

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

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| DEMOCRATIC PARTY OF GEORGIA, |) | |
| INC., DSCC, and WARNOCK FOR |) | |
| GEORGIA, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CIVIL ACTION NO.: 2022-CV-372734 |
| |) | |
| THE STATE OF GEORGIA, |) | EMERGENCY RELIEF REQUESTED |
| |) | |
| Defendant. |) | |

**GEORGIA REPUBLICAN PARTY, INC., NATIONAL REPUBLICAN SENATORIAL
COMMITTEE, AND REPUBLICAN NATIONAL COMMITTEE’S MEMORANDUM IN
SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS**

This lawsuit concerns the dates for advance voting for the December 6, 2022, runoff election, specifically, whether polling places will be open for advance voting on Saturday, November 26. The Georgia Republican Party, Inc., (“Georgia Republican Party”), National Republican Senatorial Committee (“NRSC”), and Republican National Committee (“RNC”) (jointly, the “Movants”) seek to participate as intervening defendants to (1) defend the ruling of the Georgia Secretary of State’s Office that Georgia law does not allow for advance voting on Saturday, November 26, and (2) protect their interests regarding the enforcement of Georgia election law in this and future elections.

As both the Democratic and Republican Parties agree, “political parties usually have good cause to intervene in disputes over election rules.” *Black Voters Matter Fund v. Raffensperger*, No. 1:20-cv-4869-SCJ, ECF No. 14-1 at 2 (N.D. Ga. Dec. 5, 2020) (quoting filing in *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD (E.D. Cal. June 8, 2020)). Federal and state courts across

the country also agree.¹ This Court should do the same and hold that the Movants are entitled to intervene as a matter of right; or, in the alternative, permit the Movants to intervene as a matter of discretion.

ARGUMENT

I. The Movants are entitled to intervene as a matter of right.

The Movants are entitled to intervene in this lawsuit as a matter of right to protect their interests in ensuring fair application of Georgia's voting laws. An intervenor must timely move and show "an interest relating to the [subject] property or transaction" and be "situated such that the disposition of the action may as a practical matter impair or impede his ability to protect that interest." Ga. Code § 9-11-24(a)(2). Accordingly, the intervenor must show "(1) interest, (2)

¹ See, e.g., *Black Voters Matter Fund v. Raffensperger*, No. 1:20-cv-4869, Doc. 42 (N.D. Ga. Dec. 9, 2020) (granting RNC's motion to intervene over plaintiff special interest group's opposition); *Alliance for Retired Americans v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to RNC, NRSC, and Republican Party of Maine); *Ariz. Dem. Party v. Hobbs*, No. 2:20-cv-01143-DLR, Doc. 60 (D. Ariz. June 26, 2020) (granting intervention to RNC and Arizona Republican Party); *Swenson v. Bostelmann*, No. 20-cv-459-wmc, Doc. 38 (W.D. Wis. June 23, 2020) (granting intervention to RNC and Republican Party of Wisconsin); *Edwards v. Vos*, No. 20-cv-340-wmc, Doc. 27 (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, No. 20-cv-1205 ECT/TNL, Doc. 52 (D. Minn. June 23, 2020) (granting intervention to RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to Democratic Congressional Campaign Committee and Democratic Party of California); *Nielsen v. DeSantis*, No. 4:20-cv-236-RH, Doc. 101 (N.D. Fla. May 28, 2020) (granting intervention to RNC, National Republican Congressional Committee, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Motion to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to RNC and Republican Party of Wisconsin); *Gear v. Knudson*, No. 3:20-cv-278, Doc. 58 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, No. 3:20-cv-284, Doc. 63 (W.D. Wis. Mar. 31, 2020) (same)

potential impairment, and (3) inadequate representation.” *DeKalb Cnty. v. Post Properties, Inc.*, 263 S.E.2d 905, 908 (Ga. 1980). The Movants satisfy each of those criteria for intervention as of right here.

