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

ARIZONA REPUBLICAN PARTY, et al.,
Plaintiffs,
v.
KATIE HOBBS, et al.,
Defendants.

No. S-8015-CV-202200594

MOTION TO INTERVENE

(Assigned to the Honorable Lee F.
Jantzen)

INTRODUCTION

Plaintiffs’ tortured reading of the Arizona Constitution has no merit and the relief sought would be disastrous for Arizona voters and the administration of Arizona elections. Plaintiffs claim that the Arizona Constitution contains an unspoken requirement that *all* votes must be cast in person, on the day of an election. Based on their ill-founded theory, Plaintiffs ask this Court to issue an extraordinary and entirely unprecedented order striking down, in its entirety, Arizona’s decades-old system of early voting—whether voters cast their ballots in person or by mail. Compl. at ¶ 22. What’s more, Plaintiffs seek preliminary injunctive relief to force this drastic change—which Arizona’s present election system is not remotely equipped to manage—nearly six months into a major election year. *See* Mot. for Preliminary Injunction. There is no basis that would justify issuing any of the relief that Plaintiffs seek. In reality, what Plaintiffs are asking this Court to do is substitute Plaintiffs’ policy judgment for that of the Legislature, in the process upending a critical mechanism for democratic participation that was duly established by the elected branches. But as Plaintiffs themselves acknowledge, policy concerns are better addressed “in the context of a public debate over a constitutional amendment.” Compl. at. ¶ 193.

Over 30 years ago, Arizona allowed all its voters to choose to exercise their voting rights using early voting, creating the modern early vote system. Since then, millions of Arizonans—including Plaintiff Kelli Ward—have participated in elections using some form of early ballot.¹ And, over time, it has become, by far, the most popular way to vote in Arizona. In the 2020 general election, nearly 90% of ballots cast were early votes. Compl. at ¶ 167. We are currently less than six months away from the next general election and about two months away from the August primary election. Approximately 75% of the state’s active registered voters are on the “Active Early Voting List” (“AEVL”), which means they are expecting to be automatically sent a ballot-by-mail in advance of the election. For registered voters who have not signed up for the AEVL, the Secretary of State

¹ *See* Secretary’s Response to Petition for Special Action at 12, *Arizona Republican Party v. Hobbs*, No. CV-22-0048-SA (Ariz. Mar. 11, 2022).

1 began accepting one-time ballot-by-mail requests on May 1, 2022.² Those voters, too, will
2 be relying on Arizona’s long standing early voting system to participate in the election.

3 As Arizona’s voters have become increasingly (and overwhelmingly) reliant upon
4 early voting to exercise their right to vote, the state’s election infrastructure has—not
5 surprisingly—changed dramatically in kind, such that it now relies heavily upon millions
6 of the State’s voters using early and mail voting for the election system to function. And,
7 during the same period, the number of voters in Arizona has dramatically increased: the
8 state is now home to over four million registered voters. Arizona’s election infrastructure
9 is simply not capable of serving all the state’s voters for in-person voting on a single day.
10 Granting the relief that Plaintiffs request would be nothing short of catastrophic.

11 Among those severely and irreparably harmed would be hundreds of thousands of
12 members and constituents of Proposed Intervenor-Defendants the Arizona Democratic
13 Party (“ADP”), the DSCC and DCCC—which are the national Democratic Party
14 committees dedicated to electing Democrats to the United States House and Senate—and
15 the Democratic National Committee (“DNC”) (together “Proposed Intervenor”), as well
16 as Proposed Intervenor themselves. Proposed Intervenor meet the requirements for both
17 intervention as of right and permissive intervention under Rule 24 of the Arizona Rules of
18 Civil Procedure. There can be little doubt that they have a substantial and legally protectable
19 interest in this matter. Proposed Intervenor seek intervention to protect the rights of their
20 voters and constituents, as well as to protect the rights of their candidates and their own
21 rights as political committees. Should any of the relief that Plaintiffs request be granted, it
22 would mandate a sea change in how elections function in Arizona, requiring Proposed
23 Intervenor to divert enormous resources to educating voters and assisting them in
24 overcoming substantial burdens to successful participation in the franchise.

