The Honorable Catherine Shaffer
Noted for Consideration: January 30, 2023
Without Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

VET VOICE FOUNDATION, THE WASHINGTON BUS, EL CENTRO DE LA RAZA, KAELEENE ESCALANTE MARTINEZ, BETHAN CANTRELL, DAISHA BRITT, GABRIEL BERSON, and MARI MATSUMOTO,

Plaintiffs,

v.

STEVE HOBBS, in his official capacity as Washington State Secretary of State, JULIE WISE, in her official capacity as the Auditor/Director of Elections in King County and a King County Canvassing Board Member, SUSAN SLONECKER, in her official capacity as a King County Canvassing Board Member, and STEPHANIE CIRKOVICH, in her official capacity as a King County Canvassing Board Member,

Defendants,

REPUBLICAN NATIONAL COMMITTEE and WASHINGTON STATE REPUBLICAN PARTY,

Proposed Intervenor-Defendants.

No. 22-2-19384-1 SEA

THE REPUBLICAN NATIONAL COMMITTEE AND WASHINGTON STATE REPUBLICAN PARTY'S REPLY IN SUPPORT OF MOTION TO INTERVENE

Davis Wright Tremaine LLP
LAW OFFICES
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax

Both the Secretary of State and the King County Defendants are unopposed to Movants' intervention. Plaintiffs oppose Movants' intervention, primarily because they fear "Movants' presence would clutter the litigation and imperil the expedited litigation schedule necessary to resolve this case (and the inevitable appeals) before the 2024 election." Doc. 34 at 1. But Movants will agree to any schedule that the other parties have negotiated, *see* Doc. 35, Ex. A, and any future deadlines that govern the other parties. Counsel for Plaintiffs routinely litigate against the Republican Party, yet they cite not one example where litigation has been bogged down by the Republican Party's intervention.

Movants cited nearly twenty cases where courts—in the last two years alone—allowed the Republican Party to intervene in defense of state election laws. *See* Doc. 11 at 2 n.1. In response, Plaintiffs cite a handful of decisions denying intervention to Republican intervenors. One of those decisions was reversed on appeal. *See Common Cause R.I. v. Gorbea*, 970 F.3d 11, 14 (1st Cir. 2020). Another was effectively vacated by consolidation, and the RNC is currently participating in that case—while demonstrating its commitment to reduce duplicative briefing. *See Mi Familia Vota v. Fontes*, Doc. 200, No. 2:22-cv-509 (D. Ariz. Dec. 28, 2022) (RNC's one-page notice joining the State's motion to dismiss). A third didn't even involve the RNC or any local Republican party. *See One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015). Plaintiffs' sparse, inapplicable cases do not rebut the weight of recent authority granting the RNC intervention in precisely these circumstances. What was obvious to most courts—and is obvious here—is that in cases challenging the very rules that govern our elections, one of the two major political parties deserves to be heard. Plaintiffs do not dispute that the motion is timely, and their unpersuasive responses on the other factors fail to rebut Movants' arguments.

A. Movants have identified several specific protectable interests.

Plaintiffs struggle to understand how judicial interference in State election laws could confuse or discourage voters. The Supreme Court explained that "[c]ourt orders affecting elections … can *themselves* result in voter confusion and consequent incentive to remain away from the polls." *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (emphasis added). "As an election draws closer,

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that risk will increase," *id.* at 5, but Movants have no less an "interest" to guard against that risk at all stages of the litigation, *Gorge Audubon Soc'y v. Klickitat Cnty.*, 98 Wn. App. 618, 623 (1999).

Voter participation in elections is a product of voter confidence in elections. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4. Preventing courts from enjoining election safeguards "promotes confidence in our electoral system—assuring voters that all will play by the same, *legislatively enacted* rules." *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020) (emphasis added). Simply put, "[t]he RNC has a valid interest in the orderly administration of elections." *Democratic Nat. Comm. v. Republican Nat. Comm.*, 671 F. Supp. 2d 575, 621 (D.N.J. 2009) (citing *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196 (2008) (op. of Stevens, J.)), *aff'd*, 673 F.3d 192 (3d Cir. 2012).

