UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MI FAMILIA VOTA, *et al*.,

Plaintiffs – Appellees,

v.

ADRIAN FONTES, *et al.*,

Defendants – Appellees,

and

WARREN PETERSEN, *et al.*,

Intervenor-Defendants – Appellants.

Nos. 24-3188, 24-3559, & 24-4029

D.C. No. 2:22-cv-00509-SRB (Consolidated)
U.S. District Court for the District of Arizona

MOTION TO INTERVENE ON APPEAL OF REPUBLICAN PARTY OF ARIZONA

RETRIEVED FROM DEMOCRACYDOCKET.COM

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule FRAP 26.1(a), the Republican Party of Arizona represents that it not owned, in whole or in part, by any parent corporation or any publicly held corporation.

/s/ Andrew Gould
Andrew Gould*
*Counsel of Record
Brennan A.R. Bowen
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK, PLLC
2575 E Camelback Road, Ste 860
Phoenix, AZ 85381
Phone: (540) 341-8808
Fax: (540) 341-8809
agould@holtzmanvogel.com
bbowen@holtzmanvogel.com

Counsel for Proposed Intervenor
Republican Party of Arizona

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Cases **Page(s)**

RETRIEVED FROM DEMOCRACYDOCKET.COM

RETRIEVED FROM DEMOCRACYDOCKET.COM

Rules

Other

INTRODUCTION & RELIEF REQUESTED

Proposed Intervenor Republican Party of Arizona (the "AZ GOP") respectfully moves to intervene in this appeal, both as of right and permissively. The AZ GOP and its members, candidates, and voters have an important interest in ensuring that the voter registration and proof of citizenship requirements contained in HB 2492 and 2243 (collectively, the "Acts"), which protect the integrity of Arizona's elections, are upheld against Plaintiffs' challenges.

The Parties' positions on this Motion are as follows:

(1) Do Not Oppose: President of the Arizona Senate, Speaker of the Arizona House, the Republican National Committee;

(2) Oppose: Arizona Asian American Native Hawaiian and Pacific Islander For Equity Coalition, Living United For Change In Arizona, Mi Familia Vota, Poder Latinx, Promise Arizona, and Tohono O'odham Nation;

(3) No Position: United States, State of Arizona, Arizona Attorney General, Arizona Secretary of State, as well as county recorders for the following Arizona counties: Apache, Cochise, Coconino, Graham, Greenlee, La Paz, Maricopa, Navajo, Pima, Santa Cruz, and Yavapai.[1]

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATEMENT OF THE CASE

The AZ GOP seeks to intervene for purposes of appeal to uphold the validity of the Acts. All the requirements for intervention as of right are satisfied here.

[1] Although the AZ GOP sought the position of the remaining parties the day it filed this Motion, it did not receive a response from all parties—likely because the upcoming Fourth of July holiday.

First, the AZ GOP has significant protectable interests at issue in this case that could readily be impaired by this Court's ruling on appeal. Specifically, this case affects the rules and procedures governing Arizona's 2024 elections, which in turn directly impact the interests of the AZ GOP and its members, candidates, and voters.

Second, this motion is timely. This Court treats requests to intervene for purposes of appeal as conclusively "timely as a matter of law" when they are "filed within the time within which the named [parties] could have taken an appeal." *Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) (emphasis added). The AZ GOP filed its Motion to Intervene, for purposes of appeal, in the District Court on the day that final judgment was entered. *See* ECF No. 270 (entering final judgment on May 5, 2024); ECF No. 721 (filing the AZ GOP's Motion to Intervene in the district court for the purposes of appeal).[2]

RETRIEVED FROM DEMOCRACYDOCKET.COM

Third, the "minimal burden" of demonstrating the inadequacy of existing parties is demonstrated by the fact that (1) the current Attorney General has expressly abandoned constitutional arguments supporting the Acts that the prior Attorney General advanced (and that the AZ GOP would make here), and (2) the other Intervenor-Defendants are national organizations that are focused on national elections, whereas the AZ GOP is, by design, more focused on elections to Arizona state offices, including all 90 seats in the Arizona Senate and House.

[2] District court filings will be short cited as ECF No. __.

Alternatively, this Court should grant permissive intervention. The AZ GOP seeks to raise common arguments of law and fact in defense of the Acts and its participation will aid this Court in considering the appeals from the District Court's March 22, 2024, final judgment.

