

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. OHIO DEMOCRATIC
PARTY, et al.,

Case No. 2024-1361

Relators,

Original Action in Mandamus

v.

FRANK LAROSE, in his official capacity as
OHIO SECRETARY OF STATE,

Respondent.

**MOTION TO INTERVENE OF
THE REPUBLICAN NATIONAL COMMITTEE AND OHIO REPUBLICAN PARTY**

Donald J. McTigue
Stacey N. Hauff
McTigue & Colombo, LLC 545
East Town Street Columbus,
Ohio 43215
dmctigue@electionlawgroup.com
shauff@electionlawgroup.com

Ben Stafford
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WAS 98101
bstafford@elias.law

Jyoti Jasrasaria
Marisa A. O’Gara
Elias Law Group LLP
250 Mass. Ave. NW, Suite 400
Washington, DC 20001
jjasrasaria@elias.law
mogara@elias.law

Counsel for Relators

John M. Gore* (*pro hac vice* forthcoming)
**Counsel of Record*

E. Stewart Crosland
Joshua S. Ha
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
T: (202) 879-3939
jmgore@jonesday.com
scrosland@jonesday.com
jha@jonesday.com

Sarah Welch (No. 99171)
Jesse T. Wynn (No. 101239)
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
T: (216) 586-3939
swelch@jonesday.com
jwynn@jonesday.com

*Counsel for Proposed Intervenors
The Republican National Committee
And The Ohio Republican Party*

Heather L. Buchanan
Michael A. Walton
Stephen P. Tabatowski
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Heather.Buchanan@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Stephen.Tabatowski@OhioAGO.gov

Counsel for Respondent

Freda J. Levenson (0045916)
Counsel of Record
Amy Gilbert (0100887)
ACLU of Ohio Foundation
4506 Chester Avenue
Cleveland, OH 44102
Phone: (614) 586-1959
Fax: (216) 763-9580
flevenson@acluohio.org
agilbert@acluohio.org

Carlen Zhang-D'Souza (0093079)
ACLU of Ohio Foundation
1108 City Park Avenue Suite 203
Columbus, OH 43206
Phone: (614) 586-1959
Fax: (216) 763-9580
czhangdsouza@acluohio.org

Megan C. Keenan
American Civil Liberties Union
915 15th Street NW
Washington, DC 20001
(740) 632-0671
mkeenana@aclu.org

Sophia Lin Lakin
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004 (212) 549-2500
slakin@aclu.org

*Counsel for Amici Curiae League of Women
Voters of Ohio and Ohio State Conference
of the NAACP*

MOTION TO INTERVENE

The Republican National Committee and the Ohio Republican Party (collectively, the “Republican Committees”) respectfully move to intervene as respondents in this original action as a matter of right for purposes of defending their interests under Civ.R. 24(A)(2). Alternatively, the Republican Committees seek permissive intervention under Civ.R. 24(B)(2).

A Memorandum in Support of this Motion follows. The Republican Committees also attach a proposed Answer under Civ.R. 24(C), and a proposed merit brief in accordance with the Court’s September 30, 2024 order.

Undersigned counsel contacted counsel for Relators and counsel for Respondent on October 3, 2024. Counsel for Relators stated that Relators oppose this motion. Counsel for Respondent stated that Respondent consents to this motion.

Respectfully submitted,

/s/ John M. Gore

John M. Gore* (*pro hac vice* forthcoming)

**Counsel of Record*

E. Stewart Crosland

Joshua S. Ha

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

T: (202) 879-3939

jmgore@jonesday.com

scrosland@jonesday.com

jha@jonesday.com

Sarah Welch (No. 99171)
Jesse T. Wynn (No. 101239)
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
T: (216) 586-3939
swelch@jonesday.com
jwynn@jonesday.com

*Counsel for Proposed Intervenors The Republican National Committee
And The Ohio Republican Party*

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTRODUCTION	1
BACKGROUND	3
ARGUMENT	4
A. The Republican Committees Have a Right to Intervene Under Rule 24(A).	4
B. Alternatively, the Court Should Grant Permissive Intervention.	9
CONCLUSION.....	11

