

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

**CHRISTINE CONFORTI, *et al.*,**

**Plaintiffs,**

**v.**

**CHRISTINE GIORDANO  
HANLON, in her official capacity  
as Monmouth County Clerk, *et al.*,**

**Defendants.**

**Case No. 3:20-CV-08267-ZNQ-TJB**

**Civil Action**

**ANDY KIM, *et al.*,**

**Plaintiffs,**

**v.**

**CHRISTINE GIORDANO  
HANLON, in her official capacity  
as Monmouth County Clerk, *et al.*,**

**Defendants.**

**Case No. 3:24-CV-1098-ZNQ-TJB**

**Civil Action**

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**PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO  
DISMISS CAMDEN COUNTY DEMOCRATIC COMMITTEE**

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## **PRELIMINARY STATEMENT**

While permissive intervention is often freely granted, the changed circumstances of this case strip the Camden County Democrat Committee (“CCDC”) of Article III standing. Given the different relief CCDC seeks, this lack of standing warrants dismissal. The entry of the Camden County Clerk into a consent order serves as grounds for the Court to determine, in its wide discretion, that CCDC can no longer maintain its permissive intervenor status.

## **LEGAL ARGUMENT**

### **I. CCDC Does Have to Establish Standing as a Permissive Intervenor Under the Circumstances of this Case.**

Contrary to CCDC’s assertions, because of the relief CCDC seeks, it plainly must establish Article III and prudential standing to continue as a permissive intervenor in this matter. As set forth in Plaintiffs’ opening brief, the requirement to demonstrate and maintain standing applies not only to direct parties in the action, but also to intervenors, including intervenor-defendants. See Town of Chester, N.Y. v. Laroe Estates, Inc., 581 U.S. 433, 435 (2017); Wittman v. Personhuballah, 578 U.S. 539, 543-46 (2016); Seneca Res. Corp. v. Highland Twp., No. 16-cv-289, 2017 WL 4168472, at \*3-4 (W.D. Pa. Sept. 20, 2017).

CCDC’s reliance on King v. Governor of N.J., 767 F.3d 216 (3d Cir. 2014), cert. denied sub nom. King v. Christie, 575 U.S. 996 (2015), abrogated on other

grounds by Nat'l Inst. of Family & Life Advocates v. Becerra, 585 U.S. 755 (2018), for the proposition that the Third Circuit does not require an intervenor to establish Article III standing, is highly suspect. CCDC notes that the Third Circuit in King agreed with the then-existing majority view that an intervenor did not need Article III standing. See Opp. Brf., pp. 4-5 (citing King, 767 F.3d at 244-45). However, as a general matter, as recognized in Seneca, the Supreme Court subsequently resolved that circuit split in the opposite direction:

Until recently, the Circuit Courts of Appeal were divided on whether an intervenor of right must meet the requirements of Article III standing, with the Third Circuit following the majority of its sister courts holding in the negative. King v. Governor of State of New Jersey, 767 F.3d 216, 245-46 (3d Cir. 2014) (explaining split of authority, compiling cases, and holding that intervenors “need not demonstrate Article III standing in order to intervene”). In June, the Supreme Court resolved this split of authority by adopting the minority view and requiring a litigant to possess Article III standing in order to intervene as of right under Rule 24(a)(2). Town of Chester, New York v. Laroe Estates, Inc., \_\_\_ U.S. \_\_\_, 137 S.Ct. 1645, 198 L.Ed.2d 64 (June 5, 2017). . . .

2017 WL 4168472, at \*3.

In Laroe, the Supreme Court made clear that an intervenor as of right seeking different relief from the party bringing the action must have and maintain standing. Laroe, 481 U.S. at 435. Lower courts have since interpreted these same principles to apply to a permissive intervenor, further undermining CCDC's position. See, e.g., Cirba Inc. v. VMWARE, Inc., No. CV 19-742-LPS, 2020 WL

7489765, at \*3 (D. Del. Dec. 21, 2020) (“permissive intervention (without independent Article III standing) would not be appropriate” where intervenor seeks to broaden relief). Courts elsewhere have generally agreed.<sup>1</sup>

As set forth in Plaintiff’s opening brief, CCDC seeks relief that is intrinsically more expansive than the remaining defendants, which requires it to maintain Article III standing. *Whereas the remaining defendants respond to Plaintiffs by claiming the county line ballot design is constitutionally allowable, CCDC goes further and says it is constitutionally compelled.* At bottom, CCDC wants the ability to place all of its candidates in an aligned column on a party column ballot. It may be that defending the constitutionality of the county line ballot may have, at one time, enabled CCDC to obtain that relief, since the existing practice of the Camden Clerk was to so align the names of the organization candidates via bracketing. However, subsequently, the Camden Clerk entered into

