

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Minnesota Alliance for Retired Americans
Educational Fund, Teresa Maples, and Khalid
Mohamed,

Case Type: Civil Other/Misc.
Case No. 62-cv-24-854
Judge Edward Sheu

Plaintiffs,

v.

Steve Simon, in his official capacity as
Minnesota Secretary of State,

Defendant,

Republican National Committee, Republican
Party of Minnesota,

[Proposed] Intervenors.

**INTERVENORS' MEMORANDUM IN
SUPPORT OF THEIR MOTION TO
INTERVENE AS DEFENDANTS**

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INTRODUCTION

It has long been the “policy” of Minnesota courts “to encourage intervention wherever possible.” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986); accord *Blue Cross/Blue Shield of R.I. v. Flam ex rel. Strauss*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993) (“The policy of encouraging intervention whenever possible is favored by courts, and the rule should be liberally applied.” (citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974))). This Court should adhere to that policy here and permit the Republican National Committee and Republican Party of Minnesota (collectively, the “Republican Committees”) to participate as intervenor-defendants in this case.

The Republican Committees seek to uphold the commonsense rules that Minnesota has adopted to guarantee free and fair elections for all voters in the State. They therefore oppose Plaintiffs’ challenges to Minnesota’s longstanding requirement that voters using absentee ballots obtain the signature of a registered Minnesota voter, notary, or other official authorized to administer oaths (the “Witness Requirement”). See Minn. Stat. §§ 203B.07, 203B.121; Minn. R. 8210.0500; Minn. R. 8210.0600; Minn. R. 8210.2450. The Witness Requirement is a reasonable prophylactic rule that aims to curb “voter fraud” and to “safeguard[] voter confidence” in the State’s elections. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 191–200 (2008).

Courts routinely grant intervention of right to political parties that wish to defend election laws. Indeed, Minnesota courts—including this Court in 2020—have previously granted the Republican Committees intervention in such cases. See *DSCC v. Simon*, 950 N.W.2d 280, 284 (Minn. 2020) (noting that this Court granted intervention to the Republican Committees). This Court should again follow suit here. The Republican Committees and the voters and candidates they represent have an interest in seeking and winning political office—and doing so in a fair competitive environment in which the Legislature’s duly enacted rules governing elections, like

the Witness Requirement, are enforced. A court order permitting competitive tactics that the Legislature has forbidden, like the submitting of unwitnessed mail ballots, would impair that interest. And the Republican Committees cannot rely on the Secretary of State, the only current defendant in the case, to protect their interests. The Secretary, appropriately enough, does not share the Committees' interest in electing Republicans. He must balance his duty to defend the Witness Requirement against a host of other concerns, including deciding whether to devote the State's scarce enforcement resources to other provisions that may be challenged or underenforced. The Republican Committees can guarantee their interests will be protected only if the Committees themselves are present in the case to protect them.

Alternatively, permissive intervention is warranted. This case is in its infancy, so the Committees' participation in it could not possibly cause delay or prejudice any existing party. And giving one of the country's two major political parties the opportunity to make its case will assist the Court in its decision-making process and enhance the public legitimacy of the proceedings. The Court should grant intervention.

BACKGROUND

A. The Republican Committees

The Republican National Committee ("RNC") is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party's business at the national level, including development and promotion of the Party's national platform and fundraising and election strategies; supports Republican candidates for public office at the federal, state, and local levels across the country, including those on the ballot in Minnesota; and assists state parties throughout the country, including the Republican Party of Minnesota, to educate, mobilize, assist, and turn out voters. *See* Ints.' Prop. Answer, Basis for Intervention ¶ 2 (Index #23) ("Basis for Intervention"). The RNC has made significant contributions and expenditures in

support of Republican candidates up and down the ballot in Minnesota in the past many election cycles and intends to do so again in 2024. *Id.*

The Republican Party of Minnesota is a state “political party unit” of the Republican Party as defined by Minn. Stat. § 10A.01(30) and a federally registered “State Committee” of the Republican Party as defined by 52 U.S.C. § 30101(15). The Republican Party of Minnesota’s general purpose is to promote and assist Republican candidates who seek election or appointment to partisan federal, state, and local office in Minnesota. Basis for Intervention ¶ 3. The Republican Party of Minnesota works to accomplish this purpose by, among other things, devoting substantial resources toward educating, mobilizing, assisting, and turning out voters in Minnesota. *Id.* The Republican Party of Minnesota has made significant contributions and expenditures in support of Republican candidates up and down the ballot in Minnesota for the past many election cycles and intends to do so again in 2024. *Id.*

B. Procedural history

Plaintiffs filed this lawsuit against Defendant Secretary of State Simon challenging the Witness Requirement on February 13, 2024. The Secretary filed a motion to dismiss for failure to state a claim on March 5, 2024. Def.’s Notice of Mot. & Mot. to Dismiss (Index #11). The Secretary has not yet filed a memorandum in support of the motion.

