No. A24-1170

State of Minnesota
In Court of Appeals

MINNESOTA ALLIANCE FOR RETIRED AMERICANS EDUCATIONAL FUND, TERESA MAPLES, AND KHALID MOHAMED,
Plaintiffs/Respondents,

v.

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

and

REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF MINNESOTA,
Proposed Intervenors/Appellants.

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STATEMENT OF THE ISSUE

Did the district court err in denying Proposed Intervenors/Appellants' motion to intervene?

(1) Proposed Intervenors/Appellants moved to intervene as a matter of right under Minnesota Rule of Civil Procedure 24.01 and for permissive intervention under Minnesota Rule of Civil Procedure 24.02. *See* Index # 24; Index # 43.

(2) The district court denied Proposed Intervenors/Appellants' motion to intervene. *See* Add. 1-35.

(3) Proposed Intervenors/Appellants timely filed a notice of appeal of the district court's order. *See* Index # 92.

(4) Most Apposite Authorities:

Norman v. Refsland, 383 N.W.2d 673 (Minn. 1986)

Shays v. FEC, 414 F.3d 76 (D.C. Cir. 2005)

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STATEMENT OF CASE

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)). Consistent with this policy, Proposed Intervenors/Appellants the Republican National Committee and Republican Party of Minnesota (collectively, the "Republican Committees") moved to intervene in the district court to defend a commonsense rule that the Minnesota Legislature has enacted to facilitate absentee voting and to ensure free and fair elections for all voters in the State. In particular, decades ago the Legislature enacted a requirement that voters using absentee ballots complete those ballots in the presence, and 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, 8210.0600, 8210.2450. The Witness Requirement is a reasonable prophylactic rule that aims to protect absentee voting, curb "voter fraud," and "safeguard[] voter confidence" in the State's elections. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191-200 (2008).

Plaintiffs/Respondents ("Plaintiffs") nonetheless filed the underlying suit challenging the Witness Requirement under federal law. Departing from the governing caselaw and Minnesota's policy in favor of intervention, the district court, the Honorable Edward Sheu, denied the Republican Committees' motion to intervene. The Republican

Committees now appeal that denial. *See Norman*, 383 N.W.2d at 676 (denials of motions to intervene as a matter of right are appealable); *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007) (denials of motions for permissive intervention are appealable "when . . . they are based on a finding that the applicant had no protectable interest in the litigation" (quotations omitted)). For the reasons explained below, the Court should reverse and grant the Republican Committees intervention.

STATEMENT OF FACTS

I. 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, 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 helps state parties throughout the country, including the Republican Party of Minnesota, educate, mobilize, assist, and turn out voters. *See* Index # 24 ¶ 2. The RNC has already made significant contributions and expenditures in support of Republican candidates up and down the ballot in Minnesota in the 2024 election cycle, just as it has done in prior election cycles and will do in future cycles. *Id.* Among other things, the RNC has invested substantial time and resources encouraging Republican voters in Minnesota to vote by mail in 2024, which has included training field staff and volunteers regarding Minnesota's rules for absentee voting. Add. 45 ¶¶ 10-11.

The Republican Party of Minnesota is a state "political party unit" of the Republican Party as defined by Minn. Stat. § 10A.01, subd. 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. Index # 24 ¶ 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.*; Add. 37 ¶ 12. Like the RNC, the Republican Party of Minnesota has already made significant contributions and expenditures in support of Republican candidates in Minnesota in the 2024 election cycle, just as it has done in prior election cycles and will do in future cycles. *Id.* And that has included "developing and providing trainings to volunteers, including door knockers, regarding the rules for mail voting in Minnesota, including the [Witness Requirement]," as well as "direct voter education and information programs regarding the rules for mail voting." Add. 38 ¶¶ 13-14.

II. THE WITNESS REQUIREMENT

Minnesota provides its voters one of the most generous voting regimes in the country. That regime offers several options for casting ballots. All eligible voters can vote in person on election day, in person up to 46 days before election day, or by absentee ballot. *See* Minn. Stat. § 203B.02, subd. 1; *id.* § 203B.08, subd. 1; *id.* § 203B.081; *id.* § 203B.30; *see Vote Early in Person*, Minn. Sec'y of State, https://www.sos.state.mn.us/elections-voting/other-ways-to-vote/vote-early-in-person/. Regardless of the voting method, every

eligible voter must first register to vote, Minn. Stat. § 201.018, subd. 2, and confirm his or her residential address, *id.* § 201.061. subds. 1, 3; *id.* § 201.071, subd. 1.

Because in-person voting takes place in the presence of election officials and absentee voting does not, the rules for in-person and absentee voting are different. For example, the Legislature has enacted numerous safeguards that make absentee voting available while contributing to the preservation of the integrity of Minnesota's elections. One of those safeguards is the Witness Requirement.

Under the Witness Requirement, the witness—who must be a registered Minnesota voter, a notary public, or other official authorized to administer oaths—observes the absentee voter completing the ballot (without observing who the voter voted for). The witness then signs a "certificate of eligibility" on the outer envelope verifying that the voter personally completed the ballot. In particular, the witness affirms that the ballot was unmarked when presented to the voter, that the voter marked the ballot in the witness's presence, and that the voter provided proof of residence if he or she was not previously registered to vote. *Id.* § 203B.07, subd. 3. When election officials receive the completed absentee ballot, they examine the outer envelope for compliance with the Witness Requirement. *Id.* § 203B.121, subd. 2(a). The Witness Requirement is mandatory; a failure to comply with it results in the ballot not being counted. *See id.*

III. PLAINTIFFS CHALLENGE THE WITNESS REQUIREMENT, AND THE REPUBLICAN COMMITTEES MOVE TO INTERVENE AS DEFENDANTS.

In February 2024, the Minnesota Alliance for Retired Americans Educational Fund, Teresa Maples, and Khalid Mohamed (collectively, "Plaintiffs") sued the Minnesota

Secretary of State, Steve Simon, alleging that the Witness Requirement violates two provisions of federal law: Section 201 of the Voting Rights Act, 52 U.S.C. § 10501, and the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B). *See* Index # 2. Section 201 prohibits, among other things, any requirement that a voter "prove his qualifications" to vote "by the voucher of registered voters or members of any other class." *Id.* § 10501(a)-(b). And the Materiality Provision prohibits denying the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election." *Id.* § 10101(a)(2)(B). Less than a month after Plaintiffs filed their complaint, the Secretary moved to dismiss Plaintiffs' suit for lack of standing and failure to state a claim. *See* Index # 11.

