IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA STATE CONFERENCE OF BRANCHES AND YOUTH UNITS OF THE NAACP, DISABILITY RIGHTS FLORIDA, and COMMON CAUSE, *Plaintiffs,* v. LAUREL M. LEE, in her official capacity as Secretary of State of Florida, *Defendant.*	Case No. 4:21-cv-187-MW-MAF

PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE

Plaintiffs Florida State Conference of Branches and Youth Units of the NAACP ("Florida NAACP"), Disability Rights Florida, and Common Cause (collectively, "Plaintiffs") oppose the motion to intervene (ECF No. 19) submitted by the Republican National Committee ("RNC") and National Republican Senatorial Committee ("NRSC") (together, the "Proposed Intervenors"). Neither the RNC nor the NRSC are entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), and this Court should not exercise its discretion to allow them to permissively intervene.

INTRODUCTION

Proposed Intervenors do not satisfy the requirements for intervention as of right because they lack a cognizable interest in the action and, to the extent that Proposed Intervenors do have a cognizable interest in the action, such interest is adequately represented by the Defendant, Florida Secretary of State Laurel M. Lee ("the Secretary"), who is sued in her official capacity. Proposed Intervenors share with the Secretary a strong, intertwined interest in upholding the constitutionality and legality of the Challenged Provisions of Senate Bill 90, An Act Relating to Elections, 2021 Fla. Sess. Law Serv. ch. 2020-11 (West) ("SB 90"). Little, if any, basis exists to believe that Proposed Intervenors' participation in this action as parties is necessary to vindicate any interest they may or may not have.

Proposed Intervenors' assertion that their interests will not be adequately represented rests on an abstraction. Proposed Intervenors posit that the Secretary may decide to abandon the defense of the challenged statute and do so in a manner that is particularly prejudicial to them. However, no factual basis is set forth to support this speculative assertion. Rather, Proposed Intervenors cling to a red herring, insisting that the distinction between governmental and private entities has some relevance to

this analysis. But this distinction is irrelevant. The Secretary is plainly committed to defending the challenged statute. Indeed, the Secretary, represented by the Florida Department of State's own general counsel and by a private law firm, has already moved to dismiss this action, ECF No. 36 (May 28, 2021), and plainly intends to continue mounting a spirited defense.

Proposed Intervenors' request for permissive intervention should likewise be denied. Allowing Proposed Intervenors to graft themselves onto the action as additional parties will inevitably affect motion practice, expert discovery, and trial, multiplying the complexity (and potentially the duration) of this action without any commensurate benefit to the Court, the original parties, or to the public interest. Such permissive intervention would only hamper the progress of the action, unduly delaying the ultimate adjudication of Plaintiffs' crucial claims. The Court has indicated that it wants litigation challenging the legality of SB 90 to move forward expeditiously. *See, e.g.*, *League of Women Voters of Florida, Inc., et al. v. Lee, et al.* ("*Florida LWV*"), No. 4:21-cv-186-MW-MAF, ECF No. 22 (Initial Scheduling Order).[1] Intervention runs counter to that goal.

[1] As of this writing, the Court has not entered a similar order in this action, although the Court may decide to enter such an order in the near future.

In addition to impairing the timely vindication of the fundamental right to vote under the First and Fourteenth Amendments, the Voting Rights Act, and the Americans With Disabilities Act (ECF No. 1), permitting intervention here would also prejudice Plaintiffs by assuring that there would be two voices echoing their opposition to Plaintiffs at every turn. Intervention would therefore undermine the key goal of every federal civil proceeding: to achieve a "just, speedy, and inexpensive determination." Fed. R. Civ. P. 1. Finally, denial of Proposed Intervenors' motion would not block them from any participation in the action. To the contrary, Proposed Intervenors may submit a motion for leave to file an amicus brief. Participating as an amicus is a far more appropriate mode for the RNC and NRSC to assert whatever additional arguments they may have.

I. BACKGROUND

On May 6, 2021, Governor Ron DeSantis signed SB 90 into law, immediately imposing substantial limitations on voting rights in Florida. Among other things, SB 90 (i) imposes new limitations on persons returning one or more completed, sealed, and signed vote-by-mail ("VBM") ballot on behalf of a voter, thereby precluding organizations and volunteers from helping voters return their VBM ballots; (ii) cuts access to VBM drop boxes

by limiting locations, availability, and hours; (iii) halves the lifespan of "standing" VBM requests, requiring voters to submit new VBM ballot applications every general election cycle; (iv) expands the definition of "solicitation" to make *all* "activities" carried out within an expanded zone around polling places, early voting locations, or drop boxes, with either the effect or the intent of "influencing" a voter, into a criminal offense (a vague provision that could criminalize the provision of food or drink, including water, to voters waiting in line to vote); and (v) requires voters requesting a VBM ballot to provide their Florida driver license number, Florida identification card number, or last four digits of Social Security number, without exception for citizens who are eligible to vote but who lack these forms of identification.

