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11 *Attorneys for Intervenor-Defendant*  
12 *Arizona Republican Party*

13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF ARIZONA

16 Leslie Feldman; Luz Magallanes; Mercedes  
17 Hymes; Julio Morera; Alejandra Ruiz; Cleo  
Ovalle; Marcia Baker; Former Chairman  
18 and First President of the Navajo Nation  
Peterson Zah; Democratic National  
19 Committee; DSCC a.k.a. Democratic  
20 Senatorial Campaign Committee; Arizona  
Democratic Party; Kirkpatrick for U.S.  
Senate; Hillary for America,

21 Plaintiffs,

22 v.

23 Arizona Secretary of State’s Office;  
24 Michele Reagan, in her official capacity as  
Secretary of State of Arizona; Maricopa  
25 county Board of Supervisors; Denny  
Barney, in his official capacity as a member  
26 of the Maricopa county Board of  
Supervisors; Steve Chucuri, in his official  
27 capacity as a member of the Maricopa  
County Board of Supervisors; Andy  
28 Kunasek, in his official capacity as a

No. CV-16-1065-PHX-DLR  
**MOTION TO INTERVENE**

1 member of the Maricopa County Board of  
2 Supervisors; Clint Hickman, in his official  
3 capacity as a member of the Maricopa  
4 County Board of Supervisors; Steve  
5 Gallardo, in his official capacity as a  
6 member of the Maricopa County Board of  
7 Supervisors; Maricopa County Recorder  
8 and Elections Department; Helen Purcell, in  
9 her official capacity as Maricopa County  
10 Recorder; Karen Osborne, in her official  
11 capacity as Maricopa County Elections  
12 Director; and Mark Brnovich, in his official  
13 capacity as Arizona Attorney General,

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Defendants.

Pursuant to Federal Rule of Civil Procedure 24, the Arizona Republican Party (“Proposed Intervenor”) respectfully moves this Court for leave to intervene in this action as a Defendant. This Motion is supported by the following Memorandum of Points and Authorities. Additionally, the Proposed Intervenor has attached to this Motion, in accordance with Federal Rule of Civil Procedure 24(c), a responsive pleading setting out the defenses for which intervention is sought.<sup>1</sup>

**MEMORANDUM OF POINTS AND AUTHORITIES**

**Introduction**

On April 15, 2016, Plaintiffs initiated this action seeking relief pursuant to the First and Fourteenth Amendments to the U.S. Constitution and the Voting Rights Act of 1965, challenging Arizona’s laws, policies, and procedures for carrying out its elections. (Dkt. 1.) On April 19, 2016, the initial Plaintiffs were joined by Hillary for America in filing a First Amended Complaint (“FAC”), primarily alleging that certain constitutional and statutory deficiencies in Arizona’s elections scheme during the Presidential Preference Election (“PPE”) will somehow impact the wholly separate Maricopa County General

<sup>1</sup> The Proposed Intervenor and its counsel understand that the current parties have stipulated to an extension of time for all Defendants to answer or otherwise respond to the First Amended Complaint (“FAC”), based on the expectation of a ruling on Plaintiffs’ forthcoming Motion for Preliminary Injunction. (Dkt. 31.) Given that, Proposed Intervenor respectfully advises that it plans to file a Motion to Dismiss portions of the FAC, but intends to do so on the timeline contemplated by the parties’ stipulation and only after properly conferring with Plaintiffs per the Court’s Order (Dkt. 5).

1 Election—even though it is conducted under a completely separate mandate and format  
2 from the PPE. (Dkt. 12, FAC, at ¶ 10.)

3 The Proposed Intervenor is a party that will be significantly impacted by the relief  
4 that Plaintiffs seek in this action. The Arizona Republican Party is a state committee, as  
5 defined by 52 U.S.C. § 30101(15) and A.R.S. §§ 16-801, *et seq.* involved with working to  
6 elect Republican candidates to elected offices. Specifically, for this matter, the Arizona  
7 Republican Party has an interest equal to those of the Arizona Democratic Party, the  
8 Democratic National Committee, and the DSCC a.k.a. Democratic Senatorial Campaign  
9 Committee—all Plaintiffs in this matter—because it is dedicated to electing local, state,  
10 and national candidates of the Republican Party to public office in Arizona and  
11 throughout the United States.

