

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

INTERNATIONAL ALLIANCE OF
THEATER STAGE EMPLOYEES
LOCAL 927,

Plaintiff,

v.

JOHN FERVIER, et al.,

Defendants.

CIVIL ACTION NO.:
1:23-CV-04929-JPB

ORDER

This matter is before the Court on the Republican National Committee and the Georgia Republican Party, Inc.’s (collectively, “Movants”) Motion to Intervene [Doc. 51]. This Court finds as follows:

BACKGROUND

International Alliance of Theater Stage Employees Local 927 (“Plaintiff”) filed this action against Defendants¹ on October 26, 2023, asserting that Georgia Senate Bill 202 (“S.B. 202”) violates a provision of the Voting Rights Act governing absentee balloting. Specifically, Plaintiff contends that S.B. 202’s

¹ Defendants include John Fervier, Edward Lindsey, Janice W. Johnston and Sara Tindall Ghazal—members of the Georgia State Election Board. Defendants also include the following members of the Fulton County Registration and Elections Board: Patrice Perkins-Hooker, Aaron V. Johnson, Michael Heekin and Teresa K. Crawford.

eleven-day cutoff for accepting absentee ballot applications violates 52 U.S.C. § 10502(d), which provides that:

[E]ach State shall provide by law for the casting of absentee ballots for the choice of electors for President and Vice President, or for President and Vice President, by all duly qualified residents of such State who may be absent from their election district or unit in such State on the day such election is held and who have applied therefor not later than seven days immediately prior to such election and have returned such ballots to the appropriate election official of such State not later than the time of closing of the polls in such State on the day of such election.

Movants filed the instant Motion to Intervene on January 12, 2024. [Doc. 51]. In the motion, Movants assert that they should be permitted to intervene to protect their interests in the rules governing Georgia's elections. The motion, which is opposed, is now ripe for review.

LEGAL STANDARD

Federal Rule of Civil Procedure 24 governs intervention and provides for intervention as a matter of right or with permission of the court. As to intervention as a matter of right, Rule 24(a) states that courts must permit anyone to intervene who:

- (1) is given an unconditional right to intervene by a federal statute;
or
- (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Eleventh Circuit Court of Appeals has translated this rule into a four-factor requirement. To intervene as a matter of right, a party must establish that (1) “his application to intervene is timely”; (2) “he has an interest relating to the property or transaction which is the subject of the action”; (3) “he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect his interest”; and (4) “his interest is represented inadequately by the existing parties to the suit.” Fox v. Tyson Foods, Inc., 519 F.3d 1298, 1302–03 (11th Cir. 2008).

Under Rule 24(b), which pertains to permissive intervention, courts may permit anyone to intervene who: (1) “is given a conditional right to intervene by a federal statute”; or (2) “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(A)–(B). With permissive intervention, “the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

ANALYSIS

Movants assert that they satisfy the requirements for intervention as of right under Rule 24(a) and permissive intervention under Rule 24(b). The Court will only address whether Movants can intervene under Rule 24(b).

As a threshold matter, to intervene under Rule 24(b), the motion must be timely. In determining whether a motion to intervene is timely, courts should consider: (1) “the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene”; (2) “the extent of prejudice to the existing parties as a result of the proposed intervenor’s failure to move for intervention as soon as it knew or reasonably should have known of its interest”; (3) “the extent of prejudice to the proposed intervenor if the motion is denied”; and (4) “the existence of unusual circumstances militating either for or against a determination that their motion was timely.” Georgia v. U.S. Army Corps of Eng’rs, 302 F.3d 1242, 1259 (11th Cir. 2002). Notably, “[t]imeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.” Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989).

Plaintiff asserts that Movants’ motion was not timely because it was brought over two months after the action was filed and after the deadline for responsive pleadings passed. Movants, on the other hand, argue that they filed their motion only four days after discovering that their interests were not adequately protected.