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<sup>1</sup> See, e.g., Cross Sound Cable Co., LLC v. Long Island Lighting Co., No. 21CV2771KAMARL, 2022 WL 247996, at \*8-9 (E.D.N.Y. Jan. 27, 2022) (collecting cases) (permissive intervenor seeking declaratory relief had to demonstrate standing since he sought “broader and different relief than the parties”); United States v. RaPower-3, LLC, 341 F.R.D. 311, 317 (D. Utah 2022); 1199SEIU United Healthcare Workers E. v. PSC Cmty. Servs., 608 F. Supp. 3d 50, 60 (S.D.N.Y. 2022) (Laroe reasoning equally applies to permissive intervenors seeking different relief); United States v. Bayer Cropscience LP, No. 2:15-CV-13331, 2018 WL 3553413, at \*9 (S.D. W. Va. July 24, 2018) (holding that the principles in Laroe “extend[] to a permissive intervenor”); Chapman v. Tristar Prods., Inc., No. 1:16-CV-1114, 2018 WL 4203533, at \*5-6 (N.D. Ohio Sept. 4, 2018) (joining the majority view “that Laroe Estates’s reasoning applies with equal force whether a party seeks intervention as of right or permissively”).



a consent order, where it not only agreed to office block ballot design, without bracketing, for both political parties, but was also ordered to do so by this Court. Thus, even if the arguments of the remaining defendants (Bergen and Union Clerks) prevailed, i.e., that the county line system is not unconstitutional, such a ruling would not interfere with the consent order agreed to by the Camden Clerk and signed by Judge Quraishi. And in order for CCDC to achieve its relief against Camden, CCDC would have to prove effectively that office block ballots are unconstitutional. That is a radical difference.

In other words, just because the county line could hypothetically be deemed to not be unconstitutional, does not mean that the consent decree would no longer be in effect. Rather, to obtain the relief that CCDC ultimately seeks, it would have to obtain two additional things: (1) a ruling that an office block ballot which does not provide for bracketing is unconstitutional; and (2) a ruling that the consent decree signed by the Camden Clerk and ordered by this Court is unconstitutional and/or otherwise unenforceable. In this way, the relief sought by the CCDC to preserve its alleged associational rights is more expansive, different, and otherwise goes beyond that sought by the remaining defendants. See Wayne Land Mineral Group LLC v. Delaware Basin Commission, 959 F.3d 569, 575 n.6 (3d Cir. 2020) (clarifying that under Laroe, different relief does not have to be “categorically distinct” but rather just relief beyond what the plaintiff requested). As such, under

the principles set forth by the Supreme Court in Laroe, and as found to be applicable to permissive intervention in various courts throughout the country, including in the Third Circuit, CCDC is required to maintain standing.

## **II. CCDC Does Not or at Least No Longer has Article III Standing.**

CCDC asserts that it “has suffered an injury in fact resulting from the district court’s preliminary injunction.” Opp. Brf., p. 7. It should be noted that CCDC states that it has an associational interest in grouping candidates, (see id.), but does not even specify what injury the injunction allegedly caused, as CCDC remained able to show the voting public exactly who its endorsees were by use of ballot slogans. Even if it could show an injury, however, CCDC does not maintain that any alleged injury was caused by a remaining party to the case, but states that it stems directly from the preliminary injunction. Id. Then, CCDC admits in the same breath that the “harm is fairly traceable to the County Clerks” generally, who determine ballot order. Id. *But CCDC neglects to appreciate that any unspecified harm would not stem from the Bergen or Union County Clerks, let alone from the Plaintiffs.* Rather, it is the *Camden Clerk* that designs Camden ballots with CCDC endorsees, and is thus the only (former) party that the Court could order to do anything that might provide relief that would redress any CCDC “interest.”

This is problematic for CCDC because the Camden Clerk already settled out of this case, was dismissed with prejudice, and entered into a consent order that

operates as a permanent injunction against the Camden Clerk, adjudicating all claims between it and the Plaintiffs. Indeed, although Plaintiffs maintain that it is immaterial, it is not the “preliminary injunction that applied to one primary for one political party,” see Opp. Brf., at p. 7, that stands in the way of CCDC’s “interests,” but the subsequent consent order by the Camden Clerk, who is no longer a party to this action.<sup>2</sup> See Kim ECF 265, p. 4 (matter dismissed with prejudice as to the Camden Clerk).<sup>3</sup> Thus, any unspecified harm to CCDC cannot be traceable to any party that remains in this action, nor can it be redressed by this Court, since the Camden Clerk is no longer a party to this litigation.

