

IN THE FRANKLIN COUNTY  
COURT OF COMMON PLEAS

OHIO DEMOCRATIC PARTY and JAY  
MICHAEL HOULAHAN,

Plaintiffs,

v.

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

Defendant.

Case No. 20-CV-4997

Judge Stephen L. McIntosh

**MOTION TO INTERVENE BY DONALD J. TRUMP FOR PRESIDENT, INC., THE  
OHIO REPUBLICAN PARTY, THE REPUBLICAN NATIONAL COMMITTEE, AND  
THE NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE**

Pursuant to Ohio Rule of Civil Procedure 24, Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee (the “Republican Committees”) move for leave to intervene as party defendants. As required by Rule 24(C), the Republican Committees have attached a proposed Answer to Plaintiffs’ First Amended Complaint. *See* Exhibit 1. They also attach a proposed motion for leave to join in Secretary LaRose’s motion to dismiss and opposition to Plaintiffs’ motion for a preliminary injunction. *See* Exhibit 2. The grounds supporting the Republican Committees’ Motion are set forth in the accompanying memorandum.

August 17, 2020

Respectfully submitted,

*/s/ M. Ryan Harmanis*

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### MEMORANDUM IN SUPPORT

Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee (the “Republican Committees”) respectfully move to intervene to defend Ohio’s election framework. Plaintiffs Ohio Democratic Party and Jay Michael Houlahan (“ODP”) want to change Ohio’s rules for absentee ballots. Plaintiffs assert a novel interpretation of Ohio law that would require Ohio county boards of elections to accept fax or email absentee ballot applications. And they seek to implement this change and upend the existing rules less than 90 days before the November election.

The Court should grant the Republican Committees’ motion to intervene as party defendants, whether as a matter of right or discretion. The Republican Committees have a right to intervene because this motion is timely and the Republican Committees have a substantial interest in the validity of Ohio’s current framework that they can protect only by participating in this case. Civ.R. 24(A)(2). Alternatively, the Court should exercise its discretion to allow the Republican Committees to intervene because their defenses address questions already before the Court and their intervention will neither delay nor prejudice the existing parties. Civ.R. 24(B)(2). Courts routinely permit political parties to intervene in cases that may impact upcoming elections—particularly where one party seeks to intervene to oppose a suit brought by its “mirror-image.” *Democratic Natl. Commt. v. Bostelman*, 2020 WL 1505640, at \*5 (W.D. Wis. Mar. 28, 2020) (citation omitted). The result here should be the same.

### **BACKGROUND**

*The Republican Committees.* Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee are political committees that support Republican voters and candidates in Ohio.

Donald J. Trump for President, Inc. (the “Trump Campaign”) is the principal committee for the reelection campaign of Donald J. Trump, the 45th President of the United States of America. President Trump is the presumptive Republican nominee for the office of President of the United States in the upcoming November 3, 2020 general election. The Trump Campaign seeks to intervene on its own behalf and on behalf of its candidate, President Trump. President Trump is a candidate as that term is defined in Ohio Revised Code § 3501.01(H).

The Ohio Republican Party is a “major political party” as defined by Ohio Revised Code § 3501.01(F)(1). (ODP is Ohio’s other major political party. *See* Am. Comp. ¶ 6.) Its general purpose is to promote and assist Republican candidates who seek election or appointment to partisan federal, state, or local office in Ohio. It works to accomplish this purpose by, among other things, devoting substantial resources towards educating, mobilizing, assisting, and turning out voters in Ohio. The Ohio Republican Party has made significant contributions and expenditures to support Republican candidates in Ohio for many election cycles and is doing so again in 2020. It has a substantial interest in ensuring that Ohio runs free and fair elections according to Ohio law as enacted and enforced by the people of Ohio’s representatives.

The Republican National Committee is the Republican Party’s national committee. *See* 52 U.S.C. § 30101(14). It manages the Republican Party’s business at the national level. This includes developing and promoting the Party’s national platform and fundraising and election strategies; supporting Republican candidates at all levels across the country, including in Ohio; and assisting state parties throughout the country (including in Ohio) to educate, mobilize, assist, and turn out voters. Like the Ohio Republican Party, the Republican National Committee has made significant contributions and expenditures in support of Republican candidates in Ohio,

both in the past and in 2020. The Republican National Committee similarly has a substantial interest in ensuring that Ohio runs free and fair elections according to Ohio law.

The National Republican Congressional Committee (“NRCC”) is the national congressional committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The NRCC’s mission is to elect Republican candidates to the U.S. House of Representatives from across the United States, including from Ohio’s 16 congressional districts. The NRCC works to accomplish its mission in Ohio by, among other things, providing direct and indirect financial contributions and support to candidates and other Republican Party organizations; providing technical and research assistance to Republican candidates and Party organizations; engaging in voter registration, voter education, and voter turnout programs; and other Republican party-building activities. The NRCC has made significant contributions and expenditures in support of Republican House candidates in Ohio in many past election cycles and is doing so again in 2020. The NRCC has a substantial and particularized interest in ensuring that Ohio carries out free and fair elections.