As explained above, in considering questions of timeliness, the Court must first consider the length of time during which the proposed intervenor knew or reasonably should have known of the interest in this case before moving to intervene. The Court recognizes that Plaintiff filed this action on October 26, 2023, and that Movants did not move to intervene until January 12, 2024—over two months later. The date of the filing of this action is not dispositive, however, because the timeliness of the motion should be assessed in relation to the time when Movants realized that their interests were implicated. Here, Movants assert that they realized their interests were implicated when Defendants filed their Motion to Dismiss on January 8, 2024, and argued for dismissal solely on standing grounds. In Movants' view, dismissal is required not just on standing grounds but also because of a constitutional infirmity in Plaintiff's case. Given that Movants moved to intervene only four days after Defendants filed their Motion to Dismiss, the Court finds that the timeliness requirement is satisfied.²

Because the motion was timely filed, the Court will consider whether intervention is appropriate under Rule 24(b). Courts “may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Significantly, courts must

² The Court considered the other factors as well. Notably, with only a four-day delay, any prejudice caused to Plaintiff is minimal compared to the prejudice to Movants if intervention is denied.

also consider “whether the intervention will unduly delay or prejudice the adjudication of the parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Here, Plaintiffs do not contest that Movants’ defenses share a common question of law or fact with the current action. In any event, the Court has reviewed the allegations, among other things, and finds that Movants’ defenses do share a common question of law or fact with this action in that Movants reject the assertion that the absentee ballot deadline violates the Voting Rights Act.

The remaining issue for the Court to decide is whether intervention would cause undue delay or prejudice. This case was filed on October 26, 2023, and Defendants filed their Motion to Dismiss on January 8, 2024. Thereafter, on January 29, 2024, Plaintiff filed an Amended Complaint for Declaratory and Injunctive Relief. Defendants filed another Motion to Dismiss on February 12, 2024. To date, discovery has not opened, and a scheduling order has not been entered. Moreover, dispositive motions have not been decided. In essence, this case is in a very early stage. Because Movants moved to intervene as soon as they were aware that their interests were implicated and because discovery has not yet opened, the Court finds that allowing Movants to join the action at this point will not cause undue delay or burden.³ As to prejudice, the Court finds that it would be

³ Plaintiff argued that allowing Movants to intervene will unduly delay the case because Movants intend to argue that this particular provision of the Voting Rights Act is unconstitutional, which requires notification to the United States Attorney General.

minimal. It is this Court's experience with related voting litigation that adding Movants will likely not prejudice the original parties because there is usually significant overlap between the arguments made by Defendants and Movants.

Ultimately, this Court finds that Movants filed their motion in a timely manner. The Court further finds that Movants' defenses share common questions of law and fact with this action and that allowing Movants to intervene will not unduly delay the proceedings or cause prejudice. Accordingly, to the extent that Movants move to intervene under Rule 24(b), the motion is **GRANTED**.⁴

CONCLUSION

For the reasons explained above, the Motion to Intervene [Doc. 51] is **GRANTED**. The Clerk is **DIRECTED** to add Movants as defendants in this case and docket the proposed Motion to Dismiss Plaintiff's Amended Complaint.

While this could possibly delay the case to some extent, denial of the Motion to Intervene could also delay the case if Movants immediately appealed the ruling. See Fla. State Conference of Branches & Youth Units of NAACP v. Lee, No. 2021 WL 5014153, 2021 WL 5014153, at *2 (N.D. Fla. June 8, 2021) (stating that “even if adding additional defendants creates some delay . . . , that delay is marginal when compared to the risk that ‘denying [proposed intervenors’] motion will open the door to delaying the adjudication of this case’s merits for months—if not longer’—while [proposed intervenors] appeal”).

⁴ In light of this ruling, the Court need not address whether Movants are entitled to intervene as a matter of right. See Alabama v. U.S. Dept of Com., No. 2:18-CV-772, 2018 WL 6570879, at *2 (N.D. Ala. Dec. 13, 2018) (stating that “because the court finds permissive intervention is appropriate . . . , the court need not address whether the [proposed intervenors] may intervene as a matter of right”).

Regular briefing deadlines shall apply to Movants' Motion to Dismiss Plaintiff's Amended Complaint.

SO ORDERED this 3rd day of May, 2024.



J. P. BOULEE
United States District Judge

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