UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ASIAN AMERICANS ADVANCING JUSTICE–ATLANTA,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State; REBECCA SULLIVAN, in her official capacity as the Vice Chair of the Georgia State Election Board; DAVID WORLEY, in his official capacity as a member of the Georgia State Election Board; MATTHEW MASHBURN, in his official capacity as a member of the Georgia State Election Board; and ANH LE, in her official capacity as a member of the Georgia State Election Board.

Defendants.

Case No. 1:21-CV-01333-JPB

PLAINTIFF'S RESPONSE IN OPPOSITION TO REPUBLICAN COMMITTEES' MOTION TO INTERVENE AS DEFENDANTS

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INTRODUCTION

Proposed Intervenor-Defendants Republican National Committee, National Republican Senatorial Committee, National Republican Campaign Committee, and Georgia Republican Party, Inc. (collectively, the "Republican Committees") move to insert themselves into this lawsuit on grounds that—if credited—would authorize nearly anyone to intervene in election-related lawsuits. But courts in the Eleventh Circuit have repeatedly held that intervention rights do not sweep as broadly as the Republican Committees suggest. The current Defendants will vigorously defend SB 202 and are legally required to do so. Additional defendants will only add unnecessary complexity and cost. Thus, as explained below, the Republican Committees have not established that either intervention as a matter of right or permissive intervention is justified here.

In support of their request for intervention as a matter of right, the Republican Committees fail to satisfy three of the four requirements. ***First***, the Republican Committees lack a sufficient interest in the action, mustering nothing more than a generic interest in fair elections that all voters share. Styling their interest as "helping Republican candidates and voters" does not support mandatory intervention either because it reduces to the same litigation goal shared by the state defendants: "preserving" SB 202. *See* ECF 20-1 at 3, 10 (cleaned up). ***Second***, even if these

interests could support intervention, the Republican Committees do not adequately explain how this action threatens to harm such interests. Instead, the Republican Committees fall back on speculative harms that lack any factual support—particularly following an election that Georgia's own Republican state officials described as "secure, reliable, and efficient." ***Third***, the Republican Committees do not establish that the state defendants—who have vowed to vigorously defend SB 202 and are legally required to do so—are inadequate to preserve their shared interest in upholding the law. Each of these failures is fatal for the Republican Committees' motion to intervene as of right. These same failures also provide strong reasons to reject the Republican Committees' motion for permissive intervention. Moreover, the Republican Committees' addition as a party in this lawsuit will come at great cost to all in the form of significantly more filings, discovery, and time spent at hearings, conferences, and trial. If the Republican Committees wish to offer their perspectives in this lawsuit, an *amicus* brief is the more appropriate vehicle to do so.

For these reasons, the Court should deny the Republican Committees' motion.

BACKGROUND

During the 2020 election cycle, Georgia voters from all backgrounds and political leanings turned out in record numbers to vote in an election that Georgia election officials have uniformly recognized as fair, secure, and legitimate. Due in

large part to the increased availability of absentee ballots in the 2020 election cycle, Asian American and Pacific Islander ("AAPI") voter turnout *nearly doubled* between the 2016 and 2020 elections. Plaintiff Advancing Justice–Atlanta played a key role in helping Georgia AAPI voters exercise their rights to participate in the democratic process.

Rather than celebrate these successes, the Georgia legislature emphatically rejected them. A few months after the 2020 election cycle concluded, the Georgia legislature passed (and the governor signed into law) SB 202, which erects new barriers to voting that unlawfully burden the rights of AAPI voters and other voters of color. SB 202 systematically and significantly restricts access to the polls by, among other things, imposing onerous identification requirements for absentee voting that make it harder for new citizens to vote; prohibiting local officials from proactively mailing voters absentee ballot applications; shrinking the timeline voters have to request, receive, review, and return absentee ballots; criminalizing most forms of assistance in helping voters return ballots; and reducing the number (and accessibility) of absentee ballot drop boxes in the communities where most AAPI voters and other voters of color live.

A week after SB 202 became law, Plaintiff filed suit challenging the law. Plaintiff alleges that SB 202 creates an undue burden on the right to vote in violation

of the First and Fourteenth Amendments to the United States Constitution; violates the Fourteenth and Fifteenth Amendments to the United States Constitution by intentionally denying, abridging, or suppressing the right to vote on account of race or color; and violates Section 2 of the Voting Rights Act by denying voters of color full and equal access to the political process.

Eight days after Plaintiff filed its complaint, the Republican Committees filed a motion to intervene with the stated goal of "preserving" SB 202. ECF No. 20-1 at 10 (cleaned up). For the following reasons, that motion should be denied.

