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

Pursuant to section 7-1-110 of the South Carolina Code and Rule 24, SCRCP, G. Murrell Smith, Jr., in his official capacity as Speaker of the South Carolina House of Representatives (the Speaker), by and through the undersigned counsel, moves this Court for an order granting him intervention in this matter on behalf of the House of Representatives.

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

I. The Speaker has an unconditional right to intervene.

Starting with intervention as of right, Rule 24(a), SCRCP, provides the following:

> 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.

Rule 24(a)(1)–(2), SCRCP; *see also Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93, 99, 847 S.E.2d 87, 90 (2020) (same) (quoting *Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990)).

Under the rule, the Court "shall" permit the Speaker's intervention because "a statute confers an unconditional right to intervene." Rule 24(a)(2), SCRCP. Section 7-1-110(A)—titled "Election law challenges"—provides as follows:

> The President of the Senate, on behalf of the Senate, and the Speaker of the House of Representatives, on behalf of the House of Representatives, have *an unconditional right to intervene* on behalf of their respective bodies *in a state court action that challenges the validity of an election law, an election policy, or the manner in which an election is conducted*.

S.C. Code Ann. § 7-1-110(A) (emphasis added). Here, Plaintiff is challenging "an election policy, or the manner in which an election is [to be] conducted." *Id.* What is more, in the current Appropriations Act, the General Assembly—as in prior years—vested its leadership with "an unconditional right" to intervene in state court litigation challenging legislative acts. *See* 2024 S.C. Act No. 226, Part I.B, § 91, Proviso 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").

Even if section 7-1-110(A) and Proviso 91.25 didn't exist, the Speaker has a right to intervene under Rule 24(a)(2), SCRCP. An entity seeking intervention as a matter of right under Rule 24(a)(2) must: (a) establish timely application; (b) assert an interest relating to the property or transaction which is the subject of the action; (c) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that

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interest; and (d) demonstrate that its interest is inadequately represented by other parties. *Builders Mut. Ins. Co.*, 431 S.C. at 99, 847 S.E.2d at 90 (citing *Berkeley Elec. Coop., Inc.*, 302 S.C. at 189, 394 S.E.2d at 714). The Speaker readily satisfies these elements.

A. This motion is timely.

The ACLU filed its complaint and motion for a temporary restraining order or preliminary injunction on October 22, 2024, just two days before this motion. Neither Defendant has answered or otherwise responded to the complaint in the last two days. According to the case docket, the Court intends to hear other motions to intervene and the ACLU's motion for injunctive relief tomorrow, October 25, 2024. The Speaker stands ready and willing to participate in that hearing. Given that nothing substantial has happened and the Speaker is prepared to proceed in accordance with the Court's schedule, the ACLU will not suffer any prejudice if the Court grants this motion to intervene. But the Speaker will be prejudiced if not allowed to intervene to protect the House of Representatives' interests as explained below.

Put simply, the Speaker's motion to intervene 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)).

B. The Speaker has an interest in the outcome of this case, and intervention is the only way for him to protect the interests of the House of Representatives.

South Carolina courts have compared the second element of a right to intervention with constitutional standing, finding the intervenor must be a "real party in interest." *Builders Mut. Ins. Co.*, 431 S.C. at 99, 847 S.E.2d at 90. The Speaker fits the bill here.

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The Supreme Court of South Carolina has said in no uncertain terms that "[i]ntegrity in elections is foundational." *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam). It is so foundational that the South Carolina Constitution mandates the General Assembly fulfill and protect it. *See* S.C. CONST. art. II, § 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.").

And that is what the General Assembly has done pursuant to its exclusive constitutional authority 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 also 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 in Title 7.

Yet the ACLU seeks to unravel the General Assembly's policies—and potentially the integrity of the 2024 general election by asking the Court at the eleventh hour to order the State Election Commission and South Carolina Department of Motor Vehicles to add unknown persons

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to the voter rolls past the already extended voter registration deadline 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, whether they are qualified to vote, or why they missed the deadline. Because establishing these policies on behalf of the State lies exclusively within the constitutional province of the legislative branch, the Speaker has a significant interest in this litigation.

Without intervention, the Speaker will be unable to defend the General Assembly's policy judgments or promote the legitimate state interests of the House of Representatives that are embodied in statute. The Court should decline the ACLU's invitation to red pencil a duly enacted South Carolina law without affording the legislative branch the opportunity to defend that law.

C. Existing parties do not adequately represent the Speaker's interests.

Our supreme court has instructed courts to use three factors for determining adequacy of representation: "(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." *Berkeley Elec. Coop., Inc.*, 302 S.C. at 191, 394 S.E.2d at 715. "This burden is minimal[,] and the applicant need only show that the representation of his interests 'may be' inadequate." *Id.* (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)).

The Speaker meets all three factors here too. The General Assembly is the only entity with actual knowledge of why the statutes related to the qualification and registration of voters were enacted. And it is the General Assembly's constitutional prerogative to regulate elections in South Carolina, including in how and when voter registration is to occur. *See* S.C. CONST. art. II, §§ 8 & 10. If other entities could adequately protect the General Assembly's interests, then section 7-1-

110(A) and Proviso 91.25 would not exist. But they do, and they reflect the General Assembly's recognition that its own leadership can best represent its interests where a state law is challenged.

* * *

Accordingly, the Court should recognize the Speaker's right to intervene in this matter to protect the interests of the House of Representatives and grant intervention as a matter of right under Rule 24(a), SCRCP.

II. The Court should permit the Speaker to intervene in any event.

Alternatively, the Court should grant the Speaker permissive intervention under the forgiving standard articulated in Rule 24(b).

That rule 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.

As explained above, the Speaker is filing this motion right after the case began. Because the case is still in its infancy, the addition of legislative leadership will not cause any delay. Nor

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will it prejudice the ACLU or either Defendant. The Speaker is ready and willing to participate in the upcoming hearing on October 25 and to meet any forthcoming deadlines the Court may set. This lawsuit effectively asks the Court to suspend portions of duly enacted statutes that the General Assembly designed—pursuant to its constitutional authority—to provide for free, fair, safe, and secure elections. The Speaker seeks to participate in this case to protect these legislative interests. And his arguments will undoubtedly share common questions of law and fact as demonstrated in the proposed motion to dismiss attached as Exhibit A.

CONCLUSION

For these reasons, the Court should grant the Speaker's motion to intervene as of right or permissively under Rule 24, SCRCP. Pursuant to Rule 11, SCRCP, the undersigned consulted with counsel for the parties before filing this motion. Counsel for Plaintiff opposes this motion, whereas counsel for Defendants State Election Commission and South Carolina Department of Motor Vehicles do not. The Speaker is filing a motion to dismiss contemporaneously with this motion to intervene, and he intends to oppose the relief sought in the ACLU's complaint as well as its motion for temporary restraining order or preliminary injunction. Without waiving the right to be heard on that motion to dismiss, pursuant to Rule 24(c), SCRCP, the Speaker will respond to the ACLU's complaint in accordance with the applicable deadline. *See* Rule 12(a), SCRCP.

(Signature page to follow)

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Respectfully submitted,

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Columbia, South Carolina
October 24, 2024

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