*Procedural Background.* This case is still in its early stages. ODP filed its complaint and moved for a preliminary injunction on July 31, 2020. It filed an amended complaint on August 4. Secretary LaRose filed a memorandum in opposition to ODP’s motion and moved to dismiss ODP’s complaint on August 11. ODP responded on August 14. According to the docket, the Court has not set a hearing on ODP’s or Secretary LaRose’s motions.

## **ARGUMENT**

### **A. The Republican Committees Have A Right To Intervene Under Rule 24(A).**

“Upon timely application anyone shall be permitted to intervene in an action . . . 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.” Civ.R. 24(A)(2). The Ohio Supreme Court has long construed Rule 24 “liberally to permit intervention.” *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 130 Ohio St.3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶ 41; *see Dept. of Adm. Services, Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 51, 562 N.E.2d 125 (1990). Ohio courts (and federal courts, which apply an analogous rule) regularly permit intervention in election-law cases by parties who may be affected. *See State ex rel. Ohio Democratic Party v. LaRose*, 159 Ohio St.3d 277, 2020-Ohio-1253, \_\_\_ N.E.3d \_\_\_, ¶ 2 (per curiam) (Libertarian Party of Ohio); *State ex rel. Painter v. Brunner*, 127 Ohio St.3d 463, 2010-Ohio-6461, 940 N.E.2d 978, ¶ 4 (per curiam) (Ohio Democratic Party); *State ex rel. Hoag v. Lucas Cty. Bd. of Elections*, 124 Ohio St.3d 1518, 2010-Ohio-1167, 923 N.E.2d 619 (2010) (per curiam) (Lucas County Republican Party). For good reason: “the right to vote ‘is regarded as a fundamental political right, because [it is] preservative of all rights.’” *Serv. Emps. Internatl. Union Local 1 v. Husted*, 515 F. App’x 539, 543 (6th Cir. 2013) (per curiam) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

A proposed intervenor satisfies Rule 24(A) if: (1) the motion to intervene is timely; (2) the party has an interest in the property or transaction that is the subject matter of the case; (3) the party’s ability to protect its interest will be impaired without intervention; and (4) the existing parties may not adequately represent the party’s interest. *See* Civ.R. 24(A)(2). The Republican Committees meet each requirement.

*First*, this motion is timely. Courts consider several factors: the point to which the case has progressed; the purpose for intervention; when the intervenors knew (or should have known) of their interest in the case; prejudice to the parties; and any unusual circumstances that support

(or cut against) intervention. *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503, 696 N.E.2d 1058 (1998) (per curiam). No factor is dispositive; timeliness “depends on the facts and circumstances of [each] case.” *Id.* These factors weigh in the Republican Committees’ favor because this case is still in its infancy. ODP filed its complaint and moved for a preliminary injunction two weeks ago. *See, e.g., EnerVest Operating, L.L.C. v. JSMB0912 LLC*, 11th Dist. Portage No. 2016-P-0080, 2018-Ohio-3322, ¶ 33 (intervention timely after five-month delay); *Indiana Ins Co. v. Murphy*, 165 Ohio App.3d 812, 2006-Ohio-1264, 848 N.E.2d 889, ¶ 6 (3d Dist.) (six weeks after complaint); *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (two weeks). The Republican Committees’ intervention will prejudice no party and will not delay proceedings. And the nature of this case—with implications for the upcoming election—favors allowing one of Ohio’s major political parties to intervene in a suit brought by the other.

*Second*, the Republican Committees have a substantial interest in the subject of this action. As Plaintiffs’ own complaint alleges, political parties and candidates have an interest in cases that may impact their electoral prospects. *See* Am. Compl. ¶ 46; *e.g., State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 126 Ohio St. 3d 483, 2010-Ohio-4450, 935 N.E.2d 395, ¶ 26 (per curiam) (intervention by write-in candidate). So too here, “there is no dispute that the [Republican Committees] ha[ve] an interest in the subject matter of this case, given the fact that changes in voting procedures could affect candidates running as Republicans and voters who are members of the Ohio Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at \*2 (S.D. Ohio Aug. 26, 2005). The Republican Committees have a substantial interest in preventing changes to the “competitive environment.” *See Shays v. FEC*, 414 F.3d 76, 85 (D.C. Cir. 2005). “If [ODP] is victorious in this case,” it would substantially alter the

landscape less than 90 days before the election. *State ex rel. SuperAmerica Group v. Licking Cty. Bd. of Elections*, 80 Ohio St.3d 182, 184, 685 N.E.2d 507 (1997) (per curiam). Because the Republican Committees' candidates seek election or reelection "in contests governed by the challenged rules," they have an interest in "demand[ing] adherence" to those requirements. *Shays*, 414 F.3d at 88.