ARGUMENT

I. The Republican Committees are not entitled to intervene as of right.

A nonparty seeking to intervene as of right under Rule 24(a) bears the burden of satisfying four required elements: (1) its application must be timely; (2) it must have a "direct, substantial, [and] legally protectable" "interest relating to the property or transaction which is the subject of the action"; (3) it must be "so situated that disposition of the action, as a practical matter, may impede or impair [its] ability to protect that interest"; and (4) its interests must be "represented inadequately by the existing parties to the suit." *Huff v. IRS Comm'r*, 743 F.3d 790, 795-796 (11th Cir. 2014) (quotation omitted); *Stone v. First Union Corp.*, 371 F.3d 1305, 1308–09 (11th Cir. 2004) (quoting *Worlds v. Dep't of Health & Rehab. Servs.*, 929 F.2d 591,

593 (11th Cir. 1991)); *see also Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989); *United States v. City of Miami*, 278 F.3d 1174, 1178 (11th Cir. 2002). Failing to meet even one of these required elements is fatal to a motion to intervene. Here, the Republican Committees' motion to intervene fails three times over.

A. The Republican Committees fail to show a legally protected interest in this action.

The Republican Committees contend that their "interests in ensuring that the State's election procedures are fair and reliable" are "legally protectible interest[s]." ECF 20-1 at 6. But labeling a generic interest a legally protectible one does not make it so. To the contrary, the Eleventh Circuit has rejected precisely the types of interests the Republican Committees raise here as too "generalized" to support the right to intervene. *See Athens Lumber Co. v. Fed. Election Comm'n*, 690 F.2d 1364, 1366 (11th Cir. 1982) (rejecting the argument that a labor union's interest in preventing excessive corporate spending in elections was a legally protectible one); *Thornburgh*, 865 F.2d at 1212 (explaining that "an intervenor's interest must be a particularized interest rather than a general grievance"); *see also United States v. Florida*, No. 4:12CV285-RH/CAS, 2012 WL 13034013, at *1 (N.D. Fla. Nov. 6, 2012) (explaining that "confidence in the election process" is not a legally protectible interest).

In *Athens Lumber*, for instance, a labor union sought to intervene in a lawsuit challenging limits on corporate spending in elections. 690 F.2d at 1364. The union, which wanted to preserve the election expenditures law, claimed a legally protectible interest in the "danger that unions [would] be financially overwhelmed in federal elections" by corporations. *Id.* at 1366. The Eleventh Circuit rejected that argument. In denying intervention, the court explained that the labor union's "general concern for the disproportionate corporate expenditures which [could] result if the FECA restrictions [were] lifted" was "so generalized" that it could not qualify as a legally protectible interest. *Id.* That interest, the court explained, was "shared with all unions and all citizens concerned about the ramifications of direct corporate expenditures." *Id.*

The same is true here: every political organization, candidate, and voter has an interest in fair and reliable elections. And every political organization, candidate, and voter has an interest in seeing election results that reflect their vision of what the future should look like. So it does not help the Republican Committees to claim an interest in fair elections, or even to claim an interest in seeing that their vision of "what's best for the country" be realized. *See* ECF 20-1 at 9. If everyone with

interests as generalized as these had the right to intervene, Rule 24(a)'s requirements would become meaningless.[1]

That is why the Eleventh Circuit rightly demands more: An intervenor must claim a "direct" interest in the action beyond "general concern" for harms "which *may* result" if a law is invalidated. *Athens Lumber*, 690 F.2d at 1366 (emphasis added); *see also Florida*, 2012 WL 13034013, at *1 (explaining that a "direct" interest warranting the right to intervene is one which is not "generalized"). But the Republican Committees fail to identify any such interest here. This failure alone dooms their motion to intervene.[2]

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[1] The Republican Committees cite *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Col. Sept. 15, 2014) to support the proposition that "usually '[n]o one disputes' that political parties 'meet the impaired interest requirement for intervention as of right.'" *See* ECF 20-1 at 7. But *Gessler* says no such thing. The court in *Gessler* only provided that none of the parties *in that case* disputed that there was an impaired interest at stake. ("The Applicant–Intervenors argue that they have a right to intervene because they meet the impaired-interest requirement and because the defendants do not adequately represent their interests. No one disputes that the Applicant–Intervenors meet the impaired-interest requirement for intervention as of right. Instead, both parties oppose intervention as of right on the grounds that the Applicant–Intervenors' interests are adequately represented by the current defendants.") *Gessler*, 2014 WL 4549001, at *2.