LEGAL STANDARD

There is no rule that specifically governs appellate intervention. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010 (2022) ("No statute or rule provides a general standard to apply in deciding whether intervention on appeal should be allowed."). Instead, courts should consider the "policies underlying intervention," including the legal interest that the party seeks to protect through appellate intervention. *Id*. (citing Fed. R. Civ. P. 24). Similarly (though long before *Cameron*), this Court held that "[i]ntervention on appeal is governed by Rule 24 of the Federal Rules of Civil Procedure." *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). Likewise, borrowing from that Rule, the Supreme Court in *Cameron* analyzed the strength of the legal interest asserted, the timeliness of the motion, and the prejudice to existing parties. 142 S. Ct. at 1010–14.

Rule 24 provides for intervention both permissively and as of right. Rule 24(a) authorizes anyone to intervene in an action as of right when the applicant demonstrates that:

RETRIEVED FROM DEMOCRACYDOCKET.COM

> (1) the intervention application is timely; (2) the applicant has a "significant protectable interest relating to the property or transaction that is the subject of the action"; (3) "the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest"; and (4) "the existing parties may not adequately represent the applicant's interest."

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006); *see also* Fed. R. Civ. P. 24(a)(2). Rule 24(a) is to be construed "broadly in favor of proposed intervenors." *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quotation marks and citation omitted). And application of this test is "guided primarily by practical considerations, not technical distinctions." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (quotation marks and citation omitted); *see also Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (reiterating importance of "practical and equitable considerations" as part of judicial policy favoring intervention) (quotation marks and citation omitted).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Under Rule 24, a court may also grant permissive intervention "where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996). "An applicant who seeks permissive intervention must prove that it meets three threshold requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and

(3) the court has an independent basis for jurisdiction over the applicant's claims." *Cooper v. Newsom*, 13 F.4th 857, 868 (9th Cir. 2021).

Furthermore, this Court has suggested "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" are all relevant factors. *Spangler v. Pasadena City Bd. of Educ*., 552 F.2d 1326, 1329 (9th Cir. 1977). Even further still, this Court may look to "whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties," (which is required for intervention as of right under Rule 24(a), but not for permissive intervention under Rule 24(b)), "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." *Id*.

RETRIEVED FROM DEMOCRACYDOCKET.COM

ARGUMENT

All relevant factors support granting intervention, both as of right and permissively.

I. JURISDICTIONAL MATTERS

Standing. "In general, an applicant for intervention need not establish Article III standing to intervene" unless they advance claims different from those raised by

the existing parties. *Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011); *see also Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017). As explained *infra* § II.E, the AZ GOP does not assert different claims than those raised by the existing parties. Standing is, thus, not an issue here. *See Perry*, 630 F.3d at 906.

Independent Grounds for Jurisdiction. Federal courts primarily require "independent jurisdictional grounds" to discourage use of permissive intervention "to gain a federal forum for state-law claims" or "to destroy complete diversity in state-law actions." *Freedom From Religion Found. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). But "[w]here the proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern drops away." *Id.* at 844 (citing 7C Charles Alan Wright et al., *Federal Practice & Procedure* § 1917 (3d ed. 2010)). Such is the case here.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Procedural Appropriateness of Appellate Intervention. The AZ GOP seeks intervention on appeal because that is the most appropriate procedural path considering the District Court's actions below. The AZ GOP initially moved to intervene in the District Court in May of 2022, ECF No. 24, which the court denied in June of 2023, ECF No. 57.

Then, on the same day that the District Court entered final judgment, the AZ GOP again moved to intervene in the district court for purposes of appeal. *See* ECF No. 721 (filing the AZ GOP's Motion to Intervene in the district court for the

purposes of appeal); ECF No. 270 (entering final judgment on May 5, 2024); ECF No. 723 (filing the first notice of appeal regarding final judgment on May 8, 2024).

In *pro forma* fashion, on June 28, 2024, the District Court again denied the AZ GOP's intervention; this time reasoning that—because the court had ruled on all pending motions and the parties had filed notices of appeal—the court had been "divested . . . of jurisdiction to rule on AZ GOP's Motion to Intervene." ECF No. 752 at 11. But instead of letting the Ninth Circuit decide that Motion, the District Court denied the Motion and provided that "[s]hould AZ GOP desire to intervene, it should file a motion with the Ninth Circuit." *Id.* (citing *East Bay Sanctuary Covenant v. Biden*, 102 F.4th 996 (9th Cir. 2024)).

