Dale Schowengerdt
Landmark Law PLLC
7 West 6th Avenue, Suite 518
Helena, MT 59601
(406) 457-5496
dale@landmarklawpllc.com

Thomas R. McCarthy*
Kathleen L. Smithgall
Conor D. Woodfin*
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
katie@consovoymccarthy.com
conor@consovoymccarthy.com

*pending pro hac vice admission

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

MONTANA PUBLIC INTEREST RESEARCH GROUP, et al.,

Plaintiffs,

and

JACOBSEN, et al.,

Defendants.

No. 6:23-cv-070-BMM

REPLY IN SUPPORT OF MOTION TO INTERVENE BY THE REPUBLICAN NATIONAL COMMITTEE AND THE MONTANA REPUBLICAN PARTY

INTRODUCTION

The State does not oppose Movants' participation in this case. Plaintiffs do, but there is much about Movants' intervention even they don't dispute: Plaintiffs don't dispute that the motion is timely. They admit that "political parties might bring a unique perspective that justifies intervention." Doc. 14 at 3 (cleaned up). They concede that Movants "satisf[y] the threshold requirements under Rule 24(b)" for permissive intervention. Doc. 14 at 17. And Plaintiffs recognize that "political party organizations are often granted intervention in voting-related cases." Doc. 14 at 1. Because Plaintiffs can't rebut the weight of that authority granting intervention, they argue against a strawman by suggesting that Movants rely on "some special rule" or "exception to Rule 24." Doc. 14 at 1, 3. That's wrong. Courts regularly allow political parties to intervene not because of "some special rule," but because those parties satisfied the requirements of Rule 24. *See* Doc. 8 at 1 n.1 (collecting recent cases).

Plaintiffs cite a handful of cases in which intervention was denied. 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 just finished participating in a two-week-long trial in that case, demonstrating effective and efficient litigation alongside the State. *See Mi Familia Vota v. Fontes*, Doc. 362, No. 2:22-cv-509 (D. Ariz. Dec. 28, 2022) (directing the RNC "to file dispositive motions addressing only legal issues not addressed in the State and Attorney General's dispositive motion"). The third, *Democracy North Carolina*, is a cautionary tale. That court denied the Republican Party intervention because it had already granted intervention to the leaders of the state senate and house, "both Republicans." *Democracy N.C. v. N.C. State Bd. of Elections*, 2020

WL 6591397, at *1-2 (M.D.N.C. 2020). But when the court later granted a preliminary injunction, "no party … appealed." 2020 WL 6058048, at *1 (M.D.N.C. 2020). The state defendants then used that injunction as a basis to unilaterally change state election laws. *See id.* at *2-4, *8-9. This required the Republican Party to file a separate lawsuit, which was transferred to the *Democracy North Carolina* court anyway. 2020 WL 6591367, at *1 (M.D.N.C. 2020). That series of events was anything but an efficient use of judicial or party resources. *See United States v. City of Detroit*, 712 F.3d 925, 933 (6th Cir. 2013) (holding that courts abuse their discretion if they fail to consider "the potential prejudice resulting from complete denial of intervention: significant delay … from collateral challenges" brought by the failed intervenors).

Plaintiffs rely on these cases, but they prove too much. Political parties are almost always allowed to intervene in cases affecting elections. When courts deny intervention, their orders are often reversed. When they aren't reversed, they end up causing problems bigger than the ones the courts thought they were avoiding. The Court should thus grant the motion to intervene.

ARGUMENT

I. Movants have substantial interests that are threatened by Plaintiffs' lawsuit.

A. Movants have an interest in promoting the political participation of their members and voters.

Plaintiffs don't dispute that Movants have interests in promoting participation and turnout among their members. Instead, Plaintiffs argue that *their* lawsuit is the best way to promote that participation. That's wrong for at least two reasons. First, "[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).[1] That's doubly true when courts enjoin election security measures that cut down on voters being registered in multiple States. Under Plaintiffs' logic, only organizations seeking to dismantle election security measures would have interests sufficient for intervention. Those seeking to preserve those measures—such as Movants—would have no judicial recourse. This makes no sense; the Republican Party is "uniquely qualified to represent the 'mirror image' interests of the plaintiffs." *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020), *modified on reconsideration*, 451 F. Supp. 3d 952 (W.D. Wis. 2020).

