

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

TIMOTHY K. MOORE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
DAMON CIRCOSTA, et al.,)
)
 Defendants.)

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

ORDER

The North Carolina Alliance for Retired Americans, Barker Fowler, Becky Johnson, Jade Jurek, Rosalyn Kociemba, Tom Kociemba, Sandra Malone, and Caren Rabinowitz, move to intervene as Defendants in case number 1:20CV911 under Federal Rule of Civil Procedure 24. (Doc. 27.) Those same parties also move to intervene in a related case, case number 1:20CV912. (Doc. 21.) Plaintiffs responded in the 1:20CV911 case, (Doc. 61), and this

matter is now ripe for ruling. The court will grant proposed intervenors' (hereinafter referred to as "Alliance Intervenors") motion for permissive intervention under Federal Rule of Civil Procedure 24(b).

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.

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 Alliance Intervenors meet the standards for permissive intervention. First, the court finds that the Alliance Intervenors' motion was timely. Alliance Intervenors filed their motion to intervene between four and six days after Plaintiffs filed their Complaints and motions for temporary restraining order in each of these cases, (see 1:20CV911 (Docs. 1, 8, 27); 1:20CV912 (Docs. 1, 3, 21)), and

before the original Defendants submitted any substantive responses to the Complaints and motions. 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). The first element is thus satisfied in each of these cases.

Second, it is undisputed that Proposed Intervenors' interests, as reflected in their proposed answer and the joint motion for entry of a consent judgment, (1:20CV911 (Doc. 27-1) at 2), share common questions of law and fact with the main action in this case; that is, the legality of North Carolina's election laws as amended by a consent order in which Alliance Intervenors were Plaintiffs seeking the relief granted by that Consent Order. (see id.) See N.C. State Conference of NAACP v. Cooper, 332 F.R.D. 161, 172 (2019) (agreeing that the proposed intervenors' proposed answer included "defenses which present common issues of fact and law"). Here, like the named defendants, Alliance Intervenors seek to assert defenses to Plaintiffs' claims for relief. (See generally 1:20CV911 (Doc. 27-2); 1:20CV912 (Doc. 21-1).)

Finally, the court finds that allowing Alliance Intervenors to intervene will not result in undue delay or prejudice to the

parties. The court will require Proposed Intervenors adhere to the briefing schedule set out by this court in a status conference held on October 5, 2020. (See Minute Entry 10/05/2020.) Further, Alliance Intervenors' issues and arguments largely overlap with the legal and factual issues that are already present in this action, therefore the addition of Alliance Intervenors is not likely to significantly complicate the proceedings or unduly expand the scope of discovery should discovery be necessary.

Because the court is satisfied that permissive intervention is warranted here, the court declines to conduct an analysis under Rule 24(a)(2), although it does appear Alliance Intervenors have a substantial interest in this litigation. Alliance Intervenors are parties to, and beneficiaries of, the Consent Judgment. Their interests as reflected in the consent judgment could be directly impaired as a result of this action.

IT IS THEREFORE ORDERED that Alliance Intervenors' Motions to Intervene as Defendants, (1:20CV911 (Doc. 27); 1:20CV912 (Doc. 21)), are **GRANTED**.

IT IS FURTHER ORDERED that Proposed Intervenors shall adhere to the briefing schedule as directed by the court on October 5, 2020. (Minute Entry 10/05/2020.)

This the 8th day of October, 2020.

William L. Ostun, Jr.
United States District Judge