

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GREEN PARTY OF CONNECTICUT, ET AL.,	:	CASE NO. 3:06-CV-01030 (SRU)
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
JEFFREY GARFIELD, ET AL.,	:	
	:	OCTOBER 17, 2006
Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF PROPOSED
INTERVENORS-DEFENDANTS’ MOTION TO INTERVENE**

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Audrey Blondin, Esq., Kim Hynes, Tom Sevigny, Connecticut Common Cause and Connecticut Citizens Action Group have moved to intervene in this action. This memorandum is respectfully submitted in support of that motion.

PRELIMINARY STATEMENT

Audrey Blondin, Esq., Kim Hynes, and Tom Sevigny, (collectively, “Candidate Intervenors”), Connecticut Common Cause, and Connecticut Citizens Action Group (all five, collectively, “Proposed Intervenors”) apply pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure for leave to intervene as of right as defendants in this action or, in the alternative, for permissive intervention pursuant to Rule 24(b)(2). Proposed Intervenors seek to help defend the constitutionality of the Connecticut Citizens’ Election Program (“CEP”), and the constitutionality of Conn. Gen. Stat. §§ 9-333a to 9-333n and 9-700 to 9-717 (2006), which created the CEP and instituted other reforms such as contribution restrictions from state contractors, lobbyists and their families. Proposed Intervenors have a significant interest in this action that will be impaired absent intervention. Audrey Blondin, Esq., Kim Hynes, and Tom

Sevigny are each former candidates and likely future candidates for elected office in Connecticut. All of these candidates will be more likely to run for office with the availability of CEP funding. Declaration of Audrey Blondin, Esq. (“Blondin Decl.”) ¶ 2, attached hereto as Exhibit A; Declaration of Kim Hynes (“Hynes Decl.”) ¶ 2, attached hereto as Exhibit B; and Declaration of Tom Sevigny (“Sevigny Decl.”) ¶ 3, attached hereto as Exhibit C. In addition, all of the Candidate Intervenors support the new contribution restrictions at issue in this suit. Blondin Decl. ¶ 10; Hynes Decl. ¶ 7; Sevigny Decl. ¶ 12. Connecticut Common Cause (“CCC”) and Connecticut Citizen Action Group (“CCAG”), both large non-profit membership organizations, strongly support Public Act 05-05 which created the CEP and which instituted the restrictions on contributions from lobbyists, contractors and their families. Declaration of Charles A. Sauer (“Sauer Decl.”) ¶¶ 9, 10, attached hereto as Exhibit D; Declaration of Phillip Sherwood (“Sherwood Decl.”) ¶¶ 4, 5, 7, attached hereto as Exhibit E. CCC, CCAG, and their members were strong advocates for passage of the CEP and the contribution restrictions and have been strong advocates since their passage. Sauer Decl. ¶¶ 5, 10; Sherwood Decl. ¶ 5.

Applicants are entitled to intervention as of right if their application is timely, they have real interests in the action, disposition of the action may affect those interests, and no party adequately represents their interests. Fed. R. Civ. P. 24(a)(2). Because Proposed Intervenors meet this standard, intervention as of right should be granted. In the alternative, permissive intervention should be granted to allow resolution of the questions of fact and law that the Proposed Intervenors’ defense has in common with the main case. Fed. R. Civ. P. 24(b)(2).

STATEMENT OF FACTS

Audrey Blondin, Esq. was a Democratic candidate for Secretary of the State in 2004, who would like to run for a constitutional office in Connecticut, such as the Secretary of the State or

Governor, in 2010. Blondin Decl. ¶ 2. Kim Hynes was a Democratic candidate for State Representative from the 149th District in Connecticut in 2004 and would like to run for the same office in 2008. Hynes Decl. ¶¶ 1-2. Tom Sevigny ran for State Senator as a Green Party candidate from the 8th District in 2004, and he would like to run for the same office in 2008. Sevigny Decl. ¶ 2. All of these candidates will be more apt to run for office with the availability of the Citizen's Election Program. Blondin Decl. ¶ 2; Hynes Decl. ¶ 2; Sevigny Decl. ¶ 3. The Candidate Intervenors support the CEP as a means of increasing access to public office for individuals who would otherwise be unable to run for public office. Blondin Decl. ¶ 3; Hynes Decl. ¶ 3; Sevigny Decl. ¶ 4. These candidates also support contribution restriction on lobbyists, state contractors and their families. Blondin Decl. ¶ 10; Hynes Decl. ¶ 7; Sevigny Decl. ¶ 12.

