

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Civil Action No. 2025-CP-09-00195

ANNE CROOK,

Plaintiff,

v.

SOUTH CAROLINA ELECTION COMMISSION a/k/a
STATE ELECTION COMMISSION,

Defendant.

**GOVERNOR MCMASTER'S
UNOPPOSED MOTION TO INTERVENE**

Under Rule 24 of the South Carolina Rules of Civil Procedure, Henry Dargan McMaster, in his official capacity as Governor of the State of South Carolina, moves to intervene in this case to defend this action alongside the South Carolina Election Commission. The Governor requests expedited consideration of this Motion to facilitate his participation in any hearing or proceedings here. Under Rule 11(a), SCRPC, the Governor's counsel has conferred with opposing counsel, who confirmed that Crook does not oppose the Governor's intervention here.

INTRODUCTION

The U.S. Department of Justice has requested South Carolina's voter registration list, including either driver's license numbers or the last four digits of Social Security numbers. Anne Crook filed this lawsuit, seeking to enjoin the State Election Commission from providing that information to DOJ. Crook's contention focuses on state law. Even if she were correct about what state law required, she ignores every federal statute that DOJ invoked in requesting information from the State Election Commission. Between the Supremacy Clause, U.S. Const. art. VI, cl. 2, and the Time, Places and Manner Clause, *id.* art. I, § 4, that's a glaring omission.

But this Motion isn't about the merits. Instead, this Motion simply seeks to allow the

Governor to participate in this lawsuit. As an initial matter, he satisfies Rule 24(a)'s requirements for intervention as of right. His request is timely. His constitutional authority to sign legislation and take care that state law be faithfully executed are implicated. Those interests would be impaired if he didn't have the rights of a litigant. And there's no way to guarantee the State Election Commission will make every argument that the Governor would.

But at the very least, the Governor satisfies Rule 24(b)'s low bar for permissive intervention. In addition to being timely, his defense here implicates the same legal question as Crook's Complaint: Can (or even must) the Commission provide the requested information to DOJ? And his participation here won't prejudice Crook in any way, as this case is in its earliest stages.

The Court should therefore grant the Motion.

LEGAL STANDARD

Rule 24 allows a party to intervene either as a matter of right or by permission, and these rules should be interpreted "to permit liberal intervention." *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990). To intervene as of right under Rule 24(a), an intervenor must (1) seek to intervene timely, (2) have an interest in the subject of the action, (3) have that interest be impaired if the case is decided without him, and (4) demonstrate that his interest is not sufficiently represented by the other litigants. *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 99, 847 S.E.2d 87, 90 (2020); *see* Rule 24(a), SCRPC. Under Rule 24(b), to intervene by permission, an intervenor must (1) seek to intervene timely, (2) assert a claim or defense that has a question of law or fact in common with the underlying action, and (3) prove his intervention will not delay or prejudice the original parties. *Ex parte Builders Mut. Ins. Co.*, 431 S.C. at 101, 847 S.E.2d at 91; *see* Rule 24(b), SCRPC. Whether to grant intervention rests in a trial

court's discretion. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 411, 581 S.E.2d 161, 168–69 (2003).

ARGUMENT

I. The Governor has a right to intervene under Rule 24(a).

A. The Governor's Motion is timely.

Intervention is timely when a “motion [is] filed only days after [the] complaint was filed.” *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 189, 394 S.E.2d at 714; *accord Coastal Conservation League v. Ross*, No. 2:18-CV-03326-RMG, 2019 WL 5872423, at *2 (D.S.C. Feb. 8, 2019) (ten days); *S.C. Coastal Conservation League v. Pruitt*, No. 18-CV-330-DCN, 2018 WL 2184395, at *8 (D.S.C. May 11, 2018) (22 days); *cf. Middleton v. Andino*, 481 F. Supp. 3d 563, 568 (D.S.C. 2020) (concluding even three months is timely).

Crook filed the Complaint on August 29. Governor McMaster now moves to intervene, just five days (and two business days) later, and only a day after Crook served the Commission. No one can credibly dispute that the Governor satisfies this factor.

