

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
ACLU of South Carolina)	Civil Action No. 2024-CP-40-06286
Plaintiff,)	
)	
vs.)	
)	<u>MOTION TO INTERVENE</u>
State Election Commission; South)	
Carolina Department of Motor Vehicles.)	
)	
Defendants.)	
)	
)	

Pursuant to Rule 24, SCRCP, Thomas C. Alexander, in his official capacity as President of the Senate (“Intervenor” or “President Alexander”), respectfully moves the Court for leave to intervene in this matter, both as a matter of right and permissively.

This case involves a challenge to the statutorily prescribed requirements for qualification and registration of electors in South Carolina. In Chapters 1, 3, 5, and 7 of Title 7 of the South Carolina Code, the General Assembly has established a comprehensive process for qualifying and registering individuals to vote and has set forth the related duties and responsibilities of the State Election Commission and County Boards of Voter Registration and Election. In his capacity as President of the Senate, Senator Alexander seeks to intervene to defend the legislative branch’s efforts to promote free and fair elections in South Carolina.

STANDARD OF REVIEW

Rule 24(a) of the South Carolina Rules of Civil Procedure provides the following standard for intervening as a matter of right:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he

is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Rules of Civil Procedure "permit liberal intervention," especially when "judicial economy will be promoted by the declaration of the rights of all parties who may be affected." *Berkeley Elec. Coop., Inc. v. Mount Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). President Alexander readily satisfies the factors for intervention under this rule, as explained below.

ARGUMENT

I. This motion is timely filed, as Intervenor is seeking to intervene and to present a responsive pleading within the time for answering the complaint.

Rule 24(a)'s first requirement is that an application to intervene must be "timely." The Supreme Court has established four factors to consider when evaluating the timeliness of intervention:

- (1) "the time that has passed since the applicant knew or should have known of his or her interest in the suit";
- (2) "the reason for the delay";
- (3) "the stage to which the litigation has progressed"; and
- (4) "the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial."

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991).

There cannot be any legitimate dispute that this motion is timely. This lawsuit was filed on October 22, 2024, making this motion filed well within the time for serving a responsive pleading to the complaint. The case has not progressed beyond the simple filing of the complaint and a motion for injunctive relief, nor would Plaintiff suffer any prejudice if this motion is granted beyond having legitimate defenses presented in opposition to what are faulty claims.

II. Intervenor has a statutory right to intervene.

Because this motion is timely made, President Alexander should be allowed to intervene as a matter of right pursuant to Rule 24(a)(1), SCRCP. In the current Appropriations Act, just as it has for each of the last several years, the General Assembly has vested its leadership with “an unconditional right” to intervene in state court litigation challenging actions of the Legislature. *See* 2024–25 Appropriations Act § 91.25 (vesting the President of the Senate and the Speaker of the House of Representatives with “an unconditional right to intervene on behalf of their respective bodies in a state court action” that challenges “the constitutionality of a state statute; the validity of legislation; or any action of the Legislature”); *see also* *SCE&G v. Whitfield*, Case No. 3:18-cv-1795-JMC, 2018 U.S. Dist. LEXIS 120174, at *11 (D.S.C. July 18, 2018) (“Additionally, if a state statute or legislative act gives legislative leaders authority to defend legislative enactments, then the legislative leaders are able to intervene as a matter of right.”).¹ Because President Alexander’s intervention is as a matter of statutory right, the Court should grant this motion.

III. Because the purpose of this suit is to challenge the validity or constitutionality of a state statute(s), Intervenor has an interest in the subject matter of this case that would be impaired if he is not permitted to intervene.

Alternatively, President Alexander should be permitted to intervene as a matter of right under Rule 24(a)(2). In addition to timeliness, intervention under this section of the rule requires the proposed intervenor to have an “interest relating to the property or transaction which is the subject of the action,” and resolution of the case without the Intervenor’s involvement “may as a

¹ The United States Supreme Court reinforced the principle that state legislative bodies are authorized as a matter of right to intervene under the Federal Rules of Civil Procedure in challenges to state statutes, particularly when state law authorizes such intervention. *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. ____ (2022). Rule 24(a), SCRCP, “is the same as Federal Rule 24(a),” Note, Rule 24, SCRCP, and this Court should follow the same principle by allowing intervention here.

practical matter impair or impede his ability to protect that interest.” Rule 24(a)(2), SCRCPP. Just as with the timeliness inquiry, there is no legitimate dispute that Intervenor satisfies this requirement.