The Candidate Intervenors support the CEP and the contribution restrictions for a number of different reasons. As candidate Blondin stated, “[w]hen I was running for state office, I quickly realized that I was at an insurmountable disadvantage when it came to fundraising.” Blondin Decl. ¶ 4. The CEP would level the fundraising playing field for candidates like Ms. Blondin. Candidate Hynes predicts that the CEP would have a beneficial effect on the range of citizens who stand for election. She stated, “I expect the CEP will bring in a new slate of candidates who have a broader array of experiences . . . [and] [t]he CEP is a mechanism to level the playing field so that not only wealthy candidates and career politicians are able to inform the electorate about their views on the issues . . .” Hynes Decl. ¶¶ 3, 4. While candidate Blondin hopes for an end to the “seemingly quid pro quo contributions from lobbyists and state contractors” Blondin Decl. ¶ 9, candidate Sevigny views the CEP and the contribution restrictions as holistic parts of an overall cure to the flaws in Connecticut's political system. He has declared, “[i]nitiating the Citizens' Election Program and

closing the campaign funding loopholes by restricting campaign contributions from certain sources are major steps in the right direction in reducing the problem of special interests having undue influence in our state.” Sevigny Decl. ¶ 11.

CCC, with nearly 7,000 members located throughout the State of Connecticut, works to promote and maintain a vibrant democracy in Connecticut. Sauer Decl. ¶¶ 3, 4. CCAG is a non-profit organization dedicated to working to bring about social, economic and environmental justice. Sherwood Decl. ¶ 2. CCAG has over 30,000 members who reside in Connecticut. Sherwood Decl. ¶ 2. Both CCC and CCAG are lobbyists and they support the restrictions on contributions from lobbyists, contractors and their families. Sauer Decl. ¶¶ 9, 10; Sherwood Decl. ¶¶ 4, 7. In fact, Charles A. Sauer, CCC’s Executive Director reports: “As a lobbyist who does not give campaign contributions, I have found advocating for the public interest challenging because I am competing with lobbyists who do give campaign contributions.” Sauer Decl. ¶ 9. CCC, CCAG, and their members were strong advocates for passage of the CEP and contribution restrictions and have been strong advocates since their passage. Sauer Decl. ¶¶ 5, 10; Sherwood Decl. ¶ 5. CCC and CCAG believe that the CEP removes the ability of special interest money to heavily influence elections and reduces the appearance of corruption. Sauer Decl. ¶ 10; Sherwood Decl. ¶ 7. In particular, Legislative Director of Connecticut Citizen Action Group, Phillip Sherwood, hopes the CEP will counter the effect of “money influenc[ing] the actions of candidates even before they are elected . . . [because of] the candidates’ desire not to alienate campaign donors.” Sherwood Decl. ¶ 3. Additionally, CCC and CCAG believe that the CEP creates opportunities for those who are not independently wealthy and do not have ties to other sources of private funds to have their messages heard, thereby diversifying the candidate pool. Sauer Decl. ¶ 10; Sherwood Decl. ¶ 7. Because CCC and CCAG believe the Citizens’ Election

Program furthers the mission of their organizations and the many important interests of their members and other citizens of Connecticut, they each have a strong interest in seeing that all of the challenged provisions remain in effect. Sauer Decl. ¶ 10; Sherwood Decl. ¶¶ 4, 7, 8.

ARGUMENT

I. INTERVENTION OF RIGHT SHOULD BE GRANTED.

Applicants are entitled to intervention as of right if they demonstrate that: (1) the application is timely; (2) the applicants have an interest relating to the property or transaction that is the subject of the action; (3) disposition of the action as a practical matter may impede or impair the applicants' ability to protect that interest; and (4) no existing party adequately represents the applicants' interest. Fed. R. Civ. P. 24(a)(2); *see Brennan v. New York City Bd. of Educ.*, 260 F.3d 123, 128 n. 3 (2d Cir. 2001). Applicants meet all those requirements here.

