Tyler Green*
Cameron T. Norris*
James P. McGlone*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tyler@consovoymccarthy.com
cam@consovoymccarthy.com
jim@consovoymccarthy.com

Kory Langhofer, Ariz. Bar No. 024722
Thomas Basile, Ariz. Bar. No. 031150
STATECRAFT PLLC
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078
kory@statecraftlaw.com
tom@statecraftlaw.com

Attorneys for Proposed Intervenor-Defendants
*pro hac vice

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.) **REPLY IN SUPPORT OF MOTIONS TO INTERVENE**
Living United for Change in Arizona, et al., Plaintiffs, v. Katie Hobbs, Defendant.	

Movants—the Republican National Committee (RNC), National Republican Senatorial Committee (NRSC), Republican Party of Arizona (RPAZ), Gila County Republican Committee, and Mohave County Republican Central Committee—submit this Reply in support of their Motions to Intervene. On May 12, 2022, Movants moved to intervene in *Mi Familia Vota*, No. 2:22-cv-509-SRB (Doc. 24) (*MFV* Mot.), and in *LUCHA*, No. 2:22-cv-519-SRB (Doc. 23) (*LUCHA* Mot.). Five days later, this Court consolidated the two cases. Each plaintiff group filed a response to Movants' Motions to Intervene. *See* No. 2:22-cv-509-SRB (Doc. 45) (MFV Resp.) & No. 2:22-cv-519-SRB (Doc. 26) (LUCHA Resp.). Rather than submitting multiple reply briefs, Movants submit this consolidated Reply addressing the arguments raised in both responses.

In support of their motions, Movants cited nearly twenty cases—from just the last two years—where courts allowed the Republican Party to intervene in defense of state election laws. *See MFV* Mot. 1-2 n.1; *LUCHA* Mot. 1-2 n.1. Plaintiffs offer little against this overwhelming weight of authority supporting Movants' intervention. What was obvious to those courts—and remains obvious here—is that in cases challenging the rules that govern our elections, major political parties deserve a seat at the table. Proving the point, the Democratic Party has announced that it seeks to participate in this lawsuit, and Plaintiffs themselves have consented to a motion that would extend the litigation schedule further out. *See* Doc. 47, at 1. All of this eliminates any good-faith argument against denying Republican Movants' intervention motion. The Court should allow Movants to intervene.

ARGUMENT

I. Plaintiffs fail to rebut Movants' entitlement to intervention as of right.

Intervention as of right requires a timely request, an interest, impairment, and inadequate representation. Fed. R. Civ. P. 24(a)(2). Plaintiffs concede timeliness but dispute the other criteria. Their arguments are not persuasive.

A. Movants have significant protectable interests in this case. *See Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011); *see also MFV* Mot. 1-2 n.1; *LUCHA* Mot. 1-2 n.1. This is a "'practical'" inquiry. *Citizens for Balanced Use*, 647 F.3d at 897. Here, Movants have direct and significant interests in ensuring their ability to "participate in and maintain the integrity of the election process," because they are political party organizations that promote the success of Republican candidates and expend significant resources to do so, including by defending the integrity of the election laws. *MFV* Mot. 6 (quoting *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022)); *see also LUCHA* Mot. 5-6. Federal courts across the country have routinely accepted those interests as sufficient for intervention. *See, e.g.*, *La Union*, 29 F.4th Cir. at 306; *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020); *see also MFV* Mot. 1-2 n.1; *LUCHA* Mot. 1-2 n.1.

Plaintiffs' contrary arguments mischaracterize Movants' interests. *First*, Plaintiffs incorrectly assert that Movants' interests are "generalized" and "'undifferentiated'" from other citizens' interests in ensuring a fair election. LUCHA Resp. 4; *see* MFV Resp. 6-7. Not so. Movants' interests are readily differentiated and distinguishable from the general public's interests. Not all Arizonans have an interest in electing *Republicans* or conserving

the resources of the *Republican Party*. Courts have recognized similar differentiation in election law cases. *See, e.g.*, *La Union*, 29 F.4th at 306; *Issa*, 2020 WL 3074351, at *3; *cf. Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 258 (D.N.M. 2008) ("What is unique about the [Republican Party of New Mexico] is that it is running candidates in the upcoming election."). And this interest is not generalized; it's specific and significant. Rule 24(a)(2) 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 encouraging voter participation and preventing resource diversion are sufficiently particularized to give Plaintiffs standing, then they are also sufficiently to justify Movants' intervention. *See, e.g.*, *Issa*, 2020 WL 3074351, at *3 (citing *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007)); *cf.* MFV Am. Compl. ¶¶4, 16-17, 19, 2:22-cv-509 (Doc. 38); LUCHA Compl. ¶120, 2:22-cv-519-SRB (Doc. 1).

