

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

NORTHEAST OHIO COALITION	:	
FOR THE HOMELESS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	CASE NO. C2:06-0896
v.	:	
	:	JUDGE ALGENON MARBLEY
J. KENNETH BLACKWELL,	:	
	:	
Defendants.	:	

MOTION TO INTERVENE BY THE STATE OF OHIO

Ohio Attorney General Jim Petro, on behalf of the State of Ohio, moves to intervene in this case pursuant to Civ. R. 24(a), Civ. R. 24(b), and 28 U.S.C. Section 2403(b), in order to defend the constitutionality of R.C. 3501.01, *et seq.*, Ohio’s Voter Identification Statutes (“Voter ID Law”). A Memorandum in Support of this motion is attached. Also attached is a “Proposed Notice of Defenses” setting forth the claims and defenses of the State of Ohio, as required by Civ. R. 24(c).

Respectfully submitted,

JIM PETRO
OHIO ATTORNEY GENERAL

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

This action was filed on October 24, 2006, and concerns the constitutionality of Ohio's Voter ID law. And, as of late last night, the Secretary has stated that he does not want to appeal. Accordingly, the Attorney General now seeks to intervene on behalf of the State of Ohio in order to fully defend the constitutionality of Ohio's Voter ID Law. This Court should grant this motion to intervene as the State of Ohio has interests that differ from those of the Secretary of State, given the different roles of the Secretary and the General Assembly regarding the Voter ID Law. The State of Ohio has an interest in defending the constitutionality of the statutes enacted by the General Assembly, while the Secretary's primary interest is in administering these statutes and all others that apply to elections in Ohio. Furthermore, given the Secretary's indicated refusal to appeal, the State of Ohio's interest in fully defending the constitutionality of those statutes duly enacted by the General Assembly is no longer adequately represented by the State of Ohio. Accordingly, the State of Ohio has a right to intervene for the purpose of defending the Voter ID Law.

II. STATEMENT OF FACTS

The Voter ID Law was enacted as part of HB 3 ("HB 3" or "the Bill"), which was signed by the Governor on January 31, 2006. Although portions of the Bill took effect prior to the May 2006 election, the Voter ID Law did not take effect until June 1, 2006.

This action was filed on October 24, 2006. Although the case was randomly assigned to Judge Frost, the case was transferred to the docket of this Court because *King Lincoln Bronzeville Neighborhood Assoc. v. Blackwell* ("*KLBN v. Blackwell*"), Case No. 06-745,

already pending on this Court's docket, also contained a challenge to the Voter ID laws.¹ Also pending as part of the docket in *KLBNA v. Blackwell* was a motion to intervene by the State of Ohio, filed on October 23, 2006. At the time that the case was transferred, statements were made that one purpose for the transfer was so that the two cases would be consolidated *sua sponte*. Accordingly, on the morning of October 25, 2006, the undersigned contacted all counsel in this case and *KLBNA v. Blackwell* seeking consent to intervene, under the assumption that the pending motion to intervene was now pending in the consolidated cases. In response to that e-mail, Ritchey Hollenbaugh indicated consent on behalf of the Plaintiffs in this case, as did both of the attorneys assigned as special counsel to the Secretary of State. See attached e-mail. Accordingly, all parties to this action have consented to intervention by the State of Ohio.

In this case, Plaintiffs seek to enjoin the Secretary of State from enforcing the Voter ID Provisions, as violative of rights recognized by the U.S. Constitution. To the contrary, these statutes do no more than require voters to provide some form of identification at their polling place (with a long list of suitable alternative forms of identification designed to ensure that no voter is denied the right to vote). If the voter does not have identification available, then he or she may vote provisionally, and provide identification later. Thus, the State of Ohio asserts that these statutes are fully constitutional. This Court should grant this motion to intervene so that the constitutionality of these statutes will receive the most comprehensive briefing possible.

III. LAW AND ARGUMENT

This Court should grant this motion to intervene pursuant to Civil Rule 24, either as of right and or as permissive intervention.

