

**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

**REPLY OF DONALD J. TRUMP FOR PRESIDENT, INC., THE OHIO
REPUBLICAN PARTY, THE REPUBLICAN NATIONAL COMMITTEE,
AND THE NATIONAL REPUBLICAN CONGRESSIONAL
COMMITTEE IN SUPPORT OF THEIR MOTION TO INTERVENE**

In their Motion to Intervene, Donald J. Trump for President, Inc., the Ohio Republican Party, the Republican National Committee, and the National Republican Congressional Committee (the “Republican Committees”) established that they satisfy the elements for intervention of right under Civil Rule 24(A) or, at minimum, permissive intervention under Rule 24(B). In response, Plaintiffs concede the Republican Committees’ substantial interest in this case. *See Opp.* at 2. Yet they insist that the Republican Committees—Plaintiff Ohio Democratic Party’s direct counterpart—should not be allowed to participate in a case that could change the rules for the November election. *Id.* at 2–3. They contest two elements for intervention: timeliness and adequacy of representation (which applies only to Rule 24(A)). Their opposition fails to respond to the Republican Committees’ arguments, and regardless it is unpersuasive. As explained below, the Court should allow the Republican Committees to intervene.

I. THE REPUBLICAN COMMITTEES HAVE A RIGHT TO INTERVENE UNDER RULE 24(A).

The Republican Committees’ Motion (at 3–7) showed that they meet all four elements for intervention of right: (1) the Motion is timely; (2) the Republican Committees have an interest in the subject matter of the case; (3) they can protect that interest only by intervening; and (4) the existing parties do not adequately represent their interest. *See* Civ.R. 24(A)(2). Plaintiffs challenge only timeliness and adequacy of representation. Their arguments fail on both fronts.

A. Timeliness. Ohio courts consider several factors for timeliness: (1) the stage of proceedings; (2) the purpose for intervention; (3) the time during which the proposed intervenor knew or should have known of its interest in the case; (4) prejudice to the parties; and (5) any unusual circumstances favoring or disfavoring 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).

These factors weigh heavily in favor of intervention. This case was barely two weeks old when the Republican Committees moved to intervene. They seek to protect their substantial (and conceded) interest in the upcoming election. Intervention will prejudice no party. And the potential impact of this case is a special circumstance that favors intervention—which is why courts routinely allow intervention in election cases. *See* Mot. at 4 (collecting cases).

Plaintiffs’ two responses are not enough to overcome these factors. *First*, they assert that the Motion is untimely because the parties have briefed Plaintiffs’ motion for a preliminary injunction and the Secretary’s motion to dismiss. *See* Opp. at 2. But, generally, a *preliminary* injunction is the start of a case, not the end of it. Plaintiffs cite no case or support for the notion that briefing on a preliminary injunction renders a motion to intervene untimely just two weeks into a case. Even more telling, Plaintiffs do not argue that intervention will prejudice them. In short, they fail to explain how this case is so far along that the procedural posture outweighs the

numerous factors that favor intervention—particularly when Ohio courts apply 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.

Second, Plaintiffs argue that the same factors that led the Court to deny a proposed amicus brief should lead it to deny the Republican Committees’ Motion. But none of the factors the Court mentioned in its order apply here. Time is of the essence, *see* Order at 2, but the Republican Committees’ intervention will not delay the case. The Court did “not believe it needs additional information” from the amici to decide the case, *id.*, but the Republican Committees asked to join the Secretary’s response to alleviate any issues with timeliness or prejudice. Finally, the Republican Committees’ interest is far more direct and substantial than the amici’s. 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. Given the relevant factors, the Republican Committees’ Motion was timely.

B. *Inadequate Representation.* The Republican Committees’ Motion also explained (at 6–7) that, while they may be aligned with the Secretary of State at this stage, Ohio courts permit intervention even when a government defendant *may* represent the intervenor’s interests. *E.g.*, *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). Plaintiffs’ only response—again, with no case support—is that the Secretary adequately represents the Republican Committees’ interest simply because the parties’ legal positions are currently the same. *See* Opp. at 3. That is not enough. Rule 24(A) speaks of the intervenor’s “*interest*,” not its legal position on a motion. Civ.R. 24(A)(2) (emphasis added). The Secretary’s generalized interest in enforcing the law is different from the

Republican Committees' private interest. *See* Mot. at 6–7 (collecting cases). And those interests may diverge during this case—which is enough for intervention.

II. ALTERNATIVELY, THE COURT SHOULD ALLOW THE REPUBLICAN COMMITTEES TO INTERVENE UNDER RULE 24(B).

Regardless, the Court can grant the Motion in its discretion under Rule 24(B) without addressing adequacy of representation. Rule 24(B) requires (1) a timely motion; (2) a common question of law or fact; and (3) consideration of delay or prejudice to the original parties. Civ.R. 24(B)(2). As the Republican Committees' Motion explained (at 7–9), all three favor intervention. The Motion was timely. *See supra* Section I.A. There is a common question of law or fact—a point the Plaintiffs do not dispute. And, most importantly, the Republican Committees' intervention will not slow down this case or prejudice the parties. As Plaintiff Ohio Democratic Party's "direct counterpart," the Republican Committees "are uniquely qualified to represent the 'mirror-image' interests" in this crucial election case. *Democratic Natl. Commt. v. Bostelman*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (citation omitted). They simply seek the chance to protect their important interests in the upcoming election and beyond.

CONCLUSION

For the reasons in their Motion and in this Reply, the Republican Committees respectfully ask the Court to grant their Motion to Intervene.

August 21, 2020

Respectfully submitted,

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**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I certify that on August 21, 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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