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

Tallahassee Division

HARRIET TUBMAN FREEDOM FIGHTERS CORP., and HEAD COUNT, INC. *Plaintiffs*, v. LAUREL LEE, in her official capacity as Secretary of State of Florida, ASHLEY MOODY, in her official Capacity as Florida Attorney General, *Defendants*.	Case No. 4:21-cv-00242-MW-MAF Consolidated Case No. 4:21-cv-00186-MW-MAF

PLAINTIFFS' RESPONSE
IN OPPOSITION TO MOTION TO INTERVENE

Plaintiffs Harriet Tubman Freedom Fighters, Corp. and Head Count, Inc. (collectively, "Plaintiffs"), hereby file this response in opposition to the Republican National Committee and the National Republican Senatorial Committee's (the "Republican Party") motion to intervene in this lawsuit. Mot. to Intervene, ECF 15 ("the Motion"). The Republican Party's Memorandum in Support of its Motion, ECF 16, presents no specific or unique argument supporting intervention in Plaintiffs' particular challenge to Section 7 of SB 90. Indeed, it is nothing more than a restatement of the arguments made in support of their intervention in the cases

consolidated with this action for purposes of discovery, despite Plaintiffs' much narrower and distinguishable claims.[1] Further, it needlessly and vexatiously multiplies the parties, expenses, and resources involved in these judicial proceedings, and abuses the judicial process for a partisan advantage.

I. INTRODUCTION

Plaintiffs are non-partisan, non-profit organizations that share a commitment to increased voter participation and civic engagement, which they express by helping register eligible citizens to vote in Florida. They bring this lawsuit to remedy their constitutional and statutory rights to continue engaging in their non-partisan, non-

[1] Defendants Intervenors' claim that "just this month, the Northern District of Georgia allowed the Republican Party to intervene in a *virtually identical* case." ECF 16 at 3 (citing *VoteAmerica v. Raffensperger*, Doc. 50, No. 1:21-cv-1390-JPB (N.D. Ga. June 4, 2021)) (emphasis added). This assertion misrepresents Plaintiffs' claims because the cited case did not bring a First Amendment challenge to SB 90, or any law regulating third party voter registration activities. *VoteAmerica* challenged a Georgia law "restricting [third party organizations'] ability to encourage and assist Georgia voters to *participate in elections by mail*. . . Plaintiffs' ability to speak and associate by distributing and *assisting Georgia voters with absentee ballot applications*." ECF 50 at ¶ 63 (emphasis added). While others have challenged SB 90's absentee ballot restrictions, Plaintiff's complaint has not. However, throughout their Motion, Defendant Intervenors continually mischaracterize Plaintiff's claims, falsely stating that "Plaintiffs' assert[s] that SB 90 will 'suppress' votes, is discriminatory, or itself confuses voters." ECF 16 at 11. These allegations are glaringly absent from Plaintiffs' complaint. ECF 1. At best, these repeated misrepresentations about Plaintiffs' claims reflect that Defendant Intervenors did not diligently read Plaintiffs' complaint prior to filing their Motion. At worst, they reflect that Defendant Intervenors deliberately misrepresented Plaintiffs' claims to support their Motion.

profit voter registration activities without government over-reach and encroachment on their freedom of speech, association, and private operations. This lawsuit is about the First Amendment rights of private parties and not about any particular candidates, political parties, or elected officials, or to gain any partisan advantage.

Florida enacted a law—Senate Bill 90 ("SB 90")—imposing a series of new restrictions on voting and election administration in the state. While the other cases with which Plaintiffs' case has been consolidated challenge multiple aspects of SB 90, Plaintiffs have narrowed their challenge to one particular provision in the law: Section 7, which requires Plaintiffs to issue a misleading and self-denigrating disclaimer about the timeliness and efficacy of their voter registration efforts and direct prospective voter registrants to alternative (and incomplete) state-owned voting registration websites ("the disclaimer and disclosure requirement"). At the same time, it entirely fails to put Plaintiffs on notice as to the penalties for noncompliance, whom may be held liable for violations, and whether the requirement applies to out-of-state voter registration events where Plaintiffs may encounter eligible Florida voters. Plaintiffs filed this action to enjoin this new disclaimer and disclosure requirement, which violates the Constitution and presents a disturbing trend of Florida's government selectively suppressing and coopting the First Amendment freedoms of private organizations and individuals.

