

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS
NORTHERN DISTRICT**

SUPERIOR COURT

Docket No. 216-2020-CV-00570

AMERICAN FEDERATION OF TEACHERS,
Plaintiff,

v.

WILLIAM GARDNER, in his official capacity as
the New Hampshire Secretary of State; and
GORDON MACDONALD, in his official capacity
as the New Hampshire Attorney General,
Defendants,

DONALD J. TRUMP FOR PRESIDENT, INC.
and REPUBLICAN NATIONAL COMMITTEE,
[Proposed] Intervenor-Defendants.

PARTIALLY ASSENTED MOTION TO INTERVENE AS DEFENDANTS

Movants, Donald J. Trump for President, Inc. and Republican National Committee, respectfully request that they be granted intervention in this matter. In further support, Movants state as follows:

1. The Court should allow Movants to intervene as defendants in this case. As the Democratic Party recently observed, “political parties usually have good cause to intervene in disputes over election rules.” *Issa v. Newsom*, Doc. 23 at 2, No. 2:20-cv-01044-MCE-CKD (E.D. Cal. June 8, 2020). That is why, in the recent spate of election litigation over COVID-19, the Democratic and Republican parties have been granted

intervention virtually every time they've moved for it.¹ This Court should do the same here, especially where intervention “has been rather freely allowed as a matter of practice.” *Lamarche v. McCarthy*, 158 N.H. 197, 200; 965 A.2d 992, 995 (N.H. 2008)(decided under prior Super. Cr. R. 139).

INTERESTS OF PROPOSED INTERVENORS

2. Movants are a political campaign and political committees who support Republicans in New Hampshire. Donald J. Trump for President, Inc., is the principal committee for President Donald J. Trump's reelection campaign. The Republican National Committee is a national committee as defined by 52 U.S.C. §30101. It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy,

¹ See, e.g., *Arizona Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-01143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC, Arizona Republican Party, and Donald J. Trump for President, Inc.); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC, the Republican Party of Minnesota, and Donald J. Trump for President, Inc.); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and the Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paber v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same).

and develops and promotes the national Republican platform. Both Movants have interests—their own and those of their members—in the rules governing New Hampshire elections.

ARGUMENT

3. “Any person shown to be interested may become a party to any civil action....” N.H. Super. Ct. Civil Rule 15. “It is within the trial court’s discretion to grant intervenor status.” *Lamarche*, 158 N.H. at 200; 965 A.2d. at 995. This Court should grant intervention when Movants have demonstrated:

- 1) a right involved in this case;
- 2) a direct and apparent interest; and
- 3) that their interests would suffer if denied intervention.

Snyder v. N.H. Sav. Bank, 134 N.H. 32, 35; 592 A.2d 506, 507 (N.H. 1991). Movants satisfy each of these criteria.

A. Movants have a right involved in this case.

4. Movants’ rights in this case are the same as Plaintiff’s. Movants’ members are New Hampshire voters who seek to uphold their “equal right to vote” in free and fair elections. N.H. Const. Pt. 1, art. XI. “The object of [the] election laws” that Plaintiff seeks to upend “is to secure the rights of duly qualified voters.” *Op. of the Justices*, 116 N.H. 756, 759; 367 A.2d 209, 210 (N.H. 1976). Thus, if this Court grants Plaintiff’s requested relief, Movants will lose important safeguards that currently protect their “equal right to vote.” N.H. Const. Pt. 1, art. XI.

5. Movants' other members are candidates running for elected office in New Hampshire who have "an equal right to be elected into office." N.H. Const. Pt. 1, art. XI. The right of candidates to be elected is "closely connected" to the right to vote. *Akins v. Sec'y of State*, 154 N.H. 67, 71; 904 A.2d 702, 706 (N.H. 2006). Indeed, like the right to vote, a candidate's right to be elected is a "fundamental right" right under the New Hampshire Constitution. *Id.* Thus, Plaintiff's requested relief "inevitably discriminates against voters" supporting Movants' candidates and harms their fundamental right to be elected. *Id.*

B. Movants have a direct and apparent interest in this action.

6. Movants also have a "direct and apparent interest" in the outcome of this litigation. *Lamarche*, 158 N.H. at 200; 965 A.2d at 995. Movants have interests identical to Plaintiff's as well as independent interests of their own.