The Republican Party has consistently defended its interests in signature verification in various States. Plaintiffs attempt to distinguish "[t]wo cases" in which "the Republican Party were plaintiffs, not defendants or intervenors." Doc. 34 at 7-8. Plaintiffs don't explain why that distinction matters. Whether as plaintiffs or defendants, the Republican Party has consistently defended signature verification laws, thus demonstrating a "'significant protectable interest' in defending the legality of the measure." *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006). In any event, Plaintiffs ignore the *five other cases* Movants cite in the same paragraph in which courts "permitted the Republican Party to *intervene in defense* of signature verification laws like those challenged here." Doc. 11 at 6 (emphasis added) (collecting cases).

Plaintiffs also fail to address Movants' interest in preserving their statutory right to challenge an election for deficient signatures. Under Washington law, registered voters have a statutory right to challenge an election conducted in violation of law. RCW 29A.68.020. Election officials *must* verify signatures. *See* RCW 29A.40.110(3). That means Movants and their members have a right to challenge an election in which election officials misapply the signature verification procedures. If Plaintiffs prevail in this suit, however, Movants lose that statutory right. Plaintiffs address this argument in a footnote, saying that Movants will not lose their "right to challenge an

Davis Wright Tremaine LLP
LAW OFFICES
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Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax

election outcome based on illegal votes." Doc. 34 at 8 n.4. But that misses the point. Movants are not claiming their general right to "challenge an election" is at risk. Rather, Movants claim a *specific* right to contest an election on the grounds that election officials did not appropriately verify signatures. Plaintiffs say nothing about *that interest*, which their lawsuit will indisputably nullify.

Finally, that Movants share some of their interests with third parties does not invalidate those interests. Those third parties have not moved to intervene. Movants have. And Plaintiffs cite no Washington authority disparaging interests that are shared by third parties. *See* Doc. 34 at 7. To the contrary, Movants need only "claim[] an interest *relating to* the property or transaction which is the subject of the action," CR 24(a) (emphasis added), and "[n]ot much of a showing is required … to establish [that] interest," *Gorge Audubon Soc'y*, 98 Wn. App. at 629. Plaintiffs represent the interests of some voters who claim the State's signature matching requirement disenfranchises them. Movants represent the interests of voters who think the opposite. Plaintiffs' own lawsuit refutes their claim that Movants' interests are "held by all 'registered voters.'" Doc. 34 at 6. This Court should not allow the views of only one of those groups to dominate this lawsuit.

B. Plaintiffs cite no authority rebutting Movants' arguments that their interests might be impaired.

Plaintiffs make several unsupported arguments that Movants' interests will not be impaired, but all are foreclosed by law. First, Plaintiffs argue that denying intervention would not impair Movants' interests because "[n]o one has a legitimate, cognizable interest in preventing fully qualified voters from participating in our democracy." Doc. 34 at 8. But the Court cannot "assume … that Plaintiffs will ultimately prevail on the merits" or prejudge "the ultimate merits of the [defenses] which the intervenor wishes to assert." *Pavek v. Simon*, No. 0:19-cv-3000, 2020 WL 3960252, at *3 (D. Minn. July 12, 2020). The question is not whether Movants have an interest in maintaining an "unconstitutional" law, but whether Movants have an interest in preventing a court from enjoining a *valid* law that *increases* voter confidence and *promotes* voting. *Clark v. Putnam Cty.*, 168 F.3d 458, 462 (11th Cir. 1999).

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Second, Plaintiffs admit that if they prevail, "then the litigation *should have persuasive effect*." Doc. 34 at 9. Those "persuasive effects … are sufficiently significant to warrant intervention," because they could impair Movants ability to defend their interests in other cases. *Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004). Plaintiffs say this is a "red herring," but they do not dispute the legal premise that the persuasive effect of the court's ruling could impair Movants' ability to defend their position in similar cases. Plaintiffs' remaining arguments just rehash their claims that Movants' interests are "generalized," and that Movants have no interest in guarding against "confusion." Doc. 34 at 8-9. They cite no authority in support of these arguments, which Movants have already addressed.