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>A. Philip Randolph Inst. of Ohio v. LaRose</i> , 2020 WL 5524842 (N.D. Ohio Sept. 15, 2020).....	2
<i>Builders Assn. of Greater Chicago v. City of Chicago</i> , 170 F.R.D. 435 (N.D. Ill. 1996).....	10
<i>Clark v. Putnam Cty.</i> , 168 F.3d 458 (11th Cir. 1999)	8
<i>Cleveland Cty. Assn. for Govt. by the People v. Cleveland Cty. Bd. of Commrs.</i> , 142 F.3d 468 (D.C. Cir. 1998).....	9
<i>Democratic Natl. Comm. v. Bostelmann</i> , 2020 WL 1505640 (W.D. Wis. Mar. 28, 2020).....	10
<i>Dept. of Adm. Servs., Office of Collective Bargaining v. State Emp. Relations Bd.</i> , 54 Ohio St.3d 48 (1990).....	4
<i>EnerVest Operating, L.L.C. v. JSMB0912 LLC</i> , 2018-Ohio-3322 (11th Dist.)	5
<i>Fund for Animals, Inc. v. Norton</i> , 322 F.3d 728 (D.C. Cir. 2003).....	8
<i>In re Sierra Club</i> , 945 F.2d 776 (4th Cir. 1991)	8
<i>Ind. Ins. Co. v. Murphy</i> , 2006-Ohio-1264 (3d Dist.).....	6
<i>Intralot, Inc. v. Director, Ohio Dept. of Adm. Servs.</i> , Franklin C.P. No. 17-CV-1669 (Mar. 22, 2019).....	8, 9
<i>League of Women Voters of Ohio v. LaRose</i> , No. 1:23-cv-02414, Dkt. 25 (N.D. Ohio Feb. 6, 2024).....	1
<i>League of Women Voters of Ohio v. LaRose</i> , No. 2:20-cv-3843, Dkt. No. 35 (S.D. Ohio Sept. 4, 2020)	2
<i>Meek v. Metro. Dade Cty., Fla.</i> , 985 F.2d 1471 (11th Cir. 1993), <i>abrogated on other grounds by Dillard v. Chilton Cty. Comm.</i> , 495 F.3d 1324 (11th Cir. 2007)	8

<i>Mich. State AFL-CIO v. Miller</i> , 103 F.3d 1240 (6th Cir. 1997)	6
<i>Miller v. Blackwell</i> , 348 F.Supp.2d 916 (S.D.Ohio 2004)	2
<i>Ohio Democratic Party v. Blackwell</i> , 2005 WL 8162665 (S.D.Ohio Aug. 26, 2005).....	6
<i>Ohio Democratic Party v. Husted</i> , 834 F.3d 620 (6th Cir. 2016)	1
<i>Priorities USA v. Nessel</i> , 2020 WL 2615504 (E.D.Mich. May 22, 2020).....	2
<i>Serv. Emps. Internatl. Union Local 1 v. Husted</i> , 515 Fed.Appx. 539 (6th Cir. 2013).....	5
<i>Shays v. Fed. Election Comm.</i> , 414 F.3d 76 (D.C. Cir. 2005).....	2, 6, 7
<i>Sierra Club v. Glickman</i> , 82 F.3d 106 (5th Cir. 1996)	8
<i>State ex rel. Espen v. Wood Cty. Bd. of Elections</i> , 2017-Ohio-8223	2, 4
<i>State ex rel. First New Shiloh Baptist Church v. Meagher</i> , 82 Ohio St.3d 501 (1998).....	5
<i>State ex rel. Hoag v. Lucas Cty. Bd. of Elections</i> , 2010-Ohio-1167	5
<i>State ex rel. Knowlton v. Noble Cty. Bd. of Elections</i> , 2010-Ohio-4450	6
<i>State ex rel. Merrill v. Ohio Dept. of Natural Resources</i> , 2011-Ohio-4612	4, 9, 10
<i>State ex rel. Ohio Democratic Party v. LaRose</i> , 2020-Ohio-1253	5
<i>State ex rel. Painter v. Brunner</i> , 2011-Ohio-35	5
<i>State ex rel. SuperAmerica Group v. Licking Cty. Bd. of Elections</i> , 80 Ohio St.3d 182 (1997).....	4, 7, 8, 10