[2] The lone Eleventh Circuit intervention case the Republican Committees cite to support their expansive view of a legally protectible interest is one in which the court did not even address intervention as of right. *See* ECF 20-1 at 6, citing *Black Voters Matter*, Doc. 42 at 5, No. 1:20-cv-4869 (N.D. Ga.) ("Because the Court finds that Proposed Intervenors meet the requirements for permissive intervention, it need not address whether they are entitled to intervene as of right.") The other Eleventh Circuit case they cite does not address intervention at all. *See* ECF 20-1 at 7, citing

B. The Republican Committees fail to show how this action threatens to impair their interests.

Even if the Eleventh Circuit recognized a generic interest in fair elections as a legally protectible interest under Rule 24(a), it would make no difference. That is because the Republican Committees either allege impairments which the Eleventh Circuit does not recognize as valid under Rule 24(a) or fail to explain their alleged impairments altogether.

To start, the Republican Committees contend that they have a "distinct" interest in "conserving their resources." ECF 20-1 at 3; *see also id.* at 8 (bemoaning the prospect that they will "be forced to spend substantial resources" if SB 202 is invalidated). But the Eleventh Circuit does not recognize an "economic interest" as a basis for intervention as of right. *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1251 (11th Cir. 2002) (explaining that "something more than an economic interest" is necessary for the right to intervene). It is thus irrelevant for intervention purposes whether invalidating SB 202 would cost the Republican Committees resources.

Siegel v. LePore, 234 F.3d 1163, 1169 n.1 (11th Cir. 2001) (merely recognizing the district court granted intervention to the Democratic Party).

Next, the Republican Committees protest that invalidating SB 202 will "change the structure of the competitive environment and fundamentally alter the environment in which they defend their concrete interests." ECF 20-1 at 8 (cleaned up). And they speculate that invalidating SB 202 will "undermine confidence in the electoral process." *Id.* But these are the kinds of "no more than speculative" harms that depend "on the occurrence of a long sequence of events" which courts in the Eleventh Circuit reject as insufficient for the right to intervene. *See Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995); *Laube v. Campbell*, 215 F.R.D. 655, 657 (2003). Nor are they credible: Secretary of State Brad Raffensperger, and other state election officials, have confirmed time and again that Georgia's 2020 General and 2021 Runoff Elections were secure and fair.[3] And the Republican Committees offer no reason to believe restoring the laws that governed those elections would harm their interests in fair and reliable elections. There is a simple reason for that: none exists.

[3] 60 Minutes, *Georgia official Raffensperger: "We had safe, secure, honest elections,"* YouTube, https://www.youtube.com/watch?v=TTtY_ZpS6eY (last visited April 21, 2021) (Secretary Raffensperger refuting false claims of voter fraud); CBS News, *"None of that is true": Georgia election official debunks claims about voter fraud*, YouTube, https://www.youtube.com/watch?v=dEYvOTvqlFs (last visited April 21, 2021) (Georgia Voting Systems Manager Gabriel Sterling refuting false allegations of voter fraud).

Finally, to the extent the Republican Committees claim that invalidating SB 202 will harm their interest in *electing Republicans*, they do not explain how. For that argument to make sense, SB 202 would have to offer some inherent advantage to electing Republicans as opposed to candidates of other parties. But the Republican Committees do not substantiate such a claim, so they are left with nothing more than a baseless assertion that the relief Plaintiff seeks here somehow specifically prejudices Republican candidates. Moreover, no matter the outcome of this lawsuit, *all* candidates from *all* political parties will be subject to the same election rules in Georgia. If anything, invalidating SB 202 will only make it *easier* for all candidates from all political parties to ensure their supporters can participate in the democratic process. Because the Republican Committees have not explained how this action risks impairing their interests, intervention should be denied.

C. The Republican Committees fail to show how the state defendants inadequately represent their interests.

Finally, the Republican Committees do not make the "strong showing" the Eleventh Circuit requires to rebut the presumption of adequacy afforded to existing parties with the same objectives as the proposed intervenors. *See Burke v. Ocwen Fin. Corp.*, 833 F. App'x 288, 293 (11th Cir. 2020). All the Republican Committees

can muster are *general* assertions that apply to *all* government defendants. That is not enough.

