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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.	Case No: 2:22-cv-00509-SRB (Lead) Case No: 2:22-cv-00519-SRB (Consol.) Case No: 2:22-cv-01003-SRB (Consol.) Case No: 2:22-cv-01124-SRB (Consol.) Case No: 2:22-cv-01369-SRB (Consol.)
Living United for Change in Arizona, et al., Plaintiffs, v. Katie Hobbs, Defendant.	**REPLY IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANT BY THE REPUBLICAN NATIONAL COMMITTEE**

Poder Latinx, Plaintiffs, v. Katie Hobbs, Defendant.
United States of America, Plaintiff, v. State of Arizona, et al., Defendants.
Democratic National Committee, Plaintiff, v. Katie Hobbs, et al., Defendants.

The United States does not oppose the RNC's intervention. *MFV* Doc. 117. But the *MFV*, *LUCHA*, and *Poder* plaintiffs do, although only the *MFV* and *Poder* plaintiffs have filed an opposition. *MFV* Docs. 128, 129. These two groups invite the Court to make a complex case even more convoluted. Rather than allow the RNC to litigate in this case on equal terms with all the other parties, these plaintiffs propose that the RNC be confined to partial participation, addressing only the claims of the DNC. Of course, the DNC's claims overlap considerably with those of the other plaintiffs, and the Court would inevitably be drawn into resolving disputes at all stages of the case about the scope of the RNC's participation. The Court should reject this invitation, and instead do what other courts have done as a matter of course in similar cases: grant intervention across all the consolidated cases.

I. The *MFV* and *Poder* plaintiffs mainly argue that the RNC's motion is procedurally improper in light of the Court's earlier denial of intervention. *MFV* Doc. 128 at 6-8. Not so. In the first place, any such arguments cannot apply to intervention in the *Poder* or *United States* cases, in which the RNC has never moved to intervene. But more importantly, it has no purchase in any of the consolidated cases.

The plaintiffs' "law of the case" theory is riddled with problems. The plaintiffs omit the fact that the doctrine is triggered only by the "decision of an appellate court on a legal issue." *Leibel v. City of Buckeye*, 556 F. Supp. 3d 1042, 1056 (D. Ariz. 2021). The Court's discretionary ruling on the RNC's earlier motions was neither. Law of the case also "does not 'bar a court from reconsidering its own orders before judgment is entered or the court is otherwise divested of jurisdiction.'" *Hernandez v. City of Phoenix*, 482 F. Supp. 3d 902, 911 (D. Ariz. 2020) (quoting *Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1042 (9th Cir. 2018)), *aff'd in part, rev'd in part on other grounds*, 43 F.4th 966 (9th Cir. 2022). And even where it applies, "'law of the case is a discretionary doctrine' and is 'not a limit to [a court's] power.'" *Leibel*, 556 F. Supp. 3d at 1057 (quoting *Jeffries v. Wood*, 114 F.3d 1484, 1489 (9th Cir. 1997) (en banc)). "A 'court may have discretion to depart from the law of the case' if ... changed circumstances exist.'" *Id.* (quoting *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997)). The same standard applies to motions for reconsideration. *E.g.*, *Albano v. Shea Homes Ltd. P'ship*, 2009 WL 10673633, at *1 (D. Ariz. Jan. 5, 2009).

The RNC's motion is predicated on drastically changed circumstances—indeed, circumstances alluded to in the Court's original ruling. The *MFV* and *Poder* plaintiffs seize on the Court's caveat that the RNC could move to intervene again based on "concerns

about the adequacy of the defense or objections to the terms of a settlement." *MFV* Doc. 57 at 6. But the Court also based its ruling on having "no information that the Democratic Party will try to participate in the instant lawsuit." *Id.* at 5 n.2. That much, of course, has changed, and the consolidated case is no longer a "nonpartisan legal dispute." *Id.* at 5. In short, unforeseen changed facts have undermined the Court's first ruling—which otherwise held that the RNC met all the criteria for permissive intervention, *id.*—making a new motion by the RNC fit for consideration.

The *MFV* and *Poder* plaintiffs also argue that the Supreme Court's *Berger* decision has no bearing on RNC's motion. But a simple reading of *Berger* proves the opposite. Even without presenting the exact same facts as here, *Berger* clarified that the adequacy element of intervention as of right "present[s] intervenors with only a minimal challenge" and emphasized that it had previously *declined* to "endorse a presumption of adequacy" when a private litigant sought to intervene in support of a government party. *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2203-04 (2022). The substantive clarifications of the law of intervention go to the heart of this Court's prior ruling denying intervention as of right, *see MFV* Doc. 57 at 3-4, and must be accorded "due deference" even if they were made only in dicta. *E.g.*, *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1090 n.8 (9th Cir. 2003).

