

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**Case No. 1:23-cv-00878-TDS-JEP**

DEMOCRACY NORTH CAROLINA;  
NORTH CAROLINA BLACK ALLIANCE;  
LEAGUE OF WOMEN VOTERS OF  
NORTH CAROLINA,

*Plaintiffs,*

vs.

ALAN HIRSCH, in his official capacity as  
CHAIR OF THE STATE BOARD OF  
ELECTIONS; JEFF CARMON III, in his  
official capacity as SECRETARY OF THE  
STATE BOARD OF ELECTIONS; STACY  
EGGERS IV, in his official capacity as  
MEMBER OF THE STATE BOARD OF  
ELECTIONS; KEVIN LEWIS, in his official  
capacity as MEMBER OF THE STATE  
BOARD OF ELECTIONS; SIOBHAN  
O'DUFFY MILLEN, in her official capacity  
as MEMBER OF THE STATE BOARD OF  
ELECTIONS; KAREN BRINSON BELL, in  
her official capacity as EXECUTIVE  
DIRECTOR OF THE STATE BOARD OF  
ELECTIONS; NORTH CAROLINA STATE  
BOARD OF ELECTIONS,

*Defendants.*

**PLAINTIFFS' RESPONSE TO  
MOTION TO INTEREVEVE OF  
THE REPUBLICAN NATIONAL  
COMMITTEE; NORTH  
CAROLINA REPUBLICAN  
PARTY; BRENDA M.  
ELDRIDGE; AND VIRGINIA  
ANN WASSERBERG**

**INTRODUCTION**

Democracy North Carolina, the North Carolina Black Alliance, and the League of Women Voters of North Carolina (together, "Plaintiffs") are non-partisan 501(c)(3) organizations that support voting rights and voting access for all North Carolinians,

regardless of party affiliation. On October 17, 2023, Plaintiffs filed a targeted legal challenge involving a single provision of North Carolina Senate Bill 747 (“SB 747”) known as Section 10(a). This provision imposes unconstitutional burdens upon same-day voter registration, including destroying already-cast ballots, without any notice or opportunity for a voter to cure the perceived defect if a single piece of mail to a voter’s address is returned as undeliverable, regardless of whether that voter is actually eligible. While these unlawful burdens affect all North Carolinians who utilize same-day voter registration, they particularly harm young people, who disproportionately rely on same-day registration and not coincidentally also have the highest rates of denied voter registrations due to failed mail verification.

One motion to intervene, filed by the two highest-ranking Republican legislators in the North Carolina General Assembly, is already pending before the Court. Plaintiffs take no position on that motion. In this latest motion to intervene, which Plaintiffs do oppose, the Republican National Committee, the North Carolina Republican Party, and two individual Republican Party members (the “Republican Party Intervenors”) seek to join the Republican legislators and the North Carolina State Board of Elections as defendants. To the extent the Republican Party Intervenors have legitimate interests in defending Section 10(a) of SB 747, those interests will be adequately represented by the other defendants. Moreover, allowing the Republican Party Intervenors to join the case would cause undue delay and prejudice to the Plaintiffs. Their motion to intervene should be denied.

## FACTUAL BACKGROUND

Plaintiffs filed this case on October 17, 2023, alleging that Section 10(a) of SB 747 constitutes an undue burden on the right to vote in violation of the First and Fourteenth Amendments, a denial of due process in violation of the Fourteenth Amendment, and intentional discrimination against young voters in violation of the Twenty-Sixth Amendment. Complaint ¶¶ 94-118, *Democracy North Carolina v. Hirsch*, No. 1:23-cv-00878 (M.D.N.C. Oct. 17, 2023), ECF No. 1. Plaintiffs named as Defendants the North Carolina State Board of Elections, which administers SB 747, as well as six individual Board members and officers in their official capacities. *Id.* at 1-2. The Complaint does not challenge any other section of the North Carolina election code.

