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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Democratic National Committee; Arizona Democratic Party, Plaintiffs, v. Katie Hobbs, *in her official capacity as Arizona Secretary of State*; Mark Brnovich, *in his official capacity as Arizona Attorney General*, Defendants, Republican National Committee, Proposed Intervenor-Defendant.	Case No: 2:22-cv-01369-DJH **UNOPPOSED MOTION TO INTERVENE WITH MEMORANDUM OF POINTS AND AUTHORITIES OF REPUBLICAN NATIONAL COMMITTEE**

Movant the Republican National Committee (RNC) respectfully moves to intervene as a defendant in this case under Rules 24(a)(2) and (b). No party opposes this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

After Movant sought intervention in two related cases, this Court denied that motion *without prejudice* "so that Movant[] may seek intervention" again if the circumstances driving the Court's decision changed. *Mi Familia Vota v. Hobbs*, Doc. 57 at 5-6, No. 22-509, (June 23, 2022). The Court denied intervention as of right on adequacy grounds, holding that there was a "strong presumption of adequacy" because the State was defending the law at issue and sought "the same 'ultimate objective'" as Movant. *Id.* at 4. The Court concluded that Movant "me[t] the elements of Rule 24(b)" but nonetheless denied permissive intervention, believing that Movant's intervention might unnecessarily delay adjudication of those cases by "needlessly inject[ing] partisan politics into an otherwise nonpartisan legal dispute." *Id.* at 5 (quotation omitted). To this point, the Court noted that the Democratic Party was not a party to those cases and the Court "ha[d] no information that the Democratic Party w[ould] try to participate [therein]." *Id.* at 5 n.2.

Since that ruling, circumstances have changed substantially; the Court's grounds for denying intervention in those cases do not apply here (and no longer apply in those cases either). First, the Supreme Court decided *Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191 (June 23, 2022). In that case, the Supreme Court made clear that the adequacy element of the test for intervention as of right "present[s] intervenors with only a minimal challenge," emphasizing that it had previously *declined* to "endorse a presumption of adequacy" when a private litigant sought to intervene in support of a government party. *Id.* at 2203-04. Released on the same date as the Court's prior intervention ruling, *Berger* could not have been raised by the parties and was not addressed in the Court's ruling. Yet *Berger*'s clarification of the Rule 24 standard for intervention supports Movant's intervention here.

Second, the Democratic National Committee (DNC), joined by the Arizona Democratic Party, filed this lawsuit challenging Arizona's laws on substantially the same

grounds as four other recent challenges to the same laws that have all been consolidated in this Court. Though the DNC did not designate its action as a related case, it unquestionably is one and undoubtedly will proceed alongside the other four cases. Indeed, the DNC has been coordinating with the plaintiffs in the other cases already. In other words, the DNC's entrance into the fray makes this no longer a "nonpartisan legal dispute."

Movant, the Republican National Committee, is a national committee as defined by 52 U.S.C. §30101. It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, develops and promotes the national Republican platform, and communicates the Republican Party's position and message to voters. It necessarily has an interest in participating in the suit on equal terms with its Democratic counterpart. *Compare* Compl. ¶¶ 11-12, 16. Moreover, now that there are five sets of plaintiffs and multiple, separately represented State Defendants before the Court in parallel challenges to the same laws, there is no longer any chance that inclusion of Movant on its own will prejudice these cases with delay or unwieldy case management. And even if the addition of one intervenor-defendant could possibly risk delay, the Court could alleviate that risk by designating a representative responsible for coordinating the defense for all defendants (including Movant) and requiring all other parties to move for leave to file separate briefing. *See Mi Familia Vota v. Hobbs*, Doc. 53 at 3, No. 21-CV-01423 (D. Ariz. Oct. 4, 2021).

These developments confirm that Movant should be allowed to intervene as a Defendant, whether by right under Rule 24(a)(2) or permissively under Rule 24(b). Neither the DNC nor the ADP takes a position on the RNC's intervention. Nor do Defendants. This motion thus is unopposed.

