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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Katie Hobbs, et al.,

Defendants.

Case No. 21-CV-01423-DWL

DSCC'S AND DCCC'S MOTION TO INTERVENE

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenors DSCC and DCCC (together, the "Democratic Party Committees") move to intervene as Plaintiffs in the above-captioned case.

The Democratic Party Committees have significant interests in this litigation, in which Mi Familia Vota and other plaintiffs challenge unjustifiable and unduly restrictive voting measures recently enacted by the Arizona Legislature. Those restrictions directly threaten the fundamental right to vote of the Democratic Party Committees' members and constituents, as well as the electoral prospects of their candidates. In addition, DSCC has a unique and significant interest in protecting its thus-far successful efforts to invalidate Arizona's refusal to allow voters whose mail ballots are flagged for rejection due to a missing signature the same opportunity to "cure" that deficiency as voters whose ballots are deficient due to a mismatched signature or who fail to produce an accepted form of identification when they present to vote in person (i.e., "no-ID in-person voters").

Thus, whether reviewed under the standards applicable to intervention as of right or permissive intervention, the Democratic Party Committees' motion to intervene should be granted.

Counsel for DSCC and DCCC has conferred with counsel for Plaintiffs, the Secretary, and the Attorney General regarding their position as to the Democratic Party Committees' Motion to Intervene. Plaintiffs will note their position when they file their response to the Republican Party Committees' intervention on September 30th. The Secretary takes no position. The Attorney General consents.

RELEVANT FACTUAL BACKGROUND

I. Prior Litigation

In 2019, the Arizona Legislature passed a law permitting mail voters whose ballot affidavits were perceived to have a mismatched signature up to five days after the election

to "cure" that issue, prove their identity, and have their ballot counted. A.R.S. § 16-550(A). That five-day post-election cure period was the same that is extended to Arizona voters who vote in person but fail to produce a copy of an acceptable form of voter identification at the time that they vote. A.R.S. § 16-579(A).

In 2019, the Secretary of State sought to issue guidance in Arizona's Election Procedures Manual ("EPM") stating that ballot affidavits with a "missing" signature could be cured during the same period as ballots flagged for rejection due to mismatched signatures and no-ID in-person voters, but the Attorney General vetoed that guidance. *Arizona Democratic Party v. Hobbs* ("*ADP*"), 485 F. Supp. 3d 1073, 1082 (D. Ariz. 2020) (discussing relevant background). As a result, Arizona voters were subject to an inconsistent cure regime.

DSCC and two other plaintiffs, including the Arizona Democratic Party (but not DCCC) challenged that process last cycle in *ADP v. Hobbs*, No. CV-20-1143-DLR (D. Ariz.), arguing that it imposed an undue burden on the right to vote in violation of the First and Fourteenth Amendments, and separately constituted a violation of procedural due process under the Fourteenth Amendment. The matter was assigned to Judge Douglas L. Rayes, who consolidated the preliminary injunction hearing with a trial on the merits, and after careful consideration of the arguments and evidence, issued a permanent injunction requiring the Secretary of State and Arizona county recorders to allow missing-signature voters to cure their ballots on the same timeline as mismatched-signature voters and no-ID in-person voters. *ADP*, 485 F. Supp. 3d at 1081.

The Attorney General, Republican National Committee ("RNC"), and Arizona Republican Party all intervened as defendants in the case, and they appealed Judge Rayes' decision. The matter reached the Ninth Circuit mere weeks before the November election, and a motions panel stayed the injunction in an order that relied heavily on *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006), which discourages federal courts from issuing orders that

alter election laws on the eve of an election. *ADP v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020). The appeal has since been briefed on the merits and, as of the date of this filing, remains pending.

II. 2021 Legislation

This litigation concerns two pieces of suppressive voting legislation that were pushed through the Arizona Legislature by the Republican majority, during the 2021 legislative session, in the face of substantial public opposition.