On October 25, 2023, the President *Pro Tempore* of the North Carolina State Senate, Philip E. Berger, and the Speaker of the North Carolina House of Representatives, Timothy K. Moore, (together, the “Legislative Leaders”) filed a motion to intervene as defendants on behalf of the North Carolina General Assembly, which voted SB 747 into law on October 10, 2023. *Democracy North Carolina v. Hirsch*, No. 1:23-cv-00878 (M.D.N.C. Oct. 25, 2023), ECF No. 19; ECF No. 1 ¶ 91. As President *Pro Tempore* and Speaker, Mr. Berger and Mr. Moore are the two highest-ranking Republican legislators in the North Carolina General Assembly. *See* Legislative Leaders’ Mem. Supp. Mot. at 13, *Democracy North Carolina v. Hirsch*, No. 1:23-cv-00878 (M.D.N.C. Oct. 25, 2023), ECF No. 20 (citing N.C. Gen. Stat. §§ 1-72.2(a)-(b)). While taking no position on the Legislative Leaders’ motion to intervene, Plaintiffs are cognizant of recent Supreme Court precedent addressing this particular issue as well as this Court’s order in *D.N.C. v. N.C.S.B.E.*

granting intervention to the same Legislative Leaders in a separate lawsuit involving SB 747. See Order, *N.C. Democratic Party v. N.C. State Board of Elections*, No. 1:23-cv-862 (M.D.N.C. November 3, 2023), ECF No. 47; see also *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191 (2022).

On October 26, 2023, the Republican National Committee, the North Carolina Republican Party, and two individual Republican Party members (Brenda M. Eldridge and Virginia Ann Wasserberg) filed their own motion to intervene in this case. Republican Party Intervenors' Motion at 1, *Democracy North Carolina v. Hirsch*, No. 1:23-cv-00878 (M.D.N.C. Oct. 26, 2023), ECF No. 25. As a factual (and practical) matter, the brief filed by these Republican Party Intervenors in support of their motion appears to have been borrowed, with minimal alteration, from a different lawsuit before this Court, one with different parties and different challenges to other portions of the North Carolina election code. As a result, substantial portions of the Republican Party Intervenors' brief are factually unrelated to this litigation and have nothing to do with same-day registration, underscoring the partisan nature of their request.

For instance, the Republican Party Intervenors emphasize that Ms. Eldridge and Ms. Wasserberg “have served as poll observers in the past, and intend to do so in the future” and that Ms. Wasserberg even “appoints site-specific and county at-large election observers.” Republican Party Intervenors' Mem. Supp. Mot. at 3-4, *Democracy North Carolina v. Hirsch*, No. 1:23-cv-00878 (M.D.N.C. Oct. 26, 2023), ECF No. 26. The Republican Party Intervenors therefore argue that because SB 747 grants poll observers “leeway” to move about the polling place, Plaintiffs' “requested relief would deny them

this prerogative that North Carolina now affords.” *Id.* at 10. But Plaintiffs here challenge only Section 10(a), which governs same-day voter registration. Plaintiffs here seek no relief related to poll observers.

Likewise, the Republican Party Intervenors repeatedly describe Plaintiffs as “Democratic Party-affiliated and allied groups” and therefore seek “parity in political interests” in this case. *Id.* at 12, 14. However, the Plaintiffs here are expressly non-partisan, nonprofit community organizations that seek to protect the voting rights of all North Carolinians (and, here in particular, young people) without regard to political party. Allowing the Republican Party Intervenors to inject partisan disputes into the case would fundamentally alter its very nature.

## ARGUMENT

Under the Federal Rules of Civil Procedure, parties may seek to intervene as a matter of right pursuant to Rule 24(a)(2), or permissively under Rule 24(b). The Republican Party Intervenors do not satisfy the requirements for either path.

### **I. NO INTERVENTION AS A MATTER OF RIGHT WHERE SAME INTERESTS ARE ADEQUATELY REPRESENTED BY OTHER PARTIES**

Parties seeking to intervene as a matter of right “must demonstrate that their interests are not being adequately represented by the existing defendants.” *Stuart v. Huff*, 706 F.3d 345, 348 (4th Cir. 2013) (internal quotation marks omitted); Fed. R. Civ. P. 24(a)(2). When the party seeking intervention shares the same “ultimate objective” as another existing party, a presumption of adequate representation attaches, “which can only be rebutted by a showing of adversity of interest, collusion, or nonfeasance.” *Stuart*, 706 F.3d at 349

(internal quotation marks omitted); *Com. of Va. v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976). The Republican Party Intervenors have not demonstrated any protectable interest that will not be adequately represented by the other parties in this litigation. Their request for intervention as a matter of right should therefore be denied.