In close succession, three lawsuits were filed in this Court challenging various provisions in SB 90: (1) *Florida LWV*, No. 4:21-cv-186 (filed May 6, 2021); (2) this action, *Florida NAACP* (filed May 6, 2021); and (3) *Florida Rising Together, et al. v. Lee, et al.*, No. 4:21-cv-201-AW-MJF ("*Florida Rising*") (filed May 17, 2021). The three actions name the same primary defendant: the Secretary, in her official capacity.[2] The three actions all seek

[2] The *Florida LWV* and *Florida Rising* plaintiffs name county

declaratory and injunctive relief and challenge many of the same provisions of SB 90, although each has distinct plaintiffs and raises certain distinct claims.

On May 20, 2021, Proposed Intervenors moved to intervene in both the *Florida NAACP* and the *Florida LWV* actions, seeking both intervention of right and permissive intervention. *Florida NAACP*, ECF Nos. 19, 20; *Florida LWV*, ECF Nos. 25, 26.

II. ARGUMENT

Proposed Intervenors do not satisfy the standard for either intervention as of right or permissive intervention as set forth in Federal Rule of Civil Procedure 24 and applicable case law.

A. Proposed Intervenors Fail To Establish A Right To Intervene.

This Court grants a motion to intervene as a matter of right only if a Proposed Intervenor: (1) submits a timely application; (2) has an "interest relating to the property or transaction which is the subject of the action";

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supervisors of elections ("SOEs") as defendants. The Plaintiffs in this action will be moving shortly, pursuant to Fed. R. Civ. P. 15, to add the SOEs to this case. Adding Proposed Intervenors as party defendants to an action that already includes the Secretary and will shortly include the SOEs would, as explained *infra*, make the case unwieldly and complex.

(3) is "so situated that disposition of the action, as a practical matter, may impede or impair [their] ability to protect that interest"; and (4) has interests that are "represented inadequately by the existing parties to the suit." *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)). While the third and fourth prong overlap, the focus of the third prong is on the practical impact of denying intervention, 7C Wright, Miller & Kane, *Federal Practice & Procedure* § 1908.2 (3d ed.), while the "most important factor in determining adequacy of representation" for purposes of the fourth prong is "how the interest of the [proposed intervenor] compares with the interests of the present parties," *id.* § 1909.

Proposed Intervenors bear the burden of showing that all four required elements are met. *United States v. City of Miami*, 278 F.3d 1174, 1178 (11th Cir. 2002) (movant "must establish" each factor); *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989) (movant "must show" each factor).

Here, Proposed Intervenors fail to carry their burden on three of the four requirements. First, Proposed Intervenors fail to show a valid interest in defending the Challenged Provisions of SB 90, as they cannot establish that they have a legally protected interest in the enforcement of a state statute

that violates the federal Constitution, violates federal statutes, and was designed to impede and unduly burden the ability of voters of color and voters with disabilities to access the ballot.

Second, even if Proposed Intervenors had a cognizable interest, they have offered only generalized and abstract statements in support of their claim that continuation of the action with its original parties would impede or impair that interest. This is especially true here given that the Secretary is already vigorously defending the Challenged Provisions and is extremely likely to continue to do so.

Third, Proposed Intervenors fail to show, in any concrete sense, why the Secretary will inadequately represent their interest in defending the specific challenged statute here. The Secretary's interest in defending the statute is identical to that of Proposed Intervenors to the degree that they have a legitimate interest. Nor can the Proposed Intervenors overcome the presumption of adequacy by asserting that they have a specific, parochial interest in making sure that Florida adopts and enforces election laws that they believe will work to elect their preferred candidates and deprive other voters of equal access to the electoral system. Such an "interest" is neither pertinent to this case nor a legitimate interest that this Court should protect.

1. Proposed Intervenors Lack a Protectable Interest in Upholding SB 90's Challenged Provisions.

As a threshold matter, Proposed Intervenors lack the requisite "direct," "substantial," and "legally protectable" interest to intervene of right. *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991) ("*SFWMD*"). Proposed Intervenors assert that any "changes in voting procedures *could* affect candidates running as Republicans and voters who are members of the Republican Party," and that an adverse ruling striking down the Challenged Provisions of SB 90 will impair their interest in seeing "Republican voters . . . vote" and "Republican candidates . . . win." ECF No. 20, at 5–6 (emphasis added). These speculative assertions are legally insufficient because Proposed Intervenors fail to cite *any* actual evidence. *Meadowfield Apartments, Ltd. v. United States*, 261 F. App'x 195, 196 (11th Cir. 2008) (mere "suggestion" that a movant's "future" interests "may be impaired is too speculative to support intervention."); *In re HealthSouth Corp. Ins. Litig.*, 219 F.R.D. 688, 691–92 (N.D. Ala. 2004) (denying intervention where movants were, at most, "affected only speculatively" by "the present action" (citation omitted)).