7. Movants' interests in this action are, at a minimum, equal to Plaintiff's. Like Plaintiff's members, Movants' constituents include "New Hampshire residents [who] have a 'legally protected interest' in voting." Compl. 44 (quoting *State v. McLellan*, 767 A.2d 953, 957 (N.H. 2001)). Like Plaintiff, Movants pursue political goals through "community engagement, organizing, political activism, and through the work of [their] members." Compl. 4. What Plaintiff alleges of the "Challenged Provisions," Movants allege of Plaintiff's requested relief: it would "frustrate [Movants'] mission," and "threaten the electoral prospects of [Movants'] candidates." Compl. 4. Like Plaintiff, Movants would "be required to devote time and resources to educating its

members” about sudden changes in the law governing the upcoming election. Compl.

5. In short, if Plaintiff has standing to bring this suit, then it must follow that Movants have reciprocal interests supporting intervention.

8. But even considered in isolation, Movants have “direct” and “apparent” interests in the continued enforcement of state laws governing voter-registration requirements, witness requirements, ballot-harvesting restrictions, voter-identification requirements, and other election procedures, as those laws are designed to serve “the integrity of [the] election process,” *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989), and the “orderly administration” of elections, *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.).² Federal courts “routinely” find that political parties have interests supporting intervention in litigation regarding elections and election procedures. *E.g.*, *Issa*, 2020 WL 3074351, at *3. Indeed, given their inherent and broad-based interest in elections, usually “[n]o one disputes” that a political party “meet[s] the impaired interest requirement for intervention.” *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Col. Sept. 15, 2014). That is certainly true where, as here, “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005); *see id.*

² Much of the relief requested by Plaintiff reaches beyond the upcoming general election by pursuing facial challenges to the “Challenged Provisions.” *See* Compl. 53-54.

(under such circumstances, “there [was] no dispute that the Ohio Republican Party had an interest in the subject matter of this case”).

9. Moreover, Movants will raise defenses that share many common questions with the parties’ claims and defenses—including whether COVID-19 means that New Hampshire’s duly established election laws now create an unconstitutional burden on the right to vote. *See* Compl. 40-52. Plaintiff alleges that the challenged laws are unconstitutional. Compl. 4. Movants, on the other hand, directly reject those allegations, contending not only that New Hampshire’s longstanding laws are constitutional, but also that Plaintiff’s desired relief would undermine the interests of Movants and their members. This is why numerous courts have permitted Movants to intervene in defense of state election laws. *See, e.g., Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (“[T]he [RNC and Republican Party of Wisconsin] have a defense that shares common questions of law and fact with the main action; namely, they seek to defend the challenged election laws to protect their and their members’ stated interests—among other things, interest in the integrity of Wisconsin’s elections.”); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (recognizing no dispute that the intervention factors were met when the RNC and Republican Party “demonstrate[d] that they seek to defend the constitutionality of Michigan’s [election] laws, the same laws which the plaintiffs allege are unconstitutional”).

10. In short, because Movants' candidates "actively seek [election or] reelection in contests governed by the challenged rules," and because their members' ability to participate in those elections is governed by the challenged rules, Movants have an interest in "demand[ing] adherence" to those requirements. *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005).

C. Movants' interests would suffer if they were denied intervention.

11. Movants interests "would suffer if not indeed be sacrificed" were this Court to deny intervention. *Snyder*, 134 N.H. at 35; 592 A.2d at 507. Here, the risks to Movants' interests are plain. If this Court enters the requested injunctions, then the rules surrounding the general election will be upended less than 80 days before the election.

12. Movants' interests will plainly "suffer if the Government were to lose this case, or to settle it against [Movants'] interests." *Mausolf v. Babbitt*, 85 F.3d 1295, 1302-03 (8th Cir. 1996). Not only would it undercut democratically enacted laws that protect voters and candidates (including Movants' members), it would change the "structur[e] of th[e] competitive environment" and "fundamentally alter the environment in which [Movants] defend their concrete interests (e.g. their interest in ... winning [election or] reelection)." *Shays*, 414 F.3d at 85-86. These late changes also threaten to confuse voters and undermine confidence in the electoral process. See *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections ... can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election

draws closer, that risk will increase.”). In addition to that independent harm, Movants will be forced to spend substantial resources informing Republican voters of changes in the law, fighting inevitable confusion, and galvanizing participation in the wake of the “consequent incentive to remain away from the polls.” *Id.*

13. Moreover, Plaintiff’s success in this action could prevent Movants from defending their rights at all. Unlike Plaintiff, who could have taken their concerns to the legislature instead of the courts, Movants lack “the availability of other remedies.” *Lamarche*, 158 N.H. at 200; 965 A.2d at 995. Even setting aside the long-term effects on the integrity of elections and public confidence in the electoral process, this proceeding might be the *only* time that Movants can defend the procedures governing the election. The general election is a few short months away. In a very real sense, then, this Court’s decision could be the final word on the laws governing the next election.

