

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

THE IDAHO REPUBLICAN PARTY, *et al.*,

Case No. 1:08-cv-00165-BLW

Plaintiffs,

vs.

BEN YSURSA, in his Official Capacity as
Secretary of State of the State of Idaho,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO INTERVENE AS
DEFENDANTS-INTERVENORS**

INTRODUCTION

This memorandum of law is submitted in support of a motion to intervene as defendants-intervenors in this litigation. The proposed intervenors are ten Idaho voters who self-identify as independents and have not and do not wish to affiliate with a political party. In addition, intervention is sought by two organizations that represent the interests of independent voters: the American Independent Movement of Idaho, LLC (“AIM”) and the Committee for a Unified Independent Party, Inc. (“CUIP”).

The relevant facts are set forth in the moving declarations and will not be repeated here.

INTERVENTION SHOULD BE GRANTED

1. It should be granted as of right. The standard is set forth in F.R.C.P. Rule 24(a) which requires the court to grant intervention to anyone who, *inter alia*:

(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.

The individuals seeking intervention meet this test. As Idaho voters they surely have an interest in the transaction that is the subject of this action. The action is, after all, about the terms and conditions under which persons can vote in a primary election. Now they are permitted to do so. If the plaintiffs are successful they may be deprived of that right unless they register into a political party which they do not desire to do. In that respect, disposing of the action will impair the proposed defendants-intervenors ability to protect their interest.

As for the last criteria, “unless existing parties adequately represent that interest,” the proposed defendants-intervenors submit that they do not. Plaintiffs, of course, seek to limit their voting rights. As for defendant Ysursa, the Idaho Secretary of State, he will, no doubt, effectively articulate the interests of the State of Idaho in the current system of non-partisan registration and open primaries. However, he cannot reasonably be expected to articulate the particular interest that independents have in the litigation. The interest of the State of Idaho is not the same as the interests of independent voters, although in the instant litigation both seek to deny plaintiffs the relief they seek. It is the job of the Secretary of State (and his representative, the Attorney General) to uphold the laws of Idaho against constitutional challenge. In so doing, they are required to articulate the interest of the state in the legislation being defended. *See, e.g. Washington State Grange v. Washington State Republican Party*, 128 S.Ct. 1184, 1195 (2008). For independents the question is more personal and more immediate; the outcome of this litigation will determine whether or not they can continue to fully participate in the electoral process without declaring themselves to be something that they are not, that is, a Republican or a Democrat.

Admittedly, the application to intervene by AIM and CUIP fits less comfortably into the statutory matrix. However, it is important to bear in mind that these organizations speak for the

interests of independents in Idaho and nationally. This litigation impacts directly on all independent voters in Idaho and indirectly on independents across the country. This case is one of a number of efforts by the major parties to restrict participation in their primaries. *See, California Democratic Party v. Jones*, 530 U.S. 567 (2000); *Mississippi Democratic Party v. Barbour*, WL 2190855 (5th Cir. 2008); *Miller v. Brown*, 503 F.3d 360 (4th Cir. 2007). The statewide and national perspective AIM and CUIP bring to this litigation will ensure that the interests of independents are presented in the clearest and broadest possible manner. Further, given that independents are not members of a party, it would be unfair to allow the Republican Party to represent the interest of Republicans in this litigation, but deny independents organizational representation. There is precedent for allowing such organizations to intervene. In *Johnson v. Mortham*, 915 F.Supp. 1529, 1538-39 (N.D.Fla., 1995), a reapportionment case, the NAACP was allowed to intervene under Rule 24(b) governing permissive intervention because it represented the interests of voters in the district in question. Intervention as of right was denied because, while the NAACP had a “protectable legal interest in the litigation,” it had not demonstrated that existing representation of that interest was inadequate. The proposed defendants-intervenors in the case at bar have done so as set forth above.

