

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

ANDREA BELLITTO and)
AMERICAN CIVIL RIGHTS UNION,)
in its individual and corporate capacities,)

Plaintiffs,)

v.)

Civil Action No. 16-cv-61474

BRENDA SNIPES, in her official capacity)
as the SUPERVISOR OF)
ELECTIONS of BROWARD COUNTY,)
FLORIDA,)

Defendant.)

_____)

**PLAINTIFFS’ RESPONSE IN OPPOSITION TO 1199SEIU UNITED HEALTHCARE
WORKERS EAST’S MOTION TO INTERVENE**

Plaintiffs American Civil Rights Union (“ACRU”) and Andrea Bellitto, by and through counsel, hereby file this memorandum of law in opposition to the Motion to Intervene filed by 1199SEIU United Healthcare Workers East (“1199SEIU”). (Dkt No. 23.)

For the reasons that follow, 1199SEIU has failed to establish sufficient grounds for intervention as a matter of right or permissively. Even assuming 1199SEIU’s Motion is timely, 1199SEIU has failed to show that it has an interest relating to the transaction that is the subject of this litigation, that it is so situated that the disposition of this action may impede or impair its ability to protect that interest, and that its interest is represented inadequately by the existing parties.

1199SEIU’s professed main interest in this case is ensuring that the voter rolls in Broward are maintained in conformity with the requirements of the NVRA. Nothing more. This interest is the same interest as that of the Plaintiffs. The Plaintiffs’ ultimate goal is to ensure that

the voter rolls in Broward County are being properly maintained in accordance with the NVRA. Nothing less. This Court is the arbiter of what maintenance is required under NVRA and whether the Defendant is failing to comply with them. Plaintiffs are not requesting voter list maintenance “programs” beyond what is required and contemplated by the NVRA. Therefore, 1199SEIU has not established why it should be permitted to intervene as a Defendant in this case.

At this stage in the litigation, the primary question presented to the Court by Count I of Plaintiffs’ Complaint is whether there has been a violation of the voter list maintenance by the Defendant. This question of liability must be addressed before reaching the issue of crafting a remedy should liability be found. 1199SEIU’s stated interests are not related to the question of liability on the part of the Defendant under the NVRA. Accordingly, 1199SEIU does not have an interest in the litigation at present. If appropriate, it may serve as *amicus curiae* in the stage of the litigation in which the Court addresses the issue of the required remedy under NVRA.

Permissive intervention should also be denied. 1199SEIU’s participation in this matter as a party—as opposed to *amicus curiae*—would cause undue delay and prejudice without any “corresponding benefit to the process, the litigants, or the court.”

1199SEIU’s motion should accordingly be denied.

I. Standard of Review Under Rule 24

“The focus . . . of a Rule 24 inquiry is whether the intervenor has a legally protectable interest in the litigation.” *Chiles v. Thornburgh*, 865 F.2d 1197, 1212 (11th Cir. 1989). A party seeking to intervene, however, does not need to establish that he would have independent standing. *Id.* at 1213. Rather, when the question of intervention is at issue, “justiciability questions have presumably been resolved.” *Id.* at 1212 n.16 (brackets omitted). 1199SEIU’s

interest must be sufficient such that they are “real parties in interest in the transaction which is the subject of the proceeding.” *Id.* at 1214 (citations and quotations omitted).

Where the proposed intervenors have an interest that is identical to an existing party, the “court can presume that the interest is adequately represented.” *Id.* at 1215. When the proposed intervenors provide no unique interest or claim into the litigation, “[t]he duplicative nature of the claims and interests they assert[] threatens to unduly delay the adjudication of the rights of the parties in the lawsuit and makes it unlikely that any new light will be shed on the issues adjudicated.” *Id.*

II. Intervention as a Matter of Right Should Be Denied.

1199SEIU has failed to show that it has an interest relating to the transaction that is the subject of this litigation, that it is so situated that the disposition of this action may impede or impair its ability to protect that interest, and that its interest is represented inadequately by the existing parties.

A. 1199SEIU Has Failed to Show a Legally Protectable Interest in This Litigation.

1199SEIU does not have a direct, substantial, legally protectable interest in this litigation. Based on its Motion, its interest is no different than that of any and every citizen who is eligible to vote in Broward County—ensuring that the NVRA is followed correctly with regard to voter list maintenance. (Mem. Supp. Mot. to Intervene 3 (“any resolution of this matter will necessarily impact its interests in ensuring that Broward County’s list maintenance activities comply with the NVRA.”).) The purported interested is in fact identical to the Plaintiffs’ interest. This Motion, therefore, should be treated as a motion to intervene as a plaintiff-intervenor. *See Chiles*, 865 F.2d at 1215 (interests of the intervenors was aligned with the plaintiff). The proposed intervenor states as much: “Indeed, 1199SEIU has at least as much interest as the

Plaintiffs with respect to the relief requested in Count I of the Complaint.” (Mem. Supp. Mot. to Intervene 3.) In another place: “To the extent Plaintiffs have standing to pursue Count I, 1199SEIU has a similar interest” (Mem. Supp. Mot. to Intervene at 8.) On the other hand, 1199SEIU’s interests are not aligned with the Defendant, as 1199SEIU acknowledges repeatedly. (Mem. Supp. Mot. to Intervene 4, 8.)

