

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

_____)
COMMON CAUSE RHODE ISLAND,)
LEAGUE OF WOMEN VOTERS OF)
RHODE ISLAND, MIRANDA OAKLEY,)
BARBARA MONAHAN, and MARY)
BAKER,)

Plaintiffs,

v.

C.A. NO. 1:20-CV-00318-MSM

_____)
NELLIE M. GORBEA, in her official)
capacity as Secretary of State of Rhode)
Island; DIANE C. MEDEROS, LOUIS A.)
DESIMONE JR., JENNIFER L.)
JOHNSON, RICHARD H. PIERCE,)
ISADORE S. RAMOS, DAVID H.)
SHOLES, and WILLIAM E. WEST, in)
their official capacities as members of the)
Rhode Island Board of Elections,)

Defendants

**DEFENDANT SECRETARY OF STATE NELLIE M. GORBEA’S OBJECTION TO
EMERGENCY MOTION TO INTERVENE AS DEFENDANTS
BY THE REPUBLICAN NATIONAL COMMITTEE
AND THE RHODE ISLAND REPUBLICAN PARTY**

Defendant, Rhode Island Secretary of State Nellie M. Gorbea (“Secretary Gorbea”), hereby files her objection to the Emergency Motion to Intervene by the Republican National Committee and the Rhode Island Republican Party (“Motion to Intervene”). To be clear, Secretary Gorbea has no objection to the Republican National Committee and the Rhode Island Republican Party (jointly, the “Republicans”) being heard at the fairness hearing on the proposed Consent Judgment in this matter. However, Secretary Gorbea does object to the Motion to Intervene because, as explained below and in the Affidavit of Robert Rock, attached hereto as Exhibit 1, time is of the essence to provide mail ballots to eligible Rhode Island voters and have an orderly election.

BACKGROUND

This action was filed on July 23, 2020. The District Court held an in-chambers conference on July 24, 2020, and scheduled a hearing for Monday, July 27, 2020, if the parties deemed it necessary. The parties worked throughout the weekend to attempt to resolve the matter. By July 26, 2020, the parties reached agreement on a Consent Judgment that addressed the issues in this case and provided Rhode Islanders with a safe alternative of voting by mail in the upcoming September Primary Election and November General Election. In addition, the Consent Judgment also provides that each party will bear their own attorneys' fees and costs, thereby saving Rhode Island a considerable amount of money. Undersigned counsel, along with counsel for the Rhode Island Board of Elections, consulted with Rhode Island Attorney General Peter Neronha's office throughout the negotiations.

At the eleventh hour, 11:52 PM on July 26, 2020 to be exact, the Republicans filed the Motion to Intervene. Subsequently, in response to the District Court's directive, the Republicans filed a proposed Answer to the Complaint. In their proposed Answer, the Republicans make baseless allegations against Secretary Gorbea. For example, in paragraph 17 of their proposed Answer, the Republicans state "the Secretary has failed to fulfill her statutory obligations to enforce the State's election laws." Furthermore, in paragraph 32 of their proposed Answer, Republicans "admit that the Secretary has refused to enforce the signature requirement even before this litigation." Both of these allegations are patently false.

Furthermore, the Republicans apparent basis for arguing that there has been mail ballot fraud in Rhode Island history is the book *Politics and Pasta*, written by the late former Mayor of Providence Vincent "Buddy" Cianci, Jr. Republicans' Proposed Answer ¶49.

While the Republicans are making false assertions against Secretary Gorbea and relying on *Politics and Pasta*, Secretary Gorbea is focused on making sure all Rhode Island voters have an

opportunity to vote safely during the COVID-19 pandemic. Secretary Gorbea's Director of Elections, Robert Rock, has explained in his affidavit that the vendor who is preparing the mail ballots needs to know as soon as possible which certificate envelope Rhode Island will use to prepare "all necessary mail ballot package inserts including ballots, instruction sheets, 'I Voted' stickers, mailing envelopes, return envelopes, and mail ballot certificate envelopes." Affidavit of Robert Rock, ¶¶ 14-15. The primary election in Rhode Island is scheduled for September 8, 2020. To provide voters enough time to complete their mail ballots, Secretary Gorbea's office needs to begin to mail the mail ballots by no later than August 10, 2020. Affidavit of Robert Rock, ¶ 6. To meet the August 10th deadline, the mail ballot vendor "indicated that envelopes had to be finalized by July 17, a deadline we (Secretary Gorbea's office) met." Affidavit of Robert Rock, ¶ 7.

Clearly, time is of the essence to make sure all the Rhode Islanders who request a mail ballot obtain one and are able to safely vote by mail, thereby limiting their and others' exposure to COVID-19. The Republicans' Motion to Intervene should be denied because they will do nothing more than delay the mail balloting process in Rhode Island, potentially disenfranchising thousands of voters who have requested a mail ballot.

ARGUMENT

Proposed Intervention Should Be Denied Because It Would Unduly Delay the Case and Prejudice the Parties.

