IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION (CHICAGO)

LIBERTARIAN PARTY OF ILLINOIS, ILLINOIS GREEN PARTY, DAVID F. BLACK, SHELDON SCHAFER, RICHARD J. WHITNEY, WILLIAM REDPATH, BENNETT W. MORRIS, MARCUS THRONEBURG,	)	
Plaintiffs	)	**Case No. 1:20-cv-02112**
v.	)	
J.B. PRITZKER, in his official capacity as Governor of Illinois,	)	
and	)	
WILLIAM J. CADIGAN, KATHERINE S. O'BRIEN, LAURA K. DONAHUE, CASSANDRA B. WATSON, WILLIAM R. HAINE, IAN K. LINNABARY, CHARLES W. SCHOLZ, WILLIAM M. MCGUFFAGE, in their official capacities as Board Members for the Illinois State Board of Elections,	)	
Defendants.	)	

PLAINTIFFS' RESPONSE IN OPPOSITION TO PUTATIVE-INTERVENOR RUGGERI'S MOTION TO INTERVENE

Facts

Plaintiffs filed the above-styled action on April 2, 2020, just days after Illinois's 90-day window for candidates' signature collection had opened on March 24, 2020. Verified Complaint, R. 1. The following day, on April 3, 2020, Plaintiffs filed their Motion for Emergency Relief seeking to enjoin in Illinois's signature collection requirement. Motion for Temporary Restraining

Order and Preliminary Injunction, R.2. As made clear in Plaintiffs' pleadings, time is of the essence in this case. The numbers of signatures required by Illinois range into the thousands, and each lost day of petitioning makes it that much more difficult for candidates to comply with Illinois law. As things now stand, moreover, it is not clear when or even whether Illinois can safely re-open for in-person signature collection.

On April 10, 2020, the Court directed the parties "promptly to confer regarding a proposed resolution of their dispute." Notification of Minute Entry, R.5, at PAGEID# 60. Further, the Court directed Defendants to file a "written response to the motion, if any, … by noon on Thursday, April 16, 2020." Id. It added that "[a] hearing is set by telephone at 9:30 a.m. on Friday, April 17." *Id*. On April 14, 2020, the parties conducted a telephonic conference pursuant to the Court's Order to discuss possible resolution of the case. The District Court expedited the matter and immediately scheduled a round of telephonic conferences, *see* Minute Entry, R.11, with all the parties in an effort to resolve the dispute.

Kyle Kenley Kopitke, a potential independent presidential candidate, moved in intervene on April 13, 2020, *see* R. 7, and his motion was granted by the Court. Following several telephonic conferences between the parties, the parties each submitted a proposed resolution to the Court, and the Court then adopted on April 23, 2020, with Plaintiffs' and Intervenor's concurrence, the proposal submitted by the Defendants. *See* Injunction, R.27. The Court described its reasoning and this agreed-to resolution in its Opinion and Order released that same day, April 23, 2020:

> The combined effect of the restrictions on public gatherings imposed by Illinois' stay-at-home order and the usual in-person signature requirements in the Illinois Election Code is a nearly insurmountable hurdle for new party and independent candidates attempting to have their names placed on the general election ballot. See Ill. Exec. Order No. 2020-10 (Mar. 20, 2020); 10 ILCS 5/10-4. The problem is exacerbated by the circumstance by the fact that the "window" for gathering such signatures opened at nearly the same time that Governor Pritzker first imposed restrictions. The court need not devote significant additional attention to the constitutional questions presented because, after a round of

> briefing and several hearings and in response to the court's direction at oral argument, the parties have proposed an order that grants appropriate relief in these unprecedented circumstances. Notably, from the outset of these proceedings, even Defendants have acknowledged that the ballot access restrictions must be relaxed, in some shape or form, to account for the havoc that COVID-19 has wreaked. (See Defs.' Resp. to Emergency Mot. at 2 (recognizing "the need for some accommodations" under the circumstances).) The court is satisfied that the parties' agreed order will ameliorate Plaintiffs' difficulty meeting the statutory signature requirement due to the COVID-19 restrictions—thereby addressing the constitutional questions raised by Plaintiffs' motion (see Pls.' Emergency Mot. [2] at 11–12)—while accommodating the State's legitimate interest in ensuring that only parties with a measurable modicum of public support will gain access to the 2020 general election ballot.

Opinion and Order, R.26, at PAGEID # 395-96 (emphasis added).