Ten days later, the Republican Committees filed their Basis for Intervention and Proposed Answer. *See* Index # 24. The Committees explained that they are entitled to intervene as of right as defendants under Minnesota Rule of Civil Procedure 24.01 because they have "made significant contributions and expenditures in support of Republican candidates" in Minnesota and that Plaintiffs' suit, if successful, "would alter the competitive environment in which the Republican Committees and their supported candidates operate, and would subject them to a broader range of competitive tactics than state law would otherwise allow." *Id.* ¶¶ 2-3, 7. The Committees also explained that "[t]he existing parties do not adequately represent the Republican Committees' interests in this case." *Id.* ¶ 8. Alternatively, the Committees requested that they be granted permissive

intervention under Rule 24.02 because their "arguments and defenses have questions of fact and law in common with Plaintiffs' claims," and their "intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties to the action." *Id.* ¶¶ 10-12.

The Secretary took no position on intervention, but Plaintiffs opposed it. Index # 37. The Republican Committees accordingly filed a motion to intervene in which they said more about their interests in the case, and why Plaintiffs' suit threatens those interests. As the Committees explained, they "have an interest in getting Republican candidates elected to office," which "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." Index # 43 at 5. The Republican Committees emphasized that they have already "made significant contributions and expenditures in support of Republican candidates . . . in Minnesota" by, among other things, "educating, mobilizing, and assisting voters who support Republican candidates." *Id.* at 6. Plaintiffs' suit, however, would change the rules of the game and subject the Republican Committees' candidates to practices that State law would otherwise prohibit—practices that disproportionately benefit the Committees' electoral rivals. *Id.* at 6, 9-10. The Committees also explained in greater detail that the Secretary will not adequately represent their interests, which "are narrower than, and cannot be subsumed into, [the Secretary's] interests." *Id.* at 11 (cleaned up). Finally, the Committees argued that, at a minimum, the court should grant permissive intervention. *Id.* at 15-17.

IV. THE DISTRICT COURT DENIES THE REPUBLICAN COMMITTEES' MOTION TO INTERVENE.

Plaintiffs moved for a temporary injunction enjoining the Secretary from enforcing the Witness Requirement in May 2024. In a single order issued on June 14, 2024, the district court denied the Secretary's motion to dismiss, the Republican Committees' motion to intervene, and Plaintiffs' motion for a temporary injunction. *See* Add. 1. In addressing the motion to intervene, the court acknowledged that the motion was "timely" and that there would be "minimal prejudice" to Plaintiffs if the Republican Committees were permitted to participate as parties. *Id.* at 32. But in the court's view, "the Republican Committees d[id] not show how they will be harmed if intervention is denied" or "how their interests will be impaired in this action." *Id.* at 32-33. The court further held that the Secretary "has adequately, and vigorously, defended against Plaintiffs' claims," and that the Secretary shares the Republican Committees' purported interest in ensuring "fair elections where all valid ballot regulations are enforced." *Id.* at 34. The court then stated that "the Republican Committees need not be an additional defendant [sic] at this time" because the Secretary is "already representing [the Committees'] interest," "[t]he Republican Committees seek no relief in this action that is different than what [the Secretary] seeks," and "there is no concern [that the Secretary] is not vigorously defending against Plaintiffs' claims." *Id.* The court did not address the Republican Committees' request for permissive intervention.

The Republican Committees filed a notice of appeal on July 22, 2024. Index # 92. The Secretary separately filed a petition for discretionary review of the district court's

denial of his motion to dismiss. Index # 88. This Court granted the Secretary's petition on August 13, 2024. *See Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1134, Special Term Order (Aug. 13, 2024).

SUMMARY OF ARGUMENT

It has long been the "policy" of Minnesota courts "to encourage intervention wherever possible." *Norman*, 383 N.W.2d at 678. Consistent with that policy, courts in Minnesota—and across the country—routinely grant intervention to political parties seeking to defend election laws and procedures. The Republican Committees' motion to intervene is thus typical—indeed, many courts likely would have granted the motion in summary fashion, given the well-settled and favorable rules governing political party intervention. Yet the decision below is a near-summary disposition in the *opposite* direction. That decision is wrong.

The Republican Committees' interests in this litigation are straightforward. Their ultimate interest is getting Republicans elected to office. As part of that goal, the Committees have an interest in preserving 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 these interests. It would also impair the Republican Committees' interests by changing election laws and procedures during an election year, thereby forcing the Committees to adjust their campaign strategy and divert resources to supplement the substantial efforts they have already made to turn out the vote.

Moreover, the Republican Committees cannot rely on the Secretary—who is the only current defendant in this case—to protect their partisan interests. The Secretary does not have, let alone represent, any interest in electing Republicans. Nor should he: He is required to serve the public interest in good faith, not partisan interests—so he not only does not adequately represent the Republican Committees' interests, but also must account for many considerations that are of no concern to the Republican Committees.

The district court therefore balked at what should have been an easy grant of intervention. And its decision was based on a misunderstanding of both the facts and the law. As an initial matter, the district court failed to accurately identify the Republican Committees' interests in this litigation—and thus failed to lay the foundation for a proper analysis of intervention as of right under Rule 24. The district court then erroneously held, in conclusory fashion, that the Republican Committees' failed to show how their interests (which the district court wrongly characterized) may be impaired by Plaintiffs' action. Finally, the district court distorted the legal standard for adequacy of representation, concluding that the Secretary could adequately *defend* against Plaintiffs' *claims*, rather than that the Secretary adequately *represents* the Republican Committees' *interests*. Because the district court did not separately consider the Republican Committees' alternative request for permissive intervention, its denial of that request stems from the same flawed analysis and is therefore a proper subject of this appeal.

In short, the district court's decision defies the longstanding "policy" of Minnesota courts "to encourage intervention wherever possible," *id.*, departs from the vast body of

caselaw on political party intervention, and is wrong on both the facts and the law. This Court should reverse the denial of the Republican Committees' motion to intervene.

ARGUMENT

I. STANDARD OF REVIEW

Denials of motions to intervene as of right under Rule 24.01 "are subject to de novo review and are independently assessed on appeal." *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. Ct. App. 2005) (citing *Norman*, 383 N.W.2d at 676). "Permissive intervention rulings are reviewed under an abuse-of-discretion standard." *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 691 (Minn. Ct. App. 2001). "A district court abuses its discretion by making findings unsupported by the evidence or by improperly applying the law." *In re Welfare of Child of M.L.S.*, 964 N.W.2d 443, 451 (Minn. Ct. App. 2021) (quotations omitted).