25 In this way, Proposed Intervenor’s perspective differs markedly from that of the
26 existing parties, such that the existing parties do not and cannot adequately represent

27
28 ² See Voter Registration Statistics – Jan. 2020, Ariz. Sec. of State, available at:
<https://azsos.gov/elections/voter-registration-historical-election-data>.

1 Proposed Intervenors in this litigation. The Plaintiffs, of course, are Proposed Intervenors’
2 political counterpart, the Arizona Republican Party, and its Chairwoman. And, if Plaintiffs
3 are successful, voters who tend to associate more strongly with Proposed Intervenors,
4 including Black, Hispanic, Native American, and young voters, are among those
5 constituencies who are far more likely to have their voting rights severely impeded, and in
6 some cases, effectively denied. This is particularly true of Native American voters living
7 on reservations whose circumstances often require access to early and mail voting to
8 participate in Arizona’s elections. Young voters who are away from home attending school,
9 or truly any voter temporarily absent from their home on election day, would be left with
10 no accessible means of voting, should Plaintiffs be successful in their challenge.

11 The Court should not permit Plaintiffs to attempt through this litigation to broadly
12 restrict voting rights, threatening grave injury to Proposed Intervenors and their voters and
13 constituents, without allowing Proposed Intervenors to defend those rights. The State and
14 County Defendants presumably share the Proposed Intervenors’ goal of defending
15 Arizona’s current system of election administration. But, as many courts have recognized,
16 government officials represent their jurisdiction as a whole and have different interests than
17 political parties. Among other things, the State and County Defendants do not involve
18 themselves in substantial get-out-the-vote efforts; they do not support individual candidates
19 or constituencies; and they do not have a stake in the ultimate outcomes of the elections that
20 will be conducted under Plaintiffs’ proposed new rules.

21 For each of these reasons, discussed further below, Proposed Intervenors should be
22 granted intervention as of right, or, in the alternative, permissive intervention.

23 **ARGUMENT**

24 Under Rule 24, a party is entitled to intervene when, on timely motion, a party
25 “claims an interest relating to the subject of the action, and ... disposing of the action in the
26 person’s absence may as a practical matter impair or impede the person’s ability to protect
27 that interest, unless existing parties adequately represent that interest.” Ariz. R. Civ. P.
28 24(a). Alternatively, intervention may be permitted where the motion is timely and a party

1 “has a claim or defense that shares with the main action a common question of law or fact.”
2 Ariz. R. Civ. P. 24(b)(1). Rule 24 is a remedial rule that “should be construed liberally in
3 order to assist parties seeking to obtain justice in protecting their rights.” *Dowling v. Stapley*,
4 221 Ariz. 251, 270 ¶ 58 (App. 2009). Proposed Intervenor satisfy both standards and their
5 motion to intervene should be granted. Consistent with Rule 24, Proposed Intervenor have
6 attached a proposed answer as their “pleading in intervention.”³ Ariz. R. Civ. P. 24(c).

7 **I. Proposed Intervenor are entitled to intervene as of right.**

8 Proposed Intervenor are entitled to intervene as of right under Rule 24(a). The Court
9 must allow intervention where four elements are satisfied: “(1) the motion must be timely;
10 (2) the applicant must assert an interest relating to the property or transaction which is the
11 subject of the action; (3) the applicant must show that disposition of the action may impair
12 or impede its ability to protect its interest; and (4) the applicant must show that the other
13 parties would not adequately represent its interests.” *Woodbridge Structured Funding, LLC*
14 *v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13 (App. 2014). Proposed Intervenor meet each of these
15 requirements.

16 **A. The motion to intervene is timely.**

17 Proposed Intervenor timely filed this motion to intervene. Plaintiffs filed this suit
18 on Tuesday, May 17, 2022. Proposed Intervenor file this motion to intervene along with
19 their proposed Answer on May 26, 2022—only nine days later. This motion comes a full
20 week before the Court’s scheduled hearing on June 3, 2022; indeed, it comes before *any*
21 responsive pleadings have been filed.

22 Timeliness under Rule 24 is “flexible” and the most important consideration “is
23 whether the delay in moving for intervention will prejudice the existing parties to the case.”
24 *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Here, granting the motion
25 would not require altering any existing deadlines. Consistent with the deadline under the
26

27 ³ While Rule 24 requires a “pleading,” Rule 12 requires that certain defenses be
28 asserted by motion prior to a responsive pleading. Ariz. R. Civ. P. 12(b). Accordingly, if
granted intervention, Proposed Intervenor intend to file a motion to dismiss prior to filing
their proposed Answer.