**A. Republican Party Intervenors share the same ultimate objectives as other parties.**

The State Board of Elections and Legislative Leaders will adequately represent precisely the same interests that the Republican Party Intervenors invoke. A directly analogous case from the Middle District of North Carolina (including several of the same litigants) is a useful illustration: In *Democracy N.C. v. N.C. State Bd. of Elections*, the Republican National Committee and North Carolina Republican Party moved to intervene as defendants in a case concerning the North Carolina election code. *See Democracy N.C.*, 2020 U.S. Dist. LEXIS 214153 (M.D.N.C. June 24, 2020) (Osteen, J.). The Defendants in that case included the North Carolina State Board of Elections as well as the same Legislative Leaders. The would-be intervenors argued that, as Republican political organizations, they had distinct interests in “maintaining the current lawfully enacted structure” and in “fair elections.” Mem. in Supp. of Mot. to Intervene at 7, *Democracy N.C. v. N.C. State Board of Elections*, No. 1:20-cv-457 (M.D.N.C. June 19, 2020), ECF No. 34. The court rejected that argument, denying the motion to intervene filed by the Republican National Committee and North Carolina Republican Party. In doing so, the court found that these same interests were “undoubtedly protected by the legislature and

other individuals that enacted the rules in the first place.” *Democracy N.C.*, 2020 U.S. Dist. LEXIS 214153 (M.D.N.C. June 24, 2020) at \*4.

The Republican Party shares the same “ultimate objectives” of the litigation with the Defendants and the Legislative Leaders—it matters not, for the analysis, that the Republican Party might have its own partisan motives. The Republican Party Intervenors argue that “the interests of the Republican Party are not the same as those of officials like Defendants, as the goal of Republican-affiliated groups is to elect Republican candidates in local, county, state, and federal elections, and to represent Republican voters across the state.” ECF No. 26 at 12–13 (internal citations omitted). That is precisely why intervention is *not* appropriate. Considering this same argument (from the same litigants) in the earlier *Democracy N.C.* case, Judge Osteen wrote: “[W]hile the Proposed Intervenors’ interest in the outcome of elections might be different from that of the present parties, the present parties are more than capable of supporting and defending the voting process in place presently.” *Democracy N.C.*, 2020 U.S. Dist. LEXIS 214153 at \*8–9. Despite their motivations, the objectives of the Republican Party Intervenors are the same as the other defendants and intervenors: to uphold the statutory provision as written.

The Republican Party Intervenors’ “ultimate objectives” are also necessarily the same as the other parties due to the scope of the lawsuit. Plaintiffs have filed a narrow challenge against Section 10(a) of SB 747, which governs same-day voter registration. Nonetheless, the Republican Party Intervenors argue that is “no reason to believe there will be a convergence of interests [with the Legislative Leaders] given the *numerous provisions* of SB 747 challenged” because each party will put “more focus and development on *some*

*provisions* of SB 747 than others . . . .” ECF No. 26 at 13 (emphasis added). This argument also exposes Intervenors’ propensity to confuse what is otherwise a straightforward issue: Plaintiffs here challenge only a single provision of SB 747. In defending that single statutory provision, the Republican Party Intervenors would necessarily share the same objective as the government. *See Stuart*, 706 F.3d at 352 (finding the “same ultimate objective” where “[b]oth the government agency and the would-be intervenors want the statute to be constitutionally sustained.”). In any event, as noted below, Defendants and the Legislative Leaders, along with their able counsel, surely have the resources to defend all the challenged provisions in all the suits pending before this Court.

**B. North Carolina’s executive and legislative branches will provide adequate representation of the same ultimate objectives.**

When an existing party is a government agency, “a very strong showing of inadequacy is needed to warrant intervention.” *Stuart*, 706 F.3d at 349 (internal quotation marks omitted). As the Fourth Circuit explained in *Stuart*, “when a statute comes under attack, it is difficult to conceive of an entity better situated to defend it than the government.” *Id.* at 351. It is the government that “through the democratic process, gains familiarity with the matters of public concern that lead to the statute’s passage in the first place.” *Id.* This is especially true where the statute is defended not only by the executive branch, but also by same legislators that passed the law in the first place. *See Democracy N.C.*, 2020 U.S. Dist. LEXIS 214153, at \*3–4 (“[T]he executive and legislative branches of the North Carolina government . . . are more than capable of representing those interests



of all people of the state of North Carolina and protecting the integrity of the voting process.”).