Just like 1199SEIU’s purported interests, Plaintiffs’ interests in this litigation “are focused entirely on the proper interpretation and application of the NVRA and the protection and preservation of the right to vote.” (Mem. Supp. Mot. to Intervene 8.) Plaintiffs allege that the Defendant has violated the list maintenance requirements of the NVRA. (Am. Compl. ¶¶ 14, 29.) Plaintiffs accordingly seek a declaration that the Defendant has failed to maintain the voter rolls as required by NVRA and then seek injunctive relief from this Court to ensure “compliance with Section 8 of the NVRA.” (Am. Compl. ¶ 1.) In other words, Plaintiffs’ interests are to “ensur[e] that Broward County’s list maintenance activities comply with the NVRA.” (Mem. Supp. Mot. to Intervene 3.)

1199SEIU claims that it has an interest “in ensuring its members and their communities remain registered to vote and cast a ballot.” (Mem. Supp. Mot. to Intervene 3.) 1199SEIU cannot suggest, however, that any members who are ineligible to vote, if any, must remain on the voter rolls. Plaintiffs are simply asking the Court to examine and ensure that Defendant is making reasonable efforts to ensure that only eligible voters are on the rolls in Broward County, which the Court is empowered to do under 52 U.S.C. § 20510(b). Plaintiffs are not requesting any relief other than what is provided for in the NVRA. And it is the Court’s province to determine whether there has been a violation of list maintenance responsibilities and then to prescribe relief

in accordance with the NVRA. If all of 1199SEIU's members are eligible registrants, then 1199SEIU's interest in this litigation is identical to that of the Plaintiffs.

1199SEIU's interest is, therefore, much different than the interest it had in the *Arcia v. Florida Sec'y of State* case. 772 F.3d 1335 (11th Cir. 2014). In that case, the Eleventh Circuit held that the Florida Secretary of State may not conduct a program to identify and remove noncitizens from the rolls within 90 days of an election because such a program is not listed in the 90-day exception found in 52 U.S.C. § 20507(c)(2)(B). The kind of program launched by the Florida Secretary of State is not expressly set out in the NVRA. In contrast, Plaintiffs here have not set out any specific programs as requested remedies. Once a violation and liability have been established, the Court would craft a remedy in compliance with the NVRA.

The only suggestion Plaintiffs have made is that the Defendant could use jury declaration forms to identify and remove noncitizens. (Am. Compl. ¶ 19.) A jury declaration form is a writing submitted to the county government that states under penalty of perjury whether someone is a U.S. citizen. If a person were to declare on a declaration form that they are not a citizen and therefore may not serve on a jury, that person should be removed from the voter rolls if they are registered because they have submitted a writing to that effect. This is entirely in accordance with the NVRA. *See* 52 U.S.C. § 20507(a)(3)(A).

Doubtless the views on the interpretation and application of the NVRA put forward by Plaintiffs' counsel are very different from those put forward by counsel for 1199SEIU. (Mem. Supp. Mot. to Intervene 8.) Differing legal opinions, however, do not form a valid basis for intervention. The appropriate vehicle for offering alternative legal interpretations would be as an *amicus curiae*. *See, e.g., Lee v. Virginia State Board of Elections*, No. 3:15-cv-00357-HEH, 2015

U.S. Dist. LEXIS 118647 (E.D. Va. Sept. 4, 2015) (order denying motion to intervene in NVRA Section 8 case but granting leave to participate as *amici curiae*).

B. 1199SEIU Has Failed to Show That the Disposition of This Action May Impede or Impair Its Ability to Protect Its Interests.

However the disposition of this case unfolds, 1199SEIU's purported legally protectable interests will not be impeded or impaired. Plaintiffs seek two forms of relief through this litigation brought under 52 U.S.C. § 20510(b). First, Plaintiffs seek a declaration that Defendant is in violation of the NVRA for failure to maintain the voter rolls in compliance with the NVRA. Second, once a violation and liability have been established, Plaintiffs seek remedial injunctive relief in accordance with the NVRA with the goal of establishing accurate and current roles.

1. Disposition of the Declaratory Stage

At this stage in the litigation, the primary issue before the Court is determining whether there has been violation of the list maintenance requirements of the NVRA and establishing whether the Defendant is liable for that violation. In no way can the disposition of this initial question affect 1199SEIU's purported interests. If the status quo is found to be in violation of NVRA, that is, if the Court finds that the rolls are inaccurate and not up-to-date, any declaration to that effect cannot possibly affect a legitimate interest because 1199SEIU cannot have a legitimate interest in preserving voter rolls that are inaccurate and out-of-date.

