

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR
PRESIDENT, INC.; *et al.*,

Plaintiffs,

v.

KATHY BOOCKVAR; *et al.*,

Defendants.

Civil Action

No.: 2:20-CV-966

Judge J. Nicholas Ranjan

REPLY IN SUPPORT OF INTERVENORS' MOTION TO INTERVENE

Nothing in Plaintiffs' Opposition, Dkt. 177 ("Opp.") or Plaintiffs' Amended Complaint (Dkt. 232) undermines the reasons that the Intervenor¹ are entitled to intervene in this litigation pursuant to Rule 24. Plaintiffs' Opposition spends pages reciting generic legal standards, but fails to apply them to this case by meaningfully addressing—much less rebutting—Intervenor¹'s specific arguments justifying intervention. Plaintiffs fail to address the rights and interests of the individual and organizational Intervenor¹s. Plaintiffs' also continue to ignore the threat that the ongoing and unprecedented COVID-19 pandemic poses to the health and safety of all voters in the upcoming election, and in particular Black, immunocompromised, and older voters. Additionally, Plaintiffs' Amended Complaint expands the requested relief in ways that would further suppress the right to vote in a free and fair election. Therefore, Intervenor¹'s Motion to Intervene should be granted for the reasons stated in their memorandum in support (Dkt. 104) and the additional reasons stated herein.

¹ NAACP Pennsylvania State Conference, Common Cause Pennsylvania, League of Women Voters of Pennsylvania, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise.

ARGUMENT

Plaintiffs' Opposition is flawed for myriad reasons, but Intervenor focus on four: (1) Plaintiffs' lead argument, that the Motion to Intervene should be denied due to an alleged procedural defect under Rule 24(c), is incorrect and ultimately mooted by Plaintiffs' own Amended Complaint; (2) Plaintiffs' Article III standing arguments are unavailing and leave undisputed Intervenor's declarations explaining the harms they would suffer as a result of Plaintiffs' requested relief; (3) Plaintiffs' conclusory Opposition does not meaningfully contest that Intervenor has an interest in preventing voter suppression and promoting voter health and safety; and (4) Plaintiffs fail to address the many differences between Intervenor's interests and those of the named Defendants—none of whom have argued otherwise, or opposed the Motion to Intervene.

First, Plaintiffs' procedural argument that the Motion to Intervene did not attach a proposed pleading or response to the original complaint does not justify denial of the motion, because Plaintiffs' have suffered no prejudice. *See generally* Dkt. 103 at 2; *U.S. ex rel. Frank M. Sheesley Co. v. St. Paul Fire & Marine Ins. Co.*, 239 F.R.D. 404, 411 (W.D. Pa. 2006) (accepting motion to intervene without proposed pleading given "lack of prejudice to the parties"). And even if there were a defect, Intervenor cured it by filing a motion to dismiss on July 24. Dkt. 124.² Further, Plaintiffs rendered this procedural argument moot by filing an Amended Complaint on July 27 (Dkt. 232) that "supersede[d] the original and render[ed] it of no legal effect." *W. Run Student Hous. Assocs., LLC v. Huntington Nat. Bank*, 712 F.3d 165, 171 (3d Cir. 2013) (citation omitted). Plaintiffs therefore cannot show they were "prejudiced in any manner" by any absence

² Intervenor also filed a Motion to Dismiss Plaintiffs' Amended Complaint, pursuant to the Court's scheduling order (Dkt. 241).

of a proposed pleading or response attached to the motion to intervene. *Amalgamated Transit Union, Local 1729 v. First Grp. Am. Inc.*, No. 2:15-CV-806, 2016 WL 520989, at *1 (W.D. Pa. Feb. 10, 2016) (finding “no reason to deny the [] motion [to intervene] based only on a technical defect” and granting intervention).

Second, Plaintiffs’ assertions that Intervenors lack Article III standing are conclusory and unfounded. After a boilerplate recitation of the legal standard, Plaintiffs simply assert that Intervenors would not suffer any “concrete and particularized injury-in-fact” and there is “nothing more than a generalized interest in Pennsylvania’s election laws.” Opp. at 8-9. Plaintiffs are incorrect. In the Motion to Intervene, the organizational Intervenors explained that they and their members are threatened with concrete injuries of sufficient immediacy and reality due to Plaintiffs’ lawsuit—explanations that Plaintiffs fail to specifically dispute or even address:

- Intervenors “represent the interests of organizational members who are eligible registered voters in the defendant counties, each of whom has a cognizable interest in voting while maintaining their own safety, the safety of their families, and their communities as a whole.” Dkt. 104 at 2.
- Intervenors would be “harm[ed]” in their “efforts to protect their members’ ability to exercise their right to vote safely and their organizational goals of promoting full electoral participation.” *Id.*
- ***The NAACP-PSC’s “members include voters of color who are at risk of not being able to vote by mail or absentee ballot*** if mail ballot drop boxes are eliminated as a result of this litigation.” Dkt. 104-4 (Huston Decl.) ¶ 8.³
- ***The League of Women Voters of Pennsylvania’s “members include voters at risk of not being able to vote by mail or absentee ballot*** if mail ballot drop boxes are eliminated as a result of this Litigation.” Dkt. 104-2 (Griffin Decl.) ¶ 9.
- ***Common Cause of Pennsylvania’s “members include voters at risk of not being able to vote by mail or absentee ballot*** if mail ballot drop boxes are eliminated as a result of this litigation.” Dkt. 104-3 (Almeida Decl.) ¶ 14.
- Intervenors seek to “protect their organizational and members’ interest in access to mail-in and absentee ballots, including drop-box locations. If Plaintiffs succeed in preventing

