

SUPREME COURT OF ARIZONA

ARIZONA REPUBLICAN
PARTY, et al.,

Petitioners,

v.

KATIE HOBBS, et al.,

Respondents.

Arizona Supreme Court
No. CV-22-0048-SA

**ARIZONA DEMOCRATIC PARTY, DNC, DSCC, AND DCCC'S
MOTION TO INTERVENE AS RESPONDENTS**

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INTRODUCTION

Petitioners claim to be concerned about “jeopardizing public confidence in the electoral process.” Pet. at 1. Yet they ask this Court for truly extraordinary relief that, if granted, would eviscerate voter confidence and Arizona’s election system as voters have long known it. Scattered throughout their Petition are Petitioners’ myriad requests for relief, which have little in common except that, if granted, each would have substantial, wide-ranging impacts on Arizona voters’ ability to successfully exercise their right to vote and Arizona’s ability to successfully administer elections. They include demands that the Court (1) declare early and mail voting unconstitutional, (2) prohibit the use of secure drop boxes, and (3) insert itself into the minutia of signature verification. None of these requests are supported, much less justified, by the authority upon which Petitioners rely. The long-standing electoral procedures that Petitioners attack are not, as Petitioners claim, “ongoing abuse of election laws.” Pet. at 1. They are crucial—and secure—features of Arizona’s electoral system. Without them, the system would cease to function in any reasonably accessible or recognizable way.

For decades, Arizona has guaranteed its voters the right to vote using early and absentee voting. The electorate has embraced these methods of voting—in fact, early and absentee voting has become the dominant means by which Arizona voters exercise their voting rights. Approximately 75% of the state’s active registered voters are on the Active Early Voting List (“AEVL”) and are automatically sent an early ballot every election. Of that number, over a third are registered Democrats. In the 2020 general election, more than 88 percent of ballots cast in Arizona were through early ballot procedures. Suddenly limiting—or eliminating—this means of voting would sow confusion and disenfranchise countless lawful voters.

And it is not just voters who have come to depend on early and absentee voting. Arizona’s election infrastructure relies heavily upon millions of its voters using early and absentee voting to participate in the State’s elections. Arizona’s election infrastructure has never been equipped to serve all the state’s voters for in-person voting, and it certainly is not capable of doing so now that the state is home to over four

million registered voters.¹ Petitioners attack these well-established and crucial means of voting based on a misreading of the Arizona Constitution and relevant laws. Petitioners' challenges to drop-box voting and signature matching are equally ill-founded. Simply put, no authority justifies granting any of the relief that Petitioners request. And granting any of it would do great violence to the right to vote and the ability to successfully administer elections in Arizona.

Among those severely and irreparably harmed would be hundreds of thousands of members and constituents of Proposed Intervenor-Respondents the Arizona Democratic Party ("ADP"), the Democratic National Committee ("DNC"), Democratic Senatorial Campaign Committee ("DSCC"), and the Democratic Congressional Campaign Committee ("DCCC") (together "Proposed Intervenor"). Proposed Intervenor meets the applicable requirements for both intervention as of right and permissive intervention under Rule 24 of the Arizona Rules of

¹ See Voter Registration Statistics – Jan. 2020, Ariz. Sec. of State, *available at*: <https://azsos.gov/elections/voter-registration-historical-election-data>.

Civil Procedure.² There can be little doubt that they have a substantial and legally protectable interest in this matter. Proposed Intervenors seek intervention to protect the rights of their voters and constituents, as well as to protect the rights of their candidates and their own rights as political committees. Should any of the relief that Petitioners request be granted, it would mandate a sea change in how elections function in Arizona, requiring the committees to divert enormous resources to educating voters and assisting them in overcoming substantial burdens to successful participation in the franchise.

In this way, Proposed Intervenors' perspective differs markedly from that of the existing parties, such that the existing parties do not and cannot adequately represent Proposed Intervenors in this litigation. The Petitioners, of course, are Proposed Intervenors' political counterpart, the Arizona Republican Party. And, if Petitioners are successful, voters who tend to associate more strongly with Proposed Intervenors, including Black, Hispanic, Native American, and young voters, are among those constituencies who are more likely to have their voting rights severely

² As incorporated by Rule 2(b) of the Arizona Rules of Procedure for Special Actions.

impeded, and in some cases, effectively withdrawn. This is particularly true of Native American voters living on reservations whose circumstances often require access to early and mail voting in order to participate in Arizona's elections. Young voters who are away from home attending school, too, may find themselves with no accessible means of voting, should Petitioners be successful in their challenge to Arizona's early and mail voting regime.