Accordingly, 1199SEIU's proposed intervention into this case is premature. 1199SEIU has not shown that the initial declaratory relief can affect its legitimate interests. At best, its interests would arguably be affected, if at all, later when the Court is considering remedial measures under NRVA. Intervention at this stage of the litigation will only burden the existing parties and encumber the litigation. The inquiry into whether or not Defendant has been

maintaining the rolls as required by the NVRA can have no effect on 1199SEIU's purported interests.

2. Disposition of the Injunctive Stage

1199SEIU's purported interests cannot be affected by any injunctive relief ordered by this Court either. Once a declaration of liability for failure to adequately maintain the rolls have been established, some kind of remedial injunctive relief must follow under NVRA. Thus, 1199SEIU's position that "no such court-ordered 'list maintenance' is appropriate" is untenable. (Mem. Supp. Mot. to Intervene 1.) The proposed intervenors cannot maintain that nothing should be done, or nothing can be done, under the NVRA, once a failure to maintain the rolls has been established.

Also, Plaintiffs have not proposed any programs or procedures for the removal of ineligible registrants. (*Contra* Mem. Supp. Mot. to Intervene 2.) The Court must first establish that there has been a failure to maintain the rolls and discovery will reveal where those failures may lie. Any injunctive relief would be as provided for and in accordance with the NVRA. Plaintiffs are not suggesting any remedial measures outside what is contemplated and required by the NVRA. Plaintiffs are requesting remedial measures crafted by the Court in accordance with the NVRA.

The programs at issue in the *Arcia* case were put in place by the Florida Secretary of State. No such programs are at issue here. The only program at issue is the one that would be put in place by the Court. And it is the province of the Court to decide the correct interpretation and application of the voter list maintenance requirements of the NVRA. 1199SEIU suggests that this Court might grant relief that is in violation of NVRA. (Mem. Supp. Mot. to Intervene 6.) 1199SEIU states that the motion to intervene must be granted so that the Court does not grant

injunctive relief that may put the registrants of eligible voters at risk. (Mem. Supp. Mot. to Intervene 7.) Plaintiffs submit that 1199SEIU's concerns are entirely baseless and are a contradiction in terms. Once a violation has been established, any remedial measures imposed by this Court will, of necessity, be in compliance with the NVRA and will not put the registrations of any eligible voters at risk.

Nowhere do Plaintiffs suggesting that any eligible voters have their registrations removed. Far from it. Plaintiffs are exercising the cause of action provided by the NVRA to ensure that only eligible voters are registered and to ensure that the rights of eligible voters are not diminished by the presence of ineligible voters on the rolls.

Therefore, the disposition of the injunctive portion of this case will not impede or impair any of 1199SEIU's legitimate interests in the registration of eligible members.

III. 1199SEIU Has Failed to Show Inadequate Representation.

“Where [the] interest of [the] proposed intervenor is the same as that of one of the parties, [the] court can presume that the interest is adequately represented.” *Chiles*, 865 F.2d at 1215. That is precisely the case here. (*See, e.g.*, Mem. Supp. Mot. to Intervene (“1199SEIU’s defense and main action both concern the identical legal question.”).) 1199SEIU has shown nothing more than that they have a different view of the interpretation and application of the NVRA with respect to voter list maintenance. Plaintiffs’ purpose and interest in this litigation is to ensure that eligible voters are registered to vote and remain registered in accordance with the NVRA. (Mem. Supp. Mot. to Intervene 2.) Nothing more and nothing less. By necessity this means that ineligible voters must not be registered and the rolls must be kept accurate and current. 52 U.S.C. § 20501(b)(4) (purposes of NVRA include “to ensure that accurate and current voter registration rolls are maintained). 1199SEIU cannot suggest that it has an interest in keeping ineligible voters

on the rolls or that it has an interest in preventing *any* injunctive remedial list maintenance if the Court finds that a failure to maintain the rolls has occurred, as these positions would violate the NVRA.

Therefore, because 1199SEIU's interests are indistinguishable from those of the Plaintiffs, the Court should presume adequacy of representation and move forward with the parties as they are. If appropriate, 1199SEIU may participate as *amicus curiae* in order to provide its opinion on the correct legal analysis on the issues. Participation by the proposed intervenors will unduly burden the existing parties, such as with the coordination of conferences and the undertaking of discovery.

Conclusion

For the reasons stated above, proposed intervenor 1199SEIU's Motion should be DENIED.

Dated: September 29, 2016

Respectfully submitted,

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* *Pro Hac Vice application to be filed*

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2016, I caused the foregoing to be filed with the United States District Court for the Southern District of Florida via the Court's CM/ECF system, which will serve all registered users.

/s/ Mathew D. Gutierrez
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SERVICE LIST

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