

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LEAGUE OF WOMEN VOTERS OF OHIO
and JENNIFER KUCERA,

Plaintiffs,

v.

FRANK LaROSE, in his official capacity as
Ohio Secretary of State; DAVID YOST, in his
official capacity as Attorney General of Ohio;
MICHAEL O'MALLEY, in his official
capacity as County Prosecutor of Cuyahoga
County;

Defendants.

Case. No. 1:23-cv-02414

Judge Bridget Meehan Brennan

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE

The Republican National Committee and the Ohio Republican Party (“Proposed Intervenors”) move to intervene as defendants either as of right under Federal Rule of Civil Procedure 24(a) or permissively under Rule 24(b). As the Proposed Intervenors’ motion states, Plaintiffs—the League of Women Voters of Ohio and Jennifer Kucera—do not take a position on whether the motion should be granted. Dkt. No. 16 at 1. To respond further, as the Court requested, Plaintiffs take no position on whether the Court should exercise its discretion to grant

the motion for permissive, Rule 24(b) intervention. However, to the extent that the Proposed Intervenor's motion is based on an argument that the named Defendants cannot adequately represent Proposed Intervenor's interests in the lawsuit, and thus that they are necessary parties entitled to intervene as of right, Plaintiffs disagree.

In support of their motion, Proposed Intervenor's argue that the named Defendants cannot adequately defend the case because they do not share Proposed Intervenor's partisan interest in "electing particular candidates," or in considering "specific and targeted interests" or the "social and political divisiveness of the election issue." Dkt. No. 16-1 ("Mem. in Support of Mot. to Int.") at 10. None of these interests is "an interest relating to the . . . transaction that is the subject of the action" under Rule 24(a)(2). Plaintiffs' lawsuit concerns voters with disabilities, not members of a particular party or voting bloc. The challenged provisions of House Bill ("HB") 458 concern barriers imposed on voters with disabilities who vote by absentee ballot; these provisions have nothing to do with partisan interests in electing candidates from one party or another, or with any substantive election issue that might be socially or politically divisive. *See* R.C. § 3599.21(A)(9), (10); R.C. § 3509.05(C)(1). Proposed Intervenor's offer no data, only speculation, that this lawsuit could change the "competitive environment" or the "results" of any election. Mem. in Support of Mot. to Int. at 6, 7. Thus, any adversity to the partisan interests of the Proposed Intervenor's has not been demonstrated and likely is extremely remote.

Even if the Proposed Intervenor's partisan interests did relate to the laws that are the subject of this action (which they do not), Proposed Intervenor's have provided no specific factual basis for their argument that existing Defendants would not "adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Proposed Intervenor's only assert, in conclusory fashion, that their interests

“may well diverge from the governmental defendants’ public interests.”¹ Mem. in Support of Mot. to Int. at 11. For example, their purported interest in having “certainty . . . if [their members] choose to exercise their statutory right to vote by absentee or mail-in ballot, or to assist a family member in voting by absentee or mail-in ballot,” *id.* at 8, is already a goal of Plaintiffs’ lawsuit. See Dkt. No. 1, Compl. ¶¶ 61-62, 65-76, 177-97. Proposed Intervenors have not explained how their participation, rather than named Defendants’ alone, advances that goal—which will be attained at the end of the lawsuit regardless. There is no reason to believe the named Defendants cannot adequately defend the challenged provisions of HB 458, which they are charged to enforce.

Accordingly, Plaintiffs believe the named Defendants adequately represent all interests relating to the challenged provisions of HB 458, and that intervention as of right is inapplicable here. Plaintiffs continue to take no position on Proposed Intervenors’ motion for permissive intervention.

Respectfully submitted,

/s/ Freda J. Levenson

Freda J. Levenson (Ohio Bar. No. 0045916)

ACLU OF OHIO FOUNDATION, INC.

4506 Chester Avenue

Cleveland, Ohio 44103

(216) 541-1376

flevenson@acluohio.org

¹ Plaintiffs note that, to the extent that Proposed Intervenors wish to address how to “protect their members’ votes against dilution” by those who would assist voters with disabilities, or how the “competitive environment” or even “results” of elections might be changed when voters with disabilities are enabled to participate, Mem. in Support of Mot. to Int. at 6, 7, they may raise such arguments in an amicus brief.

Megan C. Keenan*
Sophia Lin Lakin*
AMERICAN CIVIL LIBERTIES UNION
915 15th St. NW
Washington, DC 20001
(740) 632-0671
mkeenanaclu.org
slakin@aclu.org

Attorneys for Plaintiffs

**Admitted pro hac vice*

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CERTIFICATE OF SERVICE

I, David J. Carey, hereby certify that on this 2nd day of February, 2024, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Northern District of Ohio via the ECF system, which will send notification of such filing to all counsel of record.

/s/ Freda J. Levenson

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