

KATHRYN SZELIGA, et al.,	*	IN THE
<i>Plaintiffs</i>	*	CIRCUIT COURT FOR
v.	*	ANNE ARUNDEL COUNTY
LINDA H. LAMONE, et al.,	*	MARYLAND
<i>Defendants</i>	*	Case No.: C-02-CV-21-001816

\* \* \* \* \*

**MEMORANDUM OPINION**  
**AND ORDER**

The Court has reviewed the Democratic Congressional Campaign Committee's (the "DCCC") Motion to Intervene, docketed January 20, 2022, the Plaintiffs' Opposition thereto, docketed February 2, 2022, and the Defendants' Response to the Motion to Intervene, docketed February 7, 2022. Upon consideration of the record and the submitted memoranda, the Court has **DENIED** the DCCC's Motion to Intervene, and now sets forth the reasons:

**STATEMENT OF FACTS**

***Procedural History***

Plaintiffs,<sup>1</sup> several qualified, registered Republican voters, are challenging the Maryland 2021 congressional redistricting plan (the "2021 Plan"), which establishes electoral districts for selecting Maryland's representatives to Congress. Plaintiffs claim that the 2021 Plan creates partisan gerrymandered congressional districts in an unconstitutional manner. More specifically, the Plaintiffs allege violations of Articles 7, 24, and 40 of the Maryland Declaration of Rights and Article I, Section 7 of the Maryland's Constitution which, respectively, address the right to free

---

<sup>1</sup> The named Plaintiffs are Kathryn Szeliga; Christopher T. Adams; James Warner; Martin Lewis; Janet Moye Cornick; Ricky Agyekum; Maria Isabel Icaza; Luanne Ruddell; and Michelle Kordell.

elections, freedom of speech, equal protection and the obligation of the legislature to enact laws ensuring the purity of Maryland's elections.

Defendants are Linda H. Lamone, the Maryland State Administrator of Elections; William G. Voelp, the chairman of the Maryland State Board of Elections; and the Maryland State Board of Elections, which ensures compliance with Maryland and Federal election laws by all persons in the election process and is responsible for administering Federal elections under the 2021 Plan. In response to Plaintiffs' allegations, Defendants argue that neither Federal nor Maryland law places specific restrictions on how congressional districts must be created; so too, they allege, is the situation under the Maryland Constitution.

The Proposed Intervenor, the Democratic Congressional Campaign Committee (the "DCCC"), who self-identifies as "the official campaign arm of Democrats in the House of Representatives," has sought to intervene in this case as of right, or in the alternative, permissively, to allegedly defend its interests in congressional districts in Maryland that will allow Democratic candidates to be competitive. *Opp'n Mot. Intervene* at 1. The Plaintiffs oppose the DCCC's intervention both as of right and permissively, because, they allege, the DCCC lacks standing to be a party; its claimed interests will not be impacted directly by the outcome of this case; the Maryland Office of the Attorney General (the "OAG") will adequately represent the interests the DCCC seeks to protect; the DCCC has failed to demonstrate a defense that shares common questions of law or fact with those at issue in this case; and the DCCC's intervention will unduly delay this litigation and prejudice the adjudication of Plaintiff's rights. *Id.* The Defendants oppose the DCCC's intervention as of right because they allege that they can adequately represent the DCCC's interests but they take no position on the DCCC's intervention permissively. *Resp. Mot. Intervene* at 4.

## DISCUSSION

Maryland Rule of Civil Procedure 2-214 provides two mechanisms for a “person”<sup>2</sup> to intervene in an action. Under Maryland Rule 2-214, a person may intervene as “of right” or “permissively.”

### Intervention as of Right

To intervene as of right, Maryland Rule 2-214(a) states:

- (a) *Of Right*. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

*Id.* Under Maryland Rule 2-214(a)(2), the proposed intervenor must satisfy four requirements to intervene as of right:

- (1) the motion to intervene must be timely;
- (2) the person claims an interest relating to the property or transaction that is the subject of the action;
- (3) the person is so situated that the disposition of the action, as a practical matter, may impair or impede that person’s ability to protect that interest; and
- (4) the person’s interest is not adequately represented by existing parties to the suit.

*Doe v. Alt. Med. Md., LLC*, 455 Md. 377, 415 (2017) (internal citations omitted). A person’s failure to satisfy any one of the four requirements for intervention is sufficient to warrant denial of a motion to intervene as of right. *Env’t Integrity Project v. Mirant Ash Mgmt., LLC*, 197 Md. App. 179, 190 (2010) (citing *Hartford Ins. Co. v. Birdsong*, 69 Md. App. 615, 622–23 (1987)).

---

<sup>2</sup> “Person” includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, any court, or any other governmental entity. MD. RULE 1-202(u).



