

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DEMOCRATIC NATIONAL COMMITTEE  
*et al.*

PLAINTIFFS

v.

REPUBLICAN NATIONAL COMMITTEE  
*et al.*

DEFENDANTS.

Civil Action No. 81-3876

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FILED

**MEMORANDUM ON BEHALF OF OBAMA FOR AMERICA**  
**MOTION TO INTERVENE**

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Proposed Intervenor Obama for America (“OFA”), the campaign of Senator Barack Obama for the presidency of the United States, respectfully submits this memorandum of law in support of its Motion to Intervene in the above-captioned matter. OFA seeks to intervene for the purpose of joining the Democratic National Committee’s (“DNC”) pending request for relief from this Court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

OFA incorporates by reference the detailed factual and procedural background set forth in the DNC’s moving papers submitted to the Court today. In summary, OFA and the DNC learned on November 1, 2008, that defendant Republican National Committee (“RNC”) intends to hire private investigators in New Mexico to engage in unlawful so-called “ballot security” initiatives, likely to lead to intimidation and suppression of the votes of lawful New Mexican citizens. The scheme is a direct and flagrant violation of this Court’s long-standing Order and Decree, which establishes the conditions under which the RNC agreed to conduct any and all so-called “ballot security” activity. The actions are targeted at Senator Obama’s supporters and are intended to impact the outcome of the presidential election in which he is the nominee of the Democratic Party. To protect the voting rights of those supporters and the integrity of the electoral process, OFA seeks leave to intervene to join the DNC’s request for appropriate and speedy relief from the Court.

### **ARGUMENT**

Rule 24 of the Federal Rules of Civil Procedure governs intervention as of right as well as permissive intervention. As courts have consistently held, Rule 24 is to be “liberally construed in favor of intervention.” *N.L.R.B. v. Frazier*, 144 F.R.D. 650, 655 (D.N.J. 1992)

(citing *United States v. Oregon*, 913 F.2d 576, 587 (9th Cir. 1990)). OFA is entitled to intervene as of right pursuant to Rule 24(a)(2), but in the alternative seeks leave to intervene permissively pursuant to the Court's discretion under Rule 24(b).

#### **I. OFA IS ENTITLED TO INTERVENE UNDER RULE 24(a)(2)**

Rule 24(a)(2) provides a right to intervene to any person or entity who meets four criteria: “[F]irst, a timely application for leave to intervene; second, a sufficient interest in the litigation; third, a threat that the interest will be impaired or affected, as a practical matter, by the disposition of the action; and fourth, inadequate representation of the prospective intervenor’s interest by existing parties to the litigation.” *Kleissler v. United States Forest Service*, 157 F. 3d 964, 969 (3d Cir. 1998). OFA’s request to intervene meets all four criteria.

First, this motion is unquestionably timely. Though the RNC misconduct at issue here is part of its larger and continued pattern of voter suppression throughout this campaign, OFA only two days ago learned of these particular plans to engage private investigators in New Mexico for activity likely to lead to intimidation and voter suppression. OFA moved immediately and appropriately to intervene as soon as it discovered the RNC’s misconduct.

Second, OFA’s significant interest in this action is undeniable. The RNC’s plans specifically target Senator Obama’s supporters in an effort to challenge voters in an important swing state, and thus affect the outcome of the presidential election. It is axiomatic that the Obama campaign has a direct interest in that election. On a deeper level, OFA’s interest lies in protecting the right of its supporters to exercise the right to vote free from intimidation, and protecting the fairness and integrity of the electoral process. Both are threatened by the RNC’s violation of the consent decree.

Third, OFA's interest will be directly impacted by the Court's disposition of the issue now before it. Election Day is tomorrow, and the voters targeted by the RNC's suppression scheme go to the polls within hours to cast a ballot for President. If voting rights are denied, the resultant harm cannot be remedied. *See, e.g., Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 883 (3d Cir. 1997). Therefore, if the RNC is allowed to perpetrate its flagrant violation of this Court's long-standing Order and Decree, the rights of New Mexico voters to participate in this historic election will be irredeemably jeopardized, and with them the fairness of the election and the electoral process itself. OFA should therefore be permitted to intervene to defend both the integrity of the democratic process and the fundamental rights of its supporters.

Finally, OFA has an interest independent of the other parties in this election. While Senator Obama is the nominee of the Democratic Party, his supporters are not all registered Democrats, and also include unaffiliated voters, Republicans, independents and others. OFA should be allowed to participate in these proceedings to protect the rights of all voters targeted by the RNC, not just Democrats. The adequacy requirement is "should be treated as minimal," and is "satisfied if the applicant shows that representation of his interest 'may be' inadequate." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 (1972). It is satisfied here.

Because OFA meets the criteria of Rule 24(a)(2), is entitled to intervene as of right in this action.

## **II. OFA IS ENTITLED TO PERMISSIVE INTERVENTION UNDER RULE 24(b)**

In the alternative, OFA seeks leave to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, which provides that "the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact. ... In exercising its discretion, the court must consider whether the intervention will unduly delay or

prejudice the adjudication of the original parties' rights." Here, OFA seeks to join in the DNC's request for relief from this Court, which by definition involves the same questions of law and fact. No delay or prejudice will result from OFA's participation in this action. To the contrary, the DNC and OFA seek immediate adjudication, and denying the motion to intervene mean that OFA will be left without recourse.

### CONCLUSION

OFA clearly meets the criteria for intervention under Rule 24 of the Federal Rules of Civil Procedure, and should be allowed to join the DNC's request for relief from this Court.

Dated: November 3, 2008

Respectfully submitted,  
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