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STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

MINNESOTA ALLIANCE FOR RETIRED AMERICANS EDUCATIONAL FUND, TERESA MAPLES, and KHALID MOHAMED,

Plaintiffs,

v.

STEVE SIMON, in his official capacity as Minnesota Secretary of State,

Defendant.

Case No. 62-cv-24-854

Assigned Judge: Hon. Edward Sheu

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO THE REPUBLICAN COMMITTEES' MOTION TO INTERVENE

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INTRODUCTION

In this case, two individual voters and a social welfare organization sued the Minnesota Secretary of State, contending that Minnesota's witness requirement for absentee ballots violates the federal Voting Rights Act and Civil Rights Act. The Republican National Committee and the Republican Party of Minnesota (the "Republican Committees") have moved to intervene because they think the witness requirement is good policy, and they would like the Court to uphold it. But the Republican Committees' generalized interest in upholding the law does not entitle them to intervention as of right. Instead, they must identify an interest that is direct, substantial, legally protectible, and unique to them; they must show that interest may be impaired if they are not granted intervention; and they must show that no existing party adequately represents that interest. *See* Minn. R. Civ. P. 24.01.

The Republican Committees' claimed interest in a "fair competitive environment" is nothing more than a generalized grievance. Courts have required political parties seeking to intervene in election law cases to show that they or their members are likely to suffer some actual financial or electoral harm as a result of the lawsuit. The Republican Committees cannot do so because the relief sought by Plaintiffs here will inure to the benefit of Republican, Democratic, and independent voters alike. And even if the Republican Committees' generalized interest in electoral "fairness" were cognizable, they fail to demonstrate how any outcome in this lawsuit, which seeks to enforce federal civil rights laws, would be *unfair* to them.

Finally, the Republican Committees are not entitled to intervention because their generalized interest in upholding Minnesota's election laws is already adequately and ably represented by the Secretary of State, through the Attorney General. The Republican Committees merely parrot the Secretary's legal obligations as their own private pursuits and bring no new arguments to the table. And because there is no reason to believe that the Republican Committees

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would bring anything to this litigation other than duplicative filings and redundant argument, the Court should also reject their alternative request for permissive intervention.

BACKGROUND

Plaintiffs bring federal Civil Rights Act and Voting Rights Act challenges against Minnesota's requirement that a voter procure the signature of a registered Minnesota voter, notary, or other official authorized to administer oaths in order to exercise their right to vote using an absentee ballot. (*See* Index No. 2); Minn. Stat. §§ 203B.07, 203B.121; Minn. R. 8210.0500; Minn. R. 8210.0600; Minn. R. 8210.2450 (together, "the witness requirement"). Plaintiffs named as Defendant the Minnesota Secretary of State. The Secretary is Minnesota's chief elections officer and, as such, is responsible for the administration and implementation of election laws in Minnesota. *See* Minn. Stat. § 204B.27. Among many other duties, the Secretary is specifically responsible for "adopt[ing] rules establishing the form, content, and type size and style for the printing of blank applications for absentee ballots, absentee voter lists, return envelopes, certificates of eligibility to vote by absentee ballot, ballot envelopes, and directions for casting an absentee ballot." Minn. Stat. § 203B.09. The Secretary is represented in this case by the Attorney General, who is charged by law to "act as the attorney for all state officers and all boards or commissions created by law in all matters pertaining to their official duties." Minn. Stat. § 8.06; *see also* Minn. Stat. § 8.01.

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Plaintiffs filed their Complaint on February 13, 2024. (Index No. 2.) On March 5, 2024, the Secretary filed a Notice of Motion and Motion to Dismiss with a hearing date of May 23, 2024/ (Index No. 11.) On April 25, the Republican Committees filed a Notice of Motion and Motion to Intervene, also with a hearing date of May 23, 2024. (Index No. 42.) Plaintiffs filed an Amended Complaint on May 1, 2024. (Index No. 52.) Plaintiffs filed their Notice of Motion for a Temporary

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Injunction, a supporting Memorandum, and accompanying declarations on May 2, 2024. (Index Nos. 53–56.)

