

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY, MARYLAND**

KATHRYN SZELIGA, *et al.*

Plaintiffs,

v.

Case No. C-02-CV-21-001816

LINDA H. LAMONE, *et al.*

Defendants.

PLAINTIFFS' OPPOSITION TO THE DCCC'S MOTION TO INTERVENE

This lawsuit challenges the constitutionality of Maryland's newly created congressional districts, which the Democrat-controlled General Assembly unlawfully gerrymandered to guarantee the election of Democratic candidates to the United States House of Representatives. The Democratic Congressional Campaign Committee (the "DCCC")—the official campaign arm of Democrats in the House of Representatives—now seeks to intervene in this case, purportedly to advocate for congressional districts that will allow Democratic candidates to be competitive. The Court should deny the DCCC's request to intervene because the DCCC lacks standing to be a party; its claimed interest will not be impacted directly by the outcome of this case; the Maryland Office of the Attorney General (the "OAG") will adequately represent the interest 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 Plaintiffs' rights.

I. BACKGROUND

On December 9, 2021, the General Assembly passed House Bill 1 ("HB1"), which established electoral districts for selecting Maryland's eight members of the United States House of Representatives. HB1 is an extreme partisan gerrymander that guarantees victory for

Democratic candidates in seven of the congressional districts and makes likely a victory for a Democratic candidate in the remaining district. HB1 thus unconstitutionally infringes on Plaintiffs' rights to free elections, equal protection, and freedom of speech; violates the General Assembly's obligation to pass laws ensuring the purity of Maryland's elections; and defies the fundamental democratic principle that voters should choose their representatives, not the other way around.

On December 23, 2021, Plaintiffs filed their Complaint. It alleges that HB1 violates Articles 7, 24, and 40 of the Maryland Declaration of Rights and Article I, Section 7 of Maryland's Constitution. It further asks the Court to declare that HB1 is unconstitutional and enjoin the use, administration, or enforcement of HB1 in any future election in Maryland, including the 2022 primary and general elections for Congress.

The OAG is defending the Defendant state officials and state agency and the constitutionality of HB1. In fact, the OAG recently filed a motion to dismiss Plaintiffs' claims.

On January 20, 2022, the DCCC filed a motion to intervene in this case. In its motion, the DCCC describes itself as "a political organization dedicated to supporting the election of Democratic Party candidates." (Mot. to Intervene at 5.) According to its website, the DCCC is "the official campaign arm of the Democrats in the House of Representatives" and "the only political committee in the country whose principal mission is to support Democratic House candidates every step of the way to fortify and expand our new Democratic Majority." *See* <https://dccc.org/about/> (last visited Feb. 2, 2022).

The DCCC purportedly seeks to intervene in this case under Maryland Rule 2-214 "to defend its interests in congressional districts in Maryland that will allow Democratic candidates to be competitive." (Mot. to Intervene at 4.) It claims that it should be permitted to intervene as of right because its interest will be impacted by this lawsuit and that the OAG will not adequately

represent its interest. The DCCC also claims that it should be permitted to intervene permissively because it has unspecified defenses that share common questions of law or fact with this case and its participation will not unduly delay this litigation or prejudice any current parties.

II. ARGUMENT

The Court should deny the DCCC's request to intervene as a matter of right because the DCCC lacks standing to be a party, its purported interest will not be impacted directly by this litigation, and the OAG will adequately represent any legitimate interest the DCCC seeks to protect. The Court also should deny the DCCC's request to intervene permissively because the DCCC has failed to identify a claim or defense in common with this action, and its intervention will unduly delay this litigation and prejudice the adjudication of Plaintiffs' rights.

A. The DCCC Has No Right to Intervene Under Maryland Rule 2-214(a)(2)

The DCCC first seeks to intervene as a matter of right under Maryland Rule 2-214(a)(2), which provides:

Upon timely motion, a person shall be permitted to intervene in an action ... 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.

A proposed intervenor must meet four requirements under this rule: (1) a timely motion to intervene; (2) an interest relating to the property or transaction that is the subject of the case; (3) disposition of the action may impair or impede the proposed intervenor's ability to protect that interest; and (4) inadequate representation by existing parties. *Doe v. Alternative Med. Md., LLC*, 455 Md. 377, 415 (2017). "Failure to satisfy any one of the four requirements for intervention, as laid out above, is sufficient to warrant denial of a motion to intervene as of right." *Envtl. Integrity*

Project v. Mirant Ash Mgmt., LLC, 197 Md. App. 179, 190 (2010). Here, the DCCC cannot meet requirements (2), (3), or (4).