The proposed defendant-intervenors are Republican Party organizations that seek to join the State in its already well-resourced and comprehensive defense of Section 7. The question presented by this motion is whether that cause is sufficient under Federal Rule of Civil Procedure Rule 24 to require or permit them to interpose themselves into this non-partisan litigation.

The Republican Party cannot make the showing necessary for either mandatory or permissive intervention. The State Defendants can and have been adequately representing the interests of the very same voters the Republican Party purports to defend, and the Republican Party's involvement in this case will unduly burden and prejudice the prompt disposition of this litigation. For these reasons elaborated upon below, the Court should deny this motion.

II. RELEVANT BACKGROUND

In the 2021 legislative session, on the heels of ever-growing participation by Florida voters of all political persuasions, the Florida legislature rushed to pass a host of new and onerous laws regulating local governments, private citizens, and private organizations, including non-partisan, non-profit ones like Plaintiffs. Following an opaque three-day process in which the bill that would eventually become SB 90 was entirely rewritten and, in some cases, legislators were only permitted three hours to review the 48-page omnibus legislation and one hour to

debate it, the Florida legislature passed SB 90. SB 90 went into effect immediately upon the Florida Governor's signature, on May 6, 2021, during an "exclusive" televised signing that was only open to a single media outlet – Fox News.

As relevant to the Plaintiffs in this specific matter, SB 90 requires Plaintiffs and other community voter registration organizations to warn prospective voters when they collect their voter registration applications that they "might not" timely submit their registration applications, "advise" them how to return their own registration forms, and "inform" them about how to use the online voter registration website created and maintained by the state[2] and determine if their voter registration application was "delivered."[3] Fla. Stat. Ann. § 97.0575(3)(a). Plaintiffs filed this lawsuit against the relevant Florida officials ("Defendants") on June 14, 2021, to enjoin the provisions addressed above on grounds that they: compel private organizations to engage in government-mandated speech at a particular time and place and for a particular audience, in violation of the First Amendment to the U.S. Constitution; purposefully intervene in the freedom of private individuals and

[2] Since prospective Florida voters without a Florida-issued driver's license or identification card cannot register online, it is unclear how Plaintiffs should "inform" these prospective voter registrants under SB 90. Fla. Stat. Ann. § 97.0525(4)(c).

[3] Since Florida has no centralized system for the public to determine whether a voter registration application has arrived at the division of elections or a supervisor of elections' office, it is unclear how Plaintiffs should "inform" prospective voter registrants under SB 90. Fla. Stat. Ann. § 97.053(7).

organizations to associate in violation of the First Amendment to the U.S. Constitution; and impose vague penalties for Plaintiffs' failure to adhere to these unconstitutional laws, in violation of the Due Process rights guaranteed by the Fourteenth Amendment to the U.S. Constitution. *See* Compl., ECF 1, ¶¶ 82-118.

The Republican Party moved to join the case as defendants on June 25, 2021. *See* ECF 16. Except for a few sentences, the text of their Memo in support of their Motion is completely identical to the memos they made to intervene in the three other cases with which Plaintiffs' case has been consolidated, despite the significant differences between this action and these others. *See League of Women Voters of Fla. v. Lee*, 4:21-cv-0186, ECF 26; *Fla. State Conf. of NAACP v. Lee,* 4:21-cv-0186, ECF 20; *Fla. Rising Together v. Lee*, 4:21-cv-201, ECF 28. Although The Republican Party makes much of the fact that this Court granted identical motions in some of those cases, this Court was clear in its order that the Republican Party's argument for intervention as of right was "suspect" and it exercised its discretion to grant intervention only because "'denying [the Republican Party's] motion [will] open[] the door to delaying the adjudication of this case's merits for months—if not longer—' while [the Republican Party] appeal[s] this Court's decision." *League of Women Voters of Fla. v. Lee* 4:21-cv-0186, ECF 72, 2-3; *Fla. State Conf. of NAACP v. Lee*, 4:21-187, ECF 43 at 2-3 (quoting *Jacobson v. Detzner*, No. 4:18-cv-262-