INTERESTS OF PROPOSED INTERVENORS

Movant's interests in this action are the mirror image of the DNC's interests. It is a political committee that supports Republicans in Arizona. Just like the DNC, Movant is a national committee, as defined by 52 U.S.C. §30101, that manages the party's business at the national level, supports its candidates for public office at all levels, coordinates

fundraising and election strategy, develops and promotes the national platform, and communicates the Republican Party's position and messages to voters. Movant encourages the election of Republican candidates at the local, state, and national levels, including by persuading and organizing prospective voters to register as Republicans and to cast their ballots for Republican candidates. Movant conducts fundraising and assists candidates with communication, strategy, and planning. Movant expends resources on outreach and mobilization efforts towards educating voters. And if the DNC were to prevail in this case, that would force Movant to divert funds away from those activities to inform and educate voters about changes to the election landscape and engage in new outreach and mobilization efforts to prepare for upcoming elections under different rules. Movant thus has interests—its own and those of its members, candidates, and voters—in the rules and procedures governing Arizona's elections for offices at all levels of state and federal government. Indeed, Movant "represent[s] the 'mirror-image' interests," *DNC v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020), of those on which the DNC bases its own complaint, *Compare* Compl. ¶¶ 11-12, 16.

ARGUMENT

I. Movant is entitled to intervene as of right.

Under Rule 24(a)(2), this Court must grant intervention as of right if four things are true: (1) the motion is timely; (2) Movant has a legally protected interest in this action; (3) this action may impair or impede that interest; and (4) no existing party adequately represents Movant's interests. *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc); *see also Mi Familia Vota*, Doc. 57 at 2, No. 22-CV-00509 (June 23, 2022).

Movant plainly satisfies the first three elements for intervention as of right. This motion is timely: the DNC filed its complaint yesterday, Defendants do not even have to file an answer for weeks, and this litigation is in its infancy. No party will possibly be prejudiced. Like the DNC, Movant has clear and particularized interests in protecting its members, candidates, voters, and resources from Plaintiffs' attempt to upend Arizona's

duly enacted election rules. Every election cycle, party organizations like Movant "expend significant resources" on the election process including voter registration activities—"conduct" that laws like those at issue here "unquestionably regulate[]." *La Union*, 29 F.4th at 306. As the Democratic Party has explained, groups like Movant "have specific interests and concerns" in laws governing elections, "from their overall electoral prospects to the most efficient use of their limited resources." *Wood v. Raffensperger*, Doc. 13 at 16, No. 1:20-CV-05155 (N.D. Ga. Dec. 21, 2020). *See supra* pp.3-4; *compare* Compl. ¶¶ 12, 16. And because those interests mirror each other, it is plain that if the DNC prevails, it would "change the entire election landscape for those participating as the [Movant's] members and volunteers" and "change what the [Movant] must do to prepare for upcoming elections." *La Union*, 29 F.4th at 307.

Although this Court denied intervention as of right in two of the related cases based on the fourth element—adequacy of representation—Movants meet that element too. The Court at that time found that the State Defendants' presence in those cases, with the "same objective" as Movant of "defending H.B. 2492" created a "strong presumption of adequacy," Doc. 57, at 3-4. Because "Movant[] ha[d] not made the 'compelling showing' that Defendants do not adequately represent Movant['s] interests," the Court denied intervention as of right without reaching the other three elements of Rule 24(a)(2). *Id.* at 4.

The Supreme Court's *Berger* decision, however, clarifies that the adequacy-of-representation element is not so exacting. Reviewing its precedent, the Court first emphasized that it had never "endorse[d] a presumption of adequacy." 142 S. Ct. at 2204 (citing *Trbovich v. Mine Workers*, 404 U.S. 528 (1972)). Rather, the Court previously had rejected such a presumption in a case like this one, involving "a request to intervene by a private party who asserted a related interest to that of an existing government party." *Id.* at 2203. Because their respective interests were "not 'identical," the government party's duty "to bear in mind broader public-policy implications" led the Court to reject a presumption of adequacy and treat the movant's burden "'as minimal.'" *Id.* at 2204; *see also id.* ("Where 'the absentee's interest is similar to, but not identical with, that of one of the parties,' that

normally is not enough to trigger a presumption of adequate representation." (quoting 7C C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §1909 (3d ed. Supp. 2022)).