Consequently, because jurisdiction over the case has now been transferred to this Court, the AZ GOP has followed the District Court's directive and now files this Motion to Intervene, which is procedurally proper. *See Elorreaga v. Viacomcbs Inc.*, No. 23-80056, 2023 U.S. App. LEXIS 18864, at *1 (9th Cir. July 24, 2023).

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. FACTORS SUPPORTING INTERVENTION

A. The AZ GOP Has Significant Protectable Interests In The Subject Matter of This Action.

The Court's resolution of this case on appeal will have a significant impact on the interests of AZ GOP, its members, candidates, and voters. The AZ GOP is a state political committee that serves to promote and protect Republican Party principles and policies, as well as assist Republican candidates in elections for federal, state,

and local offices. Thus, the AZ GOP not only has a clear interest in laws that affect election rules and procedures, but also laws such as the Acts that promote fair and orderly elections. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 304, 306 (5th Cir. 2022) (holding that Republican Party intervenors satisfied the protectable interest prong of Rule 24(a) intervention where "claims brought by the plaintiffs" challenging the validity of laws concerning "voter registration, voting by mail, poll watchers" and other issues "could affect the [Republican] Committees' ability to participate in and maintain the integrity of the election process in [the state]"). Indeed, the AZ GOP invests a significant amount of its resources in training and assisting members, volunteers, voters, and workers in complying with election rules and procedures. *See, e.g.*, *Election Funds Portal*, See the Money, Republican Party of Arizona, LLC, https://tinyurl.com/ybdbbdtp (last visited Apr. 25, 2024) (providing publicly available expense reports for the AZ GOP).

RETRIEVED FROM DEMOCRACYDOCKET.COM

B. The AZ GOP's Ability To Protects Its Interests Would Be Impaired Or Impeded By Any Adverse Ruling

Although the AZ GOP's "impairment must be practical and not merely theoretical, [it] need only show that if [it] cannot intervene, there is a possibility that [its] interest could be impaired or impeded." *Abbott*, 29 F.4th at 307 (emphasis added) (internal quotation marks and citation omitted). Given the substantial interest the AZ GOP has in this case, the AZ GOP's interests will be adversely affected by an adverse ruling on appeal. And providing the AZ GOP with an opportunity to be

heard will also allow the appellate court to consider the AZ GOP's views before it renders an opinion. *See Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972) ("The right of intervention conferred by Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard.")

C. The Existing Parties Do Not Adequately Represent Intervenor's Interests.

The inadequacy of representation factor "is satisfied if the applicant shows that representation of his interest *may* be inadequate—a 'minimal' burden." *Kalbers v. United States DOJ*, 22 F.4th 816, 828 (9th Cir. 2021) (quoting *Legal Aid Soc'y of Alameda Cnty. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980)); *see also Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 195 (2022) ("[T]his Court has described the Rule's test as presenting proposed intervenors with only a minimal challenge."). Although the Supreme Court did not analyze this factor in *Cameron*, it did suggest that the factor is triggered when existing parties stop being able or willing to protect the interests of the proposed intervenor. *Cameron*, 142 S. Ct. at 1012. This Court, meanwhile, also compares the interests of the proposed intervenor to those of the existing parties. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) ("The most important factor in determining the adequacy of representation is how the interest compares with the interests of existing parties.") (citing 7C Charles Alan Wright et al., *Federal Practice & Procedure* § 1909 (1986)).

RETRIEVED FROM DEMOCRACYDOCKET.COM

And when assessing the adequacy of representation by existing parties, this Court considers "three factors":

> (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Id.

Here, the current Arizona Attorney General inadequately represents the interests of the AZ GOP. Simply put, the AZ GOP supports the arguments made by the prior Attorney General defending the Acts, which have been abandoned by the current Attorney General. This is evidenced by the current Attorney General's narrow appeal that neglects to challenge many of the District Court's adverse rulings.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Additionally, the existing Republican Intervenors do not fully and adequately represent the interests of the AZ GOP. The AZ GOP, as the state party committee, is more focused on state and local elections as opposed to national and federal elections, which is the primary focus of the existing Republican Intervenors. In other words, the party with the local perspective (the current Arizona Attorney General) does not advance the views that best protect the interests of the AZ GOP, and the parties that are more aligned with the AZ GOP's views (the Republic Intervenors) do not share the AZ GOP's local perspective. Thus, AZ GOP's presence is necessary

here as no party adequately represents its interests. *See Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011).

