UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

| | | |
|---|---|---|
| Open Democracy, et al., | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | |
| v. | ) | Civil Action No. 1:24-cv-00312-SE-TSM |
| | ) | |
| David M. Scanlan, et al., | ) | |
| | ) | |
| Defendants. | ) | |
| | ) | |

**PARTIALLY ASSENTED-TO MOTION FOR LEAVE TO FILE MEMORANDUM IN REPLY TO PLAINTIFFS' OBJECTION TO MOTION TO INTERVENE**

NOW COME putative intervenors Republican National Committee and New Hampshire Republican State Committee ("Republican Committees"), by and through counsel, and respectfully move that this Honorable Court permit them to file that attached memorandum in reply to Plaintiffs' Objection to Motion to Intervene, and in support thereof states as follows:

1. The Republican Committees moved to intervene as parties in this matter.
2. Plaintiffs objected to the Republican Committees' motion.
3. Defendants took no position.
4. Plaintiffs' objection raised issues that the Republican Committees seek to address by way of the attached reply memorandum, and now seek leave to file such a reply.
5. Counsel for Plaintiffs assents to the filing of a reply memorandum.
6. Counsel for Defendants takes no position on this motion.

WHEREFORE, the Republican Committees move that this Honorable Court:

A. Grant this motion to file the attached reply memorandum; and

B. Grant such other relief as may be just and proper.

Respectfully Submitted,

Republican National Committee and New Hampshire Republican State Committee
By their attorneys,
Lehmann Major List, PLLC

*/s/Richard J. Lehmann*

February 21, 2025 _____

Richard J. Lehmann (Bar No. 9339)
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**Certification**

I hereby certify that a copy of this pleading was this day forwarded to opposing counsel via the court's electronic service system.

*/s/Richard J. Lehmann*

February 21, 2025 _____

Richard J. Lehmann

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**REPUBLICAN COMMITTEES' REPLY TO PLAINTIFFS' OBJECTION TO MOTION TO INTERVENE**

Plaintiffs offer three equally unavailing reasons to deny prospective intervenors' motion to intervene. First, they assert that putative intervenors ("Republican Committees") did not accompany their motion with a pleading setting forth their claims or defenses. Second, they speculate that purported delay in filing the motion may somehow prejudice them in the future. And third, they contend that a gap in time between filing for intervention in this case and filing a similar motion in *Youth Movement v Scanlan*, Docket No. 1:24-cv-291-SE-TSM, is grounds for denying intervention here.

None of these points carry the day. Indeed, the Court's recent decision to consolidate these cases renders these arguments irrelevant, as the concededly ripe motion to intervene in *Youth Movement* empowers the Court to exercise broad discretion to ensure that this litigation proceeds efficiently.

## I. Plaintiffs' Reliance On An Overly-Technical Reading Of Fed. R. Civ. Pro. 24(c) Should Be Rejected

The First Circuit has unambiguously "eschewed overly technical readings of Rule 24(c)…." *Paeje Investments LLC v. Garcia-Padilla*, 845 F.3d 505, 515 (1st Cir. 2017). Indeed, it held that "denial of a motion to intervene based solely on the movant's failure to attach a

pleading, absent prejudice to any party, constitutes an abuse of discretion." *Id.*(citation omitted). See also *City of Bangor v. Citizens Commc'ns Co.*, 532 F.3d 70, 95 n.11 (1st Cir.2008). And the First Circuit is far from alone in this regard. See *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314-15 (6th Cir. 2005) (finding district court abused its discretion in rejecting motion to intervene based on failure to attach a pleading); *Mass. v. Microsoft Corp.*, 373 F.3d 1199, n.19 (D.C.Cir.2004) (procedural defects in connection with intervention motions should generally be excused by a court); *Piambino v. Bailey,* 757 F.2d 1112, 1121 (11th Cir.1985) ("Inconsequential" procedural noncompliance with requirements of Rule 24 should be excused); *Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir.1980) ("proper approach to [Rule 24(c)] is to disregard non-prejudicial technical defects"). See also *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 834 (8th Cir. 2009) (a putative intervenor's "statement of interest satisfie[d] Rule 24(c) because it provide[d] sufficient notice to the court and the parties of [the movant's] interests.") *Id.* The Fifth Circuit has even permitted intervention in the absence of a motion to intervene, citing Fed. R. Civ. Pro. (8)(e)(1) ("[n]o technical forms of pleadings or motions are required") and Rule 8(f) ("all pleadings shall be construed as to do substantial justice"). *Farina v. Mission Inv. Trust*, 615 F.2d 1068, 1974 (5th Cir.1980). The Court should reject Plaintiffs' effort to benefit from the kind of "overly technical" reading of Rule 24(c) that was expressly rejected in *Paeje Investments, LLC*, especially when putative intervenors have already moved to intervene and filed a responsive pleading in the other consolidated case.