Ten days later, the Republican Committees filed their Basis for Intervention and Proposed Answer. On April 12, Plaintiffs objected to the Committees’ intervention. Objection to Notice of Intervention (Index #37). The Republican Committees now file this motion to intervene.

ARGUMENT

The Court should grant the Republican Committees intervention of right because they satisfy all four requirements of Minnesota Rule of Civil Procedure 24.01. Alternatively, and at minimum, the Court should grant permissive intervention under Rule 24.02.

I. THE REPUBLICAN COMMITTEES ARE ENTITLED TO INTERVENTION OF RIGHT UNDER RULE 24.01

A movant is entitled to intervene as of right if (1) it files a “timely application,” (2) it “claims an interest” in the litigation, (3) that interest “may as a practical matter” be “impair[ed]” or impede[d]” by the disposition of the suit, and (4) the interest is not “adequately represented by existing parties.” Minn. R. Civ. P. 24.01; *see Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999). Rule 24.01 “is designed to protect nonparties from having their interests adversely affected by litigation conducted without their participation.” *Erickson v. Bennett*, 409 N.W.2d 884, 887 (Minn. Ct. App. 1987). “The standard is similar to that used by the federal court in reviewing orders under Fed. R. Civ. P. 24(a)(2),” and Minnesota courts regularly look to federal intervention decisions as persuasive authority. *Miller v. Miller*, 953 N.W.2d 489, 493 (Minn. 2021). Further, Rule 24.01 is “liberally applied” to “encourag[e] intervention whenever possible.” *Blue Cross/Blue Shield*, 509 N.W.2d at 396. “In determining whether intervention is proper, the court must accept the allegations in the pleadings as true, unless they are frivolous on their face.” *Miller*, 953 N.W.2d at 494.

The Republican Committees readily meet all four requirements for intervention as of right.

A. This motion is timely.

The Republican Committees have sought to intervene at the outset of the case, making their motion indisputably timely. “The timeliness of a motion to intervene must be determined on the basis of all the circumstances in each particular case.” *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979). “The factors to be considered in determining timeliness include how far the suit has progressed at time of intervention, the reason for the delay, and the possible prejudice of the delay to the existing parties.” *Id.* A “tardy intervention” is prejudicial “where there has been much litigation by way of motions, depositions and discovery, taking of testimony

before a master, etc.” *Engelrup*, 224 N.W.2d at 488. The timeliness requirement, like Rule 24.01 generally, “should be construed liberally.” *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 684, 687 (Minn. Ct. App. 1984).

Here, the Republican Committees served their Basis of Intervention approximately one month after Plaintiffs filed their complaint, before any “substantial litigation of the issues” had “commenced.” *Engelrup*, 224 N.W.2d at 488. To date, this Court has issued no rulings on the merits or even preliminary relief. No discovery has taken place. No scheduling order has been issued. The Secretary has not even filed an answer or a memorandum in support of his motion to dismiss. In short, the case has not meaningfully progressed in any way, so no “existing part[y]” could even conceivably claim that any “delay” by the Republican Committees caused it “prejudice.” *SST*, 288 N.W.2d at 230; *see, e.g., Engelrup*, 225 N.W.2d at 489 (intervention 10 months after commencement of suit and after “deposition[s]” had been taken but when “no rights ha[d] yet been adjudicated” was timely); *BE & K Const. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn. Ct. App. 1991) (“intervenor’s complaint” filed “two months” after filing of action, and after discovery had already begun, was timely).

B. The Republican Committees have an interest in this action.

The Republican Committees have a clear interest relating to the subject matter of this action. Both as representatives of their candidates and voters and as organizations in their own right, the Republican Committees have an interest in getting Republican candidates elected to office. That includes ensuring that Republicans can seek office in a fair competitive environment where the Legislature’s Witness Requirement and other valid laws aimed at protecting the integrity and reliability of Minnesota’s elections are enforced.

