

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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

NOTICE OF MOTION TO DISMISS  
INTERVENOR-DEFENDANT,  
CAMDEN COUNTY DEMOCRAT  
COMMITTEE

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO DISMISS  
CAMDEN COUNTY DEMOCRAT COMMITTEE

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## **INTRODUCTION AND FACTUAL BACKGROUND**

This matter comes before the Court on a motion to dismiss the Camden County Democrat Committee (“CCDC”) as Intervenor-Defendant in these precedent-setting ballot design litigations, Conforti v. Hanlon and Kim v. Hanlon. The CCDC should be dismissed from further participation in these matters as an intervenor because it no longer has standing, and because a change in circumstances has eliminated the reasons for the Court’s original grant of permissive intervention.

CCDC’s engagement in these litigations has been premised on it being “the statutory non-profit regular Democratic Party Organization for Camden County” which “promotes and endorses Democrat candidates nominated in New Jersey elections and is ‘committed to serving the community by supporting and electing candidates at every level that will fight to level the playing field for Camden County’s working families.’” (Certification by CCDC Executive Director Mike Porch in support of motion to intervene, Conforti ECF 126-1, ¶¶ 8, 9). CCDC entered Kim to “oppose the request for injunctive relief,” which was to compel the county clerks, including the Camden Clerk, to cease using a county-line style ballot and use an office-block ballot instead. (Kim, ECF 41-1, p. 4). It sought to defend the “ballot position and placement system” then in effect, i.e., one that was operated by the county clerks, including the one in Camden. (Id., p. 8). In both Kim and Conforti, CCDC was granted permissive intervention under Fed. R. Civ. P. 24(b)(1)(B) subject to the Court’s discretion. (Conforti, ECF 164, Order granting intervention of CCDC; Kim, ECF 121, Letter Order granting intervention of CCDC). In both grants of permissive intervention, the Court reasoned that CCDC had “a claim or defense that shares with the main action a common question of law or fact.”

However, subsequent critical events have transpired which eliminate the basis upon which the CCDC has standing and which otherwise warrant its removal from these matters.

Since permissive intervention was granted to the CCDC in each case, the following has occurred:

1) the Attorney General withdrew from Conforti and declined to intervene in Kim, refusing to defend the law because of its unconstitutionality; 2) Plaintiffs obtained a preliminary injunction in Kim, wherein the District Court found a likelihood of success on the merits, which was subsequently upheld in a unanimous, published decision of the Third Circuit Court of Appeals; and (3) most critically, several county clerks have settled this matter, including the Camden County Clerk for whom a consent decree was entered on October 31, 2024 approving settlement and dismissal, and requiring the Camden Clerk to abide by its terms. Therein, the Camden Clerk avowed to no longer use the county line ballot, and to instead use an office block ballot and conduct separate draws for every office and candidate. (Kim, ECF 265, Court Order approving settlement of Camden County Clerk.) CCDC did not oppose the entry of that consent decree, nor did it ask the Court to reconsider the entry of that decree, either within the 14 days prescribed by Local Rule 7.1(i), or in the nearly 4 months that have elapsed since its entry. Indeed, of the nineteen (19) original defendants in the Kim matter, only two (2) remain, the Clerks of Bergen and Union counties. Of the six (6) original defendants in the Conforti matter, only one (1) remains, the Bergen Clerk. Both remaining clerks are situated 75 miles and 100 miles north of Camden County, and the ballot designs drawn by those public actors are obviously limited to voters who reside within those counties.

While CCDC may have, at one point, had standing and/or shared interests of common question of law or fact, for example, when the State Attorney General or the Camden County Clerk were parties to this matter, that time has passed. There is now a settlement agreement signed by the Camden Clerk, and an admission by the Attorney General that the statutes are unconstitutional. CCDC no longer meets the requisite Article III “case” or “controversy” requirement and no longer shares common questions of law or fact sufficient to maintain its

status as an intervenor – it simply has no interest in the ballot designs distributed to two counties in North Jersey.

CCDC has repeatedly claimed First Amendment rights as a political party to expression on the ballot beyond the use of a slogan, effectively suggesting that the use of a county line ballot was not just constitutional, but *constitutionally compelled*. Both such arguments were unavailing before the Third Circuit Court of Appeals on appeal of the grant of preliminary injunction which no county clerks pursued in this matter. Kim v. Hanlon, 99 F.4th 140, 158 (3d Cir. 2024). Since that decision, the Camden Clerk has disengaged from the litigation. Thus, to the extent that CCDC has any ongoing interest in the ballot design of Camden voters, its qualm is with its county clerk, and not the Plaintiffs in these actions, nor the remaining county clerk defendants.

