ARIZONA SUPREME COURT

ARIZONA REPUBLICIAN PARTY, a recognized political party; and YVONNE CAHILL, an officer and member of the Arizona Republican Party and Arizona voter and taxpayer, Petitioners, v. KATIE HOBBS, in her official capacity as Arizona Secretary of State; and STATE OF ARIZONA, a body politic, Respondents.	No. CV-22-0048-SA

ARIZONA SECRETARY OF STATE'S RESPONSE TO ARIZONA DEMOCRATIC PARTY, DNC, DSCC, AND DCCC'S MOTION TO INTERVENE

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Introduction

The state Democratic Party and two national Democratic committees ("Proposed Intervenors") seek to intervene in this case even though the Court lacks jurisdiction and the Secretary is already vigorously defending their asserted interests.

The Secretary and Proposed Intervenors share the same objective: defending the constitutionality of Arizona's early voting statutes. The Secretary is thus presumed to adequately represent the Proposed Intervenors' interests; a presumption they may only overcome with a very compelling showing. They fail to do so. Their asserted "interests" amount to no more than a partisan preference for the outcome the Secretary is already fighting for. Proposed Intervenors fail to assert the kind of unique stake in a case that warrants intervention of right under Arizona Rule of Civil Procedure 24(a).

Proposed Intervenors also offer no valid reasons to grant permissive intervention under Arizona Rule of Civil Procedure 24(b). None of their arguments will help resolve the legal issues, and their proposed response is duplicative of the Secretary's. Allowing Proposed Intervenors to intervene would undermine judicial efficiency, needlessly complicate the

case, and prejudice the Secretary, who seeks prompt dismissal of Petitioners claims on jurisdictional and other grounds.

The Secretary is preserving Arizonans' right to vote and defending Arizona's early voting system against Petitioners' baseless challenges. Proposed Intervenors offer nothing more that would aid the Court in its decision, and they may file an amicus brief if they wish to be heard. At bottom, inserting more defendants into this action to assert duplicative defenses is unnecessary and inefficient.

Argument

The Court may "allow other persons to intervene" in a special action, "subject to the provisions of Rule 24 of the Rules of Civil Procedure." R. P. Spec. Act. 2(b). Under Rule 24, Ariz. R. Civ. P., a party may seek "intervention of right" or "permissive intervention." Neither type of intervention is appropriate here.

I. The Committees Are Not Entitled to Intervention of Right.

A proposed intervenor seeking intervention of right must show in a timely motion[1]: (1) they have a protectable interest in the subject of the

[1] Instead of moving to intervene immediately, Proposed Intervenors waited until fourteen days after Petitioners filed the Petition to seek

case; (2) resolving the case without them would "impair or impede [their] ability to protect that interest"; and (3) the existing parties cannot adequately represent the proposed intervenor's interest. Ariz. R. Civ. P. 24(a); *Heritage Vill. II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 570 ¶ 10 (App. 2019).

When deciding whether an intervenor's interests are adequately represented, the "most important factor" is "how the intervenor's interest compares with the interests of existing parties." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950–51 (9th Cir. 2009) (cleaned up). And when a "party and the proposed intervenor share the same 'ultimate objective,' a presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a 'compelling showing' to the contrary." *Id.* at 951.[2] The presumption is even stronger when, as here, a government official defends a law on behalf of a constituency she represents. *Prete v. Bradbury*, 438 F.3d 949, 956 (9th Cir. 2006).

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intervention. By then, the Court had already issued a scheduling order. The Court's order does not contemplate intervention motions, but permits the filing of amicus briefs.

[2] This Court looks to federal court interpretations of similar federal procedural rules as "instructive and persuasive" because "uniformity in interpretation of our rules and the federal rules is highly desirable." *Flynn v. Campbell*, 243 Ariz. 76, 80 ¶ 9 (2017) (quotation omitted).

Here, the Secretary and Proposed Intervenors' "ultimate objective" is the same: "preserving Arizona's existing election laws against this attack." [Mot. at 10] Proposed Intervenors cannot show – let alone make a "compelling showing" – that the Secretary's defense is inadequate.

First, Petitioners raise no unique defenses in their proposed response that the Secretary hasn't argued. And even if there are slight differences, distinctions in legal "strategy or tactics" or the use of different arguments as a matter of litigation judgment aren't enough to show that the Secretary's representation is inadequate. *See Perry*, 587 F.3d at 953-55; *Prete*, 438 F.3d at 957-59.

This is not a case in which the Secretary has declined to defend the law or expressed any support for the Petitioners' positions. To the contrary, the Secretary "has shown [she] is more than willing to defend this lawsuit." *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 275 (D. Ariz. 2020) (rejecting motion to intervene where proposed intervenors had the same objective as the State of defending a challenged statute).

