UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DCCC,

Plaintiff,

v.

PETER S. KOSINSKI, in his official capacity as Co-Chair of the State Board of Elections; DOUGLAS A. KELLNER, in his official capacity as Co-Chair of the State Board of Elections; ANDREW J. SPANO, in his official capacity as Commissioner of the State Board of Elections; ANTHONY J. CASALE, in his official capacity as Commissioner of the State Board of Elections; TODD D. VALENTINE, in his official capacity as Co-Executive Director of the State Board of Elections; and KRISTEN ZEBROWSKI-STAVISKY, in her official capacity as Co-Executive Director of the State Board of Elections,

Defendants.

No. 1:22-cv-01029-RA

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO THE REPUBLICAN COMMITTEES' MOTION TO INTERVENE AS DEFENDANTS

Andrew G. Celli, Jr.
Nairuby L. Beckles
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020

Marc E. Elias*
Elisabeth C. Frost
Haley Costello Essig*
Joshua L. Harris*
Graham White*
Spencer McCandless*
Tyler L. Bishop*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002

Attorneys for Plaintiff

**Pro Hac Vice*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The Republican National Committee, National Republican Congressional Committee, and New York Republican State Committee (the "Republican Committees" or the "Committees"), seek intervention, but in support identify nothing more than generic interests in maintaining election procedures that are already being ably defended by the State Board of Elections ("SBOE") Defendants. Such generalized interests cannot sustain a motion to intervene. In addition to failing to identify any particular interest in this litigation beyond generalized interests in maintaining the law, they also fail to show how even the generic interests that they identify would be impaired if Plaintiff prevails. And, critically, they also have not demonstrated that the existing Defendants are inadequate defenders of the Committees' claimed interest in defending "democratically enacted laws that protect voters and candidates," as is required to establish intervention as of right under Federal Rule of Civil Procedure 24(a)(2). Mot. at 7, ECF No. 38-1. Permitting the Republican Committees to intervene would also cause unnecessary and prejudicial delays, while doing nothing to further resolution of the issues in this litigation. For each of these reasons, the motion to intervene should be denied. If the Republican Committees wish to participate, an amicus brief is the appropriate vehicle to offer their perspectives.

LEGAL STANDARD

A non-party seeking to intervene as of right must satisfy four required elements: (1) their motion must be timely; (2) they must assert an interest relating to the property or transaction that is the subject of the action; (3) they must be so situated that without intervention, disposition of the action may, as a practical matter, impair or impede their ability to protect their interest; and (4) their interests must be inadequately represented by the existing parties. *See United States v. N.Y. City Hous. Auth.*, 326 F.R.D. 411, 415 (S.D.N.Y. 2018) (citing Fed. R. Civ. P. 24(a)). The burden on a motion to intervene "is at all times on the applicant." *Floyd v. City of New York*, 302 F.R.D.

69, 100 (S.D.N.Y. 2014), and conclusory allegations will not satisfy the movant's burden. *Kambdem-Ouaffo v. Pepsico, Inc.*, 314 F.R.D. 130, 134 (S.D.N.Y. 2016). A movant who fails to establish even one of the necessary requirements should be denied intervention as of right. *New York v. Scalia*, 1:20-cv-1689-GHW, 2020 WL 3498755, at *1 (S.D.N.Y. June 29, 2020).

While courts have discretion to grant or deny motions for permissive intervention, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1), (3). Even where a movant's intervention is timely and the movant shares a claim or defense in common with a party in the main action as required under Rule 24(b)(2), the Court "has the discretion to deny intervention" and may consider other factors that are relevant. *S.E.C. v. Illarramendi*, No. 3:11CV78 JBA, 2012 WL 5832330, at *5 (D. Conn. Nov. 16, 2012). These factors include "the nature and extent of the intervenors' interest, the degree to which those interests are adequately represented by other parties, 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." *H.L. Hayden Co. of N.Y., Inc. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986) (citations and quotations omitted). Critically, "a general interest in the action will not provide a basis for permissive intervention." *See Standard Fire Ins. Co. v. Donnelly*, No. 1:08-CV-258, 2009 WL 1349948, at *4 (D. Vt. May 12, 2009) (quoting 3B Moore's Fed. Prac., ¶ 24.10[2] (2d ed. 1993)).

