

**IN THE STATE OF MICHIGAN
COURT OF CLAIMS**

DONALD J. TRUMP FOR PRESIDENT, INC.
and ERIC OSTERGREN,

Plaintiffs,

Democratic National Committee,

Intervening Plaintiff,

v.

JOCELYN BENSON, in her official capacity as
the Michigan Secretary of State, ,

Defendant.

Civil Action No. 20-000225-MZ

HON. CYNTHIA STEPHENS

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**Pro hac vice motion forthcoming*

**[11/04/2020] BRIEF IN SUPPORT OF 11/04/2020 MOTION OF DNC
TO INTERVENE AS PLAINTIFF**

Intervening Plaintiff DNC moves to intervene as a plaintiff in this suit filed by Plaintiffs Donald J. Trump for President, Inc. and Eric Ostergren (together, the “Trump Campaign”). Through this lawsuit, the Trump Campaign seeks to disrupt the lawful counting of ballots in Michigan, which impairs DNC’s distinct and protectable legal interests. Specifically, any challenge or change to the State’s policy for public observation of the ballot tabulation process will unquestionably impact DNC’s operations and impair its constitutional rights. DNC’s immediate intervention to protect those interests is warranted.

Intervention is governed by Michigan Court Rule (“MCR”) 2.209:

(A) **Intervention of Right.** On timely application a person has a right to intervene in an action . . . (3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless applicant’s interest is adequately represented by existing parties.

(B) **Permissive Intervention.** On timely application a person may 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.

“The rule for intervention should be liberally construed to allow intervention where the applicant’s interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492 (1996); see also *State Treasurer v Bences*, 318 Mich App 146, 150 (2016).

Here, DNC readily satisfies the requirements for intervention of right under MCR 2.209(A). MCR 2.209(A)(3) requires “timely application, a showing that the representation of the applicant’s interests by existing parties is or may be inadequate, and a determination whether disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect his interests Its motion for intervention follows.” *Chvala v Blackmer*, unpublished opinion of the Court of Appeals, issued January 16, 2001 (Docket No 221317), 2001 WL 789526, p *2, (citing *Oliver v State Police Dep’t*, 160 Mich App 107, 115 (1987)).

First, its application is timely because it follows within hours of the filing of this suit, before any significant action has been taken. *See, e.g., Karrip v Cannon Tp*, 115 Mich App 726, 731 (1982).

Second, DNC possesses interests that will likely be impaired or impeded by this action. DNC is a national political committee as defined in 52 U.S.C. § 30101 that is, among other things, dedicated to electing local, state, and national candidates of the Democratic Party in Michigan. Specifically, DNC “contend[s] that [its] conduct, as well as that of [the Trump Campaign], [i]s intended to be regulated by [Defendant] and that [it is] subject to the same enforcement risks as” the Trump Campaign. *Associated Builders & Contractors v Wilbur*, unpublished opinion of the Circuit Court, issued December 15, 2000 (Docket No 00-2512-CL-L), 2000 WL 35737131, p *47 (contingently granting intervention). Like the Trump Campaign, DNC is a political party that has an interest in observing vote tabulation and ensuring the integrity of the election process. Because its ability to conduct such observation will be impacted by this suit, it has readily satisfied this requirement. Moreover, if the Trump Campaign successfully stops the tabulation, then the rights of DNC and its members—including the right to vote and the right to due process—will be violated.

Third, no current party adequately represents DNC’s interests. The Trump Campaign is indisputably opposed to DNC’s electoral performance in Michigan, while Defendant cannot be relied upon to safeguard DNC’s ability to observe the tabulation process on equal grounds as the Trump Campaign. *See, e.g., Estate of Lyle v Farm Bureau Gen Ins Co of Mich*, unpublished opinion of the Court of Appeals, issued September 19, 2019 (Docket No 343358), 2019 WL 4555993, p *7 (affirming intervention and noting that where “concern of inadequate representation

of interests . . . exists, the rules of intervention should be construed liberally in favor of intervention” (quoting *Vestevich v W Bloomfield Twp*, 245 Mich App 759, 762 (2001)).

In the alternative, DNC should be granted permissive intervention under MCR 2.209(B)(2). That rule provides for permissive intervention where a party timely files a motion and the party’s “claim or defense and the main action have a question of law or fact in common.” MCR 2.209(B)(2). “[T]he trial court has a great deal of discretion in granting or denying [permissive] intervention.” *Mason v Scarpuzza*, 147 Mich App 180, 187 (1985); *see also City of Holland v Dep’t of Nat Res & Env’t*, unpublished opinion of the Court of Appeals, issued March 1, 2012 (Docket No. 302031), 2012 WL 676356, p *3. As discussed above, DNC’s motion is timely, and DNC is entitled to the same statutory right to observe the tabulation of votes as the Trump Campaign.

For the foregoing reasons, DNC respectfully asks this Court to grant its motion to intervene.

Dated: November 4, 2020

Respectfully submitted,

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PROOF OF SERVICE

Scott Eldridge certifies that on the 4th day of November 2020, he served a copy of the above document in this matter on all counsel of record and parties *in pro per* via email.

s/ Scott Eldridge
Scott Eldridge

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