

McMANIMON, SCOTLAND & BAUMANN, LLC

75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

William W. Northgrave (039201990)

Grant W. McGuire (016801995)

Keith M. Menscher (380192022)

Attorneys for Middlesex County

Democratic Organization

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHRISTINE CONFORTI, ARATI
KREIBICH, MICO LUCIDE, JOSEPH
MARCHICA, KEVIN MCMILLAN,
ZINOVIA SPEZAKIS, and NEW
JERSEY WORKING FAMILIES
ALLIANCE, INC.,

Plaintiffs,

v.

CHRISTINE GIORDANO HANLON, in her
official capacity as Monmouth
County Clerk, SCOTT M.
COLABELLA, in his official
capacity as Ocean County
Clerk, PAULA SOLLAMI COVELLO,
in her official capacity as
Mercer County Clerk, JOHN S.
HOGAN, in his official
capacity as Bergen County
Clerk, EDWARD P. MCGETTIGAN,
in his official capacity as
Atlantic County Clerk,

Defendants.

CIVIL ACTION

NO. 3:20-cv-08267-ZNQ-TJB

NOTICE OF MOTION TO INTERVENE

To:

Flavio L. Komuves
WEISSMAN & MINTZ LLC
220 Davidson Avenue, Suite 410
Somerset, NJ 08873
732-563-4565

fkomuves@weissmanmintz.com
*Attorney for Plaintiffs Christine Conforti,
Arati Kreibich, Kevin McMillan,
Zinovia Spezakis, Joseph Marchica, and
New Jersey Working Families Alliance, Inc.*

Yaek Bromberg
BROMBERG LAW LLC
73 Glen Avenue
P.O. Box 1131
Glen Rock, NJ 07452
201-280-1969
ybromberg@bromberglawllc.com
*Attorney for Plaintiffs Christine Conforti,
Arati Kreibich, Kevin McMillan,
Zinovia Spezakis, Joseph Marchica, and
New Jersey Working Families Alliance, Inc.*

Brett M. Pugach
BROMBERG LAW LLC
43 West 43rd Street, Suite 32
New York, NY 10036-7424
973-600-9148
bpugach@bromberglawllc.com
*Attorney for Plaintiffs Christine Conforti,
Arati Kreibich, Kevin McMillan,
Zinovia Spezakis, Joseph Marchica, and
New Jersey Working Families Alliance, Inc.*

Erik Anderson
REARDON ANDERSON LLC
55 Gilbert Street North, Suite 2204
Tinton Falls, NJ 07701
732-758-8070
eanderson@reardonanderson.com
Attorney for Defendant Christine Giordano Hanlon

John C. Sahradnik
BERRY, SAHRADNIK, KOTZAS & BENSON
212 Hooper Avenue
P.O. Box 757
Toms River, NJ 08754-0757
732-349-4800
jsahradnik@bskb-law.com

Attorneys for Scott M. Colabella

Matthew Brady Thompson
BERRY SAHRADNIK KOTZAS & BENSON
212 Hooper Avenue
P.O. Box 757
Toms River, NJ 08753
732-349-4800
mthompson@bskb-law.com
Attorneys for Scott M. Colabella

Angelo Joseph Genova
GENOVA BURNS, LLC
494 Broad Street
Newark, NJ 07102
(973) 533-0777
agenova@genovaburns.com
Attorneys for Paula Sollami Covello

Christopher Zamlout
CHIESA SHAHINIAN & GIANTOMASI PC
1 Boland Drive
West Orange, NJ 07052
973-530-2187
czamlout@gibbonslaw.com
Attorneys for Paula Sollami Covello

Jennifer Borek
GENOVA BURNS LLC
494 Broad Street
Newark, NJ 07102
(973) 533-0777
jlborek@genovaburns.com
Attorneys for Paula Sollami Covello

Alan J. Cohen
Atlantic County Department of Law
1333 Atlantic Avenue
Atlantic City, NJ 08401
(609) 343-2279
Cohen_Alan@aclink.org
Attorney for Edward P. McGettigan

Edward J. Florio
FLORIO KENNY RAVAL, LLP
125 Chubb Avenue, Suite 310N

Lyndhurst, NJ 07071
201-659-8011
main@fkrlaw.com
Attorney for E. Junior Maldonado