The Court should not permit Petitioners to attempt through this litigation to broadly restrict voting rights threatening grave injury to Proposed Intervenors and their voters and constituents, without allowing Proposed Intervenors to defend those rights. The State Respondents presumably share the Proposed Intervenors' goal of defending Arizona's current system of election administration. But, as many courts have recognized, state officials represent the state as a whole and have different interests than the major political party entities. Among other things, the State Respondents do not involve themselves in substantial get-out-the-vote efforts; they do not support individual candidates or constituencies; and they do not have a stake in the ultimate outcomes of

the elections that will be conducted under Petitioners' proposed new rules.

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

ARGUMENT

Arizona Rule of Procedure for Special Actions 2(b) specifies that the Court may allow parties to intervene in a Special Action such as this one subject to the provisions of Rule 24 of the Arizona Rules of Civil Procedure. Rule 24 is a remedial rule that "should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights." *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). Proposed Intervenors satisfy both standards and their motion to intervene should be granted.

I. Proposed Intervenors are entitled to intervene as of right.

Proposed Intervenors are entitled to intervene as of right under Rule 24(a). The Court must allow intervention where four elements are satisfied: "(1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the

action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶13 (App. 2014). Proposed Intervenors meet each of these requirements.

A. The motion to intervene is timely.

Proposed Intervenors timely filed this motion to intervene. Petitioners filed their petition on Friday, February 25, 2022. In its Order Directing Service and Fixing Time for Response and Reply filed on the following Monday, February 28, this Court directed that any response to the relief requested be filed by March 11, 2022. Consistent with their requested party status, Proposed Intervenors file this motion to intervene along with their proposed response brief on March 11, 2022. Timeliness under Rule 24 is “flexible” and the most important consideration “is whether the delay in moving for intervention will prejudice the existing parties to the case.” *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Because this filing is consistent with the Court’s briefing schedule, no party will be prejudiced by

Proposed Intervenors' intervention, and the Court should consider the motion timely.

B. The disposition of this case will impair Proposed Intervenors' and their members' and constituents' abilities to protect their interests.

Proposed Intervenors, their members, and their voters have important interests in preserving a predictable, fair, and equitable electoral environment. Petitioners' claims concern how ballots will be cast and counted in all future elections in Arizona, threatening the fundamental right to vote for Proposed Intervenors' members and constituents. *See State v. Key*, 128 Ariz. 419, 421 (App. 1981). Further, the disposition of this matter will impact Proposed Intervenors' efforts to facilitate voting, engage Arizona voters, and support their candidates as they run for office to represent the people of Arizona. In short, this case threatens the predictability, equity, and ease of access to the ballot for Proposed Intervenors' members and constituents, as well as the electoral prospects of their candidates, and their core First Amendment voter engagement and associational efforts in Arizona. Further, if Petitioners' requested relief were granted, Proposed Intervenors would be forced to expend additional scarce resources to ensure that their affiliated voters

are able to cast their ballots through the limited avenues that would remain available to them. These interests are readily sufficient to merit intervention. *See, e.g., Maricopa County Republican Party et al. v. Reagan et al.*, No. CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention to political parties and other interested political actors in election dispute); *Mi Familia Vota v. Hobbs*, No. 20-cv-01903, ECF No. 5 (D. Ariz. Oct. 5, 2020) (granting intervention to political party in election dispute) *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (holding a political party has a “significant protectable interest” in intervening to defend its voters’ interests in vote-by-mail and its own resources spent in support of vote-by-mail).

Fundamentally, Petitioners ask this Court to suddenly and severely restrict access to voting in Arizona by holding that “[i]n-person voting at the polls on a fixed date (election day) is the only constitutional manner of voting in Arizona.” Pet. at 19. Even short of that, Petitioners would have the Court prohibit the Secretary from authorizing the use of ballot drop boxes *at all* based on a dubious and acontextual reading of A.R.S. § 16-548(A). Thus, the relief requested by Petitioners threatens to

effectively eliminate the most popular voting procedures available to Arizona electors, including drop-box voting, early voting, and no-excuse mail-in voting. Further, it seeks to impede the efficient administration of elections at the county level by attempting to commandeer the Secretary of State's rulemaking authority. Proposed Intervenor has a direct and substantial interest in preserving Arizona's existing election laws against this attack.

First, eliminating these procedures would force thousands of Arizona voters to endure long lines at the polls on election day, and likely disenfranchise thousands more—including among Proposed Intervenor's members and constituents. In Florida, for example, a far more modest cutback on early voting than Petitioners seek here proved catastrophic for voters, resulting in devastating long lines at the polls.³ In the general election conducted the following year, Florida had the nation's longest wait times on Election Day, with some voters waiting four hours or more to cast a ballot. The conclusion of experts was that many voters were

³ 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).

unable to sustain such long wait times, and were disenfranchised as a result.⁴

In Arizona, where the vast majority of the electorate relies on the challenged procedures to vote, the complete and sudden elimination of early voting would be even worse. Given Arizona's unique topography and population distribution, some voters would be entirely unable to access the ballot. Others would be forced to travel hours only to stand in line for many more hours to attempt to vote. And because Petitioners' logic would require the elimination of mail and absentee voting entirely, voters who are unable to physically appear at the polls for any reason would be entirely disenfranchised. Federal 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 that interest. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008); *Ne. Ohio Coal. For the Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012). Proposed Intervenor more than clear that bar.

