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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

REPUBLICAN NATIONAL COMMITTEE, *et al.*,

Plaintiffs,

v.

STEPHEN RICHER, *et al.*,

Defendants.

No. CV2022-013185

PLAINTIFFS' RESPONSE TO THE ARIZONA DEMOCRATIC PARTY AND DSCC'S MOTION TO INTERVENE

Plaintiffs Republican National Committee and the Republican Party of Arizona respectfully submit this Response in opposition to the Motion to Intervene of the Arizona Democrat Party and the DSCC (collectively, the "Proposed Intervenors").

INTRODUCTION

The Plaintiffs initiated these proceedings to vindicate what common sense counsels and the law commands: Maricopa County must ensure that each major political party is afforded equal representation on the boards charged with conducting polling place operations and with processing, tabulating and adjudicating ballots. *See e.g.*, A.R.S. §§ 16-531, -532, -549, -551, -552, -621.; Arizona Secretary of State, ELECTIONS PROCEDURES

MANUAL (rev. Dec. 2019) ("EPM") at 133, 134 196-197. Included in this right is the ability for each party to designate its own trusted nominees to serve on such boards.

Sensing an opportunity to obstruct this effort to obtain partisan balance—which does not in any way limit or otherwise prejudice the Democrat Party's ability to preserve its own representation on election boards—and advance their partisan messaging strategy, the Proposed Intervenors open their Motion with an extended disquisition against the Plaintiffs' claims. But vehement political or legal adversity is not a viable premise of intervention. Rather, a right to intervene necessitates not only a concrete legal interest that would be directly and tangibly impaired by a judicial disposition, but also the absence of effective representation by existing parties. On this score, the Proposed Intervenors offer little. The purported "interests" they posit either (1) are not cognizable legal "interests" at all, (2) could never be causally impaired by the outcome of these proceedings, or (3) are protected by or subsumed into the named parties' claims and defenses.

The clumsy attempt by the officious Proposed Intervenors to insert themselves into the process only serves to underscore the importance of the Equal Access Statutes. That is, the Proposed Intervenors reveal themselves to be far too hot to preserve their illegal partisan advantage in the ranks of the election workers.

Finally, because the Proposed Intervenors' gambit to insert themselves into this extremely time-sensitive proceeding would—by its very design—hamper an efficient and expeditious resolution, the Court should deny their alternative request for permissive intervention.

ARGUMENT

I. The Proposed Intervenors Cannot Intervene as of Right Because the "Interests" They Assert Either Are Not Implicated by This Litigation or Are Adequately Represented

A. The Proposed Intervenors Have No Legal "Interest" That These Proceedings Could Possibly Impair

A person may intervene as of right if—and only if—it "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest . . .." Ariz. R. Civ. P. 24(a)(2).[1] Further, even the existence of a *bona fide* "interest" cannot by itself sustain intervention; "[f]or the purposes of intervention of right, an applicant must show it has such an interest in the case that the judgment would have a *direct* legal effect upon its rights. A mere possible or contingent equitable effect is insufficient." *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 15 (App. 2014) (emphasis in original; internal citation omitted). In other words, "[a] bare allegation that one's interest may become impaired does not, without more, create a right to intervene." *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 447 (App. 1989); *see also Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (emphasizing that an intervenor must demonstrate that "the resolution of the plaintiff's claims actually will affect the applicant").[2]

The Proposed Intervenors float three ostensible rationales for intervention as of right. Each of these, however, either is not an articulable "interest" within the meaning of Rule 24(a) or intrinsically eludes any plausible impairment through these proceedings.

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[1] Although Rule 24(a)(1) also contemplates intervention pursuant to a statutorily secured right, the Proposed Intervenors appear to concede that no such statutory intervention is available to them here.