Indeed, faced with the need to establish that they have something other than a "generalized interest" that applies to all voters, Proposed Intervenors

emphasize that they have a special partisan interest: "Specifically, Movants want Republican voters to vote, Republican candidates to win, and Republican resources to be spent wisely and not wasted on diversions." ECF No. 20, at 5; *see also id.* at 6 ("Not all Floridians have an interest in electing *Republicans* or conserving the resources of the *Republican* Party.") (emphasis in original). In their next breath, Proposed Intervenors insist that their interest need not be "unique," just "different." *Id.* at 7. Yet why or how a Republican's interest in the enforcement of the Challenged Provisions is different from those of Floridians in general is never set forth with any specificity.

That a would-be intervenor may be disadvantaged by an adverse ruling does not make the would-be intervenor's interest "protectable." Rather, to be "legally protectable," the interest must "be one which the *substantive* law recognizes as belonging to or being owned by the applicant." *SFWMD*, 922 F.2d at 710 (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 464 (5th Cir. 1984)). "Thus, a legally protectable interest is an interest that derives from a legal right." *Mt. Hawley Ins. Co. v. Sandy Lake Props., Inc.*, 425 F.3d 1308, 1311 (11th Cir. 2005).

While the Republican Party may have an interest in the success of its

candidates, it has no legal right to gain electoral success at the expense of the constitutionally protected fundamental right of citizens to vote. It is thus unsurprising that Proposed Intervenors *nowhere* identify the specific legal right from which they contend their purported interest derives. *See also One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015) ("Rule 24 is not designed to turn the courtroom into a forum for political actors who claim ownership of the laws that they pass").

This is because there is no legal right to skew the electorate by burdening or excluding otherwise qualified voters from casting ballots. *See, e.g., Harris v. Pernsley*, 820 F.2d 592, 599, 601 (3d Cir. 1987) (interest in preserving "unconstitutional conditions" is illegitimate and not a "legally protected interest" that could justify intervention at all, even if adverse decision might "adversely affect" movant's "functions"); *see also Stotts v. Memphis Fire Dep't*, 679 F.2d 579, 582 (6th Cir. 1982) (holding that an interest in "the result of discriminatory" practices supplies "no legally cognizable interest" sufficient to support intervention); *Kirkland v. N.Y. State Dep't of Corr. Servs.*, 711 F.2d 1117, 1126 (2d Cir. 1983) (same).

Without any specific legal right giving rise to its supposed interest, Proposed Intervenors resort to generalities, repeating that it must intervene

to prevent a "democratically enacted" law from being invalidated. ECF No. 20, at 8–9. Yet "an intervenor's interest must be a particularized interest," not "a general grievance." *Chiles*, 865 F.2d at 1212. Because Proposed Intervenors' supposed interest falls into the latter category, they are not entitled to intervene. *Accord Athens Lumber Co. v. Fed. Elections Comm'n*, 690 F.2d 1364, 1365–66 (11th Cir. 1982) (labor union's position that it would lose "significant political ground if restrictions on corporate political expenditures are lifted" was too generalized to be a protectable interest justifying union's intervention in action challenging constitutionality of restriction); *Brenner v. Scott*, 298 F.R.D. 689, 691 (N.D. Fla. 2014) (advocacy group's "generalized interest in opposing same-sex marriage does not entitle [it] to intervene" to defend state law banning same-sex marriage); *Norris v. Detzner*, No. 3:15-cv-343, 2015 WL 12669919, at *2 (N.D. Fla. Sept. 17, 2015) (denying motion to intervene by League of Women Voters of Florida, Common Cause, and individual voters, who sought to defend anti-gerrymandering amendment to Florida Constitution, because proposed intervenors had no "legally protected interest" in "enforcing a duly enacted constitutional amendment"); *see also United States v. Alabama*, No. 2:06-cv-392, 2006 WL 2290726, at *3 (M.D. Ala. Aug. 8, 2006) (denying

intervention by Democratic leaders based on interest in "fair and adequate" elections in voting rights case).

2. Proposed Intervenors Fail to Show That, As a Practical Matter, Denial of Intervention Will Impair the Litigation That Is Being Conducted to Their Benefit.

Even if Proposed Intervenors had identified a direct, substantial, and legally protectable interest, they have failed to adequately explain why their participation as a party to the action is necessary to prevent such an interest from being impeded or impaired, offering only weak and tenuous rationales. As noted above, this prong focuses on whether, as a practical matter, the Secretary will litigate effectively to defend the challenged statute. Here Proposed Intervenors make no such showing.