ARGUMENT

The Court should deny the Republican Committees' Motion to Intervene. Their abstract, generalized interests in enforcing the witness requirement cannot satisfy the requirements for intervention as of right. *See* Minn. R. Civ. P. 24.01. And, because their participation will simply duplicate the Secretary's arguments and complicate proceedings, permissive intervention is unwarranted.

I. The Republican Committees are not entitled to intervention as of right.

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The Republican Committees must satisfy each of the following four requirements to intervene as a matter of right: (1) they must make "a timely application;" (2) they must show "an interest in the subject of the action;" (3) they must demonstrate "an inability to protect that interest unless" they are permitted to participate as "a party to the action;" and (4) they must show their "interest is not adequately represented by the existing parties." *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). Failure to satisfy of any one of these requirements supplies an independent basis to deny intervention. *See* Minn. R. Civ. P. 24.01.

The Republican Committees have failed to meet their burden of satisfying these elements. Although Plaintiffs do not contest the timeliness of the Motion to Intervene, the Committees failed to prove Rule 24.01's three other requirements: they do not hold a unique and cognizable interest related to this action; none of the interests they identify would be impaired by the disposition of this case; and, in any event, the purported interests identified by the Committees are already adequately represented by the Secretary of State.

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A. The Republican Committees have no cognizable interest in this action.

The Republican Committees are not entitled to intervention in this action because they lack "a direct, significant and legally protectable interest" in the subject of the lawsuit. *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985); *see also League of Women Voters Minn.*, 819 N.W.2d at 642 (quoting *Keith*, 764 F.2d at 1269). The Republican Committees here merely assert a generalized interest in "fair elections where all valid ballot regulations are enforced." (Index. No. 43) (Intervenors' Mem. in Supp. of Mot. to Intervene as Defs. at 6 ("MTI Br.")). In other words, the Republican Committees support Minnesota's witness requirement and would like to keep it. That is not enough to satisfy Rule 24.01. *See, e.g.*, *League of Women Voters Minn.*, 819 N.W.2d at 642 ("[C]ourts have denied intervention to entities whose only interest in legislation is that they lobbied for its passage."). "Not every alleged interest in a lawsuit supports intervention as a matter of right." *Schroeder v. Simon*, 950 N.W.2d 70, 76 (Minn. App. 2020). "[A] generalized interest . . . is not enough to establish intervention as of right." *Keith*, 764 F.2d at 1269.

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As other courts have found, the Republican Committees' generalized interest in "the integrity of the election process" is also "not a 'direct, significant and legally protectable interest.'" *Liebert v. Wis. Elections Comm'n*, 345 F.R.D. 169, 173 (W.D. Wis. 2023) (quoting *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 686 (7th Cir. 2023)). "Rather, it is an 'abstract' and 'general interest common to all members of the public.'" *Id.* (quoting *Gill v. Whitford*, 585 U.S. 48, 68 (2018)). This generalized grievance is insufficient to establish even the bare minimum required for Article III standing in federal courts—let alone satisfy the interest requirement of Minnesota's intervention statute. *See Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 376 (W.D. Pa. 2020) (holding that plaintiffs, including the Republican National Committee, lacked standing to vindicate generalized election integrity interests); *Flying J., Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (holding that an intervenor's "interest" must be something more than

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the minimum injury required for Article III standing); *Common Cause Ind. v. Lawson*, No. 1:17-cv-03936-TWP-MPB, 2018 WL 1070472, at *4–5 (S.D. Ind. Feb. 27, 2018) (finding organization's claimed interests in "state control over structuring its own election system" and the state's "ability to conduct fair and robust elections" were "too generalized to afford a right to intervention under Rule 24(a), as they are the same for the proposed intervenor as for every registered voter in Indiana"); *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 253 (D.N.M. 2008) ("[A]n interest in fair elections and the prevention of voter registration fraud . . . [is] too general an interest to form the basis of a rule 24(a) [sic] motion."). For this reason (among others), a Wisconsin federal district court recently denied the motion of the RNC and the Republican Party of Wisconsin to intervene in a substantially similar challenge to Wisconsin's absentee ballot witness requirement. *Liebert*, 345 F.R.D. at 173. This court should do the same.

