

IN THE SUPREME COURT OF OHIO

STATE EX REL. OHIO DEMOCRATIC PARTY

340 E. Fulton Street
Columbus, Ohio 43215
and

CASE NO. 2020-0388

STATE EX REL. KIARA DIANE SANDERS

2100 Commons N Rd.
Reynoldsburg, Ohio 43068
Relators,

**ORIGINAL ACTION
IN PROHIBITION**

STATE EX REL. LIBERTARIAN PARTY OF OHIO

6230 Busch Blvd., Suite 102
P. O. Box 29193
Columbus, Ohio 43229
Intervener-Relator,

v.

**ALTERNATIVE AND
PEREMPTORY WRITS
REQUESTED**

FRANK LAROSE,

in his official capacity as Ohio Secretary of State,
22 North Fourth Street, 16th Floor Columbus,
Ohio 43215
Respondent.

**Expedited Election Matter
Under S.Ct.Prac.R. 12.08**

INTERVENER-RELATOR'S MOTION TO INTERVENE

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ARGUMENT

The Ohio Rules of Civil Procedure govern all original actions in this Court unless they are "clearly inapplicable." *See* S.Ct.Prac. R. 12.01(A)(2). This Court has accordingly ruled that Ohio Rule of Civil Procedure 24, which addresses the intervention of parties, applies to original actions in this Court. *See, e.g., State ex rel. Polo v. Cuyahoga County Board of Elections*, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277, 1278 (1995).

Ohio Rule of Civil Procedure 24 states in relevant part:

(A) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 24 "is generally liberally construed in favor of intervention." *State ex rel. Polo v.*

Cuyahoga County Board of Elections, 74 Ohio St.3d 143, 144, 656 N.E.2d 1277, 1278 (1995).

The Libertarian Party of Ohio is entitled to intervene as of right under Rule 24(A)(2). It has timely moved to intervene just two days following Respondent's cancelation of March 17, 2020 in-person voting and his rescheduling of the primary process and just two days following the filing of this original action in this Court by Relators.

The Libertarian Party of Ohio "claims an interest relating to the property or transaction that is the subject of the action," and it "is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest...." Further, the Libertarian Party of Ohio's interest is not adequately represented by the existing parties. Respondent, after all, has taken action adverse to the interest of the Libertarian Party of Ohio, and Relator Ohio Democratic Party is the Libertarian Party of Ohio's competitor in the electoral arena. It can hardly be trusted or expected to adequately represent the Libertarian Party of Ohio's interest in this matter.

Further, Relators have failed to make a claim under the Constitution of the United States. Intervener-Relator's Complaint includes such a claim. Intervener-Relator is prepared, moreover, to explain in this case why Respondent's action violated not only Ohio law, but also the Elections Clauses found in Articles I and II of the United States Constitution.

Assuming that the Libertarian Party of Ohio is not entitled to intervention as of right, it should be permissively allowed to intervene under Rule 24(B)(2). Its claim against Respondent has "a question of law and fact in common" with Relators' claim against Respondent, that is, the legality of Respondent's canceling the March 17, 2020 election and rescheduling it for a later date. Like the Democratic Party, the Libertarian Party is recognized in Ohio and is ballot-qualified. It has five candidates running in congressional primaries in Ohio this year, and all five have suffered at the hands of Respondent's action. It has several candidates running in state-office primary elections in Ohio this year and they likewise have suffered. Because the Libertarian Party of Ohio has acted quickly, no delay or prejudice will be caused the existing parties.

Pursuant to this Court's rules governing service in original actions, service of this Motion and accompanying Complaint will be had upon the existing parties under Supreme Court Practice Rule 12.02(A)(2). This service of the Motion and Complaint is analogous to that prescribed by Ohio Rule of Civil Procedure 5 and therefore satisfies the procedural requirements of Ohio Rule of Civil Procedure 24(C). Out of an abundance of caution, Intervener-Relator is also certifying service of process on Relators and Respondent under Ohio Rule of Civil Procedure 5.

The undersigned contacted counsel for Relators and Respondent to inquire whether either objected to Intervener-Relator's intervention in this case prior to filing this Motion. Both represented that they would decide whether to object upon receiving and reviewing Intervener-Relator's Motion and accompanying Complaint.

CONCLUSION

The Libertarian Party of Ohio respectfully moves that it be allowed to intervene in the above-styled case.

Respectfully submitted,

/s Mark R. Brown

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Certificate of Service Under Rule 5(B)(2)(f)

I certify that on this day I e-mailed to Julie M. Pfeiffer, Office of the Attorney General, julie.pfeiffer@ohioattorneygeneral.gov, Counsel for Respondent, and to Donald J. McTigue, dmctigue@electionlawgroup.com, and N. Zachary West, west@goconnorlaw.com, Counsel for Relators, true and correct copies of this Motion to Intervene and accompanying Verified Complaint.

/s Mark R. Brown

Mark R. Brown