Nor could they. The Secretary is vigorously litigating this case, having already filed a motion to dismiss. In addition to the office of the Secretary's general counsel, the Secretary has retained a private firm of more than fifty lawyers, Hopping, Green & Sams, P.A., which describes itself as "Florida's foremost business & governmental law firm."[3] While Proposed Intervenors would no doubt prefer to add additional lawyers (and complexity) to the fray,

[3] Hopping Green & Sams, P.A., *Homepage*, https://hgslaw.com/ (accessed May 31, 2021).

they have no legal right to pile on when there is no reason to believe that the Secretary of State lacks adequate resources to vigorously litigate this case.

In support of their claim that their "interests" would be impaired absent their participation as parties, Proposed Intervenors assert that they will "suffer" if this Court rules in Plaintiffs' favor. However, Proposed Intervenors cite no evidence to support this contention. ECF 20, at 10. Indeed, the suit is not directed against them at all, but rather seeks to enjoin the conduct of governmental agencies. Any argument that invalidating SB 90 will promote "voter confusion" is also unpersuasive, given that the Secretary, and the State of Florida, have ample resources at their disposal to educate voters about changes to the law.

Lastly, Proposed Intervenors improbably assert that a "ruling in Plaintiffs' favor . . . could undermine Movants' ability to assert their rights and interests in those cases and in future cases across the country." ECF No. 20, at 10. This argument disregards the simple fact that a ruling by this Court invalidating or enjoining the Challenged Provisions (or declining to do so) would not bind the other federal district courts in Florida, nor the Eleventh Circuit. *See Stone*, 371 F.3d at 1310 ("the potential for negative stare decisis effects does not automatically grant" intervention as a matter of right, and

the possibility that litigation may have a precedential effect may only be relevant in determining whether proposed intervenor plaintiffs had a legitimate interest justifying intervention if they would face a "practical impairment" that was "significant"). As such, Proposed Intervenors fail to demonstrate how an adverse ruling here will actually *impair* their ability to advocate for their interests elsewhere.

3. The Secretary's Interests In Defending the Challenged Provisions Will Result in Adequate Representation of Proposed Intervenors' Purported Interests.

Proposed Intervenors are not entitled to intervene as of right because, to the extent they have a cognizable interest, such an interest is adequately represented by the Secretary and there is no divergence of interests between the Secretary and Proposed Intervenors.

Adequacy of Representation is Presumed Where, as Here, Defendants and Proposed Intervenors Have the Same Objective. Courts presume that a proposed intervenor's interests are adequately represented when, as here, an existing party pursues the same ultimate objectives as the proposed intervenors. *Stone*, 371 F.3d at 1311 (citing *Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999)); *see also Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th

Cir. 1993) ("This court will presume that a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention.").

To overcome the presumption of adequacy, a proposed intervenor must "present some evidence to the contrary." *Stone*, 371 F.3d at 1311; *accord Clark*, 168 F.3d at 461. If this proof is insufficient, a court will then "return[] to the general rule that adequate representation exists '[1] if no collusion is shown between the representative and an opposing party, [2] if the representative does not have or represent an interest adverse to the proposed intervener, and [3] if the representative does not fail in fulfillment of his duty.'" *Stone*, 371 F.3d at 1311 (quoting *Clark*, 168 F.3d at 461); *accord Wyatt v. Hanan*, 170 F.R.D. 189, 192 (M.D. Ala. 1995) (to rebut presumption, proposed intervenor must show "adversity of interest, collusion, or nonfeasance") (citation omitted).

The Secretary's Legal Obligation to Defend the Validity of the Challenged Provisions Conclusively Determines That There Is No Divergence of Interests. Moreover, if a party is "charged by law with representing the absentee's interest, then a compelling showing should be required to demonstrate why this representation is not adequate." 7C

Wright, Miller & Kane, *Federal Practice & Procedure* § 1909 (3d ed.); *accord Burke v. Ocwen Fin. Corp.*, 833 F. App'x 288, 293 (11th Cir. 2020) (per curiam) ("When, as here, [an] existing party is a government entity, [w]e presume that the government entity adequately represents the public, and we require the party seeking to intervene to make ***a strong showing of inadequate representation***" (citation and brackets omitted) (emphasis added)).

Here, the Secretary is legally bound to defend the constitutionality and validity of a state statute. Like all state officers, the Secretary is sworn to "defend the . . . Government of . . . the State of Florida," Fla. Const. art. II, § 5(b), and the Secretary has a specific statutory duty to "[o]btain and maintain uniformity in the interpretation and implementation of the election laws." Fla. Stat. § 97.012(1). Proposed Intervenors have made no showing—let alone a "compelling showing"—that the Secretary's defense will be incomplete or less than adequate. To the contrary, the Secretary is very likely to mount a vigorous and zealous defense—and has already evidenced an intent to do so by filing a motion to dismiss in this action.