Plaintiffs also err by claiming that Movants should not be allowed to intervene because Movants somehow seek only to further a "raw partisan objective." LUCHA Resp. 6 & n.2; *see* MFV Resp. 6-8. As a threshold matter, it shouldn't be any surprise that partisan organizations seek to further their organizational interests, their candidates' interests, and their voters' interests. This is why both Republicans and Democrats have successfully intervened in critical election law cases in recent years. *See, e.g.*, *Issa*, 2020 WL 3074351, at *3 (the Democratic Party intervened); *MFV* Mot. 1-2 n.1; *LUCHA* Mot. 1-2 n.1. In any event, Rule 24(a) intervention analysis looks at whether the intervenor's interest is legally protectable—not at whether it benefits an organization that happens to be a political party. Movants' interests in supporting Republican candidates and conserving the resources of

the Republican Party are clearly legally protected. And MFV Plaintiffs improperly ask this Court to assume that they will win on the merits and discount any interest in "disenfranchis[ing] Democratic voters." MFV Resp. 8. This allegation contradicts the "very purpose of intervention": "allow[ing] interested parties to air their views so that a court may consider them before making potentially adverse decisions." *Brumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014).

B. Movants have shown that this litigation "may" impair their interests. This inquiry looks to practical concerns and constitutes a low bar under Fed. R. Civ. P. 24(a)(2). *Citizens for Balanced Use*, 647 F.3d at 898; *MFV* Mot. 8; *LUCHA* Mot. 8. Here, the challenged law exists to maintain election integrity. If Plaintiffs convince this Court to strike it down, then the legislature's goals will be frustrated. The resulting loss of confidence may make it less likely that Movants' voters will vote and thus that Movants' candidates will win. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (opinion of Stevens, J.).

Plaintiffs' contrary arguments are unpersuasive. To start, LUCHA Plaintiffs do not seriously dispute impairment; they devote only two short, conclusory paragraphs to trying to rebut this issue. *See* LUCHA Resp. 8. Nor do they try to rebut Movants' arguments showing how denying intervention will impair Movants' interests. Next, MFV Plaintiffs assume that they, not Movants, will win this case on the merits and ask this Court to do the same by accepting the narrative that "the Challenged Law *uproots* the existing election law land scape." MFV Resp. 9. But when resolving a motion to intervene, courts cannot "assume … that Plaintiffs will ultimately prevail on the merits" or prejudge "the ultimate

merits of the claims which the intervenor wishes to assert." *Pavek v. Simon*, 2020 WL 3960252, at *3 (D. Minn. July 12, 2020); *see MFV* Mot. 8-9; *LUCHA* Mot. 8-9.

C. Movants also clear the low bar of proving inadequate representation. Movants need show only that representation of their interests "'*may* be' inadequate," which is a "minimal" burden. *Citizens for Balanced Use*, 647 F.3d at 898 (emphasis added). This element is met unless existing parties' interests are "so similar" to Movants' own interests "that 'adequacy of representation' is 'assured.'" *Id.* at 804.

Adequacy is far from assured here for three main reasons. First, Defendants are State officials tasked with defending state law, not with "defend[ing]" Movants' "special interests." *Conservation Law Found. of N.E., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *accord Utahns for Better Transp. v. DOT*, 295 F.3d 1111, 1117 (10th Cir. 2002) (same). Because the State "nowhere argues . . . that it will adequately protect [Movants'] interests," Movants "have raised sufficient doubt concerning the adequacy of [its] representation." *U.S. House of Representatives v. Price*, 2017 WL 3271445, at *2 (D.C. Cir. 2017).

