IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* Ohio Democratic Party, *et al.*, **Relators,** **v.** **Frank LaRose, in his official capacity as Ohio Secretary of State,** **Respondent.**	**Case No. 2024-1361** Original Action in Mandamus Pursuant to Article IV, Section 2(B)(1)(b) of the Ohio Constitution Expedited Election Case Pursuant to Supreme Court Rule of Practice 12.08 Peremptory and Alternative Writs Requested

RELATORS' RESPONSE IN OPPOSITION TO MOTION TO INTERVENE OF THE REPUBLICAN NATIONAL COMMITTEE AND OHIO REPUBLICAN PARTY

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INTRODUCTION

In this case, the Ohio Democratic Party and two individual voters bring a mandamus action against Secretary of State LaRose, contending that his issuance of Directive 2024-21 violates his clear legal duties under Ohio law. The Republican National Committee and the Ohio Republican Party (the "Republican Committees") have moved to intervene because they think the Directive is good policy, and they would like the Court to uphold it. The Court should deny the motion.

First, given the particular posture of this case, the motion to intervene comes too late—it was filed seven days after Relators filed suit, three days after the Secretary's deadline to file his Answer, two days after Relators had submitted their merit brief and evidence in this case, and one business day before Relators' reply brief is due. As the proposed intervenors are no doubt aware, this Court's Rules expedite matters related to a pending election in the final 90 days before that election, "[b]ecause of the necessity of a prompt disposition of" such cases. S.Ct.Prac.R. 12.08. As a result, the Republican Committees should have been fully aware that this action would move extremely quickly, yet they give no reason for their failure to promptly seek intervention here.

Second, courts have generally required political parties seeking to intervene in election law cases to show that they or their members are likely to suffer some *actual* financial or electoral harm as a result of the lawsuit. The Republican Committees cannot do so because the relief sought by Relators will inure to the benefit of Republican, Democratic, and independent voters alike. And even if the Committees' generalized interest in electoral "fairness" were cognizable, they fail to demonstrate how any outcome in this lawsuit, which simply seeks to ensure Ohio laws are followed, would be *unfair* to them. Nor does their generalized interest in upholding the Directive—an interest that the Secretary clearly shares—entitle the Committees to intervene as of right.

Third and finally, the Republican Committees' purported interests are already adequately and ably represented by the Secretary, through the Attorney General. Indeed, the Republican

Committees merely parrot the Secretary's legal obligations as their own private pursuits and bring no new arguments to the table that are unique to them. And because the Committees bring nothing to this litigation other than duplicative filings and redundant argument, the Court should also reject their alternative request for permissive intervention.

ARGUMENT

This Court should deny the Republican Committees' motion to intervene. Ohio Rule of Civil Procedure 24(A)(2) provides that a movant is entitled to intervene, upon a "timely application," when they "claim[] an interest relating to the property or transaction that is the subject of the action" and are "so situated that the disposition of the action may as a practical matter impair or impede" their "ability to protect that interest," *unless* their interest is "adequately represented by existing parties." Rule 24(B)(2) allows a court to permit an applicant's intervention based on a showing that the applicant's claim or defense has a question of law or fact in common with the "main action." 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). The Republican Committees cannot meet their burden to show that the requirements for intervention, whether as of right or permissive, are met here.

I. The Republican Committees' motion is untimely, such that the Committees may not intervene as of right or permissively.

Because the Republican Committees' motion is untimely, it should be denied under both Rules 24(A)(2) and (B)(2). *See Univ. Hosps. of Cleveland, Inc. v. Lynch*, 2002-Ohio-3748, ¶ 47 (2002) ("Both Civ.R. 24(A)(1), providing for intervention as of right in an action when a statute of this state confers an unconditional right to intervene, and Civ.R. 24(B), providing for permissive intervention generally, require a party seeking intervention to make 'timely application.'"). To determine timeliness, this Court considers (1) the point to which the action in which intervention

is sought has progressed, (2) the purpose for which intervention is sought, (3) the length of time between the point at which the party who seeks to intervene knew or reasonably should have known of his interest in the case, (4) any prejudice to the original parties resulting from the proposed intervenor's failure to seek to intervene earlier in the proceedings, and (5) the existence of unusual circumstances militating against or in favor of the proposed intervention. *Id.* ¶ 48. Here, all five factors counsel against granting the Republican Committees' motion.

First and foremost, the case is nearly complete. Relators filed their mandamus action on September 27, 2024, under this Court's rule for expedited election cases. S.Ct.Prac.R. 12.08. This Court then further expedited its consideration by *sua sponte* entering a scheduling order on Monday, September 30. *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4746. Pursuant to the Court's schedule, the Secretary filed his Answer on Tuesday, October 1, and Relators filed their merit brief and evidence on Wednesday, October 2. The case will be ripe for decision at 3 p.m. on Monday, October 7.

