

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

SOUTH CAROLINA GREEN PARTY, )  
et al., )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action No. 08-cv-02790-CMC  
 )  
SOUTH CAROLINA STATE )  
ELECTION COMMISSION, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION OF THE  
CHARLESTON COUNTY DEMOCRATIC PARTY TO INTERVENE**

**I. Introduction**

Plaintiffs South Carolina Green Party, Eugene Platt, and Robert Dunham respectfully submit this opposition to the motion of the Charleston County Democratic Party to intervene in this action as a defendant pursuant to Rule 24(a)(2), F. R. Civ. P. The grounds for this opposition are: (1) movant has not shown, or even alleged, that its interests will not be adequately represented by existing parties, i.e., the South Carolina State Election Commission and its members; and (2) in its answer, movant has not alleged any injury to its interests but asserts only that the complaint fails to state a claim upon which relief can be granted and that plaintiffs have waived any rights asserted in the complaint.

## **II. Movant Has Not Shown or Alleged That Its Interests Will Not Be Adequately Represented by Existing Parties**

Movant does not seek permissive intervention, but intervention as of right pursuant to Rule 24(a)(2), F. R. Civ. P. To meet the standard for intervention as of right, a movant must show, inter alia, that its interests are not adequately represented by existing parties. Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 155 (1967) (“[t]he requirement of inadequate representation by existing parties as a precondition of the right to intervene under the new Rule 24 is obviously an adaption of the similar standards contained in the former 24(a)(2)”) (Stewart, J., dissenting); Commonwealth of Virginia v. Westinghouse Elec. Corp., 542 F.2d 214, 216 (4<sup>th</sup> Cir. 1976) (a movant seeking intervention as of right must show “that the present litigants do not adequately represent its interest”); Zimmerman v. Bell, 101 F.R.D. 329, 331 (D.C. Md. 1984) (“[t]he burden is on the party seeking intervention to show that his interests are inadequately represented”).

Movant alleges, as required by Rule 24(a)(2), that it has an interest in the litigation and that disposing of the action may impair or impede its ability to protect its interests. But it is also required by the rule to show in addition that the present litigants do not adequately represent its interests. See Commonwealth of Virginia v. Westinghouse Elec. Corp., 542 F.2d at 216 (“[a]ll three tests must be met if . . . [a movant for intervention] is to prevail”); In re Hill, 2008 WL 2331028 \*2 (W.D. N.C. 2008) (denying intervention where movant failed to show that its interests were not adequately represented by

present litigants). Here, movant not only does not show that the present litigants do not adequately represent its interests, but it has not even alleged inadequate representation. Under the circumstances, movant fails to satisfy the requirements of Rule 24(a)(2), and intervention should be denied.

Any belated claim of inadequate representation would also fail for a number of reasons. First, movant seeks no relief other than that sought by the existing defendants South Carolina State Election Commission and its members. Second, the pleadings of movant and those of the existing defendants are nearly identical. Third, the existing defendants, at the request of the Democratic Party, determined that the name of the Green Party's candidate, Eugene Platt, could not be placed on the 2008 general election ballot. In light of these facts, movant cannot demonstrate that its interests are not adequately protected by the existing parties.

Fourth, the court held in Commonwealth of Virginia v. Westinghouse Elec. Corp., 542 F.2d at 216, that “[w]hen the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the petitioner must demonstrate adversity of interest, collusion, or nonfeasance.” Movant fails even to make any such allegations, let alone present evidence supporting adversity of interest, collusion, or nonfeasance. Accordingly, intervention as of right should be denied.

### **III. Movant Has not Claimed an Interest that May Be Impaired**

In its answer, movant has not alleged any injury to its interests but

asserts only that the complaint fails to state a claim upon which relief can be granted and that plaintiffs have waived any rights asserted in the complaint. Given the fact that the South Carolina State Election Commission, and not the Democratic Party, determines whether the name of a candidate nominated by the Green Party appears on the 2008 general election ballot, movant has no interest in this litigation that would justify intervention within the meaning of Rule 24(a)(2). At best, movant has only the interest of an amicus curie and is, of course, free to seek to file a brief in that capacity.

#### **IV. Conclusion**

This Court should deny the Charleston County Democratic Party's motion to intervene.

Respectfully Submitted,

/s/Laughlin McDonald  
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