

duly enacted election rules would compel a change in campaign strategy and resource allocation, which itself is a recognized harm. Because no other party is seeking to elect Republican candidates, while one party to this litigation is actively seeking to prevent their election, no existing party adequately represents RPV's interests in this matter. Finally, even if this Court determines that intervention as a matter of right is not justified, it should grant permissive intervention based on the unique role RPV plays in Commonwealth elections as one of two major political parties and to promote fairness and efficiency in the law and judicial proceedings.

Plaintiffs oppose RPV's motion to intervene by subtly shifting their own claim to standing and disregarding the difference in interests between the Defendants and RPV. Plaintiffs do not challenge that RPV's motion to intervene is timely, either as a matter of right or for permissive intervention. Instead, Plaintiffs cite three grounds for opposing intervention by right: 1) they claim RPV lacks a particularized, legally protectable interest in this action that will be directly affected by this outcome; 2) they claim that the protection of this interest would not be impaired because of this action; and 3) they claim that RPV's interests are adequately protected by the existing parties. Opposition at 1–2. Plaintiffs largely cite these same reasons for opposing permissive intervention, and further claim that RPV's participation would impose an unnecessary burden on the court and litigants. *Id.* at 3. These arguments are unavailing.

If, as Plaintiffs now claim, RPV lacks a cognizable interest in this matter sufficient to clear the bar set by Rule 24, then Plaintiffs likely lack standing to bring it in the first instance. Clearly, as evident by their position in this matter, Plaintiffs do not believe that current case law supports that conclusion, and neither does RPV.

Further, RPV's interests would be impaired by an adverse outcome in this action. While Plaintiffs seek to subtly shift their own claim of standing to a more general interest “in ensuring

that they can help as many eligible Virginians as possible to register to vote,” Opp’n at 6, their initial pleadings make clear that their asserted interests are far more narrow and parochial: helping Democrats win elections. *See* Compl. at ¶¶ 18-20. Any broader benefit is incidental to this parochial interest. In what is generally a two-party system, helping one major party win comes at the detriment of the other party, and vice versa. Even if this were not the case, an adverse outcome in this case would cause economic harm to RPV by requiring RPV to reallocate resources in order to compete in elections under the new rules that Plaintiffs are asking the Court to create.

In addition, RPV has interests that are not adequately represented by the Defendants. Part of RPV’s mission is electing Republican candidates. The Defendants do not share this goal, creating a risk that the Defendants will behave differently in this matter in ways that go beyond run of the mill differences in litigation strategy. This risk is compounded by the impact of an adverse ruling likely falling differently on Defendants and RPV.

Finally, assuming *arguendo* that the Court does not grant intervention as a matter of right, permissive intervention would not “needlessly burden the court and its litigants.” Opposition at 3. RPV has committed to follow the briefing schedule set by the Court and will not delay these proceedings. Indeed, RPV filed its Proposed Motion to Dismiss with its Motion to Intervene, within the Court’s deadline for such motions. Further, RPV is uniquely situated as a mirror-image party to Plaintiffs. As such, its inclusion will promote fairness and efficiency in the judicial process.

ARGUMENT

I. RPV IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT

RPV has sufficiently met its burden to establish the factors necessary to intervene as a matter of right. First, Plaintiffs do not contest that RPV's motion to intervene is timely. Second, as a mirror image party to Plaintiffs, RPV has a similar legally protectable interest in the conduct of elections that goes beyond the interests shared by the general public. Third, a ruling in Plaintiffs' favor would be adverse to RPV's interests. Finally, while RPV appreciates that the Defendants are actively involved in this case at this time, there is a divergence of interest that makes intervention appropriate.

A. RPV Has a Legally Protectable Interest Sufficient to Support Intervention

RPV is one of two major political parties in Virginia. The other is a Plaintiff. By virtue of being similarly positioned, RPV has a legally protectable interest to the same extent as Plaintiffs. To wit, both parties are concerned with the impact of election laws on their members, with ensuring that eligible Virginia voters register and vote, with ensuring that eligible votes are properly counted, and with the impact of changing election laws on their allocation of resources. *See Cooper Techs., Co. v. Dudas*, 247 F.R.D. 510, 514 (E.D. Va. 2007) (“[I]n cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention.” (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1908 (2d ed. 1986))).