Second, and related, Defendants' interests as state actors inherently clash with Movants'. *See MFV* Mot. 10-11; *LUCHA* Mot. 10-11. That's why the Democratic Party itself has described inadequacy as a "'light'" burden in this context: it recognizes that 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.'" Em. Mot. to Intervene 9-10, *Ga. Republican Party v. Raffensperger*, No. 2:20-cv-135 (S.D. Ga. Dec. 18, 2020) (Doc. 29) (quoting *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998)). In other words, Defendants necessarily "represent interests adverse to [Movants]"

because they also represent "the plaintif[f]." *Clark*, 168 F.3d at 461. Because Defendants represent all Arizonans, and can be motivated by concerns about the public "coffers" and their own reelection, Defendants could be less likely to make the same arguments as Movants, less likely to exhaust all appellate options, or more likely to settle. *Id.* at 461-62. This "divergence of interest" is "sufficient" to "entitle [Movants] to intervene." *Id.* at 461; *see MFV* Mot. 10-11; *LUCHA* Mot. 10-11.

Lastly, Movants and Defendants have a "difference in interests" in this case. *Stone v. First Union Corp.*, 371 F.3d 1305, 1312 (11th Cir. 2004). 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. Contrary to Plaintiffs' arguments, *see* MFV Resp. 10-11, this divergence of interests is sufficient to "'rebut[] presumption of adequacy.'" *Issa*, 2020 WL 3074351, at *3. Even if "similar," these interests are not "identical"—a deviation that might inspire different "approaches to [this] litigation." *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). "[T]his possibility sufficiently demonstrates that [Movants'] interests are not adequately represented," *id.* at 1215, and reflects the obvious truth that "private interests are different in kind from the public interests of the State or its officials" and that "[n]either the State nor its officials can vindicate [the Republican Party's] interest while acting in good faith," *La Union*, 29 F.4th at 308.

II. At a minimum, Movants are entitled to permissive intervention.

Permissive intervention is warranted when the motion is "timely," the movant's defense shares "a common question of law or fact" with the main action, and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b). Plaintiffs do not contest the first two requirements. *See* MFV Resp. 13-14; LUCHA Resp. 11-15.[1] Instead, they ask this Court to deny permissive intervention on two other grounds: undue prejudice (a requirement that appears in Rule 24(b)) and adequate representation (a requirement that does not). *See* MFV Resp. 13-14; LUCHA Resp. 11-15. Neither argument is persuasive, as courts repeatedly have found in granting the Republican Party intervention. *See MFV* Mot. 1-2 n.1; *LUCHA* Mot. 1-2 n. 2. And both arguments fail to appreciate that Rule 24 in general, and Rule 24(b) in particular, are construed liberally. *See, e.g.*, *Wash. State Bldg. & Constr. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982); *Paher*, 2020 WL 2042365, at *3; *Latta v. Otter*, 2014 WL 12573549, at *2 (D. Idaho Jan. 21, 2014); *Olin Corp. v. Lamorak Ins. Co.*, 325 F.R.D. 85, 87 (S.D.N.Y. 2018).

A. Plaintiffs articulate no specific reason why Movants' intervention would cause prejudice or delay. *See* MFV Resp. 13; LUCHA Resp. 13-14. Plaintiffs instead fret about "complicat[ing]" this case by potentially extending the litigation and discovery. LUCHA Resp. 13. But Rule 24(b)'s inquiry concerns "*undu*[*e*] delay or prejudice." (Emphasis added.) "'Undue' means not normal or appropriate." *Appleton v. Comm'r*, 430 F. App'x

[1] MFV Plaintiffs also assert that permissive intervention is not warranted because Movants cannot articulate how an injunction would injure them. MFV Resp. 12. They do not spend much effort here, and Movants have already explained above how they would be injured if they could not participate in the litigation and by an adverse ruling.

135, 138 (3d Cir. 2011). Though "any introduction of an intervenor in a case will necessitate its being permitted to actively participate, which will inevitably cause some 'delay,'" Rule 24(b) is not concerned with that kind of prejudice or delay. *Id.* The entire point of intervention, after all, is to add parties to a case.

Movants' intervention will cause no delay or prejudice, undue or otherwise. Plaintiffs concede that Movants' motion was timely. As the Democratic Party pointed out in its recent motion to intervene, "[i]ntervention motions that take place before any substantive rulings"—like this one—"generally do not prejudice the parties in the lawsuit." DCCC Ariz. Mot. to Intervene 15 (citing *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). LUCHA Plaintiffs erroneously argue that permissive intervention would cause delay because they speculate that they "could" move to strike Movants' answer. LUCHA Resp. 13. But this is speculative and premature. The Court's intervention analysis cannot hang on LUCHA Plaintiffs' speculation about what they might do. Furthermore, Defendants have not filed their answer yet—and in fact, just this week, they asked for an extension of time to file an answer to which Plaintiffs consented. *See* Doc. 47. And Plaintiffs themselves plan to amend to add NVRA claims, and it is expected that the Democratic Party will also participate in this action. *See id.* Given all those moving pieces, the notion that delay attributable to Movants themselves will cause undue delay is not a serious one.

