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21 **UNITED STATES DISTRICT COURT**
 22 **DISTRICT OF ARIZONA**

23 Mi Familia Vota et al.,
 24
 25 Plaintiffs,
 26 v.
 27 Katie Hobbs, et al.,
 28 Defendants.

Case No. 2 CV22-00509-PHX-SRB
**PLAINTIFFS' OPPOSITION TO
 MOTION TO INTERVENE**

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Living United for Change in Arizona, et al.

Plaintiffs,

v.

Katie Hobbs,

Defendant.

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1 Plaintiffs Mi Familia Vota and Voto Latino, by and through counsel, file this
2 Opposition to the Republican National Committee, National Republican Senatorial
3 Committee, Republican Party of Arizona, Gila County Republican Party, and Mohave
4 County Republican Central Committee’s (the “Movants”) Motion to Intervene (ECF No.
5 24, the “Motion”). For the reasons set forth below, Plaintiffs respectfully request that the
6 Court deny the Motion.

7 INTRODUCTION

8 Movants fall far short of meeting their burden to show that intervention as of right
9 is justified. They fail to demonstrate that they have a significantly protectable interest
10 warranting intervention, much less any purported interest that could be impaired by the
11 disposition of this action. Movants rely instead on undifferentiated interests regarding
12 election integrity and the need to uphold Arizona’s election laws, but generalized interests
13 such as these fail to satisfy the intervention requirements of Rule 24(a)(2). Movants also
14 fail to establish that Defendants, public officials including Arizona’s Secretary of State and
15 Attorney General, do not adequately represent their interests. In cases where a potential
16 intervenor seeks to enter on the side of government officials, there is a strong presumption
17 that the party’s interests are represented absent a “very compelling showing” to the
18 contrary. Here, Movants and Defendants seek the same “ultimate objective”—upholding
19 H.B. 2492 (the “Challenged Law”)—and nothing in Movants’ motion suggests that
20 Defendants are incapable of or unwilling to defend this litigation.

21 For similar reasons, the Court should use its wide discretion to dismiss Movants’
22 request for permissive intervention. Movants fail to show any interest demonstrating
23 independent grounds for jurisdiction, failing to meet one of the threshold requirements for
24 permissive intervention. And, as noted above, Movants also fail to overcome the strong
25 presumption that Defendants can adequately represent their purported interests, which
26 counsels against granting permissive intervention. Permissive intervention will also
27 inevitably delay the proceedings, increase litigation costs, and prejudice the existing parties
28 with little countervailing benefits.

1 Finally, this Court has noted before that granting political actors such as Movants
2 intervention in a case such as this introduces “unnecessary partisan politics into an
3 otherwise nonpartisan legal dispute.” *Miracle v. Hobbs*, 333 F.R.D. 151, 156 (D. Ariz.
4 2019) (quotation omitted). This consideration, taken along with all the other reasons
5 already discussed, strongly counsels against granting intervention here.

6 **LEGAL STANDARD**

7 To intervene as of right pursuant to Rule 24(a)(2), Movants must file a timely
8 motion and demonstrate that: (1) they have a significantly protectable interest in this action;
9 (2) disposition of the action may impair or impede their ability to protect that interest; and
10 (3) their purported interest is not adequately represented by existing parties to the litigation.
11 *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). As the party
12 seeking to intervene, Movants “bear[] the burden of showing that *all* the requirements for
13 intervention have been met.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th
14 Cir. 2004) (citation omitted). “Failure to satisfy any one of the requirements is fatal to the
15 application.” *United States v. Arizona*, No. CV 10-1413-PHX-SRB, 2010 WL 11470582,
16 at *1 (D. Ariz. Oct. 28, 2010) (citing *Perry*, 587 F.3d at 950).

17 To seek permissive intervention pursuant to Rule 24(b), Movants must file a timely
18 motion and demonstrate: (1) independent grounds for jurisdiction and (2) that their claims
19 share a question of law or fact with the main action. *Miracle*, 333 F.R.D. at 156 (quoting
20 *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)).