CCDC essentially seeks to remain in this matter to pursue and achieve a result on a different question of law before this Court, which would require the Court to order relief from a party that is no longer in this case. This case is about the constitutionality of the county line system. Approximately 90% of the counties involved in these matters have agreed to an office block style, including Camden County.<sup>1</sup> The Attorney General refuses to defend the matter, on the premise that “[t]his is an exceptional case,” justifying an “exceptionally rare decision not to defend the constitutionality of [ ] challenged statutes.” (Kim, ECF 149, AG Letter to Court.) Judge Quraishi already found a likelihood of success on the merits on the issue of the unconstitutionality of the county line system, which was upheld by a unanimous panel of the Third Circuit Court of Appeals, in a published opinion.

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<sup>1</sup> Sixteen consent decrees have been entered by this Court in Kim, and a seventeenth is presumably forthcoming pursuant to a settlement in principle which has been reached between the parties. In Conforti, five of the six original counties have entered consent decrees. In total, seventeen of the nineteen counties in the state who used county line ballots have now agreed to draw ballots by office block.

Simply put, the issue that CCDC seeks to vindicate on behalf of itself is whether an office block ballot unconstitutionally violates its right to associate. However, that is not the question presently before this court where the remaining parties are the Clerks of Bergen and Union and the types of ballots to be distributed to voters within those counties, and, critically, where Camden County and the State are no longer involved in this matter. CCDC lacks standing to continue to pursue its interest in this separate and distinct question of law that is not currently before the Court. Since CCDC was only permissively allowed to intervene in each of these matters pursuant to the wide discretion of the Court, and since the basis for those grounds has largely since dissipated, and further because CCDC now lacks Article III standing to continue the case, Plaintiffs respectfully request that the Court dismiss CCDC in this action as an intervenor.

### **LEGAL ARGUMENT**

#### **I. CCDC LACKS ARTICLE III STANDING, AND THEREFORE THIS MATTER IS NOT JUSTICIABLE AS TO CCDC FOR WANT OF “CASE” OR “CONTROVERSY.”**

Article III, Section 2 of the United States Constitution confines the judicial power of federal courts to deciding actual “Cases” or “Controversies.” The Supreme Court has interpreted Article III’s standing doctrine as requiring a constitutional minimum of standing containing three elements. First, injury-in-fact, “an invasion of a legally protected interest which is (a) concrete and particularized” and (b) “actual or imminent, not conjectural or hypothetical.” Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (internal quotations and references omitted). Second, there must be a causal connection between the injury and the conduct complained of – “the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” Id. (relying on Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42 (1976)). Third, it must be



“‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” Id. (quoting Simon, 426 U.S. at 38, 43).

Moreover, it is “[t]he party invoking federal jurisdiction” which “bears the burden of establishing these elements.” Id. The “Cases” or “Controversies” requirement in Article III ensures the presence of the “concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” Baker v. Carr, 369 U.S. 186, 204 (1962). The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to satisfy Article III. The Supreme Court has consistently required that the party seeking judicial resolution must “show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct” of the other party. Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99 (1979); see also Warth v. Seldin, 422 U.S. 490 (1975).

The United States Supreme Court has “repeatedly held that an ‘actual controversy’ must exist not only ‘at the time the complaint is filed,’ but throughout ‘all stages’ of the litigation.” Already, LLC v. Nike, 568 U.S. 85, 90-91 (2013) (internal references omitted). A claim within a litigation becomes moot, and thus not a “case” or “controversy” for purposes of Article III “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” Id. at 91 (citing Murphy v. Hunt, 455 U.S. 478, 481 (1982) (per curiam)). “Standing is not dispensed in gross.” Davis v. Federal Election Comm’n, 554 U.S. 724, 734 (2008) (quotations omitted); Lewis v. Casey, 518 U.S. 343, 358 n.6 (1996). That is to say, just because there remains a live case or controversy between Plaintiffs and the Bergen and Union County clerks, it does not follow that the CCDC has standing to assert claims against the remaining litigants. Town of Chester, N.Y. v. Laroe Estates, Inc., 581 U.S. 433, 439–40 (2017).