[2] Because "Federal Rule of Civil Procedure 24 is substantively indistinguishable from Arizona Rule 24, and we may look for guidance to federal courts' interpretations of their rules." *Heritage Vill. II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

1. A Desire for a "Well-Run Election" Is Not a Valid Legal "Interest"

The Proposed Intervenors assert "on behalf of their members and candidates" a "strong interest in a well-run, adequately staffed election in Maricopa County." Motion at 6. This argument is afflicted with two interrelated defects. It evinces nothing more than a diffuse and inchoate objective common to effectively all 2.5 million voters of Maricopa County, and such "[a] generalized public policy interest shared by a substantial portion of the population does not confer a right to intervene." *Bates v. Jones*, 904 F. Supp. 1080, 1086 (N.D. Cal. 1995); *cf. Planned Parenthood Arizona, inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 280, ¶ 64 (App. 2011) (rejecting notion that individual legislators "have a protectable interest in upholding or challenging the constitutionality of legislation"). That a stated concern—such as the proper administration of elections—may be substantive and sincere does not make it an articulable "interest" buttressing intervention. *See League of Women Voters of Va. v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460, 465–66 (W.D. Va. 2020) (denying voters' motion to intervene in litigation relating to the suspension of signature witnessing requirements for absentee ballots, explaining that while the proposed intervenors undoubtedly have a "personal" right to vote, "that does not make their purported interested in this case particularized as to them such that they may intervene as defendants in this action under Rule 24"); *Am. Ass'n of People With Disabilities v. Herrera*, 257 F.R.D. 236, 251–52 (D.N.M. 2008) (holding that proposed intervenor's "passionate interest in preventing voter fraud" was not a "protectable interest under rule 24(a)"); *One Wisconsin Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397 (W.D. Wis. 2015) (legislative candidates who sought to intervene in defense of voter ID law did not have protectable interest, reasoning that "neither the interest in being elected through fraud-free elections, nor the interest in casting a vote that will not be cancelled by a fraudulent ballot, is unique to the legislators or to the voters . . . Abstract agreement with the position of one side or another is not the type of 'direct, significant, and legally protectable' interest that gives rise to a right to intervene.").

In addition, to the extent "a well-run, adequately staffed election in Maricopa County" is a cognizable "interest" at all, it is precisely the aspiration that the existing parties wish to advance. *See infra* Section I.B.

2. Plaintiffs' Requested Relief Would Not Impair or Impede the Proposed Intervenors' Representation on Election Boards

The Proposed Intervenors next contend that the Plaintiffs' legal theories would, if adopted by the Court, "harm Proposed Intervenors by either reducing the number of their members and appointees who may serve on Maricopa County's election boards or by requiring them to expend resources to identify and designate additional members to serve on those boards." Motion at 7–8. This argument is worth disassembling because it illuminates the admixture of factual falsity and conceptual incoherence that underlies the Motion. To the extent the Proposed Intervenors are asserting a right of the Democrat Party to equal representation on election boards, this lawsuit not only does not "impair" or "impede" that interest—it advances it. The gravamen of the Plaintiffs' cause of action is that the controlling statutes and EPM explicitly mandate equal representation for both major parties on polling place election boards and central counting boards and allow each party to designate trusted nominees to represent their interests on, and provide independent oversight to, such boards. The Plaintiffs do not seek—and have no intention of seeking—any judicial order that would prevent, restrict or otherwise hinder the hiring of Democrat poll workers or election board members. To the contrary, the prayer for relief demands a relaxation of unreasonable and arbitrary bureaucratic strictures to enable a broader cross-section of interested and eligible citizens to serve as election workers. To the extent such a tempering of hiring requirements will expand access to prospective Democrat election board members, the Proposed Intervenors will benefit as well. At worst, the Plaintiffs' requested remedies will have no effect on the Proposed Intervenors because the individuals whom the Proposed Intervenors have recruited or nominated for board positions would remain fully eligible to serve. *Cf. Libertarian Party of Illinois v. Pritzker*, No. 1:20-cv-02112, 2020 WL 6600960, at *3 (N.D. Ill. Sept. 10, 2020) (proposed intervenor, a major

party candidate, had no endangered legal interest in connection with litigation seeking relaxation of petition signature requirements for minor party and independent candidates because the requested relief would not "impose any additional burden or impairment" on the proposed intervenor); *see also Planned Parenthood*, 227 Ariz. at 280, ¶ 62 (finding that proposed intervenor "failed to identify an interest it has that is affected by this litigation" because the requested injunction would have no practical impact on the proposed intervenor's stated interests).

