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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mi Familia Vota, et al., Plaintiffs, v. Katie Hobbs, et al., Defendants, and Republican National Committee; National Republican Senatorial Committee, Proposed Intervenor-Defendants.	CV-21-01423-DWL **MOTION TO INTERVENE BY REPUBLICAN NATIONAL COMMITTEE AND NATIONAL REPUBLICAN SENATORIAL COMMITTEE; MEMORANDUM OF POINTS AND AUTHORITIES.**

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The Republican National Committee and National Republican Senatorial Committee respectfully move to intervene as defendants in this action under Federal Rules of Civil Procedure 24(a)(2) and (b).

MEMORANDUM OF POINTS AND AUTHORITIES

This Court should allow Movants to intervene as defendants. This Court recently allowed the Republican Party to intervene as defendants in a case raising one of the same claims that Plaintiffs raise here. *See Ariz. Democratic Party v. Hobbs*, 2020 WL 6559160, at *1 (D. Ariz. June 26, 2020) (challenge to unsigned ballot signature-cure deadline). The reasons that supported intervention there support it here too. And denying intervention could lead to confusion and inefficiencies. *See Edwards v. Vos*, 2020 WL 6741325, at *1 (W.D. Wis. 2020) (granting the Republican Party intervention in "one of four lawsuits currently before this court challenging various [Wisconsin election laws]" where the Party had "already been permitted to intervene in two of those lawsuits").

Even considering this case apart from the prior one, Movants are entitled to intervention. As the Democratic Party has observed, "political parties usually have good cause to intervene in disputes over election rules." *Issa v. Newsom*, Doc. 23 at 2, No. 2:20-cv-1044 (E.D. Cal. June 8, 2020). That is why, in recent litigation challenging a variety of state election laws, the Republican Party was virtually always granted intervention.[1] This

[1] *See, e.g.*, *Harriet Tubman Freedom Fighters Corp. v. Lee*, Doc. 34, No. 4:21-cv-242 (N.D. Fla. July 6, 2021); *Florida Rising Together v. Lee*, Doc. 52, No. 4:21-cv-201 (N.D. Fla. July 6, 2021); *Fla. State Conference of Branches & Youth Units of NAACP v. Lee*, Doc. 43, No. 4:21-cv-187 (N.D. Fla. June 8, 2021); *League of Women Voters of Florida v. Lee*, Doc. 72, No. 4:21-cv-186 (N.D. Fla. June 4, 2021); *Sixth District of the African Methodist Episcopal Church v. Kemp*, Minute Order, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021); *Concerned Black Clergy of Metropolitan Atlanta v. Raffensperger*, Minute Order, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021); *Coalition for Good Governance v.*

1 Court, too, in recent election cycles, has allowed the Republican Party to intervene.[2] This
2 Court should do the same here for two independent reasons.
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4 ***First***, Movants satisfy the criteria for intervention as of right under Rule 24(a)(2).
5 This motion is timely; Plaintiffs just filed their complaint, this litigation is still in its
6 infancy, and no party will possibly be prejudiced. Movants also have a clear interest in
7 protecting their members, candidates, voters, and resources from Plaintiffs' attempt to
8 upend Arizona's duly enacted rules. Finally, no other party adequately represents
9 Movants' interests. Adequacy is not a demanding standard, and Defendants do not share
10 Movants' distinct interests in protecting their resources and helping Republican candidates
11 and voters.
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Raffensperger, Minute Order, No. 1:21-cv-2070 (N.D. Ga. June 21, 2021); *Ga. State Conference of NAACP v. Raffensperger*, Doc. 40, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021); *United States v. Georgia*, Minute Order, No. 1:21-cv-2572 (N.D. Ga. July 12, 2021); *Vote America v. Raffensperger*, Doc. 50, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021); *New Ga. Project v. Raffensperger*, Doc. 39, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021); *Black Voters Matter Fund v. Raffensperger*, Doc. 42, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020); *All. for Retired Am.'s v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459 (W.D. Wis. June 23, 2020); *Edwards v. Vos*, Doc. 27, No. 20-cv-340 (W.D. Wis. June 23, 2020); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 (D. Minn. June 23, 2020); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24 (W.D. Va. Apr. 29, 2020); *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); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020); *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 WL 6589656 (N.D. Fla. May 28, 2020).