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Instead of identifying a direct and substantial interest in the outcome of this suit, the Republican Committees rely on conclusory statements and the unremarkable fact that political parties have sometimes been granted intervention in other cases touching on election law issues. But it is not the case that political party committees may *always* intervene in election law cases. Rather, courts require political parties—like any other intervenor—to demonstrate that they are likely to suffer some cognizable harm if the relief sought by plaintiffs is granted. Courts have allowed intervention, for instance, when the outcome of a lawsuit threatens to create an uneven electoral playing field, such as by making it harder for a political party's supporters to vote or have their ballots counted, or leading to an end that would require the party to divert resources to educate or assist impacted voters to comply with voting requirements that may otherwise impede their access to the franchise. *E.g.*, *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL

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2042365, at *1 (D. Nev. Apr. 28, 2020); *cf. La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) ("*LUPE*") (granting intervention to political party committees that "expend significant resources in the recruiting and training of volunteers and poll watchers who participate in the election process"). Here, the Republican Committees allege no such harm, nor could they. Plaintiffs' requested relief makes it easier for everyone to vote and have their ballots counted. It would not impede anyone's access to the franchise, nor would it require Republican Committees to expend resources to protect voters, because the lawsuit seeks only to eliminate one of the grounds for rejecting absentee ballots—in other words, no voter, regardless of their political affiliation, will be worse off if the Court enjoins the witness requirement.

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The Republican Committees suggest that their interest in this lawsuit is tied to their "competitive" advantage against other political parties, and rely on a series of federal cases that have recognized "competitive" standing under Article III. *See* MTI Br. at 6. But they ignore that such an injury must be supported by a plausible allegation or showing of an "ongoing, unfair advantage." *Mecinas v. Hobbs*, 30 F.4th 890, 898 (9th Cir. 2022). In other words, to claim "competitive" injury based on "fairness" of the electoral system, a party must "show that it is plausible that the field is 'tilted.'" *Lake v. Hobbs*, 623 F. Supp. 3d 1015, 1029 (D. Ariz. 2022), *aff'd sub nom. Lake v. Fontes*, 83 F.4th 1199 (9th Cir. 2023). It is not, as the Republican Committees assert, enough to simply allege that Republican candidates would have to "participate in an illegally structured competitive environment." MTI Br. at 6 (quoting *Mecinas*, 30 F.4th at 898); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021) ("[A]n injury in law is not an injury in fact.").[1]

[1] And in any event, Plaintiffs' lawsuit seeks to ensure compliance with the Voting Rights Act and the Civil Rights Act. A competitive environment that complies with federal law is not "illegally

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For instance, in *Mecinas*, the Ninth Circuit held that Democratic Party committees had Article III standing to challenge a ballot-order statute that "divert[ed] more votes to Republicans than Democrats, thereupon giving the Republican Party an unfair advantage." 30 F.4th at 897. The Ninth Circuit held that, "[i]f an allegedly unlawful election regulation makes the competitive landscape worse for a candidate or that candidate's party than it would otherwise be if the regulation were declared unlawful, those injured parties have the requisite concrete, non-generalized harm to confer standing." *Id.* at 898. The same is true of the other ballot-order cases cited by the Republican Committees. *See Nelson v. Warner*, 12 F.4th 376, 385 (4th Cir. 2021) (expert testimony showed that "the primacy effect would have a negative impact on Nelson's vote tally"); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (plaintiffs alleged that the challenged statute "unequally favors supporters of *other* political parties"); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014) (party who backed candidates affected by ballot-ordering state had standing). Similarly, in *Shays v. FEC*, congressional candidates claimed a harm to their electoral prospects as a result of improper "soft money" being spent against them by their opponents. 414 F.3d 76, 84–85 (D.C. Cir. 2005). And in *Smith v. Boyle*, the Republican Party challenged an at-large election system that left them with fewer elected Republicans than there would be under a districted system. 144 F.3d 1060, 1062 (7th Cir. 1998).

