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26 *Defendant Kelly for Senate*

27 ** Pro hac vice motions forthcoming*

28 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

REPUBLICAN NATIONAL COMMITTEE,
et al.,

Plaintiffs,

v.

STEPHEN RICHER, et al.,

Defendants.

No. CV2022-014827

**KELLY FOR SENATE’S
MOTION TO INTERVENE**

Assigned to Hon. Timothy J. Ryan

1 **INTRODUCTION**

2 At the eleventh hour of this election, Plaintiffs seek the drastic remedy of changing
3 the rules of the election, while it is occurring, in the hopes of obtaining an electoral
4 advantage. But there is no evidence that any voter who appeared to vote at Maricopa County
5 polling places was turned away from the polls or that voting today in Maricopa County was
6 substantially impeded. Plaintiffs nonetheless demand that this Court enter an order
7 extending election day at all voting centers in the county—a remedy that would affect over
8 200 voting centers, thousands of election workers, and thousands more campaign workers
9 and volunteers. Mark Kelly for Senate, as a key participant in this election cycle, has direct
10 interest in this litigation, the outcome of which would require the campaign to expend
11 additional resources ensuring that its affiliated voters and its campaign are not unduly
12 disadvantaged by new, extended poll hours for only certain Arizonans.

13 No other party to this litigation can represent the Kelly campaign’s interests.
14 Plaintiffs, as members of the opposing party, plainly cannot represent the Kelly campaign’s
15 interests. And the Kelly campaign’s interests may diverge from the interests of the
16 government defendants who are representatives of the Maricopa County government, rather
17 than active participants in the election contests on the ballot.

18 For these reasons, and as discussed further below, the Kelly campaign should be
19 granted intervention as of right, or, in the alternative, permissive intervention.

20 **ARGUMENT**

21 Under Arizona Rule of Civil Procedure 24 and Arizona Rule of Procedure for Special
22 Actions 2(b), a party is entitled to intervene where, on timely motion, the party “claims an
23 interest relating to the subject of the action, and . . . disposing of the action in the person’s
24 absence may as a practical matter impair or impede the person’s ability to protect that
25 interest, unless existing parties adequately represent that interest.” Ariz. R. Civ. P. 24(a).
26 Alternatively, intervention may be permitted where the motion is timely and a party “has a
27 claim or defense that shares with the main action a common question of law or fact.” Ariz.
28 R. Civ. P. 24(b)(1). Rule 24 is a remedial rule that “should be construed liberally in order

1 to assist parties seeking to obtain justice in protecting their rights.” *Dowling v. Stapley*, 221
2 Ariz. 251, 270, ¶ 58 (App. 2009). Proposed Intervenor satisfies both standards and its
3 motion to intervene should be granted.

4 **I. Proposed Intervenor is entitled to intervene as of right.**

5 Proposed Intervenor Kelly for Senate is entitled to intervene as of right under Rule
6 24(a). The Court must allow intervention where a proposed intervenor satisfies four
7 elements: “(1) the motion must be timely; (2) the applicant must assert an interest relating
8 to the property or transaction which is the subject of the action; (3) the applicant must show
9 that disposition of the action may impair or impede its ability to protect its interest; and (4)
10 the applicant must show that the other parties would not adequately represent its interests.”
11 *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014).
12 Kelly for Senate, as a Proposed Intervenor, meets each of these requirements.

13 **A. The motion to intervene is timely.**

14 Proposed Intervenor timely filed this motion to intervene, which comes just minutes
15 Plaintiffs’ suit was made public.

16 Timeliness under Rule 24 is “flexible,” and the most important consideration “is
17 whether the delay in moving for intervention will prejudice the existing parties to the case.”
18 *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Here, granting the motion
19 would not require altering any existing deadlines. Because Proposed Intervenor’s
20 intervention would prejudice no party, the motion is timely.

21 **B. The disposition of this case will impair the Kelly campaign’s ability to**
22 **protect its interests.**

23 As a key participant in this election, Kelly for Senate has an interest in preserving a
24 predictable, fair and equitable electoral environment. Political parties and campaigns are
25 routinely permitted to intervene in litigation challenging election procedures, in Arizona
26 and elsewhere, because of their obvious interest in how elections are administered. *See, e.g.*,
27 *Ariz. Republican Party v. Hobbs*, No. S-8015-CV-202200594 (Mohave Cnty. Sup. Ct. May
28 31, 2022); *Maricopa Cnty. Republican Party v. Reagan*, No. CV2018-013963 (Ariz. Super.

1 Ct. Maricopa Cnty. Nov. 8, 2018), (granting intervention to political parties and other
2 interested political actors in election dispute); *Mi Familia Vota v. Hobbs*, No. 20-cv-01903,
3 ECF No. 25 (D. Ariz. Oct. 5, 2020) (granting intervention to political party in election
4 dispute). The Court should reach the same conclusion here.