A. S.B. 1003: The Cure Period Law

First, and despite Judge Rayes' explicit, evidence-based findings that the differential treatment of missing signature voters was "unreasonable," *ADP*, 485 F. Supp. 3d at 1091, Republicans in the Arizona Legislature rushed to codify the same unjustifiably inconsistent cure process into law with the enactment of S.B. 1003, which was signed by the Governor on May 7, 2021. They did so propelled by dangerously disingenuous theories about voter fraud and conspiracy that were weaponized by Republicans nationally and here in Arizona in an unprecedented effort to undermine (and overturn) the legitimate results of the 2020 presidential election. That those theories were repeatedly and thoroughly debunked made no difference to the Legislature, which took extraordinary steps both to keep those lies alive and to pass new restrictions on voting to specifically target access to the state's immensely popular voting by mail system.

B. S.B. 1485: The Voter Purge Law

The second piece of restrictive voting legislation that the Arizona Legislature pushed through over intense public opposition aims directly at Arizona's permanent early voting list ("PEVL"). Arizonans have had the right to vote by mail without an excuse since 1991. *See* A.R.S. § 16-541(A). To facilitate the easy use of this right (which has also eased the burden on elections officials of, e.g., running elections preparing for the possibility that any number of Arizona's over four million voters may appear in person to vote) Arizona

established the PEVL in 2007. *See* A.R.S. § 16-544.

Since the creation of the PEVL, voting by mail has steadily grown in popularity, with around 75 percent of voters now signed up. The Secretary of State's website lauds Arizona's "PROUD HISTORY OF SECURE AND RELIABLE VOTING BY MAIL," stating that "[m]ost Arizonans" now exercise their right to vote using mail voting.[1] And, in recent years, turnout among voters of color in particular has increased, in large part due to the PEVL. Results from the 2020 election demonstrate that voters of color were disproportionately likely to be new mail voters.

Through the enactment of S.B. 1485, the Legislature purported to rebrand the "permanent" early voting list into an "active" early voting list ("AEVL"). Under the new law, election officials are now required to move to purge from the early voting list any voter who has not voted *using* an early ballot in two consecutive prior election cycles. In other words, by the law's clear terms, engaged voters who vote *in person* on election day during the prior two consecutive elections are subject to being purged from the PEVL under the new statute. There is no justifiable reason for imposing this new purge regime. And its context strongly suggests that the real motivation behind it was to effectively shave additional lawful voters off of the early voting rolls, many of whom will discover too late that they will not be receiving a ballot in the mail as anticipated.

Notably, *inactive* voters were *already* subject to removal from the PEVL prior to the enactment of S.B. 1485. The law required—and still does require—that prior to each election, county recorders mail a notice to all voters on the PEVL. The notice must include "the dates of the elections that are the subject of the notice, the dates that the voter's ballot is expected to be mailed and the address where the ballot will be mailed," as well as provide the voter a means to update their address and the opportunity to decline to receive a mail

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[1] *Voting by Mail: How to Get a Ballot-by-Mail*, Ariz. Sec'y of State (last visited Sept. 15, 2021), https://azsos.gov/votebymail.

ballot for the upcoming election. A.R.S. § 16-544(E). If the notice is returned undeliverable, the county recorder must send a follow up notice, and if the voter "does not complete and return a new registration form with current information to the county recorder or make changes to the elector's voter registration information that is maintained online within thirty-five days, the elector's registration status shall be changed from active to inactive." *Id.* §§ 16-544, 16-166(A). If at any point a voter's registration becomes inactive or is cancelled, or if the voter asks to be removed, the voter is removed from the PEVL. *Id.* § 16-544(E)-(H).