*Third*, the Republican Committees' ability to protect their interests hinges on intervention. If ODP's action succeeds, the security of Ohio's county boards of elections will come into doubt, potentially jeopardizing the integrity and fairness of the November 2020 election. Unless allowed to intervene, the Republican Committees have no way to "defend their concrete interests" in, among other things, winning elections. *Id.* at 86. ODP's suit could "fundamentally alter the environment" for the upcoming election by changing the rules for absentee ballot applications at the last minute. *Id.* ODP asks the Court to require all of Ohio's 88 county boards of elections to accept electronic absentee ballot applications. Indeed, ODP specifically alleges that its requested relief will require it—and therefore the Republican Committees—to "spend resources" to respond to the change. Am. Compl. ¶ 43. This would force the Republican Committees to face a "broader range of competitive tactics than" Ohio "would otherwise allow." *Shays*, 414 F.3d at 86. Suffice it to say, this would directly prejudice the Republican Committees and their candidates in the upcoming election.

*Finally*, no other party can adequately represent the Republican Committees' interests. The Ohio Supreme Court has indicated that parties generally should be permitted to intervene in election-related litigation, even when an original party *may* protect their interests. *See SuperAmerica*, 80 Ohio St.3d at 184. Here, the Secretary's generalized interest in enforcing the law is "different" from the Republican Committees' private interests. *See Intralot, Inc. v.*



*Director, Ohio Dep't of Adm. Servs.*, Franklin C.P. No. 17-CV-1669, at 4 (Mar. 22, 2019) (attached as Exhibit 3); *Utah Assn. of Counties v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001). For one thing, the Secretary has no interest in electing particular candidates. *Cf. Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (per curiam). For another, he must consider a “broad spectrum of views.” *Clinton*, 255 F.3d at 1256. These may include the “expense of defending” the current laws, *Clark v. Putnam County*, 168 F.3d 458, 461–62 (11th Cir. 1999); the “social and political divisiveness of the election issue,” *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007) (per curiam); and the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779–80 (4th Cir. 1991). For these reasons courts across the country have “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). In *Intralot*, for example, this Court allowed a private party to intervene under Rule 24(A) despite aligned government defendants, noting the intervenor had a “commercial property interest that [was] different than” the government-defendants’ interest. Ex. 3 at 4. The Republican Committees similarly have different interests from the Secretary. And while they agree with (and, with the Court’s permission, will join) the Secretary’s initial response to ODP’s complaint, their interests may diverge if the Court denies the Secretary’s motion to dismiss. *See Cleveland Cty. Assn. for Govt. by the People v. Cleveland Cty. Bd. of Commrs.*, 142 F.3d 468, 474 (D.C. Cir. 1998) (per curiam).

**B. Alternatively, The Court Should Allow The Republican Committees To Intervene Under Civ.R. 24(B).**

Even if the Court disagrees that the Republican Committees have a right to intervene, it should permit them to intervene under Rule 24(B). And because the Republican Committees

“[meet] the requirements for permissive intervention,” the Court may grant their motion under Rule 24(B) and “need not analyze intervention as of right.” *Merrill*, 2011-Ohio-4612, ¶ 44.

Rule 24(B)(2) authorizes courts to permit anyone to timely intervene “when [the] applicant’s claim or defense and the main action have a question of law or fact in common.” Civ.R. 24(B)(2). Permissive intervention is within the Court’s discretion. *Merrill*, 2011-Ohio-4612, ¶ 41. “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.” Civ.R. 24(B)(2).

Rule 24(B), like Rule 24(A), is “liberally” construed “to permit intervention.” *Merrill*, 2011-Ohio-4612, ¶ 41. And the Ohio Supreme Court has explained that even if a proposed intervenor cannot meet Rule 24(A)(2)’s requirements—for instance, because an existing party will adequately protect the intervenor’s interest—a court nevertheless should allow intervention under Rule 24(B). Indeed, in *SuperAmerica* the Ohio Supreme Court permitted intervention even though the party opposing intervention noted that the intervenors’ defenses were “identical” to the government-defendant’s. 80 Ohio St.3d at 184.

This case is no different. The Republican Committees will assert defenses that “manifestly raise questions of law and fact in common with those raised” by the parties. *Id.* ODP asserts an interpretation of R.C. § 3509.03 that would allow voters to return absentee ballot applications by fax or email. The Republican Committees reject that interpretation. And as another court recently held in allowing the Republican National Committee and the Republican Party of Wisconsin to intervene in an election case, the Republican Committees “are uniquely qualified to represent the ‘mirror-image’ interests of the plaintiff[]” because they are its “direct counterpart[].” *Bostelman*, 2020 WL 1505640, at \*5 (citation omitted). ODP’s own complaint

confirms the point, highlighting that “voting activities are inherently the reason that political parties, like Plaintiff ODP”—and the Republican Committees—“exist.” Am. Compl. ¶ 46.

