Republican Party and state officeholders permitted to intervene in case involving ballot harvesting); *League of Women Voters of Minnesota Education Fund, et al., v. Simon*, No. 0:20-cv-01205-ECT-TNL (D. Minn., June 23, 2020) (granting RNC intervention in case concerning Minnesota's witness signature requirement) (oral order); *Thomas v. Andino*, -- F.R.D. ---, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting South Carolina

³ The parties do not contend that the Republican Committees' motion is untimely, *see* Fed. R. Civ. P. 24 (motion must be timely).

Republican Party's motion to intervene in case challenging South Carolina's witness requirement and other absentee voter restrictions); *Democratic Senatorial Campaign Comm., et al. v. Detzner*, No. 4:18-cv-00526-MW-MJF, at *1 (N.D. Fla. Nov. 13, 2018) (granting NSRC's intervention in case regarding rules for determining voter intent on ballot) (Dkt. #12); *VoteVets Action Fund, et al. v. Detzner*, No. 4:18-cv-00524-MW-CAS, at *1 (N.D. Fla. Nov. 12, 2018) (granting NSRC and Florida Attorney General the right to intervene in case challenging the constitutionality of vote-by-mail ballot deadline) (Dkt. ##16, 28); *Democratic Exec. Comm. of Fla., et al. v. Detzner*, No. 4:18-cv-00520-MW-MJF, at *2–3 (N.D. Fla. Nov. 9, 2018) (granting motions to intervene by NRSC and Florida Attorney General in litigation involving voting by mail) (Dkt. #20); *Jacobson, et al. v. Detzner*, No. 4:18-cv-262-MW/CAS, 2018 WL 10509488, at *1 (N.D. Fla. July 1, 2018) (granting NSRC and Republican Governors Association permissive intervention in case involving ballot positions for candidates).

For these reasons, and those set forth in their opening brief, the Republican Committees urge the Court to grant their motion to intervene by right and by permissive intervention.

Dated: June 23, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the word count for this Reply is 1,348 words. The word count excludes the case caption, signature lines, cover page, and required certificates of counsel. In making this certification, the undersigned has relied upon the word count of Microsoft Word, which was used to prepare the brief.

/s/ Bobby R. Burchfield
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on June 23, 2020, I electronically filed the foregoing Reply with the Clerk of the Court using the CM/ECF system.

/s/ Bobby R. Burchfield
Bobby R. Burchfield