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Here, the Republican Committees cannot demonstrate that eliminating the witness requirement would unfairly disadvantage them or advantage their political opponents. As explained, removing the unlawful barrier to the franchise imposed by the witness requirement would make it easier for *all* voters to vote—including Republican Committees' own supporters.

structured." Most states do not have witness requirements, and the Republican Committees do not argue that elections in those states are "illegally structured."

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And the Republican Committees do not explain why allowing Minnesotans to vote absentee without a witness signature—as they can in many states—would result in an "illegally structured" environment. At best, they assert that the witness requirement is a "prophylactic rule that aims to curb voter fraud and to safeguard voter confidence in the State's elections," MTI Br. at 8 (cleaned up), but they understandably stop short of ever alleging that the witness requirement accomplishes those purported goals, or that its elimination will lead to fraud.

The remaining cases cited by the Republican Committees do not support the broad proposition that political parties always have an interest in "defending against suits seeking judicial changes to election laws and procedures." *Id.* at 7 & n.1. In many of those cases intervention was unopposed, the interest prong of the intervention standard was undisputed, or the court summarily granted intervention without explaining its reasoning or analysis or even specifying whether it was granting intervention permissively or as of right.[2] The Republican Committees also cite a number of cases in which political party entities were granted *permissive* intervention without any analysis

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[2] Mem. Order at 9, *Pa. State Conf. of the NAACP v. Chapman*, No. 1:22-cv-00339-SPB (W.D. Pa. Jan. 6, 2023), ECF No. 167 ("[N]o party has objected to the Republican Committees' claim that they have a substantial and particularized interest in ensuring that Pennsylvania administers free and fair elections."); Order, *United States v. Georgia*, No. 1:21-cv-02575-JPB (N.D. Ga. July 12, 2021) (text-only order granting unopposed motion to intervene); Order, *Wood v. Raffensperger*, No. 1:20-cv-5155-TCB (N.D. Ga. Dec. 22, 2020), ECF No. 14 (one-paragraph order summarily granting Democratic entities' intervention filed day before without opposition); Order, *All. for Retired Ams. v. Dunlap*, No. CV-20-95 (Me. Super. Ct. Aug. 21, 2020) (granting intervention without analysis and without specifying whether intervention was permissive or of right); Order, *Mi Familia Vota v. Hobbs*, No. 2:20-cv-1903-PHX-SPL (D. Ariz. Oct. 5, 2020), ECF No. 25 (same); Court Minutes, *League of Women Voters of Minn. Educ. Fund v. Simon*, No. 20-cv-1205-ECT-TNL (D. Minn. June 23, 2020), ECF No. 52 (same); Order, *Corona v. Cegavske*, No. CV 20-OC-644-1B (Nev. 1st Jud. Dist. Ct. Apr. 30, 2020) (same); Order, *League of Women Voters of Va. v. Va. State Bd. of Elections*, No. 6:20-cv-00024-NKM-RSB (W.D. Va. Apr. 29, 2020), ECF No. 57 (same); Scheduling Order at 3, *Democratic Exec. Comm. of Fla. v. Detzner*, No. 4:18-cv-520-MW-MJF (N.D. Fla. Nov. 9, 2018), ECF No. 20 (same).

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of the "interests" prong of intervention as of right.[3] Worse yet, the Republican Committees cite the *same order* granting permissive intervention in consolidated cases *five times* to inflate the support for their argument.[4] The few decisions that did directly address intervention as of right merely demonstrate the flaw in the Republican Committees' arguments. In those cases, the proposed intervenors demonstrated some specific, particularized interest. *See*, *e.g.*, *LUPE*, 29 F.4th at 306 ("Specifically, the Committees expend significant resources in the recruiting and training