A. The Movants’ motion to intervene is timely.

The Movants’ motion to intervene undoubtedly is timely because it has been filed within a day of the Plaintiffs’ complaint. *See, e.g., Stephens v. McGarrity*, 660 S.E.2d 770, 773 (Ga. App. 2008) (reversing denial of motion to intervene where interested party to settlement objected to that settlement within 10 days and moved to intervene within 21 days); *Dem. Nat’l Comm. v. Bostelmann*, No. 20-cv-249-wmc, 2020 WL 1505640, at *5 (W.D. Wisc. Mar. 28, 2020) (RNC’s motion to intervene was “certainly timely” when filed “within mere days of the lawsuit”). The timeliness of a motion to intervene is entrusted to the trial court’s “sound discretion.” *Kroger v. Taylor*, 739 S.E.2d 767, 768 (Ga. App. 2013). “The most important factor is whether intervention will prejudice existing parties in the case.” *Sta-Power Indus., Inc. v. Avant*, 216 S.E.2d 897, 903 (Ga. App. 1975). The Movants’ intervention will not prejudice the parties at this early stage. The Movants recognize the time-sensitive nature of the Plaintiffs’ complaint and are prepared to comply with any schedule the Court may set for proceedings.

B. The Movants have significant protectable interests in this lawsuit.

Each of the Movants has a demonstrably significant interest in the subject of this lawsuit. The Georgia Republican Party is a political party that works to promote Republican values and to assist Republican candidates in obtaining election to partisan federal, state, and local office in Georgia. The NRSC is a national committee, as defined by 52 U.S.C. § 30101(14), and the Republican Party’s senatorial campaign committee. The NRSC is the only national political party committee exclusively devoted to electing Republican candidates to the U.S. Senate from across

the United States, including in Georgia, by, providing support and assistance to current and prospective Republican candidates in areas such as budget planning, election law compliance, fundraising, communications tools and messaging, and research and strategy. The RNC, as the entity “responsible for the day-to-day operation of [the Republican] political party at the national level,” 52 U.S.C. § 30101, aids Republican candidates in their campaigns.

In the December 6, 2022, election at issue here, each of the Movants is supporting the campaign of Herschel Walker, the Republican candidate for U.S. Senate. The Movants, like all political party entities, “ha[ve] a direct, particularized interest in the outcome of an election,” *see, e.g., N.C. State Conf. of NAACP v. McCrory*, 997 F.Supp.2d 322, 342 (M.D.N.C. 2014), *aff’d in part, rev’d in part and remanded sub nom. League of Women Voters of N.C. v. N.C.*, 769 F.3d 224 (4th Cir. 2014), and in ensuring that Republican candidates in Georgia enjoy a fair electoral environment in accord with state election laws and the United States Constitution. *See, e.g., McCrory*, 997 F.Supp.2d at 342; *New Georgia Project v. Raffensperger*, 1:21-CV-01229-JPB, 2021 WL 2450647, at *2 (N.D. Ga. June 4, 2021) (permitting intervention of Georgia Republican Party, NRSC, and RNC as defendants in suit challenging changes to Georgia election procedures); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat’l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to RNC and Republican Party of Wisconsin); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities).

Indeed, given political parties’ inherent and broad-based interest in elections, usually “[n]o one disputes” that they “meet the impaired interest requirement for intervention as of right.” *Citizens United v. Gessler*, No. 14-cv-002266-RBJ, 2014 WL 4549001, at *2 (D. Col. Sept. 15,

2014), That is certainly true where, as here, “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” *Ohio Democratic Party v. Blackwell*, No. 2:04-cv-1055, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005) (under such circumstances, “there [was] no dispute that the Ohio Republican Party had an interest in the subject matter of this case”). In sum, because the Republican candidate “actively seek[s] [election or] reelection in contests governed by the challenged rules,” and because Republican voters’ ability to participate in those elections is governed by those challenged rules, the Movants have an interest in “demand[ing] adherence” to those requirements. *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005).

C. The Movants’ ability to protect their interests could be impaired without intervention because the politically-neutral defendant do not adequately represent the Movants’ interests.

The Movants have a clear interest in protecting the Republican campaign, voters, and resources from any last-minute changes to the rules for the runoff election, and that interest is not adequately represented by the State of Georgia (the “State”), the only named defendant. The Movants need not prove with certainty that the original parties will fail to protect the interests of the Movant; rather, they must only demonstrate the original parties’ representation “may be” inadequate to guard the Movants’ interests. Ga. Code § 9-11-24(a)(2). The Supreme Court recently reaffirmed its precedent that a private party seeking to intervene alongside an existing governmental party must only make a “minimal” showing even though the interests are “related.” *Berger v. N. Carolina State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022) (examining *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528 (1972)). This on-point federal authority has persuasive value in interpreting Georgia’s corresponding rule on intervention. *Bowden v. The Med. Ctr., Inc.*, 773 S.E.2d 692, 696 n.5 (Ga. 2015) (Georgia courts look to federal case law when

interpreting corresponding rules of civil procedure). Here, the “minimal” showing of potentially inadequate representation is easily made.