As discussed earlier, Defendants here will likely include both the executive and legislative branches of the North Carolina government. *See* ECF No. 19. The Legislative Leaders currently seeking intervention consist of the two most senior Republican legislators in the North Carolina General Assembly. Both were significant proponents and defenders of SB 747 and, as leaders of their respective legislative bodies, instrumental in its passage. On August 24, 2023, for example, House Speaker Timothy Moore released a statement describing SB 747 as “a bill that simply strengthens election integrity in North Carolina” consisting of “balanced, common sense reforms passed in the House and the Senate.”<sup>1</sup> The very Republican legislators who passed the law in the first place, together with the North Carolina State Board of Elections who implements it, are therefore “more than capable” of representing the same ultimate objectives that the Republican Party Intervenors seek.

The Republican Party Intervenors, citing *Stuart*, argue that the Legislative Leaders are technically not yet an “existing party” and the Court should therefore ignore them for the purposes of this analysis. *See* Mem. in Supp. of Mot. to Intervene at 13. But as this Court recently noted when considering the same argument from the same Republican Party Intervenors in another case: “the *Stuart* court was not deciding whether an existing

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<sup>1</sup> *See* House Speaker Tim Moore, Press Release, “NC House Speaker Statement on Gov. Cooper’s Intent to Veto SB 747,” available at <http://speakermoore.com/nc-house-speaker-statement-gov-coopers-intent-veto-sb-747/> (last accessed Nov. 15, 2023).

defendant-intervenor could adequately represent a proposed intervenor . . . Absent any other justification, the court is unpersuaded that the Legislative-Intervenors' status meaningfully alters the analysis." *North Carolina Democratic Party v. North Carolina State Board of Elections*, No. 1:23-cv-00862 (M.D.N.C. Oct. 26, 2023), ECF No. 48 at n.1. In this case, where both the executive and legislative branches of the government are positioned to defend the single statutory provision at issue, the Republican Party Intervenors' stated objective of upholding the same statutory provision is adequately represented.

Finally, the Republican Party Intervenors argue that political parties (such as themselves) are "virtually always allowed to intervene" in cases concerning election rules. ECF No. 26 at 4. But as illustrated already, that is simply not the case. The cases cited by the Republican Party Intervenors, with minimal comment, in support of this declaration are distinguishable. *See id.* at n.3. In several such cases, another partisan political party or political action committee was already a named plaintiff or defendant in the matter.<sup>2</sup> In others, the legislature did not seek to intervene.<sup>3</sup> In one case, the motion for intervention

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<sup>2</sup> *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020); *Issa v. Newsom*, 2020 WL 3074351, at \*4 (E.D. Cal. June 10, 2020); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at \*5 (W.D. Wis. Mar. 28, 2020); *Democratic Exec. Cmte. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018); *Priorities USA v. Nessel*, 2020 WL 2615504, at \*5 (E.D. Mich. May 22, 2020).

<sup>3</sup> *Thomas v. Andino*, 2020 WL 2306615, at \*4 (D.S.C. May 8, 2020); *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); *Paher v. Cegavske*, 2020 WL 2042365, at \*2 (D. Nev. Apr. 28, 2020); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020).

was totally unopposed.<sup>4</sup> The Republican Party Intervenors can point to only three cases where intervention was granted despite the presence of the legislature and the absence of another political party or political action committee. In each of these three cases (none of which are from Fourth Circuit), the grant of intervention was permissive and therefore reviewable only for abuse of discretion.<sup>5</sup> As discussed above, however, precedent from an extremely analogous case from this very district demonstrates why a partisan motion to intervene should be denied where the interests in upholding the current election code will be adequately represented by both the executive and legislative branches of the North Carolina state government. *See generally Democracy N.C. v. N.C. State Bd. of Elections*, 2020 U.S. Dist. LEXIS 214153 (M.D.N.C. June 24, 2020).