⁴ *See* U.S. Gov't Accountability Office, *Observations on Wait Times for Voters on Election Day 2012* (Sept. 2014) at 24, available at <https://www.gao.gov/assets/gao-14-850.pdf>.

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

⁵ *Mecinas v. Hobbs*, 468 F. Supp. 3d 1186 (D. Ariz. 2020), is an outlier and is currently on appeal before the Ninth Circuit. In that case the district court, relying on an unsustainably cramped reading of *Owen* and subsequent cases, concluded that national party committee plaintiffs lacked "competitive" standing to challenge a ballot ordering statute because they had not alleged that a competing candidate was impermissibly placed on the ballot. *Id.* at 1206. Here, the action threatens not only the electoral prospects of Proposed Intervenors' candidates but the very voting rights of their members and voters. In addition, the only

Finally, eliminating early vote procedures would force Proposed Intervenors to expend additional resources educating and mobilizing their voters. With the 2022 elections fast approaching, Proposed Intervenors would be forced to shift resources to voter outreach and education efforts aimed at ensuring that their voters and members are aware of the dramatic departure from decades of prior practice and are prepared to endure long wait times on election day. And Proposed Intervenors' voter mobilization efforts—typically conducted throughout the early vote period—would be compressed within the critical few days leading up to in-person voting on election day. This would require exponentially more volunteers and substantial and costly changes to the ways in which those programs are currently run, in an effort to ensure that as many as possible of Arizona's millions of voters are able to access the polls in this extremely condensed timeframe.

party committees involved in *Mecinas* were national party committees. The district court tacitly suggested that the Arizona Democratic Party, which was not a plaintiff in that lawsuit, may have had “associational” standing. *Id.* at 1203-04.

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

The interests of Proposed Intervenors and their members and constituents are not adequately represented by the parties participating in this case. The Arizona Republican Party plainly does not represent Proposed Intervenors' interests. But Proposed Intervenors' particular interest in this case—fielding successful candidates in the 2022 Election by ensuring that as many of their voters can vote as possible—is also not shared by the Secretary or the State of Arizona. Because the State Respondents “must represent the interests of all people in Arizona,” they cannot give Proposed Intervenors or their members' interests “the kind of primacy” that Proposed Intervenors will. *Planned Parenthood Arizona, Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279, 257 P.3d 181, 198 (App. 2011) (permitting adversely affected groups to intervene in defense of a challenged statute).

Recognizing this, courts have consistently permitted political parties to intervene in cases involving election administration even where government officials are named as defendants—including in litigation in Arizona itself. *See, e.g., Maricopa County Republican Party*, No. CV2018-013963 (Maricopa Cnty. Super. Ct. Nov. 9, 2018); *Mi Familia*

Vota, No. 20-cv-01903, ECF No. 5 (D. Ariz. Oct. 5, 2020); *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (“While [government] Defendants’ arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, Proposed [political party] Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures.”).

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

Even if the Court were to find that Proposed Intervenors are not entitled to intervention as of right, they should be granted permissive intervention because they have “a claim or defense that shares with the main action a common question of law and fact.” Ariz. R. Civ. P. 24(b)(1). When this standard is met, Arizona courts may consider other factors to guide its decision as to whether to grant permissive intervention, including: (1) “the nature and extent of the intervenors’ interest,” (2) “their standing to raise relevant legal issues,” (3) “the legal position they seek to advance, and its probable relation to the merits of

the case,” (4) “whether the intervenors’ interests are adequately represented by other parties,” (5) “whether intervention will prolong or unduly delay the litigation,” and (6) “whether parties 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 Intervenors’ 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 Intervenors have a distinct interest in enabling their 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 Intervenors’ constituency—that they would effectively deny the right to some of those voters entirely. Second, Proposed Intervenors

oppose the issue at the very heart of this case: contrary to Petitioners' claims, the voting procedures upon which Arizona voters have come to rely are entirely permissible under the Arizona Constitution and Arizona law. Third, Proposed Intervenors' interests are distinct from that of other parties, as they represent both their organizational interests and the interests of individual voters who disagree with Petitioners and have interests distinct from those of the state. Fourth, Proposed Intervenors seek intervention promptly, along with their concurrently filed proposed response brief, and thus their intervention will not delay the proceedings. Lastly, Proposed Intervenors will contribute to full factual development of this case because they 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 parties, the Court should permit intervention in this case.

CONCLUSION

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

RESPECTFULLY SUBMITTED this 11th day of March, 2022.

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