Additionally, as set forth above, CCDC is incorrect when it asserts that “[a] favorable ruling by this Court denying Plaintiffs permanent relief can address CCDC’s constitutional harms.” See Opp. Brf., p. 9. It is equally incorrect in suggesting that “[t]he fact that the Camden Clerk entered into a settlement agreement is of no consequence.” See id. Even assuming that CCDC might suffer a possible constitutional harm, a claim which was rejected by the Third Circuit in

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<sup>2</sup> For similar reasons, it is immaterial whether or not “Plaintiffs have not yet obtained a permanent injunction enjoining the use of the county-line ballot across all counties in New Jersey.” With respect to CCDC’s “interests,” the entering of a consent order with the Camden County Clerk essentially operates as the functional equivalent of a permanent injunction in that the Court has ordered the Camden Clerk to essentially end the practice of the county line and adopt office block ballots that do not allow for bracketing in future elections for both parties.

<sup>3</sup> The Camden County Clerk was not a party in Conforti, but its entering into a consent order in Kim also governs the same conduct challenged issues in Conforti.

affirming this Court’s preliminary injunction, a ruling that a *county line ballot* is not unconstitutional, or otherwise denying permanent relief with respect to the remaining parties, by itself, does not help protect CCDC’s alleged interests. Instead, the Court would have to decide a different question of law, namely whether an *office block ballot* was unconstitutional, and that the Camden consent order was invalid—alleged harm not redressable here.

Furthermore, CCDC’s dubious assertion that “if this Court were to deny Plaintiffs permanent relief, nothing precludes the Camden Clerk from seeking relief from the Order requiring use of an office-block ballot as a result of the preliminary injunction,” (Opp. Brf, p. 9) is equally unavailing as it pertains to its standing argument. *CCDC’s claim to standing cannot be so speculative and attenuated as to depend on the potential future actions that a third party that is no longer in this case might take, depending on how the Court rules.* Moreover, CCDC again fails to appreciate that the “Order” that appears to be standing in the way of CCDC’s interests is not the order that was “a result of the preliminary injunction,” but rather the subsequent Consent Order agreed to by the Camden Clerk and signed by Judge Quraishi.

At bottom, without a specified, concrete injury, and certainly not one that is traceable to any remaining party or redressable by this court ordering any

remaining party to do anything, such defects are fatal to any claim of Article III standing for CCDC under the circumstances of this case.

**III. The Lack of an Independent Basis for Article III Standing is Relevant to the Court’s Consideration of Whether Permissive Intervention Continues to be Appropriate and the Court has Wide Discretion in Making such Determination.**

Contrary to CCDC’s assertion, its lack of standing is relevant to the permissive intervention analysis. Even if standing were not a requirement for permissive intervention, courts can use their discretion to rely on the same factors to deny permissive intervention as they do when considering intervention as of right. See Seneca, 2017 WL 4168472, at \*2 (quoting Community Vocational Schools of Pittsburgh, Inc. v. Mildon Bus Lines, Inc., 2017 WL 1376298, at \*8 (W.D. Pa. Apr. 17, 2017) (“The Court may consider the same facts and circumstances used to determine whether intervention was appropriate under Rule 24(a) to determine whether the court should use its discretion to permit intervention under Rule 24(b).”)); see also W. Virginia v. United States Dep’t of Treasury, 571 F. Supp. 3d 1229, 1247-48 & n.5 (N.D. Ala. 2021), aff’d sub nom. W. Virginia by & through Morrissey v. U.S. Dep’t of the Treasury, 59 F.4th 1124 (11th Cir. 2023) (noting that extending Laroe to “permissive intervention would make sense because, without standing, proposed intervenors could bootstrap their way into ongoing federal litigation” but not deciding that issue because the court

had full discretionary power to deny permissive intervention based on, *inter alia*, the proposed intervenor's "lack[ of] Article III standing in its own right"). In fact, the Seneca court denied permissive intervention "[b]ecause [the proposed intervenors] have not established standing." Id. at \*6 (emphasis added).