As organizations, the Republican Committees have a cognizable interest in preventing “impediments to [their] activities and mission.” *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533

(Minn. Ct. App. 2004). They may also intervene to protect their “members’ ... interests.” *BE & K Const.*, 464 N.W.2d at 758.

Both the Republican Committees and the candidates they represent are competitors in Minnesota elections. As discussed, the Republican Committees have made significant contributions and expenditures in support of Republican candidates for elections in federal, State, and local elections in Minnesota in many election cycles, and intend to do so again in 2024. Basis of Intervention ¶¶ 2–3. This includes educating, mobilizing, and assisting voters who support Republican candidates. *Id.* In addition, the Committees include as members every Republican candidate for office in Minnesota. *Id.*; see *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222–23 (1989) (recognizing political parties are expressive associations under the First Amendment).

As electoral competitors, the Republican Committees and their candidates have an interest in fair elections where all valid ballot regulations are enforced. Courts around the country have recognized that forcing “a candidate” and “that candidate’s party” “to participate in an illegally structured competitive environment” imposes a legally cognizable “injury.” *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022) (cleaned up) (collecting cases); see, e.g., *Nelson v. Warner*, 12 F.4th 376, 384 (4th Cir. 2021); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014); *Shays v. FEC*, 414 F.3d 76, 84–85 (D.C. Cir. 2005); *Smith v. Boyle*, 144 F.3d 1060, 1062–63 (7th Cir. 1998). This includes when executive or judicial officials “set the rules of the game in violation of statutory directives.” *Shays*, 414 F.3d at 85. As a result, candidates and political parties may file suit (and thus, intervene) to vindicate their “interest ... in seeking []election through contests untainted by ... practices [the Legislature] has proscribed.” *Id.*

Relying on this rationale, courts around the country routinely recognize that political parties have an interest in defending against suits seeking judicial changes to election laws and procedures.¹ As one court has explained, committees of the Republican Party have “an interest in

¹ See, e.g., *Pa. State Conf. of the NAACP v. Chapman*, No. 1:22-cv-00339-SPB (W.D. Pa. Jan. 6, 2023) (granting intervention of right to the RNC, National Republican Congressional Committee, and the Republican Party of Pennsylvania); *La Union Del Pueblo Entero v. Abbott*, 29 F.4th 299 (5th Cir. 2022) (granting intervention of right to county party committees, Republican National Committee, National Republican Senatorial Committee, and National Republican Congressional Committee); *United States v. Georgia*, No. 1:21-cv-2575 (N.D. Ga. July 12, 2021) (granting intervention to the RNC, NRSC, and Georgia Republican Party); *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728 (N.D. Ga. June 21, 2021) (granting intervention to the RNC, NRSC, NRCC, and Georgia Republican Party); *Coalition for Good Governance v. Raffensperger*, No. 1:21-cv-02070 (N.D. Ga. June 21, 2021) (same); *New Georgia Project v. Raffensperger*, No. 1:21-cv-1229, 2021 WL 2450647 (N.D. Ga. June 4, 2021) (same); *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-cv-1259 (N.D. Ga. June 4, 2021) (same); *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-1284 (N.D. Ga. June 4, 2021) (same); *Asian Ams. Advancing Justice-Atlanta v. Raffensperger*, No. 1:21-cv-1333 (N.D. Ga. June 4, 2021) (same); *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390 (N.D. Ga. June 4, 2021) (same); *Wood v. Raffensperger*, No. 1:20-cv-5155 (N.D. Ga. Dec. 22, 2020) (granting intervention to the DSCC and Democratic Party of Georgia); *Alliance for Retired American's v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention to the RNC, NRSC, and Republican Party of Maine); *Mi Familia Vota v. Hobbs*, Doc. 25, No. 2:20-cv-1903 (D. Ariz. June 26, 2020) (granting intervention to the RNC and NRSC); *Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and Arizona Republican Party); *Swenson v. Bostelmann*, Doc. 38, No. 20-cv-459-wmc (W.D. Wis. June 23, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Edwards v. Vos*, Doc. 27, No. 20-cv-340-wmc (W.D. Wis. June 23, 2020) (same); *League of Women Voters of Minn. Ed. Fund v. Simon*, Doc. 52, No. 20-cv-1205 ECT/TNL (D. Minn. June 23, 2020) (granting intervention to the RNC and Republican Party of Minnesota); *Issa v. Newsom*, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention to the DCCC and Democratic Party of California); *Nielsen v. DeSantis*, Doc. 101, No. 4:20-cv-236-RH (N.D. Fla. May 28, 2020) (granting intervention to the RNC, NRCC, and Republican Party of Florida); *Priorities USA v. Nessel*, 2020 WL 2615504, at *5 (E.D. Mich. May 22, 2020) (granting intervention to the RNC and Republican Party of Michigan); *Thomas v. Andino*, 2020 WL 2306615, at *4 (D.S.C. May 8, 2020) (granting intervention to the South Carolina Republican Party); *Corona v. Cegavske*, Order Granting Mot. to Intervene, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (granting intervention to the RNC and Nevada Republican Party); *League of Women Voters of Va. v. Va. State Bd. of Elections*, Doc. 57, No. 6:20-cv-24-NKM (W.D. Va. Apr. 29, 2020) (granting intervention to the Republican Party of Virginia); *Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to four Democratic Party entities); *Democratic Nat'l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (granting intervention to the RNC and Republican Party of Wisconsin); *Gear v. Knudson*,