<i>Utah Assn. of Counties v. Clinton</i> , 255 F.3d 1246 (10th Cir. 2001)	8
--	---

<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	5
---	---

STATUTES

52 U.S.C. 30101(14)	3
---------------------------	---

R.C. 3501.01(F)(1).....	3
-------------------------	---

OTHER AUTHORITIES

Rule 24(A)	passim
------------------	--------

Rule 24(B).....	3, 9
-----------------	------

Rule 24(C).....	3, 11
-----------------	-------

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

The Republican National Committee and the Ohio Republican Party (collectively, the “Republican Committees”) respectfully move to intervene to defend against the belated request of the Ohio Democratic Party (ODP) for the extraordinary remedy of mandamus. The Republican Committees support the Secretary of State’s reasonable, neutral, and commonsense Directive 2024-21 (the “Directive”), which sensibly facilitates and safeguards the return of voters’ completed absentee ballots to election officials. The Directive helps to ensure not only that it remains “easy to vote in Ohio,” *Ohio Democratic Party v. Husted*, 834 F.3d 620, 628 (6th Cir. 2016), but also that Ohio’s elections are secure and trusted by voters across the political spectrum. The Republican Committees therefore seek to intervene to defend their substantial interest in the outcome of this mandamus request.

As the Directive recounts, Secretary LaRose promulgated it at least in part to address “a recent federal court decision applying Section 208 of the Voting Rights Act” to “Ohio’s prohibition on ballot harvesting.” Directive at 1. The Republican Committees were granted intervention as defendants in that federal case and actively litigated the federal plaintiffs’ challenges to Ohio’s ballot-harvesting prohibition. *See League of Women Voters of Ohio v. LaRose*, No. 1:23-cv-02414, Dkt. 25 (N.D. Ohio Feb. 6, 2024). The Republican Committees therefore have an obvious interest in upholding the Directive, in ensuring the maximum lawful application of Ohio’s ballot-harvesting prohibition, and in preserving the narrow scope of the federal court’s remedy, which is the thrust of ODP’s mandamus action. *See* Compl. ¶¶ 30–33.

In addition to those case-specific interests, the Republican Committees have a host of other interests that warrant granting intervention. Indeed, the federal court’s grant of intervention comports with the nationwide trend of courts—including this Court—routinely granting intervention to political parties in cases challenging election laws under which those parties, their

voters, and their candidates exercise their constitutional rights to participate in elections. *See, e.g., State ex rel. Espen v. Wood Cty. Bd. of Elections*, 2017-Ohio-8223, ¶ 5; *A. Philip Randolph Inst. of Ohio v. LaRose*, 2020 WL 5524842 (N.D. Ohio Sept. 15, 2020); *League of Women Voters of Ohio v. LaRose*, No. 2:20-cv-3843, Dkt. No. 35 (S.D. Ohio Sept. 4, 2020); *Priorities USA v. Nessel*, 2020 WL 2615504 (E.D. Mich. May 22, 2020); *Miller v. Blackwell*, 348 F.Supp.2d 916, 918, fn. 3 (S.D. Ohio 2004).

Here as well, the Republican Committees seek to protect their own, their voters', and their candidates' interests in upholding the rules for free and fair elections the Ohio Legislature has enacted and Secretary LaRose has promulgated. Those interests include the Committees' interests in preventing changes to the "competitive environment" of elections. *See Shays v. Fed. Election Comm.*, 414 F.3d 76, 85 (D.C. Cir. 2005). They also include the Republican Committees' interests in protecting their members' votes against dilution from the counting of invalid ballots in contravention of the Directive, and in securing certainty regarding their members' rights and obligations if they choose to exercise their right to vote by methods affected by the directive. And the Republican Committees also have an interest in avoiding the unrecoverable diversion of their scarce resources that would occur if ODP's requested relief were granted.

This Court should grant the Republican Committees' motion to intervene, whether as a matter of right or discretion. The Republican Committees have a right to intervene because this motion is timely and they have a substantial interest in the validity of the Challenged Provisions that they can protect only by participating in this case. *See Civ.R. 24(A)(2)*. Alternatively, the Court should exercise its discretion to allow the Republican Committees to intervene because their defenses address questions before the Court. *See Civ.R. 24(B)(2)*. As required by Rule 24(C), the Republican Committees have attached a proposed Answer to Relators' Verified Complaint. The

Republican Committees have also attached a proposed merit brief as contemplated by the Court's September 30, 2024 Order.