Second, Proposed Intervenors cannot show that their objective differs from the Secretary's in any meaningful way. They argue [at 14] that their "particular interest" in protecting Democratic voters differs

from the Secretary's broader interest in protecting all Arizona voters. But they miss the point. Even if they have a partisan reason for defending the law that the Secretary doesn't share, the ultimate objective of upholding the challenged law is the same.

The District of Arizona has rejected an identical argument raised by the Republican Party when it sought to intervene as a defendant to defend an election law. *Yazzie v. Hobbs*, 2020 WL 8181703, at *3 (D. Ariz. Sept. 16, 2020). In *Yazzie*, the Republican Party argued the Secretary (the named defendant) was "not in the position to represent the narrower interests of Republican candidates." *Id.* The court disagreed. It found that this argument did not "call into question" the Secretary's "sincerity, will[,] or desire to defend the [challenged law]." *Id.* And even though she may "not share the exact stances of the Republican Movants," the court held she was "more than capable of defending the constitutionality of the [statute] without the Republican Movants' assistance." *Id.* So too here.

Proposed Intervenors cite [at 14] *Planned Parenthood Arizona, Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279 ¶ 58 (App. 2011) for the proposition that the Secretary cannot give their interests sufficient "primacy" because she "must represent the interests

of all people in Arizona." But that case doesn't support Proposed Intervenors. There, the plaintiff challenged various abortion laws, including a law that gave healthcare providers the right to refuse to participate in an abortion procedure. The court held that healthcare providers should have been allowed to intervene "on issues regarding the right of refusal." *Id.* The court found that the State's defense of the refusal statute didn't adequately represent the healthcare providers' rights on this narrow issue, because the State also had an interest in protecting the rights of patients "who might be adversely affected by these [healthcare providers'] exercise of the rights" of refusal. *Id.*

No similar conflicting interest exists here. As the Secretary made clear in her Response to the Petition, she seeks to uphold Arizona's early voting laws to preserve Arizonans' fundamental right to vote—no matter their political affiliation. That is precisely the objective Proposed Intervenors purport to advance, even if only for a subset of voters. If anything, Proposed Intervenors are most like the parties who were denied intervention in *Planned Parenthood*. The court denied a motion to intervene by a party who merely supported the statute and had an

interest in "upholding [its] constitutionality," because the State adequately represented that interest. *Id.* at 280 ¶ 60.

Proposed Intervenors also claim [at 14] that "courts have consistently permitted political parties to intervene in cases involving election administration even where government officials are named as defendants." They cite three cases, none of which helps them. They first cite a Maricopa County Superior Court minute entry, which allowed various parties to intervene without explanation or analysis when "[n]one of the Motions to Intervene [were] opposed." *See Yuma Cnty. Rep. Party et al. v. Reagan*, No. CV2018-013963 (Maricopa Cnty. Super. Ct. Nov. 9, 2018), attached as **Exhibit A**. They next cite *Mi Familia Vota v. Hobbs*, 492 F. Supp. 3d 980, 984 (D. Ariz. 2020), where the court allowed intervention (again with no explanation or analysis) in an emergency TRO proceeding in which no one responded to the motion to intervene and the entire matter was briefed and argued in only three business days. Order attached as **Exhibit B**. And last, they cite *Issa v. Newsom*, 2020 WL 3074351, at *1 (E.D. Cal. June 10, 2020), where the Eastern District of California allowed proposed intervenors to intervene to defend an executive order when the state defendants did not oppose intervention.

None of those cases are like this one, where (1) the Secretary is fully defending an election law, (2) a proposed intervenor seeks to intervene to defend the law, and (3) the Secretary opposes intervention. When courts actually face this situation, they deny intervention. *Yazzie*, 2020 WL 8181703, at *3 (denying intervention where Secretary adequately defended election laws and opposed intervention); *Miracle v. Hobbs*, 333 F.R.D. 151, 156 (D. Ariz. 2019) (same).

Because Proposed Intervenors cannot show that the Secretary's defense is inadequate, they are not entitled to intervention of right.

II. Permissive Intervention is Inappropriate.

A party seeking permissive intervention must show in a timely motion: (1) they have a "conditional right to intervene under a statute"; or (2) they have "a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1).

When considering whether to grant permissive intervention, the Court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Ariz. R. Civ. P. 24(b)(3). Courts also consider several other factors, including:

> the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they

> seek to advance[] and its probable relation to the merits of the case[,] whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and 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 In & For Maricopa Cty., 150 Ariz. 68, 72 (1986) (quotation omitted). These factors overwhelmingly weigh against intervention here.