II. THE DISTRICT COURT ERRED IN DENYING THE REPUBLICAN COMMITTEES' MOTION TO INTERVENE UNDER RULE 24.01.

A movant is entitled to intervene as of right if it (1) files a "timely application" and (2) "claims an interest" in the litigation that (3) "may as a practical matter" be "impair[ed] or impede[d]" by the disposition of the suit, (4) "unless the applicant's interest is adequately represented by existing parties." Minn. R. Civ. P. 24.01. Intervention under 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 [for intervention as of right] 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 caselaw as persuasive authority. *Miller v. Miller*, 953 N.W.2d 489, 493 (Minn. 2021).

Prospective intervenors do not face a heavy burden—Rule 24.01 is "liberally applied" to "encourag[e] intervention whenever possible." *Blue Cross/Blue Shield of R.I.* , 509 N.W.2d at 396; *Norman*, 383 N.W.2d at 678 ("[T]he extensive use of intervention should be encouraged."). "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 district court found—and Plaintiffs conceded—that the Republican Committees' motion to intervene is timely. *See* Index # 60 at 10; Add. 32. But the district court denied intervention based on the remaining factors. That was wrong, and this Court should reverse.

A. The Republican Committees Have An Interest In This Action.

In defining what interests count under Rule 24.01, the Minnesota Supreme Court has said that movants must have "a direct and concrete interest that is accorded some degree of legal protection." *Miller*, 953 N.W.2d at 494 (quoting *Diamond v. Charles*, 476 U.S. 54, 75 (1986)). This is a forgiving standard, and Minnesota courts apply it in light of their "policy of encouraging all legitimate interventions." *Id.* (quotations omitted).

1. The Republican Committees have multiple interests in this litigation, each of which is sufficient to support intervention under Rule 24.01. Their main interest is in getting Republican candidates in Minnesota elected to office. *See* Index # 24 ¶¶ 2-3; Index # 43 at 5; Add. 36-37 ¶¶ 5-6; Add. 44-45 ¶¶ 3, 5. As part of that goal, the Committees also

have an interest in ensuring that Republicans can seek office in a fair and competitive environment where all laws related to election integrity and reliability—including the Witness Requirement—are enforced. *See* Index # 24 ¶ 5; Index # 43 at 5-6; Add. 37 ¶¶ 8-10; Add. 45 ¶¶ 7-9. Lawsuits like this one, which threaten to disadvantage Republican candidates and eliminate key election integrity measures, directly implicate those interests. *See* Index # 24 ¶¶ 6-7; Index # 43 at 9-10; Add. 40, 42 ¶¶ 39, 53; Add. 47, 49 ¶¶ 22, 36. They also implicate the Committees' independent interest in avoiding changes to election laws and procedures that would force them to adjust their campaign strategy and divert their limited resources to supplement efforts they have already made to educate voters, train volunteers, and turn out the vote. *See* Index # 24 ¶¶ 2-3, 7; Index # 43 at 6, 9; Add. 37-39 ¶¶ 10, 12-28; Add. 44-45 ¶¶ 3, 10.

Courts across the country have held that these types of interests are legally cognizable and enjoy "legal protection." *Miller*, 953 N.W.2d at 494; *see, e.g.*, *Mecinas v. Hobbs*, 30 F.4th 890, 898 & n.3 (9th Cir. 2022) (candidates and political parties have a "shared interest in fair competition" and suffer injury when forced "to participate in an illegally structured competitive environment" (cleaned up)); *La Union del Pueblo Entero (LUPE) v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (political committees have a "direct" and "substantial" interest in proceedings that could change the "legal landscape" under which the committees "expend resources regarding . . . recruitment [and] training"); *Nelson v. Warner*, 12 F.4th 376, 384 (4th Cir. 2021) (candidate suffers concrete harm when a law "injur[es] his chances of being elected"); *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 907 (8th Cir. 2020) (political committees are injured when a law "unequally

favors supporters of other political parties"); *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014) (political parties who were "subject to" a law and whose candidates "were affected" by it suffered injury); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (political party suffers organizational injury when it diverts resources in response to law); *Shays v. FEC*, 414 F.3d 76, 86-87 (D.C. Cir. 2005) (candidates suffer injury when changes to election laws and procedures "alter the competitive environment's overall rules" and force them to "adjust their campaign strategy").

The D.C. Circuit's decision in *Shays* is particularly instructive. There, two congressional candidates challenged Federal Election Commission ("FEC") regulations that permitted campaign-related conduct that was prohibited by the Bipartisan Campaign Finance Reform Act ("BCRA"). In holding that the candidates had suffered an injury sufficient for Article III standing, the court stressed that the regulations forced the candidates to "compete for office in contests tainted by BCRA-banned practices." 414 F.3d at 85. It also emphasized that the candidates had to "adjust their campaign strategy" because the regulations "fundamentally alter[ed] the environment in which" the candidates could "defend their concrete interests." *Id.* at 86-87. And because competitors in elections may challenge "distortions that alter the competitive environment's overall rules," the candidates had a legally cognizable interest in the litigation. *Id.* at 86.

So too here. Plaintiffs' suit, if successful, would force the Republican Committees and their candidates to "compete for office in contests tainted by [Legislature]-banned practices," such as the counting of unwitnessed mail ballots. *Id.* at 85. And like the

candidates in *Shays*, the Republican Committees and their candidates have a legally protectable interest in seeking office in contests untainted by violations of the Witness Requirement. Similarly, the Committees and their candidates, like the candidates in *Shays*, have a legally protectable interest in opposing any decision—such as a judicial decision gutting the Witness Requirement—that may "alter the competitive environment's overall rules" and force them to "adjust their campaign strategy." *Id.* at 86-87. In particular, a judicial decision against the Witness Requirement would force the Republican Committees to divert resources to reeducating voters and poll watchers about the rules governing mail ballots. *See* Add. 39 ¶¶ 23-28; *see also* Add. 33-34 (not disputing that "the relief Plaintiffs seek will require the Committees to divert resources to reeducate voters and staff that the witness requirement is now waived, which will cause harm, expense, [and] confusion"); *All. for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 913-14 (Minn. App. Ct. 2003) ("Minnesota courts recognize impediments to an organization's activities and mission as an injury sufficient for standing.").