Henal Patel
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
60 Park Place, Suite 511
Newark, NJ 07102
973-755-9897
hpatel@njisj.org
*Attorneys for League of Women Voters of New Jersey, and
Salvation and Social Justice*

Ryan Paul Haygood
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
60 Park Place, Suite 511
Newark, NJ 07102
917-400-4027
rhaygood@njisj.org
*Attorneys for League of Women Voters of New Jersey, and
Salvation and Social Justice*

Jaime Richard Placek
DECOTIIS, FITZPATRICK, COLE & GIBLIN, LLP
61 South Paramus Road, Suite 250
Paramus, NJ 07652
201-928-1100
jplacek@northjerseyattorneys.com
*Attorney for John S. Hogan, and the Office
Of the Bergen County Clerk*

George N. Cohen
OFFICE OF THE NJ ATTORNEY GENERAL
R.J. Hughes Justice Complex
P.O. Box 112
Trenton, NJ 08625
(609) 633-8409
George.Cohen@law.njoag.gov
Attorney for Intervenor Gurbir S. Grewal

John M. Carbone
CARBONE AND FAASSE
401 Goffle Road
P.O. Box 763
Ridgewood, NJ 07451-0763

201-445-7100
ussrecount@aol.com
Attorney for Intervenor Honorable James Hogan

William M. Tambussi
BROWN & CONNERY, LLP
360 Haddon Avenue
P.O. Box 539
Westmont, NJ 08108
(856) 854-8900
wtambuss@brownconnery.com
*Attorney for Intervenor
Camden County Democrat Committee*

Robert F. Renaud
RENAUD DEAPPOLONIO, LLC
190 North Avenue, East, 3rd Floor
Cranford, NJ 07016
(908) 418-4088
rrenaud@rdlawnj.com
*Attorney for Intervenor
Regular Democratic Organization of Union County, Inc.*

PLEASE TAKE NOTICE that on September 6, 2022, attorneys for the Middlesex County Democratic Organization shall move before the above-named Court at the United States District Court, for an Order permitting the Middlesex County Democratic Organization to intervene in the above referenced matter pursuant to Fed. R. Civ. P. 24.

PLEASE TAKE FURTHER NOTICE, that the Middlesex County Democratic Organization shall rely on the attached Brief in support of their Motion to Intervene.

PLEASE TAKE FURTHER NOTICE, that the Middlesex County Democratic Organization hereby requests oral Argument should any

party oppose this Motion to Intervene. A form of Order is attached.

McManimon, Scotland & Baumann, LLC
*Attorneys for Middlesex County
Democratic Organization*

By: /s/ William W. Northgrave
William W. Northgrave

Dated: August 2, 2022

RETRIEVED FROM DEMOCRACYDOCKET.COM

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHRISTINE CONFORTI, ARATI
KREIBICH, MICO LUCIDE, JOSEPH
MARCHICA, KEVIN MCMILLAN,
ZINOVIA SPEZAKIS, and NEW
JERSEY WORKING FAMILIES
ALLIANCE, INC.,

Plaintiffs,

v.

CHRISTINE GIORDANO HANLON, in her
official capacity as Monmouth
County Clerk, SCOTT M.
COLABELLA, in his official
capacity as Ocean County
Clerk, PAULA SOLLAMI COVELLO,
in her official capacity as
Mercer County Clerk, JOHN S.
HOGAN, in his official
capacity as Bergen County
Clerk, EDWARD P. MCGETTIGAN,
in his official capacity as
Atlantic County Clerk,
Defendants.

CIVIL ACTION

NO. 3:20-cv-08267-ZNQ-TJB

BRIEF IN SUPPORT OF MOTION TO INTERVENE ON BEHALF OF
MIDDLESEX COUNTY DEMOCRATIC ORGANIZATION

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Second Floor
Roseland, New Jersey 07068
(973) 622-1800

Wnorthgrave@msbnj.com

Gmcguire@msbnj.com

Kmensch@msbnj.com

*Attorneys for Middlesex County
Democratic Organization*

On the Brief

William W. Northgrave (039201990)

Grant W. McGuire (016801995)

Keith M. Menscher (380192022)

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT..... 1

PROCEDURAL HISTORY AND STATEMENT OF FACTS 1

LEGAL ARGUMENT..... 3

I. STANDARD FOR INTERVENTION..... 3

II. MCDO MUST BE ALLOWED TO INTERVENE AS OF RIGHT
PURSUANT TO FED. R. CIV. P. 24(a)..... 4

 1. *The Motion for Intervention is Timely* 4

 2. *MCDO has Sufficient Interest which
 Will be Affected or Impaired as a Practical
 Matter by the Disposition of this Litigation*..... 5

