

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LEAGUE OF WOMEN VOTERS OF OHIO,
OHIO A. PHILIP RANDOLPH INSTITUTE,
LASHUNDA LEE, MUNIA MOSTAFA,
AUDRIANNA VICTORIAN RODRIGUEZ,
and HANNAH TUVELL,

Plaintiffs,

v.

FRANK LAROSE, in his official capacity as
Secretary of State of Ohio,

Defendant,

and

THE OHIO DEMOCRATIC PARTY,

Proposed Intervenor-Defendant.

CASE NO. 2:20-cv-1638

JUDGE MICHAEL H. WATSON
Magistrate Judge Elizabeth Preston Deavers

**PROPOSED INTERVENOR-DEFENDANT OHIO DEMOCRATIC PARTY'S
MOTION TO INTERVENE**

The Ohio Democratic Party (“ODP”) hereby moves to intervene as a defendant in this action. ODP moves to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2) or, in the alternative, to intervene by permission under Federal Rule of Civil Procedure 24(b)(1). If granted permission to intervene under either provision, ODP has attached a proposed Answer to the Plaintiffs’ Amended Complaint.

Prior to filing this motion, counsel for the Proposed Intervenor contacted counsel for the existing Plaintiffs and Defendant in this case. Counsel for the Plaintiffs have given their consent, but there has been no response from counsel for Defendant.

Respectfully submitted,

/s/ N. Zachary West

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CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2020, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

Respectfully submitted,

/s/ N. Zachary West

N. Zachary West (0087805)

**MEMORANDUM IN SUPPORT OF
THE OHIO DEMOCRATIC PARTY’S MOTION TO INTERVENE**

The Ohio Democratic Party (“ODP”) seeks to participate as intervening defendant in the above-captioned lawsuit which challenges several components of Am. Sub. H.B. 197 of the 133rd Ohio General Assembly (“H.B. 197”) concerning the timing and manner of Ohio’s 2020 presidential primary election. ODP opposes Plaintiffs’ requested relief to set a date for the primary election beyond the April 28, 2020 date set by H.B. 197. ODP supports Plaintiffs’ claim to extend Ohio’s voter registration deadline until 30 days prior to the date on which 2020 primary election is set to conclude, which should be March 30, 2020 based on conclusion of voting on April 28, 2020. ODP’s position is also that absentee ballot applications should be sent automatically by the State to all registered voters who have not already voted in the 2020 primary election and have not already submitted an application for an absentee ballot, and that return postage should be provided by the state. ODP’s further position is that registered voters should have the option to apply online for an absentee ballot to be mailed to them. As set forth herein, ODP has a substantial interest in the timely conclusion of Ohio’s primary election in order to ensure that its members and voters will be able to participate in the Democratic National Committee's presidential nominating convention, and, therefore, seeks to intervene in the instant action to represent and protect this interest.

ARGUMENT

I. The Ohio Democratic Party Should Be Permitted to Intervene as of Right.

Federal Rule of Civil Procedure 24(a)(2) provides that a court must permit intervention on timely application by anyone: (1) who “claims an interest relating to the property or transaction that is subject of the action,” and (2) whose interest may be “impair[ed] or impede[d]” by disposition of the action, unless “existing parties adequately represent that interest.” Fed. R. Civ.

P. 24(a)(2). This Rule is “broadly construed in favor of potential intervenors, who must be permitted to intervene if: “1) the application was timely filed; 2) the applicant possesses a substantial legal interest in the case; 3) the applicant’s ability to protect its interest will be impaired without intervention; and 4) the existing parties will not adequately represent the applicant’s interest.” *Ohio State Conference of NAACP v. Husted*, 588 F. App’x 488, 490 (6th Cir. 2014) (citation omitted). ODP meets each of these requirements for intervention as of right.