Second, even if this Court overlooked that principle, it cannot rely on Plaintiffs' empty assurances that their lawsuit will "expand access to the political process," or that "Republican voters will benefit" from their lawsuit. Doc. 14 at 7 & 17 n.8. When ruling on a motion to intervene, 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*, 2020 WL 3960252, at *3 (D. Minn. July 12, 2020); *see also Clark v. Putnam Cty.*, 168 F.3d 458, 462 (11th Cir. 1999). The question is not whether Plaintiffs' lawsuit will promote or discourage voting—it's whether Movants have an *interest* in preserving a law that increases voter confidence among its

[1] Plaintiffs' alteration of this *Purcell* quote shows why their argument doesn't fit with the law. *See* Doc. 14 at 13. Plaintiffs insert "that" into the quote, implying that *Purcell* applies only to court orders that are confusing. That misstates the law. *Purcell* applies to "[c]ourt orders affecting elections," *because* those orders "can themselves result in voter confusion." *Purcell*, 549 U.S. at 4-5. It does not apply merely to court orders "that" result in voter confusion.

members. In other words, that Plaintiffs suggest their lawsuit will benefit Movants' interests in political participation does not mean it will, and it certainly doesn't mean Movants *lack an interest* in the political participation of their members.

B. Movants have financial interests at stake.

Plaintiffs argue that Movants' diversion of resources is not a sufficient interest because the law Plaintiffs challenge (1) "changes the status quo," and (2) "is limited to two aspects of the voter-registration process." Doc. 14 at 11-12. Those arguments are a red herring—neither the status quo nor the extent of the law's changes are relevant to whether Plaintiffs' *lawsuit* will require Movants to divert resources. As Movants have already explained, "the law Plaintiffs challenge helps preserve resources for Movants' get-out-the-vote efforts by ensuring that the voter rolls contain only voters eligible to participate in Montana elections." Doc. 8 at 7. Plaintiffs have no answer to that interest, which is indisputably valid. *E.g.*, *Issa v. Newsom*, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020). Indeed, Plaintiffs filed this lawsuit for the very purpose of *increasing* voter registration. Under Plaintiffs' own theory, Movants' registration and education costs will necessarily increase if Plaintiffs prevail in enjoining the law—along with additional costs to ensure voters are not doubly registered.

Movants will suffer another kind of financial harm if the law is enjoined. When federal courts enjoin democratically enacted state laws, it sows confusion and distrust among voters, which results in "consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4-5. "As an election draws closer, that risk will increase," but the risk

is present now that Plaintiffs have moved for a preliminary injunction.[2] *Id.* at 5. And that means the Republican Party will need "to devote resources to getting to the polls those of its supporters who would otherwise be discouraged" by a single district court changing the rules for Montana voters before the next election. *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008). Plaintiffs point out that cases such as *Purcell*, *Crawford*, and *Eu* weren't about intervention. That misses the point. Those and other cases recognize that *as a matter of law* court orders enjoining election laws have direct effects on public confidence, voter participation, election administration, candidate spending, and campaign strategy, just to name a few. Those realities require political parties to reorganize, re-strategize, and divert resources in response to orders enjoining such laws.

In short, if Plaintiffs have standing because they "will have to divert and expend resources to educate its members about the consequences of HB892 and ensure they are able to register and vote in Montana," Doc. 1 at 7, then Movants have equivalent interests justifying intervention. *See Yniguez v. State of Ariz.*, 939 F.2d 727, 735 (9th Cir. 1991) ("[T]he Article III standing requirements are more stringent than those for intervention under rule 24(a)….").