Berger admittedly did not need to "decide whether a presumption of adequate representation might sometimes be appropriate when a private litigant seeks to defend a law alongside the government or in any other circumstance." *Id.* The case instead involved a "duly authorized state agent seek[ing] to intervene to defend a state law." *Id.* Even so, with its approving discussion of *Trbovich*, caution against setting a high presumption of adequacy, and emphasis on government parties' broader public-policy concerns separating them from otherwise-aligned parties, *Berger* undermines the only ground the Court relied on to deny Movant intervention as of right in the two related cases.

Moreover, the private interests of political parties are "different in kind from the public interests of the State or its officials," such that they overcome any "governmental-representative presumption" that may exist. *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 309 (5th Cir. 2022). As the Fifth Circuit has explained, political committees' "interests primarily rely on the expenditure of their resources to equip and educate their members, along with relying on the rights of the Committees' members and volunteers who participate in the election." *Id.* (citing *Sierra Club*, 18 F.3d at 1207). Although these interests "are not solely ideological, they are nevertheless incidentally partisan—if for no other reason than that they are brought on behalf of a partisan group, representing its members to achieve favorable outcomes." *Id.* Accordingly, "[n]either the State nor its officials can vindicate such an interest while acting in good faith." *Id.* With or without a presumption, then, Movant has "satisfied the minimal burden of showing inadequacy." *Id.* Movant thus is entitled to intervention as of right.

II. Alternatively, Movant should be granted permissive intervention.

Exercising broad judicial discretion, courts grant permissive intervention when the movant has 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). The only other requirement for permissive

intervention is that the court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* 24(b)(3).

The Court found in its intervention ruling in the related cases that "Movant['s] request meets the elements of Rule 24(b)." *Mi Familia Vota*, Doc. 57, at 5, No. 22-CV-00509. That remains true: Movant will raise defenses that share many common questions with the parties' claims and defenses regarding the validity of H.B. 2492. Movant's prospective arguments are "directly responsive to the claims for injunction asserted by plaintiffs." *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002). Again, this is only natural given that Movant and the DNC mirror each other's interests and positions.

The Court, however, denied intervention in the related cases on the ground that Movant's intervention might unnecessarily delay adjudication of those cases by "needlessly inject[ing] partisan politics into an otherwise nonpartisan legal dispute." *Id.* at 5 (quotation omitted). The Court emphasized that the Democratic Party was not then a party to those cases and the Court "ha[d] no information that the Democratic Party w[ould] try to participate [therein]." *Id.* at 5 n.2. Although Movant's interests "are not solely ideological, they are nevertheless incidentally partisan," *La Union*, 29 F.4th at 309, and in any event, the mirror image of the DNC's interests, *Bostelmann*, 2020 WL 1505640, at *5. Thus the DNC's presence makes it no longer a "nonpartisan legal dispute."

Nor is this a simple proceeding that might be complicated by Movant's intervention. In addition to the DNC's suit, two additional complaints presenting the same claims have been consolidated before the Court, bringing the complete array of parties to five sets of Plaintiffs, all separately represented, and *eighteen* State Defendants represented by *thirteen* sets of counsel. *See* Doc. 69, *Mi Familia Vota v. Hobbs*, No. 22-CV-00509 (consolidating *United States v. Arizona*, No. CV-22-01124); Doc. 70, *id.* (consolidating *Poder Latinx v. Hobbs*, No. CV22-01003). In the likely event these cases are further consolidated, adding Movant to the mix will not complicate these proceedings in any way. This is especially true given that Movant already made—and here reiterates—its commitment to complying

with all deadlines that govern the parties, working to prevent duplicative briefing, and coordinating with the parties on discovery. *See Mi Familia Vota*, Doc. 24 at 14, No. 22-CV-00509; *Living United for Change*, Doc. 23 at 14, No. 22-CV-00519. Especially given that Movant seeks to intervene in this multi-party proceeding on its own, any "additional burdens" from intervention will "fall well within the bounds of everyday case management." *Berger*, 142 S. Ct. at 2206.