[2] *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. Oct. 5, 2020); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143 (D. Ariz. June 26, 2020); *Feldman v. Ariz. Secretary of State's Office*, Doc. 44, No. 2:16-cv-01065 (D. Ariz. May 10, 2016).

Second, and alternatively, the Court should grant Movants permissive intervention under Rule 24(b). Again, this motion is timely, and intervention will result in no delay or prejudice. Movants' defenses also share common questions of law and fact with the existing parties' defenses. This Court's resolution of the important questions here will have significant implications for Movants—and their members, candidates, voters, and resources—as Movants work to ensure that Republican candidates and voters can participate in fair and orderly elections.

Whether under Rule 24(a)(2) or (b), Movants should be allowed to intervene as defendants. Plaintiffs oppose intervention. The La Paz and Maricopa County Recorders take no position. The other Defendants have not yet entered appearances.

INTERESTS OF PROPOSED INTERVENORS

Movants are two political committees who support Republicans in Arizona. The RNC is a national committee, as defined by 52 U.S.C. §30101, that manages the party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The NRSC is a national political committee that works to elect Republicans to the U.S. Senate. The NRSC conducts fundraising and assists candidates with communication, strategy, and planning.

Both Movants have interests—their own and those of their members, candidates, and voters—in the rules and procedures governing Arizona's elections. That includes Arizona's crucial elections in 2022 for U.S. Senate, U.S. House, Governor, and all 90 seats in the Arizona Senate and Arizona House.

ARGUMENT

I. Movants are entitled to intervene as of right.

"Rule 24(a) traditionally receives a liberal construction in favor of applicants seeking intervention." *City of Emeryville v. Robinson*, 621 F.3d 1251, 1258 (9th Cir. 2010). Under Rule 24(a)(2), this Court must grant intervention as of right if four things are true: the motion is timely; movants have a legally protected interest in this action; this action may impair or impede that interest; and no existing party adequately represents Movants' interests. *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc). All four are true here.

A. The motion is timely.

This Court determines timeliness by considering four factors: any delay in filing after the movant discovered its interest in the case, any prejudice to the existing parties from that delay, prejudice to the movant from denying intervention, and any unusual circumstances. *Id.* All four factors favor Movants.

Movants filed this motion quickly—within weeks after Plaintiffs sued, and before anything of substance happened in the case. The complaint was filed only twelve court days ago, Defendants still haven't answered it, and the Court has yet to rule on the preliminary-injunction motion. *See, e.g.*, *Ariz. Democratic Party*, 2020 WL 6559160 (motion filed before answer); *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (holding intervention was clearly timely where it was filed "before the EPA had even filed its answer"); *N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014, 1021 (C.D. Cal. 2019) (motion filed twenty-five days after complaint was timely). Movants hardly could have moved faster. Much later motions have been declared timely. *See, e.g.*, *North Dakota v.*