ARGUMENT

I. The Republican Committees are not entitled to intervene as of right.

The Republican Committees' motion fails to satisfy three of the four required elements for intervention as of right: they have not identified any legally protectable interests warranting

intervention; the generic interests they advance will not be impeded or impaired if Plaintiff prevails; and their asserted interests are adequately represented by the existing Defendants who will defend New York law. *See Great Atl. & Pac. Tea Co., Inc. v. Town of E. Hampton*, 178 F.R.D. 39, 45 (E.D.N.Y. 1998). This Court should deny the motion to intervene as of right.

A. The Republican Committees assert vague and generic interests that do not entitle them to intervention.

The Republican Committees advance an indiscriminate list of generic interests, none of which entitle them to intervention as of right. This is because Rule 24(a) requires a putative intervenor to demonstrate that it has a "direct, substantial, and legally protectable" interest in the proceedings. *Bridgeport Guardians v. Delmonte*, 602 F.3d 469, 473 (2d Cir. 2010). This interest must "be one which the substantive law recognizes as *belonging to or being owned by the applicant*." *Floyd*, 302 F.R.D. at 102 (emphasis added), *aff'd* 770 F.3d 1051, 1057 (2d Cir. 2014); *see Chiles v. Thorburgh*, 865 F.2d 1197, 1212 (11th Cir. 1989) ("[A]n intervenor's interest must be a particularized interest rather than a general grievance."). "[A] contrary view would greatly expand the universe" of parties, *Pujol v. Shearson Am. Express, Inc.*, 877 F.2d 132, 136 (1st Cir. 1989) (Breyer, J.), upsetting Rule 24's objective of "keeping a single lawsuit from becoming unnecessarily complex, unwieldy or prolonged . . . ." *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 69 (2d Cir. 1994).

A putative intervenor therefore cannot rely on an interest that "belongs . . . to an existing party to the suit" or the public at large. *Vazman v. Fid. Int'l Bank*, 418 F. Supp. 1084, 1086 (S.D.N.Y. 1986); *see also Floyd*, 302 F.R.D. at 101-02. In *Floyd*, for example, this Court held that several unions representing New York Police Department officers were not entitled to intervene as of right in a lawsuit challenging New York City's "stop-and-frisk" policy. The unions asserted several interests that would purportedly be impaired should the litigation result in the recission of

stop-and-frisk, including an interest in "officer and public safety." 302 F.R.D. at 103. But the court held that this interest could not support intervention, because "officer safety is really a restatement of the Unions' generalized interest in effective policing shared by all New Yorkers." *Id.* at 103. To the extent the interest belongs to any litigant, the Court explained, it "belongs to the City, not the Unions, and union members have no independent interest in these issues separate from" the City of New York, which was already a defendant in the litigation. *Id.* at 103-04.

Federal courts have repeatedly rejected similar interests as bases for motions to intervene in election-related litigation. In *One Wisconsin Institute, Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015), for instance, the district court denied intervention to a group of state legislators and voters who sought to defend the constitutionality of a voter identification law, holding that their general interest "in defending" state election laws and in "fraud-free elections" was insufficient to support intervention. And in *United States v. Alabama*, No. 2:06-cv-392-WKW, 2006 WL 2290726, at *3 (M.D. Ala. Aug. 8, 2006), the district court denied intervention to two Democratic Party officials who sought to intervene in a suit brought by the United States seeking to bring Alabama into compliance with the Help America Vote Act, concluding that their interest in "fair and adequate voter registration procedures and in ensuring that voters have confidence in Alabama's electoral systems" was too generalized to serve as the basis for intervention. *See also Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 258 (D.N.M. 2008) ("To the extent that the [Republican Party of New Mexico] asserts generalized interests in fair elections, it does not have a protectable interest.").