1. The DCCC Lacks Standing to Intervene

In its motion to intervene, the DCCC describes its interest as defending “congressional districts in Maryland that will allow Democratic candidates to be competitive” and “ensuring its members of Congress have an opportunity to compete in and win congressional elections in properly constituted districts.” (Mot. to Intervene at 4, 6.)¹ The DCCC thus seeks to intervene in this case *as an organization* to advocate *on behalf of its members* for congressional districts where Democratic candidates will be competitive. The DCCC’s claimed interest does not justify intervention.

Under Rule 2-214(a)(2), a proposed intervenor’s interest “must be such that the applicant has standing to be a party.” *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 that of its individual members.” *Evans v. State*, 396 Md. 256, 328 (2006) (internal quotation marks omitted) (holding that the NAACP, ACLU, and CASE lacked standing to challenge the DOC’s execution protocols).²

¹ The DCCC also claims that “[i]f Plaintiffs succeed and HB1 is enjoined, Proposed Intervenor will suffer direct injury because the districts their members of Congress have run in previously, and will run in again in 2022, will be changed.” (Mot. to Intervene at 5.) The DCCC, however, cannot seriously contend that it has an interest in preserving pre-HB1 congressional districts. Under the United States Constitution, congressional districts must be redrawn every 10 years following the decennial census. U.S. Const. art. I, § 2. Thus, regardless of the outcome of this lawsuit—no matter whether the use of the challenged congressional districts is enjoined or upheld—the districts the DCCC’s members of Congress have run in previously will be changed.

² Maryland law is materially different than federal law in this regard. Unlike the federal courts, Maryland does not recognize derivative standing for organizations. *Voters Organized for the Integrity of City Elections v. Balt. City Bd. of Elections*, 451 Md. 377, 396-97 (2017).

Here, the DCCC has set forth no interest separate and distinct from that of its members. To the contrary, the DCCC's stated interest in this case—the existence of congressional districts where Democratic Party candidates can compete—mirrors that of its members. Indeed, the DCCC's motion and website make clear that it exists to advocate for the interests of its members. The DCCC's motion to intervene states that it is “a political organization dedicated to *supporting the election of Democratic Party candidates*.” (Mot. to Intervene at 5 (emphasis added).) And the DCCC's website states that it is “the official campaign arm *of the Democrats in the House of Representatives*”; and “the only political committee in the country whose principal mission is *to support Democratic House candidates* every step of the way to fortify and expand our new Democratic Majority.” See <https://dccc.org/about/> (last visited Feb. 2, 2022) (emphasis added). Because the DCCC has no interest in this matter independent of its members' interest, it lacks standing to be a party and thus lacks an interest that justifies intervention.

2. The Disposition of this Case Will Not Impair the DCCC's Interest

The DCCC's purported interest also will not be impacted directly by a judgment in this case. See *Deane*, 393 Md. at 539 (explaining that to justify intervention “[t]he disposition of the action must ‘directly’ impact upon the applicant’s interest”). Through this litigation, Plaintiffs seek: (1) a declaration that HB1, which created unlawfully gerrymandered congressional districts, is unconstitutional; and (2) an injunction prohibiting the use in future elections of the electoral districts HB1 created. No part of this requested relief impacts the DCCC's stated interest of ensuring competitive districts for candidates from the Democratic Party.

Plaintiffs simply seek an order prohibiting the use of congressional districts designed to *unlawfully ensure or make likely* victory by Democratic candidates. Plaintiffs do not seek the creation of congressional districts where Democratic candidates are not competitive. To the contrary, Plaintiffs want congressional districts in Maryland where candidates from both major

political parties (and even third-party candidates) have a chance to prevail. Consequently, a judgment in favor of Plaintiffs will not “automatically or necessarily” impact the DCCC’s purported interest. *See Montgomery County v. Bradford*, 345 Md. 175, 198-99 (1997) (denying Montgomery County’s request to intervene in a lawsuit alleging that Baltimore City students were or would be deprived of their constitutional right to an adequate education because the County’s interest—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); *see also Doe*, 455 Md. at 431 (holding that 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”).