12 Furthermore, the Arizona Republican Party has members and constituents from  
13 across Arizona, including many eligible voters who regularly support and vote for  
14 candidates affiliated with the Republican Party. These members and constituents have a  
15 significant interest in ensuring that a single political party, *i.e.*, the Democratic Party, does  
16 not abuse judicial proceedings for the sole purpose of manipulating local election officials  
17 and creating legal authorities that would impact Republicans’ right to vote, and impact  
18 Republican candidates’ right to a fair election carried out with integrity. These members  
19 and constituents have significant interests in ensuring that the Democratic Party does not  
20 specifically advocate for the allocation of polling locations in Maricopa County to benefit  
21 solely Democratic Party candidates and not all electors of the State of Arizona.

22 In addition, the Arizona Republican Party has an interest in ensuring that the Court  
23 receives counter-arguments and -perspectives to the Democratic Party’s attempts to co-opt  
24 an unfortunate event like the 2016 PPE in Maricopa County for the purpose of advocating  
25 changes to the wholly separate General Election or other existing state laws unrelated to  
26 the PPE—such as the not-yet-effective Arizona law embodied in H.B. 2023, which  
27 prohibits the collection of signed and sealed absentee ballots. The Arizona Republican  
28 Party seeks intervention on behalf of its members and its candidates, as well as in its own

1 right.

2 For all these reasons, and as set forth below, the Proposed Intervenor should be  
3 granted leave to intervene so that it may protect Republicans' interests in this matter.

4 **Argument**

5 **I. THE PROPOSED INTERVENOR IS ENTITLED TO INTERVENTION AS**  
6 **A MATTER OF RIGHT UNDER RULE 24(a)(2).**

7 Federal Rule of Civil Procedure 24(a)(2) provides a right of intervention, “[o]n  
8 timely motion,” to anyone that “claims an interest relating to the property or transaction  
9 that is the subject of the action, and is so situated that disposing of the action may as a  
10 practical matter impair or impede the movant’s ability to protect its interest, unless  
11 existing parties adequately represent that interest.” Accordingly, “[t]he district court must  
12 grant the motion to intervene if four criteria are met: timeliness, an interest relating to the  
13 subject of the litigation, practical impairment of an interest of the party seeking  
14 intervention if intervention is not granted, and inadequate representation by the parties to  
15 the action.” *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996).

16 In considering whether these criteria are satisfied, courts have stated that “Rule  
17 24(a) is construed broadly in favor of intervention.” *Id.* Moreover, the Rule 24(a)(2)  
18 analysis must be “guided primarily by practical considerations, not technical distinctions.”  
19 *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (internal  
20 citation & quotation marks omitted). Courts also “accept[] all of the applicant’s non-  
21 conclusory allegations as true” in considering a motion to intervene. *Wildearth Guardians*  
22 *v. Jewel*, No. 2:14-CV-00833 JWS, 2014 WL 7411857, at \*1 (D. Ariz. Dec. 31, 2014).  
23 Applying these standards, the Proposed Intervenor easily satisfy the four conditions for  
24 intervention of right.

25 **A. The Motion to Intervene is Timely.**

26 Courts look to the following factors to determine if a motion to intervene is timely  
27 filed: “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the  
28 prejudice to other parties; and (3) the reason for and length of the delay.” *Cal. Dep’t of*

1 *Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th  
 2 Cir. 2002) (internal quotation marks omitted). Prejudice to existing parties is “the most  
 3 important consideration in deciding whether a motion to intervene is timely.” *See United*  
 4 *States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (internal quotation marks omitted).

5 This Motion is being filed less than a month after the initial Complaint was filed.  
 6 No prejudice to the existing parties will result from intervention at such an early stage of  
 7 the case. The Defendants in this case have not yet filed an answer or otherwise responded  
 8 to the Complaint. Furthermore, Bernie 2016, Inc., has also recently sought intervention,  
 9 which intervention is not opposed by the Plaintiffs. Therefore, the Proposed Intervenor  
 10 has made a timely motion for intervention. *See, e.g., Jewel*, 2014 WL 7411857, at \*1  
 11 (motion to intervene timely where it “was filed prior to any substantive briefing, the court  
 12 ha[d] not yet ruled on any dispositive motion, and intervention [would] not cause any  
 13 discovery delays”).

14 **B. The Proposed Intervenor Has a Significant Interest in this Proceeding.**

15 “Whether an applicant for intervention as of right demonstrates sufficient interest  
 16 in an action is a practical, threshold inquiry, and no specific legal or equitable interest  
 17 need be established.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir.  
 18 1996) (quotation and alteration in original omitted). “To demonstrate this interest, a  
 19 prospective intervenor must establish that (1) the interest [asserted] is protectable under  
 20 some law, and (2) there is a relationship between the legally protected interest and the  
 21 claims at issue.” *Id.* (alteration in original; internal quotations and citation omitted).