Equally important, even if the Republican Committees' general assertions could overcome this presumption, their claim of inadequacy still fails because they have not made any of the three showings that would enable them to overcome the Eleventh Circuit's "general rule that adequate representation exists" here. *See Stone*, 371 F.3d at 1311 (quoting *Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999)). Specifically, they have not shown that (1) collusion exists between Plaintiff and the state defendants; (2) the state defendants have an interest adverse to the Republican Committees; or (3) the state defendants have failed in their fulfillment of their duty to defend the law. *Id.* (explaining that unless proposed intervenors make one of these three showings courts "return[] to the general rule that adequate representation exists").

The Republican Committees' claim of inadequacy starts (and ends) with pointing to generalized differences between government defendants and private interests: the government represents everyone (private interests do not); the government will care about the expense of defending the lawsuit out of public coffers (private interests will not); and the government will care about how the politics of the lawsuit will affect their ability to lead the public (private interests will not). ECF

20-1 at 8-9. But merely highlighting these general differences between public and private parties is not enough to show inadequacy.

To the contrary, in *Burke*, the Eleventh Circuit made clear that a nonparty seeking intervention must offer up *actual* evidence that the existing parties are inadequate to represent their interests. 833 F. App'x at 293 (explaining that plaintiffs must "present some evidence" of inadequacy); *see also Clark*, 168 F.3d at 461 (explaining that "proposed intervenors [have] the burden of coming forward with *some* evidence" of inadequacy and citing case-specific facts for doubting the elected officials in that case were adequate representatives) (emphasis added). That means pointing to evidence that the Georgia state defendants are inadequate in *this* case. *See, e.g.*, *Clark*, 168 F.3d at 462 (explaining that the government defendants' public openness to settlement in that case indicated inadequacy). If generalized differences between government and private parties were enough to establish inadequacy, a government defendant would *always* be inadequate to represent an allied private party's interests. For it will always be true that a government defendant—unlike a private party—will act on behalf of all citizens, weigh the expense of defending a lawsuit out of public coffers, and evaluate how the lawsuit affects their ability to lead the government. *See* ECF 20-1 at 10. Inadequacy under Rule 24(a) does not sweep as broadly as the Republican Committees would like.

Indeed, the Eleventh Circuit has rejected the sweeping view of inadequacy the Republican Committees press here. In *Athens Lumber*, a labor union complained that the defendant, the Federal Election Commission ("FEC"), lacked "the incentive to represent vigorously what [it] perceive[d] as a private interest": preserving a limitation on corporate expenditures in political campaigns that, if struck down, would disadvantage labor unions in elections. 690 F.2d at 1365-67. The court disagreed. It explained that the FEC "adequately represented" the labor union's interests because the FEC had shown a willingness to and history of defending laws limiting corporate expenditures in campaigns, and both the FEC and labor union shared "precisely" the same goal in the litigation: preserving the law. *Id.* at 1366-67.

Like the FEC in *Athens Lumber*, the state defendants here have vowed to defend SB 202; have a history of defending similar laws; and share the exact same objective as the Republican Committees: preserving the law. *See, e.g., Com. Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326 (N.D. Ga. 2005) (state defending voter ID law); *Com. Cause/Georgia v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009) (state defending a new voter ID law).[4] If that were not enough, they are also legally

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[4] Indeed, Georgia Attorney General Chris Carr has already vowed to "defend this law" in court. Dave Miller, *Attorney General Carr pushes back on GA voting law*, WTVM (Apr. 5, 2021), *available at* https://www.wtvm.com/2021/04/05/attorney-general-carr-pushes-back-ga-voting-law/.

required to defend the law. *See* O.C.G.A. § 45-15-3(6) (explaining that it is the Attorney General's duty "[t]o represent the state in all civil actions tried in any court"). And contrary to the Republican Committees' suggestions, courts routinely reject intervention by political parties in election law disputes by finding that state defendants are adequate representatives for their interests. *See, e.g.*, *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020 WL 6591397, at *2 (M.D.N.C. June 24, 2020) (denying intervention to Republican party organizations because state defendants adequately represented their interest in "protecting the integrity of the voting process"); *Feehan v. Wis. Elections Comm'n*, No. 20-CV-1771-PP, 2020 WL 7182950, at *6 (E.D. Wis. Dec. 6, 2020) (denying intervention to the Democratic National Committee because state defendants adequately represented its interest in "ensuring that the valid ballot of every voter . . . [was] counted").

With no reason to believe that the state defendants will "fail[] in their fulfillment of their duty to defend the law" and many reasons to think they will fulfill this duty vigorously, the Republican Committees fail to rebut the presumption that the state defendants will adequately represent their interests. *See Stone*, 371 F.3d at 1311. This alone defeats the Republican Committees' claim of intervention as of right.