BACKGROUND

The Republican National Committee. The Republican National Committee ("RNC") is the national committee of the Republican Party as defined by 52 U.S.C. 30101(14). The RNC manages the Republican Party's business at the national level, including development and promotion of the Party's national platform and fundraising and election strategies; supports Republican candidates for public office at all levels across the country, including those on the ballot in Ohio; and assists state parties throughout the country, including the Ohio Republican Party, to educate, mobilize, assist, and turn out voters. The RNC has made significant contributions and expenditures in support of Republican candidates up and down the ballot and in mobilizing and educating voters in Ohio in the past many election cycles, is doing so in 2024, and intends to continue doing so in future election cycles. The RNC has a substantial and particularized interest in ensuring that Ohio carries out free and fair elections.

The Ohio Republican Party. The Ohio Republican Party is a "[m]ajor political party" as defined by Ohio Revised Code 3501.01(F)(1). Its general purpose is to promote and assist Republican candidates who seek election or appointment to partisan federal, state, or local offices in Ohio. It works to accomplish this purpose by, among other things, devoting substantial resources toward educating, mobilizing, assisting, and turning out voters in Ohio. The Ohio Republican Party has made significant contributions and expenditures to support Republican candidates in Ohio for many election cycles, is doing so again in 2024, and intends to continue doing so in future election cycles. It has a substantial interest in ensuring that Ohio runs free, fair, and trusted elections under Ohio law.

The Ohio Republican Party regularly recruits and trains election workers and engages in voter education and turnout efforts. On behalf of its members, who may be voters or election workers, the Ohio Republican Party has a particularized interest in knowing the exact requirements for mailing or dropping off ballots, and for judging those ballots, so that those members may properly carry out their obligations as voters and election workers.

Procedural Background. Relators ODP, Norman Wernet, and Eric Duffy filed this lawsuit on September 27, 2024. Under the Court’s September 30, 2024 Order, the Respondent’s merit brief is due today, October 4, 2024. The Republican Committees now seek to intervene before the deadline for the Respondent’s merit brief.

ARGUMENT

Whether as of right or as a matter of discretion, this Court should grant the Republican Committees’ motion under Rule 24.

A. The Republican Committees Have a Right to Intervene Under Rule 24(A).

“[A]nyone shall be permitted to intervene in an action[] . . . when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” Civ.R. 24(A)(2). This Court construes Rule 24 “liberally to permit intervention.” *Espen*, 2017-Ohio-8223, at ¶ 5; *State ex rel. Merrill v. Ohio Dept. of Natural Resources*, 2011-Ohio-4612, ¶ 3, 38–45; *see Dept. of Adm. Servs., Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 51 (1990); *State ex rel. SuperAmerica Group v. Licking Cty. Bd. of Elections*, 80 Ohio St.3d 182, 184 (1997) (per curiam).

A proposed intervenor satisfies Rule 24(A) if: (1) the motion to intervene is timely; (2) the party has an interest in the property or transaction that is the subject matter of the case; (3) the

party's ability to protect its interest will be impaired without intervention; and (4) the existing parties may not adequately represent the party's interest. *See* Civ.R. 24(A)(2). As explained above, Ohio courts (and federal courts, which apply an analogous rule) regularly grant political parties intervention in election-law cases. *See State ex rel. Ohio Democratic Party v. LaRose*, 2020-Ohio-1253, ¶ 2 (per curiam) (Libertarian Party of Ohio); *State ex rel. Painter v. Brunner*, 2011-Ohio-35, ¶ 20 (per curiam) (Ohio Democratic Party); *State ex rel. Hoag v. Lucas Cty. Bd. of Elections*, 2010-Ohio-1167 (Lucas County Republican Party). For good reason: "the right to vote 'is regarded as a fundamental political right, because [it is] preservative of all rights,'" *Serv. Emps. Internatl. Union Local 1 v. Husted*, 515 Fed.Appx. 539, 543 (6th Cir. 2013) (per curiam), quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), so political parties have obvious interests in intervening in disputes regarding state laws regulating the exercise of that right by their members and voters.