1 Arizona Rules, Proposed Intervenor intend to file a response in opposition to the Plaintiff's
2 Motion for Preliminary Injunction on June 1, 2022—well in advance of the June 6 deadline.
3 Under these circumstances, Proposed Intervenor's motion is unquestionably timely.

4 **B. The disposition of this case will impair Proposed Intervenor's and their**
5 **members' and constituents' abilities to protect their interests.**

6 Proposed Intervenor, their members, and their voters have important interests in
7 preserving a predictable, fair, and equitable electoral environment. Plaintiff's claims
8 concern how ballots will be cast and counted in all future elections in Arizona, threatening
9 the fundamental right to vote for Proposed Intervenor's members and constituents. *See State*
10 *v. Key*, 128 Ariz. 419, 421 (App. 1981). Further, the disposition of this matter will impact
11 Proposed Intervenor's efforts to facilitate voting, engage Arizona voters, and support their
12 candidates as they run for office to represent the people of Arizona. In short, this case
13 threatens the predictability, equity, and ease of access to the ballot for Proposed Intervenor's
14 members and constituents, as well as the electoral prospects of their candidates, and their
15 core First Amendment voter engagement and associational efforts in Arizona. Further, if
16 Plaintiff's requested relief were granted, Proposed Intervenor would be forced to expend
17 substantial additional resources to ensure that their affiliated voters are able to cast their
18 ballots through the limited avenues that would remain available to them. Those resources
19 would accordingly no longer be available to Proposed Intervenor to further their mission
20 in other critical ways, including through voter persuasion efforts. These interests are readily
21 sufficient to merit intervention. *See, e.g., Maricopa Cty. Republican Party v. Reagan*, No.
22 CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention to political
23 parties and other interested political actors in election dispute); *Mi Familia Vota v. Hobbs*,
24 No. 20-cv-01903, ECF No. 5 (D. Ariz. Oct. 5, 2020) (granting intervention to political party
25 in election dispute); *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351,
26 at *4 (E.D. Cal. June 10, 2020) (holding a political party has a "significant protectable
27 interest" in intervening to defend its voters' interests in vote-by-mail and its own resources
28 spent in support of vote-by-mail).

1 Fundamentally, Plaintiffs ask this Court to suddenly and severely restrict access to
2 voting in Arizona, insisting that “Arizona’s post-1991 system of no-excuse mail-in voting
3 is unconstitutional. It must be struck down.” Pet. at 9. In other words, the relief requested
4 by Plaintiffs threatens to eliminate the most popular voting procedures available to Arizona
5 electors, early voting and no-excuse mail-in voting. The impact of this cannot be overstated.
6 Proposed Intervenorors have a direct and substantial interest in preserving Arizona’s existing
7 election laws against this attack.

8 *First*, eliminating these procedures would severely burden voters in countless
9 significant and, in many cases, insurmountable ways. Voters who relied on early voting to
10 cast their ballots will no longer be able to do so; indeed, all of Arizona’s millions of voters
11 would have to cast their ballots in person on election day. This would be impossible for
12 many of Arizona’s voters—especially for those who lack access to reliable transportation,
13 or those with inflexible schedules due to work or care obligations, not to mention any voter
14 who is unavoidably out of town on election day. For those voters who are able to travel to
15 the polls and vote in person on election day, they will encounter an election system that has
16 been built on the presumption that the vast majority of the state’s voters will *not* appear to
17 vote at the polls on election day. As a result, polling locations are not nearly as numerous
18 as they would be in a system that was built for the dramatically different election system
19 that Plaintiffs envision, and election administrators will be ill-equipped to manage the
20 millions of voters who descend upon them to attempt to vote. The result will be punishingly
21 long lines and other fundamental administration failures that will severely burden and
22 disenfranchise countless more lawful voters, including many among Proposed Intervenorors’
23 members and constituents. In Florida, a far more modest cutback on early voting than
24 Plaintiffs seek here proved catastrophic for voters, resulting in devastating long lines at the
25 polls.⁴ In the general election conducted the following year, Florida had the nation’s longest
26 wait times on Election Day, with some voters waiting four hours or more to cast a ballot.

