

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EVAN MILLIGAN, et al.,

Plaintiffs,

vs.

JOHN H. MERRILL, et al.,

Defendants.

No. 2:21-cv-01530
THREE-JUDGE COURT

***MILLIGAN* PLAINTIFFS' RESPONSE
TO MOTION TO INTERVENE BY JEFF COLEMAN**

The *Milligan* Plaintiffs submit this response pursuant to the Court's order dated February 14, 2022 (Doc. 134) requiring all parties to respond to the Motion to Intervene by Jeff Coleman in this action (*Singleton*, Doc. 106). For the reasons stated below, the *Milligan* Plaintiffs oppose the request for intervention, but have no opposition to the Court issuing an order clarifying the continued effect of its prior order as to the sole matter in which Mr. Coleman claims an interest.

Mr. Coleman's motion states that it is brought "pursuant to Fed. R. Civ. P. 24," and asserts intervention "of right" under Rule 24(a)(2). *Singleton*, Doc. 106. He claims an "interest in ballot access." *Id.* ¶9. Mr. Coleman's motion is not

“accompanied by a pleading that sets out the claim or defense for which intervention is sought” as is required by Rule 24(c).

The narrow issue that Mr. Coleman’s motion appears to present is whether this Court’s order of January 24, 2022 (Doc. 88), insofar as it extended the statutory congressional qualification date in Alabama for this election cycle from January 28 to February 11, remained effective or was vitiated by the Stay of that Order issued by the United States Supreme Court on February 7. Mr. Coleman’s motion recites that neither Defendant Merrill’s stay application, nor the ruling of the Supreme Court referenced the extension of the candidate qualification deadline.

It further appears, from the facts recited in Mr. Coleman’s motion, that Defendant Merrill has indicated that he “will certify any congressional candidates whose names are certified to him by the respective chairs of the political parties pursuant to Ala. Code §17-13-5(b), for inclusion on primary ballots to be used in the May 24, 2022, primary elections.” *Singleton*, Doc. 106 ¶ 6. The Republican Party (and its chair), whose certification to Defendant Merrill Mr. Coleman apparently seeks, is, of course, not a party to this action.

Mr. Coleman’s motion does not indicate any ongoing or sufficient interest in the subject matter of this Action to justify intervention—and, as noted, he has failed to attach any pleading setting forth any claim or defense he would propose to assert as intervenor. On that basis, his motion should be denied. *See Gumm v. Jacobs*, 817

Fed. App'x 847, 850 (11th Cir. 2020) (affirming denial of intervention where intervenor had only a general interest in the litigation); *Athens Lumber Co. v. Fed. Election Comm'n*, 690 F.2d 1364, 1366 (11th Cir. 1982) (holding that attempted intervenor lacked the necessary particularized interest where its interest was shared with "all citizens concerned about the ramifications" of the lawsuit). However, to the extent the Court considers it appropriate, the *Milligan* Plaintiffs have no objection to the Court indicating that such denial is based on its understanding that the stay order issued by the United States Supreme Court, as referenced above, did not vitiate or impair this Court's order extending the candidate qualification deadline from January 28 to February 11 for the May 24, 2022 congressional primary.

Respectfully submitted,

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DATED this 17th day of February 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system which provides electronic notice of filing to all counsel of record on February 17, 2022.

/s/ Stuart Naifeh
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