

CAUSE NO. 202157207-7

TEXAS STATE CONFERENCE OF THE
NAACP, COMMON CAUSE TEXAS,
DANYAHEL NORRIS, HYUN JA
NORMAN, FREDDY BLANCO; MARY
FLOOD NUGENT, and PRISCILLA
BLOOMQUIST,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
the Governor of Texas; JOHN or JANE DOE,
in his or her official capacity as the Secretary
of State of Texas; JOE ESPARZA, in his
official capacity as the Deputy Secretary of
State of Texas; KEN PAXTON, in his official
capacity as the Attorney General of Texas,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189th JUDICIAL DISTRICT

THE HARRIS COUNTY REPUBLICAN PARTY, DALLAS COUNTY REPUBLICAN PARTY, NATIONAL REPUBLICAN SENATORIAL COMMITTEE, AND NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE’S PETITION IN INTERVENTION

Intervenor-Defendants the Harris County Republican Party, Dallas County Republican Party, National Republican Senatorial Committee, and National Republican Congressional Committee seek to uphold free and fair elections on behalf of all Texans. Accordingly, Intervenor respectfully file this Petition in Intervention pursuant to Tex. R. Civ. P. 60, and hereby appear in the above-captioned case as defendants. Intervenor seek to defend the legality of Senate Bill 1 (“SB 1”) against the claims advanced by Plaintiffs. SB 1 made amendments to the Texas Election Code in an effort to ensure that all legally cast ballots are counted, to promote voter access, and to reduce the likelihood of fraud in elections. As explained more fully below, Intervenor each have justiciable interests in this litigation that permit them intervention of right, and Intervenor would suffer injury if the challenged provisions of SB 1 were enjoined.

I. INTERVENTION

Background

1. On August 31, 2021, the Texas Legislature passed SB 1,¹ which made numerous changes to the Texas Election Code. The legislation amended the Code's provisions related to voter registration, conduct and security of elections, election officers and observers, voting by mail, voter assistance, and fraud and other unlawful practices.

2. On September 7, 2021, Governor Abbott signed SB 1 into law. Upon signing the legislation, the Governor said: "Senate Bill 1 ensures trust and confidence in our elections system—and most importantly, it makes it easier to vote and harder to cheat."²

3. That same day, Plaintiffs filed this lawsuit in the District Court of Harris County, 189th Judicial District. Plaintiffs are non-profit organizations and individuals who allege that provisions of SB 1 relating to poll watchers, voting by mail, early voting, and voter assistance violate the Texas Constitution. *See* Pls. Original Pet. ¶¶ 143–91, 213–72. Plaintiffs seek declaratory and both preliminary and permanent injunctive relief with respect to the challenged provisions. *See id.*, Prayer for Relief.

4. Defendant Greg Abbott is the Governor of Texas.

5. Defendant John or Jane Doe is the Secretary of State of Texas. The position of Secretary of State is currently vacant.

¹ S.B. 1, 2021 87th Leg., 2d Spec. Sess. (Tex. 2021).

² Office of the Texas Governor, *Governor Abbott Signs Election Integrity Legislation Into Law* (Sept. 7, 2021), <https://gov.texas.gov/news/post/governor-abbott-signs-election-integrity-legislation-into-law>.

6. Defendant Jose Esparza is the Deputy Secretary of State of Texas and is responsible for performing the duties of the Secretary of State until that position is no longer vacant.

7. Defendant Ken Paxton is the Attorney General of Texas.

8. Intervenors the Harris County Republican Party and Dallas County Republican Party promote and assist Republican candidates in Harris County and Dallas County, Texas. They work to accomplish this purpose by, among other things, devoting substantial resources towards educating, mobilizing, assisting, and turning out voters in their respective counties. Both organizations have made significant contributions and expenditures to support Republican candidates during many election cycles and are doing so again in 2022. They each have a substantial interest in ensuring that Texas runs free and fair elections according to Texas law as enacted and enforced by Texans' representatives.

9. Intervenor National Republican Senatorial Committee ("NRSC") is the national senatorial committee of the Republican Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect Republican candidates to the U.S. Senate from across the United States, including from Texas. It works to accomplish its mission in Texas by, among other things, providing direct and indirect financial contributions and support to candidates and other Republican Party organizations; providing technical and research assistance to Republican candidates and party organizations; engaging in voter registration, voter education, and voter turnout programs; and other Republican party-building activities. The NRSC has made significant contributions and expenditures in support of Republican Senate candidates in Texas in many past election cycles and will do so again in 2024. The NRSC has a substantial and particularized interest in ensuring that Texas carries out free and fair elections.