The Court's order did several things. First, it enjoined Illinois's required numbers of signatures for independent and minor-party candidates to gain access to the November 2020 general election ballot, Injunction, R.27, at PAGEID # 399, enjoined Illinois's requirement that original, "wet," in-person collected signatures be submitted, *id*. at 400, and enjoined Illinois's deadline for the submission of these signatures. *Id*. It also, with the agreement of Defendants, extended the deadline to August 7, 2020, *id*., and ordered that "[c]andidates nominated by Plaintiff Libertarian Party of Illinois ("LPIL") and Plaintiff Illinois Green Party ("GPIL") shall qualify for placement on Illinois' November 3, 2020 general election ballot for each office for which the respective party placed a candidate on Illinois' general election ballot in either 2018 or 2016." *Id*. These candidates accordingly did not need to submit signatures. Further, as agreed by the parties, it directed Defendants to accept signatures that were not "wet," *id*., and reduced the number of signatures required to 10% of the numbers previously required. *Id*. at 401.

On May 8, 2020, Defendants moved the District Court for reconsideration. *See* Motion for Reconsideration, R. 31. They sought not only to increase the number of signatures they had agreed to, but also to undo their prior agreement that "wet" signatures need not be provided and to return

to the original deadline. The Court on May 15, 2020 exercised its discretion and trimmed the deadline back from August 7, 2020 to July 20, 2020. *See* Notification of Docket Entry, R.36.

On June 6, 2020, Defendants noticed an appeal in this case. *See* Notice of Appeal, R.38. Defendants on June 9, 2020 moved to expedite the appeal, *see* Motion to Expedite, 7th Cir. Doc. No. 6, and moved this Court to stay the preliminary injunction. *See* Motion to Stay, 7th Cir. Doc. No. 7-1. The Court of Appeals on June 17, 2020 directed Defendants-Appellants to supplement their motion for stay with and "explain[] in detail and with precision, including with references to supporting evidence, what irreparable harm they believe will result if this court does not enter a stay." Seventh Circuit Order, Doc. No. 19, June 17, 2020. Defendants-Appellants' supplemental memorandum was due by 5 PM on June 18, 2020. *Id*. The Court further directed Plaintiffs-Appellees to respond by 5 PM on June 19, 2020.

The Seventh Circuit on June 21, 2020, denied the Illinois State Board of Elections Request. *See Libertarian Party of Illinois v. Pritzker*, slip op., No. 20-1961, Order, Doc. No. 23 (7th Cir., June 21, 2020) (Attachment 1). The Seventh Circuit noted the Board's argument that a Federal Court is not "in the best position to determine the necessary election modifications that will balance the rights of candidates to access the ballots," *id*. at page 5, but rejected it. "[N]owhere in its motions papers does [the Board] explain what, if any, changes it would make to the statutory petition requirements to ensure that independent candidates are not excluded from the ballot. Nor does it acknowledge the serious safety concerns and substantial limitations on public gatherings that animated the parties' initial agreement and persist despite some loosening of restrictions in recent weeks." *Id*. It accordingly refused the Board's request for a stay.

On June 23, 2020, putative Intervenor-Ruggeri moved to intervene in this case. *See* Motion to Intervene, R.44. According to his Motion:

> Intervenor Alexander (AJ) Ruggieri ("Ruggieri") is a Republican candidate for the Illinois State Senate in the 52nd Legislative District. Ruggieri was appointed to fill a vacancy in nomination following the March 17, 2020 Primary Election. Pursuant to Section 7-61 of the Illinois Election Code, once appointed, Ruggieri was required to collect the statutory minimum number of petition signatures (1000) and to file them no later than June 1, 2020. Like the independent and new party candidate plaintiffs in this case, Ruggieri's signature collection has been materially adversely affected by the COVID 19 pandemic and the pendency of Governor Pritzker's Executive Orders. While Ruggieri and his supporters used their best efforts to collect signatures on his behalf, and did file 1,152 petition signatures on June 1, 2020, an objection to his nomination papers threatens to keep Ruggieri from the General Election ballot. On June 19, 2020, staff at the Illinois State Board of Elections made an initial determination that Ruggieri's nomination papers contain, at most, 949 valid petition signatures. Accordingly, Ruggieri seeks to intervene in this case so that he may be granted relief commensurate with that granted to independent and new party candidates, particularly including those in the 52nd Legislative District.

Id. at PAGEID # 537.

The Court on June 24, 2020 instructed the parties to respond no later than July 2, 2020.

See Minute Entry, R.46.