D. The Timeliness of This Motion.

This Court determines the timeliness of intervention by considering three factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *United States v. Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996). The AZ GOP satisfies each factor here.

State of the Proceeding. This request is "[f]or the limited purpose of intervention to appeal," and courts treat such requests as conclusively timely so long as they are filed within the time to appeal: "so long as the motion to intervene is filed within the time within which the named plaintiffs could have taken an appeal, *the motion is timely as a matter of law*." *Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) (emphasis added); *see also Cameron*, 142 S. Ct. at 1012 (applying the within-the-time-to-file-an-appeal rule for intervention); *Clarke v. Baptist Mem'l Healthcare Corp.*, 641 F. App'x 520, 524 (6th Cir. 2016) (to same effect).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Here, the request was filed within the time to appeal and is thus conclusively timely. The AZ GOP's initial motion to intervene on appeal was filed in the District Court on the same day that final judgment was entered. *Supra* § I. And this Motion

is filed within a week of the District Court's denial of that initial motion. As a result, this Court treats such a motion to intervene for purpose of appeal as "timely as a matter of law." *See Alaska*, 123 F.3d at 1320.

Delay and Prejudice. As this case proceeds in this Court in the normal course, the AZ GOP's intervention will not delay any proceedings. Indeed, the Court just announced the new briefing schedule for the cross appeals on July 1. Thus, the AZ GOP's entry at this juncture will not prejudice any party.

E. Other Relevant Factors.

For the reasons set forth above, the AZ GOP has satisfied all four requirements for intervention as of right, and this Court should therefore grant intervention for purposes of this appeal on that basis alone. In addition, all of the remaining requirements for permissive intervention are satisfied here.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Federal courts may permit intervention by litigants who have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Where a litigant "timely presents such an interest in intervention," the Court should consider:

> [T]he 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 changes have occurred in the litigation so that intervention that was once denied should be reexamined, 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.

Schwarzenegger, 630 F.3d 898, 905 (9th Cir. 2011) (citation omitted). This Motion has already addressed most of these factors, but the AZ GOP highlights just a few here to demonstrate the appropriateness of permissive intervention.

The AZ GOP's Interests / Standing. As discussed above, the AZ GOP, as well as its members, candidates, and voters, have a compelling interest in the outcome of this action that will be impaired if it is not granted intervention. *See supra* § II.A. & B. Additionally, the AZ GOP's standing is not at issue here. *See supra* § I.

Common Questions of Law or Fact / Legal Position. A Rule 24(b) intervenor must "have a question of law or a question of fact in common" with the main action. *Nw. Forest Res. Council*, 82 F.3d at 839 (quoting Fed. R. Civ. P. 24(b)(2)). Here, the AZ GOP seeks to present arguments that the Acts are constitutional and comport with federal law. That will not add a question of law or fact to this case.

Changes in Litigation. As explained *supra* § I, since the AZ GOP was denied intervention in 2022, the Attorney General has changed positions in a way that materially affects the AZ GOP, and that position shift is even more acute on appeal, where the Attorney General does not appeal most of the adverse rulings below. Moreover, the District Court's denial of the AZ GOP's motion to intervene on appeal

RETRIEVED FROM DEMOCRACYDOCKET.COM

was on purely jurisdiction grounds. *See* ECF No. 752 at 11. Thus, intervention that was once denied, is now appropriate here. *See Spangler*, 552 F.2d at 1329.

CONCLUSION

For these reasons, the AZ GOP's Motion to Intervene on Appeal should be granted.

Respectfully submitted,

/s/ Andrew Gould
Andrew Gould*
*Counsel of Record
Brennan A.R. Bowen
HOLTZMAN VOGEL BARAN
TORCHINSKY & JOSEFIAK, PLLC
2575 E Camelback Road, Ste 860
Phoenix, AZ 85381
Phone: (540) 341-8808
Fax: (540) 341-8809
agould@holtzmanvogel.com
bbowen@holtzmanvogel.com

Counsel for Proposed Intervenor
Republican Party of Arizona

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) and Circuit Rule 27-1(1)(d) because this motion contains 3,274 words spanning 14 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dated: July 3, 2024

/s/ Andrew Gould
Andrew Gould

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Andrew Gould
Andrew Gould

RETRIEVED FROM DEMOCRACYDOCKET.COM