

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

TIMOTHY K. MOORE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:20CV911
)	
DAMON CIRCOSTA, et al.,)	
)	
Defendants.)	

PATSY J. WISE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	1:20CV912
)	
NORTH CAROLINA STATE BOARD)	
OF ELECTIONS, et al.,)	
)	
Defendants.)	

ORDER

The League of Women Voters of North Carolina, Democracy North Carolina, Lelia Bentley, Peggy Cates, Robert K. Priddy, Regina Whitney Edwards, John P. Clark, and Walter Hutchins ("Proposed Intervenor") move to intervene in each of these cases as defendants under Federal Rule of Civil Procedure 24. (1:20CV911 (Doc. 35); 1:20CV912 (Doc. 38).) Plaintiffs in case number 1:20CV911 have responded and object, (1:20CV911 (Doc.

61); Plaintiffs in 1:20CV912 have not filed a response. This matter is now ripe for ruling. The court will deny Proposed Intervenor's motion to intervene.

Rule 24 provides two avenues for intervention: intervention as of right pursuant to Rule 24(a)(2), and permissive intervention pursuant to Rule 24(b). Fed R. Civ. P. 24(a)(2) and (b). If intervention as of right is not warranted, a court may still allow an applicant to intervene permissively under Rule 24(b). Id.

First, the court finds that Proposed Intervenor may not intervene under Rule 24(a). Rule 24(a) dictates that the court must permit anyone to intervene who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

Proposed Intervenor contend they have an interest in preserving the relief they received in the similar case, No. 1:20CV457, in which Proposed Intervenor are Plaintiffs. (See 1:20CV911 (Doc. 36) at 2.) Proposed Intervenor also contend intervention is necessary to preserve the cure process for those ballots which might otherwise be rejected. This court disagrees.

Plaintiffs secured relief in a case brought earlier in this court in League of Women Voters v. North Carolina State Board of Elections, No. 1:20CV457, by way of a preliminary injunction order. (See 1:20CV457 (Doc. 124).) Plaintiffs are fully capable of litigating and preserving any relief received in that case. More importantly, in these two cases the issues arise as a result of litigation and a Consent Judgment issued by a state court in a different case, in which Proposed Intervenor were not a party. That case involved the Alliance Intervenor, (see e.g., 1:20CV911 (Docs. 27, 28, 67).) Defendants and Alliance Intervenor in these two cases were Defendants and Plaintiffs, respectively, in those cases. After careful review of the record in No. 1:20CV457 and these two cases, this court does not find "that disposing of [these] action[s] may as a practical matter impair or impede the movant's ability to protect its interest" Fed. R. Civ. P. 24(a)(2).

This court also finds Proposed Intervenor's interests are adequately protected by the parties to these two cases, specifically members of the North Carolina State Board of Elections and the Alliance Intervenor. Those parties agreed upon the settlement adopted by the North Carolina State Court, (1:20CV911 (Docs. 1-2, 45)), and are all present and more than capable of representing those interests of Proposed Intervenor.

This court finds Proposed Intervenor's interest is adequately protected and intervention under Rule 24(a) should be denied.

Second, the court will exercise its discretion in declining to permit Proposed Intervenor under Rule 24(b). Under Rule 24(b), the court may permit anyone who "has a claim or defense that shares with the main action a common question of law or fact" to intervene on timely motion. Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Where a movant seeks permissive intervention as a defendant, the movant must therefore satisfy three requirements: (1) the motion is timely; (2) the defenses or counterclaims have a question of law or fact in common with the main action; and (3) intervention will not result in undue delay or prejudice to the existing parties. See League of Women Voters of Va. v. Va. State Bd. of Elections, Case No. 6:20-CV-00024, 2020 WL 2090679, at *3 (W.D. Va. Apr. 30, 2020); Carcano v. McCrory, 315 F.R.D. 176, 178 (M.D.N.C. 2016).

The Fourth Circuit has held that "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with

efficiency and due process.” Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986) (internal quotation marks omitted); see also Friend v. REMAC Am., Inc., No. 3:12-CV-17, 2014 WL 2440438, at *1 (N.D. W. Va. May 30, 2014) (analyzing motion to intervene “in the context of the Fourth Circuit’s policy favoring ‘liberal intervention’ and preventing the ‘problem of absent interested parties’” (quoting Feller, 802 F.2d at 729)). Further, the decision to grant or deny permissive intervention “lies within the sound discretion of the trial court.” Smith v. Pennington, 352 F.3d 884, 892 (4th Cir. 2003) (quoting Hill v. W. Elec. Co., 672 F.2d 381, 386 (4th Cir. 1982)).

The court finds that Proposed Intervenor’s motions to intervene are not timely. While those motions might arguably be considered timely within the context of these two cases, see Carcano, 315 F.R.D. at 178 (finding the intervenors’ motion timely when it was filed nine days after the plaintiffs filed their motion for preliminary injunction and before the defendants had filed any documents), Proposed Intervenor’s delayed for more than 30 days in seeking the relief they now argue should be allowed or defended in these two cases. On August 26, 2020, Plaintiffs’ counsel wrote Executive Defendants, the North Carolina State Board of Elections, and stated that “[a]s counties will start mailing absentee ballots on

September 4, 2020, and thus begin receiving them shortly thereafter, Plaintiffs may find it necessary to file an affirmative motion to enforce the injunction should Defendants fail to implement an adequate law or rule by this date.”

(1:20CV457 (Doc. 148-4) at 4.) Plaintiffs had ample opportunity to petition this court in that case to seek or protect the relief they believed was required under this court’s order.

(1:20CV457 (Doc. 124).) Plaintiffs inexplicably delayed until a time after this court entered its order expressing its concern with the relief Plaintiffs now seek to protect. (1:20CV457 (Docs. 145, 147).)

Finally, this court finds that allowing Proposed Intervenorors to intervene will result in undue prejudice on the parties and will result in “accumulating . . . arguments without assisting the court.” Allen Calculators, Inc. v. Nat’l Cash Register Co., 322 U.S. 137, 141-42 (1944). As previously noted, the present parties are capable of representing the interests of all North Carolina citizens. To the extent Proposed Intervenorors have concern over the enforcement of the existing laws, those interests will be adequately addressed by the present parties and in Proposed Intervenorors’ original case. (1:20CV457 (Doc. 124).) To add Proposed Intervenorors has already unnecessarily caused confusion, as Plaintiffs have at times expressed no

interest in the outcome of the one-witness requirement, a central focus of these two cases. Proposed Intervenorors have instead devoted their efforts to other memos and procedures implemented by the North Carolina State Board of Elections. (See 1:20CV911 (Doc. 70); 1:20CV912 (Doc. 53) at 152 ("[W]e are not fighting for the witness - you know, the voter cure certification wasn't our idea. The idea that it can remedy technical mistakes, yes, we think that is due process.")).)

Thus, the court will exercise its discretion in denying Proposed Intervenorors' motion. The court finds that Proposed Intervenorors' interests in upholding North Carolina's voting laws will be adequately represented by Defendants.

The court will consider, at the appropriate time, whether Proposed Intervenorors and any other interested non-parties should be allowed to participate by filing timely amicus curiae briefs consistent with Federal Rule of Civil Procedure 1.

IT IS THEREFORE ORDERED that Proposed Intervenorors' Motions to Intervene, (1:20CV911 (Doc. 35); 1:20CV912 (Doc. 38)), are **DENIED**.

This the 13th day of October, 2020.


United States District Judge