The Republican Committees' asserted interests are similarly insufficient to entitle them to intervention as of right. In support of their intervention, they identify interests "in the rules and procedures governing New York's elections" and "in the implementation of a fair and orderly

election process." Mot. at 3. Just as in *Floyd*, however, these concerns are generalized interests shared by *all* New Yorkers, especially the SBOE Defendants, who are already Defendants in this action. The SBOE Defendants are statutorily required to execute on the very interests the Republican Committees assert. *See*, *e.g.*, N.Y. Elec. L. § 3-102(1), (11) (requiring SBOE to "issue . . . and promulgate rules and regulations relating to the administration of the election process," and to "promote fair, honest, and efficiently administered elections"); *see also* Mission Statement, New York State Board of Elections ("The State Board of Elections . . . [is] vested with the responsibility for administration and enforcement of all laws relating to elections in New York State" and "is charged with the preservation of citizen confidence in the democratic process and enhancement in voter participation in elections.").[1]

The Republican Committees assert in sweeping fashion that political parties are "virtually always" granted intervention in cases challenging election rules and identify a string of cases in support of this proposition. *See* Mot. at 2 & n.*; *see also id.* at 5. But the Republican Committees' characterization of the cases they rely on is misleading. In *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351 (E.D. Ca. June 10, 2020), for instance, the court did not rely on some "routine" right for political parties to intervene, but instead found that the specific interests articulated by the intervenors in that particular case—including "the rights of their members to vote safely without risking their health" during the pandemic—were "routinely" sufficient to satisfy intervention. *Id.* at *3. And in all but a handful of the cases upon which the Republican Committees rely, the court granted only *permissive* intervention—not intervention as of right.

[1] *Available at* https://www.elections.ny.gov/AboutSBOE.html (last visited Apr. 11, 2022).

Many are also otherwise distinguishable.[2] The remainder are all unpublished, do not provide a reasoned explanation for the outcome, and do not state whether the order grants permissive intervention or intervention as of right.[3] The Republican Committees entirely ignore the cases that have come out the other way, many of which found that the very types of generalized interest in election administration that the Republican Committees assert here are insufficient to justify intervention. *See, e.g.*, *Herrera*, 257 F.R.D. at 258; *Alabama*, 2006 WL 2290726, at *3; *One Wis. Inst., Inc.*, 310 F.R.D. at 394.

Finally, the Republican Committees assert that they are entitled to intervene in light of the Fifth Circuit's recent decision in *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022), which reversed the district court's denial of a motion to intervene in that case filed by certain Republican Party entities. But the Republican Committees obfuscate the actual decision by

[2] *Nielsen v. DeSantis*, No. 20-cv-236 (N.D. Fla. May 28, 2020), ECF No. 101 (granting permissive intervention); *Ariz. Democratic Party v. Hobbs*, No. 20-cv-1143 (D. Ariz. June 26, 2020), ECF No. 60 (granting permissive intervention and severely limiting the movants' participation in the matter); *Swenson v. Bostelmann*, No. 20-cv-459 at *4 (W.D. Wis. June 23, 2020), ECF No. 38 (granting permissive intervention because political party was already party in several other "closely overlapping lawsuits"); *Edwards v. Vos*, No. 20-cv-340 (W.D. Wis. June 23, 2020), ECF No. 27 (granting permissive intervention where neither plaintiffs nor defendants opposed the intervention); *Priorities USA v. Nessel*, No. 19-13341, 2020 WL 2615504 at *4 (E.D. Mich. May 22, 2020) (granting permissive intervention but noting that the "competitive interests" of the state Republican Party and the Republican National Committee were "not as salient" as those of the state legislature); *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249, 2020 WL 1505640, at *5 (denying intervention of right but granting permissive intervention).

[3] *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 20-cv-24 (W.D. Va. Apr. 29, 2020), ECF No. 57 (same); *League of Women Voters of Minn. Educ. Fund v. Simon*, No. 20-cv-1205 (D. Minn. June 23, 2020), ECF No. 52 (same); *Mi Familia Vota v. Hobbs*, No. 20-cv-1903 (D. Ariz. June 26, 2020), ECF No. 25; *Wood v. Raffensperger*, No. 20-cv-5155 (N.D. Ga. Dec. 22, 2020) (same). In two instances, the Republican Committees cite orders from state courts granting motions to intervene; they include no memorandum explaining the reasoning and do not even specify whether the intervention is of right or permissive. Order Granting Mot. to Intervene, *Corona v. Cegavske*, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020); *All. for Retired Am.'s v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020).