The first consideration is whether the Motion to Intervene was interposed timely. There is no contest by any party about this consideration, because the Motion to Intervene was filed within a month of the Complaint having been filed and before the Motion to Dismiss was filed on behalf of the Defendants. The Court finds that this requirement is met.

The Intervenor then, must demonstrate that it has an interest in the subject matter of the action. *Env't Integrity Project*, 197 Md. App. at 186. The Court of Appeals described the nature of such an interest in *Md.-Nat'l Cap. Park & Plan. Comm'n v. Town of Wash. Grove*:

The requirement which we have imposed on the applicant for intervention ... is that he have an interest for the protection of which intervention is essential and which is not otherwise protected.' Put another way, 'whether the applicant for intervention has an interest which it is essential to protect may be equated with the requirement ... that he is or may be bound by a judgment in the action.' It is not enough for a person seeking intervention to base its motion on concern that some future action in the proceedings may affect its interests adversely. Seeking intervention on such a basis is 'merely speculative and affords no present basis upon which to become a party to the proceedings.

408 Md. 37, 75 (2009) (quoting *Citizens Coordinating Comm. on Friendship Heights, Inc. v. TKU Assoc.*, 276 Md. 705, 712 (1976)). The interest of the person seeking to intervene under Maryland Rule 2-214(a)(2) "must be such that the person has standing to be a party"—i.e., "the outcome of the lawsuit might cause the person to suffer some kind of special damage differing in character and kind from that suffered by the general public." *Id.* at 45 (quoting *Duckworth v. Deane*, 393 Md. 524, 540 (2006)).

In Maryland, "for an organization to have standing to bring a judicial action, it must ordinarily have a property interest of its own—separate and distinct from its individual members." *Evans v. State*, 396 Md. 256, 328 (2006) (internal citations omitted) (holding that the NAACP, ACLU, and CASE lacked standing to challenge the DOC's execution protocols); see also *Voters Organized for the Integrity of City Elections v. Balt. City Bd. of Elections*, 451 Md. 377, 396 (2017) ("Absent special statutory standing, "a person—individual or organization—has no standing to

bring an action in court unless the person has suffered some kind of special damage.”” (quoting *Fraternal Ord. of Police v. Montgomery Cnty.*, 446 Md. 490, 506 (2016))).

In *Voters Organized for the Integrity of City Elections*, the organization sought to intervene based upon its interest in the interpretation of a particular statute under the Election Law Article. 451 Md. at 397. The court held:

[The organization] does not have standing to seek a declaratory judgment concerning its interpretation of the obligations of the election boards under the Election Law Article, simply because its members are interested in that interpretation or even because its members may themselves be specially affected by that interpretation. The organization itself must be specially affected by that interpretation.

*Id.* at 397. *But see Fraternal Ord. of Police v. Montgomery Cnty.*, 446 Md. 490, 506–07 (2016) (finding standing on behalf of the police union to challenge the county’s use of public funds to defeat a referendum concerning a statute on collective bargaining because the statute affected the scope of bargaining by the union on behalf of its members, which was a sufficiently separate and distinct interest from that of its individual members). The interests of the DCCC are more akin to those in *Voters Organized for the Integrity of City Elections* than in the *Fraternal Order of Police* and most importantly, do not reflect a “special affect” by the outcome of the present case. Thus, the DCCC has failed to meet the second requirement.

Even were the DCCC to have standing to intervene, the DCCC would not be impaired or impeded in its ability to keep Democratic candidates competitive. The standard that the Maryland Court of Appeals has adopted for determining an impairment or impediment to the ability to protect an interest is whether “the disposition of the action would at least potentially impair the [person’s] ability to protect [the person’s] interest.” *Doe*, 455 Md. at 416 (quoting *Town of Wash. Grove*, 408 Md. at 99) (brackets in original). To justify intervention, the disposition of

the action must “directly” impact the applicant’s interests. *Duckworth v. Deane*, 393 Md. 524, 539 (2006).

In *Doe*, the court held that a trade association advocating for the advancement of access to medical cannabis could not intervene in an action filed by a medical cannabis grower because “whatever the disposition of the case, the Trade Association Petitioners’ ability to protect their interest will not be impaired or impeded.” 455 Md. at 431. The court explained that the trade association was simply advocating for the advancement of access to medical cannabis, and that even if the disposition of the case was in AMM’s favor (which would result in reconducting the pre-approval process for medical cannabis grower licenses), the only result would be a delay in the date when medical cannabis becomes operational in Maryland, not a complete halt of that operation. *Id.*; see also *Montgomery Cnty. v. Bradford*, 345 Md. 175, 198–99 (1997) (finding that the County’s interests—prevention of the diversion of State funding from the County to Baltimore City—would not “automatically or necessarily” result from a judgment in the plaintiffs’ favor and was too speculative and remote).