1 *Heydinger*, 288 F.R.D. 423, 429 (D. Minn. 2012) (motion filed one year after answer);
2 *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (motion filed
3 four months after complaint); *Uesugi Farms, Inc. v. Michael J. Navilio & Son, Inc.*, 2015
4 WL 3962007, at *2 (N.D. Ill. June 25, 2015) (motions filed 4-6 weeks after complaint).
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6 Nor will Movants' intervention prejudice the parties. This litigation has only just
7 begun. No parties have filed responsive pleadings, and this Court has not decided any
8 dispositive motions. Although intervention would mean the Plaintiffs may face some
9 additional arguments against their requested relief, "these arguments do not pertain to
10 prejudice arising from the timeliness of this motion." *Am. Small Bus. League v. U.S. Dept.*
11 *of Defense*, 2019 WL 2579200, at *3 (N.D. Cal. June 24, 2019). Issues "concerning the
12 nature and duration of the case"—as opposed to the effect of an untimely intervention—
13 "do not constitute prejudice." *Defenders of Wildlife v. Johanns*, 2005 WL 3260986, at *4
14 (N.D. Cal. 2005) (emphasis added). But if Movants are not allowed to intervene, their
15 interests could be irreparably harmed by an order overriding Arizona election rules, which
16 could undermine the integrity of Arizona elections. There are no unusual circumstances at
17 play. This motion is timely.
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21 **B. Movants have protected interests in this action.**
22 As Republican Party organizations who represent members, candidates, and voters
23 in every county in Arizona, Movants have "have a significant protectable interest in the
24 action." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th
25 Cir. 2011). Specifically, Movants want Republican voters to vote, Republican candidates
26 to win, and Republican resources to be spent wisely rather than wasted on diversions.
27 These interests "are routinely found to constitute significant protectable interests" under
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Rule 24. *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. 2020). Given their inherent and intense interest in elections, usually "[n]o one disputes" that political parties "meet the impaired interest requirement for intervention as of right." *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Colo. Sept. 15, 2014). That is certainly true where, as here, "changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the . . . Republican Party." *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *2 (S.D. Ohio Aug. 26, 2005). And courts recognize that preventing diversions of resources away from an organization's activities is a legitimate "interest" under Rule 24(a)(2). *E.g.*, *Issa*, 2020 WL 3074351, at *3; *Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. New York*, 2020 WL 5658703, at *11 (S.D.N.Y. 2020). The Democratic Party has successfully made this argument in other recent election cases. *See, e.g.*, *Wood v. Raffensperger*, Doc. 12 at 8-9, No. 1:20-cv-5018-ELR (N.D. Ga. Dec. 11, 2020); *Ga. Republican Party, Inc. v. Raffensperger*, Doc. 8 at 17-19, No. 1:20-cv-4651-SDG (N.D. Ga. Nov. 18, 2020).

Nor are Movants' interests "generalized" or shared by all Arizonans. Not all Arizonans have an interest in electing *Republicans* or conserving the resources of the *Republican Party*. As the Democratic Party has explained, Movants "have specific interests and concerns—from their overall electoral prospects to the most efficient use of their limited resources—that neither Defendants nor any other party in this lawsuit share." *Wood v. Raffensperger*, Doc. 13 at 16, No. 1:20-cv-5155-TCB (N.D. Ga. Dec. 21, 2020). Nor does Rule 24(a)(2) require a movant's interest to be "unique." *Citizens United*, 2014 WL 4549001, at *2 n.1. It requires "an interest that is *independent of* an existing party's, not *different from* an existing party's." *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d

793, 806 (7th Cir. 2019) (Sykes, J., concurring); *accord id.* at 798 (majority op.). If voter participation and resource diversion are not too generalized to give Plaintiffs standing, *see* Doc. 1 ¶¶9-20, then they are not too generalized to justify Movants' intervention, *see Meek v. Metro. Dade Cty., Fla.*, 985 F.2d 1471, 1480 (11th Cir. 1993) (rejecting the argument "that the intervenors had only nonjusticiable generalized grievances simply because they asserted interests widely shared by others," and noting that, "[i]f we accepted such an argument, we would be forced to conclude that most of the plaintiffs also lack standing").

Simply put, "'in cases challenging . . . statutory schemes as unconstitutional or as improperly interpreted and applied, . . . the interests of those who are governed by those schemes are sufficient to support intervention.'" *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). Because Movants' candidates will "actively seek [election or] reelection in contests governed by the challenged rules," and Movants' voters will vote in them, Movants have an interest in "demand[ing] adherence" to Arizona's rules. *Shays v. FEC*, 414 F.3d 76, 88 (D.C. Cir. 2005).

C. This action threatens to impair Movants' interests.

Movants are "so situated that disposing of [this] action *may* as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). Movants "do not need to establish that their interests *will* be impaired," "only that the disposition of the action 'may' impair or impede their ability to protect their interests." *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014). The language of Rule 24 is "obviously designed to liberalize the right to intervene in federal actions." *Nuesse v. Camp*, 385 F.2d 694, 701 (D.C. Cir. 1967).