The Proposed Intervenors retort that "if Plaintiffs succeed in obtaining a court order for shorter hours or more limited responsibilities for election workers, then Defendants would seemingly need to recruit numerous additional poll workers from both parties in order to get the necessary work done." Motion at 8. This argument borders on incomprehensibility. Plaintiffs' claims on their face seek only to ease—not restrict—hiring prerequisites and working conditions. For example, assume that, as a result of this litigation, the Defendants reduce shifts for some election board positions from twelve hours to six hours. To the extent the Proposed Intervenors have recruited a sufficient number of Democrat poll workers willing to work a full 12-hour day, those individuals would remain entirely free to do so; they simply might be serving alongside a rotation of Republican counterparts. Similarly, the Plaintiffs have not asked for—and do not want—the creation of new or additional election boards not contemplated by the governing statutes or the EPM. The notion that the Proposed Intervenors would ever have to "recruit numerous additional poll workers," Motion at 8, from their own ranks as a result of this lawsuit is simply untethered from the facts and common sense.[3]

[3] Plaintiffs also suggest that "if fewer Republican than Democratic appointees are available to serve as county inspectors or judges, the additional Democratic appointees must not be allowed to serve in those roles." Motion at 8. But there is no judicially legal interest in serving on a malapportioned election board; any board containing unequal numbers of Democrats and Republicans would be defectively constituted. *See* A.R.S. §§ 16-531(A), -549(A), -551(A).

In sum, the Plaintiffs' requested relief demands nothing of the Proposed Intervenors and would neither disqualify any election board members recruited by the Proposed Intervenors nor restrict their ability to serve. The remedies sought would only enhance the scheduling and logistical options available to election workers and expand the pool of interested citizens able to offer their services.

3. The Plaintiffs' Requested Relief Would Not Restrict Voting Opportunities

Finally, the Proposed Intervenors conjure a specter of "reduce[d] voting days or hours or . . . other actions that make it harder for Proposed Intervenors' supporters to vote." Motion at 8. But here again, the Proposed Intervenors' argument is an exercise in strawman building. Polling hours are prescribed by statute. *See* A.R.S. § 16-565. Plaintiffs have not asked for any judicially imposed alteration of temporal voting windows or polling locations, and the remedies they seek would neither compel nor permit the Defendants to do so on their own accord. With the exception of election boards (which staff polling locations on Election Day, *see id.* §§ 16-541, -534, -535) and special election boards (which are dispatched to disabled or institutionalized voters, *see id.* § 16-549)—all the boards implicated by the Plaintiffs' claims perform their duties at the central counting center, and their responsibilities pertain to the processing and tabulation of ballots that already have been cast. *See id.* § 16-551; EPM at 196-212. Any changes to the qualifications for or composition of these boards would not—and could not—ever affect voting hours, locations or accessibility.

B. The Defendants Amply Represent Any Interest in Proper Election Administration

To recap, none of the Proposed Intervenors' three ostensible "interests" can support intervention. Their professed concerns with (a) avoiding the burden of recruiting additional Democrat poll workers and (b) preserving existing voting hours and locations are entirely disconnected from the claims the Plaintiffs actually have asserted and the relief the Plaintiffs actually seek. Neither contingency is even a plausible (let alone probable)

byproduct of these proceedings. The third professed "interest" is the imperative of "a well-run, adequately staffed election in Maricopa County." Motion at 6. Assuming *arguendo* that this objective can be a valid "interest" for intervention purposes, the named parties fully and capably represent it.

"When an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises." *Arakaki*, 324 F.3d at 1086. In the same vein, "[i]n the absence of a very compelling showing to the contrary, it will be presumed that a state adequately represents its citizens when the applicant shares the same interest." *Id.*; *see also Prete v. Bradbury*, 438 F.3d 949, 957 (9th Cir. 2006) (finding congruity of interest where the government defendant and the proposed intervenor both were aiming to "uphold[] the validity" of a challenged law). The Proposed Intervenors note correctly that the named Defendants do not share their "competitive interest in fielding candidates or mobilizing voters," Motion at 9, but proffer no explanation whatsoever of how or why this distinction translates into an actual divergence with any of the named Defendants' legal arguments or substantive litigation decisions. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1307 (9th Cir. 1997) ("purely speculative" suppositions about potential inadequate representation were insufficient). That the Proposed Intervenors may be propelled by their own independent and singular motivations and perspectives does not—without more—render them inadequately represented by the Defendants. *See Planned Parenthood*, 227 Ariz. at 280, ¶ 60 (concluding that Attorney General's defense of challenged statute adequately represented the interests of private religious organization that had lobbied for its passage).

