

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VERENA RIVERA-POWELL , FRANCESCA
CASTELLANOS, GEORGINA SANCHEZ
and MARIE SIERRA

Civil Action Number
06 Civ. 6843

Plaintiffs,

-against-

**MOTION TO
INTERVENE**

THE NEW YORK CITY BOARD OF ELECTIONS
and THE STATE OF NEW YORK,

Defendants.
-----X

PROPOSED DEFENDANT-INTERVENOR'S MOTION TO INTERVENE

Pursuant to Rules 24(a)(2) and 24(b)(2) of the Federal Rules of Civil Procedure, FRANKLIN HESS (the "Proposed Intervenor") respectfully moves for leave to intervene as a defendant in this action for the reasons set forth in the attached Memorandum. A copy of the Proposed Intervenor's Affidavit and Answer, which sets forth the claim or defense for which intervention is sought, is attached to this Motion.

GROUND FOR INTERVENTION

A. Intervention as of Right

Pursuant to Federal Rule of Civil Procedure 24(a)(2), Proposed Intervenor is entitled to intervene in this action as a matter of right because:

1. His Motion is timely.
2. Proposed Intervenor has a legally protectable interest in the subject of this action. Proposed Intervenor is a duly qualified voter of the State of New York, residing at and entitled to vote from 720 Fort Washington Avenue, N.Y., N.Y. in the 7th Municipal Civil Court District in the County of New York. Pursuant to Election Law Section 6-154 (2), Proposed Intervenor timely filed written objections to the designating petition of Plaintiff Verena Rivera Powell with the Board of Elections in the City of New York and timely filed specifications of the grounds of those

objections. Proposed Intervenor also served and filed an order to show cause and petition seeking to invalidate the designating petition of Verena Rivera Powell in New York County Supreme Court and was a named Respondent in the purported validating petition proceeding filed by Verena Rivera Powell in New York County Supreme Court, and duly filed a Verified Answer to said “petition”, a cross motion to dismiss said petition and an offer of proof, as required by the Special Election Matter Rules of the New York County Supreme Court. Franklin Hess seeks to intervene in the instant proceedings to defend his rights as a duly qualified resident and voter of the 7th Municipal Civil Court District of New York County.

3. Proposed Intervenor’s interests will be substantially impaired or impeded if he is not permitted to intervene.
4. The existing parties do not adequately represent Proposed Intervenor’s interest in this action because the other parties to the proceedings are primarily concerned with defending the entire statutory scheme complained of by Plaintiffs. They are thus concerned with the rights of New York voters who reside in all parts of the State, not specifically with the rights of those voters who reside in the 7th Municipal Civil Court District of New York County.

B. Permissive Intervention

In the alternative, if Proposed Intervenor’s Motion to Intervene as of right is denied, Proposed Intervenor should be granted permissive intervention pursuant to Federal Rule of Civil Procedure 24(b)(2), because:

1. Intervention by Proposed Intervenor will not unduly delay or prejudice the adjudication of the rights of the original parties.
2. The factual and legal issues raised in the Proposed Intervenor’s Answer are common to those raised in the action now pending before this Court in which intervention is sought.

Accordingly, Proposed Intervenor’s Motion should be granted in all respects.

RECORD ON MOTION

This Motion is based on this document, the Certificate of Service, the supporting Memorandum of Law, the Affidavit of Franklin Hess, the proposed Answer in Intervention, and on all of the papers and records on file in this action.

DATED this 21st day of September, 2006.

Respectfully submitted,

ARTHUR W. GREIG (AG2755)
Attorney for Proposed Intervenor
401 BROADWAY, SUITE 1902
NEW YORK, N.Y. 10013
(212) 941-0230

CERTIFICATE OF SERVICE

I hereby certify that on this day I served the foregoing Proposed Defendant- Intervenors' Motion to Intervene, Memorandum of Law in Support of Proposed Defendant- Intervenors' Motion to Intervene, and Proposed Defendant-Intervenors' Answer in Intervention on the following persons by causing true copies thereof to be mailed (unless otherwise indicated below) to:

STEPHEN T. MITCHELL
STEPHEN T. MITCHELL, P.C.
67 WALL STREET, SUITE 2211
NEW YORK, N.Y. 10005

CORPORATION COUNSEL OF THE CITY OF NEW YORK
100 CHURCH STREET
NEW YORK, NY 10007
BY ASSISTANT CORP. COUNSEL STEPHEN KITZINGER, ESQ.
FOR THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

JOEL GRABER, ESQ.
NEW YORK STATE DEPARTMENT OF LAW
120 BROADWAY
NEW YORK, NY

DATED this 21ST day of September , 2006

ARTHUR W. GREIG, ESQ.
Attorney for Proposed Intervenor
401 BROADWAY, SUITE 1902
N.Y., N.Y. 10013
(212) 941-0230