Here, the DCCC’s concerns are speculative and remote. The outcome of the present case will not automatically or necessarily adversely affect the DCCC from providing resources to maintain competitiveness of Democratic candidates. Therefore, the third requirement has not been met.

The fourth requirement, inadequate representation by the parties, necessitates “a comparison of the interest asserted by the person seeking to intervene with that of each existing party.” *Doe*, 455 Md. at 417 (quoting *Town of Wash. Grove*, 408 Md. at 102). The burden of showing that existing representation may be inadequate is a minimal one. *Id.* (quoting *Town of Wash. Grove*, 408 Md. at 102). The person seeking to intervene need not show that existing



representation is, in fact, inadequate, or that the person's interests are adverse to existing representation; "it is sufficient that the representation may be inadequate." *Id.* (quoting *Town of Wash. Grove*, 408 Md. at 102).

The Court of Appeals has adopted the 'interest-analysis' test for determining whether the lack of adequate representation requirement has been met. *Id.* The test to be applied is:

- (1) If the proposed intervenor's interest is not represented or advocated to any degree by an existing party, or if the existing parties all have interests which are adverse to those of the proposed intervenor, the intervenor should be permitted to intervene;
- (2) If the proposed intervenor's interest is similar, but not identical, to that of an existing party, a discriminating judgment is requirement on the circumstances of the particular case, but the proposed intervenor ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee;
- (3) If the interest of an existing party and the proposed intervenor are identical, or if an existing party is charged by law with representing the proposed intervenor's interest, a compelling showing should be required to demonstrate by this representation is not adequate.

*Id.*

Under the interest-analysis test, a party is adequately represented, even if its interests are not precisely the same as the parties already in the litigation when, "as far as the unresolved portion of the litigation is concerned, there is every indication of a compatibility objective, and of efforts to obtain that goal." *Md. Radiological Soc'y, Inc. v. Health Servs. Cost Rev. Comm'n*, 285 Md. 383, 392 (1979).

The DCCC argues that the Defendants do not share its interest in ensuring that Democratic members of Congress have an opportunity to compete in and win congressional elections in properly constituted districts. *Mot. Intervene* at 6. In contrast, Plaintiffs and Defendants claim that the DCCC's interest is adequately represented by the Office of the Attorney General for Maryland. *Opp'n Mot. Intervene* at 7–8. The Court agrees.

The Defendants and their representative, the Attorney General, as well as the DCCC essentially have identical interests—maintaining the newly drawn congressional districts and persevering against a challenge to the newly drawn congressional districts. The Defendants and the Attorney General are clearly more than adequate to the task of representing the DCCC's interests and no collusion, non-feasance, or bad faith on either of their parts have been alleged. *See Md. Radiological Soc'y, Inc.*, 285 Md. at 391 (explaining that under the interest-analysis test, when the interests of an existing party and the proposed intervenor are identical, the proposed intervenor is charged with making a compelling showing that the current representation is inadequate; to make a “compelling showing,” the proposed intervenor must show “collusion, nonfeasance, or bad faith on the part of those existing parties with whom his interest coincides”). As a result, the DCCC's interests are adequately represented by the Defendants and their representative, the Attorney General.

#### **Permissive Intervention**

In the alternative, the DCCC requests permissive intervention under Maryland Rule 2-214(b), which states:

- (1) *Generally.* Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

\* \* \*

- (3) *Considerations.* In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The purpose of permissive intervention is to promote judicial economy in the litigation process, if warranted. *Doe*, 455 Md. at 418.

The Defendants take no position on permissive intervention, while the Plaintiffs oppose permissive intervention, because they alleges that the DCCC claims the generalized and theoretical



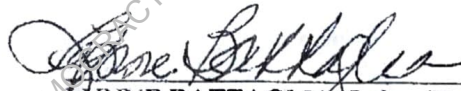
interest of advocating for Democratic candidates and most importantly, the DCCC's intervention will unduly delay this litigation and prejudice the Plaintiffs.

To permit the DCCC to permissively intervene in the present matter is inappropriate when the time sensitivity of providing direction as to what the Congressional map should look like eclipses every consideration. The nature of this case demands an efficient and expedient resolution of the issues as time is of the essence. Adding attorneys and parties when the Proposed Intervenor's interest is more than adequately protected undermines the effectiveness of the judicial process from discovery to a trial on the merits to post-trial proceedings. Permissive intervention is denied.

### CONCLUSION

For the reasons stated above, the DCCC's Motions to Intervene has been **DENIED**.

7/15/2022  
Date

  
LYNNE BATTAGLIA, Judge (Ret.)  
Circuit Court for Anne Arundel County