27
28 ⁴ See Michael C. Herron & Daniel A. Smith, *Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355*, 11 Election L.J. 331, 332 (2012).

1 Experts concluded that many voters were unable to sustain such long wait times and were
2 disenfranchised as a result.⁵

3 In Arizona, where the vast majority of the electorate relies on some form of early
4 voting, the complete and sudden elimination of those procedures would be even worse.
5 Given Arizona's unique topography and population distribution, some voters would be
6 entirely unable to access the ballot. Others would be forced to travel hours only to stand in
7 line for many more hours to attempt to vote. And because Plaintiffs' logic would require
8 the elimination of early voting entirely, voters who are unable to physically appear at the
9 polls for any reason would be entirely disenfranchised. Federal courts have repeatedly held
10 that, where an action carries with it the prospect of disenfranchising a political party's
11 members, the party has a cognizable interest at stake and may intervene to protect that
12 interest. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008);
13 *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6th Cir. 2004)
14 (holding the risk that some voters will be disenfranchised confers standing upon political
15 parties and labor organizations). Proposed Intervenor more than clear that bar.

16 *Second*, as political party committees, Proposed Intervenor has a direct interest in
17 their candidates' electoral prospects in Arizona. Because the elimination of early vote
18 procedures would make it harder for Proposed Intervenor's members and constituents to
19 successfully vote in Arizona's elections, the disposition of this matter threatens their
20 electoral prospects, which provides an independent basis for intervention. In the related
21 context of standing, federal courts have long held that political parties have standing to
22 challenge changes to election laws "to prevent their opponent[s] from gaining an unfair
23 advantage in the election process." *Owen v. Mulligan*, 640 F.2d 1130, 1133 (9th Cir. 1981);
24 *see also Townley v. Miller*, 722 F.3d 1128, 1135-36 (9th Cir. 2013); *Drake v. Obama*, 664
25 F.3d 774, 783 (9th Cir. 2011); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905,
26 97 (8th Cir. 2020); *Democratic Party v. Benkiser*, 459 F.3d 582, 586-87 (5th Cir. 2006).

27 ⁵ See U.S. Gov't Accountability Office, *Observations on Wait Times for Voters on*
28 *Election Day 2012* (Sept. 2014) at 24, available at <https://www.gao.gov/assets/gao-14-850.pdf>.

1 The Ninth Circuit recently re-affirmed this principle, finding that, “being forced to compete
2 under the weight of a state-imposed disadvantage” is sufficient to confer standing on
3 political party entities. *Mecinas v. Hobbs*, 30 F.4th 890, 899 (9th Cir. 2022) (holding it was
4 “error” for the district court to “decline[] to find competitive standing”).

5 *Finally*, eliminating early vote procedures would force Proposed Intervenors to
6 expend substantial additional resources educating and mobilizing their voters, diverting
7 those resources away from other mission-critical efforts. With the 2022 elections fast
8 approaching, Proposed Intervenors would be forced to shift resources to voter outreach and
9 education efforts aimed at ensuring their voters and members are aware of the dramatic
10 departure from decades of prior practice and are prepared to endure long wait times on
11 election day. And Proposed Intervenors’ voter mobilization efforts—typically conducted
12 throughout the early vote period—would be compressed within the critical few days leading
13 up to in-person voting on election day. This would require exponentially more volunteers
14 and substantial and costly changes to the ways in which those programs are currently run,
15 to ensure that as many as possible of Arizona’s millions of voters are able to access the polls
16 in this extremely condensed timeframe. Those resources would no longer be available to
17 the myriad other activities that Proposed Intervenors would ordinarily engage in during an
18 election cycle, and in an election cycle, resources are truly finite, and the injury to Proposed
19 Intervenors and their mission irreparable.