* * *

Both S.B. 1003 and S.B. 1485 will operate to and appear to be intentionally crafted for the purpose of making it harder for Arizonans of color to participate in the state's elections. As Judge Rayes found, the differential cure regime that the Attorney General promoted and the Legislature has now enacted into law is flatly unreasonable and does not actually promote any of the state interests that the state has claimed in it. Similarly, there is no indication that the process that has been in place to remove inactive voters from the PEVL was in any way insufficient to ensure the integrity of that list. Nevertheless, after historic levels of minority voting in the 2020 election, including in particular through the use of mail voting, the Legislature swiftly acted, over strong and vocal public opposition, to impose these additional and entirely unnecessary burdens on utilizing what has now become the predominant means by which Arizona voters exercise their right to the franchise.

As the Mi Familia Vota Complaint alleges, Latinx citizens make up 19% of the State's voters, but 33% of would-be removals, and Native American citizens make up .9% of voters, but 1.3% of would-be removals under the new "AEVL" regime. ECF No. 1 at 16-17. These communities, moreover, are far more likely to have difficulties casting a ballot in person, due to ongoing impacts of discrimination that have persisted in Arizona

for decades. The Legislature was fully aware of the likely and anticipated impacts these laws would have on the State's voters of color; indeed, legislators pushed them through in the face of substantial objections that these laws would have a devastating impact on the right to vote in Latinx and Native American communities in particular.

III. This Litigation

Plaintiffs Mi Familia Vota, Arizona Coalition for Change, Living United for Change in Arizona ("LUCHA"), and the League of Conservation Voters ("Chispa Arizona") filed this action on August 16, 2021. They allege that S.B. 1003 and S.B. 1485 are each unconstitutional under the First, Fourteenth, and Fifteenth Amendments to the United States Constitution, and violate the Voting Rights Act of 1965. Specifically, their Complaint alleges that the laws individually and cumulatively impose severe burdens on the right to vote without any state interest to justify the restrictions (Count I). The Complaint further alleges that the laws were each passed with discriminatory purpose, in violation of both the Fourteenth and Fifteenth Amendments (Count II) and Section 2 of the Voting Rights Act of 1965 (Count III).

The RNC and the National Republican Senatorial Committee (the "Proposed Republican Intervenors") have moved to intervene, arguing that the potential invalidation of S.B. 1003 and S.B. 1485 threatens to impede their interests in "Republican voters . . . vot[ing], Republican candidates . . . win[ning], and Republican resources . . . be[ing] spent wisely rather than wasted on diversions." Dkt. No. 28 at 6. That motion remains pending; Plaintiffs' deadline to respond to it is September 30.

The Proposed Republican Intervenors are not explicit in their papers as to exactly how ensuring that all voters with identity-related deficiencies in voting have the same opportunity to prove that they did, in fact, cast their ballots before they are rejected will cause Republican voters to not vote, Republican candidates to lose, or Republican resources to be spent unwisely. Similarly, they avoid stating exactly why they believe that

removal of minority voters in disparate numbers from the early voting list will have the same effect.

But it is not difficult to imagine why they might perceive these laws—and specifically their impact on minority voters—as crucial to furthering their interests in "Republican candidates winning" elections in Arizona: in 2020, nearly 60% of voters of color in Arizona voted for President Joe Biden and Vice-President Kamala Harris, including 61% of Latinx voters and 80% of voters from the Navajo Nation and Hopi Reservation. Latinx voters in particular make up an increasingly powerful part of the state's electorate: a full quarter of the state's registered voters are now believed to be Latinx. And Native American turnout is understood to have been crucial in President Biden's success in Arizona in 2020: for example, approximately about 17,500 more voters turned out from the Navajo and Hopi reservations in 2020 than in 2016, a number substantially larger than President Biden's 10,457 vote margin of victory over Donald Trump.

As noted, Latinx and Native American voters in Arizona historically have supported Democratic candidates by substantial numbers over their Republican opponents. For that reason alone, the Democratic Party Committees have specific interests in this litigation, which seeks to protect those voters' most fundamental right; the right to vote. But even if that were not the case—or if this Court were to determine that those interests were adequately protected by the current Plaintiffs—both the standards applicable to permissive intervention and principles of equity would require that, if the Proposed Republican Intervenors are permitted to intervene to protect their apparent interest in *restricting* the right to vote in Arizona, the Democratic Committees should likewise be permitted to intervene to protect their interest in *safeguarding and promoting* the right to vote.

