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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

17 Mi Familia Vota; Arizona Coalition for
18 Change; Living United for Change in
19 Arizona; and League of Conservation
20 Voters, Inc. d/b/a Chispa AZ,

21 Plaintiffs,

22 v.

23 Katie Hobbs, in her official capacity as
24 Arizona Secretary of State; Mark Brnovich,
25 in his official capacity as Arizona Attorney
26 General; and the County Recorder
27 Defendants, Apache County Recorder
28 Larry Noble; Cochise County Recorder
David W. Stevens; Coconino County
Recorder Patty Hansen; Gila County
Recorder Sadie Jo Bingham; Graham
County Recorder Wendy John; Greenlee
County Recorder Sharie Milheiro; La Paz

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Case No. CV-21-01423-PHX-DWL

**PLAINTIFFS' STATEMENT
REGARDING (1) MOTION TO
INTERVENE BY REPUBLICAN
NATIONAL COMMITTEE AND
NATIONAL REPUBLICAN
SENATORIAL COMMITTEE (ECF
NO. 28) AND (2) MOTION TO
INTERVENE BY DSCC AND DCCC
(ECF NO. 50)**

1 County Recorder Richard Garcia; Maricopa
2 County Recorder Stephen Richer; Mohave
3 County Recorder Kristi Blair; Navajo
4 County Recorder Michael Sample; Pima
5 County Recorder Gabriella Cázares-Kelly;
6 Pinal County Recorder Virginia Ross;
7 Santa Cruz County Recorder Suzanne
8 Sainz; Yavapai County Recorder Leslie M.
9 Hoffman; and Yuma County Recorder
10 Robyn S. Pouquette, in their official
11 capacities,

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Defendants.

1 This lawsuit challenges two laws enacted by the Arizona legislature that infringe on
2 the rights of Arizona citizens to vote. The first, Senate Bill 1485, will purge from Arizona’s
3 permanent early voting list any voter who does not cast a mail-in ballot in two consecutive
4 election cycles. The second, Senate Bill 1003, requires voters who submit early ballots
5 without a signature to cure the ballots by 7:00 pm on Election Day, irrationally treating
6 unsigned ballots differently than ballots alleged to have mismatched signatures, which are
7 permitted a five-day cure period. Plaintiffs will show that the legislature enacted these laws
8 knowing and intending that the laws would disproportionately impact voters of color, and
9 that the interests that purportedly justify these laws are insufficient to overcome the burden
10 on the right to vote.

11 On September 2, 2021, the Republican National Committee and National
12 Republican Senatorial Committee (“Republican Movants”) moved to intervene in this case
13 as defendants. ECF No. 28. Approximately three weeks later, the Democratic Senatorial
14 Campaign Committee and Democratic Congressional Campaign Committee (“Democratic
15 Movants”) moved to intervene as plaintiffs. ECF No. 50. As explained below, neither set
16 of proposed intervenors has a right to join this litigation under Fed. R. Civ. P. 24(a)(2).
17 However, Plaintiffs take no position on whether the Court should allow permissive
18 intervention under Fed. R. Civ. P. 24(b).

19 **I. Intervention As Of Right Is Not Appropriate.**

20 A party seeking to intervene under Fed. R. Civ. P. 24(a)(2) must show, among other
21 things, that their “protectable interest” in the action is “not adequately represented by the
22 existing parties.” *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir.
23 2009). In the Ninth Circuit, “where [a] party and the proposed intervenor share the same
24 ‘ultimate objective,’ a presumption of adequacy of representation applies, and the
25 intervenor can rebut that presumption only with a ‘compelling showing’ to the contrary.”
26 *Id.* at 951 (citation omitted). Neither set of proposed intervenors satisfies this requirement.

27 **First**, both sets of proposed intervenors share an ultimate objective with existing
28 parties to this litigation. The Republican Movants admit that they “and the Attorney

1 General both seek to defend the laws at issue,” and that the compelling-showing test
2 applies. ECF No. 28 at 10, 12. The Democratic Movants share an ultimate objective with
3 Plaintiffs—they seek to challenge the same laws under the “the same provisions of the U.S.
4 Constitution and federal statute as the original Plaintiffs.” ECF No. 50 at 15 n.4. The
5 Democratic Movants nonetheless claim that Plaintiffs are not an adequate representative
6 because they are “nonpartisan, nonprofit organizations” instead of political party
7 organizations. *Id.* at 14. But the ultimate-objective inquiry does not ask whether the parties’
8 motivations are identical, only whether they seek the same ultimate relief. *See Freedom*
9 *from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011) (finding the same
10 ultimate objective where both parties sought to uphold the constitutionality of the
11 challenged statutes).

12 **Second**, neither set of proposed intervenors successfully rebuts the presumption of
13 adequate representation—what this Court recently described as an “unenviable task.”
14 *Arizonans for Free Elections v. Hobbs*, 335 F.R.D. 269, 275 (D. Ariz. 2020) (Lanza, J.)
15 (“*AFE II*”). To rebut the presumption, it is not enough to contend that it is “unclear whether
16 the [existing party] will make the same arguments” as the would-be intervenor, or to
17 express “mere disagreement over the best way to approach litigation.” *Id.* (alteration in
18 original). Nor do appeals to “practical experience” suffice. *Id.* (internal citations omitted).