[3] Order, *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 1:21-cv-1728-JPB (N.D. Ga. June 21, 2021) (text-only order granting permissive intervention); Order, *Coal. for Good Governance v. Raffensperger,* No. 1:21-cv-2070-JPB (N.D. Ga. June 21, 2021) (text-only order granting unopposed motion for permissive intervention); Order, *Ariz. Democratic Party v. Hobbs*, No. 2:20-cv-1143-DLR (D. Ariz. June 26, 2020), ECF No. 60 (granting permissive intervention and severely limiting the movants' participation in the matter); Opinion & Order, *Swenson v. Bostelmann*, No. 3:20-cv-459-WMC (W.D. Wis. June 23, 2020), ECF No. 38 (granting permissive intervention); Opinion & Order, *Edwards v. Vos*, No. 3:20-cv-340-WMC (W.D. Wis. June 23, 2020), ECF No. 27 (granting permissive intervention without opposition); Order Allowing Republican Orgs. to Intervene, *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF (N.D. Fla. May 28, 2020), ECF No. 101 (granting permissive intervention); *Priorities USA v. Nessel*, No. 19-13341, 2020 WL 2615504, at *4 (E.D. Mich. May 22, 2020) (granting permissive intervention but noting that the "competitive interests" of the state Republican Party and the Republican National Committee were "not as salient" as the interests of the state legislature); *Democratic Nat'l Comm. v. Bostelmann*, No. 20-cv-249-WMC, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020) (denying intervention of right but granting permissive intervention solely because the state Republican Party and Republican National Committee "are uniquely qualified to represent the 'mirror-image' interests of the plaintiffs, as direct counterparts to" the Democratic National Committee and state Democratic Party); Order, *Gear v. Knudson*, No. 3:20-cv-278-WMC (W.D. Wis. Mar. 31, 2020), ECF No. 58 (text-only order granting intervention in case consolidated with *Bostelmann*, No. 3:20-cv-459-WMC (W.D. Wis. 2020)); Order, *Lewis v. Knudson*, No. 3:20-cv-284-WMC (W.D. Wis. Mar. 31, 2020), ECF No. 63 (same); *Ohio Democratic Party v. Blackwell*, No. 2:04-CV-1055, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005) ("[T]he Court need only analyze the question of whether permissive intervention is appropriate under Rule 24(b).").

[4] *New Ga. Project v. Raffensperger*, No. 1:21-cv-1229-JPB, 2021 WL 2450647, at *1–2 (N.D. Ga. June 4, 2021) (granting permissive intervention without addressing interests); Order, *Ga. State Conf. of the NAACP v. Raffensperger*, No. 1:21-cv-1259-JPB (N.D. Ga. June 4, 2021), ECF No. 40 (same order docketed in consolidated case); Order, *Sixth Dist. of the African Methodist Episcopal Church v. Kemp*, No. 1:21-cv-1284-JPB (N.D. Ga. June 4, 2021) (same); Order, *Asian Ams. Advancing Justice-Atl. v. Raffensperger*, No. 1:21-cv-1333-JPB (N.D. Ga. June 4, 2021) (same); Order, *VoteAmerica v. Raffensperger*, No. 1:21-cv-1390-JPB (N.D. Ga. June 4, 2021) (same).

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of volunteers and poll watchers who participate in the election process.").[5] Here, the Republican Committees fail to connect their generalized allegations and abstract interests to the witness requirement specifically.

None of the Minnesota cases cited by the Republican Committees supports their intervention here either. In *Growe v. Simon*, the Republican Party of Minnesota's intervention was unopposed. And the Supreme Court granted the Party's consent motion in an un unpublished order with no analysis. *See* Order, *Growe v. Simon*, No. A23-1354 (Minn. Sept. 20, 2023); Mot. of Republican Party of Minn. to Intervene as a Resp't at 1, *Growe v. Simon*, No. A23-1354 (Minn. Sept. 20, 2023) ("The RPM has obtained verbal consent from the existing parties in this action to intervene."). Like *Growe*, the Court in *Erlandson v. Kiffmeyer* merely noted that the Republican Party of Minnesota's motion to intervene was granted just two days after the initial petition was filed. 659 N.W.2d 724, 726 (Minn. 2003). The same is true of *Reiter v. Kiffmeyer*, where a candidate moved to intervene in a ballot access challenge brought by an opposing candidate and the Supreme Court granted the motion in a one-sentence order two days later. *See* Order, *Reiter v. Kiffmeyer*, No. A06-1508 (Minn. Aug. 17, 2006).[6]