The States does not share the Movants’ distinct interests in aiding a Republican candidate and voters. Because it is a politically-neutral public entity, the State does not *and cannot* promote Republican candidates or seek to ensure that the advance voting process protects the interests of the Republican candidate. As the Fifth Circuit explained earlier this year, the private interests of political parties are “different in kind from the public interests of the State or its officials[.]” *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 309 (5th Cir. 2022). Political parties and committees’ “interests primarily rely on the expenditure of their resources to equip and educate their members, along with relying on the rights of the Committees’ members and volunteers who participate in the election.” *Id.* (citing omitted). These interests are “incidentally partisan—if for no other reason than that they are brought on behalf of a partisan group, representing its members to achieve favorable outcomes.” *Id.* Accordingly, “[n]either the State nor its officials can vindicate such an interest while acting in good faith.” *Id.* Similarly, the Eleventh Circuit observed that governmental entities consider “a range of interests likely to diverge from those of the intervenors” in election litigation. *Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993). Those interests include “the expense of defending the current [laws] out of [state] coffers,” *Clark v. Putnam Cty.*, 168 F.3d 458, 461 (11th Cir. 1999), “the social and political divisiveness of the election issue,” *Meek*, 985 F.2d at 1478, “their own desires to remain politically popular and effective leaders,” *id.*, and even the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779-80 (4th Cir. 1991).

As the case law cited above explains, the Movants’ interests “may be” inadequately represented if they are not allowed to intervene. Denying intervention would impair the Movants’

ability to protect their interests in ensuring fair application of Georgia election law to Republican candidates in this and future elections.

II. In the alternative, this Court should permit the Movants to intervene as a matter of discretion.

Even if the Movants were not entitled to intervene as a matter of right, this Court should permit it to intervene as a matter of discretion. *See* Ga. Code § 9-11-24(b)(2). Like an intervention as a matter of right, permissive interventions must be timely filed. *Id.* As explained above, the Movants have done so. But where an intervention as of right requires a showing of “(1) interest, (2) potential impairment, and (3) inadequate representation,” *DeKalb Cnty.*, 263 S.E.2d at 908, permissive intervention requires *only* that (1) the potential intervenor’s claim or defense share some question of law or fact with the main action and (2) the intervention not “unduly delay or prejudice the adjudication of the rights of the original parties,” *see* Ga. Code § 9-11-24(b)(2). The corresponding federal rule governing permissive intervention, Fed. R. Civ. P. 24(b), contains those same requirements, and under that rule, Georgia federal courts have permitted the Movants to intervene. *New Georgia Project*, 2021 WL 2450647, at *2; *Black Voters Matter Fund*, ECF No. 42, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020).

No one can dispute that the Movants’ defense—that O.C.G.A. 21-2-385(d)(1) does not permit advance voting on Saturday, November 26, for the runoff election—shares at least *some* common question of law *or* fact with the main action. And at this early stage of the case, the Movants’ intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Conversely, altering Georgia’s election rules without the input of the parties who stand to be most impacted by a change in existing law would be imprudent and unjust.

The Court should permit the Movants to intervene. Movants recognize the time-sensitive nature of the Plaintiffs' complaint and are prepared to comply with any schedule the Court may set.

CONCLUSION

For these reasons, the Movants asks that this Court grant the motion to intervene as a matter of right under Ga. Code § 9-11-24(a)(2); or, in the alternative, permit the Movants to intervene under Section 9-11-24(b)(2).

DATED: November 15, 2022

Respectfully submitted,

/s/ R. Thomas Warburton

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CERTIFICATE OF SERVICE

I, R. Thomas Warburton, do hereby certify that on the 15th day of November, 2022, a true and correct copy of the foregoing **Georgia Republican Party, Inc., National Republican Senatorial Committee and Republican National Committee’s Memorandum in Support of the Emergency Motion to Intervene as Defendants** was served via First-Class United States Mail, postage prepaid, addressed to:

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This 15th day of November, 2022.

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