Here, Movants' interests might "suffer if the Government were to lose this case, or to settle it against [Movants'] interests." *Mausolf v. Babbitt*, 85 F.3d 1295, 1302-03 (8th Cir. 1996). Laws like those challenged here are designed to serve "the integrity of [the] election process" and the "orderly administration" of elections. *Eu v. San Fran. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989); *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.). An adverse decision thus would not only undercut democratically enacted laws that protect voters and candidates (including Movants' members), but it would also change the "structur[e] of th[e] competitive environment" and "fundamentally alter the environment in which [Movants] defend their concrete interests (e.g. their interest in . . . winning [election or] reelection)." *Shays*, 414 F.3d at 85-86. These changes could confuse voters and undermine confidence in the electoral process, *see Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006), potentially making it less likely that Movants' voters will vote, *Crawford*, 553 U.S. at 197. And those changes would require Movants to spend substantial resources fighting confusion and galvanizing participation. *Crawford*, 553 U.S. at 197; *Pavek v. Simon*, 2020 WL 3183249, at *10 (D. Minn. June 15, 2020).

Movants' concerns are magnified by the likelihood that such an order would come shortly before the 2022 election. *See Purcell*, 549 U.S. at 4-5. Voters, candidates, campaigns, and election officials will be diligently studying and implementing SB 1003 and SB 1485 while this case is litigated and appealed. *See Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay). The whiplash from a "conflicting" court order, particularly as

the election "draws closer," could only "result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5.

At this stage, this Court cannot credit Plaintiffs' assertions that SB 1003 and SB 1485 will "suppress" votes, are discriminatory, or will confuse voters. When resolving a motion to intervene, courts cannot "assume . . . that Plaintiffs will ultimately prevail on the merits" or prejudge "the ultimate merits of the [defenses] which the intervenor wishes to assert." *Pavek*, 2020 WL 3960252, at *3; *SEC v. Price*, 2014 WL 11858151, at *2 (N.D. Ga. 2014). Thus, the question for this Court is not whether Movants have an interest in maintaining an "unconstitutional" law. The question is whether Movants have an interest in preventing a federal court from enjoining a *valid* law that *increases* voter confidence and *promotes* voting. *Clark v. Putnam Cty.*, 168 F.3d 458, 462 (11th Cir. 1999). They do.

Any persuasive effect of an adverse ruling here could further jeopardize Movants' interests. *Chiles*, 865 F.2d at 1214. Similar groups have recently challenged other election-integrity measures in Iowa, Georgia, and Florida, for example. A ruling in Plaintiffs' favor here could undermine Movants' ability to assert their rights and interests in those cases and in future cases across the country. *See Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004) (holding that the "persuasive effects" of one court's opinion on other courts can be significant and thus warrant intervention). Accordingly, "disposition of [the] suit might, as a practical matter, impair the ability of [Movants] to protect [their] interest[s]." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983). So the "best" course—and the one that Rule 24 "implements"—is to give "all parties with a real stake in a controversy . . . an opportunity to be heard" in this suit. *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972). That includes Movants.

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D. The existing parties do not adequately represent Movants' interests.

Finally, Movants are not adequately represented by Defendants. This requirement is satisfied if "the existing parties *may* not adequately represent [Movant]'s interest." *Citizens for Balanced Use*, 647 F.3d at 898 (emphasis added). "The burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can demonstrate that representation of its interests 'may be' inadequate." *Id.* While that burden increases "when the government is acting on behalf of a constituency that it represents," Movants can meet the burden by "mak[ing] a 'compelling showing' of inadequacy of representation." *Id.*

Courts "often conclude[] that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). "[T]he government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private movant] merely because both entities occupy the same posture in the litigation." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001). Here, too, Defendants necessarily represent "the public interest," rather than Movants' "particular interest[s]" in protecting their resources and the rights of their candidates and voters. *Coal. of Ariz./N.M. Counties for Stable Economic Growth v. DOI*, 100 F.3d 837, 845 (10th Cir. 1996).