Moreover, allowing the Republican Committees to intervene will not delay this case or prejudice any party. *See Merrill*, 2011-Ohio-4612, ¶ 44. Their motion to intervene is timely, given the early stages of the case. *See supra* Section A. This motion may be decided along with pending motions. With the Court’s permission, the Republican Committees will join and adopt Secretary LaRose’s motion to dismiss and opposition to ODP’s motion for a preliminary injunction, so intervention will not delay or affect the parties or the expedited nature of the case. *See Exhibit 2*. The Republican Committees will follow any schedule the Court sets going forward. And allowing them to intervene would prevent piecemeal litigation or the need for collateral challenges to a settlement or appeals from an order that may prejudice them.

### CONCLUSION

The Republican Committees respectfully ask the Court to grant their motion to intervene as defendants in this case. An Answer to Plaintiff’s First Amended Complaint is attached as required by Rule 24(C), as is a proposed motion for leave to join in Secretary LaRose’s motion to dismiss and opposition to Plaintiff’s motion for a preliminary injunction.

August 17, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on August 17, 2020, the foregoing was electronically filed via the Court's e-Filing System, which will send notice of such filing to the following counsel of record:

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/s/ M. Ryan Harmanis

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# **EXHIBIT 1**

**Proposed Answer**

**IN THE FRANKLIN COUNTY  
COURT OF COMMON PLEAS**

OHIO DEMOCRATIC PARTY and JAY  
MICHAEL HOULAHAN,

Plaintiff,

v.

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

Defendant.

Case No. 20-CV-4997

Judge Stephen L. McIntosh

**PROPOSED ANSWER OF DONALD J. TRUMP FOR PRESIDENT, INC., THE OHIO  
REPUBLICAN PARTY, THE REPUBLICAN NATIONAL COMMITTEE, AND THE  
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE**

Intervenor-Defendants Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee (the “Republican Committees”) respectfully answer Plaintiffs’ First Amended Complaint. Any allegation in the First Amended Complaint not explicitly responded to in this Answer is hereby denied.

1. The Republican Committees support free and fair elections for all Ohioans and for all voters across the country. The Republican Committees admit that Plaintiffs’ Amended Complaint purports to challenge Ohio’s election procedures on absentee ballot applications and seeks to force Ohio’s county boards of election to accept electronic absentee ballot applications. To the extent any answer is required, the Republican Committees deny the remaining allegations in Paragraph 1.

2. Paragraph 2 states a legal conclusion that does not require an answer. To the extent one is required, R.C. 3509.03 speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 2.

3. R.C. 3501.05(B)–(C) speaks for itself and the Republican Committees deny any allegations in Paragraph 3 inconsistent with it.

4. The Republican Committees admit that Defendant LaRose issued Directive 2020-13, which speaks for itself. Paragraph 4 otherwise states legal conclusions that do not require an answer. To the extent one is required, the Republican Committees deny the remaining allegations in Paragraph 4.

5. The Republican Committees admit that Plaintiffs seek the relief described in Paragraph 5. The Republican Committees deny that Plaintiffs are entitled to relief. Paragraph 5 otherwise states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 5.

6. The Republican Committees admit that Plaintiff Ohio Democratic Party is one of Ohio’s two major political parties and that its candidates for local, state, and federal offices will stand for election at the November 3, 2020 general election. As to the remaining allegations in Paragraph 6, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

7. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7 and so deny them.

8. The Republican Committees admit that Defendant LaRose is Ohio’s Secretary of State and that Plaintiffs purport to sue him in his official capacity. Paragraph 8 otherwise states legal conclusions that do not require an answer. To the extent one is required, Ohio law addressing the Secretary of State’s duties, including R.C. 3501.04–.05, speaks for itself, and the Republican Committees deny any allegation in Paragraph 8 inconsistent with its provisions.



9. Paragraph 9 states a legal conclusion that does not require an answer. To the extent one is required, the Republican Committees do not contest venue; and except as expressly admitted, the Republican Committees deny any remaining allegations in Paragraph 9.

10. Paragraph 10 states legal conclusions that do not require an answer. To the extent one is required, the Republican Committees do not contest the Court's exercise of jurisdiction; and except as expressly admitted, the Republican Committees deny any remaining allegations in Paragraph 10.

11. Paragraph 11 states legal conclusions that do not require an answer. To the extent one is required, R.C. 2721.01-.15 and R.C. 2727.03 speak for themselves, and the Republican Committees deny any allegation in Paragraph 11 inconsistent with them.

