UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

MARY T. THOMAS, NEA RICHARD, JEREMY RUTLEDGE, TRENA WALKER, DR. BRENDA WILLIAMS, and THE FAMILY UNIT, INC., Plaintiffs, v. MARCI ANDINO as Executive Director of the State Election Commission, JOHN WELLS in his official capacity as Chair of SC State Election Commission, CLIFFORD J. EDLER and SCOTT MOSELEY in their official capacities as Members of the South Carolan State Election Commission, and HENRY D. MCMASTER in his official capacity as Governor of South Carolina Defendants.	Case No.: 3:20-cv-01552-JMC **SOUTH CAROLINA REPUBLICAN PARTY'S REPLY IN SUPPORT OF MOTION TO INTERVENE**

The South Carolina Republican Party (the Party) submits this reply in support of its motion to intervene in the above-referenced case as a matter of right or, in the alternative, permissively. Although the Party recognizes replies are typically discouraged in this district, it writes solely to address a few issues raised by the plaintiffs. For the reasons below, as well as those set forth in the Party's motion to intervene, the Court should enter an Order granting intervention.

Initially, the Court should grant the Party's motion to intervene as of right because it has a "significantly protectable interest." Teague v. Bakker, 931 F.2d 259, 261 (4th Cir. 1991). While the plaintiffs cite case law from other jurisdictions, those cases have no application here and are not binding on this Court. What is more, the Supreme Court of South Carolina recently allowed the Party to intervene in another similar lawsuit challenging state absentee voting requirements.

Contrary to the plaintiffs' assertions, the Party's interest in this case is not purely political. The Party is actually involved in the administration of the election.

To be sure, the June primary is a political party primary. The Party actually collects the filing fees from Republican candidates to then send to the State Election Commission to administer the election. See S.C. Code Ann. § 7-13-40. The Party is also responsible for certifying the candidates. See id. But its participation does not end there. The Party is also responsible for handling protest hearings stemming from election contests and deciding these cases. See S.C. Code Ann. §§ 7-17-520 through -570. Often times, these hearings center on whether certain votes should have counted. Protests are often lodged against absentee ballots. Given the great confusion that will undoubtedly ensue if the Court grants the extraordinary relief sought by the plaintiffs and changes state election law on the eve of the June primary, these protest hearings will become even more difficult.

Accordingly, the Party does have a significantly protectable interest in the State Election Commission's administration of the upcoming election pursuant to state law.[1] See Teague, 931 F.2d at 261. For the reasons set forth in the motion to intervene, the Party also meets the other elements necessary for intervention as a matter of right. See Fed. R. Civ. P. 24(a).

Even if intervention as of right is unavailable, the plaintiffs barely mounted a defense to permissive intervention. As previously noted, the Party undoubtedly "has a claim or defense that

[1] The plaintiffs apparently take the position that no political party has standing to raise these issues. If that is the case, then it certainly raises the question of how state and national Democrats have had standing to bring the very same challenges in jurisdictions around the country—including South Carolina—that the plaintiffs bring here. But that is a question for another day. In the interim, the Court should reject this myopic reading of the law. Last month, the U.S. Supreme Court noted that a lower court had allowed both national political parties to intervene in a dispute regarding Wisconsin's absentee voting laws. See Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S. Ct. 1205, 1209 (2020) (per curiam) (Ginsburg, J., dissenting) (noting the state and national political "parties intervened as defendants" in a similar dispute over changing absentee ballot requirements in Wisconsin prior to its primary).

shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). The plaintiffs hang their hat on the Party delaying or prejudicing the adjudication of the original parties' rights. This argument is disingenuous. Having to prove their case on the merits does not result in any cognizable prejudice. Further the lawsuit has just begun, no responsive pleadings have been filed, and allowing the Party to intervene would not cause any delay.[2] While the plaintiffs contend the Party's participation will needlessly complicate the case, the plaintiffs ignore the Court's text order of May 5, 2020, stating that if the Court grants the Party's motion to intervene, the Party "shall file its response to Plaintiffs' Motion for Preliminary Injunction on May 11, 2020." See ECF No. 20. The Party already told the Court that—if allowed in the case—it will meet this deadline and be ready for a hearing on May 15, 2020.[3] In any event, given that the plaintiffs have the resources of two national organizations, the Party is confident opposing counsel can handle an additional brief addressing the merits.