This tension is stark in the context of elections. Defendants have no interest in the election of particular candidates or the mobilization of particular voters, or the costs associated with either. Instead, state officials, acting on behalf of all Arizona citizens and the State itself, must consider "a range of interests likely to diverge from those of the intervenors." *Meek*, 985 F.2d at 1478. Those interests include "the expense of defending

the current [laws] out of [state] coffers," "the social and political divisiveness of the election issue," "their own desires to remain politically popular and effective leaders," and even the interests of Plaintiffs. *Clark*, 168 F.3d at 461; *Meek*, 985 F.2d at 1478. All of this makes Defendants less likely to make the same arguments, less likely to exhaust all appellate options, and more likely to settle. *Clark*, 168 F.3d at 461-62. To quote the Democratic Party again, inadequacy is a "'light'" burden here because Defendants' "'views are necessarily colored by [their] view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it.'" *Ga. Republican Party*, *supra* at 9-10 (quoting *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998)).

For similar reasons, Movants and Defendants have fundamentally different interests. The fact that they "both believe [Plaintiffs' relief] should be denied . . . does not mean that [they] have identical positions or interests." *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002). On the contrary, Defendants are concerned with "properly administer[ing Arizona's] election laws," while Movants "are concerned with ensuring their party members and the voters they represent have the opportunity to vote," "advancing their overall electoral prospects," and "allocating their limited resources to inform voters about the election procedures." *Issa*, 2020 WL 3074351, at *3. This "difference in interests" between Movants and Defendants is "sufficient to overcome the weak presumption of adequate representation." *Stone*, 371 F.3d at 1312.

Inadequacy is starkly demonstrated by Secretary Hobbs—the Defendant charged with the responsibility of administering elections in Arizona. Ariz. Rev. Stat. § 16-142(A). As Plaintiffs highlight in their Complaint, Secretary Hobbs has publicly opposed the laws

that Plaintiffs challenge here. Doc. 1 ¶¶3, 96. In the related case, Secretary Hobbs has refused to defend Arizona's signature-cure deadline and has even taken the side of the plaintiffs seeking to overturn Arizona's election laws. *See Ariz. Democratic Party v. Hobbs*, 485 F. Supp. 3d 1073, 1089-90, 1091 (D. Ariz. 2020) (discussing the Secretary's positions). Secretary Hobbs has done the same in other cases. *E.g.*, Br. of Respondent Ariz. Sec'y of State Katie Hobbs, *Brnovich v. Democratic Nat'l Comm.*, No. 19-1257 (U.S. Jan. 13, 2021) (arguing Arizona law violates the Voting Rights Act).

Neither does the Attorney General Defendant adequately represent Movants' interests. The "presumption" that the Attorney General adequately represents Movants is "rebutted" here because "[Movants' position] represents more than a mere difference in litigation strategy . . . but rather demonstrates the fundamentally differing points of view between [Movants] and the [State] on the litigation as a whole." *Citizens for Balanced Use*, 647 F.3d at 899; *see Issa*, 2020 WL 3074351, at *3 (granting the Democratic Party intervention as of right, even though California was already defending the challenged policy, because "the parties' interests are neither 'identical' nor 'the same'"). Defendants are elected officials charged with administering the State's election laws—and doing so neutrally, without favoring Democrats or Republicans. "In carrying out this responsibility, [Intervenor-Defendant] would 'shirk [his] duty were [he] to advance the narrower interest of a private entity.'" *Nat'l Parks Conservation Ass'n v. EPA*, 759 F.3d 969, 977 (8th Cir. 2014). Although Movants and the Attorney General both seek to defend the laws at issue, "the government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" *Citizens for Balanced Use*, 647 F.3d at 898. For these

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reasons, Movants occupy an adversarial position in this case that no existing party serves. Their "intervention [is] vital to the defense of the law[s] at issue" in this case. *Miracle v. Hobbs*, 333 F.R.D. 151, 155 (D. Ariz. 2019) (citing *Horne v. Flores*, 557 U.S. 433, 433 (2009)). Movants should be granted intervention as of right.

II. Alternatively, Movants should be granted permissive intervention.

Even if Movants were not entitled to intervene as of right under Rule 24(a), this Court should grant them permissive intervention under Rule 24(b). Courts can grant permissive intervention broadly to "anyone who 'has a claim or defense that shares with the main action a common question of law or fact.'" *Ariz. Democratic Party*, 2020 WL 6559160, at *1. Courts also consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). If a court has doubts, "the most prudent and efficient course" is to allow permissive intervention. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wis. v. United States*, 2002 WL 32350046, *3 (W.D. Wis. Nov. 20, 2002). A movant's arguments easily "satisf[y] the literal requirements of Rule 24(b)" when they are "directly responsive to the claims for injunction asserted by plaintiffs." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002). Indeed, district courts have found this element met merely when "the intervenors' represent that their defenses are based on the same legal arguments that the state has raised, such that there are questions of law and fact in common between their defense and the main action." *Becerra*, 420 F. Supp. 3d at 1021.