12. The Republican Committees admit that Plaintiffs seek the relief described in Paragraph 12. The Republican Committees deny that Plaintiffs are entitled to relief. Paragraph 12 otherwise states a legal conclusion that does not require an answer. To the extent an answer is required, R.C. 2335.39 speaks for itself, and the Republican Committees otherwise deny the remaining allegations in Paragraph 12.

13. The Republican Committees admit that Ohio's 2020 general election is scheduled for November 3, 2020. Paragraph 13 otherwise states legal conclusions that do not require an answer. To the extent one is required, R.C. 3511.04 and R.C. 3509.01 speak for themselves, and the Republican Committees deny any allegation in Paragraph 13 inconsistent with them.

14. Paragraph 14 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3509.02(A) and Directive 2019-28 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 14.

15. Paragraph 15 states a legal conclusion that does not require an answer. To the extent one is required, R.C. 3509.03(A) speaks for itself, and the Republican Committees deny any allegations in Paragraph 15 inconsistent with it.

16. Paragraph 16 states legal conclusions that do not require an answer. To the extent an answer is required, R.C. 3509.03(B) speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 16.

17. Paragraph 17 states a legal conclusion that does not require an answer. To the extent one is required, the Republican Committees admit that the Ohio Secretary of State offers Form-11A as an application for absentee ballots. Ohio law otherwise speaks for itself on absentee ballot applications, and the Republican Committees deny any remaining allegations in Paragraph 17.

18. Paragraph 18 states legal conclusions that do not require an answer. To the extent an answer is required, R.C. 3501.011 and Directive 2019-28 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 18.

19. Paragraph 19 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3509.03(D) and Directive 2019-28 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 19.

20. Paragraph 20 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3509.03 and R.C. 3509.04(B) speak for themselves, and the Republican Committees deny any allegations in Paragraph 20 inconsistent with them.

21. Paragraph 21 states a legal conclusion that does not require an answer. To the extent one is required, the Ohio Election Code, including R.C. 3509.03, speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 21.

22. Paragraph 22 states a legal conclusion that does not require an answer. To the extent one is required, Ohio law speaks for itself, and the Republican Committees deny any allegations in Paragraph 22 inconsistent with it.

23. Paragraph 23 states legal conclusions that do not require an answer. To the extent an answer is required, R.C. 3509.05(A) speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 23.

24. Paragraph 24 states a legal conclusion that does not require an answer. To the extent one is required, R.C. 3509.06 speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 24.

25. Paragraph 25 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3503.19(A) and R.C. 3503.20 speak for themselves, and the Republican Committees deny any allegations in Paragraph 25 inconsistent with them. The Republican Committees deny any remaining allegations in Paragraph 25.

26. Paragraph 26 states a legal conclusion that does not require an answer. To the extent one is required, Ohio law, including R.C. 3509.03, speaks for itself, and the Republican Committees deny any allegations in Paragraph 26 inconsistent with it.

27. Paragraph 27 states legal conclusions that do not require an answer. To the extent an answer is required, Ohio law, including R.C. 3519.051, speaks for itself, and the Republican Committees deny any allegations inconsistent with it. The Republican Committees deny any remaining allegations in Paragraph 27.

28. Paragraph 28 states legal conclusions that do not require an answer. To the extent an answer is required, R.C. 3509.03 speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 28.

29. Paragraph 29 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 and so deny them.

30. The Republican Committees admit that Defendant LaRose issued Directive 2020-13 on July 17, 2020, which speaks for itself. The Republican Committees deny any remaining allegations in Paragraph 30.

31. The Republican Committees admit that Paragraph 31 purports to quote from Directive 2020-13, Directive 2019-28, and the Ohio Secretary of State's website, which speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 31.

32. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 32 and so deny them.

33. Directive 2020-13 speaks for itself. As to the remaining allegations in Paragraph 33, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

34. Paragraph 34 states a legal conclusion that does not require an answer. To the extent one is required, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 34 and so deny them.

35. Paragraph 35 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3509.03 and the caselaw cited in Paragraph 35 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 35.

36. Paragraph 36 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3509.03 and the caselaw cited in Paragraph 36 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 36.

37. Paragraph 37 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 37.

38. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 and so deny them.

39. The Republican Committees admit that Paragraph 39 purports to quote from a letter from Defendant LaRose, as well as Columbus Dispatch and Cincinnati Enquirer articles, which speak for themselves. As to the remaining allegations in Paragraph 39, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

40. The Republican Committees admit that Paragraph 40 cites a Washington Post article, which speaks for itself. As to the remaining allegations in Paragraph 40, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

41. Paragraph 41 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 41.

42. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42 and so deny them.

43. Paragraph 43 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 43 and so deny them.

44. Paragraph 44 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 44 and so deny them.

45. Paragraph 45 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 45.

46. Paragraph 46 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 46.

47. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47 and so deny them.

48. The Republican Committees are without knowledge or information sufficient to form a belief about the truth of the allegations regarding Plaintiff Houlahan and so deny them. Paragraph 48's remaining allegations state legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny any remaining allegations in Paragraph 48.

