

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Audrey J. Schering)	
)	
Plaintiff,)	Case No. 1:04cv755
)	
v.)	
)	Judge Michael H. Watson
J. KENNETH BLACKWELL)	
Secretary of State of Ohio,)	
)	
Defendant.)	

**PLAINTIFF'S RESPONSE TO MOTION OF
OHIO DEMOCRATIC PARTY TO INTERVENE**

Plaintiff Audrey J. Schering has no objection to the Ohio Democratic Party (the "ODP") intervening in this matter, but only as a defendant. Plaintiff agrees that these matters should be litigated in a single proceeding rather than in multiple actions where there would be a potential for divergent outcomes. However, in this action, there can only be one complaint and one plaintiff. This is because Plaintiff Schering and the ODP have different interests in the present action. The ODP admits this is its own memorandum:

The issue is not whether Plaintiff Schering is represented by competent counsel; certainly she is. *Rather, the issue is whether the interests of the Ohio Democratic Party in this case are the same as Plaintiff's interests. They are not.*

[ODP's Memorandum, at p. 5.] (Emphasis added.)

EEOC v. American Telephone & Telegraph Company, 506 F.2d 735 (3rd Cir. 1974), involved a similar issue. A labor union sought to intervene as a plaintiff in an EEOC discrimination action against AT&T. When the EEOC and AT&T reached a memorandum of agreement and the district court entered a consent decree, the labor union sought to intervene, claiming the agreement contradicted AT&T's collective bargaining agreement

with its employees. Id., at 738. Since the labor union did not share the same interests as the EEOC and was not seeking the same relief, the district court denied the motion to intervene. Id., at 737-38. Upon appeal, the circuit court held:

[W]e think that the district court did not err in denying [labor union] the right to intervene generally as a party plaintiff in this action. We conclude, however, that [the labor union] should be accorded, if it so requests, the *right to intervene as a party defendant* to protect its interests in its collective bargaining agreements with AT&T.... (Emphasis added.)

Id., at 739.

Just as the labor union in EEOC v. AT&T did not have the same interests as the EEOC, so the ODP acknowledges it does not have the same interests as Plaintiff. While the ODP's proposed complaint mirrors and sometimes states verbatim some of the same allegations set forth in Ms. Schering's complaint, neither complaint states the specific remedy which will be sought. As the ODP bluntly states that it has different interests from Plaintiff, so it is likely to seek a different result. If this is so, it makes no sense to have two plaintiffs seeking different results which may even be diametrically opposed.

Moreover, allowing the ODP to intervene as a plaintiff presents numerous procedural problems, no small of which is the presentation of evidence at trial. This would be an unworkable situation. There would be issues as to who would present evidence first, who would present the first and possibly second direct examination of the same witness, who would have rights of rebuttal, and what would be the order of cross-examination. Further difficulties would arise at the time of entering judgment where one plaintiff might prevail and the other might not, but where they have both asserted the same claims while seeking different remedies.

By allowing the ODP to intervene only as a party defendant, the ODP could still pursue its remedies, but by answer and cross-claim against the Secretary of State. In light of the procedural difficulties of having two plaintiffs, as well as the fact that the ODP and

Plaintiff Schering hold different interests in the outcome, the ODP would be more properly positioned in the action as a defendant.

Finally, if the Court believes that the ODP should be allowed to intervene as a party plaintiff, Plaintiff Schering requests a conference with the Court to set procedural guidelines for the management of the case.

Respectfully submitted,

s/Quintin F. Lindsmith

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2004, a copy of the foregoing Plaintiff's Response to Motion of Ohio Democratic Party to Intervene was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Quintin F. Lindsmith