B. The Governor has significant interests here.

The Governor has multiple interests to vindicate. *First*, he must “be presented” with “[e]very bill or joint resolution which shall have passed the General Assembly” “before it becomes a law” and either “approv[e]” or “return” it. S.C. Const. art. IV, § 21. Under this authority, the Governor signed major (and bipartisan) election-reform legislation into law a few years ago, which included the voter-registration provisions implicated here. *See, e.g.*, 2022 S.C. Acts No. 150 §§ 5, 10, 19.

Second, the Governor is the State’s “Chief Magistrate” and “supreme executive authority.” S.C. Const. art. IV, § 1. And Governor McMaster is constitutionally charged with the duty to “take

care that the laws be faithfully executed.” *Id.* art. IV, § 15. This obligation is a “Chief Executive’s most important constitutional duty.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 577 (1992). Governors have therefore repeatedly been allowed to intervene to defend challenges to state law. *See, e.g.,* Order, *League of Women Voters v. Alexander*, No. 2024-001227 (Oct. 3, 2024) (partisan gerrymandering); Order Granting Mot. to Intervene, *Planned Parenthood S. Atl. v. State*, No. 2022-CP-40-03569 (S.C. Comm. Pls. July 28, 2022) (2021 Fetal Heartbeat Act); Order, *Owens v. Stirling*, No. 2021-CP-40-2306 (Richland Cnty. Ct. Comm. Pls. May 25, 2021) (methods of execution); Mem. Op. and Order Granting Mots. to Intervene, *Planned Parenthood S. Atl. v. Wilson*, No. 3:21-cv-508 (D.S.C. Mar. 9, 2021), ECF No. 62; *Planned Parenthood S. Atl.*, 2021 WL 878791 (2021 Fetal Heartbeat Act); *Williams v. Morris*, 320 S.C. 196, 464 S.E.2d 97 (1995) (appropriations act).

Third, the Governor bears sole responsibility for appointing the members of the State Election Commission. *See* S.C. Code Ann. § 7-3-10(A).

Fourth, not only has the Governor been a longtime proponent of protecting the electoral process, but he is also actively defending election law right now. *See League of Women Voters v. Alexander*, No. 2024-001227 (S.C.). Thus, it should come as no surprise to Crook’s counsel that the Governor again seeks to intervene here.

C. The Governor’s interests and authority would be impaired absent intervention.

On the third element, “a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene.” *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 190, 394 S.E.2d at 715. If the Governor is not a party to this case and the Court were to enjoin the Election Commission from complying with federal law and DOJ’s request (whether on a temporary or permanent basis), the Governor

would not have access to the proper forum to explain why federal law requires the State to provide the requested information or why state law does not prevent that. For instance, absent intervention, Governor McMaster could not “make motions or to appeal the final judgment in the case,” so “the ‘practical impairment’ requirement for intervention is satisfied.” *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986).

D. The Governor must represent his unique interests and authority.

A proposed intervenor must meet only a “minimal” burden on this last factor. *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 191, 394 S.E.2d at 715. Factors to consider on this front include “(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.” *Id.*

Whatever similarities they may share in this litigation, the Election Commission does not have the same constitutional authority and duties as the Governor. *Cf. Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 186 (2022) (“Like the Governor, the attorney general is an independently elected official.”); *Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1011 (2022) (“The way in which Kentucky divides executive authority . . . should not obscure the important constitutional consideration at stake.”); *State ex rel. Condon v. Hodges*, 349 S.C. 232, 240, 242, 562 S.E.2d 623, 627, 628 (2002) (discussing the “dual role” and “other duties” of the Attorney General); *Williams*, 320 S.C. at 206, 464 S.E.2d at 102 (emphasizing the Governor’s constitutional role related to, and participation in, the legislative process). Given these differences, no one can say at this stage that the Election Commission will “undoubtedly” make

all of the arguments the Governor will make, whether in this Court or in any appeal. *Berkeley Elec. Co-op., Inc.*, 302 S.C. at 191, 394 S.E.2d at 715.