Rather, the requirement to demonstrate and maintain standing applies not only to the direct parties in the action, but also to an intervenor. Id. at 435. (“[A]n intervenor must meet the requirements of Article III if the intervenor wishes to pursue relief not requested by a plaintiff.”). Such requirements persist throughout the lawsuit and apply regardless of whether the party intervenes on the side of the plaintiffs or on the side of the defendants. See Wittman v. Personhuballah, 578 U.S. 539, 543-46 (2016) (standing under Article III is required in order for a defendant-intervenor to appeal); see also Seneca Res. Corp v. Highland Twp., No. 16-cv-289, 2017 WL 4168472, at \*3-4 (W.D. Pa. Sept. 20, 2017) (“[T]he requirement that the defendant have standing is relevant, especially in public interest matters.”). To the extent that any party seeks or continues to seek to intervene in order to obtain different relief, they must have and maintain standing under Article III.

Here, Intervenor-Defendant CCDC has no “direct stake in the outcome” of the county-line ballot design challenged in the Conforti/Kim litigations because – critically – the Camden County Clerk has entered into a court-approved settlement agreement to discontinue use of the county-line ballot design. See Diamond v. Charles, 476 U.S. 54, 62 (1986) (citing Sierra Club v. Morton, 405 U.S. 727, 740 (1972) (a request to seek an exercise of judicial review must be placed “in the hands of those who have a direct stake in the outcome”)). Indeed, it is clear that even as the issue of the constitutionality of the *county line* is no longer at issue with respect to Camden County in light of the settlement agreement signed by the Camden Clerk and approved by this Court, the CCDC has dug its heels in as to whether or not an *office block ballot* is constitutional. In doing so, it not only seeks relief which cannot be given by a judgment against any active party in this litigation, it also clearly seeks relief which is different from that sought by the plaintiffs or that which is otherwise properly before the Court. Because they now seek different relief, they must, yet for the reasons set forth below, cannot, demonstrate Article III

standing. See Wayne Land and Mineral Group LLC v. Delaware Basin Commission, 959 F.3d 569, 574 (3d Cir. 2020).

CCDC fails to satisfy the Article III injury-in-fact requirement which requires injury in a “personal and individual way” as to the manner in which ballots are designed and distributed to the voters of Bergen and Union counties, the only remaining defendants. Lujan, 504 U.S. at 560, n.1; see also Massachusetts v. Mellon, 262 U.S. 447, 488 (1923) (“The party who invokes the [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally.”). Repeatedly throughout the course of these litigations, CCDC, including as the sole appellant before the Third Circuit Court of Appeals, has claimed that its First Amendment rights are somehow trampled by the office block ballot design, notwithstanding that it can continue to engage in campaign activity outside of the ballot box, and notwithstanding that it can, and continues to, bear a slogan alongside affiliated candidates on the ballot itself. As the Third Circuit Court of Appeals recognized here, “CCDC’s First Amendment rights are not meaningfully harmed by the injunction” and “the [severe] burdens on the Plaintiffs’ competing First Amendment rights outweigh any of them.” Kim, 99 F.4th at 158. The Third Circuit also recognized that CCDC and its members may continue to “endorse, support, or vote for anyone they like.” Id. (citing Timmons v. Twin Cities Area New Party, 520 U.S. 351, 363 (1997)).

Even more importantly, any alleged injury-in-fact can no longer be said to be fairly traceable to, nor redressable by, any party remaining in the litigation. A critical change of circumstances, in addition to the Attorney General’s withdrawal in Conforti and concession in Kim, has arisen since this matter was litigated for preliminary relief and the Third Circuit issued its precedential ruling. That is, the Camden Clerk settled out of this case and agreed not to design

ballots using the county line system, and agreed to adopt an office block ballot, leaving the CCDC without any party that can offer the relief it seeks, and resulting in a situation where the CCDC is no longer properly before this Court for want of standing. Since the Camden Clerk is no longer in this case (and indeed affirmatively settled out of this case), no alleged injury to the CCDC can be tied back to the actions of any of the remaining parties, be it the Plaintiffs, the Bergen County Clerk, or the Union County Clerk. Nor, critically, can the Court order any remaining party to redress any alleged injury to the CCDC. Indeed, Plaintiffs do not control ballot design, and thus cannot be ordered to provide any relief for the CCDC, since only the county clerks control ballot design. And while the Bergen and Union County Clerks control ballot design with respect to candidates within their jurisdiction, they do not do so 75-100 miles south, in Camden County, where the *Camden County* Democrat Committee runs its candidates. It is clear that any relief sought by the CCDC is redressable only by the Camden Clerk, who is no longer in this case and who already settled<sup>2</sup> out of this case. There is no order this Court can issue against the Plaintiffs or the Bergen/Union Clerks which could possibly require them to let the CCDC bracket their candidates.