the Fifth Circuit in that case, which supports *denial* of the Republican Committees' motion to intervene in this case. Again, in *this* case, (1) the only interests that the Republican Committees assert to support their motion to intervene is their interest in the continued application of current New York election law, and (2) they have failed to explain how Plaintiff's challenge could even possibly impede any specific interest held by the Republican Committees. In *Abbott*, the Fifth Circuit did not allow intervention based on the only interest that the Republican Committees assert here—i.e., their purported interests in defending Texas's election rules and fair elections. The Republican entities who sought to intervene in *Abbott* made similar claims, but the district court specifically rejected those interests as too generalized to support intervention as of right, and the Fifth Circuit expressly declined to disturb that holding on appeal. *Id.* at n.5 ("[W]e need not address whether the Committees' more election-specific interests are enough to establish intervention by right."). But in *Abbott*, the Republican entities who sought to intervene did not *solely* rely upon those generalized interests. They also asserted a separate and far more concrete interest in a specific provision challenged by the Plaintiffs that gave "poll watchers" recruited and trained by political parties nearly unlimited access to polling places. If the plaintiffs prevailed, the access to polling places by poll watchers engaged by the Republican entities would be curtailed. Thus, the Fifth Circuit held that, in that particular case, the Republican intervenors had alleged a sufficient interest in the litigation because it involved a provision that "unquestionably regulates the conduct of the Committees' volunteers." No such similar provision is at issue in this litigation, nor have the Republican Committees attempted to identify or claim such an interest.

Taken to its logical conclusion, the Republican Committees' position would confer a right of intervention on *any* political entity in any case involving elections or election laws. That is not the law. Indeed, such a position undermines the very purpose of Rule 24. *See Pitney Bowes*, 25

F.3d at 69. The Republican Committees have failed to state a particularized interest and have merely reiterated the general interest that New York law assigns to the existing defendants in this case. As such, their motion to intervene as of right must be denied.

B. The Republican Committees' generic interests will not be impeded or impaired absent intervention.

The Republican Committees also do not make clear how a ruling in Plaintiff's favor will negatively impact even their generalized asserted interests. Here, once again, their assertions are so generalized as to be effectively meaningless. The Republican Committees advance three theoretical theories of impairment: they claim that (1) this litigation could "undercut democratically enacted laws that protect voters and candidates," (2) "change the structure of the competitive environment," and (3) "confuse voters and undermine confidence in the electoral process." Mot. at 7 (quotations and alterations omitted). These supposed impairments are far too generalized and speculative to entitle the Republican Committees to intervene. *Kambdem-Ouaffo*, 314 F.R.D. at 134.

It is important to consider the Republican Committees' assertions in the context of this specific case. Plaintiff is primarily challenging the SBOE's practices of *discarding* valid ballots cast by lawful voters due to *government officials'* own *errors*. These include ballots cast by voters whom officials gave ballots they were not legally allowed to cast, *see* Compl. at ¶ 4, ECF No. 1; ballots returned by voters in compliance with erroneous instructions, *id.* ¶ 6, ballots that the Postal Service arbitrarily fails to postmark, *id* ¶ 7, and ballots that contain superficial defects that voters are legally allowed to cure but are not afforded the opportunity, *id.* ¶ 8. As detailed in Plaintiff's Complaint, these practices inflict burdens on voters who are often denied their fundamental right to vote as a result. The Republican Committees fail entirely to explain how enjoining these burdensome practices could possibly "confuse voters" and "undermine confidence in the electoral

process." Mot. at 7. If anything, it is the current SBOE's practice of discarding valid ballots cast by lawful voters that creates confusion for New Yorkers. Such practices are *contrary* to and undermine the "democratically enacted laws that protect voters and candidates." *Id.*

Nor do the Republican Committee explain how enjoining the wrongful rejection of these ballots would "change the structure of the competitive environment." *Id*. at 7 (quotations and alterations omitted). To the extent they suggest that their candidates fare better in elections in which voters are wrongfully denied their fundamental voting rights, the Committees lack any legally protectable interest in that purported advantage. While competitive standing is recognized in this and many other circuits, it is understood to confer a cognizable claim only when the competitive environment is illegally structured. *See Mecinas v. Hobbs*, No. 20-16301, 2022 WL 1052620, at *5-6 (9th Cir. Apr. 8, 2022); *Shays v. Fed. Election Comm'n*, 414 F.3d 76, 85 (D.C. Cir. 2005). The Republican Committees seek to distort that precedent by effectively claiming a right to a competitive environment where lawful voters have their ballots rejected due to election official error. There is no precedent for such a contention. *Cf. Wise v. Circosta*, 978 F.3d 93, 100 (4th Cir. 2020) (holding there is no basis for a challenge based on theory that laws make it easier for others to vote); *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) ("[A] person complaining that government action will make his criminal activity more difficult lacks standing because his interest is not 'legally protected.'").