20 **C. Proposed Intervenors are not adequately represented in this case.**

21 The interests of Proposed Intervenors are not adequately represented by the parties
22 participating in this case. Proposed Intervenors’ particular interests in this case—fielding
23 successful candidates in the 2022 Election, efficiently using limited resources in
24 competitive elections, and ensuring that as many of their voters can vote as possible—is
25 also not shared by the Secretary, the State of Arizona, or any of the county officials named
26 as Defendants. Because the State Defendants “must represent the interests of all people in
27 Arizona,” they cannot give Proposed Intervenors or their members’ interests “the kind of
28 primacy” that Proposed Intervenors will. *Planned Parenthood Arizona, Inc. v. Am. Ass’n of*

1 *Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279, 257 P.3d 181, 198 (App. 2011)
2 (permitting adversely affected groups to intervene in defense of a challenged statute).
3 County defendants are similarly entrusted with a general obligation to their respective
4 residents—not a particular competitive interest in fielding candidates or mobilizing voters.

5 Recognizing this, courts have consistently permitted political parties to intervene in
6 cases involving election administration even where government officials are named as
7 defendants—including in Arizona. *See, e.g., Maricopa Cnty. Republican Party*, No.
8 CV2018-013963 (Maricopa Cnty. Super. Ct. Nov. 9, 2018); *Mi Familia Vota*, No. 20-cv-
9 01903, ECF No. 5 (D. Ariz. Oct. 5, 2020); *see also Issa v. Newsom*, No. 2:20-cv-01044-
10 MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (“While [government]
11 Defendants’ arguments turn on their inherent authority as state executives and their
12 responsibility to properly administer election laws, Proposed [political party] Intervenors
13 are concerned with ensuring their party members and the voters they represent have the
14 opportunity to vote in the upcoming federal election, advancing their overall electoral
15 prospects, and allocating their limited resources to inform voters about the election
16 procedures.”).

17 **II. In the alternative, Proposed Intervenors should be granted permissive**
18 **intervention.**

19 Even if the Court were to find that Proposed Intervenors are not entitled to
20 intervention as of right, they should be granted permissive intervention because they have
21 “a claim or defense that shares with the main action a common question of law and fact.”
22 Ariz. R. Civ. P. 24(b)(1). When this standard is met, Arizona courts may consider other
23 factors to decide whether to grant permissive intervention, including: (1) “the nature and
24 extent of the intervenors’ interest,” (2) “their standing to raise relevant legal issues,” (3)
25 “the legal position they seek to advance, and its probable relation to the merits of the case,”
26 (4) “whether the intervenors’ interests are adequately represented by other parties,” (5)
27 “whether intervention will prolong or unduly delay the litigation,” and (6) “whether parties
28 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*, 150 Ariz. 68, 72 (1986). Like Rule 24(a), Rule 24(b) should be liberally construed. *Id.* Here, each factor weighs in favor of permitting Proposed Intervenor’s permissive intervention. *Cf. Ariz. Democratic Party v. Hobbs*, No. 2:20-cv-01143-DLR, ECF No. 60 (D. Ariz. June 26, 2020) (granting permissive intervention to political party entities).

First, Proposed Intervenor has a distinct interest in enabling its members and constituents to continue utilizing the voting procedures to which they are accustomed, and in avoiding the diversion of resources to last-minute efforts to help voters cast their ballots through severely restricted means. As noted above, the changes would be so drastic—and fall so hard on particular Arizona communities within Proposed Intervenor’s constituency—that they would effectively nullify the rights of some voters entirely. *Second*, Proposed Intervenor opposes the issue at the very heart of this case: contrary to Plaintiffs’ claims, the voting procedures upon which Arizona voters have come to rely are entirely permissible under the Arizona Constitution and Arizona law. *Third*, Proposed Intervenor’s interests are distinct from those of other parties, as they represent both their organizational interests and the interests of individual voters who rely on early voting and have interests distinct from those of the state. *Fourth*, Proposed Intervenor seeks intervention promptly, along with its concurrently filed proposed Answer, and thus its intervention will not delay the proceedings. *Lastly*, Proposed Intervenor will contribute to the full factual development of this case because it can present evidence regarding the impact on voters, candidates, and organizational efforts to encourage Arizonans to vote.

Because Rule 24 is liberally construed to protect the rights of all interested parties, the Court should permit intervention in this case.

CONCLUSION

For these reasons, the Arizona Democratic Party, DSCC, DCCC, and DNC request that the Court grant their Motion to Intervene and participate in these proceedings as Defendants.

1 Dated: May 26, 2022

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**Pro hac vice application to be filed*

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2022, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Mohave County, for filing using the AZTurboCourt System. I further certify that a copy of the foregoing was sent via email this same date to:

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