MW/CAS, 2018 WL 10509488, at *1 (N.D. Fla. Jul. 1, 2018)). In effect, the Motion relies on this Court's implicit acknowledgement that it must grant the Republican Party's motions to intervene because, if it does not, the Republican Party will abuse the judicial appeals process to hold the resolution of consolidated Plaintiffs' claims on the merits hostage until Defendants can successfully invoke "the specter of *Purcell*." *Id.* at 3.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24 governs whether a non-party may intervene into pending litigation. To intervene as of right, the non-party bears the burden to satisfy each of four elements: (1) it must file a timely application; (2) it must have a cognizable "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." *Stone v. First Union Corp.*, 371 F.3d 1305, 1308–09 (11th Cir. 2004) (citing Fed. R. Civ. P. 24(a)).

Where a nonparty cannot intervene as of right, it can seek to intervene permissively, provided its application is (1) timely, and (2) implicates a common question of law or fact. *Cox Cable Commc'ns v. United States*, 992 F.2d 1178, 1180

n.2 (11th Cir. 1993). A District Court has broad discretion to deny permissive intervention, "even if both of these requirements are met." *Id.* Moreover, because Rule 24 requires a court to consider whether permissive intervention "will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), courts properly deny intervention from qualified intervenors when adding new parties will prejudice the "prompt disposition" of the original "controversy." *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302, 1305 (11th Cir. 2008).

IV. ARGUMENT

This Court previously found, in a case that the Republican Party asserts contains a claim that "is the same as" Plaintiffs', the Party's basis to intervene as of right was "suspect." Memo, ECF 16, 1; *League of Women Voters of Fla. v. Lee*, 4:21-cv-0186, ECF 72, 2. The Court should also decline to exercise its discretion to allow the Republican Party to intervene permissively, which would only inject redundancies and prolong litigation, especially where there is no evidence the Defendants intend to do anything other than vigorously defend the Florida law, and when the Republican Party's only stated purposes for intervention could be accomplished just as completely and with less disruption through participation as *amici curiae*.

A. The Proposed Defendant-Intervenors Are Not Entitled to Intervene by Right.

The Proposed Defendant-Intervenors have not carried their burden to establish the elements required to support intervention by right.

1. The Republican Party has only generalized interests that are legally insufficient to support intervention.

Intervention as of right only extends to parties with a "significantly protectable interest" in the subject litigation. *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Applying this rule, the Eleventh Circuit has held that the interest must be "direct, substantial, [and] legally protectable." *Huff v. Comm'r*, 743 F.3d 790, 796 (11th Cir. 2014) (quote omitted). This means it must reflect a lawful purpose that "the *substantive* law recognizes." *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.3d 452 (5th Cir. 1984)) (emphasis in original). And the interest must be distinguishable from interests "shared with all . . . citizens," meaning it must exceed a "general concern" with how the "result" of the litigation might affect the movant. *Athens Lumber Co., Inc. v. Fed. Election Comm'n*, 690 F.2d 1364, 1366 (11th Cir. 1982).

The Republican Party does not proffer any interest that meets this standard. The proposed intervention is based on the unfounded assumption that "[l]aws like

the one challenged here are designed to serve 'the integrity of [the] election process[,]'" the "'orderly administration' of elections[,]" or that "their interests could be irreparably harmed by an order overriding Florida's election rules, which could undermine the integrity of Florida's elections." Memo, ECF 16, at 6, 9. This argument fails to distinguish the Republican Party from any member of the general public who also hopes that SB 90 is upheld. It also fails to identify any interest specific to the provision challenged in this action. Similarly, to the extent that the Republican Party's intervention is based on a desire to "represent members, candidates, and voters in every county in Florida" and enable "Republican voters to vote, Republican candidates to win, and Republican resources to be spent wisely and not wasted on diversions," they fail to actually describe how these general desires are uniquely relevant—or even connected—to the specific challenge at issue in the case. *See* Memo, ECF 16, 6.