Although all of the criteria must be satisfied, they should be considered together rather than discretely. Intervention should be granted of right if the interests favoring intervention outweigh those opposed. 6 *Moore's Federal Practice*, ¶ 24.03[1][b] at 24 (3d ed. 1997). For example, if the proposed intervenor's interest is very strong, a lesser showing of impairment of that interest or inadequacy of representation may be sufficient for intervention. *Id.*

A. Proposed Intervenors Have Acted in a Timely Manner.

The United States Court of Appeals for the Second Circuit has stressed the importance of timeliness and the wide discretion afforded the district courts in evaluating intervention motions. *In re Bank of New York Derivative Litigation*, 320 F.3d 291, 300 (2d Cir. 2003). In considering the timeliness of a motion to intervene courts should consider: "(1) how long the applicant had notice of the interest before it made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any

unusual circumstances militating for or against a finding of timeliness.” *Id.* (quoting *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 70 (2d Cir.1994)). Proposed-Intervenors’ motion to intervene is being filed within three weeks of the day that Plaintiffs filed their Amended Complaint, a day after Plaintiffs filed a Motion for Preliminary Injunction and before any responsive pleading has been submitted by or is even due from Defendants. Proposed Intervenors do not intend to seek any delay in the case and, accordingly, this motion will cause neither prejudice to the existing parties nor any delay in these proceedings. Under these circumstances, this motion is unquestionably timely.

B. Proposed Intervenors Have Interests in the Subject of the Action, Which May, as a Practical Matter, Be Impeded Absent Intervention.

In discussing intervention of right, a leading treatise states:

It is generally agreed that in determining whether disposition of the action will impede or impair the applicant’s ability to protect his interest the question must be put in practical terms rather than in legal terms. The central purpose of the 1966 amendment was to allow intervention by those who might be practically disadvantaged by the disposition of the action and to repudiate the view . . . that intervention must be limited to those who would be legally bound as a matter of *res judicata*.

13B Wright, Miller & Kane, Federal Practice and Procedure: Jurisdiction 2nd 1908 at 301 (1986) (footnotes omitted).

There is no question that the Candidate Intervenors will be “practically disadvantaged” if Plaintiffs succeed in overturning the CEP. Indeed, it is the future availability of public financing that will allow candidates like Proposed Intervenors Ms. Hynes and Ms. Blondin, who face difficulty in raising large sums of private money, to meaningfully share their message with the voters in the next election. Hynes Decl. ¶¶ 2, 3, 4; Blondin Decl. ¶¶ 4, 7.

Candidate Sevigny is differently situated from the other Candidate Intervenors. As a minor party candidate, Mr. Sevigny cannot receive public funds in the next election. Sevigny Decl. ¶ 6. However, with a strong electoral showing by the Green Party in his district, Mr. Sevigny could benefit from the public funds available through the CEP in a future election. Sevigny Decl. ¶ 6. The CEP thereby creates an incentive for minor party candidates to work hard in present elections to garner as many votes as they can so that their future candidates may benefit from public funding. Similarly, the approximately 37,000 combined members of CCC and CCAG will be disadvantaged if the CEP, which they believe is integral to maintaining a strong democracy, is invalidated. Sauer Decl. ¶ 10; Sherwood Decl. ¶ 8.

As polling by Connecticut Common Cause has indicated, the public is keenly aware of the corrosive effect of money on democracy. Sixty-two percent of those Connecticut residents surveyed in 2005, directly before the passage of the Act, “agreed that elected officials in Connecticut are looking out for the needs of those who pay for their campaigns.” Sauer Decl. ¶ 8. Additionally, the poll found that 80 percent surveyed agreed with a proposal that “would place strict limits on political action committees and lobbyists campaign contributions.” Sauer Decl. ¶ 8. The Candidate Intervenors will be disadvantaged if the restrictions on contributions from lobbyists, state contractors and their families are invalidated because candidates want to run for election in a system that has the public’s trust. Blondin Decl. ¶ 10; Hynes Decl. ¶ 7; Sevigny Decl. ¶ 12. Candidate Sevigny would be particularly harmed by the fall of the contribution restrictions because he does not accept corporate or PAC money. Sevigny Decl. ¶ 5. With the restrictions, he and his opponents are limited to similar sources of campaign funds—primarily individuals.