the subject matter of [a] case,” when “changes in voting procedures could affect candidates running as Republicans and voters who [are] members of the ... Republican Party.” *See Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005).

Minnesota courts too have allowed political parties to intervene as defendants in challenges to election laws and procedures. *See, e.g., Growe v. Simon*, 2 N.W.3d 490, 495 (Minn. 2024) (noting Minnesota Supreme Court had “granted the motion of the Republican Party of Minnesota to intervene as a respondent” in suit against the Secretary seeking to deny ballot access to Donald Trump); *DSCC*, 950 N.W.2d at 284 (noting that this Court granted intervention to the Republican Committees); *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 726 (Minn. 2003) (granting motion of the chair of the Republican Party of Minnesota to intervene as defendant in a challenge to the Secretary’s enforcement of absentee ballot rules); *see also Reiter v. Kiffmeyer*, 721 N.W.2d 908, 910 (Minn. 2006) (granting candidate’s motion to intervene as defendant in a ballot-access challenge).

This case squarely fits within the mold set by this line of precedent. Plaintiffs challenge the Witness Requirement, a prophylactic rule that aims to curb “voter fraud” and to “safeguard[] voter confidence” in the State’s elections. *Crawford*, 553 U.S. at 191–200. The Republican Committees and their candidates have an interest in seeking office in “contests untainted by” violations of that rule. *Shays*, 414 F.3d at 85.

Doc. 58, No. 3:20-cv-278 (W.D. Wis. Mar. 31, 2020) (same); *Lewis v. Knudson*, Doc. 63, No. 3:20-cv-284 (W.D. Wis. Mar. 31, 2020) (same); *see also Democratic Exec. Cmte. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018) (granting intervention to the NRSC).

C. Disposition of the action may impair the Republican Committees' ability to protect that interest.

Rule 24.01's impairment inquiry is not demanding. The impairment needed is "practical" rather than "based on strict legal criteria." *Minneapolis Star & Trib. Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). And the Rule "requires only that disposition of the action ... *may impair*" the movant's interest, not that the movant's "interests *will be* impaired." *Kan. Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 60 F.3d 1304, 1307-08 (8th Cir. 1995) (cleaned up). Further, in assessing the risk of impairment in this context, courts "should not second-guess a candidate's"—or political party's—"reasonable assessment of his own campaign by assuming the guises of campaign consultants or political pundits in assessing the candidate's assertion of how a challenged governmental action affects their capacity to compete politically." *Castro v. Scanlan*, 86 F.4th 947, 958 (1st Cir. 2023) (cleaned up).

Here, the inquiry is especially straightforward. If Plaintiffs succeed in enjoining enforcement of the Witness Requirement, the Republican Committees' interest will *necessarily* be impaired because the Republican Committees and their members will necessarily "be[] forced to participate in an 'illegally structure[d] competitive environment'"—*i.e.*, one in which the Legislature's directive not to count unwitnessed ballots is disregarded. *Mecinas*, 30 F.4th at 898 (alteration in original) (quoting *Shays*, 414 F.3d at 87). As a result, the Republican Committees will be subjected to "a broader range of competitive tactics than [State] law would otherwise allow." *Shays*, 414 F.3d at 86. Since Plaintiffs' requested relief would "alter" the "overall rules" to which the Republican Committees and its members are subject, the Republican Committees "may challenge [Plaintiffs'] subversion of [the Legislature]'s guarantees" through intervention. *Id.* at 86, 91.