The Eleventh Circuit denied intervention as of right on these same grounds in *Athens Lumber.* 690 F.2d at 1366. In that case, it rejected a labor union's request to intervene in litigation challenging an election law because the labor union presented only a "general concern" that the "result" of the litigation might affect its success in the political arena, which was an interest "shared" by "all citizens concerned about the ramifications" of the lawsuit. *Id.*; *see also Smith v. Cobb Cty.*

Bd. of Elecs. & Regs., 314 F. Supp. 2d 1274, 1312–13 (N.D. Ga. 2002) (denying motion to intervene by right in voting rights litigation where movant's interest was shared by "all Cobb County voters" and "not unique to the putative intervenors").

For the same reason, federal courts have denied intervention for political parties and organizations seeking to join lawsuits based on generalized interests in "fair" elections. A court in the Western District of Wisconsin rejected the exact same argument in *One Wisconsin Institute, Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015). Considering partisan legislators' motion to intervene in that non-partisan civil rights case, the court explained that "Rule 24 is not designed to turn the courtroom into a forum for political actors" to vindicate the laws they support, and held that neither a general interest "in defending" challenged election laws, nor a general interest in "fraud-free elections" sufficed to support intervention. *Id.* at 397; *see also United States v. State of Alabama*, No. 2:06-CV-392-WKW, 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 Help America Vote Act case).

The Republican Party cannot overcome this defect by recasting their general interest as "distinct interests in protecting their resources and helping Republican candidates and voters." *Cf.* MTI at 4. The Republican Party makes no argument, nor

can it, that their ability to win elections depends on requiring Plaintiffs to issue Section 7's disclaimer and disclosure statements. Rather, they merely restate generalized interests in upholding SB 90, which are legally inadequate to support intervention. *Athens Lumber*, 690 F.2d at 1366.

Despite their contention that they "cited nearly twenty courts who granted the Republican Party intervention in virtually identical cases [,]" the Republican Party cites no controlling Eleventh Circuit authority that changes this analysis. ECF 16 at 18 (citing *id.* fn 1-2).[4] They cite *Siegel v. LePore*, 234 F.3d 1163, 1169 n.1 (11th

[4] In fact, most of the cases The Republican Party cites are not identical to Plaintiffs'. In *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459 (W.D. Wis. June 23, 2020) the issue before the court was extending voting deadlines and responding to the COVID-19 pandemic, not First Amendment claims by third party voter registration organizations. While *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 (D. Minn. June 23, 2020) involved First Amendment claims, it, too, was focused on the burden on the right to vote due restrictive witness requirements in elections during the pandemic. Additionally, *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020), *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020), and *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) all involved challenges to election provisions that would burden voters' voting rights during a pandemic and while under stay-at-home orders. In addition to not bringing First Amendment claims as a voter registration organization, the plaintiffs in *Edwards v. Vos*, Doc. 27, No. 20-cv-340 (W.D. Wis. June 23, 2020) did not oppose intervention. There were also no First Amendment challenges to restrictions on non-partisan third party voter registration organizations in *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No.2:20-cv-1143 (D. Ariz. June 26, 2020), where intervention was sought because state defendants declined to appeal injunctions.

Cir. 2000) (*see* Memo at 7), but that case offered no opinion on intervention. That case, which dealt with the 2000 Florida Presidential election recount, also involved a dispute *between* political parties over election *conduct*, and included "no state defendants," *id.*, unlike the case here. By contrast, this case presents a private civil rights action challenging the legality of election rules and names only government defendants. And contrary to the Republican Party' representation, Judge Jones' emergency order in *Black Voters Matter Fund v. Raffensperger*, No. 1:20-cv-04869-SCJ, ECF 42 at 5 (N.D. Ga. Dec. 9, 2020) (cited Motion at fn. 1) only addressed *permissive* intervention under Rule 24(b), and did not address whether the generic and partisan interests the Republican Party offer here would be sufficient for intervention as of right under Rule 24(a). The Republican Party's reliance on *Shays v. F.E.C.*, 414 F.3d 76, 88 (D.C. Cir. 2005), is similarly misplaced. *Cf.* Motion at 9. That decision was not about intervention at all, holding only that *plaintiffs* had *standing* to "demand adherence" to the law at issue. 414 F.3d at 88.