21 **ARGUMENT**

22 **I. Movants are not entitled to intervene as of right.**

23 Movants fail to show that they meet the requirements for intervention as of right.
24 Movants have no significantly protectable interest in this action, their ability to protect any
25 interests they allege would not be impeded or impaired by a disposition, and their interests
26 are adequately represented by the parties to this litigation. The Court should accordingly
27 deny their motion to intervene.
28

1 **A. Movants fail to show that they have a significantly protectable interest**
2 **that warrants intervention.**

3 Movants’ generalized interests in the election process fall short of the standard for
4 intervention as of right. Intervention as of right is reserved for parties that demonstrate a
5 direct and specific interest in an action. *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436,
6 441 (9th Cir. 2006). Said interest must be particular to the movant and cannot be
7 “generalized” or “undifferentiated.” *Id.*; see also *One Wis. Inst., Inc. v. Nichol*, 310 F.R.D.
8 394, 397 (W.D. Wis. 2015) (“To intervene as of right, a party must demonstrate ‘a direct,
9 significant, and legally protectable interest in the question at issue in the lawsuit ... That
10 interest must be unique to the proposed intervenor.”) (citation omitted). Yet central to
11 Movants’ argument in support of its Motion are its interests in “fair and reliable elections”
12 and in upholding Arizona’s law. Mot. to Intervene (hereinafter “Mot.”) at 6–8 (May 12,
13 2022), ECF No. 24. These are interests which can be shared by anyone across election
14 cases, and which are not specific or particular to Movants in the present action.

15 Such undifferentiated, generalizable interests have been rejected as a basis for
16 intervention as of right by courts around the country, including this one. See *Miracle*, 333
17 F.R.D. at 155 (“The Court is similarly unmoved by the highly generalized argument that
18 Proposed Intervenors have an interest in upholding the constitutionality of the” challenged
19 law); *Arizona*, 2010 WL 11470582, at *3 (finding that a movant did not have a direct and
20 specific interest in the litigation in part because his “expressed interest [was] general” and
21 “shared by many other citizens of the state of Arizona”). Movants offer no compelling
22 reason why this Court should take a different course here.

23 Beyond their generalized interests, Movants seem to contend that they should
24 automatically be allowed to intervene in election law cases solely because they are political
25 party organizations; courts nationwide have rejected this very assertion. Mot. at 5–7. Being
26 a political party alone is not enough;¹ a political party, like any other litigant seeking

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28 ¹ Nor is it enough for Movants to ambiguously assert that political party organizations
typically “expend significant resources” on elections and that generally, “preventing

1 intervention, must show that it meets the standard for intervention as of right under Rule
 2 24(a)(2). *See, e.g., Yazzie v. Hobbs*, No. CV-20-08222-PCT-GMS, 2020 WL 8181703, at
 3 *3, *4 (D. Ariz. Sept. 16, 2020) (Snow, J.)² (denying Republican Party’s motion to
 4 intervene in voting rights case); *Common Cause R.I. v. Gorbea*, No. 1:20-cv-00318-MSM-
 5 L7DA, 2020 WL 4365608, at *3 n.5 (D.R.I. July 30, 2020) (explaining a previous denial
 6 of a motion to intervene by the Republican National Committee and Rhode Island
 7 Republican Party); *Democracy N.C. v. N.C. State Bd. of Elections*, No. 1:20CV457, 2020
 8 WL 6591397, at *1 (M.D.N.C. June 24, 2020) (denying Republican National Committee
 9 and North Carolina Republican Party’s motion to intervene in voting rights case); *Nichol*,
 10 310 F.R.D. at 399 (denying intervention to Republican officials and voters); *Am. Ass’n of*
 11 *People with Disabilities v. Herrera*, 257 F.R.D. 236, 259 (D.N.M. 2008) (denying
 12 intervention motions by Republican entities seeking to defend restrictive election law).
 13 Movants offer nothing to meet this requirement.