Contrary to CCDC's assertions, the entry of the consent order with the Camden Clerk is a *game-changer*, and warrants a determination that CCDC cannot maintain its permissive intervenor status. Without repeating the arguments set forth above, a ruling on the constitutionality of the county line system against the Bergen and Union County Clerks does not directly impact CCDC. Even if the county line system is found to be constitutionally *permissive*, it does not follow that the Camden Clerk would be constitutionally *required* to use the county line system. Moreover, the Camden Clerk has already entered into a consent order signed by this Court, requiring it to adopt an office block ballot and prohibiting bracketing. The Camden Clerk has been dismissed from this action with prejudice, and the Court cannot order Plaintiffs, nor the Bergen and Union County Clerks to afford CCDC the relief it seeks, which necessarily entails both a declaratory ruling on the constitutionality of an office block ballot (as compared to a county line ballot) and dissolving the consent order to which the CCDC is not a party. Indeed, because the Camden Clerk designs the ballots in Camden County, any relief to

protect CCDC's alleged associational interests would have to be ordered against the Camden Clerk.<sup>4</sup> For these reasons, CCDC lacks Article III standing.

Moreover, even if CCDC hypothetically did have constitutional standing, without the Camden Clerk and without the Attorney General on behalf of the State, they are not sufficiently adverse to the remaining parties in this case to warrant their continued participation as an intervenor. Cf. United States v. Windsor, 570 U.S. 744, 760 (2013) (“Even when Article III permits the exercise of federal jurisdiction, prudential considerations demand that the Court insist upon ‘that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’” (quoting Baker v. Carr, 369 U.S. 186, 204 (1962)); Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004) (listing three types of prudential restraints).

The above reasons, in and of themselves, demonstrate a change in circumstances sufficient to warrant this Court's wide discretion to find that CCDC should not be permitted to maintain its intervenor status. They also implicate concerns of prejudice and undue delay, since the protection of CCDC's alleged associational “interests” would implicate different constitutional arguments,

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<sup>4</sup> For this reason, it is irrelevant whether or not Plaintiffs seek an office block ballot in Bergen and Union. The office block ballot that pertains to Camden is a direct result of the consent order agreed to by the Camden County Clerk. Even if such relief is denied in Bergen and Union, the office block will remain in Camden by virtue of the consent order.

require different relief, and otherwise veer this case in directions that were never intended and which stray from the direct merits.

CCDC claims that Plaintiffs did not cite to binding precedent to establish that the Court can review and revoke a party's status as an intervenor after it already granted intervention. While CCDC takes issue with the cases cited by Plaintiffs from other jurisdictions, it does not offer any case holding that such a practice is prohibited. Nor could it. There can be no dispute that Article III standing is required to be maintained at every stage of the litigation. See Already, LLC v. Nike, 568 U.S. 85, 90-91 (2013) (requiring standing not just at the time of the filing of the complaint but also throughout all stages in the case); see also Laroe, 581 U.S. 439-40; Wittman, 578 U.S. at 543-44 (regardless of whether defendant-intervenor had standing when he first intervened, he no longer possessed standing based on developments in the case); see also Hering v. Walgreens Boots All., 341 F. Supp. 3d 412, 419 (M.D. Pa. 2018) (denying plaintiff's application for permissive and of right intervention after certain claims were dismissed because lack of standing could not be cured by a motion to intervene and highlighting that the court "do[es] not see a functional difference between a plaintiff who lacks initial standing and a plaintiff like Hering who loses standing after certain claims are dismissed"). And, since the Supreme Court made clear that Article III standing was required for intervenors as of right to pursue different relief, see Laroe, 581



U.S. at 435, it necessarily follows that an intervenor as of right, even after being granted the right to intervene, can be stripped of its ability to continue to intervene, if, for example, a change in circumstances leads to it no longer having standing. It also follows that if intervention as of right can be revoked after being granted, there is no reason why permissive intervention could not also be revoked, whether based on a lack of standing, changed circumstances, or otherwise. Cf. McLaughlin v. Pernsley, 876 F.2d 308, 313-14 (3d Cir. 1989) (“It is clear, however, that an intervenor defendant—whether permissive or as of right—will not necessarily have standing to appeal.” (quoting Diamond v. Charles, 476 U.S. 54, 68-69 (1986) (“The interests [appellant] asserted in the district court in seeking to intervene plainly are insufficient to confer standing on him to continue this suit now.”))); see also Acceptance Indemnity Ins. Co. v. Southeastern Forge Inc., 209 F.R.D. 697, 701 (M.D. Ga. 2002) (exercising discretion to revoke permissive intervention and dismiss intervenor “in light of the changed circumstances”).

