

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS OF IOWA ,
Plaintiff,

v.

Iowa Secretary of State PAUL PATE,
in his official capacity, and Iowa
Attorney General THOMAS
MILLER, in his official capacity,
Defendants,

Case No. CVCV061476

Motion to Intervene

The Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), and the Republican Party of Iowa move to intervene under Iowa Rule of Civil Procedure 1.407.

As the Democratic Party recently put it, “political parties usually have good cause to intervene in disputes over election rules,” and “courts regularly permit the intervention of political parties ... in cases involving elections.” *Issa v. Newsom*, Doc. 23 at 2 & n.1, No. 2:20-cv-01044-MCE-CKD (E.D. Cal. June 8, 2020). That is why, in the many pending cases involving election rules for the 2020 election, the Democratic and Republican parties

were granted intervention virtually every time they moved for it.* Movants were permitted last year to intervene in a lawsuit filed by LULAC against the Secretary of State seeking to block enforcement of a law related to the absentee ballot request process. *See*, *LULAC v. Pate*, Johnson County No. CVCV081901. This Court should follow those courts in granting intervention for two independent reasons.

First, Movants satisfy the criteria for intervention as of right under Iowa Rule of Civil Procedure 1.407(1). Their motion is unquestionably

* *See, e.g., Pavek v. Simon*, Doc. 96, No. 19-cv-3000-SRN-DTS (D. Minn. July 12, 2020) (granting intervention to Donald J. Trump for President, Inc., Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, and Republican Party of Minnesota); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-01143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC, Arizona Republican Party, and Donald J. Trump for President, Inc.); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC, the Republican Party of Minnesota, and Donald J. Trump for President, Inc.); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and the Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same).

timely; the complaint was filed less than three weeks ago (and the original notice was filed just six days ago), this litigation is still in its infancy, and no party will be prejudiced by intervention at this early stage. Movants also have a clear interest in protecting their candidates, voters, and resources from upheavals in Iowa election law. And no other party adequately represents Movants' interests. Adequacy is not a demanding standard, and the other defendants do not share Movants' interests in conserving their resources and helping voters and Republican candidates.

Second, and alternatively, the Court should grant Movants permissive intervention under Iowa Rule of Civil Procedure 1.407(2). Again, this motion is timely. Movants' defenses share common questions of law and fact with the existing parties, and intervention will result in no delay or prejudice. The Court's resolution of the important questions here will have significant implications for Movants, as they work to ensure that voters have the undeterred opportunity to participate in fair elections and to allocate their resources throughout the election season.

Whether under Rule 1.407(1) or (2), Movants respectfully ask the Court to let them intervene as defendants.

INTERESTS OF PROPOSED INTERVENORS

Movants are four political committees who support Republicans in Iowa. The RNC is a national committee as defined by 52 U.S.C. §30101. It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The NRSC and NRCC are national political committees that work to elect Republicans to the U.S. Senate and House of Representatives, respectively. And the Republican Party of Iowa is a recognized political party that works to promote Republican values and to assist Republican candidates in winning election to partisan federal, state, and local office. All four Movants have interests—their own and those of their members—in the rules governing Iowa elections.

ARGUMENT

I. Movants are entitled to intervene as of right.

Rule 1.407 “should be liberally construed” in favor of intervention.

Schimerowski v. Iowa Beef Packers, Inc., 196 N.W.2d 551, 555 (Iowa 1971).

When analyzing intervention, “all allegations of [the motion to intervene] are assumed true.” *Rick v. Boegel*, 205 N.W.2d 713, 717 (Iowa 1973). Under Rule 1.407(1), this Court must grant intervention as of right if:

1. The motion is timely;
2. Movants have a legally protected interest in this action;
3. This action may impair or impede that interest; and
4. No existing party adequately represents Movants’ interests.