What is more, *Shays* addressed the higher standard for Article III standing, *see* 414 F.3d at 85, which is "more stringent" than the lower Rule 24 standard for intervention, *see Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1252 n.4 (10th Cir. 2001); *Chiles v. Thornburgh*, 865 F.2d 1197, 1212-13 (11th Cir. 1989) (observing that "standing cases . . . are relevant to help define the type of interest that the intervenor must assert"). Thus, that the Republican Committees satisfy *Shays*'s version of the interest requirement *necessarily* means that they satisfy Rule 24's standard as well. *See LUPE*, 29 F.4th at 305 ("An interest is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor

does not have an enforceable legal entitlement or would not have standing to pursue her own claim."); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) ("Our conclusion that the [proposed intervenor] has constitutional standing is alone sufficient to establish that [it] has 'an interest relating to the property or transaction which is the subject of the action.'"); *Utah Ass'n of Cntys.*, 255 F.3d at 1252 n.4 ("[B]ecause Article III standing requirements are more stringent than those for intervention under Rule 24(a), a determination that intervenors have Article III standing compels the conclusion that they have the requisite interest under the rule."); *Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001) ("[I]t is impossible to conjure a case in which an intervenor would have constitutional standing to intervene but not have a sufficient 'interest in the litigation' to justify intervention under Fed.R.Civ.P. 24(a)(2)."); *Johnson v. Mortham*, 915 F. Supp. 1529, 1535 n.6 (N.D. Fla. 1995) ("[A] movant who shows standing has a sufficiently substantial interest to intervene.").

Indeed, courts routinely grant intervention to political parties on a showing of an altered competitive environment or disrupted campaign strategy and resource allocation indistinguishable from the showings the Republican Committees have made here. As the Fifth Circuit explained, Republican Party entities had an interest in defending state election laws because the case's outcome "could affect [their] ability to participate in and maintain the integrity of the election process in Texas." *LUPE*, 29 F.4th at 306. Another court likewise held that Republican Party entities have "an interest in 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." *Ohio Democratic Party v.*

Blackwell, 2005 WL 8162665, at *2 (S.D. Ohio Aug. 26, 2005). Still another court granted intervention as of right to Republican committees seeking to defend a mail voting law because "[t]he claims brought by Plaintiffs could affect the Committees' ability to participate in the election process within the state." *Pa. State Conf. of the NAACP v. Chapman*, 2023 WL 121867, at *5 (W.D. Pa. Jan. 6, 2023). Courts have allowed entities affiliated with the Democratic Party to intervene in similar circumstances. *See, e.g., Paher v. Cegavske*, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention to Democratic Party entities when lawsuit would disrupt their organizational efforts); *Issa v. Newsom*, 2020 WL 3074351, at *1-3 (E.D. Cal. June 10, 2020) (same).

Minnesota courts have also allowed political parties to intervene as defendants in similar suits. *See, e.g.*, *Growe v. Simon*, 2 N.W.3d 490, 495 (Minn. 2024) (noting that the 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 v. Simon*, 950 N.W.2d 280, 284 (Minn. 2020) (noting that the district court granted intervention to the Republican Committees); *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 726 (Minn. 2003) (noting that the court had previously granted the 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) (noting that the court had previously granted candidate's motion to intervene as defendant in a ballot-access challenge). In 2020, for example, the Republican Committees were allowed to intervene in defense of challenged Minnesota laws in order to protect one of the same interests they assert now: competing in

a fair environment untainted by practices the Legislature has proscribed. *See DSCC*, 950 N.W.2d at 284.

2. Against this avalanche of authority, the district court denied the Republican Committees' motion to intervene, and it did so without even identifying their interests in this litigation. By all appearances, moreover, the district court misunderstood those interests.

For example, the district court stated that "Plaintiffs seek[] to enforce federal voting laws, which the Republican Committees cannot reasonably assert they have an interest in opposing." Add. 33. This statement, of course, begs the question. If permitted to intervene, the Republican Committees will argue that federal voting laws do *not* invalidate the Witness Requirement. *See* Index # 49 at 9-26 (arguing that Plaintiffs' claims fail as a matter of law); Index # 64 at 13-29 (same). And the Republican Committees certainly have an interest in preventing the misapplication of federal law when it would impair the Committees' interests in winning elections, educating voters, avoiding diversion of their limited resources, and protecting candidates and voters from the counting of unlawful ballots. *See infra* at 23-27; *see also Shays*, 414 F.3d at 85 (interest affected when executive or judicial officials "set the rules of the game in violation of statutory directives").

The district court also opined that "[t]he Republican Committees do not show how the outcome of this action, in their absence as a party, might make it harder for their members to vote or have ballots counted." Add. 32; *see also infra* at 27-29 (discussing the district court's related point that the Republican Committees' interests cannot be impaired because Plaintiffs suit, if successful, would make it easier for everyone to vote). That is

true—but irrelevant. The Republican Committees did not make that showing because it has nothing to do with the interests they asserted in their motion to intervene. Again, the Republican Committees' interests here are in getting Republicans elected, ensuring a fair competitive process, and preventing any changes to the competitive environment's governing rules that would force the Committees to alter their campaign strategy and divert resources toward activities such as education and training. Those interests are independent of—and legally cognizable notwithstanding—any inability to show a difficulty in voting if the Witness Requirement is invalidated.

As for the Republican Committees' interest in a fair competitive environment, the district court asserted, in conclusory fashion and without any analysis, that "an interest tied to competitive advantage must be tied to an ongoing, unfair advantage." Add. 32 (citing *Mecinas*, 30 F.4th at 898). The district court is wrong twice over. To start, enjoining the Witness Requirement will subject the Republican Committees to an "ongoing, unfair" disadvantage because it will result in predominantly Democratic ballots being illegitimately counted. *See infra* at 26-27. Such a result could flip the outcome in one or more close elections to the Republican Committees' detriment. Index # 43 at 10; Add. 41-42 ¶¶ 43-53.

In any event, the district court applied the wrong standard; the Committees have an interest in ensuring that Republicans can seek office in a fair "competitive environment" where they can "compete for office in contests [not] tainted by [Legislature]-banned practices" like the counting of unwitnessed mail ballots. *Shays*, 414 F.3d at 85. Contrary to the district court's statement above, that interest does not turn on political rivals having

an "ongoing, unfair advantage." *See id.* at 86 (candidates suffered injury even though their rivals did not enjoy "special benefits" that were "unavailable" to them).