STANDARD OF LAW

Courts in the Ninth Circuit employ a four-part test when considering a motion for intervention as of right:

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Arizonans for Fair Elections, 335 F.R.D. at 273 (quoting *Wilderness Soc.*, 630 F.3d at 1177). Courts are "required to accept as true the non-conclusory allegations made in support of an intervention motion." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001) (citation and quotation marks omitted).

In the alternative, a court may grant permissive intervention to a party under Rule 24(b), "where the applicant for intervention shows '(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.'" *Arizonans for Fair Elections*, 335 F.R.D. at 276 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002)).

ARGUMENT

I. Intervention as of right is warranted under Rule 24(a)(2).

The Democratic Party Committees satisfy the necessary factors for intervention as of right: they have filed this motion at an exceedingly early stage of this litigation, before any substantive rulings have been issued, they have significant and unique interests at stake in the action, the disposition of the case could impair those interests, and the existing parties to the action do not adequately represent them.

A. The motion is timely.

The Democratic Party Committees' motion for intervention is timely. Three factors

guide the court in considering timeliness in this context: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986).

Here, the original Plaintiffs filed their Complaint only five weeks ago on August 17, 2021. DSCC and DCCC are filing this motion to intervene "before any proceedings ha[ve] taken place." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996), *as amended on denial of reh'g* (May 30, 1996). Furthermore, the Court has not yet decided the Proposed Republican Intervenors' pending motion to intervene, and this motion is filed before the plaintiffs' response to that motion is due. *See* ECF No. 40. Thus, granting the motion for intervention would not prejudice the other parties because it was "filed before the district court ha[s] made any substantive rulings." *Id.*

B. The disposition of this action may impair the Democratic Party Committees' significant interests.

The Democratic Party Committees also satisfy the intertwined second and third prongs of the standard for intervention as of right: (1) they have significant interests at stake, and (2) disposition of this action may, as a practical matter, impair or impede those interests. "[A] prospective intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). "It is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Id.* (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). In assessing whether such an interest is sufficiently "impair[ed] or impede[d]," Fed. R. Civ. P. 24(a)(2), courts "look[] to the 'practical consequences' of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*,

385 F.2d 694, 702 (D.C. Cir. 1967)). The Federal Courts of Appeals, including the Ninth Circuit, have had "little difficulty concluding" that, where an intervenor has a protectible interest in the outcome of litigation, such interest would be impaired by a denial of intervention. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011). The Democratic Party Committees have multiple distinct interests at stake in this litigation that easily satisfy this standard.

First, the Committees have significant interests in advancing the fundamental constitutional rights of their members and constituents, which are threatened by the suppressive voting legislation that this litigation challenges. Courts have repeatedly held that, where an action carries with it the prospect of disenfranchising a political party's members, the party has a cognizable interest at stake—and that it may intervene to protect them. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with unanimous view of Seventh Circuit that Democratic Party had standing to challenge a voter identification law that risked disenfranchising its members); *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (Democratic Party allowed to intervene in case where challenged practice would lead to disenfranchisement of its voters); *Wood v. Raffensperger,* 1:20-cv-04651-SDG, Dkt. No. 52 (N.D. Ga. Nov. 19, 2020) (granting intervention to DSCC, DCCC, and Georgia Democratic Party in action seeking to invalidate election in Georgia). Here, as discussed above, S.B. 1003 and S.B. 1485 impose severe and disparate burdens upon and will disenfranchise the Democratic Party Committees' members and constituencies. Intervention is therefore warranted on this ground.

