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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND ACLU of South Carolina, Plaintiff, v. State Election Commission, South Carolina Department of Motor Vehicles, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT C/A No.: 2024-CP-40-06286 **SOUTH CAROLINA REPUBLICAN PARTY'S MOTION TO INTERVENE**

YOU WILL PLEASE TAKE NOTICE THAT the South Carolina Republican Party ("the SCGOP" or "the Party"), by and through the undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for Richland County for an order permitting it to intervene in the above-captioned matter for the limited purpose of protecting its interest in the outcome of this litigation pursuant to Rule 24(b), SCRCP.

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INTRODUCTION

The SCGOP is a political party representing thousands of South Carolina citizens. The Party's mission is to elect Republican candidates for elected offices across South Carolina. South Carolina law expressly and unambiguously gives the SCGOP—as well as all political parties—the sole authority and duty to ensure its candidates are qualified under South Carolina law and certify those qualified candidates to run in partisan primaries. The Court should permit the Party to intervene to protect its interest in ensuring entities such as the Plaintiff do not use the court system to alter the voter registration deadlines in lieu of seeking legislative changes.

ARGUMENT

"Intervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected." *Ken's Cabana, LLC v.*

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Flemington Props., LLC, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004). Rule 24 provides for two methods of intervention: intervention of right and permissive intervention. *See* Rule 24(a)–(b), SCRCP. The SCGOP meets the elements for permissive intervention.

Rule 24(b), SCRCP, provides as follows:

> Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the 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.

Rule 24(b)(1)–(2), SCRCP. In other words, "[a]n intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties." *Builders Mut. Ins. Co.*, 431 S.C. at 101, 847 S.E.2d at 91.

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The SCGOP meets all requirements for permissive intervention. *First*, this motion is timely. Plaintiff American Civil Liberties Union of South Carolina contemporaneously filed its complaint for declaratory and injunctive relief and its motion for temporary restraining order or preliminary injunction on October 22, 2024. Neither Defendant has answered or otherwise responded to the complaint at the time of the filing of this motion, and the hearing is scheduled for October 25, 2024. Further, the SCGOP understands several other interested parties intend to move to intervene in the coming days. Thus, the SCGOP's motion is timely. *See Davis v. Jennings*, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (stating "four-part test for determining timeliness"

looks at "(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" (internal citation omitted)).

Second, the SCGOP's defenses have questions of law or fact in common with the underlying action. Undoubtedly, the SCGOP has a fundamental interest in protecting the integrity of elections, and it plays a significant role in the election process. *See, e.g.*, *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam) (stating "the political parties" have a "statutory gatekeeping role" to play in elections). "Integrity in elections is foundational." *Id.* It is so foundational that the South Carolina Constitution mandates the General Assembly to fulfill and protect it. *See* S.C. CONST. art. 2, § 10 ("The General Assembly shall provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting, establish procedures for contested elections, and enact other provisions necessary to the fulfillment and integrity of the election process.").

Yet Plaintiff seeks to unravel the integrity of the 2024 General Election on its eve by asking the Court to order the State Election Commission and South Carolina Department of Motor Vehicles to add unknown persons on voter rolls without so much as a second look. And Plaintiff does so without a single named individual attesting who they are, how old they are, where they live, or whether they are qualified to vote. The SCGOP has an interest in defending the integrity of the 2024 General Election—and protecting its Republican candidates up and down the ballot—against Plaintiff's attempt to interfere with the election after it has already begun. Weighing in now would help avoid issues down the road.

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State and federal courts in South Carolina have consistently recognized the SCGOP's interest in participating in election related lawsuits. *See Bailey v. S.C. State Election Comm'n*, App. Case No. 2020-000642 (S.C. Sup. Ct. filed Apr. 28, 2020); *Kleckley v. Garrett, et al.*, No. 2024-CP-32-04088 (S.C. Ct. of Common Pleas filed Oct. 16, 2024); *Thomas v. Andino*, 335 F.R.D. 364, 367 (D.S.C. 2020); *Middleton v. Andino*, No. 3:20-cv-01730-JMC, ECF No. 27 (D.S.C. May 12, 2020). Indeed, the General Assembly is considering an amendment to Title 7 to provide that certified political parties have automatic standing in any suits regarding elections and election law. This lawsuit is exactly what the SCGOP has fought for: a seat for the political parties in litigation involving challenges to our state's election laws.

The SCGOP maintains that all candidates and elected officials representing certified political parties should be able to count on their respective political party's ability to represent their interests in election law cases, especially when considering the resources it takes to adequately do so. *Cf.* S.C. Code Ann. § 15-53-80 ("When declaratory relief is sought all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding."). For example, it would have no problem if the South Carolina Democratic Party wanted to weigh in on this matter too.

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As to the specific issue in this matter, over the past six years, the SCGOP has lobbied the South Carolina House of Representatives to reject legislation that would have altered the voter registration deadline from 30 days prior to Election Day to 25 days prior to Election Day. That misguided legislation would have reduced time for election offices to conduct due diligence to ensure that every person who registers to vote is legitimate, as well as to provide time for poll books to be correct. The SCGOP's position on the subject is based on hearing reports from other

states, which demonstrated that bad actors would drop thousands of registration applications on local county registrars at 5:00 P.M. on the last day of registration, and then return within a day or two and demand to take advantage of early or absentee voting. Such a short turnaround—whether in the now dead legislation or in this case—does not afford sufficient time or opportunity to political parties or election officials to ensure each voter is legitimate.

The SCGOP has maintained that reducing the number of days for registration will increase the likelihood that South Carolina will be the target of such efforts. Fortunately, because of the SCGOP's efforts, this legislation has been thwarted in the General Assembly. Arguably, the relief Plaintiff seeks has similar timing problems. Voter registration has closed, and voting is underway—absentee ballot voting for over two weeks and early voting for nearly one week.

Third, given that the lawsuit was filed a mere day ago, the SCGOP's participation will not delay or prejudice adjudication of the original parties' rights in this nascent stage of litigation. To that end, the SCGOP is filing an answer with this motion—even before Defendants have done so—and stands ready to attend the hearing scheduled for October 25, 2024 in this matter. *See* Ex. A, SCGOP's Proposed Answer. Its intervention therefore will not prejudice any party in any way.

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CONCLUSION

The Court should grant the SCGOP's motion to intervene permissively under Rule 24, SCRCP. Pursuant to Rule 11, SCRCP, the undersigned consulted with counsel for the parties before filing this motion. Counsel for the Plaintiff does not consent to this motion, whereas counsel for the South Carolina Election Commission and the South Carolina Department of Motor Vehicles consent to the Party's Motion to Intervene.

(Signature Page Follows)

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Respectfully submitted,

/s/Robert E. Tyson, Jr.

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Columbia, South Carolina
October 24, 2024

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