The Ninth Circuit's decision in *Mecinas* is not to the contrary. There, the Democratic Party argued that it was injured by a state ballot-order statute because it created an "ongoing, unfair advantage" by listing Republican candidates first on general election ballots. 30 F.4th at 898. The Ninth Circuit agreed that the Democratic Party suffered injury, but in doing so, it held only that "injured parties have the requisite concrete, non-generalized harm to confer standing" when "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." *Id.* That is what the Republican Committees contend will happen here if Plaintiffs' suit is successful: Plaintiffs will obtain a legally erroneous judicial decision, tantamount to an "unlawful election regulation," that "makes the competitive landscape worse" for the Republican Committees and their candidates. *See id.*; *infra* at 22-27. Said another way, such a decision would "force[] [the Republican Committees and their candidates] to participate in an illegally structured competitive environment." *Mecinas*, 30 F.4th at 898 (cleaned up). Thus, *Mecinas*—a case addressing the higher standard for Article III standing—confirms that the Republican Committees have legitimate interests in this case under the lower standard for Rule 24 intervention. *See, e.g.*, *LUPE*, 29 F.4th at 305; *Utah Ass'n of Cntys.*, 255 F.3d at 1252 n.4; *Fund for Animals*, 322 F.3d at 735.

The district court went on to write off the Minnesota caselaw allowing political parties to intervene as defendants in challenges to election laws. It did so because none of

the cited cases involved a full Rule 24 analysis. *See* Add. 33. But the lack of analysis in those cases simply reflects the well-settled state of the law on political party intervention—and the longstanding "policy" of Minnesota courts "to encourage intervention wherever possible." *Norman*, 383 N.W.2d at 678. Indeed, it makes no sense to *distinguish* prior cases that *granted* intervention to political parties because those courts declined to conduct what they viewed as an unnecessary full-blown Rule 24 analysis.

Finally, the district court expressed concern that permitting the Republican Committees to intervene "would tacitly invite [Democratic] committees to also move to intervene, which would threaten to make this action a political dispute rather than a legal one." Add. 33. But that other entities may seek to intervene "is not a factor in deciding whether to recognize intervention as of right and is probably common to most cases where intervention [of political groups] is allowed." *Norman*, 383 N.W.2d at 677. And the district court's suggestion that granting the Republican Committees intervention would "make this action a political dispute" is baseless and untrue. Add. 33. Indeed, if it were true, then political parties should *never* be granted intervention—but courts *routinely* grant them intervention in cases like this one. Moreover, the district court's suggestion contradicts its own observation that, in addressing the Secretary's motion to dismiss and Plaintiffs' motion for temporary injunction, the Committees "have added *legal* arguments Defendant has not" that the district court itself "considered … in this action." Add. 34 (emphasis added). The district court's suggestion that the Committees seek to turn this case into a "political dispute" rings hollow through the district court's own description of the record.

In sum, the Republican Committees have substantial and particularized interests in this litigation. Their main interest is helping Republican candidates win elections. As part of that goal, they also have interests in maintaining a fair competitive environment and preventing changes to the governing rules that may force them to alter their campaign strategy and reallocate their limited resources in an effort to turn out the vote. These interests are plainly implicated by Plaintiffs' challenge to the Witness Requirement, and the district court erred in failing to recognize as much.

B. The Disposition Of This Action May Impair The Republican Committees' Ability To Protect Their Interests.

Rule 24.01's impairment inquiry is not demanding. The impairment required must be assessed "from a practical standpoint rather than one 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).

1. *Changes to the Competitive Environment*. Here, the impairment inquiry is especially straightforward. If Plaintiffs succeed in enjoining enforcement of the Witness

Requirement for any future election, the Republican Committees' interests will *necessarily* be impaired because the Committees and their candidates will be forced to "compete for office in contests tainted by [Legislature]-banned practices," such as the counting of unwitnessed mail ballots. *Shays*, 414 F.3d at 85; *see also Mecinas*, 30 F.4th at 898. As a result, the Republican Committees and their candidates will be subjected to "a broader range of competitive tactics than [State] law would otherwise allow," *Shays*, 414 F.3d at 86, and thus "are at the very least harmed by having to anticipate other actors taking advantage of [an enjoined Witness Requirement] to engage in activities that otherwise would be barred," *id.* at 87. In short, because Plaintiffs' requested relief would "alter the competitive environment's overall rules" and force the Republican Committees and their candidates to "adjust their campaign strategy," *id.* at 86-87, the Republican Committees "may challenge [Plaintiffs'] subversion of [the Legislature]'s guarantees" through intervention, *id.* at 86, 91.

These changes also affect the Republican Committees' allocation of resources. 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). The mission of the Republican Committees is to get Republican candidates elected to office, and they pursue that goal through activities designed to turn out the vote, such as educating voters and training volunteers. Index # 24 ¶¶ 2-3; Index # 43 at 2-3, 6; Add. 36-37 ¶¶ 5-7, 12-19; Add. 44-45 ¶¶ 3, 5-6.

An injunction enjoining the Witness Requirement in any future election would be an impediment to these activities because the Republican Committees will be forced to

divert their limited resources to reeducate voters and retrain volunteers regarding a new set of rules for mail voting. *See All. for Metro. Stability*, 671 N.W.2d at 914; *In re Trade Secret Designations of 2019 Cogeneration and Small Power Prod. Reps.*, 2021 WL 1247948, at *5 (Minn. App. Ct. Apr. 5, 2021) (acknowledging standing exists where defendant's actions result in a "consequent drain on [an] organization's resources"); *accord Crawford*, 472 F.3d at 951. The Committees have already invested substantial resources to encourage Republican voters throughout Minnesota to vote by mail in 2024—and they intend to do so for future election cycles as well. Those investments "have included developing and providing trainings to volunteers, including door knockers, regarding the rules for mail voting in Minnesota, including the [Witness Requirement]." Add. 38 ¶¶ 13, 17-18 (explaining that "[t]he State Party conducted several trainings for field staff and volunteers across the State in early 2024" and that "[t]he trainings . . . included information regarding the rules for mail voting and the Witness Requirement"). They "have also included direct voter education and information programs regarding the rules for mail voting . . . and the Witness Requirement." *Id.* ¶ 14.

Thus, an injunction enjoining the Witness Requirement for any future election "would harm the [Committees] by requiring [them] to invest time and resources in communicating to field staff, volunteers, candidates, and voters that the Witness Requirement is no longer applicable to mail voting." *Id.* ¶ 26. They will also have to "revis[e] and updat[e] [their] training programs for volunteers, as well as [their] voter education and information programs, to clarify that the Witness Requirement is no longer in force." *Id.* ¶ 23. And "[t]his investment of time and resources would require the

[Committees] to divert time and resources [away] from [their] other activities, which are aimed at helping Republican voters vote and Republican candidates win elections." *Id.* ¶ 24; *Crawford*, 472 F.3d at 951 (political party suffers organizational injury when it diverts resources in response to law).