Further, for the DCCC’s interest truly to be impacted, congressional maps will have to be redrawn at some future time (likely by the Maryland General Assembly) in a way that prevents Democratic candidates from being competitive. Plaintiffs are not seeking such a result and, in light of the Democratic supermajority in the General Assembly, such a result seems far-fetched. Thus, the DCCC’s concerns that potential congressional districts will be created in which Democratic candidates are not competitive are indirect, remote, and speculative and do not justify intervention. *See Bradford*, 345 Md. at 199 (“Moreover, the concern expressed by the County in this regard, namely that it may at some time in the future have an effect on its share of the State’s education budget, or its tax burden, is far too remote and indefinite to justify intervention under Rule 2-214(a).”); *see also Doe*, 455 Md. at 416 (explaining that “[i]t is not enough for a person

seeking intervention to base [his or her] motion on concern that some future action in the proceedings may affect [the person's] interests adversely").³

3. The DCCC's Interests Are Adequately Represented

Finally, the DCCC's interest in this case is adequately represented by the OAG. The OAG is defending the state officers and agency sued in this case and the constitutionality of HB1; in fact, the OAG is charged by law with doing so. *See, e.g., Deane*, 393 Md. at 536-37. Consequently, the OAG will be defending the congressional districts created by HB1 and advocating for their affirmation. Importantly for purpose of this motion, the congressional districts created by HB1 overwhelmingly favor Democratic Party candidates—Democrats are virtually assured of winning in seven of the districts and have a competitive advantage in the eighth. Because the OAG is defending these overwhelmingly pro-Democratic congressional districts, its interests squarely align with the DCCC's asserted interest of advocating for districts where Democratic Party candidates can be competitive. Thus, the OAG's interests and those of the DCCC "are largely similar and are not adverse," and the OAG will adequately represent the interest of the DCCC. *Envtl. Integrity Proj.*, 197 Md. App. at 192. Moreover, even if the OAG's interests and those of the DCCC are not identical—although for all practical purposes they appear to be—

³ It seems possible that the DCCC also seeks to intervene in this case to ensure that it has some say in the formulation of any legal standard that may emerge. However, that is not a sufficient interest to justify intervention. *See Deane*, 393 Md. at 539 (explaining that "an 'interest' in the 'transaction that is the subject of the action,' which may be affected by 'the disposition of the action,' means something more than an applicant's 'generalized interest in participating in the formulation of a constitutional [or legal] standard, to which the [applicant for intervention] may be subjected'"); *see also Bradford*, 345 Md. at 199 ("Were it otherwise ... then any applicants' generalized interest in participating in the formulation of a constitutional standard, to which the person may be subjected, could intervene as a party from which an interpretation of a constitutional provision might emerge."); Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* § 2-214.04 (5th ed. 2020) ("[T]he person's interest must also be something more than a generalized interest in participating in a lawsuit for the purpose of influencing the result.").

the OAG will adequately represent the interests of the DCC because “there is every indication of a compatibility of objective, and of efforts to obtain that goal.” *Id.* Indeed, the OAG already has filed a lengthy motion to dismiss Plaintiffs’ claims.⁴

In circumstances like those here—“where the interest of an existing party and the movant are identical, or if an existing party is charged by law with representing a movant’s interest”—“a compelling showing should be required to demonstrate why this representation is not adequate.” *Id.* at 191; *see also Doe*, 455 Md. at 417 (same); *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013) (“Both the government agency and the would-be intervenors want the statute to be constitutionally sustained. In this context ... the putative intervenor must mount a strong showing of inadequacy. To hold otherwise would place a severe and unnecessary burden on government agencies as they seek to fulfill their basic duty of representing the people in matters of public litigation.”). To make a “compelling showing,” the DCCC must show “collusion, nonfeasance, or bad faith on the part of those existing parties with whom his interest coincides.” *Maryland Radiological Soc. v. Health Servs. Cost Rev. Com.*, 285 Md. 383, 391 (1979); *see also Stuart*, 706 F.3d at 349, 352-55. The DCCC has not and cannot make such a showing here.

The DCCC relies heavily on *Doe* to support its claim that the OAG will not adequately represent its interests. That case, however, is distinguishable. In *Doe*, AMM sued Maryland’s Medical Cannabis Commission over the denial of a medical cannabis grower license. 455 Md. at 383, 387. The Court of Appeals found that growers who had been pre-approved for a license could intervene. *Id.* at 419. The Court of Appeals found that the OAG would not adequately represent the interests of the growers because the growers and the Commission (which the OAG was

⁴ It is worth noting that the OAG vigorously defended a constitutional challenge to Maryland’s pre-HB1 congressional districts—which also were politically gerrymandered to favor Democratic candidates—all the way to the Supreme Court. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). There is no reason to suspect that the OAG will try to defend HB1 any less vigorously.