14 The “analogous” cases Movants cite to attempt to justify intervention on political
 15 party grounds only reaffirm the principle that political party organizations must still
 16 demonstrate specific interests to justify intervention. For example, while Movants cite to
 17 *Issa v. Newsom* to support their argument that “federal courts routinely find that political
 18 parties have interests supporting intervention in litigation regarding election rules,” Mot.
 19 at 6 (quoting *Issa*, 2020 WL 3074351 at *3) (quotations omitted), that case does not
 20 contend that political parties get a *de facto* interest in an action. *Issa*, 2020 WL 3074351,

21 _____
 22 diversions of resources” from Movants’ “activities is a legitimate ‘interest’” warranting
 23 intervention. Mot. at 6. Generalizations about political parties or the election process do
 24 not overcome Movants’ failure to specify *their* significant protected interests in *this* action.
 25 ² Movants contend that *Yazzie* is “unpersuasive and distinguishable. . . because the
 26 Secretary of State had already filed a motion to dismiss, demonstrating her commitment to
 27 defending the challenged law, and because intervention would delay the proceeding.” Mot.
 28 at 16. Plaintiffs disagree with Movants’ characterization. That Defendants here have not
 yet filed a motion in this action does not mean, and nothing in Movants’ Motion suggests,
 that Defendants are not committed to defending the Challenged Law. Moreover, like in
Yazzie, Movants here share the same ultimate objective with Defendants, making
 intervention improper. *See* Sec. I.C., *infra*. Lastly, intervention *will* inevitably lead to
 delays in the proceeding. *See* Sec. II., *infra*.

1 at *3. Rather, movants in *Issa*, unlike Movants here, met all the factors for intervention as
2 of right, including listing direct and specific interests (rather than undifferentiated
3 generalizations). *Id.* In short, Movants being political party organizations does not absolve
4 them from abiding by Rule 24(a)(2) requirements.

5 Moreover, Movants fail to explain how the prospects of the Republican Party would
6 be hurt by removing a law that, without notice or opportunity to challenge, ends the rights
7 of properly registered voters to vote in presidential elections. In fact, Movants fail to assert
8 with any specificity why they support the Challenged Law or what harms the law purports
9 to assuage. Plaintiffs’ interest, on the other hand, is “to safeguard the fundamental rights
10 of hundreds of thousands of Arizonans, including the right to vote and the state-protected
11 right to vote early by mail.” Pls.’ Am. Compl. (hereinafter “Am. Compl.”) ¶ 1, ECF No.
12 38; *see also* Am. Compl. at 59–66. Movants presumably share an interest in ensuring that
13 the fundamental rights of lawful Arizona voters are upheld. This is particularly true since
14 the Challenged Law is certain to impede the voting rights of even some among Movants’
15 membership or constituencies. *Id.*

16 The only logical means by which Movants’ “interests” could be negatively
17 implicated by this action is if they have concluded that the Challenged Law is *more likely*
18 to disenfranchise Democratic voters, and that the collateral damage to the voting rights of
19 Republican voters is worth the benefit the Party stands to gain from shutting out those other
20 voters from the franchise. And to be sure, as Plaintiffs have alleged, it is true that the
21 Challenged Law is more likely to disenfranchise Arizona’s non-white voters. *Id.* at ¶ 46.
22 But an interest in *preventing* others from voting is not legally protectable. *See, e.g., Wise*
23 *v. Circosta*, 978 F.3d 93, 100 (4th Cir. 2020). Accordingly, it cannot support Movants’
24 intervention.