The Fifth Circuit recently reversed a district court and ordered it to grant a motion to intervene filed by several political committees based on a similar risk of impairment. In *LUPE*, those committees moved to intervene as defendants in a challenge to a Texas election law. 29 F.4th at 304. The Fifth Circuit reversed the district court's denial of the motion, reasoning that the political committees "expend resources regarding the recruitment, training, and appointment of poll watchers, and [the challenged law] changes the legal landscape for what it takes to carry out that duty." *Id.* at 306. The court added that intervention was appropriate because a successful challenge to the law would force the committees "to expend resources to educate their members on the shifting situation in the lead-up to the 2022 election." *Id.* at 307.

The Republican Committees assert a similar harm here—they have devoted, and will continue to devote, substantial resources to educate, mobilize, assist, and turn out voters in Minnesota, and the elimination of the Witness Requirement in any future election would force them to reallocate those resources "to clarify that the Witness Requirement is no longer in force." Add. 39 ¶ 23. In other words, the disposition of Plaintiffs' lawsuit may "change the entire election landscape for those participating as the Committees' members and volunteers" and force the Committees to divert substantial resources in response. *LUPE*, 29 F.4th at 307. That is enough to show that "the disposition of the

action *may* as a *practical matter* impair or impede" the Republican Committees' interests. Minn. R. Civ. P. 24.01 (emphasis added).

2. *Electoral Disadvantage*. The Republican Committees and their candidates may vindicate their interest in seeking office in "contests untainted by" violations of the Witness Requirement without establishing that invalidating that rule "will disadvantage their []election campaigns." *Shays*, 414 F.3d at 85, 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 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. *See* 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 to the general trend. In the 2020 presidential election, the Democratic strongholds of the Twin Cities region and St. Louis, Lake, and Olmstead Counties generally had the highest rates of absentee voting.[1] 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; Index # 43 at 10; Add. 42 ¶¶ 50-52; Add. 48-49 ¶¶ 33-35. Indeed, several recent elections in Minnesota have been decided by

[1] *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.

exceedingly narrow margins, and available information suggests that the same will be true in future elections. *See* Add. 41-42 ¶¶ 46-48; Add. 48 ¶¶ 29-31. Notably, the district court did not dispute this point.

What is more, an injunction enjoining the Witness Requirement "will likely confuse voters" (especially ones who voted in compliance with the Witness Requirement in the 2024 primary election or other past elections), "create voter mistrust in mail voting and in the State's election administration, and cause some voters not to vote" because of that mistrust. Add. 39 ¶ 29. And given that future elections in Minnesota will likely be decided by slim margins, every vote lost could be significant.

3. ***The District Court's Errors***. The district court devoted only half a page to the question whether the Republican Committees' interests may be impaired by this action. And what little it said was either wrong or completely irrelevant.

Start with the district court's claim that "the Republican Committees cannot show any interest that will be impaired" because Plaintiffs' suit makes it easier to vote and thus "benefits all Minnesotans needing to vote absentee regardless of party affiliation." Add. 33. This logic fails on multiple levels. For one, it ignores the interests that the Republican Committees have asserted in this action—getting Republicans elected, ensuring a fair competitive process, and preventing changes to the governing rules that would force the Committees to alter their campaign strategy and divert resources in response. Eliminating the Witness Requirement may make voting by mail easier, but for the reasons given above, it would still undermine the interests the Republican Committees have asserted here.

Take their main interest—getting Republicans elected. Because electoral contests are zero-sum games, a decision that enjoins the Witness Requirement and makes absentee voting easier would undercut that interest because Democrats vote by mail at a significantly higher rate than Republicans. *See supra* at 26-27. Indeed, a federal court recently allowed Democratic Party entities to intervene because it recognized that limiting mail voting would harm their electoral prospects. *See Issa*, 2020 WL 3074351, at *3 (agreeing that limiting mail voting would harm Democratic Party's electoral prospects). Eliminating the Witness Requirement would therefore result in disproportionately more Democratic votes, thus harming the Republican Committees' interest in winning elections.

Or consider the Republican Committees' interest in preserving the competitive environment and avoiding changes to their campaign strategy. As to that interest, the district court's "everybody benefits" notion is entirely beside the point. Indeed, in *Shays*, the FEC made a similar argument—namely, that the candidates suffered no injury because the challenged regulations did not give their rivals any "special benefits unavailable to" them. 414 F.3d at 86 (quotations omitted). But the court saw right through the argument, and countered that the candidates still "face[d] *intensified* competition" that required them to "anticipate and respond to a broader range of competitive tactics than federal law would otherwise allow." *Id.* So too here—the elimination of the Witness Requirement would expose the Republican Committees to "a broader range of competitive tactics than [Minnesota] law would otherwise allow," like the casting of unwitnessed mail ballots. *See id.* Such harm, standing alone, is legally cognizable. *Id.*

Worst of all, under the district court's reasoning, a political party could likely *never* intervene to defend a law that safeguards election integrity and reliability. That is because most, if not all, successful challenges to such a law would make it easier for everyone to vote (at the price of other legitimate ends, of course, such as preventing voter fraud and preserving voter confidence in electoral outcomes). Yet courts have time and again allowed political parties to intervene in opposition to lawsuits that would eliminate an election rule and thus potentially result in more votes being counted. *See, e.g.*, *DSCC*, 950 N.W.2d at 284 (noting intervention granted to Republican Committees to defend laws that resulted in some ballots not being counted); *LUPE*, 29 F.4th at 306 (granting intervention as of right in case where plaintiffs challenged restrictions on mail voting); *Pa. State Conf. of the NAACP*, 2023 WL 121867, at *4-5 (intervention as of right to defend mail ballot rule); *Blackwell*, 2005 WL 8162665, at *2 (allowing intervention where plaintiffs sought order that would allow more voters waiting in line to vote); *The New Ga. Project v. Raffensperger*, 2021 WL 2450647, at *2 (N.D. Ga. June 4, 2021) (permissive intervention granted to defend Georgia rules for mail ballots).