Under Eleventh Circuit Precedent, the Coincidence of Objectives of the Defendant and Proposed Intervenors

Establishes That There Is No Divergence of Interests. *Chiles* is directly applicable to the facts at hand. There, the Eleventh Circuit rejected the claim of a group of homeowners and a homeowners' association "that they were entitled to intervene as of right" in an action against federal officials seeking to prevent operation of a federal detention center in Dade County. *Chiles*, 865 F.2d at 1200–02, 1215. The Court held that there was no inadequacy of representation because (a) the interest of the would-be intervenors was "*identical* to" the interest of the governmental party (Dade County), namely "the prevention of riots and escapes . . . and the protection of nearby residents," and (b) there was "no indication whatsoever that the representation rendered by Dade County would be inadequate." *Id.* at 1215.

The *Chiles* principle has been consistently followed. *See, e.g.*, *City of Miami*, 278 F.3d at 1179 (no right to intervene when proposed intervenors' stated objectives were not "mutually exclusive" with preexisting government defendant's objectives); *Fed. Sav. & Loan*, 983 F.2d at 215 (test is whether proposed intervenor shares the same "ultimate objective" as the existing party); *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 911 (11th Cir. 2007), where the proposed intervenor defendant and the named federal defendant each had the "mutual interest . . . to defend the legality" of the challenged law and

"nothing in the record . . . casts doubt upon the will of the [federal defendant] to defend [its] legality"); *Johnson v. Mortham*, 915 F. Supp. 1529, 1536–37 (N.D. Fla. 1995) (denying motion for intervention where an existing party was "pursu[ing] the same ultimate objective" as the proposed intervenor and it was "unlikely these individuals would raise any substantive defenses beyond those raised" by existing party); *see also Brenner*, 298 F.R.D. at 691 (advocacy group's "generalized interest in opposing same-sex marriage" does not entitle it to intervene to defend state law banning same-sex marriage from constitutional challenge).

The same principle obtains here. The Secretary and Proposed Intervenors seek the same outcome: rejection of Plaintiffs' claims and denial of injunctive and declaratory relief to block the Challenged Provisions of SB 90 from being enforced. There is no evidence of any "adversity of interest," "collusion," or "nonfeasance" that would make the Secretary inadequate for advancing the arguments that Proposed Intervenors suggest.

Proposed Intervenors Have Failed To Identify Any Concrete Divergence of Interests. Proposed Intervenors vaguely contend that they *might* have some "positions or interests" that are not "identical" to the Secretary's positions or interests. ECF No. 20, at 12–13. Such vague

statements are inadequate to establish an actual divergence of interest. And, of course, a mere disagreement over litigation strategy is not sufficient to rebut the presumption that the interests of Proposed Intervenors, such as they are, will be adequately represented by the Secretary. *See, e.g.*, *Stuart v. Huff*, 706 F.3d 345, 353 (4th Cir. 2013) ("[D]isagreement over how to approach the conduct of the litigation is not enough to rebut the presumption of adequacy."); *Buquer v. City of Indianapolis*, No. 1:11-cv-708, 2013 WL 1332137, at *3 (S.D. Ind. Mar. 28, 2013) (proposed intervenors' "mere[] disagree[ment] with the litigation strategy decisions made by the Indiana Attorney General" does not establish in adequacy of representation). Indeed, Proposed Intervenors' argument is plainly controverted by their proposed Answer, ECF No. 21, which indicates *no* distinction between how Proposed Intervenors would respond to the allegations in the complaint and how the Secretary would likely respond.

Nor is it material that Proposed Intervenors are non-governmental entities while the Secretary is a government official. *See, e.g., Daggett v. Comm'n on Governmental Ethics & Election Pracs.,* 172 F.3d 104, 111 (1st Cir. 1999) (affirming denial of political party's motion to intervene in election-law case because "the government in defending the validity of the

statute is presumed to be representing adequately the interests of all citizens who support the statute"); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 258 (D.N.M. 2008) (denying Republican entities' motions to intervene in voting rights case because secretary of state was already "adequately protecting" the proposed intervenor's interest); *id.* ("While the Defendant is governmental, the [Republican Party of New Mexico]'s protectable interest is essentially the same as the public interest asserted by the Defendant, not a distinct private interest").

There Are No Special Carve-Outs for Government Entities or Political Parties. Proposed Intervenors obliquely suggest that the intervention-of-right standard incorporates some sort of special carve-out or extra leeway for candidates or political parties. ECF No. 20, at 11–13. Not so. Political parties, like other would-be intervenors, are subject to the same presumption of adequate representation. Proposed Intervenors have not provided any legal support to the contrary.