The Republican Committees did not even file their motion to intervene until Friday, October 4, three days *after* the Secretary's deadline to Answer, just minutes before the Secretary's deadline to file his merit brief and evidence, one business day before the case is fully briefed, and after *seventy percent* of the ten-day case schedule had elapsed. Given the "facts and circumstances of the case," intervention comes far too late. *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503 (1998) ("Whether a Civ.R. 24 motion to intervene is timely depends on the facts and circumstances of the case."). Indeed, this Court has previously found persuasive the contention that a motion to intervene and answer were untimely because they were filed just one day after the existing respondent's deadline to respond to the complaint. *State ex rel. McCord v. Delaware Cnty. Bd. of Elections*, 2005-Ohio-4758, ¶ 20. Here, the proposed intervenors

filed their proposed answer in intervention three days after the deadline to response to the Complaint. That is untimely.

Second, the Republican Committees offer no purpose for their intervention beyond advancing arguments that the Secretary, through the Attorney General, is capably pursuing. *See infra* Part IV.

Third, the Republican Committees offer no reason to suggest that they did not know of their interest immediately after this case was filed. *See State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cnty. Bd. of Elections*, 2007-Ohio-5379, ¶ 22 (denying intervention where proposed intervenor "should have known of the filing of this case" but "waited until after the parties filed their evidence and briefs before requesting intervention"); *see also, e.g.*, *State ex rel. Mason v. Griffin*, 2004-Ohio-6384, ¶ 10 (same).

Fourth, Relators will be prejudiced if this Court grants intervention to the Committees at this late date. S.Ct.Prac.R. 12.08 expedites actions relating to a pending election "[b]ecause of the necessity of a prompt disposition of" such cases. Here, the Court expedited the matter even further, presumably in light of the necessity of issuing a decision quickly, where early and absentee voting begins tomorrow, on October 8, 2024. The interjection of the Republican Committees at this stage is prejudicial and threatens to delay resolution of this important, time-sensitive matter.

Finally, and to repeat, this is an election case, in which "[e]xtreme diligence and promptness are required . . . ." *State ex rel. Commt. for Charter Amendment, City Trash Collection v. City of Westlake*, 2002-Ohio-5302, ¶ 16. The Republican Committees have shown no such diligence or promptness here. Their motion should therefore be denied under both intervention standards, for its lack of timeliness alone.

II. The Republican Committees have no cognizable interest in this action.

Instead of identifying a direct and substantial interest in the outcome of this suit, the Republican Committees rely on conclusory statements and the unremarkable fact that political parties have sometimes been granted intervention in other cases touching on election law issues. Mot. at 11–13.[1] But it is not the case that political party committees may *always* intervene in election law cases. In fact, the Republican Committees primarily rely on *Ohio Democratic Party v. Blackwell*, No. 2:04-cv-1055, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005), but in that case, the court granted the Ohio Republican Party only *permissive* intervention, and acknowledged that "[i]t is debatable whether the Ohio Republican Party has an interest in the outcome of the case which differs from the interest of either the Ohio Secretary of State or the respective County Boards of Elections." *Id.*

Courts require political parties—like any other intervenor—to demonstrate that they are likely to suffer some cognizable harm if the relief sought by plaintiffs is granted. Courts have allowed intervention, for instance, when the outcome of a lawsuit threatens to create an uneven electoral playing field, such as by making it harder for a political party's supporters to vote or have their ballots counted, or leading to an end that would require the party to divert resources to educate or assist impacted voters to comply with voting requirements that may otherwise impede their access to the franchise. *E.g.*, *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3–4 (E.D. Cal. June 10, 2020); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *1 (D. Nev. Apr. 28, 2020); *cf. La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (granting intervention to political party committees that "expend significant resources in the recruiting and training of volunteers and poll watchers who participate in the

[1] The Republican Committees' brief does not include page numbers, so Relators refer to the page number of the PDF filing.

election process").

Here, the Republican Committees allege no such harm, nor could they. Relators' requested relief would restore the status quo rules that governed the 2024 primary, and make it easier for everyone to vote and have their ballots counted in accordance with statutory law—regardless of party affiliation. It would not impede anyone's access to the franchise, nor would it require the Republican Committees to expend resources to protect voters, because the lawsuit seeks only to *eliminate* a barrier to delivering ballots—in other words, no voter, Republican, Democrat, or otherwise, will be worse off if the Court directs the Secretary to rescind the Directive.

The Republican Committees suggest that their interest in this lawsuit is tied to the "competitive environment" in which elections are conducted. *See* Mot. at 13. But such an injury must be supported by a plausible allegation or showing of an "ongoing, unfair advantage." *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022). In other words, to claim "competitive" injury based on "fairness" of the electoral system, a party must "show that it is plausible that the field is 'tilted.'" *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1029 (D. Ariz. 2022), *aff'd sub nom. Lake v. Fontes*, 83 F.4th 1199 (9th Cir. 2023). It is not, as the Republican Committees assert, enough to simply allege that Republican candidates have an interest in "demand[ing] adherence" to the challenged requirements. Mot. at 13 (quoting *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005)). This is a classic generalized grievance—not an interest unique to the Republican Committees that requires their participation in the lawsuit. *See also TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021) ("[A]n injury in law is not an injury in fact.").[2]

[2] And in any event, Relators' lawsuit simply seeks to ensure compliance with Ohio and federal law. A competitive environment that complies with the law is not illegal.