In *Johnson*, of course, the affected votes (those residing in the relevant district) were allowed to intervene as of right. 915 F. Supp. at 1536. This is in accord with *Georgia v. Ashcroft*, 539 U.S. 461, 476 (2003) and *Carter v. Dies*, 321 F. Supp. 1358, 1360 (D.C. Texas 1970), *aff’d without reference to intervention issue*, *Bullock v. Carter*, 405 U.S. 134 (1972). In *Georgia v. Ashcroft* the intervenors were voters affected by a redistricting plan, and, in *Carter v. Dies*, they were voters who wanted to vote for a particular candidate who was suing to overturn a ballot access restriction.

2. Alternatively, permissive intervention should be granted. Intervention may be permitted, under F.R.C.P. Rule 24(b)(1), to anyone who, *inter alia*:

(B) has a claim or defense that shares with the main action a common question of law or fact.

As the proposed answer submitted herewith makes clear, the claims and defenses asserted by the proposed defendants-intervenors grow directly out of the factual underpinnings of the main action: the existing non-partisan registration/open primary system in Idaho; and the actions taken by the Idaho Republican Party to challenge it. There are as well, common questions of law, namely, what deference the State of Idaho and, ultimately, this Court has to give to the assertion by the Republican Party that its constitutional rights demand a change in the Idaho system.

Of significance in considering the question of intervention by both the individual voters and the organizations, is the new, but growing, phenomena, of significant numbers of Americans self-identifying as independents, 40 percent of voters and the pivotal role they played in the recent presidential primaries. (See declaration of Jacqueline Salit, paras. 9-12, submitted herewith.) Since this lawsuit directly intersects these voters and their participation in the primary process, it is important that the Court have available to it the most developed points of view on questions concerning independents, their interest, and their role in the political process. It is respectfully submitted that the proposed defendants-intervenors are in a position to provide this.

DATED this ___ day of July, 2008.

/s/ Gary G. Allen

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MOVEMENT OF IDAHO; its Chairman MITCH
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ANDREW LOGSDON; BARBARA NELSON;
LAUNA NOBLE; LAMAR ORTON; JASON
RAMSEY; BOYD STOKES; LAURA PIKE
CAMPBELL and JOSEPH BRITTON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of July, 2008, I submitted this foregoing to the Clerk of the Court for service on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing, including, but not limited to, the following:

John Eric Sutton

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/s/ Gary G. Allen

Gary G. Allen

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Secretary of State of the State of Idaho,

Defendants.

**MOTION FOR INTERVENTION AS DEFENDANTS-INTERVENORS
PURSUANT TO F.R.C.P. RULE 24**

The following respectfully move this Court for an order, pursuant to F.R.C.P. Rule 24 granting them intervention as of right, or alternatively, by permission as defendants in this action: Mitch Campbell, John Haight, Andrew Logsdon, Launa Noble, LaMar Orton, Boyd Stokes, and Launa Pike Campbell of Twin Falls, Idaho; Calvin Leman of Salmon; Barbara Nelson and Jason Ramsey of Filer, Idaho; Joseph Britton of Jerome, Idaho; the American Independent Movement of Idaho, LLC (“AIM”); and the Committee for a Unified Independent Party, Inc. (“CUIP”).

1. As is set forth more fully in the declaration of Mitch Campbell, submitted herewith, the individual proposed defendants-intervenors are citizens of the state of Idaho and registered voters who are not aligned with a political party and do not wish to be. They identify themselves as independents.

2. As is set forth more fully in the declaration of Mitch Campbell, submitted herewith, AIM is an organization representing independent voters in the State of Idaho.

3. As is set forth more fully in the declaration of Jacqueline Salit, submitted herewith, CUIP is a national organization representing the interests of independent voters.

4. Submitted with this motion is an application to admit attorney Harry Kresky of New York to the U.S. District Court for the District of Idaho *pro hac vice*.

5. This motion is timely as defendants' answer has not been filed.

WHEREFORE, it is requested that the instant motion be granted.

DATED this ____ day of July, 2008.