 3. *The Interests of MCDO are not Adequately
 Represented by an Existing Party in this
 Litigation*..... 7

III. IN THE ALTERNATIVE, MCDO SHOULD BE GRANTED
PERMISSIVE INTERVENTION PURSUANT TO
FED. R. CIV. P. 24(b)..... 8

CONCLUSION..... 9

TABLE OF AUTHORITIES

Am. Pipe & Const. Co. v. Utah, 414 U.S. 538 (1974)..... 3

Commonwealth of Pennsylvania v. Rizzo,
530 F.2d 501 (3d Cir. 1976) 4,5,7

Donovan v. United Steelworkers of Am., AFL-CIO,
721 F.2d 126 (3d Cir. 1983)..... 4,5

Eu v. San Francisco Cnty. Democratic Cent. Comm.,
489 U.S. 214 (1989)..... 6,7

Harris v.. Pernsley, 820 F.2d 596 (3d Cir. 1987)..... 4,5,8,9

Hoots v. Com. of Pa., 672 F.2d 1133 (3d Cir. 1982)..... 8

In re Safeguard Scis., 200 F.R.D. 43 (E.D. Pa. 2004)..... 4

Kleissler v. U.S. Forest Serv., 157 F.3d 964 (3d Cir. 1998).... 6

Liberty Mut. Ins. Co. v. Treesdale, Inc.,
419 F.3d 216 (3d Cir. 2005)..... 4

McKay v. Heyison, 614 F.2d 899 (3d Cir. 1980)..... 8

Mountain Top Condo Ass'n v. Dav Stabbert Master Builder, Inc.,
72 F.3d 361 (3d Cir. 1995)..... 4,5

NAACP V. New York, 413 U.S. 345 (1973)..... 4

Quaremba v. Allan, 67 N.J. 1 (1975)..... 1,6,7

Trbovich v. United Mine Workers, 404 U.S. 528 (1972)..... 7

Statutes

N.J.S.A. 19:23-18..... 1,6

N.J.S.A. 19:49-2..... 2,6

Rules

Fed. R. Civ. P. 24..... 3,9

Fed. R. Civ. P. 24(a)..... 3,8,9

Fed. R. Civ. P. 24(b)..... 3

Fed. R. Civ. P. 24(b)(3)..... 3,8

PRELIMINARY STATEMENT

The Middlesex County Democratic Organization (the "MCDO") is a not-for-profit and the official Democratic Party organization for Middlesex County. The MCDO promotes and endorses Democratic candidates in Middlesex County. The MCDO exercises its authority in vetting and ultimately endorsing candidates in primary elections, and allowing the chosen candidates to bracket with like-minded candidates under a single slogan on the ballot.

State law recognizes the First Amendment rights of the MCDO to affiliate with like-minded candidates and put such candidates on the ballot so they can be readily identified with each other. see *N.J.S.A. 19:23-18*; *Quaremba v. Allan*, 67 N.J. 1, 12 (1975). Plaintiffs' First Amended Complaint seeks relief that would deny that long recognized First Amendment right. The constitutionality of the laws challenged, as addressed *infra*, have been sustained in State Court, consistent with existing Federal precedent.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

On or about July 6, 2020, Plaintiffs initiated this matter by Complaint in the District Court of the District of New Jersey (the "Litigation"). (ECF No. 1). On or about January 25, 2021, Plaintiffs filed their First Amended Complaint. (ECF No. 33).

Defendants in the Litigation each filed a Motion to Dismiss. (see ECF Nos. 53, 55, 57, 58, 59, 60, 63). Plaintiffs filed their opposition to Defendants' Motions to Dismiss on May 24, 2021. (ECF

No. 69). In reply, certain Defendants filed a reply to Plaintiffs' Opposition. (see ECF Nos. 87, 89, 91, 92, and 96). On May 31, 2022, this Court denied Defendants' Motions to Dismiss. (ECF No. 112).