19 The Republican Movants claim that their “parochial” interests in electing
20 Republican candidates and motivating Republican voters, which are not shared by the
21 Attorney General, mean that the Attorney General is “less likely to make the same
22 arguments, less likely to exhaust all appellate options, and more likely to settle” than the
23 Republican Movants. ECF No. 28 at 11. But these assertions are not backed up by specifics.
24 The Republican Movants do not say what arguments they plan to make that the Attorney
25 General will not make. Nor do the Republican Movants offer any reason to believe that the
26 Attorney General actually will fail to defend this case in this Court or on appeal. Indeed,
27 the case the Republican Movants cite in asserting that “intervention [is] vital to the defense
28 of the law[s] at issue” (ECF No. 28 at 12) rejects their premise, denying a motion to

1 intervene where “[t]he Arizona Attorney General is representing Defendant.” *Miracle v.*
2 *Hobbs*, 333 F.R.D. 151, 155 (D. Ariz. 2019).¹

3 The Democratic Movants’ arguments for intervention as of right are unavailing for
4 similar reasons. As with the Republican Movants’ motion, the Democratic Movants argue
5 that they have unique interests in “safeguard[ing] the fundamental rights of their members
6 and candidates and their own electoral prospects in the state.” ECF No. 50 at 13-14. But
7 the Democratic Movants do not identify any unique arguments they intend to make if
8 intervention is granted, or offer facts to support their assertion that it is “far from clear”
9 that Plaintiffs will not advance the same arguments or pursue the same relief. Again, these
10 assertions are inadequate. *See AFE II*, 335 F.R.D. at 275 (rejecting speculation that an
11 existing defendant’s “substantive positions may be different” where the proposed
12 intervenors “failed to provide any examples of such differences”).

13 **II. Plaintiffs Take No Position On Permissive Intervention.**

14 Plaintiffs do not dispute that the proposed intervenors meet the threshold
15 requirements of Rule 24(b). However, this Court has broad discretion to grant or deny
16 permissive intervention. Indeed, “the district court has discretion to deny permissive
17 intervention” even if “an applicant satisfies th[e] threshold requirements.” *AFE II*, 335
18 F.R.D. at 276 (internal citation omitted). Plaintiffs believe that the presence of either
19 political party is not necessary to the development of this case, and that intervention would
20 threaten to lengthen this litigation by adding additional parties where doing so is not needed
21 for full and fair litigation of the issues at stake. *Cf. id.* (denying motion for permissive
22 intervention and stating that “the Court doesn’t see how Proposed Intervenors can more
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24 ¹ The Republican Movants also argue that the Arizona Secretary of State is unlikely to
25 defend the challenged laws. ECF No. 28 at 11-12. That might be relevant if the Secretary
26 were the only defendant in this case, but she is not. *Compare Arizonans for Fair Elections*
27 *v. Hobbs*, 335 F.R.D. 261, 267-68 (D. Ariz. 2020) (“*AFE I*”) (granting motion by the
28 Attorney General to intervene in a case where Secretary Hobbs and the Pima County
Recorder had “both indicated they do not intend to oppose Plaintiffs’ TRO request”), *with*
AFE II, 335 F.R.D. at 275 (denying subsequent motion to intervene because the Attorney
General “is already a party to this case” and appeared ready to defend the law).

1 adequately defend state laws than the State itself”).

2 Given the Court’s discretion, however, Plaintiffs take no position on whether
3 permissive intervention is ultimately appropriate here, with two qualifications.

4 **First**, the motions by both political parties should rise or fall together. There is no
5 basis to permit intervention by one set of proposed intervenors but deny it to the other.

6 **Second**, if the Court decides to permit intervention, it should at a minimum impose
7 strict limits to prevent unnecessary delay, duplication, and prejudice to the existing parties.
8 In particular—similar to the approach Judge Rayes took in the *Arizona Democratic Party*
9 case—Plaintiffs respectfully request that the Court designate Plaintiffs (for the challengers
10 to SB 1485/1003) and the Attorney General and Secretary (for the defenders of those laws)
11 as “the representatives responsible for coordinating” the prosecution or defense of this case,
12 respectively, and provide that “any proposed response” to the Complaint or brief in
13 response to any motion to dismiss filed by one of the Intervenors “not repeat any argument
14 already raised” in the briefing submitted by one of the original parties to the action. *Arizona*
15 *Democratic Party v. Hobbs*, 2020 WL 6559160, at *1 (D. Ariz. June 26, 2020). Plaintiffs
16 note that the Republican Movants have committed to “prevent duplicative briefing” (ECF
17 No. 28 at 14) and the Democratic Movants “will agree to abide by any and all scheduling
18 orders and other limitations imposed by the court” (ECF No. 50 at 15) in the event their
19 motions to intervene are granted.

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21 Dated: September 30, 2021

Respectfully submitted,

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