C. No party adequately represents Movants' specific interests.

On the final factor, Plaintiffs invite the Court to follow federal law instead of Washington law. Plaintiffs claim that "Movants must overcome the presumption that the existing Defendants adequately represent Movants' interests." Doc. 34 at 9 (citing *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947 (9th Cir. 2009)). But that presumption doesn't apply in Washington courts, in which "[t]he intervenor need make only a minimal showing that its interests may not be adequately represented." *Columbia Gorge Audubon Soc'y*, 98 Wn. App. at 629. Likewise, Plaintiffs cite only federal cases for their claim that a "separate presumption of adequacy also applies when the government acts on behalf of its constituency." Doc. 34 at 9 (citing *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). But in Washington, "the state's general duty to protect the public's interest does not sufficiently protect the narrower interests of private groups." *Pub. Util. Dist. No. 1 of Okanogan Cnty. v. State*, 182 Wn.2d 519, 532 (2015).

In addition, that "Defendants and Movants share the same 'ultimate objective'" is irrelevant. Doc. 34 at 10. "[A]n intervenor's interest is not adequately represented simply because similar relief is sought by another party." *Pub. Util. Dist. No. 1*, 182 Wn.2d at 532. Movants also do not doubt that "Defendants will vigorously defend this lawsuit," Doc. 34 at 11, but the issue is whether they "adequately represent[]" "the *applicant's interest*," CR 24(a) (emphasis added). Washington courts thus routinely recognize that political organizations have "interest[s] divergent

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from that represented by the Attorney General" and other state officials. *Fritz v. Gorton*, 8 Wn. App. 658, 661 (1973) (reversing denial of intervention to the League of Women Voters).

Finally, as many courts have stressed, the State's "silence on any intent to defend [the movant's] special interests is deafening." *Conservation Law Found. of N.E., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *accord Utahns for Better Transp. v. DOT*, 295 F.3d 1111, 1117 (10th Cir. 2002) (same). Because the State "nowhere argues . . . that it will adequately protect [Movants'] interests," Movants "have raised sufficient doubt concerning the adequacy of [its] representation." *U.S. House of Representatives v. Price*, 2017 WL 3271445, at *2 (D.C. Cir. 2017).

D. Plaintiffs identified no persuasive reason this Court should deny permissive intervention.

At the very least, the Court should permit Movants to intervene under CR 24(b)(2). Movants' adversarial involvement will assist the Court in deciding this case. Movants have repeatedly committed to abiding by the parties' agreements and the Court's schedule. The Court should thus reject Plaintiffs' pleas to "impose strict limits" on Movants' participation, which will impose more work on this Court, not less. Doc. 34 at 14 n.8. Movants easily satisfy the intervention rules, which the Court should "liberally construe … in favor of intervention." *Olver v. Fowler*, 161 Wn.2d 655, 664 (2007). The Court should grant the motion to intervene.

DATED this 26th day of January, 2023.

DAVIS WRIGHT TREMAINE LLP

By *s/ Robert J. Maguire*

Robert J. Maguire, WSBA #29909
Harry J.F. Korrell, WSBA #23173
Arthur A. Simpson, WSBA #44479
920 Fifth Avenue, Ste. 3300
Seattle, WA 98104
Tel: (206) 622-3150
robmaguire@dwt.com
harrykorrell@dwt.com
arthursimpson@dwt.com

Counsel certifies that this memorandum contains 1,748 words, in compliance with the Local Civil Rules

Cameron T. Norris, *admitted pro hac vice*
Gilbert Dickey,* *admitted pro hac vice*
Conor D. Woodfin,† *admitted pro hac vice*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
Tel: (703) 243-9423
cam@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com

Tyler Green, *admitted pro hac vice*
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
Tel: (703) 243-9423
tyler@consovoymccarthy.com

Attorneys for Proposed Intervenor-Defendants

* Admitted in Alabama, District of Columbia, North Carolina, and West Virginia. Virginia bar application is pending. Supervised by principals of the firm.

