

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LAWRENCE REYNOLDS,

Plaintiff,

v.

TED STRICKLAND, et al.,

Defendants.

Case No. 2:10-cv-27

JUDGE GREGORY L. FROST

Magistrate Judge Terence P. Kemp

ORDER

This matter is before the Court for consideration of a motion to intervene filed by Arthur Tyler (Doc. # 10), a motion to intervene filed by Mark Brown (Doc. # 11), and a response filed by Defendants (Doc. # 12) in which they state that they do not oppose Brown's motion given the immediacy of his scheduled execution. For the reasons that follow, this Court finds the motions well taken.

Both Tyler and Brown move to intervene as of right and with the permission of this Court. In addressing both intervention as of right and permissive intervention, the Court must first determine whether the application to intervene is timely. Federal Rule of Civil Procedure 24(a), which targets intervention of right, requires that the motion to intervene be timely. The rule states:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that the 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). Similarly, Rule 24(b), which targets permissive intervention, also includes a timeliness component. 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)(2). The rule also provides that “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

The timeliness component requires the Court to consider:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor’s failure, after he or she knew or reasonably should have known of his interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

United States v. Tennessee, 260 F.3d 587, 592 (6th Cir. 2001) (quoting *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989) (both construing analogous former Rule 24)).

In determining whether the instant intervention motions are timely, the first factor the Court must consider is the point to which the suit has progressed. *See United States v. Tennessee*, 260 F.3d 587, 592 (6th Cir. 2001) (quoting *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). It is beyond dispute that this litigation is in its early stages; the case is not even a month old. Intervention at this point will not prejudice the original parties to this litigation.

The second factor this Court must consider is the purpose for which intervention is sought. This factor also militates in favor of finding that the motions to intervene are timely. Tyler and Brown have an obvious significant interest in the adjudication of this lawsuit. Each intervenor’s interest in seeing a comprehensive disposition of the shared questions of law and fact is obvious from the record and requires no speculation.

The third factor for this Court to weigh in determining whether the pending applications

are timely is the length of time preceding the applications during which the proposed intervenors knew or reasonably should have known of their interest in the case. The Court recognizes that Defendants do not oppose Brown's motion and that both motions fall within the statute of limitations for the claims asserted.

The fourth factor this Court must consider in determining whether the instant motions are timely is the prejudice to the original parties due to the proposed intervenors' failure, after they knew or reasonably should have known of their interest in the case, to apply promptly for intervention. There is no undue or needless burden that the original parties will suffer if Tyler and Brown join this lawsuit. Given the early procedural posture of this litigation, the Court concludes that permitting intervention here will neither unduly delay nor prejudice the adjudication of the rights of the remaining original parties. Rather, permitting intervention here will facilitate the expeditious resolution of the rights of the parties. *See Sec'y of Dep't of Labor v. King*, 775 F.2d 666, 669 (6th Cir. 1985) (affirming allowance of permissive intervention on such grounds).

The fifth and final factor for this Court to weigh in assessing the timeliness of the motions to intervene is the existence of any unusual circumstances militating against or in favor of intervention. There are no unusual factors weighing against intervention, while the ongoing development of the law in regard to Ohio's execution protocols and this Court's previous intervention orders referenced by Defendants all weigh in favor of intervention. To conclude otherwise would be to run the risk that constitutional rights go unprotected for some parties while others receive consideration.

Having found that the motions to intervene are timely, the Court turns to the issue of