And Plaintiffs' fears of prejudice are unfounded because Movants will "comply with the schedule that would be followed in their absence." *Nielsen v. DeSantis*, 2020 WL 6589656, at *1 (N.D. Fla. 2020); *see MFV* Mot. 14; *LUCHA* Mot. 14. Movants also pledge to avoid duplication in their briefs, oral arguments, and elsewhere. Nor could Movants' arguments "materially increase[] either delay or prejudice" because, as Plaintiffs concede,

Movants can still raise them as *amici*.[2] *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997); *see* MFV Resp. 13; LUCHA Resp. 14-15. Notably, Plaintiffs point to no delay or prejudice in the many cases where the Republican Party has intervened over the last few years, even when those cases were litigated on an expedited basis. Had any such prejudice occurred, Plaintiffs should have been able to do so, since they or their attorneys were involved in most of those cases. By all accounts, the courts in those cases found the Republican Party's unique perspective and expertise useful in reaching the right result. *E.g.*, *League of Women Voters of Minn. Educ. Fund v. Simon*, 2021 WL 1175234, at *1 & n.1 (D. Minn. Mar. 29, 2021).

B. Plaintiffs' argument that the Republican Party cannot permissively intervene because the State adequately defends its interests fails at the outset "because Rule 24(b) does not have the same inadequate representation requirements that Rule 24(a)(2) does." *Black Voters Matter Fund v. Raffensperger*, Doc. 42 at 5, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020); *see also Ariz. Democratic Party v. Hobbs*, 2020 WL 6559160, at *1 (D. Ariz. June 26, 2020) (same). Rule 24(b) 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*, 942 F.3d at 801 n.4. Instead, courts 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*

[2] Because Movants commit to avoid duplicating any arguments, it is unnecessary to adopt the approach taken in *Arizona Democratic Party v Hobbs*, 2020 WL 6559160, at *1 (D. Ariz. June 26, 2020), and require Movants to obtain the Court's leave before filing any submissions. *See* LUCHA Resp. 14 n.4; MFV Resp. 13 n.4.

Party v. Blackwell, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005); *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 286 (D.D.C. 2014); *Alabama v. U.S. Dep't of Commerce*, 2018 WL 6570879, at *3 (N.D. Ala. Dec. 13, 2018). So denying permissive intervention based on "adequate representation" would not comport with the Federal Rules.

In any case, Movants have concrete interests at stake that Defendants do not adequately represent. *See supra* §I; *MFV* Mot. 10-11; *LUCHA* Mot. 10-11. As one of the major political parties whose resources and candidates will be directly affected by the outcome of this litigation, Movants are "uniquely qualified"—and better positioned than Defendants—to represent "'mirror-image' interests" in any dispute over election laws. *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020). At the very least, these close questions should not drive the Court's analysis.

What's more, the "rationale for intervention" has "particular force" here because "the subject matter of the lawsuit is of great public interest," Movants have "a real stake in the outcome," and their "intervention may well assist the court in its decision." *Daggett v. Comm'n on Governmental Ethics & Election Pracs.*, 172 F.3d 104, 116 (1st Cir. 1999) (Lynch, J., concurring); *accord Meek v. Metro. Dade Cty.*, 985 F.2d 1471, 1479 (11th Cir. 1993) ("The substantial public interest at stake in the case is an unusual circumstance militating in favor of intervention."). It appears that the Democratic Party shares this view, since it apparently will seek to participate in this litigation soon. The Republican Party should be permitted to do the same.

CONCLUSION

For the foregoing reasons, the Court should grant intervention.

Respectfully submitted on June 2, 2022.

Tyler Green*
Cameron T. Norris*
James P. McGlone*
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tyler@consovoymccarthy.com
cam@consovoymccarthy.com
jim@consovoymccarthy.com

By: */s/ Kory Langhofer*

Kory Langhofer, Ariz. Bar No. 024722
Thomas Basile, Ariz. Bar. No. 031150
STATECRAFT PLLC
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078
kory@statecraftlaw.com
tom@statecraftlaw.com

Attorneys for Proposed Intervenor-Defendants

*pro hac vice