defending) had different interests—“the Commission’s interest is in conducting the medical cannabis grower licensing process lawfully, whereas the Growers’ interest is in protecting their status and investment as pre-approval awardees.” *Id.* at 425. Critical to the Court of Appeals’ conclusion was the fact that AMM sought a court order requiring the Commission to reconduct the pre-approval process for growers, which would eliminate the intervenor-growers’ pre-approved status. *See id.* at 424 (explaining that the Commission had a conflict of interest in representing the pre-approved growers because “the Growers seek to maintain their status as pre-approval awardees” while “the Commission seeks to assure that the selection process is lawfully implemented”).

Unlike *Doe*, the DCCC’s interests align perfectly with those of the named defendants and the OAG. Specifically, the DCCC seeks congressional districts where Democratic Party candidates can be competitive, and the OAG seeks to preserve congressional districts that ensure the success of Democratic Party candidates. Moreover, as explained above, Plaintiffs do not seek a court order establishing congressional districts in which Democratic Party candidates will not be competitive. Unlike the grower-intervenors in *Doe*, the DCCC does not have an individualized, concrete interest that differs from that of the named defendants and the OAG; nor do Plaintiffs seek relief that will eliminate some individualized and concrete right or interests that the DCCC currently has. Thus, *Doe* does not support the DCCC’s claim that the OAG’s will inadequately represent its interests.

B. The Court Should Not Permit the DCCC to Intervene Permissively

The DCCC also seeks to intervene permissively under Rule 2-214(b)(1), which provides that “[u]pon 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.” In exercising its

discretion under this rule, the Court “shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Md. Rule 2-214(b)(3).

Here, the DCCC has not set forth claims or defenses that share questions of law or fact with this case. Again, *Doe* is instructive. Although in *Doe* the Court of Appeals found that pre-approved medical cannabis growers could intervene, it affirmed the denial of requests to intervene made by certain medical cannabis trade organizations. 455 Md. at 419. Regarding the trade associations’ request for permissive intervention, the Court of Appeals explained that the trade organizations did not present a claim raising a question of law or fact in common with the action because: (a) the case concerned the constitutionality of the Maryland Medical Cannabis Commission’s process and issuance of pre-approvals for medical cannabis grower licenses; and (b) the trade organizations’ interests were “attenuated and general interests in having the medical cannabis industry operational in Maryland sooner rather than later.” *Id.* at 432.

So too here. The DCCC’s generalized and theoretical interest of advocating for districts where Democratic Party candidates may be competitive does not raise a question of law or fact in common with this case, which claims the congressional districts created by HB1 violate specific constitutional rights of the Plaintiffs. The DCCC’s motion states only that it “has defenses that have questions of law and fact in common with the case—for example, Proposed Intervenor maintains in the attached Answer that Plaintiffs have failed to state a claim on which relief can be granted.” (Mot. to Intervene at 8.) Nowhere in its motion does the DCC explain what individualized “defenses” it has to Plaintiffs’ claims in light of its stated interest (or how its “defenses” differ from those the OAG has already asserted in its motion to dismiss).

The DCCC’s intervention in this case, moreover, will unduly delay this litigation and prejudice Plaintiffs’ ability to enforce their rights. Adding an additional party like the DCCC will necessarily complicate and prolong discovery, motions, hearings, and trial, and will consume

additional resources of the Court and the parties. Inclusion of the DCCC as a party, for example, will result in three parties at every deposition, three separate sets of briefs for every motion, and three parties presenting evidence and arguments at every hearing and at trial. Additionally, allowing the DCCC to intervene will impose these costs without any corresponding benefit, particularly because the named Defendants and the OAG are already zealously pursuing the same ultimate objectives as the DCCC. *See Stuart*, 706 F.3d at 355 (affirming denial of request for permissive intervention on similar grounds); *Md. Restorative Justice Initiative v. Hogan*, 316 F.R.D. 106, 116-17 (D. Md. 2016) (denying motion to intervene for similar reasons).

IV. CONCLUSION

For the above reasons, the Court should deny the DCCC's motion to intervene.

Respectfully submitted,

Dated: February 3, 2022

/s/ Strider L. Dickson

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CERTIFICATE OF SERVICE

I certify that on February 3, 2022 the foregoing Plaintiff's Opposition to the DCCC's Motion to Intervene was filed electronically via the Court's MDEC system.

/s/ Strider L. Dickson
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