A. ODP’s Motion is Timely.

ODP Motion to Intervene is timely. The Plaintiff initially filed their Complaint with the Court on March 30, 2020, and they filed their Amended Complaint on March 31, 2020. This motion was filed the next day on April 1, 2020. Given that the lawsuit is in its earliest stages, ODP’s intervention will not delay the proceedings or prejudice the Plaintiffs or the Defendant.

B. ODP Has a Substantial Legal Interest in the Subject Matter of this Case.

ODP clearly has a substantial legal interest in the subject matter of this case. The U.S. Court of Appeals for the Sixth Circuit subscribes to a “rather expansive notion of the interest sufficient to invoke intervention of right.” *Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999); *see also Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (“‘[I]nterest’ is to be construed liberally.”) No specific legal or equitable interest is required, *see Grutter*, 188 F.3d at 398, and even “close cases” should be “resolved in favor of recognizing an interest under Rule 24(a),” *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997).

As a “major political party” within the meaning of Ohio Rev. Code § 3501.01(F), ODP has substantial legal interests, both organizational and associational, in this litigation concerning the timing and manner of voting in Ohio’s 2020 presidential primary election. ODP’s legal interests include nominating candidates for local, state, and federal offices, and electing members of ODP’s

county-affiliates' committees. ODP, as a major political party, also has hundreds of thousands of members who are expected to cast ballots in the primary election.

Moreover, ODP is relying upon the results of the primary election to determine the makeup of its delegation to the Democratic Party's national convention to be held in Milwaukee, WI from July 13-16, 2020 (the "Convention"). At the Convention, the national Democratic Party will select a presidential nominee and approve a platform outlining the Democratic Party's ideology and policy priorities. Each state Democratic Party, including ODP, will send a delegation to the convention to vote on the nominee and the platform, as well as various other issues related to party governance and ideology. In Ohio, most of these delegates are determined based on the outcome of Ohio's primary election, which was originally scheduled to occur on March 17, 2020. The DNC sets the Convention's rules. In August 2018, the DNC approved the Call to Convention which included the Convention's governing rules. Two of these rules included setting a June 20, 2020 deadline for state parties to certify to the DNC's Secretary the state party's delegations to the Convention—states who fail to meet this deadline risk not being able to participate in the Convention.

The DNC's rules for the Convention also include requiring state parties to submit a detailed delegate selection plan, including measures to ensure each state's delegation is representative of the Democratic Party's diverse membership. Well before the current health pandemic began, ODP's governing committee approved, and ODP submitted, a twelve-step delegate selection plan that included approximately eight weeks of post-primary actions to ensure ODP's delegation meets the DNC's requirements. Thus, in order for ODP to ensure that its delegates will be seated at the Convention, ODP must have a sufficient amount of time in between the end of the primary election and the DNC's June 20, 2020 deadline for state parties to certify their delegations to the

Convention. Plaintiffs' proposed relief of extending voting beyond the already-extended date of April 28, 2020 threatens this interest.

Accordingly, ODP has substantial legal interests in the subject matter of this case.

C. Intervention in this Case is Necessary to Protect ODP's Interest.

Under the third intervention prong, a "would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied." *Miller*, 103 F.3d at 1247. This burden is "minimal," and can be satisfied if a determination in the action may result in "potential stare decisis effects." *Id*; see also *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 900 (9th Cir. 2011) ("[I]ntervention of right does not require an absolute certainty that a party's interest will be impaired").

The disposition of this case directly impacts ODP's ability to have its delegates seated at the 2020 Democratic National Convention. This is an interest of great importance to ODP given the delegates at the convention are the ones who select the Democratic Party's presidential nominee and approve a platform outlining the Democratic Party's ideology and policy priorities, as well as other issues related to party governance.