To whatever extent CCDC claims to have suffered some injury with respect to ballot design in New Jersey, the proper opposing party with whom it has that discrepancy is the Camden County Clerk. It is not the Plaintiffs in Conforti/Kim who sought, and secured, a fair ballot design in the 2024 primary election, and who have secured the same indefinitely with respect to sixteen of the nineteen relevant county clerks in the state who consented to court-approved settlement agreements, with a seventeenth presumably on the way; nor is it the remaining county clerk defendants from other jurisdictions. Article III standing “is not to be

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<sup>2</sup> It should be noted that this Court approved the settlement between Plaintiffs and the Camden Clerk, and ordered the Camden Clerk to comply with its terms, and dismissed the Camden Clerk from this case. It should also be noted that no party, let alone the CCDC, moved for reconsideration of that order, within the 14-day timeframe set forth in L. Civ. R. 7.1(i).

placed in the hands of ‘concerned bystanders,’ who will use it simply as a ‘vehicle for the vindication of value interests.’” Diamond, 476 U.S. at 62 (internal citation omitted). Thus, while it may have been true that CCDC once had a legitimate nexus to the central matters of the litigations, once the Camden Clerk acquiesced to settlement, and once the statewide implications no longer became relevant upon the withdrawal of the Attorney General and the overwhelming majority of the county clerks in the state, any actual controversy as to CCDC completely disintegrates. Accordingly, CCDC has no standing in this matter, and their continued engagement is nonjusticiable by a federal court. Therefore, CCDC must be dismissed from this action.

“[P]rivate parties who otherwise lack standing” should not be granted “a ticket to the federal courthouse.” Hollingsworth v. Perry, 570 U.S. 693, 715 (2013). Recently, the United States Supreme Court recognized: “We have never before upheld the standing of a private party to defend the constitutionality of a statute when state officials have chosen not to.” Id. Here, the Camden Clerk is not only *not* defending the constitutionality of the county line system, it affirmatively agreed to end it, signing a settlement agreement that was approved by this Court. CCDC is a private party that lacks individualized and particularized standing beyond a mere generalized grievance; nor may it stand in the shoes of public actors to privatize public defense where the public entities that bear the closest nexus to CCDC’s core original interests in this matter – the Camden County Clerk and the State – have withdrawn and/or settled out. CCDC simply cannot piggy-back now on the remaining Defendant Bergen and Union county clerks, nor can it reframe the focus of this case. If it needs to advance some argument as to its First Amendment interests in the ballot, it can readily do so closer to home with a fresh complaint, for it no longer bears an adversary interest here as to ballots of Union and Bergen counties.

**II. THE OCCURRENCE OF SUBSEQUENT EVENTS MATERIALLY UNDERMINE THE ORIGINAL BASIS FOR PERMISSIVE INTERVENTION PURSUANT TO THE COURT'S DISCRETION.**

CCDC's motions to intervene (Conforti, ECF 126-1; Kim, ECF 41-1) were granted, despite the Plaintiffs' oppositions, pursuant to the Court's discretion in granting permissive intervention in accordance with Fed. R. Civ. P. 24(b)(1)(B), rather than intervention as of right. (Conforti Order, ECF 164; Kim Order, ECF 121.) "Whether to grant permissive intervention under Rule 24(b), as the doctrine's name suggests, is within the discretion of the district court." Brody v. Spang, 947 F.2d 1108, 1124 (3d Cir. 1992). "In exercising its discretion, 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). Discretion to allow for permissive intervention applies only to parties who maintain "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).

Just as a Court's grant of intervenor status is committed to its sound discretion, the Court has the complementary power to revoke intervenor status if warranted. "[I]ntervention does not carry with it an absolute entitlement to continue as a party until termination of the suit." Tasby v. Wright, 109 F.R.D. 296, 298 (N.D. Tex. 1985). Rather, a Court is permitted to review the intervenor's ongoing ability to retain intervenor status and, if appropriate, revoke it. Mishewal Wappo Tribe of Alexander Valley v. Salazar, No. 5:09-cv-02502 EJD, 2012 WL 4717814, at \*1 (N.D. Cal. Sept. 28, 2012), aff'd, 534 F. App'x 665 (9th Cir. 2013). The Mishewal Wappo court did precisely that with respect to county government intervenors, noting the changes in circumstances, particularly, the plaintiff's and defendants' "fruitful settlement discussions," id., the precise event that occurred in this case.