II. The Republican Committees should be denied permissive intervention.

A nonparty seeking permissive intervention must submit a timely motion and share a claim or defense in common with the main action. Fed. R. Civ. P. 24(b)(1). But, as the Eleventh Circuit has explained, the "introduction of additional parties inevitably delays proceedings." *Athens Lumber*, 690 F.2d at 1367. So once a nonparty has satisfied Rule 24(b)(1)'s minimum requirements, courts considering permissive intervention must be mindful of "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

This circuit has thus recognized several good reasons for denying permissive intervention: the unlikelihood of a party shedding "any new light" on the issues; the "general nature" of a would-be intervenor's claims; the "identical" nature of the would-be intervenor's objectives to those of existing defendants; and the addition of unnecessary "witnesses and collateral issues" to dispose of the claims. *See Athens Lumber*, 690 F.2d at 1367; *Chiles*, 865 F.2d at 1215; *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 711 (11th Cir. 1991). Heeding this guidance, Eleventh Circuit courts routinely deny permissive intervention to proposed intervenors who bring nothing new to the table. *See, e.g., Wollschlaeger v. Farmer*, No. 11-22026-Civ-COOKE/TURNOFF, 2011 WL 13100241, at *3 (S.D. Fla. July 11, 2011)

(denying permissive intervention to the National Rifle Association because its inclusion would be "duplicative" and "unlikely [to] shed any new light on the constitutional issues in th[e] case"); *Smith v. Cobb Cnty. Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1313 (N.D. Ga. 2002) (denying permissive intervention motion in voting rights case when movants "failed to demonstrate that their interests [were] not being adequately represented" and failed to show any "compelling reason" for permissive intervention); *Florida*, 2012 WL 13034013, at *1 (finding that a would-be intervenor's permissive intervention should be denied because its interests were adequately represented by existing parties); *First Nat'l Bank of Tenn. v. Pinnacle Props. V*, C.A No. 1:11-CV-2087-ODE, 2011 WL 13221046, at *4 (N.D. Ga. Nov. 1, 2011) (denying permissive intervention because the existing defendants asserted "the same position that movant" asserted and movant's addition "would be duplicative of the efforts already being expended"); *see also Chiles*, 865 F.2d at 1215 (affirming district court's denial of permissive intervention by movants whose interests were identical to those of the government defendant).

The Court should follow the same course here. As explained, all the Republican Committees have shown is that they seek to "preserve" and "demand adherence" to SB 202, and that they "reject [the] allegation . . . that the challenged

law is unconstitutional." ECF 20-1 at 7, 10-11. In other words, the identical objectives and position of the state defendants. As for the Republican Committees' vague assertion that enjoining SB 202 "would undermine the[ir] . . . and their members['] interests," ECF 20-1 at 11, that merely repackages their central aim—preserving SB 202—without explaining how their and their members' interests will be uniquely damaged if the next election follows the same procedures as the last one. This is the kind of "speculative" impairment which courts in the Eleventh Circuit reject as insufficient for permissive intervention. *Johnson*, 915 F. Supp. at 1538 (denying both mandatory and permissive intervention when movants had "no more than a generalized interest" in the case and the alleged impairment of their interest was "no more than speculative"). To the extent that the Republican Committees are claiming that their interests in electing Republicans will be impaired by invalidating SB 202, those are collateral issues to the claims at issue in this lawsuit which will require unnecessary witnesses, evidentiary hearings, and parties at trial. *South Florida*, 922 F.2d at 711. At any rate, the Republican Committees do not even explain how invalidating SB 202 will prevent them from electing Republicans.

In short, the Republican Committees have failed to articulate with specificity what viewpoints they seek to offer that the state defendants will not or cannot. If the Republican Committees wish to offer their "diversity of viewpoints" about SB 202

during this litigation, ECF 20-1 at 12, they do not need to become defendants to do so. The better (and more efficient) course would be for them to file an *amicus* brief. Accordingly, the Court should deny permissive intervention.

CONCLUSION

For these reasons, the Republican Committees' motion to intervene as of right under Rule 24(a) should be denied. Plaintiff also requests that the Court exercise its discretion to deny permissive intervention under Rule 24(b).

Respectfully submitted, this 23rd day of April, 2021.

/s/ Phi Nguyen
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Defendants.

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CERTIFICATE OF COMPLIANCE

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I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: April 23, 2021

/s/ Phi Nguyen
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ASIAN AMERICANS ADVANCING JUSTICE–ATLANTA

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CERTIFICATE OF SERVICE

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I hereby certify that on April 23, 2021, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: April 23, 2021

/s/ Phi Nguyen
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