Here as well, the Republican Committees meet each requirement to intervene of right. *First*, this motion is timely. Courts consider several factors in the timeliness analysis: the point to which the case has progressed; the purpose for intervention; when the intervenors knew (or should have known) of their interest in the case; prejudice to the parties; and any unusual circumstances that support (or cut against) intervention. *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503 (1998) (per curiam). No factor is dispositive; timeliness "depends on the facts and circumstances of [each] case." *Id.*

The Republican Committees' motion to intervene could scarcely have been more timely. This case is still in its infancy. ODP filed this suit just seven days ago. *See, e.g., EnerVest Operating, L.L.C. v. JSMB0912 LLC*, 2018-Ohio-3322, ¶ 33 (11th Dist.) (intervention timely after five-month delay); *Ind. Ins. Co. v. Murphy*, 2006-Ohio-1264, ¶ 6 (3d Dist.) (six weeks after complaint); *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (two weeks). The

Republican Committees' intervention will prejudice no party and will not delay proceedings; the Committees' merit brief is submitted with this motion, in accordance with the Court's expedited schedule. *See* Case Announcements, 2024-Ohio-4746 (Sept. 30, 2024). And the nature of this case—with implications for the upcoming election—favors allowing one of Ohio's major political parties to intervene in a suit brought by the other.

Second, the Republican Committees have a substantial interest in the subject of this action. As ODP's own Complaint alleges, political parties and candidates have an interest in cases that may impact the electoral prospects of the candidates they support. *See* Compl. ¶ 15–18; *e.g.*, *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, 2010-Ohio-4450, ¶ 26 (per curiam) (intervention by write-in candidate). So too here, “there is no dispute that the [Republican Committees] ha[ve] an interest in the subject matter of this case, given the fact that changes in voting procedures could affect candidates running as Republicans and voters who were members of the Ohio Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005).

For example, the Republican Committees have a substantial interest in preventing changes to the “competitive environment” in which Ohio's elections are conducted. *Shays*, 414 F.3d at 85. Because the Republican Committees' candidates seek election or reelection “in contests governed by the challenged rules” promulgated in the Directive, they have an interest in “demand[ing] adherence” to those requirements. *Id.* at 88.

But “[i]f [ODP] is victorious in this case,” those rules will be set aside and Ohio's electoral landscape will be substantially altered in the final days leading up to the opening of early voting on Tuesday, October 8, as well as the entire imminent 2024 general election in which millions of Ohioans will cast their votes for President, U.S. Senator, U.S. Representative, and scores of state and local offices. *SuperAmerica*, 80 Ohio St.3d at 184. Moreover, a court order changing those

rules would inflict irreparable harm on ORP by requiring it to divert its scarce resources away from its core campaign activities and toward activities designed to offset the political disadvantage it would suffer from invalidation of the Directive. Indeed, just as ODP alleges that the Directive requires it to “expend additional resources” on voter education and related activities, *see* Compl. ¶ 18, the Republican Committees would be required to divert resources in response to a court order invalidating the Directive. And by requiring election officials to count ballots that are invalid under Ohio law and the Directive, such a court order could even flip the result of one or more closely contested election races this year or in the future to the detriment of ORP, its voters, and its supported candidates.

Third, the Republican Committees’ ability to protect their interests hinges on intervention. *See* Civ.R. 24(A)(2). If ODP’s action succeeds, the validity of ballots returned by somebody other than the voter will come into doubt, potentially jeopardizing the integrity and fairness of the November 2024 general election. Furthermore, unless allowed to intervene, the Republican Committees have no way to “defend their concrete interests” in, among other things, winning elections. *Shays*, 414 F.3d at 86. ODP’s suit could “fundamentally alter the environment” for the upcoming election by changing the rules for returning absentee ballots at the last minute and, thus, expose the Republican Committees to a “broader range of competitive tactics than” Ohio law “would otherwise allow.” *Id.* It could also require ORP to divert its scarce resources, or even result in flipping the outcome of one or more election races in Ohio from one in which the Republican candidate prevails to one in which the Democratic candidate is declared the winner. Suffice it to say, any and all of these results would directly prejudice the Republican Committees and their candidates in the upcoming election. The Republican Committees can protect their interests in avoiding these results only by intervening and defending the Directive in this suit.