49. The Republican Committees admit that Plaintiffs seek the relief described in Paragraph 49. The Republican Committees deny that Plaintiffs are entitled to relief. Paragraph 49 otherwise states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 49.

50. Paragraph 50 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 50.

51. Paragraph 51 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 51.

52. Paragraph 52 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 52.

53. Paragraph 53 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 53.

54. Paragraph 54 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 54.

**COUNT ONE**

55. The Republican Committees incorporate their responses to the preceding paragraphs.

56. Paragraph 56 states legal conclusions that do not require an answer. To the extent one is required, the Republican Committees deny the allegations in Paragraph 56.

**COUNT TWO**

57. The Republican Committees incorporate their responses to the preceding paragraphs.

58. The Republican Committees admit that Paragraph 58 cites the Secretary of State's online "County Boards of Elections Directory," which speaks for itself. As to the remaining allegations in Paragraph 58, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

59. The Republican Committees admit that Paragraph 59 cites the Secretary of State's online "County Boards of Elections Directory" and the Hardin County Board of Election's website, which speak for themselves. As to the remaining allegations in Paragraph 59, the Republican Committees are without knowledge or information sufficient to form a belief about the truth of such allegations and so deny them.

60. Paragraph 60 states legal conclusions that do not require an answer. To the extent one is required, the Republican Committees deny the allegations in Paragraph 60.

**COUNT THREE**

61. The Republican Committees incorporate their responses to the preceding paragraphs.

62. Paragraph 62 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 62.

63. Paragraph 63 states legal conclusions that do not require an answer. To the extent one is required, R.C. 3511.02(A)(1) and 52 U.S.C. § 20302(a)(6)(A) speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 63.

64. Paragraph 64 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 64.

65. Paragraph 65 states legal conclusions that do not require an answer. To the extent an answer is required, R.C. 3509.04 and R.C. 3511.04 speak for themselves. The Republican Committees deny any remaining allegations in Paragraph 65.

66. The Republican Committees admit that Plaintiffs seek the relief described in Paragraph 66. Paragraph 66 otherwise states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny that Plaintiffs are entitled to relief and deny any remaining allegations in Paragraph 66.

**COUNT FOUR**

67. The Republican Committees incorporate their responses to the preceding paragraphs.

68. Paragraph 68 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 68.



69. Paragraph 69 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 69.

70. Paragraph 70 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 70.

71. Paragraph 71 states a legal conclusion that does not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 71.

72. Paragraph 72 states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny the allegations in Paragraph 72.

73. The Republican Committees admit that Plaintiffs seek the relief described in Paragraph 73. Paragraph 73 otherwise states legal conclusions that do not require an answer. To the extent an answer is required, the Republican Committees deny that Plaintiffs are entitled to relief and deny any remaining allegations in Paragraph 73.

#### **PRAYER FOR RELIEF**

(1) The Republican Committees deny the allegations of Paragraph (1) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief.

(2) The Republican Committees deny the allegations of Paragraph (2) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(3) The Republican Committees deny the allegations of Paragraph (3) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(4) The Republican Committees deny the allegations of Paragraph (4) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(5) The Republican Committees deny the allegations of Paragraph (5) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(6) The Republican Committees deny the allegations of Paragraph (6) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(7) The Republican Committees deny the allegations of Paragraph (7) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(8) The Republican Committees deny the allegations of Paragraph (8) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(9) The Republican Committees deny the allegations of Paragraph (9) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief

(10) The Republican Committees deny the allegations of Paragraph (10) of Plaintiffs' prayer for relief and deny that Plaintiffs are entitled to relief.

#### **AFFIRMATIVE AND OTHER DEFENSES**

Without assuming the burden of proof or persuasion, and while reserving the right to assert all applicable affirmative defenses supported in law and fact, the Republican Committees assert the following affirmative defenses:

#### **FIRST AFFIRMATIVE DEFENSES**

The First Amended Complaint fails to allege sufficient facts upon which a claim for relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to assert their claims in the First Amended Complaint

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statute of limitations.

#### FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the equitable doctrines of laches, estoppel, unclean hands, and/or waiver.

#### CONCLUSION

The Republican Committees respectfully request that the Court (1) dismiss Plaintiffs' claims with prejudice and enter judgment for Defendants; (2) deny Plaintiffs' prayer for relief; and (3) grant other such relief as the Court may deem proper.

August 17, 2020

Respectfully submitted,

/s/ M. Ryan Harmanis

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*Trial Attorney*

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# **EXHIBIT 2**

**Proposed Motion to Join Ohio Secretary of  
State Frank LaRose's Combined  
Memorandum in Opposition to Plaintiffs'  
Motion for Preliminary Injunction and  
Motion to Dismiss Plaintiffs' Amended  
Complaint**

IN THE FRANKLIN COUNTY  
COURT OF COMMON PLEAS

OHIO DEMOCRATIC PARTY and JAY  
MICHAEL HOULAHAN,

Plaintiffs,

v.