Both parties are also concerned with the impact of this litigation on their allocation of resources. *See* Compl. (ECF No. 1) ¶ 23 (“The Full SSN Requirement requires DCCC to dedicate additional time and resources to ensuring that its voter registration efforts do not

jeopardize the sensitive information of voters.”); Mem. of Law in Support of the Mot. to Intervene by the Republican Party of Virginia, (ECF No. 28) at 4-5 (“Changes to those rules . . . directly impact how political parties allocate resources and strategize in their campaigns.”). If RPV does not have a legally protectable interest in this matter that clears the hurdle set by Rule 24, then Plaintiffs clearly would not have an interest sufficient to create standing.

Plaintiffs seek to deny the manifest similarity of legally protectable interests in this litigation by subtly shifting their own stated basis for standing in this matter, creating a strawman of RPV’s position, and attempting to immolate their own strawman. In their Opposition, Plaintiffs claim that their interest is “in ensuring that they can help as many eligible Virginia voters (including those who would associate with the Democratic Party and support its candidates) are not impeded in their right to register to vote, and that lawfully registered voters receive an adequate opportunity to cure technical defects on their absentee ballot envelopes to save them from rejection.” Opp’n at 6. This is at best a selective interpretation of Plaintiffs’ own Complaint. Plaintiff Democratic Party of Virginia (“DPVA”) states its “mission is to elect Democratic candidates in local, county, state, and federal elections in the Commonwealth and to help its members and constituents successfully register to vote.” Compl. ¶ 18. DPVA’s stated interest in the social security number requirement is that the requirement “threatens and inhibits DPVA’s efforts to register eligible voters throughout the Commonwealth, making it harder for DPVA to succeed in its mission of electing Democrats to public office in elections up and down the ticket.” *Id.* Put differently, and contrary to their lofty rhetoric, Plaintiffs are not engaged in a purely altruistic voter registration drive. They want to change the rules to help Democrats win elections. This is an understandable interest for Plaintiffs to assert given that courts have recognized “harm to . . . election prospects” constitutes a “concrete and particularized injury

sufficient for standing purposes.” *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586-597 (5th Cir. 2006); *see also 24th Senatorial District Republican Comm. v. Alcorn*, 820 F.3d 624, 635 n.3 (4th Cir. 2016) (Traxler, J., dissenting) (Plaintiff’s “alleged interest in depriving his opponent of that advantage, and thereby increasing his own prospects for winning the nomination, is sufficient to establish his standing.” (citing *Tex. Democratic Party*, 459 F.3d at 586–87 & n.4; *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir.1994) (referencing “[t]he well-established concept of competitors’ standing”); *Owen v. Mulligan*, 640 F.2d 1130, 1132–33 (9th Cir.1981) (finding standing where a an action would put a candidate at a competitive disadvantage)).¹

While RPV shares Plaintiffs’ objectives of getting more eligible voters registered and voting, it does not believe Plaintiffs’ partisan approach to changing the rules of the game will best serve that goal. RPV does not share Plaintiffs’ concerns that it will be unable to recruit volunteers if voters must provide minimal verification that they are who they say they are when they register to vote. Instead, RPV believes that its candidates will do quite well in an orderly election, under the rules of the game that have served candidates of both parties quite well over the past nearly half century and under curing provisions that were adopted to prevent the sort of last minute scrambling that undermines confidence in the electoral process. When properly understood, the mirror image of Plaintiff’s interest is not the strawman Plaintiffs’ construct of “preventing other individuals from voting.” Opp’n at 6. It is encouraging civic participation by inspiring confidence in the electoral process, which RPV believes will benefit its own electoral

¹ The court’s decision in *24th Senatorial District Republican Committee* is not to the contrary. In *24th Senatorial District*, the court distinguished *Texas Democratic Party* based on redressability. *Id.* at 633 (“But even if we assume [Plaintiff] has a legally protected interest, he still fails to demonstrate how that injury is redressable by a decision of this Court.”). Given that the harm RPV asserts would be result from an adverse judicial decision, redressability is not an issue in this Motion.

prospects. *See* ECF No. 28 at 4 (noting that “RPV surely also has a recognizable interest in ensuring the integrity of the electoral process” and that “RPV has an equal interest in ensuring that it and its candidates are not adversely impacted by Plaintiff’s efforts . . . to disrupt the orderly management of elections.”).