II. The Court Should Not Allow Permissive Intervention

The Proposed Intervenors' permissive intervention would encumber these proceedings with additional—and gratuitous—issues and obstruct the Court's provision of expedited relief.

The timeliness of the Motion and the existence of some common legal or factual question are only threshold inquiries, not an entitlement to intervene. Rather, permissive

intervention pivots ultimately on the Court's discretionary appraisal of contextual factors, to include "[1] the nature and extent of the intervenors' interest, [2] their standing to raise relevant legal issues, [3] the legal position they seek to advance, and its probable relation to the merits of the case. . . [4] whether the intervenors' interests are adequately represented by other parties, [5] whether intervention will prolong or unduly delay the litigation, and [6] whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Bechtel v. Rose In & For Maricopa County*, 150 Ariz. 68, 72 (1986); *see also Dowling v. Stapley*, 221 Ariz. 251, 272, ¶ 68 (App. 2009).

The first four variables overlap heavily with the criteria governing intervention as of right, and so Plaintiffs will not belabor them here. As discussed above, the Proposed Intervenors have not delineated any interest (let alone an injury sufficient for standing) that is even facially implicated—and certainly not an interest that is actually threatened—by this litigation. The fears they contrive (namely, that they will be forced to recruit additional poll workers and that citizens' voting opportunities somehow will be curtailed) are premised on claims the Plaintiffs have never brought and would be actualized only by judicial remedies that the Plaintiffs have never sought. Further, whatever generalized interest the Proposed Intervenors may possess in statutorily compliant election administration is competently and vigorously shared by the named parties.

The Proposed Intervenors fare no better with respect to the remaining two *Bechtel* factors. Their proposed Answer enumerates no fewer than five affirmative defenses—*i.e.*, standing, laches, unclean hands, estoppel, and waiver—any or all of which would substantially expand the scope of the proceedings and impede this Court's resolution of the merits. Given the imminence of the impending general election, these machinations do not merely inconvenience the parties—they fundamentally threaten the Plaintiffs' right to obtain a full and timely judicial disposition of substantial legal questions of enduring public importance. *See Dowling*, 221 Ariz. at 273, ¶ 73 (denying permissive intervention that would prolong litigation, finding that it would have "only unduly delayed or prejudiced the

adjudication of the [named parties'] rights"); *Matter of Appeal in Maricopa Cnty. Juvenile Action No. JS-7135*, 155 Ariz. 472, 476 (App. 1987) (intervention should be denied when there is a "significant likelihood that undue delay and complication will result").

Similarly, nothing in the Motion permits an inference that the Proposed Intervenors will "significantly contribute to full development of" the issues in the case. *Bechtel*, 150 Ariz. at 72. To the extent factual questions concerning the mechanics of election administration prove relevant, the named Defendants can address them far more adeptly than can the Proposed Intervenors. *See Prete*, 438 F.3d at 958 (expressing skepticism of proposed intervenors' professed claims of specialized knowledge of petitioning process, noting that there was no indication that the Secretary of State "lacks comparable expertise"). Similarly, the Proposed Intervenors have not proffered any substantive contributions to the analysis of the Plaintiffs' legal claims beyond extraneous and dilatory affirmative defenses. The balance of the *Bechtel* factors accordingly weighs decisively against permissive intervention.

CONCLUSION

The relief Plaintiffs seek would expand the Democrat Party's options, as well as those of its volunteers, not force them to do anything that they do not wish to do. For the foregoing reasons, the Court should deny the Motion to Intervene in its entirety.

DATED this 20th day of October, 2022.

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By: */s/ Timothy A. La Sota*

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I hereby certify that on October 20, 2022, I caused the foregoing document to be filed with the Maricopa County Superior Court Clerk via the Turbo Court E-file system.

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