In *Daggett*, for example, the Libertarian Party of Maine challenged a state campaign finance reform statute. Several candidates from other political parties moved to intervene in defense of the statute, claiming that the defendant state election commission would not adequately represent

their interests. 172 F.3d at 108. The district court denied the motion, and the First Circuit affirmed, noting that "adequate representation is presumed where the goals of the applicants are the same as those of the plaintiff or defendant"; and that no "actual conflict of interests" existed since the proposed candidate-intervenors and the state commission shared the same goal. *Id.* at 111-12; *accord Gonzalez v. Arizona*, 485 F.3d 1041, 1051–52 (9th Cir. 2007) (proponent of voter initiative that enacted law requiring proof of citizenship to vote could not intervene of right or permissively to defend the legality of the new law, given adequacy of existing defendants); *One Wis. Inst.*, 310 F.R.D. at 398–99 (Republican officeholders and candidates could not intervene as defendants to defend restrictive Wisconsin voting law, because they shared "the same goal" as the state board tasked with defending law).

4. The Decisions Cited By Proposed Intervenors Are Plainly Distinguishable.

Proposed Intervenors suggest that "[t]his Court . . . has always allowed the Republican Party to intervene," at least "in recent election cycles." ECF No. 20, at 1. Yet when this Court has done so, it was in factual and procedural contexts plainly distinguishable from the instant case, involving a specific harm that the Proposed Intervenors persuasively alleged would occur to

them directly as a result of denial of intervention.

Here, Proposed Intervenors identify no such specific harm. By contrast, this Court has allowed Republican entities to intervene when they have shown *specifically* identified harm to a specific Republican candidate in a specific election, often in the specific context of an application for emergency injunctive relief (which Plaintiffs do not seek here).[4] For example, Proposed Intervenors rely heavily on *Jacobson*, but that case dealt with a challenge to a Florida statute that required the candidate of the party that won the last gubernatorial election to appear first on the ballot for each office—a statute that specifically and directly benefited the Republican Party. In contrast, this case concerns a challenge to Florida statutes that impose a range of substantial limitations on voting rights in Florida: the Proposed

[4] *VoteVets Action Fund v. Ertel*, No. 4:18-cv-524, ECF No. 10, at 2 (seeking intervention because the relief sought by plaintiffs—specifically, an order allowing the counting of VBM ballots received after Election Day 7 p.m. cutoff, would disadvantage the candidacy of the Republican U.S. Senate candidate in 2018, then-Governor Scott); *Democratic Exec. Comm. of Fla. v. Detzner*, No. 4:18-cv-520 (N.D. Fla.), ECF No. 11, at 2–4 (Nov. 9, 2018) (seeking intervention to oppose preliminary injunction relating to signature-matching process on grounds that it would "prejudice . . . Governor Scott's candidacy," to which the NRSC had "provide[d] support and assistance," and benefit "Senator Nelson, the opposing candidate for the U.S. Senate"). *Fla. Dem. Party v. Scott*, No. 4:16-cv-626, ECF No. 47, at 4 (sought to intervene based on claim that changes to treatment of provisional ballots "on the eve of a General Election" could "dilut[e] or distort[]" Republican votes).

Intervenors seek to join the case not to defend their own right to a certain ballot order, but to help defeat voters' rights to access the franchise without undue burdens.[5]

B. This Court Should Not Exercise Its Discretion to Grant Permissive Intervention to Proposed Intervenors.

Proposed Intervenors' request in the alternative for permissive intervention should also be denied. To the extent Proposed Intervenors have any legitimate interests in the litigation, the Secretary will adequately represent them and the addition of two more parties will further and unnecessarily complicate the proceeding. Furthermore, permissive intervention would not aid the judicial process in any way that could not be obtained less onerously by the Proposed Intervenors participating by submitting a brief as *amici curiae* at an appropriate point.

A Court may permit a movant to intervene if the movant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). But there is no right to permissive

[5] *Jacobson v. Lee*, No. 4:18-cv-262, ECF No. 23, at 5–11 (seeking intervention to defend the application of Florida's statute directing that "candidates of the political party of the Governor be listed first on the ballot," a system benefiting Republicans).

intervention: it is well established that this Court has discretion to deny permissive intervention even if Rule 24(b)(1)(B)'s requirements are satisfied.[6] "In 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). When evaluating a motion for permissive intervention, a district court may "consider almost any factor rationally relevant." *Bake House SB, LLC v. City of Miami Beach*, No. 1:17-cv-20217, 2017 WL 2645760, at *6 (S.D. Fla. June 20, 2017) (quoting *Daggett*, 172 F.3d at 113).

1. The Secretary's Adequate Representation of Proposed Intervenors' Interests Also Militates Against Permissive Intervention.