The Republican Committees are entitled to vindicate their interest in competing under the rules the Legislature has ordained “without establishing” that invalidating those rules “will disadvantage their [e]lection campaigns.” *Id.* at 91 (cleaned up). But if such a showing were needed, the Republican Committees would easily satisfy it. It is no secret that, in recent years, mail-in voting has favored Democrats over Republicans. In the 2022 general election, for instance, 46% of Democratic voters nationwide voted by mail, while only 27% of Republicans did so. Charles Stewart III, M.I.T. Election Data & Science Lab, *How We Voted in 2022*, at 10 (2023), <https://perma.cc/444Z-58ZY>. Minnesota is no exception from the general trend. In the 2020 presidential election, the Democratic strongholds of the Twin Cities region and St. Louis, Lake, and Olmstead Counties also generally had the highest rates of absentee voting.² It is entirely “reasonable,” therefore, for the Republican Committees to fear that if duly enacted restrictions of voting by mail go unenforced, the resulting increase in mail ballots *may* impair their prospects for electoral success. *See Castro*, 86 F.4th at 958.

D. The existing parties do not adequately represent the Republican Committees’ interest in this case.

Rule 24.01’s final requirement, inadequacy of representation, likewise imposes a “‘minimal’ burden” on the movant. *Jerome Faribo Farms, Inc. v. Cnty. of Dodge*, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). The movant need only show that “the existing parties ‘may’ not adequately represent their interests.” *Id.* And if the movant has met the Rule’s other three requirements, “he ordinarily

² *See 2020 General Election for U.S. President: Biden-Trump Margin by County*, Minn. Sec’y of State (Dec. 2020), <https://www.sos.state.mn.us/media/4384/us-president-2020-official-results-map-margin-by-county.pdf>; *2020 General Election Absentee Balloting: Accepted Absentee Ballots as Percent of Total Voting*, Minn. Sec’y of State (Dec. 2020), <https://www.sos.state.mn.us/media/4431/2020-absentee-and-mail-voting-map.pdf>.

should be allowed to intervene unless it is *clear* that the party will provide adequate representation.” *Id.* (emphasis added).

It is clear that the Secretary may not adequately represent the Republican Committees’ interests. As a public official, the Secretary “has multiple interests in application and enforcement of [election] laws,” which “may be divided” as the case progresses. *Id.* at 571. In challenges premised on federal law, the Secretary’s duty is not simply to defend state law as zealously as possible. His “sworn oath” and “first duty are to uphold the Constitution, then only the law of the state which too is bound by the charter.” *Screws v. United States*, 325 U.S. 91, 130 (1945) (Rutledge, J., concurring). The Secretary thus may not defend the Witness Requirement as forcefully as a private party if doing so would conflict with his view of what federal law fairly requires. Further, the Witness Requirement is just one of many state laws the Secretary is charged with enforcing, and he must consider “the expense of defending [it] out of [state] coffers,” when the money could go to some other enforcement priority. *Clark v. Putnam Cty.*, 168 F.3d 458, 462 (11th Cir. 1999). The Secretary also may stay his hand out of concern for “the social and political divisiveness of the election issue,” and his “own desires to remain [a] politically popular and effective leader[.]” *Meek v. Metro. Dade Cnty.*, 985 F.2d 1471, 1478 (11th Cir. 1993).

The Republican Committees’ interests, on the other hand, “are narrower than, and cannot be subsumed into, the government[’s] ... interests.” *Living Word Bible Camp v. Cnty. of Itasca*, 2012 WL 4052868, at *6 (Minn. Ct. App. Sept. 17, 2012). The Committees’ ultimate “interest” in this action is “winning [election[s]]” for the Republican Party. *Shays*, 414 F.3d at 86. The Secretary does not share that interest *at all*. Indeed, he *could not* “vindicate such an interest while acting,” as he must, “in good faith.” *La Union del Pueblo Entero (LUPE) v. Abbott*, 29 F.4th 299, 309 (5th Cir. 2022). Thus, when weighing all the conflicting considerations of how to and to what

extent to defend the Witness Requirement, the Secretary cannot give any weight at all to the interests driving the Republican Committees to intervene. In contrast, if allowed to intervene, the Committees could zealously pursue those interests without needing to take into account the many countervailing considerations the Secretary must.