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

Defendant.

Case No. 20-CV-4997

Judge Stephen L. McIntosh

**DONALD J. TRUMP FOR PRESIDENT, INC., THE OHIO REPUBLICAN PARTY, THE  
REPUBLICAN NATIONAL COMMITTEE, AND THE NATIONAL REPUBLICAN  
CONGRESSIONAL COMMITTEE’S PROPOSED MOTION TO JOIN DEFENDANT  
OHIO SECRETARY OF STATE FRANK LAROSE’S COMBINED MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION AND  
MOTION TO DISMISS PLAINTIFFS’ AMENDED COMPLAINT**

Proposed Intervenor-Defendants Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee (the “Republican Committees”) respectfully move this Court for an Order permitting the Republican Committees to join Ohio Secretary of State Frank LaRose’s Combined Memorandum in Opposition to Plaintiffs’ Motion for Preliminary Injunction and Motion to Dismiss Plaintiffs’ Amended Complaint (“Motion to Dismiss”).

The Court should grant the Republican Committees’ motion to join the Secretary’s Motion to Dismiss in the interests of judicial economy and efficiency. Ohio courts have long permitted parties to join similar motions. *E.g., Klamert v. Cleveland*, 186 Ohio App.3d 268, 2010-Ohio-443, 927 N.E.2d 618, ¶ 3 (8th Dist.); *Rich v. Thompson Newspapers, Inc.*, 11th Dist. Ashtabula No. 2003-A-0065, 2004-Ohio-1431, ¶ 29; *Newkirk v. Schultz*, 66 Ohio App.3d 267, 268, 583 N.E.2d 1121 (11th Dist.1990); *Jusu-Kamara v. Stouffer Foods Corp.*, 8th Dist.

Cuyahoga No. 50570, 1986 WL 5950, \*1 (May 22, 1986). As explained in the Republican Committees' Motion to Intervene, they have a strong interest as Plaintiff Ohio Democratic Party's counterpart because this case may affect the Republican Committees and their candidates and voters in the upcoming November 3, 2020 election. Allowing the Republican Committees to join the Motion to Dismiss will avoid any delay or prejudice to any party.

August 17, 2020

Respectfully submitted,

/s/ M. Ryan Harmanis

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*\*Pro hac vice applications forthcoming*

**CERTIFICATE OF SERVICE**

I certify that on August 17, 2020, the foregoing was electronically filed via the Court's e-Filing System, which will send notice of such filing to the following counsel of record:

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/s/ M. Ryan Harmanis

M. Ryan Harmanis (0093642)

# **EXHIBIT 3**

***Intralot, Inc. v. Director, Ohio Dept. of Adm. Servs., Franklin C.P. No. 17-CV-1669 (Mar. 22, 2019)***



IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Intralot, Inc.,	:	
	:	
Plaintiff,	:	<b>Case No. 17CV-1669</b>
	:	
-v-	:	<b>JUDGE KAREN HELD PHIPPS</b>
	:	
Director, Ohio Department of Administrative Services, et al.,	:	
	:	
Defendants.	:	

**ENTRY GRANTING MOTION TO INTERVENE**

This matter is before the Court on Scientific Games International, Inc.’s [“Scientific Games”] Motion to Intervene. The Motion is opposed by Plaintiff. The issues have been fully briefed and are ready for consideration.

By way of brief background, Plaintiff, pursuant to a contract with the Ohio Department of Administrative Services (“DAS”), had been the provider of instant ticket warehousing and distribution services for the Ohio Lottery Commission since 2009. As its contract was set to expire in June of 2017, DAS issued a Request for Proposal [“RFP”] setting forth a process for the award of the new contract for those services. Plaintiff and Scientific Games were the only vendors to respond to the RFP. Following the evaluation, scoring, and review process, DAS announced the contract was being awarded to Scientific Games.

Plaintiff then filed this action on February 16, 2017 seeking, inter alia, an injunction preventing DAS and the Lottery Commission from proceeding with the award. Plaintiff argued that they had interfered with its ability to present a full and complete protest of the decision by refusing to produce public records and that the decision to award the contract to Scientific Games was in violation of the law and the terms of the RFP.

Plaintiff initially prevailed in obtaining a preliminary injunction following a full hearing before a Magistrate. However, on June 15, 2017, the Court's predecessor, Judge David Cain, overruled the Magistrate's Decision, denied Plaintiff's request for a preliminary injunction, and then dismissed the action with prejudice on the grounds that it was moot. On Plaintiff's subsequent appeal, the Tenth District affirmed the denial of the request for preliminary injunction, but ruled Judge Cain had erred in dismissing the case.