14. Movants’ intervention will not unduly delay this litigation or prejudice anyone. Movants swiftly moved to intervene while the case is in its earliest stages, and their participation will add no delay beyond the norm for multiparty litigation. After all, Plaintiff put the constitutionality of the laws at issue and “can hardly be said to be prejudiced by having to prove a lawsuit [they] chose to initiate.” *Swenson*, Doc. 38, No. 20-cv-459-wmc (quoting *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995)). Movants commit to submitting all filings in accordance with whatever briefing schedule the Court imposes, “which is a promise” that undermines claims of undue delay. *Emerson Hall Assocs., LP v. Travelers Casualty Ins. Co. of Am.*, 2016 WL

223794, *2 (W.D. Wis. Jan. 19, 2016). Because they intervened early and will abide by the Court’s schedule, “Movants’ presence is unlikely to delay adjudication of this matter.” *Arizona Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-01143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC, Arizona Republican Party, and Donald J. Trump for President, Inc.).

15. Finally, “the interest of preserving judicial economy and of arriving at a just, appropriate and complete determination of the cause will be served if [Movants] are joined in this action.” *Manchester Airport Auth. v. Romano*, 120 N.H. 166, 168; 412 A.2d 1020, 1021 (N.H. 1980). In the recent election cases involving these Movants, courts have recognized that “permitting [Movants] to intervene ... will not unduly delay or prejudice the interests of the original parties and will serve the interests of judicial administration and efficiency.” *Swenson*, Doc. 38, No. 20-cv-459-wmc. Intervention will prevent protracted piecemeal litigation and the possibility of conflicting legal decisions, and, “given the importance of the issues Plaintiffs raise, the Court will benefit from hearing all perspectives.” *Arizona Democratic Party*, Doc. 60, No. 2:20-cv-01143-DLR. At the very least, “it cannot be said with assurance that the existing parties will frame the issues so well that the proposed intervention will add nothing of value.” *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020). Because “[t]he right of a party to intervene in pending litigation in [New Hampshire] has been rather freely allowed as a matter of practice,” Movants should be granted intervention. *Lamarche*, 158 N.H. at 200; 965 A.2d at 995.

CONCLUSION

16. The Court should grant Movants' motion and allow them to intervene as defendants.

POSITIONS OF OTHER PARTIES

17. Counsel for the plaintiffs OBJECTS to the relief requested in this motion.

18. Counsel for the defendants, Anthony Galdieri, ASSENTS to the relief requested in this motion.

WHEREFORE, the Movants respectfully request that this Honorable Court:

- A. Grant this Motion to Intervene as Defendants; and
- B. Grant such other relief as may be just and proper.

Dated: August 24, 2020

Respectfully submitted,

/s/ Richard J. Lehmann
Richard J. Lehmann (N.H. Bar No.9339)
LEHMANN LAW OFFICE, PLLC
Three Spring Street
Suite 200
Concord, N.H. 03301
(603) 731-5435
rick@nhlawyer.com

/s/ Patrick Strawbridge
Patrick Strawbridge (Pro hac vice)
CONSOVOY MCCARTHY PLLC
Ten Post Office Square
8th Floor South PMB #706
Boston, MA 02109
(703) 243-9423
patrick@consovoymccarthy.com

Thomas R. McCarthy (pro hac vice)
Cameron T. Norris (pro hac vice)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209

*Counsel for Proposed Intervenor-Defendants Donald J. Trump for President, Inc. and
Republican National Committee*

CERTIFICATION

I hereby certify that a copy of this pleading has this day been forwarded to all counsel of record via the court's electronic filing system, and all known counsel of interest via email.

August 24, 2020

/s/ Richard J. Lehmann

Richard J. Lehmann