Argument

Federal Rule of Civil Procedure 24, which governs intervention, states, in relevant part:

> (a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:
> …
>
> (2) 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.
>
> (b) PERMISSIVE INTERVENTION.
>
> (1) *In General.* On timely motion, the court may permit anyone to intervene who:
> …
>
> (B) has a claim or defense that shares with the main action a common question of law or fact.
> …
>
> (3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

F. R. Civ. P. 24.

I. Ruggeri Has No Right to Intervene.

Ruggeri has no right to intervene under Rule 24(a). In order to intervene as of right, a non-party must, in timely fashion, demonstrate to the Court's satisfaction that it possesses a "direct, substantial, and legally protectable" interest in the case, *United States v BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003), and that will be practically impaired by the Court's resolution of the case in the proposed intervenor's absence. *See Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 774 (7th Cir. 2007) (holding that action did not in fact threaten the interests raised by the putative intervenors). Further, the putative intervenor must show that the existing parties cannot adequately represent its interests. *Trobovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). He must also attach a copy of proposed pleading, here presumably a Complaint, to his motion to intervene. *See* Fed.R.Civ. P. 24(c).

Ruggeri's motion to intervene under Rule 24(a) fails for three reasons. First, he waited more than two more months to seek to join this action notwithstanding his obvious knowledge of the case -- news reports were widespread -- and then only after he failed to satisfy the major-party June 1, 2020 deadline. "A prospective intervenor must move promptly to intervene as soon as it knows or has reason to know that its interests might be adversely affected by the outcome of the litigation." *Heartwood, Inc. v. U.S. Forest Service, Inc*., 316 F.3d 694, 701 (7th Cir. 2003). While the Seventh Circuit has stated that it does not "want a rule that would require a potential intervenor to intervene at the drop of a hat," *Aurora Loan Services, Inc. v. Craddieth*, 442 F.3d 1018, 1027 (7th Cir. 2006), it has recognized that Rule 24 still requires that intervention not be dilatory. *Heartwood*, 316 F.3d at 701. Here, Ruggeri's failure to move sooner is simply inexplicable.

"Timeliness is determined based on the totality of the circumstances," S. GENSLER, FEDERAL RULES OF CIVIL PROCEDURE: RULES AND COMMENTARY 516 (2014), with Courts focusing on four factors:

> (1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances militating for or against a finding of timeliness."

Id. (citing *Heartwood*, 316 F.3d 129). Here, Ruggeri's two month delay in seeking to intervene in what has been an expedited proceeding at every level -- both in this Court and in the Seventh Circuit -- strongly counsels against allowing his belated intervention. This case is basically over. It should not be re-opened and re-tooled to fashion relief for a major-party candidate whose circumstances are much different from those of the Plaintiffs.

Ruggeri, meanwhile, will not be prejudiced by denying his intervention. He is always free to file his own action. The disposition in the present case will have no adverse effect on his right to proceed separately in his own action. *See Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 531-33 (7th Cir. 1988). The present case therefore will not practically impair the resolution of his rights in a separate proceeding as required for intervention as of right. *See Maram*, 478 F.3d at 774. His motion should be denied.

II. Ruggeri Should Not Be Allowed to Intervene Permissively.

Ruggeri's attempt to intervene permissively should also be rejected. First and foremost is the tardiness of his motion. He waited more than two months notwithstanding the expedited nature of these proceedings. Further, he now seeks to use this case to win relief from a past deadline that he failed to meet. Even if common questions of law are presented, which is far from clear and cannot be fully ascertained given Ruggeri's failure to file a proposed Complaint, permissive intervention need not be allowed. Whether to do so, of course, is left to this Court's discretion,

Ligas, 478 F.3d at 775, and Plaintiffs respectfully submit that allowing Ruggeri to piggy-back onto Plaintiffs' case at this late date is not necessary nor warranted. Ruggeri should file his own action seeking relief under his own unique facts.

III. Ruggeri Should Be Denied Intervention For Failure to Comply with Rule 24.

Ruggeri has not complied with Rule 24(c), which requires that a putative intervenor file its "pleading that set[s] out a claim or defense for which intervention is sought" with its motion. The absence of this pleading prejudices Plaintiffs' ability to respond to Ruggeri's Motion and only causes more delay. It is grounds alone for denying intervention, as Courts have often held. *See*, *e.g.*, *Shevlin v. Schewe*, 809 F.2d 447, 450 (7th Cir.1987) ("Federal Rule of Civil Procedure 24(c) is unambiguous in defining the procedure for an intervenor," and requires a pleading to accompany the motion to intervene); *Public Service Co. of New Hampshire v. Patch*, 136 F.3d 197, 205, n. 6 (1st Cir.1998) (failure to accompany motion to intervene with a pleading setting forth a claim or defense "ordinarily would warrant dismissal" of the motion); *Abramson v. Pennwood Inv. Corp*., 392 F.2d 759, 761 (2nd Cir.1968) ("appellant's reference in his motion papers to the allegations of the original complaint was insufficient to comply with the requirements of Rule 24(c)").

Conclusion

Plaintiffs respectfully **OPPOSE** Ruggeri's Motion to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2020 the foregoing document was filed using the Court's CM/ECF system, which will effect service upon all counsel of record.

/s/Oliver B. Hall
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