## II. Plaintiffs' Claims of Prejudice Are Wrong

Plaintiffs are unable to seriously allege prejudice due to delay at this still-early stage of the proceedings. Their assertion that the Republican Committees' entry into the case at this stage will delay these proceedings is entirely speculative and unsupported by anything that has transpired in this case. The proposed trial date is not until January 19, 2026, nearly a year from

today, and the proposed close of discovery is not until September 1, 2025, over six months from today. Despite Plaintiffs' contention that discovery has already commenced, they offer no reason to believe that putative intervenors' participation would make it even mildly burdensome to complete discovery within the next six-plus months. The Secretary of State has not filed an answer to the Complaint, choosing instead to move to dismiss the Complaint, a motion putative intervenors intend to join if permitted.

Plaintiffs' claimed concerns about delay are quite rich given their own conduct in this case. Notably, despite seven attorneys having entered an appearance in this case, they have sought and obtained an additional twenty-one days to answer the motion to dismiss. Litigants so concerned with the remote possibility of delay that might, if ever, occur well into the future, would have found a way to resolve the pending motion with greater dispatch rather than to ask for delays of their own.

Furthermore, the discovery and trial schedule of these cases remain unsettled. The Defendants reached an agreement on discovery with the Defendants in December. 1:24-cv-291, ECF No. 33. The Court has not ruled on that proposal, but the Defendants represent that the parties are conducting discovery according to that plan. See ECF 39 at ¶8. After the *Open Democracy* litigants submitted their joint discovery plan, the Court notified the parties of its intent to consolidate this case with *Youth Movement,* in an Order that the Defendants assert changed the posture of their discovery plan negotiation.[1] The question of whether to grant the request for a scheduling conference remains undecided. And obviously, the outcome of any such conference that might occur remains undecided as well. Thus, the Plaintiffs' claim that putative

[1] Putative intervenors take no position on the relative posture of the parties at this time, and any suggestion in the tone or mood of this writing is purely unintentional.

intervenors are likely to interfere with the trial schedule is misplaced, as there presently *is no* trial schedule. At least not one that has been ordered by the Court.

### III. Lack of Explanation For Delay

Plaintiffs complain that putative intervenors' "delay is wholly unexplained in the motion, which is substantively identical to the one filed months ago in the related case…." *Complaint* at 10. No such explanation is necessary here where this is no evidence at all of any prejudice. But to the extent any such explanation is required, there are justifiable reasons for any delay. First, undersigned counsel believed that these cases would be quickly consolidated and that separate filings would be duplicative. And the cases were eventually consolidated, although not as soon as counsel had anticipated. Second, as time passed, counsel undertook the effort to draft a separate motion. Unfortunately, in the interim period, counsel underwent a medical procedure that substantially interfered with his ability to work, particularly given the prescription medications that were required for rehabilitation. If needed, counsel is willing to provide further information regarding these regrettable facts and circumstances in a sworn statement to the court.

### IV. The Court Has Broad Authority To Fashion Efficient Discovery And Trial Orders Over These Consolidated Cases

When the Court provided notice of potential consolidation on January 10, 2025, ECF 35, Plaintiffs knew, or should have known, that under Rule 42 the Court could "join for hearing or trial any or all matters at issues in the action," Fed. Rule Civ. Proc. 42(a)(1), it could "consolidate the actions," Rule 42(a)(2), or it could "issue any other order to avoid unnecessary cost or delay." Rule 42 (a)(3). See, *Hall v. Hall,* 584 U.S. 59, 65 (2018). The text of the rule clearly reflects that "[d]istrict courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases." *Id.* at 77.

Even if no motion to intervene had been filed in this matter, once the Republican Committees sought intervention in *Youth Movement,* consolidation of these cases likely meant

that any influence the Republican Committees had in that case would affect this case in a similar way. With the two cases traveling down parallel paths, it is difficult to imagine inconsistent judgments. And despite knowing that the Court had this broad authority and, despite discussing the fact the Republican Committees had sought intervention in the *Youth Movement* matter at an earlier time than it did here, the only concern the Plaintiffs expressed about putative intervenors' participation in this case concerns inconsistent judgments and delays caused by potential appeals. ECF 42, ¶7. But those are both reasons that intervention should be granted, not denied. Plaintiffs' assertion about discovery is best remedied by consolidation of the discovery process and the surest way to avoid any delay attributable to an appeal in this case is to grant the otherwise immediately appealable motion to intervene. Notably, the Plaintiffs expressed no concern that they might find themselves in a consolidated case with the Republican Committees with questionable "ability to participate in this litigation in a timely manner." ECF 43 at 9.

Plaintiffs' opposition is based on their concocted speculation about the manner in which this case will proceed going forward. These baseless fears completely ignore the Court's inherent authority to control the discovery process, including imposing sanctions on parties that engage in discovery abuse, setting deadlines to ensure the case proceeds apace, and exercising its broad authority to control the proceedings before it. And the putative intervenors do not need to be ordered to avoid duplicative discovery requests or filings. Indeed, by joining in the Defendants' motion to dismiss as they did here, the Republican Committees have already demonstrated a willingness to do just that.

## V. Conclusion

For the foregoing reasons, the motion to intervene should be granted.

Respectfully Submitted,
Republican National Committee and New Hampshire Republican State Committee
By their attorneys,
Lehmann Major List, PLLC

*/s/Richard J. Lehmann*

February 21, 2025 _____

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