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ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

LAURIE AGUILERA, et al..

Plaintiff,

vs.

ADRIAN FONTES, et al..

Defendants.

Case No. CV2020-014562

**ARIZONA DEMOCRATIC PARTY'S
MOTION TO INTERVENE**

Expedited Election Matter

Hon. _____

Although Plaintiffs' Verified Complaint is difficult to parse, it appears to ask for two things: (1) that anyone should, for any reason, be allowed to be physically present when ballots are being tabulated, and (2) for Plaintiff Laurie Aguilera to be able to vote twice. The Arizona Democratic Party ("ADP") seeks to intervene as a defendant in this matter so that it may prevent this intrusion on the vote tabulation process and the orderly administration of elections in Maricopa County. ADP has been granted intervention twice in election-related lawsuits within the last few weeks alone. This very Court granted the

1 ADP’s request for intervention in *Aguilera v. Fontes*, No. CV2020-014083 (Maricopa Cty.
2 Super. Ct. Nov. 5, 2020), as did the Honorable Daniel Kiley in *Donald J. Trump for*
3 *President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cty. Ct. Nov. 9, 2020). The
4 same result should follow here.

5 ADP meets the applicable requirements for intervention under Rule 24 of the
6 Arizona Rules of Civil Procedure. ADP is dedicated to protecting Democratic candidates
7 and voters across Arizona and has a keen interest in the outcome of this litigation. Any
8 interference with the processing and tabulation of ballots in the state’s most populous
9 county could impact races in which Democratic candidates have competed. Further, the
10 current Defendants do not adequately represent ADP’s interests in this litigation; ADP’s
11 interests may diverge from the interests of the government defendants who are
12 representatives of the Counties’ interests in election administration rather than active
13 participants in the election contests on the ballot. ADP should be permitted to intervene as
14 of right, or, in the alternative should be granted permissive intervention. As required by
15 Arizona Rule of Civil Procedure 24(c), this Motion is accompanied by a Proposed Answer,
16 which is attached hereto as Exhibit 1, and a proposed form of order, filed concurrently
17 with this motion.

18 Counsel for ADP contacted counsel regarding this motion and was advised that the
19 Plaintiffs object to ADP’s intervention. Counsel for the County Defendants advise that the
20 County takes no position.

21 ARGUMENT

22 A. ADP is entitled to intervene as of right under Rule 24(a).

23 ADP is entitled to intervene as of right in this case. The Court must allow
24 intervention in any case where a party “claims an interest relating to the subject of the
25 action” and “disposing of the action in the person’s absence may as a practical matter
26 impair or impede the person’s ability to protect that interest, unless existing parties
27 adequately represent that interest.” Ariz. R. Civ. P. 24(a)(2). Rule 24 is a remedial rule
28 that “should be construed liberally in order to assist parties seeking to obtain justice in

1 protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶58 (App. 2009). Four
2 elements are necessary for a successful motion to intervene under Rule 24(a): “(1) the
3 motion must be timely; (2) the applicant must assert an interest relating to the property or
4 transaction which is the subject of the action; (3) the applicant must show that disposition
5 of the action may impair or impede its ability to protect its interest; and (4) the applicant
6 must show that the other parties would not adequately represent its interests.” *Woodbridge*
7 *Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶13 (App. 2014).

8 Here, all four requirements demonstrate ADP’s entitlement to intervene. *First*, the
9 motion is timely. Plaintiffs filed their Complaint just two days ago, and ADP files this
10 motion before the Court has heard argument or made any substantive rulings. Timeliness
11 under Rule 24 is “flexible” and the most important consideration “is whether the delay in
12 moving for intervention will prejudice the existing parties to the case.” *Weaver v. Synthes,*
13 *Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Given that all issues remain live before the
14 Court, no party will be prejudiced by ADP’s intervention, and the Court should therefore
15 consider the motion timely.

16 *Second* and *third*, ADP clearly has important rights at stake that would be impaired
17 if the Court were to grant Plaintiffs’ requested relief. Given that this matter could
18 potentially affect the orderly and timely tabulation of ballots, it plainly affects the proper
19 counting of votes of ADP’s members and constituents. *See State v. Key*, 128 Ariz. 419, 421
20 (App. 1981) (noting the right to have one’s vote counted as “fundamental”). To ensure a
21 predictable, fair and equitable electoral environment, ADP would have to divert scarce
22 resources and allocate unexpected volunteer hours to observe any additional in-person
23 public observation that was ordered. These interests are readily sufficient to merit
24 intervention.