The district court also second-guessed the Republican Committees' assessment that some Republicans will not vote if the Witness Requirement is enjoined. Add. 34 ("[T]he court does not find credible the notion that some people may not vote if absentee voting is made easier."). But as the First Circuit explained, 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*, 86 F.4th at 958 (cleaned up). And here, the Republican Committees submitted declarations in which senior Republican Party officials explained that eliminating the Witness Requirement would likely cause some Republican voters to lose confidence in the integrity of the election and decide not to vote. *See* Add. 39-41 ¶¶ 29-40; Add. 46-47 ¶¶ 14-20; *cf. Miller*, 953 N.W.2d at 494 ("In determining whether intervention is proper, the court must accept the allegations in the pleadings as true, unless they are frivolous on their face.").

Finally, as for the Republican Committees' argument that eliminating the Witness Requirement would force them to divert resources, the district court's only response was that the Secretary "would face the same consequences" and that "the court is not granting immediate temporary injunctive relief at this time." Add. 33-34. The court's bizarre claim about the Secretary is neither true nor relevant—the Secretary does not participate in the Republican Committees' get-out-the-vote efforts, and in any event, the district court cites no authority suggesting that intervention should be denied when an existing party would face the same consequences as the prospective intervenor. The court's claim about temporary relief is equally puzzling, because its refusal to grant such relief now does not affect whether "the disposition of the action" in the future may impair the Republican Committees' interests. *See* Minn. R. Civ. P. 24.01.

In short, the district court erred in concluding that the Republican Committees failed to show how the outcome of this litigation may impair their interests. They made that showing in spades.

C. 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 should be allowed to intervene unless it is *clear* that the party will provide *adequate* representation." *Id.* (cleaned up). Indeed, Rule 24.01—like its federal analogue—provides that a movant is entitled to intervene when the other factors are met, "*unless* the applicant's interest is adequately represented by existing parties." Minn. R. Civ. P. 24.01 (emphasis added); *cf.* Fed. R. Civ. P. 24(a)(2). This language implies that there is a strong presumption in favor of intervention when the other factors are satisfied, and that the court should deny intervention only when it is "persuaded that the representation is in fact adequate." 7C C. Wright & A. Miller, Federal Practice & Procedure § 1909 (3d ed. 2024 update) (observing that the language of the federal rule may even shift the burden of persuasion to the existing parties to prove adequate representation).

1. It is far from "clear" that the Secretary "will" adequately represent the Republican Committees' interests in this litigation. *Jerome Faribo Farms*, 464 N.W.2d at 570. Just the opposite—it is clear that the Secretary *may not* adequately represent those interests for several basic reasons. Foremost, the Republican Committees' interests are not the Secretary's. Nor could they be. After all, the Republican Committees' ultimate interest in

this action is "winning []election[s]" for the Republican Party. *Shays*, 414 F.3d at 86. And the Secretary does not share that interest *at all*. To start, he is an elected Democrat. But more importantly, he *could not* "vindicate [the Republican Committees'] interest[s] while acting," as he must, to serve the *public interest* "in good faith." *LUPE*, 29 F.4th at 309. The same is true with respect to the Republican Committees' other interests, which are each partisan in nature and ultimately serve their main interest in securing victories for Republicans at the ballot box. *See id.*

There are also several practical reasons why the Secretary may not be an adequate representative. As a public official, the Secretary "has multiple interests in application and enforcement of [election] laws," which "may be divided" as the case progresses. *Jerome Faribo Farms*, 464 N.W.2d at 571. In challenges like this one, which are 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 therefore may not defend the Witness Requirement as forcefully as the Republican Committees if doing so would conflict with his view of what federal law fairly requires.

Moreover, 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 Cnty.*, 168 F.3d 458, 462 (11th Cir. 1999). The Secretary may also 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). After all, "voting by mail" has become a "politically controversial topic" in recent years, *VoteAmerica v. Schwab*, 576 F. Supp. 3d 862, 889 (D. Kan. 2021), and the Secretary (who, like the Attorney General representing him, is an elected Democrat) may determine that defending the Witness Requirement will undermine his support among important constituencies.

Certain practical realities may also cause the Secretary's "interests" to "diverge" from the Committees' on "how to carry out" a defense of the Witness Requirement. *LUPE*, 29 F.4th at 308. The Secretary has an institutional interest in protecting the state government from suits generally, which may push 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 other suits challenging state voting regulations under the Materiality Provision of the Civil Rights Act. *See, e.g.*, *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.

In short, the Republican Committees do not share the many (often conflicting) interests that the Secretary must balance. Rather, their interests "are narrower than, and cannot be subsumed into, the [Secretary's] . . . interests." *Living Word Bible Camp v. Cnty. of Itasca*, 2012 WL 4052868, at *6 (Minn. Ct. App. Sept. 17, 2012). If allowed to intervene, the Republican Committees could thus zealously defend the Witness

Requirement without the need to account for the many countervailing considerations that weigh on the Secretary.

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. There, a union member sought to intervene in a suit filed by the Secretary of Labor to set aside a union election—a suit that was triggered by the same union member's administrative complaint. *Id.* at 529-30. At a high level of generality, the interests of the Secretary and the union member were closely aligned, as they both opposed the election. Yet the Supreme Court deemed the Secretary's representation inadequate, given his "duty to serve two distinct interests": vindicating 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*.

That language can nearly be copy-and-pasted here: The Secretary has duties relating to the conduct of elections that transcend the "narrower interest" of the Republican Committees, which gives them sufficient grounds to intervene. *Id.*

Tellingly, the Secretary has still "taken no position on the motion to intervene." *Utah Ass'n of Cntys.*, 255 F.3d at 1256. 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 sure, is understandable, as 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.

To further see why the district court erred in simply assuming 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 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, and the Minnesota Supreme Court reversed it 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.

2. The district court nonetheless deemed the Secretary's representation to be adequate. In doing so, the court confusingly held that the Secretary "has adequately, and vigorously, defended against Plaintiffs' claims." Add. 34. But the question is not whether the existing party adequately defends against the plaintiff's *claims*; the question is whether the existing party adequately represents the proposed intervenor's *interests*. *See Jerome*

Faribo Farms, 464 N.W.2d at 570. And on that question, the district court's *only* answer is that the Secretary "represents the sovereign interest of fair elections where all valid ballot regulations are enforced, which is what the Republican Committees argue as their primary goal." Add. 34.

Not so. The Republican Committees do not assert a generalized interest in fair elections or in the enforcement of valid ballot regulations. Rather, they assert direct, concrete, and particularized interests in getting Republicans elected, ensuring a fair competitive process for their candidates, and preventing changes to election laws and procedures that may affect their get-out-the-vote efforts. As explained above, the Secretary represents *none* of those interests, let alone *adequately*.