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Finally, in *DSCC v. Simon*, the district court summarily concluded that the Republican Committees had a sufficient interest in the contested action because their interests were "similar"

[5] *See also Issa*, 2020 WL 3074351, at *3 (recognizing Democratic committees' interest in "the rights of their members to vote safely without risking their health" during the pandemic); *Thomas v. Andino*, 335 F.R.D. 364, 370 (D.S.C. 2020) (granting intervention of right based on the specific interest invoked by the state party movant: that it was "tasked with 'handling protest hearings stemming from [primary] election contests [at issue] and deciding th[o]se cases'" (internal citation omitted)); *Paher*, 2020 WL 2042365, at *2 (granting intervention of right where movant identified specific interests implicated and provided 166 pages of exhibits in support of motion).

[6] Although not specified in either order, it appears likely that the motions to intervene in both *Erlandson* and *Reiter* were unopposed, based on the short timeframe between the filing of the motion and the court's order.

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to those expressed by the plaintiff Democratic committees. No. 62-CV-20-585, 2020 WL 4519785, at *16 (Minn. Dist. July 28, 2020). That is consistent with other cases that have recognized "mirror interest" standing where a political party seeks to intervene in a case that the opposing political party brought. *Bostelmann*, 2020 WL 1505640, at *5 (denying intervention of right but granting permissive intervention solely because the state Republican Party and Republican National Committee "are uniquely qualified to represent the 'mirror-image' interests of the plaintiffs, as direct counterparts to" the Democratic National Committee and state Democratic Party); *Issa*, 2020 WL 3074351, at *1 (granting intervention to Democratic Party committees in case brought by Republican Party committees and congressional candidates). But Plaintiffs here are not Democratic Party organizations—they are individual voters and a non-profit social welfare organization seeking to make it easier for *everyone* to vote in Minnesota, including Republicans. None of these cases—and nothing in Minnesota law—suggests that a political party must automatically be granted intervention whenever a social welfare organization brings a case with which the party disagrees. *See*, *e.g.*, *Bost*, 75 F.4th at 691 (denying intervention by Democratic Party of Illinois in suit brought by Republican congressman and two voters).

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In short, the Republican Committees fail to show that they have a unique interest in this litigation, and there is no case law supporting that proposition.

B. None of the Republican Committees' purported interests will be impaired by this litigation.

Even assuming their generalized interest in election "fairness" could suffice under Rule 24.01, the Republican Committees never explain how that interest is even implicated by this action—let alone likely to be impaired. Because the Committees bear the burden of satisfying each element for intervention, the Court cannot be required to speculate about how a successful challenge to the witness requirement could implicate election fairness.

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In fact, Plaintiffs' action is most likely to vindicate these interests. As Plaintiffs allege, Minnesota's witness requirement is contrary to clear federal law. Requiring the Secretary to conduct voting processes consistent with federal requirements will promote election integrity. Among other things, it will absolve elections officials from having to review absentee ballot envelopes for satisfactory witness signatures, thereby improving administrative efficiency; eliminating an obstacle to absentee voting; remove a disincentive for potential voters who are unable to cast their ballots in person; and ensure that election results reflect the views of all qualified voters—even those who lack ready access to the necessary witness. All of this will enhance confidence in our electoral system. The Republican Committees' motion—which barely mentions the challenged witness requirement at all—provides no basis to conclude otherwise.

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The Republican Committees mistakenly rely on the First Circuit's decision in *Castro v. Scanlan*, 86 F.4th 947 (1st Cir. 2023), to suggest that this Court must accept their conclusory explanations and excuse their failure to connect their abstract interest to the witness requirement. MTI Br. at 9. In *Castro*, the First Circuit explained that courts "should not 'second-guess a candidate's *reasonable* assessment of his own campaign.'" 86 F.4th at 958 (emphasis in *Castro*) (quoting *Becker v. FEC*, 230 F.3d 381, 387 (1st Cir. 2001)). But the First Circuit has also declined "to adopt a rule that would grant standing to *any* political entrant to challenge any aspect of an election that might *someday* affect them." *Id.* (emphasis in original) (cleaned up). The First Circuit has "therefore required the candidate to show a 'plausible' chance of being competitively affected by the conditions that they challenged." *Id.* at 959 (quoting *Becker*, 230 F.3d at 386 n.4).