While it may have once been true that CCDC's engagement in this matter shared a "common question of law and fact" regarding the constitutionality of New Jersey's county-line

ballot design, sufficient for the Court to exercise its discretion pursuant to Fed. R. Civ. P. 24(b)(3) to allow CCDC to intervene in these matters, that premise has now slipped away.

Regardless of whether Plaintiffs ultimately prevail on their claims that the county line is unconstitutional with respect to the remaining county clerks in Bergen and Union, the Camden County Clerk has already entered into a settlement agreement, approved by this Court, requiring it to not use a county line style ballot, and to use an office block ballot. Thus, the question of law of whether the county line style ballot is unconstitutional is no longer before the Court with respect to the Camden Clerk, and therefore no longer directly implicates CCDC's legal and factual claims. Accordingly, CCDC no longer shares the requisite common question of law presented by the main action, and the grounds upon which CCDC was granted permissive intervention have dissipated. (Kim ECF 121, Order Granting CCDC Intervention, Mar. 14, 2024, p. 1 (finding permissive intervention elements satisfied based on “common questions of law and fact regarding the constitutionality of New Jersey’s primary election system, as well as its administration and application of New Jersey’s election laws.”); Conforti ECF 164, Order Granting CCDC Intervention, Mar. 31, 2023, pp. 10-11 & n.3 (Magistrate Judge did not address element of common issues of law/fact, finding only, that CCDC had “interests that are separate and distinct from existing parties,” which were based on promoting/endorsing Democratic candidates by ‘supporting and electing candidates at every level . . . for Camden County.’”) (internal citation to CCDC brief in support of intervention omitted)).

Since this issue is no longer applicable to CCDC in light of the Camden Clerk’s settlement and agreement to adopt an office block ballot, it is important to understand the nature of CCDC’s assertions. CCDC’s claims, as asserted in its papers and most vociferously before the Third Circuit Court of Appeals, are really not even based on whether or not the *county line system* is constitutional. Rather, to vindicate its own alleged rights, the CCDC is really taking

issue with whether an *office block ballot* is unconstitutional because it does not allow for additional alignment of candidate names to demonstrate association, above and beyond the fact that New Jersey already allows association on the ballot itself via a common slogan/designation. That argument, one which the Third Circuit squarely rejected<sup>3</sup>, presents an entirely different question of law, and importantly, one that is not presently before this Court. In other words, the issue before the Court is whether the county line style ballot, as implemented by the remaining county clerks, is unconstitutional, not, as CCDC tries to inject into this lawsuit, whether office block ballots as ordered by this Court to be used in the 2024 Democratic Primary, and as subsequently agreed to be used in future primary elections by approximately 90% of defendants in this matter, are unconstitutional.

The injection of a separate question of law, as to the constitutionality of office block ballots which exist in primary elections in almost every state in the country and the District of Columbia is entirely inappropriate, and would subject Plaintiffs to prejudice, especially in the absence of the Camden Clerk, and unduly delay this matter by redirecting the entire focus of this case. Thus, even if this Court once found that some common questions of law and fact existed, it is within the Court's discretion to find that such grounds have been so severely undermined by subsequent events as to warrant a revocation of their permissive grant to continue to intervene.

Since neither the Court in Kim nor in Conforti determined whether CCDC could intervene as of right, Plaintiffs do not address that issue at length. Nevertheless, it should be noted that a threshold requirement to intervene as of right requires that the intervenor demonstrate and maintain throughout the case Article III standing. See, e.g., Town of Chester, supra, 581 U.S. at 435, 439-40; Wittman v. Personhuballah, 578 U.S. at 543-44 (regardless of

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<sup>3</sup> See Kim v. Hanlon, 99 F.4th at 158 (“As outlined by the District Court, parties and candidates have plenty of other ways to express their associations, and forty-nine other states have managed to provide manageable, understandable, and unconfusing ballots, as have two counties in New Jersey.”).



whether defendant-intervenor had standing when he first intervened, he no longer possessed standing based on developments in the case); Wayne Land, supra, 959 F.3d at 574; Seneca, supra, 2017 WL, 4168472 at \*3 (The Supreme Court resolved a circuit split and held that a litigant must “possess Article III standing in order to intervene as of right under Rule 24(a)(2).”). Thus, to the extent that CCDC lacks Article III standing for the reasons set forth in Point 1 above, it cannot be permitted to intervene as of right. Moreover, the Court is on good grounds to withdraw the grant of permissive intervention based on a totality of the circumstances here, including want of Article III standing.