Moreover, ODP has already participated in two other lawsuits in state courts to protect its interests. On March 16, 2020, prior to Defendant Secretary issuing Directive 2020-06 suspending the primary election, ODP participated in *Jill Reardon, et al v. Frank LaRose*, Franklin C.P. Case No. 20-cv-002105 as an Intervenor-Defendant where it successfully opposed an eleventh hour motion to postpone the primary election until June 2, 2020. And, on March 17, 2020, following Defendant Secretary's issuance of Directive 2020-06, ODP filed an action in the Ohio Supreme Court seeking an order to (1) require Defendant Secretary to rescind Directive 2020-06, and (2) provide voters with an adequate alternative means of voting given the suspension of voting at the

March 17, 2020 primary election. *State ex rel. Ohio Democratic Party, et al. v. LaRose*, Ohio Supreme Court Case No. 2020-0388. However, ODP obtained this relief via the passage of H.B. 197 prior to completion of briefing in the Ohio Supreme Court action, and ODP ultimately asked the Ohio Supreme Court to dismiss the action as a result. *See 03/27/2020 Case Announcements*, 2020-Ohio-1139. Thus, a federal decision altering the relief that ODP successfully obtained through its litigation and advocacy efforts would significantly impact ODP's interests, and ODP should, therefore, be given the opportunity to provide its input on this important issue.

D. The Existing Parties Cannot Protect the Interests of ODP

ODP carries a minimal burden to show that the existing parties to this litigation inadequately represent ODP's interests. *Jordan v. Mich. Conference of Teamsters Welfare Fund*, 207 F.3d 854, 863 (6th Cir. 2000). A potential intervenor "need not provide that the [existing parties'] representation will in fact be inadequate, but only that it 'may be' inadequate. *Id* (citations omitted); *see also Davis v. Lifetime Capital, Inc.*, 560 F. App'x 477, 495 (6th Cir. 2014) ("The proposed intervenor need only show that there is a *potential* for inadequate representation." (citation omitted) (emphasis original)). ODP satisfies this minimal burden.

ODP has an interest in Ohio's 2020 presidential primary election concluding in time to allow its delegates to be seated at the 2020 Democratic National Convention. This interest is inadequately represented by the existing parties. It is not adequately protected by the Plaintiffs given that they seek to set a new date for the primary election that would potentially be too late for ODP's delegates to be sat at the Convention. Moreover, this interest is inadequately represented by Defendant Secretary, who previously sought to suspend Ohio's primary election to a date that would have been too late for ODP's delegates to be sat at the convention—the action that prompted ODP to file a lawsuit in the Ohio Supreme Court. As such, intervention is necessary to protect

ODP's interest in concluding Ohio's 2020 primary election in time for its delegates to be sat at the Convention.

II. Alternatively, the Ohio Democratic Party Should Be Allowed to Intervene by Permission.

ODP may also be granted to intervene by permission. Rule 24(b)(1)(B) permits intervention on timely motion by anyone who “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). The Court, “[i]n exercising its discretion . . . 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 rule is to be construed liberally, and it excludes many of the requirements of intervention as of right. *Meyer Goldberg, Inc. v. Goldberg*, 717 F.2d 290, 294 (6th Cir. 1983).

The same substantial interests that give ODP a right to intervene in this case under Rule 24(a)(2) support permissive intervention under Rule 24(b):

First, and as stated previously in Argument Section I.A., the motion is timely given that it was filed at earliest stages of the case. Second, ODP has a claim or defense that shares with the main action a common question of law or fact—namely, ODP seeks to defend the Ohio General Assembly’s extension of voting through April 28, 2020. This date is critical to defending ODP’s interests in promptly concluding Ohio’s primary election and ensuring that its delegates can be sat at and participate in the 2020 Democratic National Convention. Third, the entry of ODP into the case will not unduly delay or prejudice the adjudication of the original parties’ rights. If granted intervention, ODP is prepared to proceed on the current case schedule and will avoid causing any undue delay in the proceedings. For these reasons, ODP should be allowed to intervene in the instant action by permission.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendant Ohio Democratic Party requests that its motion be granted, and that it be permitted to intervene in the instant action.

Respectfully submitted,

/s/ N. Zachary West

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