Moreover, contrary to Plaintiff’s suggestion that RPV’s interest in election integrity is indistinguishable from that of the general public, “the RPV is uniquely positioned within Virginia law.” Mem. Op., *League of Women Voters v. Va. State Bd. Of Elections*, Case No. 6:20-cv-00024-NKM-RSB, ECF No. 60 at 7 (W.D. Va. Apr. 30, 2020) (granting RPV permissive intervention). Indeed, as one Plaintiff has observed in other proceedings “[p]olitical parties usually have good cause to intervene in disputes over election rules.” Reply in Support of Mot. to Intervene as Defendants by DCCC and California Democratic Party, *Issa v. Newsom*, Doc. 23 at 2, Case No. 2:20-cv-01044-MCE-CKD (E.D. Cal. June 8, 2020). “Accordingly, courts regularly permit the intervention of political parties and affiliated organizations in cases involving elections and voting rights.” *Id.* at 2 n.1 (citing *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *1 (D. Nev. Apr. 28, 2020); *Stringer v. Pablos*, No. 5:16-cv-00257-OLG, slip op. at 1 (W.D. Tex. Jan. 21, 2020); *Harris Cty. Dep’t of Educ. v. Harris County*, Civil Action No. H-12-2190, 2012 WL 3886427, at *1 (S.D. Tex. Sept. 6, 2012); *NAACP v. Snyder*, No. 11-153845, slip op. at 1–2 (E.D. Mich. Jan. 23, 2012)).²

² *See also generally* *Black Voters Matter Fund v. Raffensperger*, Doc. 42, No. 1:20-cv-4869 (N.D. Ga. Dec. 9, 2020) (granting intervention to the RNC and Georgia Republican Party); *Alliance for Retired Americans 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 (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459 (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 (W.D. Wis. June 23,

Instead of following these cases, Plaintiffs cite comparatively few cases where intervention has been denied. One of these cases, *Democracy North Carolina v. North Carolina State Board of Elections*, No. 1:20CV457, 2020 WL 6591397 (M.D.N.C. June 24, 2020), illustrates the flaws of Plaintiffs' arguments. Far from being a model to for this Court to follow, *Democracy North Carolina* ought to serve as a cautionary tale of the hazards presented by an overly restrictive approach to litigation. In *Democracy N.C.*, the court denied the Republican National Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee's joint motion to intervene, ruling that the applicants' interests were adequately represented by the government parties already in the case, and went on to enter a preliminary injunction that was used to justify unilateral changes to state election law. *Democracy N.C. v. N.C. State Bd. of Elections*, Civ. No. 1:20CV457, 2020 WL 6058048

2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 WL 6589656 (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, Case No. 19-13341, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, Civ. No. 3:20-cv-01552-JMC, 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); *Democratic Nat'l Comm. v. Bostelmann*, Civ. No. 20-cv-259-wmc, 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); *VoteVets Action Fund v. Detzner*, Doc. 16, No. 4:18-cv-524-MW-CAS (N.D. Fla. Nov. 11, 2018) (granting intervention to the NRSC); *Democratic Exec. Comm. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018) (granting intervention to the NRSC); *Jacobson v. Detzner*, Doc. 36, No. 4:18-cv-262-MW-CAS, 2018 WL 10509488 (N.D. Fla. July 1, 2018) (granting intervention to the NRSC and Republican Governors Association); *Florida Democratic Party v. Scott*, Doc. 49, No. 4:16-cv-626-MW-CAS (N.D. Fla. Oct. 19, 2016) (granting intervention to Republican Party of Florida).

(M.D.N.C. Oct. 14, 2020); *see also Wise v. N.C. State Bd. of Elections*, No. 5:20-cv-00505 (E.D.N.C.). In response, the RNC and others filed a separate lawsuit, which was then transferred to the *Democracy N.C.* court anyway. Order, *Wise v. N.C. State Bd. of Elections*, No. 5:20-cv-00505 (E.D.N.C. Oct. 3, 2020); *see also Democracy N.C.*, 2020 WL 6591367 (M.D.N.C. Oct. 5, 2020). Plaintiffs profess to be concerned about ensuring that this litigation proceeds expeditiously and preventing additional burdens on the Court and litigants. *See* Opp'n at 3. However, Plaintiffs' overly narrow interpretation of Rule 24(a) risks creating the very harms Plaintiffs seek to avoid. By denying intervention in the first instance, the *Democracy North Carolina* court set off a chain of events that took more time and imposed a greater burden on the courts and litigants by forcing them to go through parallel proceedings before being transferred back to where they started in the first place.