If, on the other hand, the Republican Party's argument is that the challenged provisions operate to skew the electorate in their favor by suppressing Plaintiffs' First Amendment freedoms, then their interest in preserving "unconstitutional conditions" is illegitimate and not a "legally protected interest" that could justify intervention at all. *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987); *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).

Because it has no direct, nongeneralized, lawful interest in the litigation, the Republican Party's motion to intervene as of right must be denied.

2. This action poses only speculative threats to the Republican Party's generalized interests.

Even if the Republican Party's general interests in preserving the challenged provisions were sufficient to satisfy the first element for intervention as of right, they fail to carry their burden to establish how an adverse outcome in this litigation would certainly—or even likely—impair those interests. The mere "suggestion" that a movant's "future" interests "may be impaired is too speculative to support intervention." *Meadowfield Apartments, Ltd. v. United States*, 261 F. App'x 195, 196 (11th Cir. 2008). Applying this rule, the Northern District of Florida denied intervention to Members of Congress in a voting rights case, holding that, because their districts were "not the subject of a constitutional challenge," "the possibility of a remedy that would impair their interests" was "no more than speculative." *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995).

The Republican Party is similarly "affected only speculatively," if at all, "by the present action." *In re HealthSouth Corp. Ins. Litig.*, 219 F.R.D. 688, 691–92 (N.D. Ala. 2004) (denying intervention for this reason) (citation omitted). The ramifications for the Republican Party if Plaintiffs prevail at striking down the disclaimer/disclosure provision of SB 90 are unknown. Although the Republican Party asserts that such an outcome "would require Movants to spend substantial resources fighting confusion and galvanizing participation," they provide no evidence to support this naked conjecture or explain how either of those results would actually "impair" their interests. Memo, ECF 16 at 9. For this reason, too, the Court must deny intervention by right.

3. The Republican Party cannot rebut the presumption that the Defendants will adequately protect their interests.

The Eleventh Circuit instructs lower courts to "presume that a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention." *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993) (emphasis added). Overcoming that presumption requires a movant to "present some evidence to the contrary." *Stone*, 371 F.3d at 1311. When the existing party on the proposed intervenor's side of the case is a governmental entity, a movant must go further to "make a strong showing of inadequate representation" to overcome the

presumption. *Burke v. Ocwen Fin. Corp.*, 833 F. App'x 288, 293 (11th Cir. 2020) (emphasis added) (quote omitted).

The Republican Party fails to meet the burden required by this standard. There is no daylight between their attested desire to "preserve" and defend the challenged provisions of SB 90 and the Defendants' legal obligation under Florida law to do the same. *See* Fla. Stat. Ann. § 97.0575(3)(a). The Republican Party presents no evidence to suggest otherwise. They are, instead, situated in the same position as the rejected intervenors in *Athens Lumber*, whose desire to "uphold the constitutionality" of a challenged federal statute was "adequately represented by the FEC" because "both" had "precisely the same objective." 690 F.2d at 1366–67. The Eleventh Circuit rejected intervention on the same grounds in *Sierra Club, Inc. v. Leavitt*, 488 F.3d 904 (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 . . . cast doubt upon the will of the [federal defendant] to defend [its] legality." *Id.* at 911.