The primary contention in the Amended Complaint is that "bracketing" of like-minded candidates under a single slogan provides a systemic advantage to certain candidates over others. (ECF No. 33, ¶¶95-99). Ultimately, Plaintiffs seek to have this Court declare the ability of like-minded candidates to bracket unconstitutional. (ECF No. 33, ¶221). Such a decision would void a long recognized and firmly established right of political parties, including the MCDO, to freely associate with candidates who share a core set of values. It must be noted that bracketing under a single slogan is not restricted to the statutorily recognized parties; any group of candidates can so organize themselves consistent with the statute and appear bracketed on the ballot in a primary election. See, *N.J.S.A. 19:49-2*.

LEGAL ARGUMENT

I. STANDARD FOR INTERVENTION

The Federal Rule of Civil Procedure, specifically Rule 24, governs the right to intervene. Fed. R. Civ. P. 24. Pursuant to Fed. R. Civ. P. 24(a), a party is permitted to intervene as of right “(1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” *Am. Pipe & Const. Co. v. Utah*, 414 U.S. 538, 544 n. 8 (1974).

In the alternative, a party may move for permissive intervention under Fed. R. Civ. P. 24(b), “(1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common.” *Am. Pipe*, 414 U.S. at 544. n.

9. When considering permissive intervention, a court must “consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*; Fed. R. Civ. P. 24(b) (3).

II. THE MCDO MUST BE ALLOWED TO INTERVENE AS OF RIGHT PURSUANT TO FED. R. CIV. P. 24(a)

The MCDO is allowed as of right to intervene in the Litigation due to its interest in the outcome. The Third Circuit has consistently held that "a person is entitled to intervene if (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation." *Harris v. Pemsley*, 820 F.2d 592, 596 (3d Cir. 1987) (citing *Commonwealth of Pennsylvania v. Rizzo*, 530 F.2d 501, 504 (3d Cir. 1976)); see also, *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995); *Liberty Mut. Ins. Co. v. Treesdale, Inc.*, 419 F.3d 216, 220 (3d Cir. 2005).

1. The Motion for Intervention is Timely

Courts must analyze the facts and circumstances of the proceedings and decide whether the motion to intervene is timely based on the totality of circumstances. *In re Safeguard Scis.*, 220 F.R.D. 43, 46-47 (E.D. Pa. 2004) (see e.g., *NAACP v. New York*, 413 U.S. 345(1973); *Mountain Top*, 72 F.3d at 369). It is ultimately within the court's sound discretion whether a motion to intervene is timely. *Donovan v. United Steelworkers of Am., AFL-CIO*, 721 F.2d 126, 127 (3d Cir. 1983); see also, *Mountain Top*, 72

F.3d at 369. The Third Circuit has set forth three factors to determine timeliness: "(1) the stage of the proceedings when the movant seeks to intervene; (2) possible prejudice caused to other parties by delay; and (3) the reason for delay." *Rizzo*, 530 *F.2d* at 506 (internal citations omitted); see also, *Donovan*, 721 *F.2d* at 127; *Mountain Top*, 72 *F.3d* at 369.

The MCDO satisfies the timeliness requirement. Here, the meaningful risk to the rights of MCDO ripened on May 31, 2022, when this Court denied Defendants' respective Motions to Dismiss. This motion was filed promptly after the Court's May 31 decision, and within the motion cycle that existing pending motions to intervene are scheduled to be heard. As such, this matter is ripe for intervention, and this Motion to Intervene is timely.

2. The MCDO has Sufficient Interest which Will be Affected or Impaired as a Practical Matter by the Disposition of this Litigation

The MCDO satisfies the second and third factors to intervene as of right because it has a sufficient, and in fact substantial, interest in the disposition of the Litigation which will be Affected or Impaired by the outcome. A sufficient interest is one where there is a "legal interest as distinguished from interests of a general and indefinite character." *Mountain Top*, 72 *F.3d* at 366 (citing *Harris*, 820 *F.2d* at 601). Further, "[t]he applicant must demonstrate that there is a tangible threat to a legally cognizable interest to have the right to intervene." *Id.* Overall,

"intervenors should have an interest that is specific to them, is capable of definition, and will be directly affected in a substantially concrete fashion by the relief sought." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998).

The New Jersey Supreme Court in upholding the constitutionality of both *N.J.S.A. 19:23-18* and *N.J.S.A. 19:49-2*, found:

The purpose of a ballot is to permit voters to record their will, and one must assume the Legislature intended a ballot so arranged that all voters may find their candidates with the least difficulty the total content of the ballot will permit.