Further, even if the Secretary chooses to defend the suit with the same zeal as the Republican Committees would, his “interests” may “diverge” on “how to carry out” the defense. *Id.* at 308. The Secretary has an institutional interest in protecting the state government from suits generally, which may incentivize him to prioritize dismissing the suit “on sovereign-immunity and standing grounds.” *Id.* The RNC, on the other hand, is currently involved as an intervenor-defendant in multiple other suits challenging state voting regulations under the Materiality Provision of the Civil Rights Act. *See, e.g., Pa. State Conf. of NAACP Branches v. Sec’y Commonwealth of Pa.*, 97 F.4th 120 (3d Cir. 2024), *pet. for rehearing filed* (Apr. 12, 2024); *LUPE v. Abbott*, 2023 WL 8263348 (W.D. Tex. Nov. 29, 2023), *appeal filed sub nom. United States v. Paxton*, No. 23-50885 (5th Cir. Dec. 5, 2023). The Committees would thus prefer a ruling upholding the Witness Requirement on the merits, which the RNC could then invoke as a precedent in its other lawsuits.

The U.S. Supreme Court’s decision in *Trbovich*, which is the source of the “minimal” burden standard for inadequacy of representation, confirms that intervention is appropriate here. *See* 404 U.S. at 538 n.10. *Trbovich* involved a motion to intervene by a voting union member in a suit filed by the Secretary of Labor to set aside a union election in which the rights of voting members had allegedly not been respected. *Id.* at 529–30. The Court held the Secretary’s representation was inadequate given his “duty to serve two distinct interests”: to vindicate the “rights” of “individual union members” and “assuring free and democratic union elections that

transcends the narrower interest of the complaining union member.” *Id.* at 538–39. These two functions “may not always dictate precisely the same approach to the conduct of the litigation.” *Id.* at 539. So “[e]ven if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about [his] performance,” which is “sufficient to warrant ... intervention” as of right. *Id.* So too here, the Secretary has duties relating to the conduct of election that transcend the “narrower interest” of the Republican Committees, giving them sufficient grounds to intervene. *Id.*

Tellingly, the Secretary “has taken no position on the motion to intervene.” *Utah Ass’n of Ctys. v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001). Even in cases where a government official may be actively “defending” the suit, such “silence on any intent to defend the intervenors’ special interests is deafening.” *Id.* (cleaned up). If the Secretary will not commit to defending the Republican Committees’ interests—which, to be clear, is understandable, since it is not his job to elect Republicans—it cannot be “clear” that he will defend them “adequately.” *Jerome Faribo Farms*, 464 N.W.2d at 570.

Nor do the Republican Committees need to clear “a heightened burden in seeking to intervene in an action already defended by a government” official, as some litigants have argued in prior cases. *Living Word Bible Camp*, 2012 WL 4052868, at *6. Minnesota courts have “not ... adopted this doctrine.” *Id.* To the contrary, *Jerome Faribo Farms* applied the “‘minimal’ burden” standard to permit intervention in a case where the movant sought to intervene as a defendant in a proceeding already defended by a government body. 464 N.W.2d at 570. This Court is bound by that decision. *See State v. Chauvin*, 955 N.W.2d 684, 694–95 (Minn. Ct. App. 2021). Similarly, *Trbovich*, the source of the “‘minimal’ burden” standard, was a case where the existing party was a government official. *See* 404 U.S. at 529–30. Such a presumption also makes

little sense, since the government *almost always* has to balance its support of an individual’s private interest with its need to consider the interests of the public at large. If anything, courts should “look skeptically on government entities serving as adequate advocates for private parties.” *Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015).³ But in any event, even if this higher standard applied, “it should not bar intervention” where, as here, “the interests of the putative intervenors are narrower than, and cannot be subsumed into, the government entities’ interests.” *Living Word Bible Camp*, 2012 WL 4052868, at *6.