/s/ Gary G. Allen

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Attorneys for Defendants-Intervenors THE COMMITTEE FOR A UNITED INDEPENDENT PARTY, INC.; the AMERICAN INDEPENDENT MOVEMENT OF IDAHO; its Chairman MITCH CAMPBELL; JOHN HAIGHT; CALVIN LEMAN; ANDREW LOGSDON; BARBARA NELSON; LAUNA NOBLE; LaMAR ORTON; JASON RAMSEY; BOYD STOKES; LAURA PIKE CAMPBELL and JOSEPH BRITTON

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DECLARATION OF JACQUELINE SALIT

I, JACQUELINE SALIT, swear and affirm under the penalties of perjury that I am over 18 years of age and otherwise competent to testify as to the matters herein, which are based on my personal knowledge:

1. I reside in New York, NY and am the President of the Committee for a Unified Independent Party, Inc. (“CUIP”) a proposed defendant- intervenor herein.
2. I am also the Executive Editor of the *Neo Independent* magazine that uniquely features commentary on and coverage of the independent political movement.
3. CUIP is a not for profit corporation organized and chartered in New York and exempt from income taxes under Section 501(c)(4) of the Internal Revenue Code.
4. CUIP’s mission is to seek political recognition for independent voters and to respond to any efforts to marginalize their participation in the political process.
5. CUIP is in regular contact by telephone, e-mail and through its website with tens of thousands of independents across the country. Its website, *IndependentVoting.org*, is a recognized clearinghouse and nerve center for ideas and information about independent politics.

6. On June 22, 2008, I hosted CUIP's regular national conference call in which over 150 independent activists from more than 35 states participated. The agenda included discussion of the ways in which open primaries allow independents to fully exercise their franchise.

Representatives from several states reported on local campaigns to expand such opportunities.

7. Responding to across-the-board concern by 70% of Americans that our country is "on the wrong track" and the widespread belief that partisanship has promoted the decay of our democracy, CUIP seeks to change the culture of politics so that it is less partisan and more conducive to serious dialogue on important issues of public policy.

8. CUIP supports such reforms as open primaries, initiative and referendum, non-partisan administration of elections, non-partisan redistricting, and the lowering of barriers to ballot access.

9. Independents, now more than 40 percent of the electorate, are playing an increasingly important role in the political process.

10. In the recent round of presidential primaries and caucuses, independents were allowed to participate in some 33 states.

11. Observers and analysts generally agree that independents were key to the success of the presumptive nominees of both major parties.

12. This lawsuit seeking to close Idaho's primary elections and institute partisan registration may be a response to the increasing influence of independent voters.

13. Along with the other individual proposed defendants-intervenors, CUIP seeks to join in this litigation so that the state and national interests of independents can be represented.

14. Independents have a direct and immediate interest in the outcome of this litigation.

15. If the plaintiffs are successful, independents in Idaho will be denied participation in primary elections unless they enroll in a political party.

16. As independents we value our right to non-association with a political party.

17. If the plaintiffs have their way, and the court directs that Idaho implement a system of partisan registration and closed primaries, independents will become second class citizens, denied the right to participate in primary elections.

18. While we are confident that defendant Secretary of State will effectively articulate the interests of the State of Idaho in the current system of non-partisan registration and open primaries, he cannot reasonably be expected to articulate the particular interest that independents have in the litigation.

19. CUIP believes that this litigation is of national significance and if plaintiffs prevail it will encourage partisans in other states with some form of open primary to seek to close them.

20. Further, the extremist nature of the relief sought by plaintiffs – to compel the State of Idaho to institute partisan registration and closed primaries is, in my opinion, a threat to the right of all Americans.

21. It goes far beyond what Republicans in Virginia, for example, sought and won, namely the right to be provided with some mechanism for ensuring that persons who vote in their primary, if challenged, pledge that they intend to vote Republican in the upcoming general election. *See, Miller v. Brown*, 503 F.3d 360 (4th Cir. 2007).