## II. PERMISSIVE INTERVENTION WOULD CAUSE UNDUE DELAY AND PREJUDICE

Permissive intervention is appropriate only if intervention will not result in any undue delay or prejudice to the existing parties. *Carcano v. McCrory*, 315 F.R.D. 176, 178 (M.D.N.C. 2016); Fed. R. Civ. P. 24(b). Denial of permissive intervention is appropriate where proposed intervenors “will likely unnecessarily extend fact-finding, discovery, and evidentiary hearings, thereby resulting in inefficiencies and undue delay of the resolution of these matters.” *Democracy N.C.*, 2020 U.S. Dist. LEXIS 214153, at 7. The decision to

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<sup>4</sup> *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (noting that intervenors “committed to filing no motion to dismiss and to following the same briefing schedule as the defendants”).

<sup>5</sup> *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (no discussion); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv- 236-RH (N.D. Fla. May 28, 2020) (lawsuit against the sitting Republican governor).

grant or deny permissive intervention “lies within the sound discretion of the trial court.” *Smith v. Pennington*, 352 F.3d 884, 892 (4<sup>th</sup> Cir. 2003) (quoting *Hill v. W. Elec. Co., Inc.*, 672 F.2d 381, 386 (4<sup>th</sup> Cir. 1982)).

Granting permissive intervention to the Republican Party Intervenors will result in undue delay, inefficiencies, and prejudice to the Plaintiffs. Even already, the Republican Party Intervenors have distorted and confused the issues in this case, forcing Plaintiffs to respond to arguments about legal challenges Plaintiffs have not raised and remedies Plaintiffs have not sought. *See* ECF No. 26 at 13 (arguing that “there is no reason to believe there will be a convergence of interests given the numerous provisions of S.B. 747 challenged”); *id.* at 10 (“The requested relief would deny [poll observers] this prerogative [to move about the voting place] that North Carolina law now affords.”).

Leaving that aside, the addition of four additional and redundant parties, including one national political organization and one state political organization, is bound to extend fact-finding, discovery, and evidentiary hearings. These undue inefficiencies and delays are unwarranted considering that there will likely be no “corresponding benefit to existing litigants, the court[], or the process” because the other existing defendants will also be “pursuing the same ultimate objectives.” *Stuart*, 706 F.3d at 355. As discussed earlier, the Attorney General and the Republican Legislative Leaders who enacted the statute are more than capable of representing the very same interests that the Republican Party Intervenors purport to represent.

The Republican Party Intervenors argue that permissive intervention should be granted to achieve “parity” between the litigants. *See* ECF No. 26 at 14 (“If the Democratic

National Committee and the North Carolina Democratic Party are on one side of an election case, it makes sense to permit the Republican National Committee and the North Carolina Republican Party to intervene . . . .”). As previously discussed, this argument largely hinges on a misstatement—Plaintiffs here are explicitly nonpartisan, and the Republican Party Intervenors may have confused this case with another case pending before this Court.<sup>6</sup> However, the inverse of this argument is instructive: If the Democratic Party is not on one side of the case, it does not make sense to allow the Republican Party to intervene.

To the extent that the Republican Party Intervenors suggest that the Legislative Leaders and their “one law firm” lack “parity in resources” (ECF No. 26 at 4, 13), or “experience in election litigation” (*Id.* at 15), it bears mentioning that the Legislative Leaders have engaged Nelson Mullins Riley & Scarborough LLP, a national and well-resourced firm that is currently involved in more than forty (40) docketed election litigation matters across the country. Plaintiffs, meanwhile, consist of non-partisan, community-based North Carolina nonprofit organizations. Parity, to the extent the law even supports this consideration, would not be achieved by allowing two large, partisan political organizations and their members to intervene in this case, especially where their objectives are already adequately represented.

### III. CONCLUSION

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<sup>6</sup> The same Republican Party Intervenors also moved to intervene in another case before this Court, where Plaintiffs are in fact the Democratic National Committee and North Carolina Democratic Party. See Republican Party Intervenors’ Mot., *North Carolina Democratic Party v. North Carolina State Board of Elections*, No. 1:23-cv-00862 (M.D.N.C. Oct. 26, 2023), ECF No. 35.

For the reasons stated above, Plaintiffs respectfully request that the Court deny the Republican Party Intervenors' Motion to Intervene.

Dated: November 15, 2023

Respectfully Submitted,

/s/Christopher Shenton

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 3,393 words as counted by the word count feature of Microsoft Word.

*/s/Christopher Shenton*

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all parties of record.

*/s/Christopher Shenton*

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