Finally, while mischaracterizing RPV's interest in this case, Plaintiffs completely disregard RPV's asserted economic interest in preventing the diversion and reallocation of its own resources. *See Tex. Democratic Party*, 459 F.3d at 586 (quoting *Tex. Democratic Party v. Benkiser*, Civ. No. A 06 CA 459 SS, 2006 WL 1851295, at * 2 (W.D. Tex. July 6, 2006) (upholding a finding that a political party would suffer an injury in fact where it "would need to raise and expend additional funds and resources to prepare a new and different campaign in a short time frame" in response to the challenged action). This oversight is curious given that Plaintiffs cite the impact of the challenged laws on their own allocation of resources as part of their standing claim. *See* Compl. ¶ 21 (asserting that the notice and curing process "diverts scarce resources and staff time" that could otherwise "go to other mission-critical efforts"); ¶ 23 (asserting that the social security number requirement "requires DCCC to dedicate additional time and resources" to training volunteers).

B. Disposing of This Action May Impair RPV's Ability to Protect Its Interests

In arguing against an impairment to RPV's interests, Plaintiffs again seek to subtly shift their asserted basis for standing and deny what their Complaint plainly states: that an integral part of their claim of standing is a claim that success on the merits will help Democrats win elections. *See, e.g.* Compl. ¶ 18 (“The Full SSN requirement . . . mak[es] it harder for DPVA to succeed in its mission of electing Democrats to public office in elections up and down the ticket.”); ¶ 20 (“[E]ven if the number of voters who are not notified that their ballots have curable technical defects is small, the failure to offer those voters the same process provided to those whose ballots are received by the Notice Cutoff directly threatens DPVA’s and its candidates’ electoral prospects, and, indeed, DPVA’s very mission.”). This shift is necessary to avoid the zero-sum nature of electoral politics in what is effectively a two-party system: what helps Democrats win elections will generally hurt Republican chances, and vice-versa.

In addition, as described above, an adverse determination in this matter would have adverse economic consequences by impacting how RPV allocates scarce resources. If Plaintiffs succeed in this case, RPV will need to reallocate its scarce resources to new strategies and activities to ensure both the actual and perceived integrity of the electoral process.

C. RPV's Interests Are Not Adequately Protected by the Government Defendants

While RPV appreciates the Defendants’ active litigation posture and Motion to Dismiss in this matter, it does not follow that Defendants will adequately protect RPV’s interests in this litigation.

Defendants are acting in the public interest, which “may not be ‘identical to the individual parochial interest’ of a particular group just because ‘both entities occupy the same posture in the litigation.’” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893,

899 (9th Cir. 2011) (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)). For example, the Defendants “have a duty to consider the expense of defending [a challenged action] out of [government] coffers” that may lead them to value pursuing litigation differently than RPV in ways that go beyond mere disagreements over litigation strategy. *Clark v. Putnam Cty.*, 168 F.3d 458, 461–62 (11th Cir. 1999); *see also Meek v. Metropolitan Dade Cty.*, 985 F.2d 1471, 1478 (11th Cir. 1993) (the government “was required to balance a range of interests likely to diverge from those of the intervenors,” including “the expense of litigation”). An outcome that is minimally disruptive and cost effective for the Defendants may well be prohibitively expensive for RPV.

Furthermore, and consistent with a different evaluation of the appropriate expense of pursuing litigation, Defendants may still opt to settle the case after initially defending it. To wit, in *League of Women Voters of Minnesota Education Fund v. Simon*, Secretary of State Steve Simon was sued in a challenge to the state’s witness signature requirement for absentee ballots and initially defended the law. He later reversed course and sought to enter into a consent decree that the political party intervenors viewed as adverse to their interests and successfully blocked. *See League of Women Voters of Minnesota Educ. Fund v. Simon*, Civ. No. 20-cv-1205-ECT-TNL, 2021 WL 1175234 (D. Minn. Mar. 29, 2021); *see also* Proposed Consent Decree to Judge; Mem. of Law in Supp. of Mot. to Intervene as Defs. by Donald J. Trump for President, Inc., the Republican National Committee, and the Republican Party of Minnesota; Order on Mot. for Prelim. Inj., *Simon*, 2021 WL 117534 (Civ. No. 0:20-cv-01205-ETC-TNL). Similarly, in *Pavek v. Simon*, the government defendants initially defended against the claims, but declined to appeal a preliminary injunction, leaving it up to political party intervenors to step in and effectuate a

successful stay of the injunction. *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020).