Passing comprehensive campaign reform in Connecticut, including certain contribution restrictions from lobbyists and contractors, has been a high priority for both CCAG and CCC for years. Polling demonstrates that the majority of the general public agrees with these reforms as sound public policy. As polling in Connecticut showed, 82 percent agreed that “[w]e need to limit the influence of money on politics.” Sauer Decl. ¶ 8. As the high priority issue for these nonprofit organizations, it will be a setback for the members of both CCC and CCAG if these reforms are invalidated in this lawsuit and all the effort expended by these organizations to pass these reforms is for naught. Also, the faith in the integrity of government by the organizations and their members, who are registered voters, will continue to diminish if restrictions are not upheld. Sauer Decl. ¶¶ 8, 10; Sherwood Decl. ¶ 7.

Political candidates repeatedly have been granted intervention as of right in order to defend the constitutionality of the election laws under which they operate, including in recent cases similar to this one. In an ongoing suit in the United States District Court in North Carolina, James R. Ansley, a potential judicial candidate, and Common Cause North Carolina were permitted to intervene in case to help defend the constitutionality of North Carolina’s public financing program for judicial elections. Order, *Jackson v. Leake*, Civil Action No. 5:06-CV-324-BR (D.N.C. Sept. 6, 2006) (granting intervention), attached hereto as Exhibit F.

In a recent case in the United States District Court for the District of Arizona, the Court similarly granted Stephen S. Poe, a candidate for the Arizona State Senate who supported Arizona’s public campaign financing system, intervention of right to defend Arizona’s system against a constitutional challenge very similar to the one at issue in this case. In granting Mr. Poe’s motion to intervene as of right, the District Court noted that “if Plaintiffs are successful [in challenging the statute], Poe’s ability to run for office as a clean elections candidate could be

impacted.” Order, *Association of Am. Physicians and Surgeons v. Brewer*, No. 04-0200 (D. Ariz. Apr. 26, 2004) (granting motion to intervene), attached to this memorandum as Exhibit G.

In a case challenging the constitutionality of the Bipartisan Campaign Reform Act of 2002 – the comprehensive federal reform law – a three-judge district court granted intervention to federal candidates seeking to help defend the constitutionality of the law. *McConnell v. FEC*, 251 F.Supp.2d 176 (D.D.C. 2003) (three judge court) *aff’d* in part and *rev’d* in part 540 U.S. 93 (2003) (Order of May 3, 2003 granting intervention) (attached as Exhibit H). The three-judge court said that “as opposed to members of the general public, the movants have a concrete, direct, and personal stake – as candidates and potential candidates – in the outcome of a constitutional challenge to a law regulating the processes by which they may attain office.” Order at 7. *See also Shays v. FEC*, 414 F.3d 76, 83 (D.C. Cir. 2005) (finding standing to challenge FEC regulations issued under BCRA because “as officeholders and candidates for office, [plaintiffs] are among those who benefit from BCRA’s restrictions on practices Congress believed to be corrupting.”).

In *Marshall v. Meadows*, 921 F. Supp. 1490 (E.D. Va. 1996), a political incumbent and candidate was granted the right to intervene as a defendant to support the constitutionality of the state’s open primary law. The proposed intervenor was an incumbent U.S. Senator who expected to benefit from the primary. The District Court found that intervention of right and permissive intervention were both appropriate, noting that the proposed intervenor “has as a practical matter a vital interest in a procedure through which he is currently seeking election and toward which he has expended considerable money and time.” 921 F. Supp. at 1492; *see also Meek v. Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993) (permitting individuals seeking to defend the county’s at-large system for electing county commissioners to intervene as

of right); *Smith v. Chicago Board of Election Commissioners*, 103 F.R.D. 161, 163 (N.D. Ill. 1984) (allowing registered voters who supported particular candidates to intervene in action challenging constitutional validity of signature requirements for candidates).