III. None of the Republican Committees' purported interests will be impaired by this litigation.

Even assuming their generalized interest in election "fairness" could suffice under Rule 24(A)(2), the Republican Committees never explain how that interest is even implicated by this lawsuit—let alone likely to be impaired.

In fact, Relators' action is most likely to vindicate these interests. As Relators allege, the Directive is contrary to clear state law and also raises concerns under the Equal Protection Clause and Section 208 of the Voting Rights Act. Requiring the Secretary to conduct voting processes consistent with state and federal law will promote election integrity. Among other things, it will absolve elections officials from having to administer attestation forms, thereby improving administrative efficiency; eliminate an obstacle to absentee voting; remove a disincentive for potential voters who are unable to cast their ballots in person; and ensure that election results reflect the views of all qualified voters—even those who require assistance to return their ballots. All of this will enhance confidence in our electoral system. The Republican Committees bear the burden of substantiating their claim that the law threatens election "fairness," but they fail to do so; to the contrary, the history and circumstances of this action show otherwise.

The Republican Committees' citations to *Shays* are misguided. *See* Mot. at 14. In *Shays*, the court explained that, while a party claiming "competitive" harm need not "establish that but for certain . . . rules they could have won an election," they nonetheless must establish some "distinct risk" that "political rivals will exploit the challenged rules to their disadvantage." 414 F.3d at 91–92 (quotation omitted). To the extent the Republican Committees claim that removing restrictions that make voting harder will harm their candidates' electoral prospects, that argument rests on an unacceptable premise: a protectable legal interest in making it *harder* for some segments of the population—particularly those requiring assistance—to vote.

While courts have regularly held that political parties have an interest in protecting the voting rights of their members, no court has recognized an interest in making it *harder* for one's *political opponents* to vote. Disenfranchisement is not a direct, significant, or legally protectable interest. *Cf. Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (holding that a law that "makes it easier for some voters to cast their ballots by mail" "does not burden anyone's right to vote"). Moreover, as explained, improving access to absentee voting will benefit *all* voters—not just Democrats. If Democratic voters choose to take advantage of absentee voting in 2024 at higher rates than Republican voters—which is as of yet unknown—that does not mean that one side has been given an "unfair advantage." *Mecinas*, 30 F.4th at 897.

The Republican Committees fail to show that their purported interests will be impaired by this litigation as required to entitle them to intervene.

IV. The Secretary adequately represents the Republican Committees' purported interests.

The Republican Committees' generalized interest in upholding the Directive is adequately represented by the Secretary of State, and the motion to intervene can also be denied on this ground alone. The Republican Committees face an especially high hurdle here because the Secretary (a Republican), represented by the Attorney General (a Republican), is already defending the Directive and has the same "ultimate goal." *Nationwide Mut. Ins. Co. v. Clow*, No. C-910511, 1992 WL 247551, at *2 (1st Dist. Sept. 30, 1992) (cited in *State ex rel. Greene Cnty. Bd. of Commr's v. O'Diam*, 2019-Ohio-1676, ¶ 12). "Where the party seeking to intervene has the same ultimate goal as a party already in the suit, courts have applied a presumption of adequate representation, and to overcome that presumption, applicants ordinarily must demonstrate adversity of interest, collusion or nonfeasance." *Id.*

That presumption applies here. The Republican Committees' proposed merit brief shows

that they "ha[ve] taken the same position as the [Secretary]. . . . Thus, [Respondent] seek[s] the same ultimate goal as the [Republican Committees]." *Greene Cty. Bd. of Commissioners*, 2019-Ohio-1676, ¶ 12.[3] The Secretary "has both the full incentive and no less capability to advance the strictly legal arguments" against mandamus, and this Court should accordingly deny intervention of right. *Id.* ¶ 13; *see also State ex rel. Brown v. Bd. of Cnty. Comm'rs.*, 52 Ohio St. 2d 24, 26 (1977) (finding "that the Court of Appeals correctly determined that the Attorney General adequately represents the applicants for intervention, and properly denied the motion for intervention").

CONCLUSION

For the foregoing reasons, the Court should deny the Republican Committees' motion to intervene—both because the Committees meet none of Rule 24(A)(2)'s requirements to intervene as of right, and because the Committees' untimely intervention would unduly delay or prejudice adjudication of the parties' rights under Rule 24(B)(2).

[3] The Republican Committees acknowledge that merit briefing is critical to this Court's analysis of adequate representation. They suggest that "the Committees' and the Secretary's interests may diverge in merits briefing," Mot. at 16, but that did not transpire. Both merit briefs make the same basic arguments, and reveal no daylight between the Committees' and the Secretary's interests.

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Respectfully submitted,

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