II. On the merits, denying intervention here would make the case drastically more unwieldy and require much more of the Court's attention to supervise. Plaintiffs suggest that the RNC should be limited to defending against the DNC's claims, even though many of the DNC's claims are substantially the same as or similar to those of the other plaintiffs. As the case moves into discovery on a consolidated basis, there is sure to be doubt and

disagreement about the scope of RNC's limited-party status: what depositions it can attend and participate in, what motions it can make or respond to, what issues it can address, whether and when it can appeal any adverse ruling, and whether it can even join other defendants' filings. And at each juncture, the Court will have to divert its own resources to untangling these disputes and policing the bounds of the RNC's limited-intervenor status. Intervention across the whole consolidated case is the simple solution.

Courts routinely avoid these predictable headaches in similar cases by allowing intervenors in one case to intervene in the others that have been consolidated. In Florida, for example, a court last year consolidated three election-law challenges. *See League of Women Voters of Fla., Inc. v. Lee*, Doc. 92, No. 4:21-cv-186 (N.D. Fla. June 17, 2021) (lead case). The RNC had already successfully intervened in two of the consolidated cases, yet the court granted its motion to intervene in the third *after* consolidating the cases. *See Harriet Tubman Freedom Fighters Corp. v. Lee*, Doc. 34, No. 4:21-cv-242 (N. Fla. July 6, 2021). And as previously discussed in the RNC's motion to intervene, *MFV* Doc. 101 at 3-4, a Wisconsin court in 2020 did the same thing "to clarify the [RNC's] status" in two cases consolidated with a case in which the RNC had intervened, *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020).

The *MFV* and *Poder* plaintiffs argue that the RNC's previous attempt to intervene in two of the cases "readily distinguishes" the Wisconsin case. *MFV* Doc. 128 at 10 n.4. This is a distinction without a difference. As already explained *supra*, the RNC's previous motions make no difference to the current one, which is predicated on markedly changed circumstances. And by offering only this lone procedural distinction between the two sets of cases, the *MFV* and *Poder* plaintiffs effectively concede that the intervention questions

in these cases are readily analogous in *substance*. The crucial feature of the Wisconsin case is that the court granted an intervenor in one case the same status in all the other consolidated cases, as the best way to resolve the case efficiently. The *MFV* and *Poder* plaintiffs offer no reason to conclude that the same practical question of case management before the court in *Lewis* should be answered differently here.

For their part, the plaintiffs fail to cite a single case in which a court adopted the sort of frankenstein posture they have proposed. Indeed, they do not cite any cases at all in the section of their opposition arguing that "[t]he RNC's intervention will impede, not promote, the efficient resolution of this matter." *MFV* Doc. 128 at 9-10. Instead, they merely assert that granting the RNC equal party status would be *more* complex than restricting it to the DNC's case, simply due to the added "complexity" and "burdens" of letting the RNC "defend against every single claim." *MFV* Doc. 128 at 9. Of course, these plaintiffs did not raise such objections to the inclusion of any other party, nor did they express such concerns when they declined to oppose consolidation of the *DNC* case—at which point the RNC's intervention was already pending and unopposed. *See DNC* Doc. 10 (Aug. 16, 2022); *MFV* Doc. 90 (Aug. 23, 2022). The *MFV* and *Poder* plaintiffs evidently believe that *five* independent plaintiff-side briefs, or even separate filings on simple scheduling and page-limitation issues, is an unremarkable burden on the Court's resources. *See MFV* Docs. 95, 96, 98, 99. But they now maintain that just two (or at most, three) defense-side briefs on the same issues would be an unmanageable burden.

In reality, the RNC's full participation will not prejudice the plaintiffs or delay resolution of their claims. In the first place, the plaintiffs who object "can hardly be said to be prejudiced by having to prove a lawsuit [they] chose to initiate." *Security Ins. Co. of*

Hartford v. Schipporeit, Inc., 69 F.3d 1377, 1381 (7th Cir. 1995). And the cases in this district which the *MFV* and *Poder* plaintiffs do cite, *see MFV* Doc. 128 at 10, only prove the point that the Court can easily manage the addition of one additional intervenor—especially one that is already present in these proceedings. In those cases, neither of which involved consolidation of multiple lawsuits, the courts' "strict limitations" did not concern the party status of any intervenor, but instead simply guarded against duplicative briefing by aligned parties by requiring intervenors to move for leave to file a brief. *See generally ADP v. Hobbs*, Doc. 60 at 2-3, No. 2:20-cv-01143 (D. Ariz. June 10, 2020); *Mi Familia Vota v. Hobbs*, Doc. 53 at 4, No. 2:21-cv-1423 (D. Ariz. Aug. 17, 2021). The RNC has committed throughout this case to avoiding duplicative briefing and would stipulate here to the same requirements for filing briefs ordered by Judge Lanza in *ADP*.

CONCLUSION

For the foregoing reasons, the Court should grant intervention.

Respectfully submitted on September 27, 2022.

By: */s/ Tyler Green*

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