Intervention by Movant is particularly warranted in cases brought by the Democratic Party. As the DNC's "direct counterpart[]," Movant is "uniquely qualified to represent [its] 'mirror-image' interests." *Bostelmann*, 2020 WL 1505640, at *5. That explains why courts regularly have granted intervention to Republican Party organizations in suits brought by their Democratic counterparts, and *vice versa*. *Id.*; *see also, e.g.*, *Ariz. Democratic Party v. Hobbs*, 2020 WL 6559160 (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Issa v. Newsom*, 2020 WL 3074351 (E.D. Cal. June 10, 2020) (granting intervention to Democratic organizations in suit by RNC Plaintiffs); *Donald J. Trump for President, Inc. v. Bullock*, Doc. 35 at 3, No. 6:20-CV-00066 (D. Mont. Sept. 8, 2020) (same); *Donald J. Trump for President, Inc. v. Murphy*, Doc. 20, No, 3:20-CV-10753 (D.N.J. Sept. 1, 2020) (same); *Donald J. Trump for President, Inc. v. Cegavske*, Doc. 33, No. 2:20-CV-01445 (D. Nev. Aug. 21, 2020).

The DNC does not oppose Movant's intervention, perhaps because it has taken a mirror-image position when trying to intervene in other election cases. For example, Plaintiff moved to intervene in a case in this Court last year and argued that it would be fundamentally unfair to let the Republican Party litigate over the election rules but not the Democratic Party. *See Mi Familia Vota v. Hobbs*, Doc. 50, No. 2:21-CV-01423 (D. Ariz. Sept. 24, 2021). Excluding "the Democratic Committees" while allowing "the Proposed Republican Intervenors ... to intervene," it stressed, would violate "both the standards applicable to permissive intervention and principles of equity." *Id.* at 8. That observation—which ultimately carried the day—is bipartisan.

For their part, Movant and related Republican organizations have agreed with the DNC on this point even when the shoe was on the other foot. Indeed, in election-law suits the Republican Party filed last election cycle, those plaintiffs (including the RNC, Movant here) always consented to intervention by Democratic Party groups. *RNC v. Newsom*, Doc. 22, No. 2:20-CV-01055 (E.D. Cal. June 5, 2020); *Donald J. Trump for President, Inc. v. Bullock*, Doc. 30, No. 6:20-CV-00066 (D. Mont. Sept. 4, 2020); *Donald J. Trump for President, Inc. v. Murphy*, Doc. 14, No, 3:20-CV-10753 (D.N.J. August 28, 2020); *Donald J. Trump for President, Inc. v. Cegavske*, Doc. 30, No. 2:20-CV-01445 (D. Nev. Aug. 20, 2020). As the Democratic Party has explained, "'[P]olitical parties usually have good cause to intervene in disputes over election rules.'" *Issa v. Newsom*, Doc. 23 at 2, No. 2:20-CV-01044 (E.D. Cal. June 8, 2020). Movant agrees. In short, when one of the two major political parties has entered a dispute over election rules, the other deserves to be heard as well. The Court thus should allow Movant to intervene as of right or else grant Movant permissive intervention.[1]

[1] Should the Court nonetheless remain concerned that adding Movant might somehow render this proceeding procedurally unwieldy, the Court could alleviate that concern by designating a representative responsible for coordinating the defense for all defendants (including Movant) and requiring all other parties to move for leave to file separate briefing. This Court has done so in previous election-law cases. *See Mi Familia Vota v. Hobbs*, No. 21-CV-01423, Doc. 53 at 3 (Oct. 4, 2021). To be clear, intervention without this extra procedure is both proper and warranted. But imposing such a condition on Movant's intervention would be much more defensible than denying intervention altogether.

RESPECTFULLY SUBMITTED this 16th day of August, 2022.

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