In short, the Republican Committees' generalized speculation is not enough to show that disposition of the action in their absence may impair or impede their ability to protect their interests. *New York City Hous. Auth.*, 326 F.R.D. at 415. This by itself is sufficient grounds to deny the motion to intervene as of right.

C. The existing SBOE Defendants more than adequately represent the Republican Committees' interests.

Adequate representation by existing defendants is presumed when "the putative intervenor and a named party have the same ultimate objective." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001). "The proponent of intervention must make a particularly strong showing of inadequacy in a case where the government" seeks the same outcome as the intervenor. *United States v. City of New York*, 198 F.3d 360, 367 (2d Cir. 1999); *see also Orange Env't, Inc. v. Cnty. of Orange*, 817 F. Supp. 1051, 1060 (S.D.N.Y. 1993), *aff'd sub nom. Orange Env't, Inc. v. Orange Cnty. Legis.*, 2 F.3d 1235 (2d. Cir. 1993). To overcome the presumption, the movant to intervene may provide "evidence of collusion, adversity of interest, nonfeasance or incompetence." *St. John's Univ. v. Bolton*, 450 Fed. App'x 81, 84 (2d Cir. 2011) (quoting *Butler*, 250 F.3d at 180.

That the existing Defendants share the exact same goal as the Republican Committees—to defend the practices challenged by Plaintiff—is yet another reason to deny their motion to intervene. The Republican Committees cannot make the necessary "rigorous showing" to overcome the presumption of adequacy of representation. *Butler,* 250 F.3d at 179. They claim interests "in the rules and procedures governing New York's elections" and "in the implementation of a fair and orderly election process." Mot. at 3. But, as previously discussed, the SBOE is legally required to represent—and, indeed, exists for the very purpose of furthering—these precise interests. *See* N.Y. Elec. L. § 3-102(1), (11). The Republican Committees do not even attempt to rebut the presumption that this well-resourced, sophisticated government entity will adequately perform its duties in this litigation.

Instead, the Republican Committees insist that SBOE's representation is inadequate because the SBOE Defendants do not share their interest in electing Republican candidates and

mobilizing Republican voters. Mot. at 8. The relevant inquiry, however, is whether the existing parties will adequately represent the protectable interests *upon which intervention is asserted*. *Herrera*, 257 F.R.D. at 258. Here, the Republican Committees have sought intervention not to further their interest in electing Republican candidates, but to prevent changes to "the rules and procedures governing New York's elections" and to ensure "the implementation of a fair and orderly election process." Mot. at 3. A federal court rejected a virtually identical argument by the Republican Party of New Mexico in *Herrera*:

> While the [Republican Party of New Mexico] has a protectable interest stemming from its running of state-wide candidates and others who may be effected by the Plaintiffs' voter registration effort, the RPNM seeks to intervene to protect its interests by defending the constitutionality of the registration law. The Defendant is already advocating this position. While Defendant is governmental, the RPNM's protectable interest is essentially the same as the public interest asserted by the Defendant, not a distinct private interest.

257 F.R.D. at 258; *see also Alabama*, 2006 WL 2290726, at *5 (finding adequate representation because "the proposed intervenors' partisan concerns are subordinate to the implementation of [the Help America Vote Act]"). So too here. The Republican Committees seek to intervene to protect their interests by purportedly attempting to prevent changes to New York's election practices and procedures. The SBOE Defendants share the same objective, and as such the Republican Committees have failed to identify any unique interest germane to this litigation that will go unprotected by the SBOE Defendants' advocacy.

For the same reason, it is no answer that government entities have their own interests that putative intervenors may not share. Mot. at 8. While the Republican Committees cite then-Judge Garland's opinion in *Fund for Animals, Inc. v. Norton*, 322 F.3d 728 (D.C. Cir. 2003), for the proposition that courts "often conclude[] that governmental entities do not adequately represent the interests of aspiring intervenors," Mot. at 8 (quoting *Fund for Animals*, 322 F.3d at 736), that case makes clear that differing interests by themselves are not sufficient to show inadequate

representation. Instead, *Fund for Animals* found inadequate representation because it was "not hard to imagine how [those differing] interests . . . might diverge during the course of litigation." 322 F.3d at 736. Put another way, putative intervenors must show how a party's unique interests diverge from their own "in a manner germane to the case." *Texas v. United*, 805 F.3d 653, 662 (5th Cir. 2015). The Republican Committees have not done so here.