22 Here, the Proposed Intervenor has multiple interests protectable under law and  
 23 related to the claims in this case. First, the Arizona Republican Party has an interest equal  
 24 to those of the Arizona Democratic Party, the Democratic National Committee, and the  
 25 DSCC a.k.a. Democratic Senatorial Campaign Committee because it is dedicated to  
 26 electing local, state, and national candidates of the Republican Party to public office in  
 27 Arizona and throughout the United States.

28

1 Second, the Arizona Republican Party has members and constituents from across  
 2 Arizona, including many eligible voters who regularly support and vote for candidates  
 3 affiliated with the Republican Party. These members and constituents have a significant  
 4 interest in ensuring that a single political party, i.e., the Democratic Party, does not abuse  
 5 judicial proceedings for the sole purpose of manipulating local election officials and legal  
 6 authorities that would impact members' and constituents' right to vote or for the sole  
 7 purpose of specifically advocating for the allocation of polling locations in Maricopa  
 8 County's to benefit solely Democratic candidates and not all Arizona electors.

9 Third, the Arizona Republican Party has an interest in ensuring that the Court  
 10 receives counter-arguments and -perspectives to the Democratic Party's attempts to co-opt  
 11 an unfortunate event like the 2016 PPE in Maricopa County for the purpose of advocating  
 12 changes to the wholly separate General Election or other existing state laws unrelated to  
 13 the PPE—such as the not-yet-effective Arizona law embodied in H.B. 2023, which  
 14 prohibits the collection of signed and sealed absentee ballots.

15 The Proposed Intervenor's interests are not undifferentiated or generalized; they  
 16 are “direct, non-contingent, and substantial.” *See California ex rel. Lockyer v. United*  
 17 *States*, 450 F.3d 436, 441 (9th Cir. 2006) (where effect would result in “practical  
 18 impairment of [intervenor's] interests as a result of the pending litigation,” intervention is  
 19 appropriate *even if* intervenor does not have an existing, enforceable right). Because the  
 20 Proposed Intervenor has the necessary interest in the outcome of this matter, this Court  
 21 should grant this motion to intervene.

22 **C. The Disposition of the Action Will Impair or Impede the Proposed**  
 23 **Intervenor's Ability to Protect Its Interests.**

24 The disposition of this action may impair or impede the Proposed Intervenor's  
 25 ability to protect their legally protested interests. Fed. R. Civ. P. 24(a)(2) & advisory  
 26 committee note (1966) (intervenor need only show that disposition of action “*may . . .*  
 27 *impair or impede the movant's ability to protect its interest*” and “[i]f an absentee would  
 28 be substantially affected in a practical sense by the determination made in an action, he

1 should, as a general rule, be entitled to intervene”) (emphasis added). “[T]he nature of the  
 2 applicant’s interest and the effect that the disposition of the action may have on the  
 3 applicant’s ability to protect its interest . . . are closely related issues.” Charles Alan  
 4 Wright, et al., 7C FED. PRAC. & PROC. CIV. § 1908 (3d ed.).

5 Here, absent intervention, the Proposed Intervenor will be unable to protect its, its  
 6 candidates, and its members interests in ensuring their rights are protected; and that an  
 7 opposing political party does not inappropriately co-opt the events surrounding the PPE to  
 8 (1) impact the wholly separate General Election and (2) overturn legislation that it is not  
 9 yet effective. If Plaintiffs prevail, Republicans may be subject to violations of their rights  
 10 without having any representation in this litigation on the matter.

11 **D. The Existing Parties Do Not Adequately Represent the Proposed**  
 12 **Intervenor’s Interests.**

13 Intervention as of right is appropriate, as here, where other parties in the litigation  
 14 will not adequately represent the intervenor’s interest. “The burden of showing  
 15 inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate  
 16 that representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use v.*  
 17 *Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quotation omitted). To assess  
 18 whether a party’s interest is adequately represented, a court considers several factors,  
 19 including:

- 20 (1) whether the interest of a present party is such that it will  
 21 *undoubtedly* make all of a proposed intervenor’s arguments;  
 22 (2) whether the present party is capable and willing to make  
 such arguments; and (3) whether a proposed intervenor would  
 offer any necessary elements to the proceeding that other  
 parties would neglect.