22. For all of the above reasons and those set forth in the other moving papers, CUIP's application to intervene as a defendants-intervenors should be granted, as should that of the other proposed defendants-intervenors.

Pursuant to 28 U.S.C. Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June ____, 2008

JACQUELINE SALIT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of July, 2008, I submitted this foregoing to the Clerk of the Court for service on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing, including, but not limited to, the following:

John Eric Sutton

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/s/ Gary G. Allen

Gary G. Allen

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DECLARATION OF MITCH CAMPBELL

I, MITCH CAMPBELL, swear and affirm under the penalties of perjury that I am over 18 years of age and otherwise competent to testify as to the matters herein, which are based on my personal knowledge.

23. I reside in Twin Falls, Idaho where I was born and raised.

24. I make my living as principal of Alternative Funding, LLC, a commercial and wholesale lender.

25. This declaration is submitted in support of the motion for intervention as defendant-intervenors by myself and a number of other independent voters in Idaho: John Haight, Andrew Logsdon, Launa Noble, LaMar Orton, Boyd Stokes, and Laura Pike Campbell (my wife) of Twin Falls; Calvin Leman of Salmon; Barbara Nelson and Jason Ramsey of Filer; and Joseph Britton of Jerome.

26. Intervention is also sought by the American Independent Movement of Idaho, LLC (“AIM”) of which I am the founder and managing member.

27. I have been politically aware for most of my adult life and ran for the state legislature in 1978 as a Democrat.

28. I subsequently oriented towards the Republican Party, until the mid-1990's when I realized that I was an independent, someone who believed that partisanship was bad for Idaho and bad for America.

29. In September, 2007, I founded AIM.

30. AIM speaks for independent voters who are not aligned with any political party and assert their right to vote for candidates they believe are the best qualified for office.

31. Along with others in AIM, I believe that the two major parties have evolved into the political equivalent of huge corporations that place their interests and those of the special interests they serve before the good of our state and country.

32. Along with others in AIM, I believe that an open primary, non-partisan registration system such as that in Idaho provides the best opportunity for non-aligned voters to influence the choice of candidates who run for public office.

33. Along with others in AIM, I believe that the introduction of partisan registration and closed primaries would increase the control of the major parties over the political process and our government by preventing independents from voting for the candidate of their choice unless they join that candidate's political party.

34. The intervenor-defendants seek to join in this litigation so that the voice of Idaho's independents, now 28 percent of the electorate¹, can be heard.

35. Independents have a direct and immediate interest in the outcome of this litigation.

36. If the plaintiffs are successful independents will be denied participation in primary elections unless we enroll in a political party.

37. As independents we value our right to non-association with a political party.

¹ *Idaho Statesman*, "Our View: Open primaries respect Idahoan's independence", June 17, 2008.

38. Under the current system, we are on an equal footing with all the citizens of Idaho.

39. If the plaintiffs have their way and the court directs that Idaho implement a system of partisan registration, we will become second class citizens, denied the right to participate in primary elections.

40. In most elections in Idaho, moreover, the winner of the Republican Party primary is the likely winner of the general election.

41. Therefore, to be barred from the primary is to be barred from meaningful participation in the electoral process.

42. While we are sure that defendant Secretary of State will effectively articulate the interests of the State of Idaho in the current system of non-partisan registration and open primaries, he cannot reasonably be expected to articulate the particular interest that independents have in the litigation.

43. The claims and defenses of proposed intervenors are based on facts and legal issues that are, in part, common with the main action.

44. For all of the above reasons and those set forth in the other moving papers, this motion to intervene as defendants-intervenors should be granted.

Pursuant to 28 U.S.C. Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on June ____, 2008

MITCH CAMPBELL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of July, 2008, I submitted this foregoing to the Clerk of the Court for service on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing, including, but not limited to, the following:

John Eric Sutton

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/s/ Gary G. Allen

Gary G. Allen