The Republican Committees' citations to *Shays* are also misguided. *See* MTI Br. at 9-10. The court in *Shays* explained that, while a party claiming "competitive" harm need not "establish that but for certain . . . rules they could have won an election," they nonetheless must establish

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some "distinct risk" that "political rivals will exploit the challenged rules to their disadvantage." *Shays*, 414 F.3d at 91–92. To the extent the Republican Committees claim that removing restrictions that make voting harder will harm their candidates' electoral prospects, that argument rests on an unacceptable premise: a protectible legal interest in making it harder for some segments of the population—particularly those residing in "the Twin Cities region and St. Louis, Lake, and Olmstead Counties"—to vote. MTI Br. at 10. While courts have regularly held that political parties have an interest in protecting the voting rights of their members, no court has recognized an interest in making it *harder* for one's *political opponents* to vote. Disenfranchisement is not a direct, significant, or legally protectable interest. *Cf. Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (holding that a law that "makes it easier for some voters to cast their ballots by mail" "does not burden anyone's right to vote"). Moreover, as explained, improving access to absentee voting will benefit *all* voters—not just Democrats. If Democratic voters choose to take advantage of absentee voting at higher rates than Republican voters, that does not establish that one side has been given an "unfair advantage." *Mecinas*, 30 F.4th at 897.

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The Republican Committees should not be permitted to intervene because they fail to show that their purported interests will be impaired by this litigation.

C. The Secretary adequately represents the Republican Committees' purported interests.

The Republican Committees' generalized interest in maintaining the current state of Minnesota election law is adequately represented by the Secretary of State, and the Motion to Intervene can be denied on this ground alone. The Committees face an especially high hurdle here because the Secretary, represented by the Attorney General, is already defending the witness requirement. "[W]hen one of the parties is an arm or agency of the government, and the case concerns a matter of sovereign interest, the bar is raised, because in such cases the government is

presumed to represent the interests of all its citizens." *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996) (cleaned up).[7]

That presumption applies here. While the Republican Committees argue that the Secretary cannot represent their narrower, more partisan interests, that argument ignores the actual interest that the Committees have identified: a general desire for "fair elections where all valid ballot regulations are enforced." MTI Br. at 6. They cannot explain how that interest departs from the "sovereign interest" that the Secretary is already representing. *Mausolf*, 85 F.3d at 1303. Indeed, "[t]he interests the Republicans identify do not affect Republicans more than any other party." *Liebert*, 345 F.R.D. at 173. "The government represents the interests of a movant to the extent his interests coincide with the public interest." *North Dakota ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015) (cleaned up). The Secretary need not "shirk[his] duty to advance the narrower interest of [the Republican Committees] at the expense of [his] representation of the general public interest," because, by the Republican Committees' own telling, those interests overlap fully. *Id.* (cleaned up).

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Even assuming the Republican Committees asserted narrower interests, that would not be enough to establish inadequate representation on its own. Even the most lenient view of adequate representation requires some showing of potential conflict. *Bost*, 75 F.4th at 690. But the Committees "ha[ve] not proposed even a possible conflict between [themselves] and the [Secretary]." *Id.* The Republican Committees have not identified any divergence—potential or

[7] Although the Minnesota Court of Appeals has not yet decided whether this heightened burden applies, *Schroeder*, 950 N.W.2d at 79 n.10 (declining to reach this question), the standard, as the Republican Committees acknowledge, 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." MTI Br. at 4 (quoting *Miller v. Miller*, 953 N.W.2d 489, 493 (Minn. 2021)).