Finally, no other party can adequately represent the Republican Committees' interests. This Court has indicated that political parties generally should be permitted to intervene in election-related litigation, even when a party named to the litigation *may* protect their interests. See *SuperAmerica*, 80 Ohio St.3d at 184. ODP obviously does not represent the Republican Committees' interest in electing Republican candidates.

Moreover, the Secretary's generalized interest in enforcing the law is "different" from the Republican Committees' private interests. See *Intralot, Inc. v. Director, Ohio Dept. of Adm. Servs.*, Franklin C.P. No. 17-CV-1669, 4 (Mar. 22, 2019); *Utah Assn. of Counties v. Clinton*, 255 F.3d 1246, 1255–1256 (10th Cir. 2001). For one thing, the Secretary has no interest in electing particular candidates. Cf. *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (per curiam). For another, he must consider a "broad spectrum of views." *Clinton* at 1256. These may include the "expense of defending" the current laws, *Clark v. Putnam Cty.*, 168 F.3d 458, 461–462 (11th Cir. 1999); the "social and political divisiveness of the election issue," *Meek v. Metro. Dade Cty., Fla.*, 985 F.2d 1471, 1478 (11th Cir. 1993) (per curiam), *abrogated on other grounds by Dillard v. Chilton Cty. Comm.*, 495 F.3d 1324 (11th Cir. 2007) (per curiam); and the interests of opposing parties, *In re Sierra Club*, 945 F.2d 776, 779–780 (4th Cir. 1991).

For these reasons, courts across the country have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). In *Intralot*, for example, the court allowed a private party to intervene under Rule 24(A) despite its alignment with government defendants, noting the intervenor had a "commercial property interest that [was] different than" the government-defendants' interest. *Intralot* at 4. The Republican Committees similarly have different interests from the Secretary. And while they agree with the position taken in the Secretary's initial answer

to ODP's Complaint, the Committees' and the Secretary's interests may diverge in merits briefing. *See Cleveland Cty. Assn. for Govt. by the People v. Cleveland Cty. Bd. of Commrs.*, 142 F.3d 468, 474 (D.C. Cir. 1998) (per curiam).

Accordingly, the Republican Committees respectfully request that the Court grant intervention as of right under Rule 24(A)(2).

B. Alternatively, the Court Should Grant Permissive Intervention.

Even if the Court disagrees that intervention of right is warranted, it should permit the Republican Committees to intervene as a matter of discretion under Rule 24(B). And because the Republican Committees “[meet] the requirements for permissive intervention,” the Court may grant their motion under Rule 24(B) and “need not analyze intervention as of right.” *Merrill*, 2011-Ohio-4612, at ¶ 44.

Rule 24(B)(2) authorizes courts to permit anyone to timely intervene “when [the] applicant’s claim or defense and the main action have a question of law or fact in common.” Civ.R. 24(B)(2). Permissive intervention is within the Court’s discretion. *Merrill*, 2011-Ohio-4612, at ¶ 41. “In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Civ.R. 24(B)(2).

Rule 24(B), like Rule 24(A), is “liberally” construed “to permit intervention.” *Merrill*, 2011-Ohio-4612, at ¶ 41. And this Court has explained that even if a proposed intervenor cannot meet Rule 24(A)(2)’s requirements—for instance, because an existing party will adequately protect the intervenor’s interest—a court nevertheless should allow intervention under Rule 24(B). Indeed, in *SuperAmerica*, the Ohio Supreme Court permitted intervention even though the party opposing intervention noted that the Republican Committees’ defenses were “identical” to the government-defendant’s interest. 80 Ohio St.3d at 184.

This case is no different. The Republican Committees will assert defenses that “manifestly raise questions of law and fact in common with those raised” by the parties. *Id.* ODP asserts an interpretation of Ohio law that would allow individuals to return other individuals’ absentee ballots without the attestation safeguard the Directive requires. The Republican Committees oppose that assertion and maintain that the Directive and the attestation safeguard are lawful and well within the Secretary’s statutory authority to promulgate.