The requirements of Rule 24(b) are met here. Movants have filed a timely motion that will neither delay the case nor prejudice the parties. And Movants will raise defenses likely to share many common questions with the parties' claims and defenses. Plaintiffs

allege that the challenged laws are unconstitutional and must be enjoined. Movants will argue that the laws are valid, that an injunction is unwarranted, and that Plaintiffs' desired relief would undermine Movants' interests. This obvious clash is why courts allow political parties to intervene in defense of state election laws. *See, e.g.*, *Swenson*, *supra* ("[T]he [RNC and Republican Party of Wisconsin] have a defense that shares common questions of law and fact with the main action; namely, they seek to defend the challenged election laws to protect their and their members' stated interests—among other things, interest in the integrity of Wisconsin's elections."); *Priorities USA*, 2020 WL 2615504, at *5 (granting permissive intervention where the RNC "demonstrate[d] that they seek to defend the constitutionality of Michigan's [election] laws, the same laws which the plaintiffs allege are unconstitutional"). Indeed, as noted, this Court recently granted permissive intervention to Republican Party entities in a similar challenge. *See Ariz. Democratic Party*, 2020 WL 6559160, at *2 ("[G]iven the importance of the issues Plaintiffs raise, the Court will benefit from hearing all perspectives. The Court is reluctant, at this early stage, to conclude that Movants will have nothing relevant to contribute to the merits and prefers to err on the side of more information, not less.").

Movants' intervention will not delay this litigation or prejudice anyone at all. Movants swiftly moved to intervene at this case's earliest stage, and their participation will add no delay beyond the norm for multiparty litigation. Movants also commit to complying with all deadlines that govern the parties, working to prevent duplicative briefing, and coordinating with the parties on discovery, "which is a promise" that undermines claims of undue delay, *Emerson Hall Assocs., LP v. Travelers Casualty Ins. Co. of Am.*, 2016 WL 223794, *2 (W.D. Wis. Jan. 19, 2016); *see Nielsen*, 2020 WL 6589656, at *1. Of course,

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"any introduction of an intervener in a case will necessitate its being permitted to actively participate, which will inevitably cause some 'delay,'" but that kind of prejudice or delay is irrelevant. *Appleton v. Comm'r*, 430 F. App'x 135, 138 (3d Cir. 2011). Rule 24(b) is concerned with "*undu[e]* delay or prejudice," and "'[u]ndue' means not normal or appropriate." *Id.* As another court recently said, "it is this Court's experience that adding the [Republican Party] will not necessarily prejudice the original parties." *League of Women Voters of Fla.*, *supra*.

Allowing Movants to intervene will promote consistency and fairness in the law, as well as efficiency in this case. *See Venegas v. Skaggs*, 867 F.2d 527, 531 (9th Cir. 1989). It will allow "the Court . . . to profit from a diversity of viewpoints as [Movants] illuminate the ultimate questions posed by the parties." *Franconia Minerals (US) LLC v. United States*, 319 F.R.D. 261, 268 (D. Minn. 2017). Any prejudice from granting intervention would be no greater than the prejudice from denying intervention. *See League of Women Voters of Fla.*, *supra* ("'[D]enying [the Republican Party's] motion [will] open[] the door to delaying the adjudication of this case's merits for months,' while Proposed Intervenors appeal this Court's decision" (quoting *Jacobson*, 2018 WL 10509488, at *1)).