See Iowa R. Civ. P. 1.407(1)(b); *In re Marriage of Ballstaedt*, 606 N.W.2d 345, 350 (Iowa 2000) (“Intervention is a matter of right to parties interested in the litigation.”). Because “rule 1.407(1)(b) does mirror the federal rule regarding intervention of right,” Iowa courts “draw guidance from the federal law in this area.” *Lakes Gas Co. v. Terminal Properties, Inc.*, 720 N.W.2d 192 (table), 2006 WL 1229934, at *5 (Iowa Ct. App. 2006). Movants satisfy each of these requirements.

A. The motion is timely.

Movants “timely” moved to intervene. Iowa R. Civ. P. 1.407(1). The complaint was filed March 9, 2021, Defendants still haven’t answered it, no discovery has occurred, and the case is still in its infancy. *See, e.g., Rick*, 205 N.W.2d at 717 (“An interested party may intervene at any time prior to trial.”); *Schimerowski*, 196 N.W.2d at 554 (granting intervention where the motions were filed the same month as the complaint and before defendant answered plaintiff’s petition); *In re C.L.C.*, 479 N.W.2d 340, 344 (Iowa Ct. App. 1991) (motion timely even when filed after important rulings had already been made because the rulings did not “‘finalize’ the entire proceeding”). Indeed, Movants are aware of *no* case from *any* court holding that three weeks is too late to intervene.

Movants’ intervention will not prejudice the parties either. The Court has ruled on no motions, granted no relief, and heard no arguments from the parties beyond the initial complaint. This case is thus a far cry from the standard barring intervention when the action “ha[s] been dismissed before the intervention was interposed.” *See Mata v. Clarion Farmers Elevator Co-op.*,

380 N.W.2d 425, 427 (Iowa 1986); *see also In re T.F.-M.*, 928 N.W.2d 901 (Iowa Ct. App. 2019) (finding intervention timely after “termination hearing but before the court issued its order”).

If Movants are denied intervention, however, their interests will be irreparably harmed. Preparations are already underway for the 2022 election. Political organizations face nomination deadlines that are a mere 11 months away. Any relief granted by this Court may well be the final word on the challenged election rules. Because this is Movants’ first and likely only opportunity to protect their interests, their motion is timely.

B. Movants have protected interests in this action.

Movants also have an “‘interest’ in the subject matter of the litigation.” *Mata*, 380 N.W.2d at 429. The Court’s “discretion is to be exercised on the question of whether an intervenor is ‘interested’ in the litigation.” *In re A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). Because “no definitive or precise test exists to determine the sufficiency of the interest required for intervention,” courts “approach the inquiry with flexibility, and

focus on the circumstances of each case.” *State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa Ct. App. 1995). For precisely this reason, Courts “routinely” find that political parties have interests supporting intervention in litigation about election procedures. *Issa*, 2020 WL 3074351, at *3. Indeed, given their obvious interest in elections, usually “[n]o one disputes” that a political party “meet[s] the impaired interest requirement for intervention as of right.” *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Col. Sept. 15, 2014). That is certainly true where, as here, “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005); *see id.* (under such circumstances, “there [was] no dispute that the Ohio Republican Party had an interest in the subject matter of this case”).

Movants’ interests in this action are, at a minimum, equal to Plaintiff’s. In this situation, “permitting intervention or joinder is ‘[o]ne obvious way to see that everyone’s interests are watched over.’” *Mata*, 380 N.W.2d at 427 (alteration in original). Like Plaintiff, Movants advance the

“political influence” and “civil rights” of their members, many of whom are “voting-age [Iowa] citizens.” Pet. 4-5. Like Plaintiff, Movants seek to encourage full participation by voters in our election process, including in Iowa. Pet. 5. Like Plaintiff, Movants will engage in substantial expenditures of financial and organizational resources under Iowa’s election laws and, if Plaintiff succeeds in obtaining its requested relief, Movants will be forced to divert substantial resources and attention from other critical missions to deal with the adverse impacts any injunctive relief obtained by Plaintiff. In short, if Plaintiff has standing to bring this action, Movants have an interest in intervening.