Second, as political party committees, DSCC and DCCC each have a direct interest in their Party's and candidates' electoral prospects in Arizona—including specifically to the U.S. Senate and U.S. House. Because S.B. 1003 and S.B. 1485 threaten to disenfranchise or make it harder for voters who would support the Democratic Party

Committees' candidates to successfully vote in Arizona's elections, they threaten the Committees' electoral prospects, providing an independent basis for intervention. *See, e.g.*, *Democratic Party v. Benkiser*, 459 F.3d 582, 586-87 (5th Cir. 2006); *see also DCCC v. Ziriax*, 487 F. Supp. 3d 1207, 1226 (N.D. Okla. 2020) (finding Democratic Party organization "has an interest in ensuring that its voters have an opportunity to vote for Democratic Party candidates"). Here, voters from Latinx and Native American communities, both of which have overwhelmingly favored Democratic candidates in the past, are threatened with removal from the early voting list at significantly greater rates. And, as the Complaint recognizes, both laws challenged in this action originated *not* with actual concerns about purported fraud or improprieties in voting, but rather with unhappiness about the success of *Democratic candidates* in the 2020 Election. ECF No. 1, ¶¶ 48-56, 64-67. In short, the Democratic Party Committees should be allowed to intervene as Plaintiffs because the practical consequences of denying intervention would be to impair their significant interest in their electoral prospects in the state.

Third, with respect only to the right-to-vote claim against S.B. 1003, DSCC seeks to intervene given its protectable interest in the litigation pending in *ADP v. Hobbs*.[2] Regardless of how the Ninth Circuit resolves that appeal, questions regarding the impact of that litigation on the claims at issue here, and vice versa, are almost certain to arise. Denying intervention would therefore impair, as a practical matter, DSCC's ability to safeguard its interests stemming from that separate litigation.[3]

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[2] The claims in that case overlap but are not coextensive with the claims presented here. *ADP v. Hobbs* concerns certain constitutional challenges to Arizona's failure to provide a uniform cure period for voters to resolve identification questions. That case does not present any claims of intentional discrimination and does not address the new restrictions targeting the PEVL system.

[3] As noted above, the RNC (which has now moved to intervene in this case), along with the Arizona Republican Party and the Trump Campaign, were allowed to intervene as defendants in *ADP v. Hobbs*. *See* 2020 WL 6559160, at *1. Their attempt to participate in this litigation only underscores the salience of DSCC's interests here. *Cf. Paher v.*

C. The Democratic Party Committees' interests are not adequately represented by the parties.

Finally, DSCC and DCCC satisfy the fourth and final factor for intervention as of right because their unique and significant interests are not adequately represented by the existing parties in this action. Courts consider three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003) (cleaned up). "The 'most important factor' in assessing the adequacy of representation is 'how the interest compares with the interests of existing parties.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). This element "requires a 'minimal' showing and is satisfied if existing parties' representation of its interest 'may be' inadequate." *Arizonans for Fair Elections*, 335 F.R.D. at 275 (quoting *Citizens for Balanced Use*, 647 F.3d at 898). Courts in the Ninth Circuit "follow[] the guidance of Rule 24 advisory committee notes that state that if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Arakaki*, 324 F.3d at 1086; Advisory Comm. Note to Fed. R. Civ. P. 24 (1966 Am.).

This factor, too, favors intervention. DSCC and DCCC are political party organization seeking to intervene as Plaintiffs to safeguard the fundamental rights of their

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Cegavske, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) ("That a group of voters similar to Plaintiffs have apparently moved to intervene in Proposed Intervenors' State Court Action further underscores the significance of the interests at stake and that impairment of the ability to protect the various interests will likely result should intervention be disallowed here."). If the RNC is permitted to participate in this litigation, and present its view of the impact of any final decision in *ADP v. Hobbs* to this Court, then the DSCC should be permitted to do the same.