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otherwise—in their respective litigation positions. Instead, their Proposed Motion to Dismiss, (Index No. 49), largely repeats the same arguments made in the Secretary's Motion to Dismiss, (Index No. 39). There is no potential conflict between the Secretary's position and the Republican Committees' position. *See League of Women Voters Minn.*, 819 N.W.2d at 643 (denying intervention to a nonprofit where the position it sought to advance in the litigation was "substantially the same as the position advanced by the House and Senate").

Finally, the Republican Committees' invocation of the Secretary's past litigation positions does not suffice to show the possibility of conflict in *this* case. *See* MTI Br. at 14. By entering into a consent decree in *Thao v. Minnesota Secretary of State*, No. 62-CV-20-1044 (Minn. Dist. April 21, 2020) (Index No. 22), the Secretary agreed that limits on voter assistance were preempted by the Voting Rights Act—after the court in a related criminal case had already held as much. *See DSCC v. Simon*, 950 N.W.2d 280, 285 (Minn. 2020) (describing history of *Thao* litigation). That litigation involved a different provision, different challenge, and different facts. In *this* case, the Secretary is vigorously defending the challenged law, as demonstrated by the Motion to Dismiss he has already filed, which largely echoes the arguments made by the Republican Committees. In short, there is no reason to believe that the Secretary will not adequately represent the Republican Committees' interests in this case.

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II. The Court should deny the Republican Committees permissive intervention.

The Court should also deny the Republican Committees' alternative request for permissive intervention because the addition of unnecessary parties will needlessly delay and complicate adjudication of this case. Permissive intervention may be allowed "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. But in making this discretionary determination, the court must consider "whether the intervention will

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unduly delay or prejudice the adjudication of the rights of the original parties." *Id.* Those considerations militate against permissive intervention here.

The 2024 election is fast approaching. "[T]his is an election-law case that needs to be streamlined and decided quickly." *Bost*, 75 F.4th at 691 (affirming denial of permissive intervention to a political party). And "[i]ncreasing the number of parties to a suit can make the suit unwieldy." *Id.* (quotation omitted). The court should "weigh[] the cost of diverting its resources against the minimal value [the proposed intervenor] offer[s] as a party." *Id.* Here, the Republican Committees "identify no unique arguments they wish to raise. So adding [them] as a party would create more complexity in the case without any benefit." *Liebert*, 345 F.R.D. at 173 (citing *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 199 (2022)). Moreover, the Secretary has already filed a Motion to Dismiss that is scheduled to be heard on the same day as the Committees' Motion to Intervene. (*See* Index No. 11.) Allowing the Republican Committees to intervene and submit their own Motion to Dismiss, with a new hearing date, would necessarily delay the course of this litigation.

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As a countervailing consideration, the Republican Committees claim that granting intervention will avoid "piecemeal, protracted litigation, and the possibility of conflicting legal decisions." MTI Br. at 16. But they do not explain why that is the case, or what other litigation they might possibly contemplate that would generate a "conflicting" decision.

The Republican Committees also argue that permissive intervention should be granted here because they "simply offer the mirror-image arguments of Plaintiffs." *Id.* at 15 (quoting *Bostelmann*, 2020 WL 1505640, at *5). They are wrong. As explained above, Plaintiffs here are two individual voters and a nonprofit group that advocates for the rights of retired voters—not political party organizations. The Republican Committees therefore do not present the "mirror

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image" of Plaintiffs. Their presence will not ensure that "all sides of the political spectrum have had a chance to make their case" because the Republican Committees represent only *one* such "side." *Id.* at 17. And in any event, there are only two relevant "sides" here—those who believe the witness requirement is unlawful and those who do not. Both of those positions are adequately represented by the existing parties. Despite the Republican Committees' vague and ominous warning that members of the public may not "accept" this Court's ruling, the "legitimacy" of the Court's decision does not turn on the presence of the Republican Party. *See* MTI Br. at 16. The Court should reject the Republican Committees' attempt to reduce this legal dispute to a partisan brawl.

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CONCLUSION

For the foregoing reasons, the Court should deny the Republican Committees' Motion to Intervene.

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ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, subdiv. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, subdiv. 2.

/s/ Sybil L. Dunlop
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