

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Ohio Democratic Party	:	
	:	Case No. C204-1055
Plaintiff,	:	
v.	:	Judge Marbley
	:	
J. Kenneth Blackwell, et al.,	:	Magistrate Judge Kemp
	:	
Defendants.	:	

**MEMORANDUM IN OPPOSITION TO MOTION OF THE
ALLIANCE FOR DEMOCRACY TO INTERVENE AS A PLAINTIFF**

Plaintiff, the Ohio Democratic Party, asks that the Motion to Intervene filed by The Alliance for Democracy be denied. The motion to intervene does not comply with requirements for intervention under Fed. R. Civ. P. 24 and is not timely.

The Ohio Democratic Party commenced this action on November 2, 2004, the day of the national presidential election. The sole claim advanced in its complaint was that the “because of a failure to supply an adequate number of voting machines, thousands of Ohio voters may be disenfranchised.” Complaint, ¶ 1. The sole relief sought was immediate injunctive relief ordering defendants to provide “an alternative means to supplement the inadequate electronic voting systems in [Franklin and Knox] counties.” *Id.* The Court acted promptly. It held an immediate evidentiary hearing at which it heard the testimony of the president of the Franklin County Board of Elections and received declarations from witnesses who had personally observed the long lines in precincts in both Franklin and Knox and the voters’ reactions to the long wait. It also heard the arguments of counsel for Plaintiff, counsel for Defendant Blackwell,

and counsel for Defendant Franklin County Board of Elections. Counsel for the Ohio Republican Party also was permitted to appear and be heard. After hearing the evidence and argument, the Court issued an order directing the defendants “to provide paper ballots or another mechanism to provide an adequate opportunity to vote.” By its terms that order expired on November 2, 2004 at the close of voting.

For all practical purposes, this action terminated when the last voter in Franklin and Knox counties cast his or her ballot on November 2, 2004. Plaintiff and the Franklin County Board of Elections agree that the cause of action heard by this Court on November 2, 2004 is now moot. They stipulated to the dismissal of this action as to the Franklin County Board of Elections on December 2, 2004. (Dkt. # 14.) In its separate Motion to Dismiss, also filed on December 2, 2004, the Ohio Democratic Party asks the Court to recognize that the action is moot and no longer justiciable by allowing it to dismiss its claim as to Defendant Blackwell and by denying the State of Ohio’s motion to intervene for the purpose of pursuing a counterclaim. (Dkt. # 15.)

The Ohio Democratic Party believes that the claim asserted in this case was timely heard and fairly decided. The best course of action at this point is to look forward to assure that the experience of the November 2, 2004 election is not repeated in future elections. The responsibility for meeting this objective should be shouldered by state and local election officials, the political parties and the electors of this State.

The Court should deny the Alliance for Democracy’s motion to intervene. It is not a proper motion to intervene under Rule 24(a) because there is no statute authorizing the Alliance’s intervention and the disposition of this action, as requested by Plaintiff in its December 2, 2004 motion, will not impair or impede the Alliance’s ability to protect its own interests. The Alliance is free to commence its own action by filing a proper complaint in the

forum of its choice. It does not need this action to remain pending because the relief awarded in this action, which is the sole relief ever sought, does not limit the Alliance's right to prosecute its own separate claim.

The Alliance's motion also fails to satisfy the prerequisites for permissive intervention under Rule 24(b). The Alliance does not suggest any statute confers a conditional right to intervene in this action. There is no common question of law or fact between the claim asserted by the Ohio Democratic Party on November 2, 2004 and the claim the Alliance seeks to pursue. The claim asserted in the main action was narrow and clearly defined. Plaintiff sought an immediate remedy for the long lines experienced on election day, which cause of action expired, as did the relief awarded by the Court, when the last elector voted that day. The Ohio Democratic Party does not believe there is a valid reason for pursuing the main action further and it does not believe that there is good cause shown for expanding this action in the manner suggested by the Alliance.

Respectfully submitted,

/s/ Kathleen M. Trafford

Kathleen M. Trafford (0021753), Trial Attorney

David K. Orensten (0075452)

PORTER WRIGHT MORRIS & ARTHUR LLP

41 South High Street

Columbus, Ohio 43215

(614) 227-1915

(614) 227-2100 *facsimile*

ktrafford@porterwright.com

dorensten@porterwright.com

OF COUNSEL:

Ritchey Hollenbaugh (0001072)
Carlile, Patchen and Murphy LLP
366 East Broad Street
Columbus, Ohio 43215
(614) 228-6135
(614) 221-0216 *facsimile*
hrh@cpmlaw.com

Donald McTigue (0022849)
3886 North High Street
Columbus, Ohio 43214
(614) 263-7000
(614) 263-7078 *facsimile*
mctiguelaw@rrohio.com

Michael O'Grady (0023796)
Ohio Democratic Party Legal Counsel
271 East State Street
Columbus, Ohio 43215
(614) 221-6563
(614) 221-0721 *facsimile*
ogradypearse@yahoo.com

CERTIFICATE OF SERVICE

I certify that on February 1, 2005 a copy of the foregoing *Memorandum In Opposition To Motion Of The Alliance For Democracy To Intervene As A Plaintiff* 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/ Kathleen M. Trafford

Kathleen M. Trafford