Rather than point to interests that the SBOE possesses in this litigation, the Republican Committees identify the interests of government entities in *other cases*. Mot. at 8-9 (discussing, inter alia, "the expense of defending the current laws out of state coffers" and "officials' 'own desires to remain politically popular and effective leaders'") (quoting *Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999); *see also Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1478 (11th Cir. 1993)). They then ask the Court to assume that the SBOE shares those interests here and that those interests would undermine the SBOE's defense of the challenged practices. *See id.* It is not the Court's job to connect the dots, however, and a movant is not entitled to intervention based on a threadbare recitation of speculative conflicts. *Kambdem-Ouaffo*, 314 F.R.D. at 134. The SBOE Defendants adequately protect the Republican Committees' interests in defending the challenged practices. The Court should therefore deny the motion to intervene.

II. The Court should deny permissive intervention.

The Republican Committees' request for permissive intervention under Rule 24(b) should likewise be denied. First, although Rule 24(b) "does not require a finding that party representation is adequate," adequate representation "weighs against permitting intervention." *Scalia*, 2020 WL 3498755, at *4 (cleaned up) (citing *New York v. United States Dept. of Health & Human Servs.*, No. 19 Civ. 4676, 2019 WL 3531960, at *6 (S.D.N.Y. Aug. 2, 2019)). Here, the Republican Committees' manifest failure to demonstrate a concrete interest in this action that will not be adequately represented by the SBOE Defendants counsels against permissive intervention. *See*

NextEra Energy Cap. Holdings, Inc. v. Walker, No. 1:19-CV-626-LY, 2020 WL 3580149, *1 (W.D. Tex. Feb. 26, 2020) (denying permissive intervention where "existing parties adequately protect all asserted intere[sts] and the presence of additional parties will not be of assistance to the court's determination of the issues presented"); *Abbott*, 2021 WL 5410517, at *3 (same).

Second, permissive intervention will do nothing to further the Court's resolution of the issues in this litigation. While the Republican Committees assert that permissive intervention "will allow 'the Court . . . to profit from a diversity of viewpoints as [Movants] illuminate the ultimate questions posed by the parties,'" Mot. at 11 (quoting *Franconia Minerals (US) LLC v. United States*, 319 F.R.D. 261, 268 (D. Minn. 2017)), they fail to identify any specific viewpoints or explain how they will assist the factual development of this case. Nor do they explain why participation as amicus would not achieve the same ends. Once again, the Republican Committees cannot carry their burden on a motion to intervene with conclusory allegations. *Kambdem-Ouaffo*, 314 F.R.D. at 134.

Finally, the Republican Committees' participation would unnecessarily prejudice the existing parties. *See Pitney Bowes*, 25 F.3d at 73 ("The principal guide in deciding whether to grant permissive intervention is 'whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.'" (quoting Fed.R.Civ.P. 24(b)(2))). With the crowding of additional participants in this coordinated proceeding, litigation becomes more complex, expensive, and time consuming at every step. Briefing schedules become more complicated, the number of pages that the parties and the Court must contend with in filings become multiplied, discovery becomes more burdensome, and negotiating even basic stipulations become more cumbersome. The Republican Committees have not demonstrated how the benefits from their

participation in this litigation will outweigh these additional burdens. Accordingly, the Court should also deny the motion for permissive intervention.

CONCLUSION

For the all the reasons above, the Court should deny, in full, the Republican Committees' Motion to Intervene.

Dated: April 14, 2022

Respectfully submitted,

Andrew G. Celli, Jr.
Nairuby L. Beckles
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP
600 Fifth Avenue, 10th Floor
New York, New York 10020

Marc E. Elias*
Aria Branch*
Haley Costello Essig**
Joshua L. Harris*
Graham White*
Spencer McCandless*
Tyler L. Bishop*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002

Attorneys for Moving Plaintiff

**Pro Hac Vice*
***Pro Hac Vice Forthcoming*