C. This action threatens to impair Movants’ interests.

Movants are “so situated that the disposition of [this] action may as a practical matter impair or impede [their] ability to protect [their] interest.” Iowa R. Civ. P. 1.407(1)(b). An interest will support intervention when it is “a legal right which will be directly affected” by the litigation. *In re J.R.*, 315 N.W.2d 750, 752 (Iowa 1982). “[A]ssuming as [the Court] must that the allegations in the motion to intervene are true,” this action threatens to

impair Movants' interests. *Lakes Gas Co.*, 720 N.W.2d 192, 2006 WL 1229934, at *7.

Here, the risks to Movants' interests are plain. Any relief awarded to Plaintiff will change the "structur[e] of th[e] competitive environment" and "fundamentally alter the environment in which [Movants] defend their concrete interests (e.g. their interest in ... winning [election or] reelection)." *Shays v. Federal Election Com'n*, 414 F.3d 76, 85-86 (D.C. Cir. 2005). These changes also threaten to confuse voters and undermine confidence in the electoral process. See *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections ... can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."). Since Iowa lawmakers passed SF 413 (89th G.A.), Movants (just like Plaintiff, Pet. 4-5.) have been working to notify voters of its requirements. Were this Court to enjoin its enforcement and impose a 180-degree turn on Iowa voting procedure, Movants will be forced to spend substantial resources informing Republican voters of the change, fighting inevitable confusion, and galvanizing

participation in the wake of the “consequent incentive to remain away from the polls.” *Id.*

Moreover, “as a practical matter,” Iowa R. Civ. P. 1.407(1)(b), “[i]n this case intervention limits, rather than increases, the number of suits that will arise from this particular controversy.” *Lakes Gas Co.*, 720 N.W.2d 192, 2006 WL 1229934, at *7. The next election is fast approaching, and the Plaintiff’s requested relief will suspend a law that Iowans thought prudent to pass. If Movants are not allowed to intervene in this time-sensitive action, they will be forced to pursue appeal or risk forgoing their right to defend their interests at all.

D. The parties do not adequately represent Movants’ interests.

Finally, Movants are not “adequately represented by the existing parties.” *In re Marriage of Mersman*, 2015 WL 4714913, *5 (Iowa Ct. App. 2015). With regard to adequacy, “necessity is not the test for intervention.” *Miles*, 540 N.W.2d at 465. The existing parties “[are] not adequately representing [Movants’] ... interests” because Movants are “the only

member[s] who [are] attempting to preserve [their] assets.” *Lakes Gas Co.*, 720 N.W.2d 192, 2006 WL 1229934, at *7.

Plaintiff clearly does not represent Movants’ interests, and Defendants do not adequately represent them either. As former Judge Garland has explained, courts “often conclude[] that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). “[T]he government’s representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private movant] merely because both entities occupy the same posture in the litigation.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001). Here, too, Defendants necessarily represent “the public interest,” rather than Movants’ “particular interest[s]” in protecting their resources and the rights of their candidates and voters. *Coal. of Ariz./N.M. Counties for Stable Economic Growth v. DOI*, 100 F.3d 837, 845 (10th Cir. 1996). While all political parties want what’s best for the public, they have very different ideas of what that looks like and how best to accomplish it. As the Ohio Democratic Party argued in

a similar context, “a political organization dedicated to the election of Democratic candidates for office[] plainly has separate interests ... that are not adequately represented” by “the elected ... official responsible for the administration of the State’s election laws.” Doc. 148, *Ne. Ohio Coalition for the Homeless v. Brunner*, No. 2:06-cv-00896 (S.D. Ohio).