[2] Plaintiffs suggest that *Purcell* doesn't apply because the laws they challenge are "new" and because "the 2024 election is still a year away." Doc. 14 at 13-14. Neither are true. *Purcell* applies to "[c]ourt orders affecting elections"—whether the order enjoins a new law or an old law is irrelevant. *Purcell*, 549 U.S. at 4. Montana's primary is in early June, barely six months away. And the law Plaintiffs challenge concerns voter registration, which *closes* on May 6. Plaintiffs' preliminary injunction squarely implicates *Purcell*. *See Thompson v. Dewine*, 959 F.3d 804, 813 (6th Cir. 2020) (applying *Purcell* six months before an election).

C. Movants' interests in election integrity are distinct from the State's.

Citing old Seventh Circuit law, Plaintiffs argue that Movants have only a "generalized interest in election integrity" and adherence to Montana's election law. Doc. 14 at 8. But Movants' interests in election integrity are specific, not generalized. The Seventh Circuit (and the Ninth Circuit) have "never required a right that belongs *only* to the proposed intervenor, or even a right that belongs to the proposed intervenor *and not to* the existing party." *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023). The adequate-representation element itself contemplates that an intervenor and another party might share the same interests. To the extent Movants and the State share interests in election integrity, Movants' interests are "independent of" the State's because they directly affect Movants' members and electoral chances. *Id.* at 687 (cleaned up). Whereas the State's "general interests" in election integrity consider the whole State, Movants' "more narrow, parochial interests" in election integrity consider the effects on their members and voters. *W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022) (quoting *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995)).

In other words, Movants' *electoral* interest in election integrity "is not dependent on the" State's *sovereign* interest in election integrity. *Bost*, 75 F.4th at 687. "After all, when the proposed intervenors' concern is not a matter of 'sovereign interest,' there is no reason to think the government will represent it." *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996). Movants' independent interests are valid under Rule 24(a).

II. The existing parties do not adequately represent Movants' interests.

The State does not oppose Movants' intervention. And it did not file a response indicating it would—or could—defend Movants' financial, electoral, and organizational interests. As other courts have stressed, the State's "silence on any intent to defend [the movant's] special interests" counsels against a finding of adequate representation. *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); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (finding the government would not adequately represent the intervenors' interests when its "response to the [intervenors'] motion acknowledges that it 'will not represent proposed intervenors' interests in this action'"). 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).

Intervention is appropriate when the existing parties and the intervenor "do not have sufficiently congruent interests." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 823. That's true here, as the State can't represent Movants' "more narrow, parochial interests" given that the State "must necessarily take into account a more diffuse set of considerations." *W. Watersheds Project*, 22 F.4th at 842. Movants are "uniquely well-positioned" to explain the effects of the challenged laws on campaigns, parties, and candidates. *Kalbers v. DOJ*, 22 F.4th 816, 828 (9th Cir. 2021). And while fast-moving cases demanding preliminary relief before an election stretch the State's resources, Movants are accustomed to briefing these issues on tight deadlines. That's why Movants

are filing a proposed opposition to Plaintiffs' preliminary injunction motion that highlights some of the differences between Movants and the State.

III. Plaintiffs have not shown that permissive intervention will "unduly delay or prejudice" the litigation.

No party disputes that Movants satisfy the threshold requirement for permissive intervention: they assert 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 State does not object to permissive intervention at all, and it expressed no concerns of delay or prejudice. Only Plaintiffs do. But they complain only of *de minimis* delays requiring them to respond to more arguments and read more briefing. Of course, "any introduction of an intervener … will inevitably cause some 'delay'" of that sort. *Appleton v. Comm'r*, 430 F. App'x 135, 138 (3d Cir. 2011). But that is not the "undu[e] delay or prejudice" that the Rules require. Fed. R. Civ. P. 24(b)(1)(B).

