

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

OHIO DEMOCRATIC PARTY, et al, :
 :
 Plaintiff, : CASE NO. 20 CV 4997
 :
 vs. : JUDGE MCINTOSH
 :
 FRANK LAROSE, in his official capacity :
 as Ohio Secretary of State, :
 :
 Defendants.

**DECISION AND ENTRY ON DONALD J. TRUMP FOR PRESIDENT, INC., THE OHIO
REPUBLICAN PARTY, THE REPUBLICAN NATIONAL COMMITTEE AND THE
NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE’S MOTION TO
INTERVENE**
(FILED AUGUST 17, 2020)

MCINTOSH, J.

This matter is before the Court upon motion by Donald J. Trump for President, Inc, the Ohio Republican Party, the Republican National Committee and the National Republican Congressional Committee (hereafter “Republican Committees”) to intervene as party defendants filed August 17, 2020. Plaintiffs Ohio Democratic Party and Jay Michael Houlahan (hereafter “Plaintiffs”) filed a Memorandum in Opposition on August 19, 2020. The Republican Committees filed a Reply on August 21, 2020. This motion is fully briefed and ripe for review.

FACTUAL BACKGROUND

Under R.C. 3509.02, all registered voters have had the option to vote by absentee ballot, for any reason or for no reason at all. A qualified voter who wishes to cast an absentee ballot “shall make written application for those ballots to the director of elections of the county in which the elector’s voting residence is located.” R.C. 3509.03(A). Applications need not to be in “any

particular form,” but must include certain information, such as the voter’s name, date of birth, address, and driver’s license number, social security number, or a copy of a valid form of identification. R.C. 3509.03(B)(1)-(9).

On July 17, 2020, the Secretary of State issued Directive 2020-13 to the 88-county board of elections. The directive provided instructions for how boards should prepare for the statewide mailing of absentee ballot applications and indicated that voters must submit their absentee ballot applications to their respective county board of elections “either in person or by mail, with the voter affixing a first-class stamp.” (Directive 2020-13 at *1.) On July 31, 2020 Plaintiff’s filed a Complaint and Motion for Preliminary injunction. On August 4, 2020, Plaintiff’s filed an Amended Complaint seeking a declaration that R.C. 3509.03 allows voters to return absentee voter applications in electronic form, such as email or facsimile. Plaintiff’s also claim that the Secretary of State’s interpretation of R.C. 3509.03 violates Ohio Constitution Article 1, Section 2 and 16.

The Republican Committees move to intervene as party defendants and maintain that they have a right to intervene because their motion is timely and they have a substantial interest in the validity of Ohio’s current framework which can only be protected by participating in this case.

LAW AND ANALYSIS

Civ.R. 24 allows a non-party to file a motion to intervene and contains specific requirements for such a motion. Under the rule two types of intervention are allowed “intervention of right” and “permissive intervention.” Civ.R. 24(A) discusses intervention as a matter of right, whereas Civ.R. 24(B) discusses permissive intervention. While a motion to intervene should be liberally construed, the standard of review of a ruling on a motion to intervene, whether as of right or by permission, is whether the trial court abused its discretion. *State ex rel. Merrill v. Ohio Dep’t of Natural Res.*, 130 Ohio St. 3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶41.

To intervene as a matter of right under Civ.R. 24(A)(2) the movant must show: (1) that the application to intervene is timely; (2) an interest relating to the property or transaction which is the subject of the action; (3) that he is so situated that disposition of the action may as a practical matter impair or impede his ability to protect that interest; and (4) that the existing parties do not adequately represent his interest. *Fairview Gen. Hosp. v. Fletcher*, 69 Ohio App. 3d 827, 830-831, 591 N.E. 2d 1312 (10th Dist.1990) (quoting *Blackburn, supra*, 29 Ohio App. 3d at 352, 29 OBR at 480, 505 N.E.2d at 1012.) Failure to meet any one of the elements will result in denial of the right to intervene. *Id.*

“While no uniform definition of ‘interest’ for purposes of Civ.R. 24(A) exists, an assessment of interest involves ‘* * * a realistic appraisal * * * of the immediacy of the interest of such a would be intervenor. Chaos would result if every citizen ‘interested’ in the outcome * * * were permitted to intervene * * *. The interest of the intervenor must be more particularly in the subject matter of the lawsuit.” *Duryee v. PIE Mut. Ins. Co.*, 10th Dist. No. 98AP-535, 1998 Ohio App. LEXIS 5654, at *5 (Dec. 1, 1998) (quoting *Fairview General Hosp., supra*, at 831). Consider the following cases for example.