25 *Fourth*, ADP’s interests would not be adequately represented by the Defendants
26 named in this lawsuit. ADP’s particular interest in this case is not shared by the County
27 Defendants, whose stake in this lawsuit is defined solely by their statutory duties to
28 conduct elections. ADP’s interest is in electing Democratic candidates and ensuring that

1 their affiliated voters have their votes counted in a timely, orderly manner in accordance
2 with state and federal law. Because these interests are meaningfully different than those of
3 election administrators, political actors are routinely granted intervention in actions where
4 election officials are named as defendants. *See, e.g., Donald J. Trump for President, Inc. v.*
5 *Hobbs*, No. CV2020-014248 (Maricopa Cty. Ct. Nov. 9, 2020) (ADP granted intervention
6 in election dispute); *Aguilera v. Fontes*, No. CV2020-014083 (Maricopa Cty. Super. Ct.
7 Nov. 5, 2020) (same); *Maricopa County Republican Party et al. v. Reagan et al.*, No.
8 CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention to
9 political parties and other interested political actors in election dispute); *Mi Familia Vota v.*
10 *Hobbs*, No. 20-cv-01093 (D. Ariz. Oct. 2, 2020) (granting intervention to political party in
11 election dispute); *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL
12 3074351, at *4 (E.D. Cal. June 10, 2020) (“While [government] Defendants’ arguments
13 turn on their inherent authority as state executives and their responsibility to properly
14 administer election laws, Proposed [political party] Intervenors are concerned with
15 ensuring their party members and the voters they represent have the opportunity to vote in
16 the upcoming federal election, advancing their overall electoral prospects, and allocating
17 their limited resources to inform voters about the election procedures.”).

18 **B. In the alternative, ADP should be granted permissive intervention.**

19 In the alternative, ADP should be permitted to intervene as a party who “has a claim
20 or defense that shares with the main action a common question of law and fact.” Ariz. R.
21 Civ. P. 24(b)(1). When this standard is met, Arizona courts may consider other factors to
22 guide their decision as to whether to grant permissive intervention, including: (1) “the
23 nature and extent of the intervenors’ interest,” (2) “their standing to raise relevant legal
24 issues,” (3) “the legal position they seek to advance, and its probable relation to the merits
25 of the case,” (4) “whether the intervenors’ interests are adequately represented by other
26 parties,” (5) “whether intervention will prolong or unduly delay the litigation,” and (6)
27 “whether parties seeking intervention will significantly contribute to full development of
28 the underlying factual issues in the suit and to the just and equitable adjudication of the

1 legal questions presented.” *Bechtel*, 722 P.2d at 240. As with Rule 24(a), Rule 24(b)
2 should be liberally construed. *Dowling*, 221 Ariz. at 272 ¶ 67 (citing *Bechtel v. Rose*, 150
3 Ariz. 68, 72 (1986)). Ultimately, whether a party may intervene under Rule 24(b) is left to
4 the adjudicating court’s discretion. *See id.* at ¶ 16 (concluding trial court did not abuse its
5 discretion in performing Rule 24(b) analysis).

6 Here, each factor weighs in favor of permitting ADP’s permissive intervention. *Cf.*
7 *Ariz. Democratic Party v. Hobbs*, No. 2:20-cv-01143-DLR, ECF No. 60 (D. Ariz. June 26,
8 2020) (granting permissive intervention to political party entities). First, ADP has a distinct
9 interest in the lawful administration of this election without interference from Plaintiffs
10 during the processing of ballots. Second, ADP opposes Plaintiffs’ unprecedented request
11 for Plaintiff Aguilera to “cast a new ballot.” Complaint at 4.30(B). Third, ADP’s interest
12 is distinct from other parties, as only ADP can represent both its organizational interests
13 and the interests of its affiliated candidates, members, and voters, who have an interest in
14 the orderly administration of the tabulation process and in the accuracy of election results.
15 Fourth, ADP seeks intervention promptly, two days after the Complaint was filed, and thus
16 its intervention will not delay the proceedings. Because Rule 24 should be “liberally
17 construed” to protect the rights of all parties, *Dowling*, 221 Ariz. at 272 ¶ 67, the Court
18 should permit intervention in this case.

19 **CONCLUSION**

20 For these reasons, ADP requests that the Court grant its Motion to Intervene.
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1 DATED: November 15, 2020
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4 By: /s Sarah R. Gonski

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**Pro hac vice application to be filed*

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1 ORIGINAL of the foregoing e-filed with
2 AZTurbo Court this 15th day of November, 2020
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