5 Beyond Kelly for Senate’s obvious interest in how this election is administered, if
6 Plaintiffs’ suit is successful, Kelly for Senate would need to expend additional resources
7 ensuring that its affiliated voters and its campaign are not unduly disadvantaged by new,
8 extended poll hours for only certain Arizonans. This would require Kelly for Senate to
9 expend additional resources educating their voters about the change in poll times, diverting
10 those resources away from other mission-critical efforts, such as their early ballot cure
11 program. At this point in the election, the campaign’s resources are truly finite. Such a
12 required diversion of resources is separately sufficient to merit intervention. *See Crawford*
13 *v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d* 551 U.S. 181 (2008)
14 (finding that the Democratic Party suffered injury because challenged law “compell[ed] the
15 party to devote resources” in response); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582,
16 586 (5th Cir. 2006) (same).

17 **C. Proposed Intervenor is not adequately represented in this case.**

18 The Kelly campaign’s interests are not adequately represented by the parties in this
19 lawsuit. Plainly, Plaintiffs does not represent the Kelly campaign’s interests. And Proposed
20 Intervenor’s particular interests in this case—preserving a predictable, fair and equitable
21 electoral environment, and ensuring the efficient use of limited resources on election day—
22 are also not shared by any of the county officials named as Defendants. County defendants
23 are entrusted with a general obligation to their respective residents, not a particular
24 competitive interest in ensuring that last-minute changes to poll hours do not create undue
25 burdens on Kelly for Senate’s resources.

26 Because these interests are meaningfully different than those of election
27 administrators, political actors, including candidates, have routinely been permitted to
28 intervene in actions where election officials are named as defendants. *See supra* Part I.B.

1 **II. In the alternative, Proposed Intervenor should be granted permissive**
2 **intervention.**

3 In the alternative, the Court should grant Proposed Intervenor permissive
4 intervention because it has “a claim or defense that shares with the main action a common
5 question of law and fact.” Ariz. R. Civ. P. 24(b)(1). In particular, Proposed Intervenor’s
6 defenses depend on the same questions of law and fact surrounding Arizona election laws
7 regarding precinct hours and adjustments of those hours based on events that occurred on
8 election day.

9 When this required common question of law or fact is present, Arizona courts may
10 consider other factors to decide whether to grant permissive intervention, including: (1) “the
11 nature and extent of the intervenors’ interest,” (2) “their standing to raise relevant legal
12 issues,” (3) “the legal position they seek to advance, and its probable relation to the merits
13 of the case,” (4) “whether the intervenors’ interests are adequately represented by other
14 parties,” (5) “whether intervention will prolong or unduly delay the litigation,” and (6)
15 “whether parties seeking intervention will significantly contribute to full development of
16 the underlying factual issues in the suit and to the just and equitable adjudication of the
17 legal questions presented.” *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986). Like Rule 24(a), Rule
18 24(b) should be liberally construed. *Id.* Here, each factor weighs in favor of permitting
19 permissive intervention.

20 First, Proposed Intervenor has distinct interests in safeguarding a predictable, fair
21 and equitable electoral environment, and in avoiding the diversion of limited resources to
22 address confusion and undue disadvantages stemming from last-minute extensions to
23 precinct hours, despite a lack of any evidence that there were voters who could not vote as
24 a result of the tabulation machine issues. Second, Proposed Intervenor may be directly
25 harmed by the relief Plaintiff seeks in this case, as the last-minute changes to precinct hours
26 will only force Kelly for Senate to divert critical, resources from mission-critical election-
27 day activities to addressing issues that will inevitably stem from last-minute changes to
28 polling hours. Third, Proposed Intervenor’s interests are distinct from those of other parties

1 in this case, as they represent the interests of Kelly for Senate, as opposed to its electoral
2 opponent Plaintiffs or County Defendants. Fourth, Proposed Intervenor seeks intervention
3 promptly, and its intervention will not delay the proceedings. Lastly, Proposed Intervenor
4 will contribute to the full factual development of this case because they can present evidence
5 regarding how Plaintiffs' requested relief will negatively impact Proposed Intervenor's
6 limited resources and create chaos to upend the current electoral environment in Arizona.

7 Because Rule 24 is liberally construed to protect the rights of all interested parties,
8 the Court should permit intervention in this case.

9 CONCLUSION

10 For these reasons, Kelly for Senate requests that the Court grant its Motion to
11 Intervene and participate in this proceedings as a Defendant.

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1 Dated: November 8, 2022

Respectfully submitted,

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**Pro hac vice application to be filed*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 8th day of November, 2022, I electronically transmitted
3 a PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa
4 County, for filing using the AZTurboCourt System. I further certify that a copy of the
5 foregoing was sent via email this same date to:

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