This tension is stark in the context of elections. Defendants have no interest in the election of particular candidates or the mobilization of particular voters, or the costs associated with either. Instead, Defendants, acting on behalf of all Iowan voters and the state itself, must balance “a range of interests likely to diverge from those of the intervenors.” *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993). Those interests include “the expense of defending the current [laws] out of [state] coffers,” *Clark v. Putnam Cty.*, 168 F.3d 458, 461 (11th Cir. 1999), “the social and political divisiveness of the election issue,” *Meek*, 985 F.2d at 1478, “[his] own desire[] to remain politically popular and effective,” *id.*, and even the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779-80 (4th Cir. 1991). Movants should thus be granted intervention as of right.

II. Alternatively, Movants are entitled to permissive intervention.

Even if Movants were not entitled to intervene as of right under Rule 1.407(1), this Court should grant them permissive intervention under Rule 1.407(2). Exercising broad judicial discretion, courts grant permissive intervention when the movant's "claim or defense and the main action have a question of law or fact in common." Iowa R. Civ. P. 1.407(2)(b). The court also must consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Iowa R. Civ. P. 1.407(2)(c).

The requirements of Rule 1.407(2) are met here. As explained, Movants filed a timely motion. And Movants will raise defenses that "involve[] common questions of law and fact" with existing parties' claims and defenses, *Schimerowski*, 196 N.W.2d at 555, including whether Iowa's duly enacted election procedures create an unconstitutional burden on the right to vote. See Compl. 24-30. Plaintiff alleges that the challenged law is unconstitutional. Movants, on the other hand, directly reject those allegations, contending not only that Iowa's laws are constitutional, but that

Plaintiff's desired relief would undermine the interests of Movants and their members. In this case, "intervenors plainly could have been proper [defendants] in the petition filed only a few days before they intervened." *Schimerowski*, 196 N.W.2d at 555. Thus, permissive intervention is appropriate.

Movants' intervention will not unduly delay this litigation or prejudice anyone. Movants swiftly moved to intervene while "at the first appropriate stage," *In Interest of A.G.*, 558 N.W. 400, 402 (Iowa 1997), and their participation will add no delay beyond the norm for multiparty litigation. And Plaintiff cannot complain that Movants' arguments in defense of the laws is prejudicial. After all, Plaintiff put the constitutionality of the laws at issue and "can hardly be said to be prejudiced by having to prove a lawsuit it chose to initiate." *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Thus, intervention in this case easily satisfies the legal standard, which is "whether the intervention will 'unduly delay or prejudice the adjudication of the rights of the original parties.'" *In re E.F.*, No. 19-2141, 2020 WL 1881096, at *1 (Iowa Ct. App. Apr. 15, 2020)

(emphasis added). Moreover, Movants commit to submitting all filings in accordance with whatever briefing schedule the Court imposes, “which is a promise” that undermines claims of undue delay. *Emerson Hall Assocs., LP v. Travelers Casualty Ins. Co. of Am.*, 2016 WL 223794, *2 (W.D. Wis. Jan. 19, 2016).

Allowing Movants to intervene will promote consistency and fairness in the law, as well as efficiency in this case. Intervention in this case is “consistent with the requirement that we construe rule 1.407 liberally to reduce litigation and expedite the matters before the court.” *Lakes Gas Co.*, 720 N.W.2d. 192, 2006 WL 1229934, at *7. Permitting Movants to intervene in this action will prevent protracted piecemeal litigation and the possibility of conflicting legal decisions. On the other hand, “[r]equiring [Movants] to instead bring a separate action works against the mandate that intervention should be allowed to reduce litigation and expedite matters before the court.” *Id.* Allowing intervention also preempts the delay that would otherwise result from sorting out Movants’ rights on appeal. See *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377 (1987)

("[W]hen an order prevents a putative intervenor from becoming a party in any respect, the order is subject to immediate review."). If this Court has any doubts, "the most prudent and efficient course of action" is to grant permissive intervention. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 2002 WL 32350046, *3 (W.D. Wis. Nov. 20, 2002).

CONCLUSION

The Court should grant Movants' motion and allow them to intervene as defendants.

Respectfully submitted,

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