10. Intervenor National Republican Congressional Committee (“NRCC”) is the national congressional committee of the Republican Party as defined by 52 U.S.C. § 30101(14). Its mission is to elect Republican candidates to the U.S. House of Representatives from across the United States, including from Texas. It works to accomplish its mission in Texas by, among other things, providing direct and indirect financial contributions and support to candidates and other Republican Party organizations; providing technical and research assistance to Republican candidates and party organizations; engaging in voter registration, voter education, and voter turnout programs; and other Republican party-building activities. The NRCC has made significant contributions and expenditures in support of Republican congressional candidates in Texas in many past election cycles and is doing so again in 2022. The NRCC has a substantial and particularized interest in ensuring that Texas carries out free and fair elections.

Standard for Intervention

11. Rule 60 of the Texas Rules of Civil Procedure provides that “[a]ny party may intervene by filing a pleading, subject to being stricken out by the court for sufficient cause on the motion of any party.” “The rule authorizes a party with a justiciable interest in a pending suit to intervene in the suit as a matter of right.” *Nghiem v. Sajib*, 567 S.W.3d 718, 721 (Tex. 2019) (citation omitted). “A party has a justiciable interest in a lawsuit, and thus a right to intervene in the suit, when its interests will be affected by the litigation.” *Massachusetts Bay Ins. Co. v. Adkins*, 615 S.W.3d 580, 602 (Tex. App.—Houston [1st Dist.] 2020). “The interest asserted by the intervenor may be legal or equitable.” *Guar. Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990) (citation omitted).

12. “Intervenors can be characterized as plaintiffs or defendants depending on the claims asserted and relief requested by the intervenor.” *In re Ford Motor Co.*, 442 S.W.3d 265,

274 & nn.27–28 (Tex. 2014) (orig. proceeding); *see also Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. “Even where an intervenor has not or could not have been sued directly, if a judgment for the plaintiff may lead to an action against the intervenor or otherwise seriously prejudice the intervenor, the intervention is necessary to assure a proper defense against the claim.” *Jenkins v. Entergy Corp.*, 187 S.W.3d 785, 797 (Tex. App.—Corpus Christi 2006, pet. denied) (citing *Evan’s World Travel, Inc. v. Adams*, 978 S.W.2d 225, 234–35 (Tex. App.—Texarkana 1998, no pet.)).

13. “An intervenor is not required to secure the court’s permission to intervene; the party who opposed the intervention has the burden to challenge it by a motion to strike.” *Nghiem*, 567 S.W.3d at 721. “Intervenors are parties to the lawsuit until the trial court grants a motion to strike.” *Massachusetts Bay Ins. Co.*, 615 S.W.3d at 602. A court “abuses its discretion by striking a plea in intervention if: (1) the intervenor establishes it has a justiciable interest; (2) the intervention will not complicate the case by excessively multiplying the issues; and (3) the intervention is practically essential to effectively protect the intervenor’s interest.” *Allen Parker Co. v. Trustmark Nat’l Bank*, No. 14-12-00766-CV, 2013 WL 2457113, at *5 (Tex. App.—Houston [14th Dist.] June 6, 2013) (not designated for publication) (citing *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657).

Republican Committees’ Interests

14. There can be “no dispute” that the Republican Committees have “an interest in the subject matter of this case, given the fact that changes in voting procedures could affect candidates running as Republicans and voters who are members of the [Texas] Republican Party.” *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005). Courts “routinely” find that political parties have interests supporting intervention in

election-law litigation. *Issa v. Newsom*, No. 2:20-cv-1044, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020). Usually, “[n]o one disputes” that political parties “meet the impaired interest requirement for intervention as of right.” *Citizens United v. Gessler*, 2014 WL 4549001, *2 (D. Colo. Sept. 15, 2014).³

³ See, e.g., *United States v. Georgia*, No. 1:21-cv-2575 (N.D. Ga. July 12, 2021) (granting intervention to the RNC, NRSC, and Georgia Republican Party); *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021) (granting intervention to the RNC, NRSC, NRCC, and Georgia Republican Party); *Coalition for Good Governance v. Raffensperger*, No. 1:21-cv-02070 (N.D. Ga. June 21, 2021) (same); *New Georgia Project v. Raffensperger*, No. 1:21-cv-1229, 2021 WL 2450647 (N.D. Ga. June 4, 2021) (same); *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021) (same); *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021) (same); *Asian Ams. Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021) (same); *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021) (same); *Wood v. Raffensperger*, No. 1:20-cv-5155 (N.D. Ga. Dec. 22, 2020) (granting intervention to the DSCC and Democratic Party of Georgia); *Alliance for Retired American’s v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat’l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*, Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same).