Here, the Republican Party attempts to distinguish the Defendants' interest, which it characterizes as a concern with "properly administer[ing Florida's] election laws." ECF No. 16 at 14 (quoting *Issa v. Newsom*, Doc. 23 at 3, No. 2:20-cv-1044 (E.D. Cal. June 8, 2020)) (alteration in original). But that is *precisely* the same result

the Proposed Intervenor-Defendants seek in this case. Believing that Section 97.0575(3)(a) is constitutionally valid and that its enforcement constitutes the proper administration of Florida's election laws, they ask to join this case to defend the law and ensure its enforcement—a task clearly delegated to Defendants under Florida law. "'The defendants are, after all, officials of the State of Florida. Whatever might be said of the litigation stance of public officials generally, the State of Florida has recently—repeatedly—shown little reluctance to pursue litigation on matters of this kind; the state is no shrinking violet.'" 2012 WL 3194950, at *1. *Arcia v. Detzner*, No. 12-22282-CIV, 2012 WL 12844562, at *2 (S.D. Fla. Sept. 28, 2012) (quoting *League of Women Voters of Fla. v. Detzner*, No. 4:11-cv-628-RH/WCS, 2012 WL 3194950, at *1 (N.D. Fla. Aug. 6, 2012)).

Form, not substance, underlies the Republican Party's unsubstantiated assertions to the contrary. They claim that the Defendants' obligations to pursue the public interest necessarily preclude the Defendants from "'ensuring [the Republican Party's] members and the voters they represent have the opportunity to vote . . . advance[e] their overall electoral prospects, and allocate[e] their limited resources to inform voters about the election procedures." Memo, ECF 16 at 13 (quoting *Issa v. Newsom*, Doc. 23 at 3, No. 2:20-cv-1044 (E.D. Cal. June 8, 2020)). However, the Republican Party does not demonstrate *how* its particular interests *in this litigation*

differ in substance from the Defendants' obligations to defend the challenged provision. While the Republican Party may well have distinct *motivations* for defending SB 90 more generally, "[a] putative intervenor does not have an interest not adequately represented by a party to a lawsuit simply because it has a motive to litigate that is different from the motive of an existing party." *Nat. Res. Def. Council, Inc. v. N.Y. State Dep't of Envtl. Conservation*, 834 F.2d 60, 61–62 (2d Cir. 1987); *accord* C. Wright & A. Miller, 7C Fed. Prac. & Proc. Civ. § 1909 at n.35 (3d ed. 2021).

The test instead is whether the intervenor shares the same "ultimate objective" as the existing party. *Fed. Sav. & Loan*, 983 F.2d at 215. The Eleventh Circuit accordingly rejected the Republican Party' position in *Athens Lumber*, refusing to credit the movant's argument that "a public agency charged with protecting the public interest cannot represent adequately private interests" because the movant and the government defendant shared the "same objective." 690 F.2d at 1366–67.

Proposed intervenor-defendants—like political parties—regularly encounter this problem, and district courts do not hesitate to reject their motions to intervene by right. *See, e.g.*, *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, No. 1:20-cv-457, 2020 WL 6591397, at *1 (M.D.N.C. June 24, 2020) (holding that proposed Republican Party intervenors' interests in defending voting laws were

"undoubtedly protected by the legislature and other individuals that enacted the rules in the first instance," where State Board of Election members were defendants and legislative leaders were intervenor-defendants and "both Republicans"), *aff'd on recons.*, 2020 WL 6589359 (M.D.N.C. June 30, 2020)[5]; *Feehan v. Wisconsin Elections Comm'n*, No. 20-CV-1771-PP, 2020 WL 7182950, at *6 (E.D. Wis. Dec. 6, 2020) (denying Democratic National Committee's motion to intervene in lawsuit to decertify Wisconsin's electoral college results because it had "the same goal as the defendants and ha[d] identified no right independent of the defendants"); *Common Cause R.I. v. Gorbea*, No. 1:20-cv-00318-MSM-LDA, 2020 WL 4365608, at *3 n.5 (D.R.I. July 30, 2020) (rejecting state Republicans Party's rationale "to see that existing laws remained enforced" because "[t]hat is the same interest the defendant agencies are statutorily required to protect"); *One Wis. Inst.*, 310 F.R.D. at 398-99 (same); *cf. Smith*, 314 F. Supp. 2d at 1312–13 (rejecting motion to intervene by right as plaintiffs when movants "failed to present sufficient evidence" that "they can better represent the interest of the voters" than "the elected officials who are the plaintiffs").