† Admitted in District of Columbia. Virginia bar application is pending. Supervised by principals of the firm.

Davis Wright Tremaine LLP
LAW OFFICES
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax

CERTIFICATE OF SERVICE

On January 26, 2023, I served a copy of the foregoing document on all counsel of record in the manner indicated:

Attorneys for Defendant Steve Hobbs
Karl D. Smith, Deputy Solicitor General
Tera M. Heintz, Deputy Solicitor General
William McGinty, Assistant Attorney General
Rebecca Davila-Simmons, Paralegal
Victoria Johnson, Legal Assistant
Electronic Mailing Inbox
1125 Washington Street SE, PO Box 40100
Olympia, WA 98504-0100 (360) 752-6200
Karl.Smith@atg.wa.gov;
Tera.Heintz@atg.wa.gov
William.McGinty@atg.wa.gov
rebecca.davilasimmons@atg.wa.gov
victoria.johnson@atg.wa.gov
comcec@atg.wa.gov

☐ Messenger
☐ U.S. Mail, postage prepaid
☐ Federal Express
☐ Fax
☒ ECF and/or EMAIL

Attorneys for Defendants Julie Wise, Susan Slonecker, and Stephanie Cirkovich
David J. Hackett
Ann Summers
Lindsey Grieve
Kris Bridgman, Paralegal II
Rafael Munoz-Cintron, Paralegal I
Senior Deputy Prosecuting Attorneys
516 Third Avenue, #W554
Seattle, WA 98104
(206) 477-1120
david.hackett@kingcounty.gov
ann.summers@kingcounty.gov
lindsey.grieve@kingcounty.gov
kris.bridgman@kingcounty.gov
rmunozcintron@kingcounty.gov

☐ Messenger
☐ U.S. Mail, postage prepaid
☐ Federal Express
☐ Fax
☒ ECF and/or EMAIL

Davis Wright Tremaine LLP
LAW OFFICES
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax

Attorneys for Plaintiffs
Kevin J. Hamilton
Matthew Gordon
Heath L. Hyatt
Hannah Parman
Elva Gonzalez, Paralegal
Jennifer Bible, Legal Assistant
Perkins Coie, LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101
(206) 359-8000
KHamilton@perkinscoie.com
MGordon@perkinscoie.com
HHyatt@perkinscoie.com
Hparman@perkinscoie.com
EGonzalez@perkinscoie.com
JBible@perkinscoie.com

☐ Messenger
☐ U.S. Mail, postage prepaid
☐ Federal Express
☐ Fax
☒ ECF and/or EMAIL

Attorneys for Proposed Intervenor-Defendants RNC & WSRP
Cameron T. Norris, *admitted pro hac vice*
Gilbert Dickey,* *admitted pro hac vice*
Conor D. Woodfin,† *admitted pro hac vice*
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
Tel: (703) 243-9423
cam@consovoymccarthy.com
gilbert@consovoymccarthy.com
conor@consovoymccarthy.com

Tyler Green, *admitted pro hac vice*
CONSOVOY MCCARTHY PLLC
222 S. Main Street, 5th Floor
Salt Lake City, UT 84101
Tel: (703) 243-9423
tyler@consovoymccarthy.com

☐ Messenger
☐ U.S. Mail, postage prepaid
☐ Federal Express
☐ Fax
☒ ECF and/or EMAIL

By: *s/ Robert J. Maguire*
Robert J. Maguire

Davis Wright Tremaine LLP
LAW OFFICES
920 Fifth Avenue, Suite 3300
Seattle, WA 98104-1610
206.622.3150 main · 206.757.7700 fax