³ All emphasis added unless otherwise stated.

the use of drop-box locations for absentee and mail-in ballots, ***Applicants will be required to redirect scarce resources*** to reeducate confused voters about the location of polls, the transportation options to county board of elections offices, the requirements for voting by mail, and safe practices for voting in person. ... For the organizational Applicants, ***expending additional resources*** to, *inter alia*, educate its members and other voters, arrange transportation, and to ensure that county election offices are prepared to receive an influx of mail and absentee ballots, ***will necessarily divert funds from other efforts*** important to their missions and the rights of their members.” Dkt. 104 at 9; *see also* Dkt. 104-2 (Griffin Decl.) ¶¶ 12-13; Dkt. 104-3 (Almeida Decl.) ¶¶ 17-18; Dkt. 104-4 (Huston Decl.) ¶¶ 12-14.

Plaintiffs’ assertions that “none of the Proposed Intervenors have any responsibilities under the Pennsylvania Election Code in the conduct or administration of elections” and that their claims “do not impact” “voter registration and voter education activities” (Opp. at 8) are irrelevant and incorrect. They ignore the real injuries Plaintiffs’ requested relief would cause the organizational Intervenors and their members, who would be “at risk of not being able to vote by mail or absentee ballot,” and the diversion and/or expenditure of scarce resources that would be necessitated by the burdens Plaintiffs seek to impose on voting. *See Common Cause Ind. v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (“[A] voting law can injure an organization enough to give it standing by compelling [it] to devote resources to combatting the effects of that law that are harmful to the organization’s mission.”); *Fla. State Conf. of the N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165-66 (11th Cir. 2008) (finding standing by organizations, like the NAACP, “that [] will have to divert personnel and time to educating volunteers ... and to resolving the problem of voters” who would face difficulty voting).

Moreover, Plaintiffs fail to even mention the individual Intervenors, who are registered voters in Allegheny County (and one of whom is an elected official on the Forest Hills Borough Council), and whose right to vote would be substantially disadvantaged by the elimination of drop-boxes for mail-in or absentee ballots. *See* Dkt. 104-5 (Robinson Decl.); Dkt. 104-6 (Wise Decl.);

Dkt. 104-7 (DeMarco Decl.); *Baker v. Carr*, 369 U.S. 186, 206 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue.”).

Third, as shown above, Intervenors have demonstrated their interest in this case because the relief Plaintiffs seek—*e.g.*, preventing the use of drop-boxes for mail-in or absentee ballots—would harm their fundamental right (and that of the members of their organizations) to vote, and their aims to promote ballot access. See *Pennsylvania v. President United States of Am.*, 888 F.3d 52, 59 (3d Cir. 2018) (stating a “policy preference which, as a matter of judicial economy, favors intervention” and holding that courts should consider the “*practical consequences*” of the litigation and “any significant legal effect on the applicant’s interest”) (quoting *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 970 (3d Cir. 1998)); *Alexander v. Rendell*, 246 F.R.D. 220, 230 (W.D. Pa. 2007) (finding intervenors have “a sufficient interest to intervene when the action will have a significant *stare decisis effect on the applicant’s rights*”). Plaintiffs’ conclusory denial of Intervenors’ legally protectable interests and Plaintiffs’ unsupported assertion that such interests would not be impaired (Opp. at 12, 14) leaves undisputed that Plaintiffs’ desired relief would *negatively affect* and impair the right of Pennsylvania citizens to vote, and would strain organizations like the NAACP-PSC, Common Cause, and the League of Women Voters who would be required to redistribute scarce resources to protect and promote the right to vote. And remarkably, Plaintiffs do not acknowledge the serious health and safety concerns of voting in-person during the COVID-19 pandemic (including in their Amended Complaint). Plaintiffs’ silence on this ongoing national emergency reinforces Intervenors’ interest in participating in this

litigation to ensure a free and fair election by protecting the health and safety of all citizens who wish to vote.⁴

Fourth, Plaintiffs offer no support for their assertion that all of Intervenors' interests are adequately represented by the named Defendants. Opp. at 16-17. To the contrary, Intervenors explained that the named Defendants do not have a specific, or legal interest in "ensuring the availability of local secure drop-boxes for [Intervenors] and to expanding voting access for underrepresented groups," or in "facilitating and supporting the right to vote of the elderly and the medically vulnerable." Dkt. 104 at 15-16. Intervenors "provide a perspective that Defendants lack" because they seek to "ensure all eligible citizens are given robust opportunities to vote without undue burden, particularly during a pandemic." *Id.* at 17. Notably, no named Defendant has disagreed with, or filed an opposition to, the Motion to Intervene.⁵

CONCLUSION

For all the reasons set forth herein, their motion to intervene, memorandum of law in support, and the attached declarations, Intervenors respectfully request that the Court grant their Motion to Intervene.

⁴ Plaintiffs' Amended Complaint confirms their objective to diminish ballot access. Rather than narrowing their allegations in response to any of the concerns raised in the numerous and varied motions to intervene and motion to dismiss filed in this case, Plaintiffs *expanded* their requested prohibitions on voting via absentee and mail-in ballots. See Dkt. 232 ¶¶ 5, 116-121, 192, 201, 211.

⁵ In fact, 20 county boards of elections have affirmatively stated that they do not oppose the Motion. See Dkt. 103 at 2-3; Dkt. 107.

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