Further, the plaintiffs' reliance on Stuart v. Huff, 706 F.3d 345 (4th Cir. 2013), is misplaced. See ECF No. 22 at 9. Unlike in Stuart, the Party's involvement here will not "complicate the discovery process and consume additional resources of the court and the parties." 706 F.3d at 355. The plaintiffs are trying to get the Court to change South Carolina law governing absentee ballots and enter an injunction to prevent the defendants from enforcing the law on the

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[2] Indeed, counsel for the State Election Commission just filed a notice of appearance in the case yesterday. See ECF Nos. 23 & 24.

[3] Though not addressed by the plaintiffs, the Party did wish to inform the Court that it is aware of the pleading requirement. See Fed. R. Civ. P. 24(c). The Fourth Circuit, however, "has noted . . . that a motion that clearly spells out the intervener's position satisfies Rule 24(c), as it provides notice to the Court and the parties of the intervener's interest in the litigation." Veasey v. Wilkins, No. 5:14-cv-369-BO, 2015 WL 7776557, at *2 (E.D.N.C. Dec. 2, 2015); see also Spring Constr. Co. v. Harris, 614 F.2d 374, 376–77 (4th Cir. 1980) (recognizing that, while "some cases have held that intervention should be denied when the moving party fails to comply strictly with the requirements of Rule 24(c), the proper approach is to disregard non-prejudicial technical defects"). Here, the deadline for filing a responsive pleading has not passed, so it would be anomalous to require an earlier answer or other pleading from the Party. Regardless, the Party has clearly spelled out its interest and given notice of its intent to oppose the plaintiffs' requested relief.

eve of an election. At this juncture, no discovery is required to answer the questions in the case before the injunction hearing. And the involvement of one additional party will not consume the Court's resources. Thus, intervention will not complicate the case given the expedited nature of the matter. Notably, no other party to this action objected to the Party's intervention.

Finally, the Party must address the plaintiffs' assertion that "[p]ermitting intervention here would only serve to delay and complicate resolution of this case and lead to greater risk of confusion close to the election." ECF No. 22 at 10. South Carolina's absentee laws are hardly new. In fact, they have been on the books for years. Sections 7-15-310 and -320 of the South Carolina Code were last amended in 2015 and 2014, respectively. See S.C. Code Ann. §§ 7-15-310 & -320 (including legislative history in the statute). And section 7-15-220—the other statutory provision under challenge—was last amended in 2011 and received preclearance that same year. S.C. Code Ann. § 7-15-220 (noting the changes would take effect upon preclearance from U.S. Department of Justice or U.S. District Court for the District of Columbia, and preclearance was obtained on June 7, 2011).

Yet at the eleventh hour before the June primary, the plaintiffs are trying to change state law through the courts. They now feign outrage that a political party wanting to defend the law will create a "greater risk of confusion." Respectfully, the plaintiffs are the ones creating the confusion. To be sure, this conundrum was manufactured by the plaintiffs, who waited until the last minute to challenge these laws that have been in place for at least five years—some even longer. This tardy legal challenge on the eve of the June primary election is consistent with a well-documented strategy to use the COVID-19 pandemic as a basis to change longstanding election processes. See, e.g., John Monk & Emma Dumain, Citing COVID-19 Threat to African

Americans, 3rd Lawsuit Filed to Expand SC Mail Voting, THE STATE (May 2, 2020), https://www.thestate.com/news/coronavirus/article242443566.html.

In sum, "Rule 24(b) is to be liberally construed in favor of intervention." Backus v. South Carolina, No. 3:11-cv-03120, 2012 WL 406860, at *2 (D.S.C. Feb. 8, 2012). Again, the Party has an interest in this matter of public importance due to its role in the administration of the June primary and simply wants a seat at the table. The Court should therefore grant the Party's motion to intervene and allow it to submit a filing in accordance with the expedited briefing schedule.

Respectfully submitted,

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