Civ.R. 24(B) outlines the requirements for permissive intervention and states, in relevant part:

Upon timely application anyone may be permitted to intervene in an action: * * * (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.

The Republican Committees argue that they have a right to intervene under Civ. R. 24(A) because the motion is timely. Plaintiffs filed its complaint and moved for a preliminary injunction on August 4, 2020 and the Republican Committees argue that intervention will not prejudice any party and will not delay proceedings. The Republican Committees further argue that they have a substantial interest in the subject of this action as political parties and candidates have an interest in cases that may impact their electoral prospects. The Republican Committees contend that no other party can adequately represent their interests. The Republican Committees argue that the Secretary of State's generalized interest in enforcing the law is different from the Republican Committees' private interests. The Republican Committees further argue that the Secretary of State does not have an interest in election particular candidates and that although they agree with the Secretary's initial response to ODP's complaint, their interests may diverge if the Court denies the Secretary's motion to dismiss. Alternatively, the Republican Committees maintain that it should be allowed to intervene under Civ. R. 24(B). The Republican Committees argue that it will join and adopt the Secretary of State's motion to dismiss and opposition to Plaintiffs' motion for preliminary injunction, so intervention will not delay or affect the case.

In their Memorandum Contra, Plaintiffs argue that the same principles that factored into the Court's August 19, 2020 Decision should be applied here. Plaintiffs maintain that time is of the essence and the Republican Committees do not have any unique information or arguments that are necessary for the Court to consider for a just resolution of this matter. Plaintiffs argue that the Republican Committees have failed to meet the threshold for intervention. Plaintiffs contend that the motion to intervene is not timely as briefing has already concluded on pertinent motions (motion for preliminary injunction and motion to dismiss) and the Republican committee has failed to show that their interests are not already adequately represented by the Secretary of State.

In reply, the Republican Committees argue that its interest is more direct and substantial than those that would be presented in the amici's. The Republican Committees maintain that this case could "substantially alter the election landscape less than 75 days before November 3, directly affecting the Republican Committees, their candidates, and their voters." (Republican Committees Reply at p. 3.) The Republican Committees argue that the Secretary of States generalized interest in enforcing the law is different from its private interest.

Upon review, the Court finds good cause to allow the Republican Committees to intervene in this matter. The Court finds that the motion is timely and the Republican Committees have a substantial interest in the outcome of this matter. The Court does not find that any prejudice will result in granting the motion. The Republican Committee shall file its Answer and Memorandum in Support of Defendant's Motion to Dismiss forthwith.

CONCLUSION

For the aforementioned reasons, the Republican Committees' Motion to Intervene is
GRANTED.

So Ordered

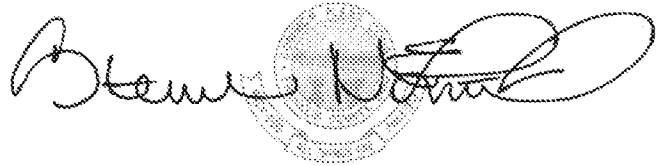
Copies to:

All Counsel and Parties (Electronically)

Franklin County Court of Common Pleas

Date: 09-08-2020
Case Title: OHIO DEMOCRATIC PARTY ET AL -VS- OHIO SECRETARY OF STATE
Case Number: 20CV004997
Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "Stephen L. McIntosh", is written over a circular official seal. The seal is partially obscured by the signature and contains some illegible text and a central emblem.

/s/ Judge Stephen L. McIntosh

Court Disposition

Case Number: 20CV004997

Case Style: OHIO DEMOCRATIC PARTY ET AL -VS- OHIO
SECRETARY OF STATE

Motion Tie Off Information:

1. Motion CMS Document Id: 20CV0049972020-08-1799930000
Document Title: 08-17-2020-MOTION TO INTERVENE - NON-
PARTY: DONALD J TRUMP FOR PRESIDENT INC
Disposition: MOTION GRANTED