First, Proposed Intervenors have no cognizable interest in the litigation, *see supra* section II.A.1 and II.A.2, and any interest that Proposed Intervenors do have would be adequately represented by the Secretary, s*ee*

[6] *Chiles*, 865 F.2d at 1213; *see also Purcell v. BankAtlantic Fin. Corp.*, 85 F.3d 1508, 1513 (11th Cir. 1996) ("[I]t is wholly discretionary with the court whether to allow intervention under Rule 24(b) and even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention." (quoting *Worlds*, 929 F.2d at 595); *Fla. Wildlife Fed'n, Inc. v. Johnson*, No. 4:08-cv-324, 2009 WL 248078, at *2 (N.D. Fla. Feb. 2, 2009) (Hinkle, J.) ("A district court has broad discretion in deciding whether to let a nonparty intervene under Rule 24(b), even when the nonparty has met the requirements of the rule.") (citing *Worlds*, 929 F.2d at 595).

supra section II.A.3. "[T]he same facts and circumstances used to determine whether intervention was appropriate under Rule 24(a)" are relevant "to determine whether the court should use its discretion to permit intervention under Rule 24(b)." *Cmty. Vocational Schs. of Pittsburgh, Inc. v. Mildon Bus Lines, Inc.*, No. 09-cv-1572, 2017 WL 1376298, at *8 (W.D. Pa. Apr. 17, 2017).[7] Courts often consider "'the nature and extent of the intervenors' interests' and 'whether the intervenors' interests are adequately represented by other parties.'" *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 955 (9th Cir. 2009) (citation omitted); *In re Pinchuk*, No. 13-cv-22857, 2014 WL 12600728, at *6 (S.D. Fla. Jan. 27, 2014) ("[T]he issue of whether the intervenors' interests are adequately represented by other parties . . . is also a factor to be balanced in a permissive intervention assessment.").

Proposed Intervenors claim that this Court can grant permissive intervention even if the Court finds that the Secretary adequately represents their interests. ECF No. 20, at 15. But district courts in the Eleventh Circuit routinely deny motions for permissive intervention when they conclude that

[7] *Accord Chiles*, 865 F.2d at 1215 (affirming denial of Rule 24(a) and 24(b) intervention motions because movant's interest was adequately represented); *Purcell*, 85 F.3d at 1513–14 (affirming denial of Rule 24(a) and 24(b) intervention motions because movant's interest was too remote to justify intervention).

the intervenor's interest is adequately represented by the defendant. *See, e.g., Wollschlaeger v. Farmer*, No. 11-cv-22026, 2011 WL 13100241, at *2–3 (S.D. Fla. July 11, 2011) (denying trade organization's motion for permissive intervention to defend a law against constitutional challenge, when the state officials named as defendants were already defending law's constitutionality); *Smith v. Cobb Cnty. Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1313 (N.D. Ga. 2002) (denying motion for permissive intervention because "the putative intervenors have failed to demonstrate that their interests are not being adequately represented by the plaintiffs in this action, and the movants have not demonstrated any compelling reason to grant their motion"); *see also Lacasa v. Townsley*, No. 12-cv-22432, 2012 WL 13069998, at *2 (S.D. Fla. July 6, 2012) (denying permissive intervention when "the interest set forth by [a proposed intervenor] will be adequately represented by the existing Defendant," and therefore the additional party "will only present a risk of delaying the adjudication of the case").

For example, in *Wollschlaeger*, the court denied the National Rifle Association's motion to permissively intervene to defend a challenged Florida law when the defendants, the state officials tasked with enforcing the

challenged law, would likewise "defend the constitutionality of the law, and the rights it protects." 2011 WL 13100241, at *2–3. Similarly, the Secretary and Proposed Intervenors have the same goal. *See supra* section II.A.3. Thus, as in *Wollschlaeger*, the "duplicative nature" of Proposed Intervenors' claims and interests with the Secretary's interests, and the unlikelihood that intervention would "shed any new light on the constitutional issues" in the case, counsel against permissive intervention. 2011 WL 13100241, at *3.

2. Intervention Would Cause Undue Delay and Burden this Litigation.

There is a strong likelihood that granting Proposed Intervenors' motion would "unduly delay the adjudication of the rights of the parties," *id.* at *3, by generating unnecessary motion practice and cumulative discovery.[8] The negative effect of the intervention on the timely progression of the litigation is highly relevant to analyzing whether intervention should be granted. *See* Fed. R. Civ. P. 24(b)(3). Courts routinely deny motions for permissive intervention on this basis. *See, e.g., Athens Lumber*, 690 F.2d at 1367 (upholding district court's denial of a motion for intervention of right

[8] Other courts in this Circuit have come to similar conclusions. *See, e.g.*, *Smith*, 314 F. Supp. 2d at 1313 ; *Lacasa*, 2012 WL 13069998, at *2.

or permissive intervention, noting that "the introduction of additional parties" by way of intervention "inevitably delays proceedings").[9]