The Candidate Intervenors' interest is similar to the interest of the candidate-intervenors in *Brewer* and *Marshall v. Meadows*, both of whom were granted intervenor status as of right.¹ The Connecticut Candidate Intervenors have an interest in seeing that the election system under which they may run for office in the future is not declared unconstitutional. The viability of candidacy of each of the Candidate Intervenors depends in significant part on the availability of public financing and therefore depends on the continuing vitality and legality of the CEP. Blondin Decl. ¶ 4; Hynes Decl. ¶ 2; Sevigny Decl. ¶ 4. The Connecticut Candidate Intervenors also have an additional interest in seeing the contribution restrictions upheld. Blondin Decl. ¶ 10; Hynes Decl. ¶ 7; Sevigny Decl. ¶ 12.

Moreover, courts have held that organizations like CCC and CCAG whose members would benefit from regulations that were challenged were entitled to intervene in a suit challenging the regulations. For example, Common Cause North Carolina was permitted to intervene in *Jackson v. Leake*, a case challenging the constitutionality of North Carolina's judicial public financing, where Common Cause North Carolina was a strong supporter of the law establishing the public financing system. *See* Ex. F. Also in *Brewer*, the Clean Elections Institute, a non-profit organization, was allowed to intervene as a matter of right to help defend Arizona's clean election system because of "its work in support of the goals of the challenged Act." Ex. G. In fact, the Second Circuit reversed denial of intervention as a matter of right to a

¹ In *Jackson v. Leake*, *supra*, intervention was granted but the court did not specify whether the intervention was as of right or permissive.

pharmaceutical association in a suit challenging the validity of a regulation “from which its members benefit.” *N.Y. Pub. Interest Research Group, Inc. v. Regents of the University*, 516 F.2d 350, 352 (2nd Cir. 1975); *see also Washington State Bldg. and Constr. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 629-30 (9th Cir.1982) (public interest group that sponsored statute as a ballot initiative had a right to intervene in an action challenging the constitutionality of the statute); *Herdman v. Town of Angelica*, 163 F.R.D. 180, 187 (W.D.N.Y. 1995) (public interest group that “took an active role” in drafting a law “has a clear interest in the continuing constitutional viability of that law”).

C. The Existing Parties May Not Adequately Represent the Intervenors’ Interests.

The inadequate representation prong of Rule 24(a)(2) “is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10, 92 S. Ct. 630, 636 n.10, 30 L. Ed. 2d 686, 694 n.10 (1972). Proposed Intervenors easily meet this “minimal burden” of demonstrating that the State “may not” adequately represent their direct personal interests.

The Attorney General is required by law to defend this action. *See Conn. Gen. Stat. § 3-125*. By contrast, CCC and CCAG are motivated by their interest in protecting the CEP and the contribution restrictions, the result of its members’ advocacy efforts to promote and maintain a democracy free of corrupting influences. Sauer Decl. ¶ 5, 10; Sherwood Decl. ¶ 6. The Candidate Intervenors also have personal stakes in defending a system that affords each of them the possibility of running a competitive campaign for office in a system that has fewer corrupting influences and is regarded by the public as having integrity. As private citizens and registered

voters who are likely to run for office again and seek to participate in the CEP, the Candidate Intervenor has different interests from and stand in a different position than the State defendants. The State may not adequately represent their interests.

II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION SHOULD BE GRANTED.

If the Court were to conclude that Proposed Intervenor is not entitled to intervene as of right, then the Court should exercise its discretion and grant permissive intervention under Fed.

R. Civ. P. 24(b)(2), which provides, in relevant part:

Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . 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.

As the Supreme Court has noted, the permissive intervention provision in Rule 24(b) "plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *S.E.C. v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459, 60 S. Ct. 1044, 1055, 84 L. Ed. 1293, 1306 (1940). Because Proposed Intervenor's defense unquestionably has questions of law and fact in common with the main action, and because intervention will not unduly delay or prejudice the rights of any party, the Court should grant permissive intervention. As the declarations attached to this memorandum of law demonstrate, Proposed Intervenor has clear interests in the outcome of this lawsuit. Their unique and varied perspectives will be valuable to the Court in assessing the important and weighty democratic issues raised by this case.

CONCLUSION

For the foregoing reasons, this Court should grant the motion to intervene and order that the accompanying Answer be accepted for filing by the Clerk of the Court.

Respectfully submitted,

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