The Ohio Supreme Court declined to accept the case for further review, and the matter is now back in this Court. Plaintiff has filed a second Motion for Preliminary Injunction challenging the lawfulness of an Amended Contract between Scientific Games and DAS. Plaintiff contends the amendments, such as a proposed new location for a warehouse and different pricing options, materially alter Scientific Games' response to the RFP and should have been subject to the evaluation and scoring process.

Scientific Games now moves the Court for leave to intervene in this action either permissively or as a matter of right. Plaintiff opposes the Motion on the grounds that the request for intervention is not timely and because Scientific Games' interest is aligned with and being adequately protected by DAS and the Lottery Commission.

Civ. R. 24(A) sets forth the standard for allowing a party to intervene in an action as a matter of right:

[u]pon 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.

Thus, “the following elements must be met before a party may intervene: (1) the intervenor must claim an interest relating to the property or transaction that is the subject of the action; (2) the intervenor must be so situated that the disposition of the action may, as a practical matter, impair or impede the intervenor's ability to protect his or her interest; (3) the intervenor must demonstrate that his or her interest is not adequately represented by the existing parties; and (4) the motion to intervene must be timely.” *State ex rel. Montgomery v. City of Columbus*, 10th Dist. No. 02AP-963, 2003-Ohio-2658, ¶11. “All of these conditions must be met to establish a right to intervene.” *Id.*

Civ. R. 24(B) provides for 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. \* \* \*. 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.”

There is no dispute that Scientific Games has an interest in the transaction that is the subject matter of this action. Plaintiff is challenging the lawfulness of and seeking to prevent implementation of Scientific Games’ contract with DAS. However, both Civ. R. 24(A) and (B) require a party to timely seek intervention. Plaintiff argues Scientific Games cannot meet this element because this action was filed on February 16, 2017, the matter was partially litigated through the preliminary injunction hearing, and the case has been through an appeal. Plaintiff notes that Scientific Games never sought to intervene in any of the proceedings until now and there can be no explanation for the two-year delay.

Additionally, to intervene as a matter of right under Civ. R. 24(A), Scientific Games must establish its interest is not being adequately protected by the existing parties. Plaintiff argues this

also cannot be established due to the fact that Scientific Games' position is aligned with DAS and the Lottery Commission, and, again, Scientific Games has allowed these agencies to represent its interest for two years.

Scientific Games responds that its intervention was necessitated by Plaintiff's recent Motion for Preliminary Injunction raising new issues and presenting new claims. Scientific Games contends Plaintiff's Complaint solely challenged DAS' procurement process, and the allegations did not directly involve its own conduct. It further asserts it did not have any particular knowledge or insight concerning the issues raised in the Complaint and the original request for injunctive relief. In contrast, Scientific Games states the more recent Motion for Preliminary Injunction directly challenges its efforts to implement the contract awarded by DAS. It further argues it has a separate commercial interest in upholding the validity of the contract which is not a concern of or being adequately represented by the existing parties.

The Court has thoroughly reviewed the parties' arguments and the applicable law. The Court finds that Scientific Games has set forth a reasonable explanation for seeking intervention more than two years after the Complaint was filed. Within the second Motion for Preliminary Injunction, Plaintiff itself represents that the circumstances have changed and it has new allegations and evidence to support its request for injunctive relief. Those new allegations relate, not just to the procurement process at issue during the first preliminary injunction hearing, but also to the contract negotiations between Scientific Games and DAS. The Court finds that Scientific Games timely sought intervention when its conduct became more directly an issue. Additionally, Plaintiff is not prejudiced by the delay. This action is essentially starting anew. Finally, the Court further agrees with Scientific Games' position that it has a commercial property interest that is different than DAS and the Lottery Commission's interest and will not be adequately protected.

For these reasons, the Court finds Scientific Games is entitled to intervene both permissively and as a matter of right. Accordingly, its Motion to Intervene is well-taken and GRANTED, and it is hereby made a party to this action.

**IT IS SO ORDERED.**

Electronically Signed By:  
JUDGE KAREN HELD PHIPPS

Copies to:

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Franklin County Court of Common Pleas

**Date:** 03-22-2019  
**Case Title:** INTRALOT INC -VS- OHIO DEPARTMENT ADMINISTRATIVE SERVICES ET AL  
**Case Number:** 17CV001669  
**Type:** ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "K. Held Phipps", is written over a circular, textured stamp or seal.

/s/ Judge Karen Held Phipps

Court Disposition

Case Number: 17CV001669

Case Style: INTRALOT INC -VS- OHIO DEPARTMENT  
ADMINISTRATIVE SERVICES ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 17CV0016692019-03-0199960000  
Document Title: 03-01-2019-MOTION TO INTERVENE - NON-  
PARTY: SCIENTIFIC GAMES INTERNATIONAL INC  
Disposition: MOTION GRANTED