Given that *three* actions challenging the same Florida law are already pending in this district, adding *two* new defendant entities will add an extra layer of complexity in a case in which the parties anticipate an expedited schedule already. For example, responding to discovery requests from three additional defendants may require deadline extensions. The addition of two parties may also complicate the dispositive motion schedule. Moreover, including additional parties at trial will inevitably complicate the proceedings. These procedural concerns are amplified because there has

[9] *See also Ansley v. Warren*, No. 1:16-cv-54, 2016 WL 3647979, at *3 (W.D.N.C. July 7, 2016) (denying Republican state legislators' motion to intervene, of right or permissively, because it "would needlessly prolong and complicate this litigation, including discovery, and delay the final resolution"); *One Wis. Inst.*, 310 F.R.D. at 399 (denying Republican officials and voters' motion to intervene, of right or permissively when intervention "could unnecessarily complicate and delay all stages" of the case, including discovery, dispositive motions, and trial); *Herrera*, 257 F.R.D. at 259 (denying Republican entities' motion to intervene, of right or permissively, to defend law restricting voting rights, because intervention would likely cause delay, complicate action, and "prejudice the Plaintiff's case"); *United States v. North Carolina*, No. 13-cv-861, 2014 WL 494911, at *5 (M.D.N.C. Feb. 6, 2014) (denying activist group's motion to intervene, of right or permissively, in voting rights case, because doing so would consume judicial sources, complicate discovery, "potentially unduly delay the adjudication of the case on the merits, and generate little, if any, corresponding benefit to the existing parties").

been no showing of demonstrated need or any articulation as to how the intervention will contribute to this Court's decisionmaking process. In particular, the Secretary is capable of asserting the supposed rationales of voter confusion or voter confidence in elections and has raised the same arguments in prior election cases. *See Jacobson v. Lee*, 411 F. Supp. 3d 1249, 1280-81 (N.D. Fla. 2019), *vacated and remanded sub nom. Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236 (11th Cir. 2020) (analyzing the Secretary's argument that the particular ordering of a ballot "would promote citizen confidence"); *Fla. State Conf. of NAACP v. Browning*, 569 F. Supp. 2d 1237, 1251 (N.D. Fla. 2008) (recognizing Florida's "compelling interest in fair and honest elections"). Accordingly, the motion for permissive intervention should be denied.

C. As An Alternative to Intervention, Proposed Intervenors Can Be Permitted To File Amicus Briefs.

Should this Court deny their motion to intervene, Proposed Intervenors need not be barred entirely from participating in this case. Given Proposed Intervenors' desire for "a seat at the table," ECF No. 20, at 16, they should seek leave to file an amicus brief. Where a proposed intervenor "presents no new questions, [it] can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention."

South Carolina v. North Carolina, 558 U.S. 256, 288 (2010) (Roberts, C.J., concurring in judgment in part and dissenting in part) (citation omitted). Proposed Intervenors have not demonstrated why their interest (to the extent it exists) cannot be vindicated through this "meaningful and adequate" avenue. *Stupak-Thrall v. Glickman*, 226 F.3d 467, 477 (6th Cir. 2000).

This sensible path has been taken by this Court in the past. *E.g., League of Women Voters of Fla. v. Detzner*, 283 F.R.D. 687, 689 (N.D. Fla. 2012) (denying proposed intervenors' motion to join action to defend state law restricting voter-registration drives and instead inviting them to "file amicus briefs"); *Norris*, 2015 WL 12669919, at *3 (denying motion to intervene, but permitting proposed intervenors to file amicus brief within seven days of order). Other courts have taken a similar approach.[10] The Proposed Intervenors have not suggested why their participation as amici

[10] *Vazzo v. City of Tampa*, No. 8:17-cv-2896, 2018 WL 1629216, at *6 (M.D. Fla. Mar. 15, 2018) (denying motion to permissively intervene but permitting group to submit amicus brief to allow group's views to be heard "without causing undue delay or prejudice to the adjudication of the original parties' rights"); *Wis. Educ. Ass'n Council v. Walker*, 824 F. Supp. 2d 856, 861 (W.D. Wis. 2012), *rev'd in part, aff'd in relevant part*, 705 F.3d 640, 658–59 (7th Cir. 2013) (denying motions to intervene while allowing movants to file amicus briefs in support of state defendants).

would not satisfy their limited and generalized interests in this case or their desire to offer their viewpoint in support of the Challenged Provisions. Plaintiffs will not oppose any motion from Proposed Intervenors seeking leave to file amici briefs at an appropriate point in the litigation.

CONCLUSION

For the foregoing reasons, the motion to intervene should be denied.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

The undersigned certifies that the foregoing complies with the word limit in Local Rule 7.1(F) and contains 6,653 words, excluding the case caption, signature blocks, and certificates.

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