Notably, this Court can grant permissive intervention even if it concludes that Defendants adequately represent Movants' interests. For starters, "Unlike Rule 24(a), subsection (b) 'does not require a showing of inadequacy of representation.'" *Ariz. Democratic Party*, 2020 WL 6559160, at *1. Permissive intervention does not require the intervenor to have an "interest" at all, let alone an interest that the parties inadequately represent. *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 509 (7th Cir. 1996); *Planned Parenthood of Wis.*, 942 F.3d at 801 n.4. Courts thus

grant permissive intervention even when the movant is "completely and adequately represented," will merely "enhance[]" the government's defense, or will provide a "secondary voice in the action." *Ohio Democratic Party*, 2005 WL 8162665, at *2; *see also Jacobson*, 2018 WL 10509488, at *1 (permissive intervention is warranted because "reasonable minds may differ over whether Florida's Secretary of State represents Proposed Intervenors' interests adequately"); *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 286 (D.D.C. 2014); *Ala. v. U.S. Dep't of Commerce*, 2018 WL 6570879, at *3 (N.D. Ala. 2018).

This Court should not consider whether to change the election rules in a crucial State without giving one of the two major political parties a seat at the table. Republican Party organizations "are not marginally affected individuals; they are substantial organizations with experienced attorneys who might well bring perspective that others miss or choose not to provide." *Nielsen*, 2020 WL 6589656, at *1. Movants respectfully submit that they have at least as much at stake in Arizona's elections and at least as much expertise on the relevant issues as Plaintiffs or Defendants. Allowing Movants to intervene here would similarly serve "'the interest of a full exposition of the issues.'" *South Carolina v. North Carolina*, 558 U.S. 256, 272 (2010); *accord Meek*, 985 F.2d at 1479 ("The substantial public interest at stake in the case militat[es] in favor of intervention.").

In sum, Movants have cited over twenty courts that in the last few years have granted the Republican Party intervention in virtually identical circumstances, *see supra* nn.1-2, including a challenge to the same signature cure deadline at issue here, *Ariz. Democratic Party*, *supra*. Plaintiffs apparently believe all those courts abused their discretion. They did not. Movants should be allowed to intervene.

Yazzie v. Hobbs is both an outlier and distinguishable. This Court denied the Republican Party's motion to intervene there because the Secretary of State had already filed a motion to dismiss, demonstrating her commitment to defend the challenged law, and because intervention would delay the proceeding. *See* 2020 WL 8181703, at *3-4 (D. Ariz. Sept. 16, 2020). Movants respectfully disagree with that decision. But it's also unpersuasive here. As discussed, Movants timely sought intervention here, intervention will not delay these proceedings, and the Secretary has refused to defend one of the precise laws challenged here. That all strongly favors intervention here. This case is far more akin to *Arizona Democratic Party*, where this Court allowed the Republican Party to intervene to defend Arizona's unsigned ballot cure deadline because the Court would "benefit from hearing all perspectives." 2020 WL 6559160, at *2.[3]

CONCLUSION

For the foregoing reasons, Movants' motion to intervene should be granted.

[3] Also distinguishable are cases involving interventions by individuals and officials—as opposed to party organizations. *Cf. Ansley v. Warren*, 2016 WL 3647979, at *3 (W.D.N.C. 2016) (citing the difficulties of "additional government actors" purporting to speak for the state); *see also Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 276 (D. Ariz. 2020); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 259 (D.N.M. 2008). Political parties efficiently represent many individuals and candidates at once, and they bring substantial experience and expertise that differs from the State's and that should aide this Court. *E.g.*, *Ariz. Democratic Party*, 2020 WL 6559160, at *2 (granting Republican Party intervention in an *Anderson-Burdick* challenge); *Feldman*, *supra* (granting Republican Party intervention in a VRA Section 2 challenge).

Respectfully submitted this 2nd day of September, 2021.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al., Plaintiffs, v. Katie Hobbs, et al., Defendants, and Republican National Committee; National Republican Senatorial Committee, Proposed Intervenor-Defendants.	CV-21-01423-DWL **[PROPOSED] ORDER GRANTING INTERVENTION**

Having considered the Motion to Intervene by Republican National Committee and National Republican Senatorial Committee, pursuant to Fed. R. Civ. P. 24,

IT IS HEREBY ORDERED granting the motion.

IT IS FURTHER ORDERED directing the Clerk to file the Proposed Answer lodged with the Intervenor-Defendants' Motion to Intervene.