To see why this Court cannot simply assume the Secretary will adequately represent the Republican Committees’ interests, “a page of history is worth a volume of logic.” *N.Y. Tr. Co. v. Eisner*, 256 U.S. 345, 349 (1921) (Holmes, J.). Four years ago, the Secretary consented to a judgment that a state-law restriction on collecting completed ballots from other voters violated federal law. *DSCC*, 950 N.W.2d at 285. In follow-on litigation, moreover, the Secretary refused to appeal a temporary injunction of the law’s enforcement. *Id.* at 286. But because the Republican Committees had intervened, they appealed the injunction order, which the Minnesota Supreme Court reversed unanimously. *Id.* at 286, 296. The Republican Committees were able to vindicate their interest *solely* because they had been allowed to intervene. And if the Secretary was unwilling to defend an election regulation *unanimously* held lawful by the State high court, his interests are simply not naturally in sync with the Republican Committees’ interests—and he does not adequately represent them.

³ See also *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003) (“we have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors”); *Utah Ass’n*, 255 F.3d at 1255–56 (“[T]he government’s representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a [private party] merely because both entities occupy the same posture in the litigation.”); *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999) (rejecting “the proposition that a stronger showing of inadequacy is required when a governmental agency is involved as the existing defendant”).

In sum, it cannot be clear that the Secretary will adequately represent the Republican Committees' interest in competing to elect Republicans to office. The Court should grant intervention as of right.

II. THE REPUBLICAN COMMITTEES ALTERNATIVELY ARE ENTITLED TO PERMISSIVE INTERVENTION UNDER RULE 24.02

The Republican Committees' right to intervene in this case is clear, but even if it were not, the Court should still grant permissive intervention under Rule 24.02. The Court may grant permissive intervention “[u]pon timely application . . . when an applicant’s claim or defense and the main action have a common question of law or fact.” Minn. R. Civ. P. 24.02. Moreover, in exercising its discretion under Rule 24.02, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.* These factors all point in favor of permissive intervention here.

First, Minnesota courts consider the same factors when assessing timeliness under Rule 24.02 as under Rule 24.01. *See, e.g., State ex rel. Lucero v. CSL Plasma, Inc.*, 2020 WL 807356, at *10 (Minn. Dist. Ct. Feb. 12, 2020). Thus, for the reasons explained above, *see supra* Part I.A, the Republican Committees' application to intervene is timely.

Second, the Republican Committees clearly will raise defenses that share many common questions with the claims and defenses of the parties. Plaintiffs allege that the Witness Requirement violates the Voting Rights Act and the Materiality Provision of the Civil Rights Act. The Republican Committees reject those allegations and intend to argue that, properly construed, those provisions of federal law present no conflict with the longstanding Witness Requirement. If permitted to intervene, the Republican Committees will simply offer “the ‘mirror-image’” arguments of Plaintiffs. *Democratic Nat’l Comm. v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020).

Third, allowing the Republican Committees to intervene will neither delay this litigation nor prejudice anyone. This case remains in its infancy, so the Republican Committees' participation in it cannot prejudice any existing party or cause any delay. And to avoid any doubt, the Committees pledge to adhere to any briefing deadlines the Court chooses to set. *See Thomas v. Andino*, 335 F.R.D. 364, 371 (D.S.C. 2020) (finding no prejudice or delay based on such a commitment).

Moreover, granting intervention will further the adversarial process and promote judicial economy by avoiding piecemeal, protracted litigation, and the possibility of conflicting legal decisions. *See Jacobson v. Detzner*, 2018 WL 10509488, at *1 (N.D. Fla. July 1, 2018) (“[D]enying Proposed Intervenors’ [Republican Party organizations] motion opens the door to delaying the adjudication of this case’s merits for months—if not longer”); *Norman*, 383 N.W.2d at 675 (denial of intervention as of right is an immediately “appealable order”).

Under these circumstances, the only prejudice Plaintiffs could conceivably identify is that they will have more arguments to respond to. But that fact “would, if anything, be a beneficial addition allowing for a more informed decision by the court.” *Snyder’s Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974). Plaintiffs “can hardly be said to be prejudiced by having to prove a lawsuit [they] chose to initiate.” *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

Finally, granting intervention would promote the legitimacy of the Court’s decision-making process. Election-law cases have a unique potential to cause controversy and to undermine confidence in our system of government because they involve judges determining the rules under which the democratic process will take place. Regardless of the final outcome, members of the public of all political stripes can more readily accept a court’s decision as the fair and impartial

application of the law when all sides of the political spectrum have had a chance to make their case. The Court should not decide an important question about the lawfulness of this State's voting procedures without at least hearing the views of one of the State's and the country's two major political parties.

CONCLUSION

The Court should grant the Republican Committees intervention of right or, in the alternative, permissive intervention.

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Respectfully submitted,

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