The Defendants and RPV have different interests. Because of these differing interests, they may well value this matter differently and react differently in ways that go beyond mere run of the mill disagreements over litigation strategy. Accordingly, the Defendants do not adequately represent RPV in this litigation.

II. ALTERNATIVELY, RPV SHOULD BE GRANTED PERMISSIVE INTERVENTION

RPV brings the interests of Republican candidates and Republican voters before the Court. No current Party to this matter specifically represents those interests. Plaintiffs make three arguments for why the Court should deny permissive intervention: 1) they claim RPV is already adequately represented by the Defendants; 2) they claim that RPV brings nothing new to the matter; and 3) they claim that RPV's intervention is more likely to cause confusion, delay, and unnecessary complications. Opp'n at 12.

For the reasons set forth above, RPV does not believe its interests are adequately represented by Defendants. Indeed, Plaintiffs mission is to actively thwart Republican electoral prospects, while Defendants have a much broader charge that is generally indifferent to the impact on Republican candidates and voters. RPV is not. RPV believes that its showing is sufficient to meet the heightened standard of adequacy in this circuit for intervention as a matter of right. Assuming *arguendo* that it is not, RPV believes that its interests are nevertheless sufficiently different to counsel in favor of intervention as a matter of the court's discretion.

What RPV brings to this matter are the interests of Republican candidates and voters, interests clearly not represented by Plaintiffs or the defendants. This also sets RPV apart from other prospective intervenors, such as the Public Interest Legal Foundation. "[T]he RPV is one

of the only two major political parties in the Commonwealth.” Mem. Op., *League of Women Voters v. Va. State Bd. Of Elections*, Case No. 6:20-cv-00024-NKM-RSB, ECF No. 60 at 7 (W.D. Va. Apr. 30, 2020). As such, “the RPV is indeed uniquely positioned within Virginia law,” including being “empowered to ‘provide for the nomination of its candidates, including the nomination of its candidates for office in case of any vacancy.’” *Id.* at 7-8 (quoting Va. Code § 24.2-508). This unique position distinguishes RPV from other prospective or potential intervenors. Accordingly, “several courts have ruled similarly in allowing political parties to permissively intervene in actions targeting statewide election procedure.” *Id.* at 8.

Finally, Plaintiffs claim that RPV’s intervention would cause unnecessary confusion, delay, and complications. With respect to delay, no one has challenged that RPV’s motion to intervene is timely, and RPV has already committed to submit all filings in accordance with the briefing schedule the Court imposes. ECF 28 at 8. RPV’s Motion includes a Proposed Motion to Dismiss, filed within the deadline for responsive pleadings. With respect to confusion, Plaintiffs identify no area where confusion is likely. Finally, with respect to unnecessary complications, RPV disagrees with Plaintiffs’ characterization. Any complications associated with RPV’s intervention are necessary to ensure that all sides of the argument are represented in this matter and are likely to be well within the norm for multiparty litigation.

CONCLUSION

For the foregoing reasons, this Court should permit RPV to intervene pursuant to Rule 24(a) or, in the alternative, pursuant to Rule 24(b).

Dated: February 1, 2022

Respectfully submitted,

By: /s/ David A. Warrington
David A. Warrington (VSB No. 72293)
Dhillon Law Group Inc.
2121 Eisenhower Avenue, Suite 402
Alexandria, VA 22314
Telephone: 703.328.5369
Facsimile: 415.520.6593
dwarrington@dhillonlaw.com

Harmeet K. Dhillon*
Michael A. Columbo*
Dhillon Law Group Inc.
177 Post Street, Suite 700
San Francisco, CA 94108
Telephone: 415.433.1700
Facsimile: 415.520.6593
harmeet@dhillonlaw.com
mcolumbo@dhillonlaw.com
**Admission pro hac vice forthcoming*

*Counsel for Proposed Intervenor-Defendant
Republican Party of Virginia*

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all counsel of record in this action.

Dated: February 1, 2022

By: /s/ David A. Warrington
David A. Warrington (VSB No. 72293)

RETRIEVED FROM DEMOCRACYDOCKET.COM