As detailed above, Proposed Intervenors aren't raising any legal issues that the Secretary hasn't addressed, and they share exactly the same objective as the Secretary. *See Yazzie*, 2020 WL 8181703, at *4 (denying permissive intervention because the Secretary's defense of the law sought "the exact same objective as the" proposed intervenors, and "it is well within [the Secretary's] function as the public official in charge of elections to resolve this dispute on her own"); *see also Arizonans for Fair Elections*, 335 F.R.D. at 276 (denying permissive intervention where "Proposed Intervenors' interests align[ed] with the State's," and the court didn't "see how Proposed Intervenors can more adequately defend state laws than the State itself"). There is nothing unique in their proposed response brief that will aid the Court in deciding this case, and in all events, they can raise their arguments in an amicus brief. *Arizonans for*

Fair Elections, 335 F.R.D. at 276 ("Proposed Intervenors' participation is unnecessary to the full development of this case" but still granting them "permission to file an amicus brief if they wish to do so"); *Miracle*, 333 F.R.D. at 156-57 (denying permissive intervention where Secretary was adequately defending the law, but granting "leave to file an amicus brief").[3]

Proposed Intervenors' involvement would also be inefficient and may prejudice the Secretary, who seeks prompt dismissal of Petitioners claims. As the Secretary explained in her Response to the Petition, the Court lacks jurisdiction and should dismiss the Petition on that ground. Proposed Intervenors encourage the Court to accept jurisdiction

[3] The only case Proposed Intervenors cite in support of their request for permissive intervention is *Ariz. Dem. Party v. Hobbs*, 2020 WL 6559160, at *1-2 (D. Ariz. June 26, 2020). In that case, the court conditionally granted a motion to intervene when the court did not have the benefit of briefing to decide whether the proposed intervenors had anything "relevant to contribute to the merits." *Id.* But the court also held that the intervenors could not "file a response without leave of Court," their proposed response could not "repeat any argument already raised," and any motion for leave had to "explain how the briefing submitted by Secretary Hobbs and the State [did] not adequately address the issue or issues affecting [intervenors]." *Id.* In contrast here, Proposed Intervenors filed a proposed response with entirely duplicative arguments.

[Proposed Resp. at 3-4], but they don't acknowledge Petitioners' failure to establish jurisdiction under Rule 3, R. P. Spec. Act.

In the end, the Secretary is vigorously defending Arizona's early voting system, and she doesn't need Proposed Intervenors' help. They offer no new defenses or claims, and they can raise their arguments in an amicus brief.

Conclusion

For all these reasons, the Court should deny intervention.

RESPECTFULLY SUBMITTED: March 14, 2022.

COPPERSMITH BROCKELMAN PLC

By: /s/ Roopali H. Desai
Roopali H. Desai
D. Andrew Gaona
Kristen Yost

ARIZONA SECRETARY OF STATE
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EXHIBIT A

Chris DeRose, Clerk of Court
*** Electronically Filed ***
11/09/2018 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-013963 11/08/2018

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
D. Swan/G. Verbil
Deputy

YUMA COUNTY REPUBLICAN PARTY, et al. BRETT W JOHNSON

v.

MICHELE REAGAN, et al. JOSEPH E LA RUE

RYAN DOOLEY
JEFFERSON R DALTON
RYAN ESPLIN
JASON MOORE
COLLEEN CONNOR
ROSE WINKELER
KENNETH A ANGLE
ROBERT DOUGLAS GILLILAND
WILLIAM J KEREKES
DANIEL JURKOWITZ
CHRISTOPHER C KELLER
CHARLENE A LAPLANTE
BRITT W HANSON
THOMAS M STOXEN
JOSEPH YOUNG
SAMBO DUL
SARAH R GONSKI
SPENCER G SCHARFF
JUDGE MAHONEY

MINUTE ENTRY

The Court has considered:

1. Proposed Intervenor Arizona Democratic Party's Motion to Intervene and Memorandum in Support Thereof, filed 11/8/18;
2. Proposed Intervenors League of United Latin American Citizens of Arizona, League of Women Voters of Arizona, and Arizona Advocacy Network Foundation's Motion to Intervene as Defendants, filed 11/8/18;
3. Proposed Intervenors' Motion to Intervene by Arizona Republican Party and Public Integrity Alliance, filed 11/8/18; and
4. Plaintiffs Maricopa County Republican Party, Apache County Republican Party, Navajo County Republican Party and Yuma County Republican Party's Response to Motions to Intervene, filed 11/8/18.

None of the Motions to Intervene are opposed.

Good cause shown, and the requirements of Rule 24 having been met,

IT IS ORDERED granting each of the three unopposed Motions to Intervene identified above.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

vs.

Katie Hobbs,

Defendant.

No. CV-20-01903-PHX-SPL

ORDER

Having reviewed the Republican National Committee and the National Republican Senatorial Committee's timely Motion to Intervene (Doc. 15) filed pursuant to Fed. R. Civ. P. 24,

IT IS ORDERED that the Motion to Intervene (Doc. 15) is **granted**.

IT IS FURTHER ORDERED that the Clerk of Court shall file the lodged Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (lodged at Doc. 19).

IT IS FURTHER ORDERED that the Clerk of Court shall file the lodged Answer to the Complaint (lodged at Doc. 20).

Dated this 2nd day of October, 2020.

Honorable Steven P. Logan
United States District Judge