A. The State of Ohio Has A Right To Intervene In This Action.

¹ The Voter Id challenge was included in *King Lincoln Bronzeville Neighborhood Association* in the Amended Complaint filed on October 9, 2006.

The State of Ohio should be granted the right to intervene pursuant to Civil Rule 24(a) because of the statutory right of the State of Ohio to intervene in cases in which the constitutionality of a State statute is at issue. Civil Rule 24(a) provides that, upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute of the United State confers an unconditional right to intervene; or (2) when the person seeking to intervene claims an interest relating to the action and is so situated that the disposition of the action may impair that person's ability to protect that interest, unless existing parties adequately represent the applicant's interest. In this case, Civil Rule 24(a)(1) and (a)(2) support a right to intervene.

The State of Ohio has a right to intervene pursuant to Civil Rule 24(a)(1) because a federal statute, 28 U.S.C. § 2403(b), grants the State of Ohio a right to be heard on the constitutionality of the Voter I.D. Law. That section provides that "in any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality." While this is not a case in which the duty to certify arises or the statute strictly applies because there is a State officer, the Secretary of State, who is already a party in the case, nevertheless the State of Ohio invokes its independent right to intervene under 28 U.S.C. § 2403(b), given the fact that the Secretary has indicated a desire not to fully litigate the constitutionality of the statutes. The purpose of the statute is to guarantee that the State of Ohio has an opportunity to be heard when the constitutionality of a statute is at issue, and this case indisputably concerns the constitutionality of statutes very important to the General Assembly.

Accordingly, the State of Ohio also meets the test set forth in Civil Rule 24(a)(2). The State of Ohio has an interest in the constitutionality of the statutes at issue which will be impeded by a negative disposition of this action, and no party before the Court is adequately representing that interest. Civ. R. 24(a)(2).

B. If This Court Does Not Find A Right To Intervene, Then It Should Permit The State Of Ohio To Intervene.

Furthermore, if this Court finds that the State does not have the right to intervene, then the Court should grant the motion pursuant to Civil Rule 24(b). Civil Rule 24(b)(2) provides that upon timely application anyone may be permitted to intervene in an action “when an applicant’s claim or defenses and the main action have a question of law or fact in common.” The rule further provides that “[i]n exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Under these standards, the State of Ohio should be permitted to intervene.

First, this application is timely. The Complaint was filed on October 24, 2006, and assigned to this Court on October 25, 2006, and is currently scheduled for preliminary injunction next Wednesday, November 1, 2006. Under these circumstances, this motion is timely.

Second, the State of Ohio’s defenses share common questions of law and fact with Plaintiffs’ claims against the Voter ID Law. Plaintiffs allege that the statutes are unconstitutional; the State of Ohio will present argument regarding why the statutes are constitutional, and is in a better position to make those arguments than the Secretary of State, because the evidence is within control of the General Assembly and the General Assembly is better situated to address any questions regarding statutory interpretation and legislative intent that may arise.

Finally, granting the State of Ohio the opportunity to intervene at this extremely early juncture will not create any delay, nor will it prejudice any other party's rights, given the fact that intervention is sought solely to present evidence and arguments on the constitutionality of the Voter ID provisions. Indeed, the intervention of the State of Ohio should be favored, because of the opportunity for the Court to hear the unique viewpoint of the General Assembly regarding the enactment of this statute.

As such, this Court should permit the Attorney General to intervene on behalf of the State of Ohio in order to defend the constitutionality of the Voter ID Law.

IV. CONCLUSION

For these reasons, the State of Ohio asks the Court to grant its motion to intervene in this matter.

Respectfully submitted,

JIM PETRO
OHIO ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October, 2006, the foregoing Motion to Intervene was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by facsimile upon all parties for whom counsel has not yet entered an appearance and upon all counsel who have not entered their appearance via the electronic system.

/s/ Holly J. Hunt
Holly J. Hunt