

No. 22O155, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF
GEORGIA, STATE OF MICHIGAN, AND STATE OF
WISCONSIN,

Defendants.

On Motion for Leave to File Bill of Complaint

**MOTION OF STATES OF MISSOURI,
ARKANSAS, LOUISIANA, MISSISSIPPI, SOUTH
CAROLINA, AND UTAH TO INTERVENE AND
PROPOSED BILL OF COMPLAINT IN
INTERVENTION**

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Motion to Intervene and Brief in Support

The States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina, and Utah (“Intervening States”), through their undersigned counsel, respectfully file this motion for leave to intervene in this action and join Plaintiffs’ Bill of Complaint, as modified by proposed intervenor President Donald J. Trump, in the event that this Court grants Plaintiff leave to file the Bill of Complaint. In support of this Motion, the Intervening States state as follows:

This Court permits States to intervene in original actions when “the issues in the litigation are so related to the possible interests of [the intervening states] ... in the subject matter of th[e] suit, that the just, orderly, and effective determination of such issues requires that they be adjudicated in a proceeding in which all the interested parties are before the Court.” *United States v. Louisiana*, 354 U.S. 515, 515–16 (1957) (granting Alabama, Florida, Mississippi, and Texas leave to intervene); *see also*, *e.g.*, *Delaware v. New York*, 507 U.S. 490, 497 (1993) (permitting Michigan, Maryland, Nebraska, and the District of Columbia to intervene); *Texas v. New Jersey*, 373 U.S. 948 (1963) (granting Florida’s motion to intervene). The Court’s power to permit intervention arises from both “the Federal Rules of Civil Procedure” and the “general equity powers” of the Court. *United States v. Louisiana*, 354 U.S. at 515; *see also* Sup. Ct. R. 17.2 (providing that, in an original action, “[t]he form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed”).

Federal Rule of Civil Procedure 24 permits intervention as of right and by the Court's leave. The Intervening State Plaintiffs satisfy both standards here, and the Court should grant the motion.

I. The Intervening States Satisfy the Requirements for Intervention As of Right.

Federal Rule of Civil Procedure 24(a) provides: "On timely motion, the court must permit anyone to intervene who ... (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). The Intervening States satisfy the standards to intervene in this action as of right.

First, the Intervening States' Motion is unquestionably timely. They filed this Motion to Intervene within three days of the filing of Plaintiff's Motion for Leave to File Bill of Complaint, and within two days of receiving notice of the Motion. In addition, the Bill of Complaint has not yet been filed, and the Intervening States seek leave to join it as soon as it is filed. Accordingly, the request for intervention is filed at the case's earliest possible procedural juncture. *See Arizona v. California*, 460 U.S. 605, 615 (1983) (permitting intervention when no adverse party could show how its interests "would be prejudiced or this litigation unduly delayed").

Second, the Intervening States claim an interest relating to the property or transaction that is the subject of the action. They share Plaintiff State of Texas's and Intervenor Donald J. Trump's concerns

about the unconstitutional administration of the Presidential election in the Defendant States, and its impact on voters in the Intervening States. As this Court has stated, “in the context of a Presidential election,” actions in the Defendant States “implicate a uniquely important national interest,” because “the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.” *Anderson v. Celebrezze*, 460 U.S. 780, 794–95 (1983). “For the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation.” *Id.* Further, the Intervening States have a strong interest in ensuring that the unconstitutional administration of elections in the Defendant States does not compromise ballot security and unfairly dilute the votes of voters in the Intervening States. “Every voter” in a federal election, “has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974).

Third, the Intervening States’ interests may be impaired or impeded by the disposition of this action. In the event that this Court grants leave to file the Bills of Complaint, this Court’s adjudication of the merits of Plaintiff’s claims would likely impair or impede the Intervening States’ ability to advance similar claims and interests, including the claim that non-legislative actors in each Defendant State unconstitutionally encroached upon the authority of the “Legislature thereof” to control the administration of Presidential elections in that State. U.S. CONST. art. II, § 1, cl. 2.