Moreover, as other courts have recognized, granting Republican Party entities permissive intervention in election-related cases brought by Democratic Party entities is appropriate because Republican Party entities are “direct counterparts” to Democratic Party entities and, thus, “are uniquely qualified to represent the ‘mirror-image’ interests of” those entities. *Democratic Natl. Comm. v. Bostelmann*, 2020 WL 1505640, *5 (W.D.Wis. Mar. 28, 2020), quoting *Builders Assn. of Greater Chicago v. City of Chicago*, 170 F.R.D. 435, 440 (N.D.Ill. 1996). ODP’s own Complaint confirms the point, highlighting that ODP serves as “one of Ohio’s two legally recognized major political parties whose candidates for local, state, and federal office will stand for election” in November, Compl. ¶ 15—the other being the Ohio Republican Party.

Finally, allowing the Republican Committees to intervene will not delay this case or prejudice any party, *see Merrill*, 2011-Ohio-4612, at ¶ 44, because, as explained, the motion is timely, *see supra* Section A. The Republican Committees have complied with the Court’s deadline for submitting its merit brief and will follow any schedule the Court sets going forward. And allowing them to intervene would avoid potential prejudice by eliminating the prospect of piecemeal litigation or the need for collateral challenges to a settlement or appeals from an order that may prejudice the Republican Committees.

CONCLUSION

The Court should grant the Republican Committees' motion for intervention. An Answer to Relators' Verified Complaint is attached as required by Rule 24(C). Republican Committees also attach a proposed merit brief in accordance with the Court's September 30, 2024 order.

Respectfully submitted,

/s/ John M. Gore

John M. Gore* (*pro hac vice* forthcoming)

**Counsel of Record*

E. Stewart Crosland

Joshua S. Ha

JONES DAY

51 Louisiana Avenue, N.W.

Washington, D.C. 20001

T: (202) 879-3939

jmgore@jonesday.com

scrosland@jonesday.com

jha@jonesday.com

Sarah Welch (No. 99171)
Jesse T. Wynn (No. 101239)
JONES DAY
901 Lakeside Avenue
Cleveland, Ohio 44114
T: (216) 586-3939
swelch@jonesday.com
jwynn@jonesday.com

*Counsel for Proposed Intervenors The Republican National Committee
and The Ohio Republican Party*

CERTIFICATE OF SERVICE

I certify that a on October 4, 2024, copy of the foregoing was filed electronically using the Court's e-filing system and served via electronic mail upon the following counsel:

Donald J. McTigue
Stacey N. Hauff
McTigue & Colombo, LLC 545
East Town Street Columbus,
Ohio 43215
dmctigue@electionlawgroup.com
shauff@electionlawgroup.com

Ben Stafford
Elias Law Group LLP
1700 Seventh Avenue, Suite 2100
Seattle, WAS 98101
bstafford@elias.law

Jyoti Jasrasaria
Marisa A. O'Gara
Elias Law Group LLP
250 Mass. Ave. NW, Suite 400
Washington, DC 20001
jjasrasaria@elias.law
mogara@elias.law

Counsel for Relators

Heather L. Buchanan
Michael A. Walton
Stephen P. Tabatowski
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Heather.Buchanan@OhioAGO.gov
Michael.Walton@OhioAGO.gov
Stephen.Tabatowski@OhioAGO.gov

Counsel for Respondent

Freda J. Levenson (0045916)
Counsel of Record
Amy Gilbert (0100887)
ACLU of Ohio Foundation
4506 Chester Avenue
Cleveland, OH 44102
Phone: (614) 586-1959
Fax: (216) 763-9580
flevenson@acluohio.org
agilbert@acluohio.org

Carlen Zhang-D'Souza (0093079)
ACLU of Ohio Foundation
1108 City Park Avenue Suite 203
Columbus, OH 43206
Phone: (614) 586-1959
Fax: (216) 763-9580
czhangdsouza@acluohio.org

Megan C. Keenan
American Civil Liberties Union
915 15th Street NW
Washington, DC 20001
(740) 632-0671
mkeenana@aclu.org

Sophia Lin Lakin
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004 (212) 549-2500
slakin@aclu.org

*Counsel for Amici Curiae League of Women Voters
of Ohio and Ohio State Conference of the NAACP*

/s/ John M. Gore
John M. Gore