

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

HUNTINGTON DIVISION

NAOMI SPENCER DALY and
DARRELL CASTLE,

Plaintiffs,

v.

No. 3:16-cv-08981

NATALIE TENNANT.
in her official capacity as
Secretary of State of the
State of West Virginia,

Defendant.

MOTION TO INTERVENE

Dorrel W. Arthur, by counsel, moves pursuant to Federal Rule of Civil Procedure 24(a) for intervention as a matter of right in this proceeding. Dorrel W. Arthur claims an interest relating to the transaction that is the subject matter of this action, and is so situated that disposing of the action may as a practical matter impair or impede his ability to protect his interests, unless existing parties adequately represent that interest.

Mr. Arthur is a duly qualified, non-affiliated candidate for the office of County Commission, Putnam County, West Virginia, in the November 8, 2016, general election by virtue of a certificate of announcement dated June 1, 2016, obtained from the Putnam County Clerk by complying with the provisions of *W.Va. Code* § 3-5-7(d)(6) and §§ 3-5-23, 24, as they were represented to him by the West Virginia Secretary of State. The intervenor's interest in a

position on the Putnam County general election ballot is now threatened by a directive from the West Virginia Secretary of State to the Putnam County Clerk asking him to remove Mr. Arthur from the ballot if his certificate of announcement was not obtained prior to a retroactive deadline date of January 30, 2016.

Mr. Arthur's interests are not adequately represented by the existing parties to this litigation. Because they are candidates for national office or state legislative office, the existing parties obtained their certificates of announcement through the Secretary of State. The Secretary of State's directive to the Putnam County Clerk specifically named the two existing parties as individuals to be stricken from the ballot. Mr. Arthur is a countywide candidate, seeking the office of Commissioner, County Commission of Putnam County. He obtained his certificate of announcement from the County Clerk and qualified as a nonaffiliated candidate pursuant to the procedures set forth by *W.Va. Code* § 3-5-7(d)(6) and §§ 3-5-23, 24 through the County Clerk's office.

If the Court grants the existing plaintiffs the relief they seek on Constitutional grounds, that will still not serve as an adequate directive to West Virginia County Clerks who are confronted with qualified, nonaffiliated candidates seeking only countywide office. This could result in conflicting treatment of county candidates as opposed to those who filed with the Secretary of State.

This motion is accompanied with a pleading setting forth the claim for which intervention is sought. [**Complaint, Motion Exhibit 1**]

Accordingly, Dorrel W. Arthur moves the Court that he be permitted to intervene as a matter of right in this action for all purposes, including the pending request for a temporary restraining order and, if necessary, joinder of the Clerk of the County Commission of Putnam County, West Virginia, as a party defendant in this action.

DORREL W. ARTHUR

BY COUNSEL

s/Harvey D. Peyton

Harvey D. Peyton, Esquire (#2890)

Thomas H. Peyton, Esquire (#8841)

Peyton Law Firm, PLLC

2801 First Avenue

P. O. Box 216

Nitro, WV 25143

Telephone: (304) 755-5556

Fax: (304) 755-1255

Counsel for Dorrel W. Arthur

CERTIFICATE OF SERVICE

I, Harvey D. Peyton, counsel for Dorrel W. Arthur, do hereby certify that I have this 21st day of September, 2016, served a copy of the foregoing “**Motion to Intervene**” upon the following parties of record by using the Court’s CM/ECF system which will send notification of such filing to the following CM/ECF participants:

Counsel for Plaintiffs:

amajestro@powellmajestro.com

helen@powellmajestro.com

jnelson@powellmajestro.com

paula@powellmajestro.com

bryan@bryansellslaw.com

No attorney has yet made an appearance for the Defendant, Secretary of State Natalie Tennant. However, I hereby certify that on September 21, 2016, I attempted service of the foregoing “Motion to Intervene” upon the Defendant by emailing a copy to the following attorneys by electronic mail:

Ashley Summitt

Chief Counsel, West Virginia Secretary of State

easummitt@wvsos.com

Timothy Leach

Assistant Counsel, West Virginia Secretary of State

[tleach@wvsos.com](mailto:tleaseh@wvsos.com)

J. Robert Leslie

Senior Deputy Attorney General, West Virginia Attorney General

James.r.leslie@wvago.gov

s/Harvey D. Peyton

HARVEY D. PEYTON