Plaintiffs' vague fears of complexity and delay are unfounded. For one, they ignore Movants' assurances to comply with all deadlines that govern the parties, work to prevent duplicative briefing, and coordinate with the parties on discovery, which defeat claims of undue delay, *Emerson Hall Assocs. v. Travelers Cas. Ins.*, 2016 WL 223794, at *2 (W.D. Wis. Jan. 19, 2016); *see also Nielsen v. DeSantis*, 2020 WL 6589656, at *1 (N.D. Fla. May 28, 2020). For another, in the dozens of cases in which the Republican Party has participated as an intervenor, Plaintiffs can point to none in which the Republican Party slowed down proceedings or upset the Court's deadlines. Plaintiffs have thus not shown that there is any risk of *undue* delay beyond what is "normal or appropriate." *Appleton*, 430 F. App'x at 138.

Nor is there any serious risk that allowing Movants in would risk a flood of other interventions. *Contra* Doc. 14 at 19 (citing *Trump v. Bullock*, 2020 WL 5517169, at *2 (D. Mont. Sept. 14, 2020)). Any late-coming intervenors might not be timely in the first place. On top of that, they would have to show that the "existing parties" do not adequately represent their interests—which would include Movants. Fed. R. Civ. P. 24(a)(2). Thus, "if the moving committees … are permitted to intervene, then other parties seeking intervention face a different equation," and a court "could reasonably conclude that the interests of other [intervenors] are adequately represented." *Friends of Scott Walker v. Brennan*, 2012 WI App 40, ¶33, 812 N.W.2d 540 (Wis. Ct. App. 2012) (unpublished op.) (reversing the "flaw[ed]" assumption that once a court "permits a party with a particular interest to intervene, the court must permit other parties with a similar interest to intervene").

Contrary to Plaintiffs' suggestion, this Court can grant permissive intervention even if it concluded that Defendants adequately represent Movants' interests. "Unlike Rule 24(a), subsection (b) 'does not require a showing of inadequacy of representation.'" *Ariz. Democratic Party v. Hobbs*, 2020 WL 6559160, at *1 (D. Ariz. 2020). Permissive intervention does not require the intervenor to have an "interest" at all, let alone an interest that the parties inadequately represent. *Solid Waste Agency of N. Cook Cty. v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 509 (7th Cir. 1996). Courts thus grant permissive intervention even when the movant is "completely and adequately represented," will merely "enhance[]" the government's defense, or will provide a "secondary voice in the action." *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio 2005); *see also Jacobson v. Detzner*, 2018 WL 10509488, at *1 (N.D. Fla. 2018) (permissive

intervention is warranted because "reasonable minds may differ over whether Florida's Secretary of State represents Proposed Intervenors' interests adequately"); *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 286 (D.D.C. 2014); *Ala. v. U.S. Dep't of Commerce*, 2018 WL 6570879, at *3 (N.D. Ala. 2018).

Recognizing the national expertise and substantial interests Movants have in election issues, many courts grant permissive intervention without deciding intervention as of right. That's the most efficient route, because "[w]here a court finds that a movant has met the standard for permissive intervention, the court 'need not reach the question of intervention as of right.'" *True Return Sys. LLC v. Compound Protocol*, 2023 WL 6211815, at *2 (S.D.N.Y. Sept. 25, 2023) (citation omitted). At bottom, Plaintiffs fear that Movants will make arguments that defeat their case. That's the adversarial process, not undue prejudice. Regardless of how the Court decides the merits, Movants' participation will benefit the Court.

CONCLUSION

The Court should grant the motion to intervene.

Dated: November 20, 2023

Respectfully submitted,

By: */s/ Dale Schowengerdt*

Thomas R. McCarthy*
Kathleen L. Smithgall
Conor D. Woodfin*
Consovoy McCarthy PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
(703) 243-9423
tom@consovoymccarthy.com
katie@consovoymccarthy.com
conor@consovoymccarthy.com

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Dale Schowengerdt
Landmark Law PLLC
7 West 6th Avenue, Suite 518
Helena, MT 59601
(406) 457-5496
dale@landmarklawpllc.com

Counsel for the Republican National Committee and the Montana Republican Party

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that the foregoing motion complies with Local Rule 7.1(b), (c), and (d) and contains 2,968 words.

Dated: November 20, 2023

By: */s/ Dale Schowengerdt*