Finally, it should be noted that Rule 24(b) provides that “[i]n exercising its discretion, 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) (Permissive Intervention, Delay or Prejudice). Here, notably, the CCDC admitted that it sought to step in the shoes of public actors who withdrew from appeal.<sup>4</sup> In argument before the Third Circuit Court of Appeals, Judge Jordan endeavored to understand the analytical framework given that no public actors were pursuing the grant of preliminary injunction on appeal, and given that the United States Supreme Court has reiterated that a separate Article III injury is necessary. Third Circuit Judge Jordan directly asked Mr. Tambussi, counsel for CCDC: “*So, you’re saying you’re a state actor, in effect?*” To which he responded, “*In effect.*” Judge Jordan continued: “*OK well why doesn’t that torpedo your argument that you have associational rights . . . Why should we hear you say that you’ve got associational harms? If you’re the State, you’re the State, and you don’t have associational arguments to assert, do you?*” Judge Jordan then differentiated the relevant legal claim before the court from the right to slogans and expression on the ballot, as raised by Mr.

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<sup>4</sup> Audio of the Third Circuit Court of Appeals oral argument is available on the U.S. Courts website: <https://www2.ca3.uscourts.gov/oralargument/audio/24-1594AndyKim,etal.vChristineGiordanoHanlon,etal.mp3> (last accessed Feb. 21, 2025). The colloquy described herein is available at minute 17:43 to minute 29.

Tambussi. Judge Jordan zeroed in: *“That’s not the issue in this case. The single issue is does the state have an interest that you can assert as a sometimes state actor, sometimes not, I guess, with respect to bracketing?”* Judge Jordan then read into the record the CCDC brief on appeal with regard to its qualm with the office block design, and summarized: *“So, your argument has to come down to this. . . It’s not just constitutional for the state statute to say the clerks can order this . . . but that the office block system would be unconstitutional. In the end, your argument is more than that ... your argument is that the office block design is unconstitutional because it doesn’t allow you to group.”* To which Mr. Tambussi responded, on behalf of CCDC, *“It doesn’t allow you to associate on the ballot.”* There lies the rub. CCDC continues to endeavor to reframe the focus of this litigation away from the lack of constitutionality of the county line, and to pivot to the lack of constitutionality of the office block ballot. Another jurist on the panel found this incredulous, facetiously noting in oral argument that CCDC’s argument is in effect that all other states in the nation that use office block designs must therefore be using unconstitutional ballots.

Since the Third Circuit precedential, published decision, the Camden County Clerk has withdrawn from this action, along with approximately 90% of the county clerks engaged in this action, see supra n.1. CCDC may no longer seek to essentially privatize the defense of public actors by redirecting their arguments, or hijacking Plaintiffs’ claims for its own convenience, especially where only two county clerks substantively remain in this action, and where with respect to the remaining clerks, CCDC has nothing more than some concocted generalized grievance too attenuated to be given the serious attention of the judiciary at continued taxpayer expense and at continued expense of the voters and the good faith Plaintiffs here.

If CCDC has concerns about its First Amendment rights to ballot design, it may bring a new action and name the appropriate parties adverse to its interests. It cannot privatize the defense of public actors without an express grant by the legislature, see e.g., Hollingsworth,

supra, and it cannot commandeer a public interest lawsuit by inserting its own private actor interests. Such an allowance is violative of the fundamental basics of litigation, and violative of Plaintiffs' due process rights. Should such an injustice be allowed to proceed here, it threatens grave concern to public interest litigation to set a precedent where a private actor, bolstered by corporate funds, can circumvent the adjudication of an original party's rights, step in the shoes of public actors when it suits private interests, reframe the focus of litigation even where no appropriate adversary is named to grant traceable or redressable relief, and even where no injury in fact can be established vis-a-vis the original nature of the litigation, and certainly further causes undue delay to efficient resolution of the focus of the litigation. The Plaintiffs here have never sought to, nor should they have to, now litigate the constitutionality of the office block ballot in New Jersey or across the country. They have only sought to litigate the unconstitutionality of a corrupt and corrupting, antiquated and anomalous county-line ballot, and they seek permanent relief as to the remaining two county clerks in this action whose voters reside 75-100 miles north of Camden County.

### **CONCLUSION**

For the foregoing reasons, the Court should grant Plaintiffs' motion to dismiss Intervenor CCDC from this matter.

Respectfully submitted,

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