Fourth, the Intervening States’ interests are not adequately represented by the existing parties in the case. The Intervening States do not doubt that Plaintiff State of Texas will vigorously and effectively litigate this case, but the Attorney General of each individual State is best situated to represent the interests of that State and its People. The requirement for adequacy of representation is “minimal,” *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972), and the undersigned Attorneys General respectfully submit that they are the most adequate representatives of their respective States. *Cf. Commonwealth of Kentucky v. Indiana*, 281 U.S. 163, 173 (1930) (“[B]y virtue of the original jurisdiction over controversies between states, [a State] must be deemed to represent all its citizens.”). Moreover, Plaintiff State of Texas has consented to the intervention requested in this Motion, as has counsel for President Trump.¹

¹ The Intervening States previously filed an *amicus curiae* brief in this case, along with other States, supporting the Motion for Leave to File Bill of Complaint. Their prior participation as *amici curiae* is fully consistent with granting them leave to participate as parties if the Court grants the Motion for Leave to File Bill of Complaint. *See, e.g., United States v. Louisiana*, 354 U.S. at 515 (granting leave to intervene to the State of Texas based in part on “the representations made by the State of Texas in its *amicus curiae* brief”); *see also* S. SHAPIRO, K. GELLER, T. BISHOP, E. HARTNETT & D. HIMMELFARB, *SUPREME COURT PRACTICE* § 10.10 n.37 (10th ed. 2013).

II. The Intervening States Satisfy the Standards for Permissive Intervention.

In the alternative, the Intervening States satisfy the standards for permissive intervention under Federal Rule of Civil Procedure 24(b). That Rule provides that “[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). For the reasons stated above, this Motion is unquestionably timely, and the Intervening States seek to join the Plaintiff’s Bill of Complaint with the additions and modifications of President Trump, so it is unquestionable that they share “a claim or defense that shares with the main action a common question of law or fact.” *Id.* Given the great importance of the constitutional issues raised in this case, the Intervening States should also be granted permissive intervention as well.

CONCLUSION

For the reasons stated, the Intervening States request that this Court grant them leave to intervene as Plaintiffs in the event that the Court grants leave to file the Bill of Complaint.

December 10, 2020

Respectfully submitted,

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COMMONWEALTH OF PENNSYLVANIA, STATE OF
GEORGIA, STATE OF MICHIGAN, AND STATE OF
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On Motion for Leave to File Bill of Complaint

**BILL OF COMPLAINT IN INTERVENTION OF
MISSOURI, ARKANSAS, LOUISIANA,
MISSISSIPPI, SOUTH CAROLINA AND UTAH**

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BILL OF COMPLAINT IN INTERVENTION

The States of Missouri, Arkansas, Louisiana, Mississippi, South Carolina and Utah seek to intervene in an original action proposed by the State of Texas against the States of Pennsylvania, Georgia, Michigan, and Wisconsin. Donald J. Trump, President of the United States and candidate for re-election to the Office of the Presidency at the general election that was held on November 3, 2020, has sought to intervene and proposed his own Bill of Complaint in Intervention. The Intervening State Plaintiffs adopt by reference and join in the Bill of Complaint submitted by Plaintiff State of Texas as modified by President Trump's Bill of Complaint in Intervention in all aspects, including the statements of Jurisdiction, the Parties, Additional Facts, Count I (alleging a violation of the Elector's Clause) and the Prayer for Relief. The Intervening States further state:

PARTIES

1. The State of Missouri, an Intervening State Plaintiff, is a sovereign State of the United States of America.
2. The State of Arkansas, an Intervening State Plaintiff, is a sovereign State of the United States of America.
3. The State of Louisiana, an Intervening State Plaintiff, is a sovereign State of the United States of America.

4. The State of Mississippi, an Intervening State Plaintiff, is a sovereign State of the United States of America.

5. The State of South Carolina, an Intervening State Plaintiff, is a sovereign State of the United States of America.

6. The State of Utah, an Intervening State Plaintiff, is a sovereign State of the United States of America.

December 10, 2020

Respectfully submitted,

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