[5] Similarly, the individuals responsible for enforcing Fla. Stat. § 97.0575(3)(a) are parties to this suit and both identify as members of the Republican Party.

With respect to *Democracy North Carolina*, proposed intervenors suggest that the Middle District court's refusal to grant the Republican Party intervention resulted in duplicative, unnecessary litigation. This is not so. The Republican Party's attempt to secure involvement in the North Carolina litigation also revolved around their collateral attack on a ruling in a separate state court case as well as the Middle District case. *See Moore v. Circosta*, 5:20-cv-507-D, ECF No. 1 (E.D.N.C. Sept. 26, 2020); *Wise v. Circosta*, 5:20-cv-505-D, ECF No. 1 (E.D.N.C. Sept. 26, 2020). The cases were consolidated and transferred back to the Middle District, and although the district court blocked part of the relief ordered by the state court, it otherwise preserved its order requiring the Board of Elections to implement a cure process. *See Democracy N. Carolina*, 1:20-cv-457, ECF No. 169 (M.D.N.C. Oct.14 2020); *id.*, ECF No. 188 (M.D.N.C. Oct. 30, 2020). On appeal, the Fourth Circuit and Supreme Court denied the *Wise* plaintiffs' requests for relief. *See Wise v. Circosta*, 978 F.3d 93, 103 (4th Cir. 2020); 141 S. Ct. 658, 658 (2020) (Mem.).

In *Gorbea*, while the Republican Party was eventually permitted to intervene, the Supreme Court ultimately denied its request to stay entry of a consent decree to which the state defendants had agreed, noting that the Party "lack[ed] a cognizable interest in the State's ability to 'enforce its duly enacted' laws." *Republican Nat'l Comm. v. Common Cause R. I.*, 141 S. Ct. 206, 206 (2020) (Mem.). Here, as in

Gorbea, the Republican Party would not have a sufficient interest in defending Section 97.0575(3)(a) on appeal, if the Defendants indeed decline to appeal an unfavorable ruling. Its intervention here for this purpose would therefore be pointless.

Because the Republican Party shares the same interests and ultimate objectives as the Defendants, and because they have presented no evidence to demonstrate the inadequacy of those parties' representation, intervention as of right must be denied for this reason, as well.

B. Permissive Intervention Is Not Warranted.

The Republican Party also requests permissive intervention pursuant to Rule 24(b). Rule 24(b) provides the Court with substantial discretion to "balance" the interests of proposed intervenors against the risk that intervention would "unduly delay or prejudice the adjudication of the rights of the original parties." *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 380 (1987) (quoting Fed. R. Civ. P. 24(b)). Plaintiffs oppose the Republican Party' request for all of these reasons set out above, and for two additional reasons: (1) permissive intervention would unduly delay and complicate an action that requires expedition and already includes 86 defendants, and (2) permissive intervention would not aid the judicial process in any

way, especially when the Republican Party may participate as amici curiae in a way that is both adequate, meaningful, and less taxing on the court and other parties.

1. Permissive intervention would delay the prompt resolution of this litigation.

Adding the Republican Party—which has only demonstrated that it will echo the substantive positions advanced by the Defendants—will "unduly prejudice" the orderly litigation of this case. Fed. R. Civ. P. 24(b)(3).

This case requires expedition in order to allow Plaintiffs to obtain relief in a timely fashion as elections continue throughout Florida. As it stands, Plaintiffs will need to take and respond to discovery from each of the Defendants, as well as their experts, their employees, and custodians. At trial, Plaintiffs and each of the Defendants will make motions, raise objections, offer arguments, question witnesses, and seek to enter their own evidence and testimony.[6] These demands will already consume significant judicial resources, and the addition of two new parties will only compound the burdens they place on the parties and the Court.

The Republican Party does not present any countervailing interest that justifies the "inevitabl[e] delays" and certain impositions the permissive

[6] To the extent the Republican Party insist that they will not require additional discovery, motions practice, trial testimony, etc., they make all the clearer that their interests are the same as State Defendants.