members and candidates and their own electoral prospects in the state. The original Plaintiffs are nonpartisan, nonprofit organizations. Thus, by comparing the interests of the parties, even if there were *some* overlap, the parties do not share precisely the same "ultimate objective," so the inquiry should end there. *See Citizens for Balanced Use*, 647 F.3d at 898-99. Moreover, it is far from clear, if not highly unlikely, that the original Plaintiffs will make "all of" proposed Intervenors' arguments. *See Arakaki*, 324 F.3d at 1086; *see also, e.g.*, *Paher v. Cegavske*, 2020 WL 2042365, at *3 (granting intervention where it appeared different arguments may be made). In any event, because the Democratic Party Committees have articulated clear interests at stake, *see supra*, they should "be entitled to intervene." *Arakaki*, 324 F.3d at 1086 (quoting Advisory Comm. to Fed. R. Civ. P. 24 (1966 Am.)).

Finally, with respect to DSCC's request to intervene regarding the right-to-vote claims against S.B. 1003, the original Plaintiffs are not parties to the separate litigation in *ADP v. Hobbs*, and there is no guarantee that DSCC's interests—much less its arguments—regarding the interaction between the two suits will be adequately presented if DSCC is not permitted to intervene. This risk becomes particularly heightened if the RNC and National Republican Senatorial Committee *are* permitted to intervene, given that the RNC and Attorney General are among the parties that pursued the still-pending appeal in that related case.

For the foregoing reasons, the Democratic Party Committees meet each of the factors required for intervention as of right; the motion to intervene should therefore be granted.

II. Alternatively, permissive intervention is appropriate under Rule 24(b).

Even if the Court were to conclude that the Democratic Party Committees do not meet the requirements for intervention as of right, it should grant permissive intervention under Rule 24(b). A court has broad discretion to grant permissive intervention when (1)

the motion is timely, and (2) the intervenors' claim and the main action have a question of law or fact in common. *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. at 268.[4] Courts also consider "whether the intervention will 'unduly delay or prejudice the adjudication of the'" original parties' rights. *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting Fed. R. Civ. P. 24(b)(3)).

The Democratic Party Committees meet each of these requirements. *First*, the motion to intervene—which comes before any substantive proceedings or rulings—is timely. *Nw. Forest Res. Council*, 82 F.3d at 837. *Second*, the claims they bring clearly share "common questions of law or fact" with the original claims, as reflected by the proposed complaint in intervention, attached as **Exhibit A**. *Third*, no prejudice or undue delay will result if the motion is granted. *Venegas*, 867 F.2d at 530. Intervention motions that take place before any substantive rulings generally do not prejudice the parties in the lawsuit. *Nw. Forest*, 82 F.3d at 837. Additionally, the Democratic Party Committees have a strong interest in the timely and final resolution of the matters raised in this lawsuit and will agree to abide by any and all scheduling orders or other limitations imposed by the court. *Arizonans for Fair Elections*, 335 F.R.D. at 266 ("The State has agreed to abide by the Court's briefing schedule. Thus, there is no possible prejudice in allowing the State to intervene."). For all of these reasons, the Democratic Party Committees also satisfy the permissive intervention inquiry and the Court—if it does not find that intervention as of right is warranted—should exercise its discretion to allow permissive intervention.

CONCLUSION

For the foregoing reasons, DSCC and DCCC respectfully request that the Court

[4] A third factor, that the intervenor shows there is independent jurisdiction for its claims "does not apply to proposed intervenors in federal-question cases when the proposed intervenor is not raising new claims." *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011). Because the only claims the Democratic Party Committees seek to bring arise under the same provisions of the U.S. Constitution and federal statute as the original Plaintiffs, the independent jurisdiction inquiry "drops away." *Freedom from Religion Found.*, 644 F.3d at 844; *Beckman*, 966 F.2d at 473.

grant its motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permissively under Rule 24(b).

Dated: September 24, 2021

Respectfully Submitted,

/s/ Daniel A. Arellano

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2021, I caused the foregoing to be filed and served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Christina M. Kinsey