15. Plaintiffs ask the Court to invalidate entire provisions of SB 1 relating to election security, voting by mail, and other election procedures. These provisions are valid laws that the Texas Legislature enacted to structure and protect the integrity and reliability of Texas elections—elections in which the Republican Committees and their members, supported candidates, and voters actively participate. Since their candidates seek election or reelection “in contests governed by the challenged rules,” the Republican Committees have an interest in “demand[ing] adherence” to those requirements and preventing changes to the “competitive environment.” *Shays v. FEC*, 414 F.3d 76, 85, 88 (D.C. Cir. 2005); *cf. Miami Indep. Sch. Dist. v. Moses*, 989 S.W.2d 871, 879 (Tex. App.—Austin 1999) (intervenors’ “interest in a constitutionally efficient and equitable school system” justified intervention “to determine whether legislative enactments comport with Texas constitutional provisions on school finance”).

Other Factors Favoring Intervention

16. The Republican Committees’ intervention “will not complicate the case by excessively multiplying the issues.” *Guar. Fed. Sav. Bank*, 793 S.W.2d at 657. Intervenors are entering the case while it is still in its infancy, and their “defenses deriv[e] from the same allegations” that Plaintiffs have made. *Jenkins*, 187 S.W.3d at 797. The Republican Committees will not raise any new claims or introduce any factual evidence that was not already relevant to the existing claims. Indeed, here, “[j]udicial economy requires” the participation of Intervenors “to avoid a multiplicity of lengthy lawsuits.” *Guar. Fed. Sav. Bank*, 793 S.W.2d at 658.

17. Additionally, intervention is “practically essential to effectively protect the [Republican Committees’] interest.” *Id.* at 657. Plaintiffs’ action here could “chang[e] the results of elections,” directly impacting the interests of the Republican Committees and their

candidates and voters. *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 764 (E.D. Mich. 2020). Because the Republican Committees’ “interests are potentially adversely affected by the litigation in the event of a judgment for” the Plaintiffs, intervention is necessary to protect those interests. *Jenkins*, 187 S.W.3d at 797. The Republican Committees cannot rely solely on the named Defendants to protect their interests, because government defendants “ha[ve] more extensive interests to balance than do” Intervenors. *Brumfield v. Dodd*, 749 F.3d 339, 346 (5th Cir. 2014). “The lack of unity in all objectives, combined with real and legitimate additional or contrary arguments, is sufficient to demonstrate” that the Defendants’ “representation *may* be inadequate.” *Id.*

II. GENERAL DENIAL

18. Subject to such stipulations and admissions as may be made in this litigation, the Republican Committees generally deny each and every allegation in Plaintiffs’ Petition in accordance with Texas Rule of Civil Procedure 92 and demand strict proof of such allegations in accordance with the appropriate burden of proof as the Court may order in accordance with the laws of the State of Texas.

III. AFFIRMATIVE DEFENSES

19. Pursuant to Texas Rule of Civil Procedure Rule 91a, Intervenors reserve their right to move the Court to dismiss Plaintiffs’ claims in this case because Plaintiffs’ claims have no basis in law or fact in that (1) the allegations do not entitle Plaintiffs to the relief they seek, and (2) to the extent that Plaintiffs’ claims are dependent on pleaded facts, no reasonable person could believe the facts as pleaded.

20. Plaintiffs fail to meet the pleading verification requirements for injunctive relief in Tex. R. Civ. P. 682, and therefore are not entitled to injunctive relief.

21. Plaintiffs' claims are barred by the equitable doctrines of laches, estoppel, unclean hands, and/or waiver.

22. Plaintiffs have failed to join indispensable parties to this action.

IV. SPECIAL EXCEPTIONS

23. The Republican Committees Specially Except to Plaintiffs' claims seeking Preliminary and Permanent Injunctive Relief, as their Pleadings are not verified, and/or not properly verified by each and every Plaintiff for whom allegations are made in the Petition. *See* Tex. R. Civ. P. 682 ("No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit . . .").

V. REQUEST FOR ATTORNEY'S FEES AND COSTS

24. Intervenors request their attorney's fees and costs be awarded to fullest extent permitted by law, including for successfully defending against Plaintiffs' claims under the Declaratory Judgment Act.

VI. REQUEST FOR DISCLOSURE

25. Intervenors request that Plaintiffs disclose the information and materials described in Rule 194.2 of the Texas Rules of Civil Procedure within 30 days of receipt of this request.

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Intervenors respectfully request the following relief: (1) that this matter be set for trial by jury; (2) that, upon trial/hearing, the Court enter a judgment pursuant to the Declaratory Judgment Act that Plaintiffs take nothing, and deny their requested relief, declaring that the challenged provisions of SB 1 are valid and enforceable and not in violation of the Texas Constitution; (3) that Plaintiffs' application for a preliminary and permanent injunction be denied; (4) that Intervenors be awarded their costs and attorney's

fees to the full extent permissible by applicable law; and (5) that Intervenors be awarded all such other relief in law or equity as Intervenors may show themselves entitled.

October 26, 2021

Respectfully submitted,

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**Pro hac vice applications forthcoming*

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Associated Case Party: Dallas County Republican Party

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