Interest in Subject Matter: The South Carolina Constitution vests authority with the General Assembly to provide for registration of voters. *See, e.g.*, S.C. Const. art. II, § 8 (“The General Assembly shall provide for the registration of voters for periods not less than ten years in duration. Provision shall be made for registration during every year for persons entitled to be registered. The registration lists shall be public records.”). The General Assembly “may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitutions” that advances a public purpose. *Moseley v. Welch*, 209 S.C. 19, 27, 39 S.E.2d 133, 137 (1946); *see City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (“The power of our state legislature is plenary, and therefore, the authority given to the General Assembly by our Constitution is a limitation of legislative power, not a grant.”).

Providing for the qualification and registration of voters and administration of the elections in which they participate is precisely what the General Assembly has done by way of statute. Because establishing these policies on behalf of the State is within the exclusive constitutional purview of the legislative branch, President Alexander—in his capacity as a legislative leader—has a significant interest in this litigation.

If the Court denies intervention, the legislative branch will be unable to defend its policy judgments or promote the legitimate state interests that are embodied in statute. It would be fundamentally improper for the Court to accept the Plaintiffs’ invitation to enjoin a duly enacted South Carolina law without also giving the legislative branch the opportunity to defend that same law.

Adequacy of Existing Parties: Nor do the existing parties “adequately present” the proposed Intervenor’s interests. While an intervenor bears the burden of demonstrating the inadequacy of representation, “[t]his burden is minimal and the applicant need only show that the representation of his interests ‘may be’ inadequate.” *Berkeley Electric Cooperative*, 302 S.C. at 191, 394 S.E.2d at 715.

The Supreme Court has established a three-factor test for assessing the “adequacy of representation” prong of the intervention analysis:

- (1) “whether the existing parties will undoubtedly make all of the intervenor’s arguments”;
- (2) “whether the existing parties are capable and willing to make such arguments”; and
- (3) “whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent.”

Id.

It is readily apparent that President Alexander meets each prong of this test. Regarding the first two, none of the existing parties can adequately represent legislative interests in this litigation because none of them bear the constitutional responsibility for establishing South Carolina law that the General Assembly does. While the existing defendants may share common goals with Intervenor, they are members of the executive branch of government, and none speak from the perspective of protecting and defending the work of the Legislature and its policy judgments.

As to the third prong, the General Assembly has recognized that its own leadership can best represent the Legislature’s interests where a state law is challenged, even if the Attorney General has also appeared in the case. In fact, the very law that gives President Alexander an unconditional right to intervene in state-level matters says that his involvement in litigation

“does not limit the duty of the Attorney General to appear and prosecute legal actions or defend state agencies, officers or employees as otherwise provided.” 2021–22 Appropriations Act § 91.25. Accordingly, the Court should recognize the importance of the Legislature’s participation as a matter of right in this challenge of state law and grant this motion pursuant to Rule 24(a)(2), SCRCP.

IV. President Alexander also meets the low threshold for permissive intervention.

Alternatively, the Court should permit President Alexander to intervene in this litigation as a defendant in his official capacity pursuant to Rule 24(b), SCRCP. That rule allows for permissive intervention when “a statute confers an unconditional right to intervene” or “an applicant’s claim or defense and the main action have a question of law or fact in common.” *Id.*

President Alexander meets this low threshold for permissive intervention. As explained above, this motion was filed almost immediately after the case began. And because the case is still in a preliminary stage, the addition of legislative leadership at the outset will not cause any delay or prejudice to the Plaintiffs or any other litigant, as Intervenor is prepared to meet any deadlines which may be established for adjudication of this case.

Plaintiff effectively asks this Court to suspend portions of duly enacted statutes that were designed by the General Assembly to provide for free, fair, safe, and secure elections. Thus, Intervenor seeks to participate in this case in order to protect these legislative interests. Accordingly, President Alexander should be permitted to intervene in this case to protect the legislative interests that are at issue in, and jeopardized by, this litigation.

CONCLUSION

For the reasons stated above, President Alexander respectfully request that the Court grant this motion and authorize him to intervene in this lawsuit as a defendant in his official

capacity. This motion shall be supported by all other memoranda, evidence, and arguments permitted by the Court. The below-signed counsel certifies it has conferred with Plaintiffs' counsel regarding the subject matter of this motion. Plaintiffs' counsel has indicated that Plaintiffs do not "understand the basis for intervention" and has not consented to the relief requested in this motion.

Additionally, pursuant to Rule 24(c), SCRCF, the Intervenor states that he intends to defend the challenged statute(s), and that he will respond to the complaint within the time permitted by the rules or as otherwise instructed by the Court.

Respectfully submitted,

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