Quaremba, 67 *N.J.* at 12.

The Court further held that the current law does not prevent voters from choosing who they wish to vote for, and therefore the law is clearly not "invidiously discriminatory." See *id.* at 11.

Quaremba is consistent with the U.S. Supreme Court holding in *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 215 (1989). In *Eu*, the Supreme Court held, as a matter of constitutional right under the First and Fourteenth Amendment, "a political party has a right to 'identify the people who constitute the association.'" *Id.* at 224. The Court further noted that "[d]epriving a political party of the power to endorse suffocates [its constitutional] right." *Id.*

Here, MCDO's legal interest is rooted in its constitutional right under the First and Fourteenth Amendment and recognized in

Quaremba and *Eu*. See *Eu*, 489 U.S. at 224. The Litigation challenges fundamental and long-standing rights of the MCDO, previously affirmed at both the state and federal levels in *Quaremba* and *Eu*. As such, the MCDO is directly and immediately impacted by the relief sought, which if granted, will impact its ability to advance the core beliefs shared by its members. MCDO's right to intervene is clear when measuring the potential impacts the decision in this matter could have.

3. The Interests of the MCDO are not Adequately Represented by an Existing Party in this Litigation

The MCDO is separate and distinct from other parties. Its interests are not, and will not, be adequately represented in the Litigation. The burden of showing inadequate representation "should be treated as minimal." *Rizzo*, 530 F.2d at 505 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). An applicant must only show that representation of his interest "may be" inadequate. *Trbovich*, 404 U.S. at 538 n. 10.

Defendants here are the Clerks who implement state law but who have no interest in how the implementation of that law impacts the MCDO or any other group wishing to appear on a ballot under a single slogan, and easily identified and found by voters. MCDO's interests lie not only within the right to associate, but the core set of values shared between the political party and its members, and the ability to present that shared message to Democratic voters

of Middlesex County and be easily found by voters looking at a ballot.

The MCDO's interests have not been and will not be briefed or heard by this Court by existing parties. As such, the MCDO satisfies the four (4) factors set forth in *Harris*, and should be granted intervention under Fed. R. Civ. P. 24(a).

III. IN THE ALTERNATIVE, MCDO SHOULD BE GRANTED PERMISSIVE INTERVENTION PURSUANT TO FED. R. CIV. P. 24(b)

In the event the Court should find MCDO has not met its burden under Fed. R. Civ. P. 24(a), the MCDO seeks permissive intervention. The "denial of intervention as of right does not automatically mandate a denial of permissive intervention." *Hoots v. Com. of Pa.*, 672 F.2d 1133, 1136 (3d Cir. 1982) (citing *McKay v. Heyison*, 614 F.2d 899, 905 (3d Cir. 1980)). It is within the Court's discretion in determining "whether [permissive] intervention will unduly delay or prejudice the adjudication of the original parties' rights." See Fed. R. Civ. P. 24(b)(3); see also, *Hoots*, 672 F.2d. at 1135.

Here, MCDO's position on the ability to bracket with likeminded candidates is the question presented in the Litigation. The question rests upon the constitutional standing of existing State laws allowing the affiliation and commonality of candidates to be readily identified on ballots. Consistent with the requirements of Fed. R. Civ. P. 24(b)(3), MCDO's intervention will

not unduly delay or prejudice the parties because not only are there additional pending motions to intervene, but this Motion to Intervene is filed within the same motion cycle as those pending motions to intervene.

Therefore, based on the commonality of MCDO's claims and the main issue of the Litigation, and because the MCDO's claims are not identical to any claims already heard and briefed, intervention will not be duplicative, and the parties will not be unduly delayed or prejudiced in their rights. Therefore, MCDO should be granted permissive intervention.

CONCLUSION

For the foregoing reasons, the MCDO respectfully requests this Motion to Intervene be granted as of right, pursuant to Fed. R. Civ. P. 24(a), as the MCDO satisfies the four (4) factors set forth in *Harris*, 820 F.2d at 596. In the alternative, the MCDO respectfully requests the Court grant it permissive intervention pursuant to Fed. R. Civ. P. 24.

McManimon, Scotland & Baumann, LLC
Attorneys for Middlesex County
Democratic Organization

By: /s/ William W. Northgrave
William W. Northgrave

Dated: August 2, 2022