Indeed, unlike intervention as of right, permissive intervention is granted at the considerable and wide discretion of the court. See Liberty Mut. Ins. Co. v. Treesdale, Inc., 419 F.3d 216, 227-28 (3d Cir. 2005) (permissive intervention is “highly discretionary” and thus “review of the denial of a motion for permissive intervention is less stringent than the standard for reviewing a denial of a motion for intervention”) (quoting Brody v. Spang, 947 F.2d 1108, 1115 (3d Cir. 1992);

id. (“In fact, one court of appeals has noted that a denial of a motion for permissive intervention ‘has virtually never been reversed.’” (quoting Catanzano By Catanzano v. Wing, 103 F.3d 223, 234 (2d Cir. 1996))); United States v. Territory of Virgin Islands, 748 F.3d 514, 519 (3d Cir. 2014) (courts are “‘more reluctant to intrude into the highly discretionary decision of whether to grant permissive intervention’” (quoting Brody, 947 F.2d at 1115)). Brennan v. Cmty. Bank, N.A., 314 F.R.D. 541, 547 (M.D. Pa. 2016) (permissive intervention is “‘wholly discretionary’” and may be withheld “[e]ven when the requirements of Rule 24(b) are met,” since “the court is given the ultimate discretion as to whether to allow permissive intervention) (internal citation omitted); see also W. Virginia, 571 F. Supp. 3d at 1247-48 (“[E]ven if a proposed intervenor satisfies the timeliness and common interest requirements, the court may still deny permissive intervention.”) (citing Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989)).

#### **IV. Plaintiffs are Not Barred from Asserting that CCDC Attempted to Function as a State Actor on Appeal and CCDC’s Assertions Hurt, Rather than Help, Its Standing Argument.**

To begin with, the law of the case doctrine and collateral estoppel do not apply to the lack of standing issue currently before the Court. Without repeating the arguments above at length, suffice it to say that whether CCDC had standing to appeal in April 2024 is not the same issue as whether it currently has standing to continue as an intervenor. Important intervening events happened. Subsequent to

the appeal, the Camden Clerk entered into the consent order, which, for the reasons described above, impacted CCDC's requisite standing and otherwise undermined the basis upon which it should be permitted to permissively intervene.<sup>5</sup>

Moreover, this entire section of CCDC's brief appears aimed at attempting to prove that CCDC is protecting its own associational interests, and not standing in the shoes of the state. As set forth in detail above and in Plaintiffs' opening brief, protecting CCDC's own associational interests, as opposed to the interests of the remaining parties in defending the constitutionality of the county line system, requires consideration of a different legal issue and different relief, from actors such as the Camden Clerk who have been dismissed with prejudice following their agreement to enter into a consent order which now governs their conduct. Thus, CCDC's arguments further Plaintiffs' grounds for asserting that CCDC necessarily has to pursue different relief than the other parties in order to protect its associational interests. Indeed, as set forth in Plaintiffs' opening brief quoting from the Third Circuit oral argument in connection with the preliminary injunction, Judge Jordan acknowledged, and CCDC agreed, that CCDC's argument goes

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<sup>5</sup> Ironically, CCDC states that one element of collateral estoppel is that there was a final judgment on the merits, see Opp. Brf., p. 15, but elsewhere states that the issues were not fully decided because only a preliminary injunction was issued, but not permanent relief, see id. at p. 11 ("Plaintiffs have only obtained preliminary injunctive relief as to one political party in one primary . . . [and] have not yet obtained a permanent injunction."). Thus, under its own assertions, CCDC essentially concedes that it cannot meet the elements of collateral estoppel.

beyond the constitutionality of the county line, and instead are centered around the constitutionality of an office block which CCDC asserts does not allow them to associate. CCDC even notes that the Third Circuit opinion found that CCDC was pursuing “different interests.” See Opp. Brf., p. 15 (quoting Kim, 99 F.4th at 154). This furthers Plaintiff’s arguments for lack of standing and detracts from CCDC’s claims that it maintains standing.

**V. The Law of the Case Doctrine and Collateral Estoppel do Not Bar Plaintiffs from Moving to Dismiss CCDC.**

For similar reasons the law of the case doctrine and collateral estoppel do not bar Plaintiffs from pursuing a motion to dismiss CCDC as an intervenor in this case. As set forth above, parties and intervenors can lose Article III standing at different stages of a case, which can implicate their ability to continue to intervene. Such standing considerations can also be considered by the Court in connection with its wide discretion to consider the grounds for permissive intervention. The entry of the consent order with the Camden Clerk also represented a change in circumstances, sufficient to bring such issues out of the realm of the equitable doctrines asserted by CCDC.

**CONCLUSION**

For these reasons and those in Plaintiffs’ moving brief, Plaintiffs’ motion to dismiss CCDC from the case should be granted.

Respectfully submitted,

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/s/ Brett M. Pugach  
/s/ Flavio L. Komuves

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