25 **B. Movants fail to establish that their purported interests would be**
26 **impaired by the Court’s disposition of this action.**

27 Movants fail to demonstrate a direct and specific interest in this action so “there can
28 be no impairment of the[ir] ability to protect” said non-existent interest. *Herrera*, 257

1 F.R.D. at 252; *see also Arizona*, 2010 WL 11470582, at *3 (holding that because a potential
2 intervenor failed to establish a protectible interest, the impairment requirement for
3 intervention was not met). But even assuming Movants successfully demonstrated a direct
4 and specific interest, Movants failed to establish that their ability to protect their interest
5 would be impeded or impaired by the disposition of *this* litigation. Movants instead rely on
6 generalized assertions to conclude that their ability to protect their interests will “plainly”
7 suffer if Defendants lose or if the matter settles against Movants’ position. Mot. at 8. For
8 example, Movants contend that “[l]aws *like*” the Challenged Law “serve the integrity of
9 the election process” and that a decision adverse to Movants would lead to substantial
10 changes to the “election landscape.” *Id.* at 8, 9 (emphasis added). Yet Movants fail to
11 explain how or why these assertions are true. Movants cannot cure their lapse by arguing,
12 as they do, that the Court should not credit Plaintiffs’ position regarding the Challenged
13 Law or judge the final merits of the case.³ *Id.* at 9. Movants failed to show how their
14 interests would be impaired, even *if* the Court were to decide the merits in favor of
15 Plaintiffs. Indeed, it is hard to imagine the kind of change or confusion Movants anticipate
16 facing when the Challenged Law *uproots* the existing election law landscape and when
17 disposition in favor of Plaintiffs would happen well before the next presidential election.

18 Further, Movants’ contentions about their need to intervene to guard against
19 purported confusion or disruption to the upcoming election from an injunction in this
20 matter entirely miss the mark. *Id.* at 8–9. As Plaintiffs’ Amended Complaint notes that, on
21 April 22, 2022, Governor Doug Ducey signed into law S.B. 1638, which provides that H.B.
22 2492 “is effective from and after December 31, 2022.” S.B. 1638 § 4, 55th Leg., 2d Reg.
23 Sess. (Ariz. 2022). *See* Am. Compl. n.2. In other words, the Challenged Law will not take
24 effect until *after* the coming election. Movants’ purported desire to avoid voter confusion
25 and election disruption from any potential injunction of the Challenged Law occurring

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28 ³ Movants instead urge the Court to view the Challenged Law as *constitutional*, despite their contention that the Court should not yet reach the final merits of the case. None of the cases Movants cite suggest that the Court should favor the law being challenged, but rather hold that the motion to intervene be judged by the factors set out in this brief.

1 before the November 2022 election are inapt given this fact and do not show potential
2 impairment of any legitimate interest.

3 **C. Movants fail to make the “very compelling showing” required to rebut**
4 **the presumption that the Government’s representation is adequate.**

5 Movants have the “unenviable task” of rebutting the strong presumption that their
6 interests are adequately represented by the existing Defendants, a presumption they fail to
7 overcome. *Arizonans for Free Elections v. Hobbs*, 335 F.R.D. 269, 275 (D. Ariz. 2020).
8 The “most important factor” in determining “whether a proposed intervenor is adequately
9 represented by a present party to the action is ‘how the [intervenor’s] interest compares
10 with the interests of existing parties.’” *Perry*, 587 F.3d at 950 (citing *Arakaki v. Cayetano*,
11 324 F.3d 1078, 1086 (9th Cir. 2003)). “Where [an existing] party and the proposed
12 intervenor share the same ‘ultimate objective,’ a presumption of adequacy of representation
13 applies” which the intervenor can only rebut with a “compelling showing” that the
14 representation is inadequate. *Id.* at 950–51. While Movants argue that Defendants’
15 motivation to further “the public interest” is not the same as Movants’ motivation to further
16 its “particular [partisan] interests,” Mot. at 10, the ultimate objective inquiry does not ask
17 whether the parties’ motivations are identical, only *whether they seek the same ultimate*
18 *relief*. See *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir.
19 2011) (finding the same ultimate objective where both parties sought to uphold the
20 constitutionality of the challenged statutes). Both Movants and Defendants share the same
21 ultimate objective: for this Court to uphold the constitutionality of the challenged statute,
22 so a presumption of adequacy exists.