"introduction of additional parties" would create. *Athens Lumber*, 690 F.2d at 1367. To the contrary, the Republican Party's Proposed Answer (ECF 17) and Motion to Intervene (Motion at 15) confirm its plan to duplicate the State Defendants' basic positions in a manner that all but guarantees the "accumulati[on]" of "arguments" that fail to "assist[] the court" by providing any new substantive contentions. *Allen Calculators v. Nat'l Cash Register Co.*, 322 U.S. 137, 141–42 (1944); *see also ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990) (holding that it is proper to deny permissive intervention that "would severely protract the litigation").

Under materially identical circumstances, the Eleventh Circuit found it proper in *Athens Lumber* to deny permissive intervention to would-be intervenors that supplied only redundant "general" arguments to defend the constitutionality of the challenged election law. 690 F.2d at 1367. Lower courts in this Circuit and state have done the same, particularly in cases involving voting rights and constitutional litigation. *See, e.g.*, *Smith*, 314 F. Supp. 2d at 1313 (denying redundant intervention in voting rights case); *Lacasa v. Townsley*, No. 12-22432-CIV, 2012 WL 13069998, at *2 (S.D. Fla. July 6, 2012) (denying Democratic Caucus of Florida's motion to intervene in Florida election dispute because it did not have an interest "separate and apart" from the defendants); *Wollschlaeger v. Farmer*, No. 11-22026-civ-

Cooke/Turnoff, 2011 WL 13100241, at *3 (S.D. Fla. July 11, 2011) (denying "duplicative" permissive intervention in constitutional litigation).

2. The Republican Party could adequately and less intrusively participate as *amici curiae*.

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) "Courts often treat *amicus* participation as an alternative to intervention.". *Id.* (citation omitted). There is no need here for permissive intervention because the Republican Party can participate in this case as *amici curiae*—and Plaintiffs will not object to such participation at appropriate points in the litigation. *See Smith*, 314 F. Supp. 2d at 1313 (rejecting intervention as of right and permissive intervention in a voting rights case, but inviting the rejected intervenors to appear as amici); *Piedmont Heights Civic Club, Inc. v. Moreland*, 83 F.R.D. 153, 159 (N.D. Ga. 1979) (holding movant's interests could be better and less intrusively represented as *amicus curiae*).

The Republican Party suggests no reason why participation as *amici* would not satisfy their limited general interests in this case in support of Section 7. For this reason, too, the Court should exercise its discretion to deny permissive intervention.

V. CONCLUSION

The Republican Party has only demonstrated a generalized interest in this litigation and are adequately represented by the existing Defendant Republican state officials. The motion to intervene by right accordingly must be denied. The Court should also exercise its discretion to deny permissive intervention, which would only duplicate issues, unduly prejudice the progress of this fast-paced case, and allow partisan actors to coopt these judicial proceedings to gain yet another public platform to air their generalized grievances.

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Respectfully submitted,

/s/ Nancy G. Abudu
Nancy G. Abudu (Fla. Bar No. 111881)
Emma C. Bellamy
Southern Poverty Law Center
P.O. Box 1287
Decatur, Ga 30031-1287
Tel: 404-521-6700
Fax: 404-221-5857
nancy.abudu@splcenter.org
emma.bellamy@splcenter.org

Michelle Kanter Cohen
Jon Sherman*
Cecilia Aguilera
Fair Elections Center
1825 K Street NW, Suite 450
Washington, DC 20006
Tel.: (202) 331-0114
mkantercohen@fairelectionscenter.org

jsherman@fairelectionscenter.org
caguilera@fairelectionscenter.org

Attorneys for Plaintiffs
*application for admission *pro hac vice* forthcoming

LOCAL RULES CERTIFICATION

Undersigned counsel certifies that this motion contains 5606 words and 25 pages, excluding the case style, conferral certification, signature block, and certificate of service.

/s/ Nancy G. Abudu

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of Florida by using the appellate CM/ECF system on July 2, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Nancy G. Abudu