

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LIBERTARIAN PARTY OF OHIO	:	
KEVIN KNEDLER, and	:	
MICHAEL JOHNSTON,	:	
	:	
Plaintiffs,	:	Case No. 11-CV-722
	:	
v.	:	Judge Algenon Marbley
	:	
JON HUSTED,	:	
In his Official Capacity as	:	
Secretary of State	:	
	:	
Defendant	:	
	:	
and	:	
	:	
OHIO GENERAL ASSEMBLY,	:	
	:	
[Proposed] Intervenor-Defendant.	:	

**MOTION TO INTERVENE BY PROPOSED
INTERVENOR OHIO GENERAL ASSEMBLY**

Pursuant to Fed. R. Civ. P. 24(a) and (b), the Ohio General Assembly hereby moves to intervene as a Defendant in this case. Attached is a Memorandum in Support and Proposed Answer in accordance with Fed. R. Civ. P. 24(c).

MICHAEL DeWINE
Ohio Attorney General

/s/ Jeannine R. Lesperance

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Certificate of Service

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 7th day of October, 2011.

/s/ Jeannine R. Lesperance

Jeannine R. Lesperance (0085765)

Assistant Attorney General

MEMORANDUM IN SUPPORT

I. INTRODUCTION AND STATEMENT OF FACTS

Plaintiffs Libertarian Party of Ohio, Kevin Knedler and Michael Johnson (“Plaintiffs”) challenge the constitutionality of sections of House Bill 194 (“HB 194” or the “Act”), an act passed by the Ohio General Assembly on June 29, 2011, and signed by the Governor on July 1, 2011. Under Ohio law, the Act was to become effective on September 30, 2011. However, as noted by the Court in its opinion and order filed September 7, 2011 (the “Order”), the Act is subject to a pending referendum effort. Order at 3. Because the referendum petition and signatures were filed, the Act is stayed, subject to validation of the signatures, until Ohio voters pass on the measure in November, 2012.

This Court has declared the Act’s amendments to Ohio Revised Code § 3517.01(A)(1) to be unconstitutional. To date the action has been defended by the Ohio Secretary of State. The Ohio General Assembly has an interest in defending the constitutionality of the statutes it enacts, while the Secretary’s primary interest is in administering such statutes. Furthermore, the Secretary has indicated that he will not appeal the Order. As a result, the General Assembly’s interest in fully defending the constitutionality of the Act is no longer adequately protected in this action. Finally, the Order “requires [the State] to take the steps to enact ballot access laws.” Apart from popular initiative, only the General Assembly can “enact ballot access laws.” Ohio Const. art. II, § 1. Accordingly, the General Assembly has a right to intervene for the purpose of defending the Act and taking an appeal.

II. LAW AND ARGUMENT

A. The General Assembly is entitled to intervene as of right under Civ. R. 24(a).

The General Assembly is entitled to intervene based on its direct stake in this litigation. Federal Rule of Civil Procedure 24(a) states that the Court must permit anyone to intervene: (1) when a federal statute confers an unconditional right to intervene; or (2) when the person seeking to intervene claims an interest relating to the action such that disposition of the action may impair that person's ability to protect that interest, unless existing parties adequately represent the applicant's interest. Both provisions apply.

Federal law grants a right to intervene to defend the constitutionality of state law. 28 U.S.C. §2403(b). If the Secretary does not appeal, the General Assembly must be permitted to intervene to present such defense.

The General Assembly also has a manifest interest in defending the constitutionality of any law it enacts. Because the Secretary of State's duties to administer the law are distinct from the duties of the General Assembly in enacting laws, the General Assembly's interests are not adequately protected in this case. Moreover, the General Assembly's interests will not be protected to any extent if the Secretary does not appeal the Order. Thus, intervention is necessary.

Finally, the Order "requires" the State to "enact ballot access laws." The Secretary of State, the only defendant in this case, cannot enact ballot access laws. Because the Ohio General Assembly is vested with the legislative authority of the State, it has a right to intervene.

Accordingly, the Court should grant the motion to intervene as of right.

B. The General Assembly should be permitted to intervene under Civ. R. 24(b).

In the alternative, the General Assembly should be permitted to intervene under Fed. R. Civ. P. 24(b). Rule 24(b) provides that upon timely application, anyone may be permitted to intervene in an action: (1) when a federal 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.

As explained above, the General Assembly has the right to defend the constitutionality of the acts it passes. Moreover, the Court directs the State to "enact ballot access laws." The General Assembly, the body charged with enacting legislation under the Ohio Constitution, should be permitted to intervene to defend against this directive.

In addition, this motion is timely. The General Assembly had no cause to intervene while the Secretary was defending the constitutionality of the Act. Moreover, the General Assembly was not on notice that this Court would order the State to enact new laws until the Court filed its Order. Plaintiffs are not prejudiced because the intervention essentially substitutes one defendant for another and no answer has yet been filed in this case.

CONCLUSION

For these reasons, the Ohio General Assembly respectfully asks the Court to grant its motion to intervene as a Defendant.

Respectfully submitted,

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Attorney General of Ohio

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Assembly

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Intervene was served upon all counsel of record by means of the Court's electronic filing system on this 7th day of October, 2011.

/s/ Jeannine R. Lesperance

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Assistant Attorney General