In ruling on a motion to intervene under FED. R. CIV. PROC. 24, the court must weigh whether the proposed intervention will unduly delay the case or prejudice the existing parties. *Culbreath v. Dukakis*, 630 F.2d 15, 21 (1st Cir. 1980) (courts should consider the prejudice to existing parties for motions to intervene filed under Rule 24(a) or (b)). Several courts have denied the intervention of unnecessary parties in election-related cases due to the significant prejudice that can arise from complications and delays resulting from the intervention.

In *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015), plaintiffs filed suit

challenging several state voting laws. A group of Republican officials and registered voters sought to intervene as defendants. *Id.* at 396. The proposed intervenors asserted a protected interest in ensuring that they are not defeated by fraudulent votes and avoiding the appearance of corruption in the electoral process. *Id.* at 396. The court denied the motion to intervene, paying particular attention to the fact that “adding the proposed intervenors could unnecessarily complicate and delay all stages of this case.” *Id.* at 399. For the court, the electoral nature of the case “require[d] a higher-than-usual commitment to a swift resolution.” *Id.* Because plaintiffs challenged the State’s election procedures, the court recognized, in an order issued on October 28, 2015, that needed to resolve these challenges “well ahead of the November 2016 election to avoid any voter confusion” and that “even minor delays . . . could jeopardize the parties’ ability to obtain a final judgment . . . in time for the election.” *Id.*

Likewise, in *N. Carolina State Conf. of NAACP v. Cooper*, 332 F.R.D. 161 (M.D.N.C. 2019), plaintiffs sought to strike down state laws requiring voters to provide photographic identification before voting in person and expanding the number of poll observers and the number of people who can challenge ballots. Less than one month after the plaintiff filed suit, a group of Republican officials filed a motion to intervene as defendants. *Id.* at 164. In denying the motion to intervene, the court focused on the fact that the outcome of the case “could have direct impact on the upcoming election cycle, beginning with primary elections scheduled in early 2020.” *Id.* at 172. In an order issued in June 2019, the court held that the electoral nature of the claims at issue and the imminence of the 2020 election “require[d] a swift resolution on the merits to bring certainty and confidence to the voting process.” *Id.* Given the proximity of the electoral cycle, the court concluded that the intervention would “unnecessarily complicate and delay” the case and, therefore, jeopardize the Court’s ability to reach final judgment in advance of the impending election cycle. *Id.* (quoting *One Wis. Inst.*, 310 F.R.D. at 399).

In *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236 (D.N.M. 2008), plaintiffs challenged state laws requiring the registration of non-government voter registration agents and providing for various procedures and penalties regarding the activities of such agents. A group of voters, state officials, and the Republican Party of New Mexico filed motions to intervene as co-defendants. *Id.* at 241. In an order issued one month before the state deadline to register voters for the November 2008 election, the court denied the proposed intervention to avoid any unnecessary delays as the case was “very time-sensitive.” *Id.* at 259.

Lastly, in *SEIU, Local 1 v. Husted*, 887 F. Supp. 2d 761 (S.D. Ohio 2012) *aff'd* 515 F. App'x 539 (6th Cir. 2013), the court denied the intervention by a group of voters in consolidated cases challenging the constitutionality of Ohio's provisional ballot system. The court noted that the delay caused by the intervention and resulting prejudice to the parties was “of particular concern in this election case.” *Id.* at 772. The Sixth Circuit affirmed, holding that the delay posed a significant risk of upsetting the expedited schedule necessitated by the upcoming election. *SEIU Local 1 v. Husted*, 515 F. App'x 539, 542 (6th Cir. 2013)

In all these cases¹, the court denied intervention due, in part, to concerns about undue delay and prejudice to the parties even though the relevant electoral deadlines in each case were months, or even a full year, away. *See One Wis. Inst.*, 310 F.R.D. at 399 (one year); *N. Carolina State Conf. of NAACP*, 332 F.R.D. at 172 (more than six months); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. at 259 (one month); *SEIU, Local 1 v. Husted*, 887 F. Supp. 2d at 771-72 (three months). Here, Rhode Island's primary and general 2020 elections are only mere *weeks* away. As a result, concerns about undue delays and prejudice to the parties caused by the proposed intervention are even more pressing. Any minor delays caused by the Republicans' proposed intervention will most likely impact the state's ability to conduct well-ordered elections,

¹ Perhaps not by coincidence, in three of the four cases cited, it is Republicans who are trying to intervene.

especially amidst a global pandemic.²

CONCLUSION

Based upon the foregoing reasons, Defendants respectfully request that the Court deny the Emergency Motion to Intervene by the Republican National Committee and the Rhode Island Republican Party.

Dated: July 28, 2020

Respectfully Submitted,

NELLIE M. GORBEA, IN HER CAPACITY
AS R.I. SECRETARY OF STATE,

By her attorney,

/s/ Angel Taveras

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² Secretary Gorbea reserves her right to seek attorneys' fees and costs incurred in opposing the present motion to intervene. *See League of United Latin American Citizens, Statewide v. City of Boerne*, 2010 WL 11541836 (W.D.Tex. Aug. 9, 2010) (denying motion to intervene and awarding defendant attorney's fees incurred in opposing the intervention).

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent all those non-registered participants on July 28, 2020.

/s/Angel Taveras_____