The district court also took the bait by repeating Plaintiffs' quip "that this action involves only two sides—those who claim the witness requirement violates federal voting laws and those who do not." *Id.*; *see also* Index # 60 at 24. The Supreme Court might have said something similar in *Trbovich*: "This action involves only two sides—those who want to set aside the union election and those who do not." But the Supreme Court sacrificed pithy remarks for thoughtful analysis. And for good reason—the "two sides" point defines the interests at such a high level of generality that virtually every motion to intervene could easily be defeated. Moreover, even the district court noted that "the Republican Committees have added legal arguments" on the merits that the Secretary "has not" and that those arguments were properly "considered … in this action." Add. 34. Thus, even if there are only two sides to this *dispute*, the Secretary has not even adequately

represented the *arguments* the Republican Committees seek to make in defense of the Witness Requirement. *See id.*

The district court concluded by stating that "[t]he Republican Committees seek no relief in this action that is different than what [the Secretary] seeks," and that "there is no concern [that the Secretary] is not vigorously defending against Plaintiffs' claims." Add. 34. But once again, these free-floating observations have little connection to Rule 24.01, which asks whether "the existing parties 'may' not adequately represent [the Republican Committees'] interests." *Jerome Faribo Farms*, 464 N.W.2d at 570. Adequacy of representation cannot be assessed in a vacuum simply by asking whether the existing party is "vigorously" defending against the lawsuit or even seeking the same relief as the movant. Instead, adequacy must be weighed with respect to the specific interests the movant seeks to protect. *See* Minn. R. Civ. P. 24.01 (asking whether "the applicant's *interest* is adequately represented by existing parties" (emphasis added)). And for all the reasons given, the Secretary plainly does not adequately represent the Republican Committees' interests in this litigation.

So even if the Court cannot say for *certain* that the Secretary will inadequately represent the Republican Committees' interests—and it likely *can* say so here—it can at least say that the Secretary *may* inadequately represent those interests. That is all Rule 24.01 requires. The Court should reverse and grant the Republican Committees intervention of right.

III. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING *SUB SILENTIO* THE REPUBLICAN COMMITTEES' MOTION TO INTERVENE UNDER RULE 24.02.

"Denials of requests for permissive intervention" are appealable "when, as here, they are based on a finding that the applicant had no protectable interest in the litigation." *Deal*, 740 N.W.2d at 760. The district court did not separately address the Republican Committees' alternative argument that they should be granted permissive intervention under Rule 24.02. Instead, the court denied the Committees' motion in full—which necessarily includes their request for permissive intervention—based entirely on the Rule 24.01 analysis discussed above. Because that analysis entailed a finding that the Republican Committees lack a protectable interest in this litigation, this Court may review the district court's denial of permissive intervention as well. *See* Add. 33 ("Plaintiffs seek[] to enforce federal voting laws, which the Republican Committees *cannot reasonably assert they have an interest in opposing*." (emphasis added)); *see also id.* ("If successful, Plaintiffs' action benefits all Minnesotans needing to vote absentee regardless of party affiliation, so *the Republican Committees cannot show any interest* that will be impaired." (emphasis added)); *id.* at 32 (reasoning that the Republican Committees have no interest in the preserving the competitive environment on the view that "an interest tied to competitive advantage must be tied to an ongoing, unfair advantage").

Under Rule 24.02, courts 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." Moreover, "the court shall consider whether the intervention will

unduly delay or prejudice the adjudication of the rights of the original parties." Minn. R. Civ. P. 24.02.

The district court expressly found that the Republican Committees' motion was timely and that there would be "minimal prejudice to existing parties" if intervention were allowed. Add. 32. The remaining analysis therefore should have been straightforward: Will the Republican Committees raise defenses that share common questions with the claim and defenses of the parties? The answer is clearly yes. 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 federal statutes present no conflict with the Witness Requirement. In other words, if permitted to intervene, the Republican Committees will simply offer "the 'mirror-image'" arguments of Plaintiffs, making permissive intervention more appropriate. *DNC v. Bostelmann*, 2020 WL 1505640, at *5 (W.D. Wis. Mar. 28, 2020).

The district court, however, never considered whether the Republican Committees' defense and the main action share a common question of law or fact. Its analysis on permissive intervention was instead entirely subsumed within its analysis on intervention as of right. But those are different legal standards, as the plain text of the rules makes clear. *Compare* Minn. R. Civ. P. 24.01, *with id.* 24.02. Because the district court improperly applied the law, this appeal presents an open-and-shut case of abuse of discretion. *See In re Welfare of Child of M.L.S.*, 964 N.W.2d at 451.

Indeed, every other conceivable consideration favors intervention here. Allowing the Republican Committees to intervene will neither delay this litigation nor (as the district court found and as is still true) 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 the Committees pledged below to adhere to any briefing deadlines the district 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). The Committees did so when they filed briefs in support of the Secretary's motion to dismiss and in opposition to Plaintiffs' motion for a temporary injunction. *See* Index # 49; Index # 64. And the Committees would abide by any deadlines this Court sets as well.

Under these circumstances, the only prejudice Plaintiffs could possibly 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). In any event, that has already happened here: The Republican Committees "have added legal arguments" on the merits that the Secretary "has not," and those arguments are properly "considered … in this action." Add. 34.

As for the district court's concern that permitting the Republican Committees to intervene "would tacitly invite [Democratic] committees to also move to intervene" and "threaten to make this action a political dispute rather than a legal one," *id.* at 33, that fear

is unfounded. Even if a Democrat-affiliated entity later moved to intervene, that motion would be denied if the court concluded that it was untimely or that Plaintiffs adequately represent the entity's interest. That would be the likely outcome here. After all, Plaintiffs' counsel is the go-to firm for the Democratic Party in election litigation, and it even describes itself as a "mission-driven firm committed to helping Democrats win" and "the nation's largest firm focused on representing the Democratic Party [and] Democratic campaigns." *See About*, Elias Law Group LLP (2024), https://www.elias.law/about. It is therefore highly improbable that Plaintiffs will pursue this action in a manner inconsistent with the Democratic Party's interest, making it unlikely that the Democratic Party would even try to intervene at a later juncture (let alone successfully do so).

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, the public can more readily accept a court's decision as the fair and impartial application of the law when all sides of the political spectrum had a chance to make their case. The Court should not decide an important question about the lawfulness of Minnesota'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 reverse the district court's denial of the motion to intervene.

Dated: August 22, 2024

Respectfully submitted,

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