23 A separate presumption of adequacy also applies when the government acts on
24 behalf of its constituency. *Arakaki*, 324 F.3d at 1086 (emphasis added); *United States v.*
25 *City of L.A.*, 288 F.3d 391, 401 (9th Cir. 2002); *PEST Comm. v. Miller*, 648 F. Supp. 2d
26 1202, 1212–14 (D. Nev. 2009). Absent a “very compelling showing to the contrary,” courts
27 presume that a state adequately represents its citizens where the movant shares the same
28 interest. *Id.* Courts consider three factors when determining the adequacy of representation:

1 “(1) whether the interest of a present party is such that it will undoubtedly make all the
2 proposed intervenor’s arguments; (2) whether the present party is capable and willing to
3 make such arguments; and (3) whether the proposed intervenor would offer any necessary
4 elements to the proceedings that other parties would neglect.” *Miracle*, 333 F.R.D at 155–
5 56 (citing *Arakaki*, 324 F.3d at 1086).

6 Movants’ attempt to rebut the presumption by again rattling off one-size-fits-all
7 generalizations that are not specific to the issues at hand and fall far short of the “very
8 compelling showing” standard. Mot. at 10, 11. For example, Movants suggest that they
9 should be permitted to intervene because Defendants may not litigate the case in a way that
10 explicitly protects the interests of Republican candidates for office. *Id.* They then, without
11 more, conclude that the potential “difference in interests” that traditionally exist between
12 governments and political parties (which they fail to connect to this action) overcomes the
13 presumption of adequate representation. *Id.* at 10–12.

14 Movants are mistaken. They have not articulated a single argument they intend to
15 make if intervention is granted, let alone shown that Defendants are unwilling or incapable
16 of making those arguments themselves. *Miracle*, 333 F.R.D at 155–56 (citing *Arakaki*, 324
17 F.3d at 1086); *Arizonans for Fair Elections*, 335 F.R.D. at 275 (rejecting speculation that
18 an existing defendant’s “substantive positions may be different” where the movants
19 “fail[ed] to provide any examples of such differences”). Even if they had articulated such
20 an argument, concerns over partisan bias, disagreements over litigation strategy, and
21 appeals to “practical experience” are not sufficient to overcome the presumption of
22 adequate representation. *See, e.g., Miracle*, 333 F.R.D. at 156 (D. Ariz. 2019) (denying
23 intervention as of right because a movant “must do more than allege—and superficially at
24 that—partisan bias to meet” the standard); *Arizonans for Fair Elections*, 335 F.R.D. at 275
25 (denying intervention as of right in a case where a state actor was already defending
26 because the movants failed to demonstrate anything more than a potential disagreement
27 over “the best way to approach litigation”) (citation omitted). Movants have similarly
28 failed to indicate exactly which “necessary elements” they bring “to the proceedings that

1 other parties would neglect.” *Miracle*, 333 F.R.D at 155–56 (citing *Arakaki*, 324 F.3d at
2 1086), or why that perspective cannot be addressed via a more appropriate forum such as
3 an amicus brief.

4 * * *

5 For all these reasons, the Court should deny Movants’ request to intervene as of
6 right pursuant to Rule 24(a)(2).

7 **II. The Court should deny Movants’ motion for permissive intervention.**

8 Movants’ request that the Court grant permissive intervention under Rule 24(b)
9 should also be denied because they cannot show independent grounds for jurisdiction. As
10 noted above, to demonstrate an entitlement to permissive intervention Movants must file a
11 timely motion and demonstrate: (1) independent grounds for jurisdiction and (2) that their
12 claims share a question of law or fact with the main action. *Miracle*, 333 F.R.D. at 156.
13 Movants cannot demonstrate independent grounds for jurisdiction here because they fail to
14 articulate how an injunction of the Challenged Law would injure them. As noted above, an
15 interest in preventing others from voting is not legally protectable, and Movants have not
16 established any other way in which an injunction here would cognizably injure them. *See*
17 *supra*, Sec. I.A (citing *Wise*, 978 F.3d at 100). Absent some independent injury to their
18 non-generalized interests, Movants are not entitled to permissive intervention here.