* * *

Governor McMaster satisfies all four elements to intervene as a matter of right. The Court should therefore authorize him to intervene under Rule 24(a).

II. The Court should alternatively permit the Governor to intervene under Rule 24(b).

At the very least, the Court should permit Governor McMaster to intervene under Rule 24(b). As explained already, the Governor’s Motion to Intervene is timely. This Part thus focuses on the two other elements of permissive intervention: (1) a common question of law or fact and (2) lack of delay or prejudice.

A. The Governor seeks to defend against Crook’s claim.

Crook seeks to stop the very action that the Governor contends is legally required. So there is no question that Governor McMaster’s proposed intervention involves the very same questions that Crook has put before this Court. *See Middleton*, 481 F. Supp. 3d at 571 (this factor is met when “Plaintiffs seek declarative and injunctive relief that the Challenged Provisions are unconstitutional, while the Proposed Intervenors seek to prove the constitutionality of the Challenged Provisions”).

B. The Governor’s intervention will not prejudice any existing party.

Crook will not be prejudiced by Governor McMaster’s intervention. This case is in its earliest stages. The Election Commission has not yet appeared or responded to Crook’s Complaint, and the only activity on the docket other than that pleading is the *ex parte* temporary restraining order. The deadlines imposed by the South Carolina Rule of Civil Procedure thus can remain in place. *See Planned Parenthood S. Atl.*, 2021 WL 878791, at *4 (“Here, as to the potential for delay,

the Court agrees with the Proposed Intervenor that their involvement at this early stage of the litigation fails to delay this matter. The Court will enforce all existing deadlines upon the Proposed Intervenor.”). Governor McMaster is prepared to respond to any motions that Crook may file and to file a dispositive motion under Rule 12(b), SCRCP, on any expedited schedule directed by the Court, and he is prepared to attend the September 10 hearing. At most, the Governor’s intervention at this stage might mean more briefing for Crook, but courts have repeatedly rejected the idea that “some additional work” is a reason to deny intervention. *Id.* (“Regarding prejudice to the Plaintiffs, the Court concludes briefing by the Proposed Intervenor fails to amount to a finding of prejudice, even if it creates some additional work for the Plaintiffs and the Court. Hence, the Court concludes the Proposed Intervenor’s intervention fails to prejudice Plaintiffs.”); *see also Middleton*, 481 F. Supp. 3d at 568 (“[T]he court finds briefing by the Proposed Intervenor would not amount to prejudicial delay, even if it creates some additional work for Plaintiffs (and the court).”). Accordingly, permitting Governor McMaster to intervene under Rule 24(b) would not and will not prejudice Plaintiffs and is otherwise warranted under the circumstances.*

CONCLUSION

For these reasons, the Court should grant this Motion and allow the Governor to intervene as a matter of right under Rule 24(a). Alternatively, Governor McMaster requests that the Court

* Given this timing and the pending hearing, an accompanying pleading under Rule 24(c) is unnecessary. As explained by the Fourth Circuit, “a motion to intervene that clearly spells out the intervenor’s position satisfies Rule 24(c), as it provides notice to the Court and the parties of the intervenor’s interest in the litigation.” *Veasey v. Wilkins*, No. 5:14-cv-369-BO, 2015 WL 7776557, at *2 (E.D.N.C. Dec. 2, 2015) (citing *Spring Constr. Co. v. Harris*, 614 F.2d 374, 376–77 (4th Cir. 1980)). Because this Motion “provides the appropriate parties with notice” of the Governor’s intent, Rule 24 is satisfied. *Id.*; *see, e.g., S.C. Elec. & Gas Co. v. Whitfield*, No. 3:18-cv-01795-JMC, 2018 WL 3470660, at *2 n.4 (D.S.C. July 18, 2018) (applying this rule) (“The court finds that President Leatherman’s Motion to Intervene is proper as it provides notice to the court and the parties of his intention in the case.” (internal citation omitted)).

permit him to intervene under Rule 24(b). Finally, Governor McMaster respectfully requests expedited consideration of this Motion to facilitate the Governor's prompt participation in this case.

Respectfully submitted,

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