23 *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 952 (9th Cir. 2009) (emphasis  
 24 added; internal quotations omitted). The “most important factor” in assessing the  
 25 adequacy of representation is “how the interest compares with the interests of existing  
 26 parties.” *Citizens for Balanced Use*, 647 F.3d at 898.

27 Here, the Proposed Intervenor’s interests are not the same as the existing parties.  
 28 Those interests are, in fact, directly contrary to the Plaintiffs’ claimed interests. Unlike

1 Plaintiffs, the Proposed Intervenor seeks to *defend* existing state law and advocate for the  
 2 rights of Republicans during the upcoming General Election.

3 The Proposed Intervenor’s interests are not adequately represented by the existing  
 4 Defendants in the case either. The Defendants are elected or appointed officials named in  
 5 their official capacities only. The Defendants, as they should, “must represent the interests  
 6 of *all* people in Arizona”—not the interests of the Republican Party, its committees, or  
 7 candidates. *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life Obstetricians &*  
 8 *Gynecologists*, 227 Ariz. 262, 279 ¶ 58, 257 P.3d 181, 198 (App. 2011) (emphasis added).  
 9 “As a result, the state might not give [the Proposed Intervenor’s] interests ‘the kind of  
 10 primacy’ that [the Proposed Intervenor] would.” *Id.* (reversing denial of motion to  
 11 intervene when state could not adequately represent interests of associations that, like the  
 12 state, sought to uphold a challenged law, since state had to represent all Arizonans)  
 13 (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003)); *see also*  
 14 *Jackson v. Abercrombie*, 282 F.R.D. 507, 519 (D. Haw. 2012) (granting intervention to  
 15 public interest group due to the possibility that the group, which “is not constrained by  
 16 political considerations,” “will advance broader and more comprehensive rationales” than  
 17 state officials).

18 **II. IN THE ALTERNATIVE, PERMISSIVE INTERVENTION IS**  
 19 **APPROPRIATE UNDER RULE 24(b)(2).**

20 If the Court does not grant intervention of right under Rule 24(a)(2), the Proposed  
 21 Intervenor should be granted permissive intervention under Federal Rule of Civil  
 22 Procedure 24(b)(2). Rule 24(b)(2) states that “[o]n timely motion, the court may permit  
 23 anyone to intervene who . . . has a claim or defense that shares with the main action a  
 24 common question of law or fact.”

25 The standards for permissive intervention are less stringent than those for  
 26 intervention as of right, and require: “(1) an independent ground for jurisdiction; (2) a  
 27 timely motion; and (3) a common question of law and fact between the movant’s claim or  
 28 defense and the main action.” *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712



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1 F.3d 1349, 1353 (9th Cir. 2013).<sup>2</sup> “In exercising its discretion, the court must consider  
2 whether the intervention will unduly delay or prejudice the adjudication of the original  
3 parties’ rights.” Fed. R. Civ. P. 24(b)(3). All requirements for permissive intervention are  
4 met here.

5 The timeliness requirement is satisfied for all the reasons discussed above. As  
6 noted, there is no risk of prejudice to the existing parties given the early posture of this  
7 case. Moreover, the Proposed Intervenor seeks intervention in order to protect the interests  
8 of Republican members and candidates that will directly be impacted by the legal and  
9 factual claims made by the Plaintiffs. As such, the Proposed Intervenor’s defenses  
10 necessarily “share[] with the main action a common question of law or fact.” Fed. R. Civ.  
11 P. 24(b)(1)(B). And if the Plaintiffs had jurisdictional grounds to assert their claims in this  
12 action, there is certainly jurisdiction to present defenses to those claims. Since the  
13 requirements in Rule 24(b)(2) are all met, permissive intervention constitutes appropriate,  
14 alternative relief to intervention as of right.

15 **Conclusion**

16 All potentially affected parties deserve the opportunity to be heard in this matter.  
17 The Proposed Intervenor thus respectfully requests that the Court permit it to intervene to  
18 protect its interests in this action.

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<sup>2</sup> “Rule 24(b) does not require a showing of inadequacy of representation.” *Groves v. Ins. Co. of N. Am.*, 433 F. Supp. 877, 888 (E.D. Pa. 1977).

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DATED this 9th day of May, 2016.

Respectfully submitted,  
SNELL & WILMER L.L.P.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2016, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

/s/ Tracy Hobbs

24046460

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