19 Further, even if Movants meet the threshold requirements the Court has discretion
20 to deny permissive intervention and should in this instance. This discretion is appropriately
21 exercised when a potential intervenors’ interests are adequately represented by the existing
22 parties or when intervention would unduly delay or prejudice the original parties. *Miracle*,
23 333 F.R.D. at 156 (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir. 1989)); Rule
24 24(b)(1)(B). In particular, where an applicant fails to overcome the strong presumption of
25 adequate representation, “the case for permissive intervention disappears.” *Nichol*, 310
26 F.R.D. at 399 (quoting *Menominee Indian Tribe of Wis. v. Thompson*, 164 F.R.D. 672, 678
27 (W.D. Wis. 1996)); *see also Perry*, 587 F.3d at 955 (holding that the district court properly
28 denied permissive intervention where movants were adequately represented by existing

1 parties).

2 The Court should exercise this discretion to deny Movants’ request for permissive
3 intervention for three reasons. *First*, Movants failed to overcome the presumption that
4 Defendants can adequately represent their purported interests in this action. *See supra*, Sec.
5 I.C. *Second*, allowing all five Movants to intervene will inevitably delay the proceedings,
6 increase litigation costs, and prejudice the existing parties. *See PEST Comm.*, 648 F. Supp.
7 2d at 1214 (declining to allow permissive intervention despite movants meeting the
8 threshold factors because their interests were already met by existing parties and “adding
9 [movants] as parties would unnecessarily encumber the litigation”). *Third*, allowing
10 Movants to intervene “will introduce unnecessary partisan politics into an otherwise
11 nonpartisan legal dispute.” *Miracle*, 333 F.R.D. at 156 (internal quotations omitted).

12 In sum, Movants’ intervention is not necessary to the development of the case;
13 permitting *amicus* participation would allow Movants to “bring their perspective,” Mot. at
14 15, while facilitating the speedy and efficient resolution of the matter and keeping the
15 floodgates shut on unnecessary partisan dispute, particularly since any of Movants’
16 purported interests are already represented by existing parties.⁴

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20 ⁴ If the Court is inclined to grant intervention, Plaintiffs respectfully request that, at a
21 minimum, it impose strict limits to prevent unnecessary delay, duplication, and prejudice
22 to existing parties and to judicial economy. For example—similar to the approach Judge
23 Rayes took in *Arizona Democratic Party*, Plaintiffs respectfully request that the Court
24 designate existing Plaintiffs and Defendants as “the representatives responsible for
25 coordinating” the legal strategy and scheduling in the matter and order that (1) Movants
26 “cannot file a response without leave of Court;” (2) “any proposed response must not repeat
27 any argument already raised,” and (3) “any motion seeking leave to file a response will
28 need to explain how the briefing submitted by [existing parties] does not adequately
address the issue or issues affecting Movants.” *Ariz. Democratic Party*, 2020 WL 6559160,
at *1. Plaintiffs note that Movants “commit to complying with all deadlines that govern the
parties, working to prevent duplicative briefing, and coordinating with the parties on
discovery,” Mot. at 14, and ask that if Movants are admitted as parties, they be strictly held
to that commitment.

1 **CONCLUSION**

2 For these reasons, the Court should deny Movants’ motion to intervene pursuant to
3 Rule 24(a) and Rule 24(b).

4
5 Dated: May 26, 2022

6 Respectfully Submitted,

7 /s/ Daniel A. Arellano

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