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**State of Minnesota
In Supreme Court**

**OFFICE OF
APPELLATE COURTS**

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

Petitioners,

v.

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

Respondent,

and

REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF MINNESOTA,

Proposed Intervenors/Respondents.

**MOTION OF REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN
PARTY OF MINNESOTA TO INTERVENE IN SUPPORT OF RESPONDENT
ON APPEAL AND, IF NECESSARY, INTERIM LEAVE TO FILE OPPOSITION
TO PETITION FOR REVIEW**

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INTRODUCTION

The Republican National Committee and the Republican Party of Minnesota (collectively, “the Republican Committees”) support and seek to uphold free and fair elections on behalf of all Minnesotans. Accordingly, in the courts below, they have sought to intervene in this suit, which challenges Minnesota’s longstanding requirement that absentee voters have a witness observe their completion of the absentee ballot. Minn. Stat. § 203B.07, subd. 3. But in a departure from controlling precedent, both the district court and the Court of Appeals refused to grant the Republican Committees intervention. The Republican Committees therefore now respectfully request that this Court grant them leave to intervene in this ongoing case.

The Republican Committees seek to do what major political parties routinely do in election litigation: intervene to defend an election law. Court after court has allowed this practice—often in summary fashion, and without objection, given the obvious interest political parties have in the rules governing elections. And in Minnesota, it has long been the “policy” of courts “to encourage intervention wherever possible.” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986). The rule on intervention, whether in the elections context or otherwise, is thus “liberally applied.” *Blue Cross/Blue Shield of R.I. v. Flam by Strauss*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993) (citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974)).

Despite this long-settled policy and governing precedent, the Committees have thus far been denied the right to participate as intervenors in this case. The district court denied the Committees’ motion to intervene, believing that the Committees had not shown a

protectable interest likely to be impaired and that the Secretary of State would adequately represent any such interest. Then, eight days ago, the Court of Appeals rejected the Republican Committees' appeal of that denial as moot even though Petitioners agreed that it was not moot. As the Court of Appeals saw it, no live controversy on intervention remains because it "remanded for dismissal of [P]laintiffs' complaint in a precedential decision" in this separate merits appeal. *Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1170, Order at 2 (Minn. Ct. App. May 27, 2025). Because this Court is considering whether to grant discretionary review in this merits appeal, the Republican Committees' intervention appeal is obviously not moot. *See Enright v. Lehmann*, 735 N.W.2d 326, 330 (Minn. 2007) (an issue is not moot if a court is "[a]ble to grant effectual relief"); *see also Snell v. Walz*, 985 N.W.2d 277, 283 (Minn. 2023); *Schroeder v. Simon*, 950 N.W.2d 70, 73–75 (Minn. Ct. App. 2020).

In any event, this Court should grant the Republican Committees intervention in this ongoing case. *See, e.g., DSCC v. Simon*, 950 N.W.2d 280, 284 (Minn. 2020). The Republican Committees satisfy all elements for intervention. They have interests that could be impaired if Petitioners prevail. For one thing, they would be forced to compete under election rules other than those set by the Legislature and to divert resources in response to that changed legal landscape. For another, Petitioners prevailing could change the outcome of one or more future general election races to the Committees' detriment. Nor does the Secretary adequately represent the *partisan* interests of the Republican Committees; the Secretary, understandably, represents governmental interests that can easily diverge from those of partisan litigants. *See Trbovich v. United Mine Workers of Am.*,

404 U.S. 528, 539 (1972). And there is no question this motion is timely. The Republican Committees have diligently sought to intervene in this case from the very beginning. They now seek appellate intervention in this Court only eight days after the Court of Appeals' refusal to adjudicate their intervention appeal.

Fundamentally, there is no good reason to deny intervention—and the Republican Committees would be highly prejudiced by any such denial. The Republican Committees wish to file a brief opposing discretionary review, which is due only seven days from today. Moreover, if the Court nevertheless grants review, the Republican Committees wish to be heard on the merits as full parties. The only way to facilitate the Republican Committees' rightful participation as full parties is to grant them intervention. The alternative—requiring the Republican Committees to follow the time-consuming procedures for seeking the Court's discretionary review of the Court of Appeals' erroneous mootness holding while this merits appeal is pending, *see* Minn. R. Civ. App. P. 117—would create a substantial (and unnecessary) risk that the door to party status in this ongoing case would be closed to the Committees.

The Republican Committees recognize that the timing of the Court of Appeals' order in their intervention appeal may make it difficult for this Court to resolve this motion for leave to intervene by the June 11 deadline for oppositions to the petition for review in this merits appeal. The Republican Committees therefore respectfully request that, if necessary, the Court grant them interim leave to file such an opposition pending the Court's decision on this motion.

On June 2, 2025, counsel for the Republican Committees contacted counsel for Petitioners and counsel for the Secretary. Petitioners oppose this motion. The Secretary takes no position.

BACKGROUND

A. The Republican Committees

The Republican National Committee (“RNC”) is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). The RNC manages the Republican Party’s business at the national level, including development and promotion of the Party’s national platform, 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 Republican state party organizations throughout the country, including the Republican Party of Minnesota, educate, mobilize, assist, and turn out voters.

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.

B. The Witness Requirement

Minnesota provides its voters with 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, subd. 1; *id.*

§ 203B.30, subd. 2. Regardless of the voting method, every eligible voter must first register to vote, *id.* § 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 preserving the integrity of Minnesota’s elections. One of those safeguards is the Witness Requirement.

Under the Witness Requirement, the witness—who, starting in 2025, can be any adult citizen—observes the absentee voter completing the ballot (without observing who the voter voted for). *Id.* § 203B.07, subd. 3. The witness then signs a “certificate of eligibility” on the outer envelope verifying that the voter personally completed the ballot. *Id.* 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.* When election officials receive the completed absentee ballot, they examine the outer envelope for compliance with the Witness Requirement. *Id.* § 203B.121, subd. 2. The Witness Requirement is mandatory; a failure to comply with it results in the ballot not being counted. *See id.*

C. Procedural History

In February 2024, the Minnesota Alliance for Retired Americans Educational Fund, together with two individual voters (collectively, “Petitioners”), sued the Minnesota

Secretary of State, Steve Simon, alleging that the Witness Requirement violates Section 201 of the Voting Rights Act of 1964, 52 U.S.C. § 10501, and the Materiality Provision of the Civil Rights Act of 1964, 52 U.S.C. § 10101(a)(2)(B). Within a month, the Secretary moved to dismiss the complaint for lack of standing and failure to state a claim.

Ten days later, the Republican Committees sought to intervene as defendants. They filed both a Proposed Answer and a detailed notice explaining 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 Petitioners’ 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.” Index #24 ¶¶ 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 law and fact in common with [Petitioners’] 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 Petitioners 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 Petitioners’ 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. Petitioners’ 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.

In May 2024, Petitioners moved for a temporary injunction barring the Secretary from enforcing the Witness Requirement for forthcoming elections. 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 Petitioners’ motion for a temporary injunction. *See* Add. 1. Although the court found the intervention request timely, it believed that the Committees had not shown a protectable interest likely to be impaired and that the Secretary would adequately represent any such interest. *Id.* at 32–34. The court did not address the Republican Committees’ request for permissive intervention.

The Republican Committees filed a Notice of Appeal concerning the denial of intervention on July 22, 2024. Shortly thereafter, the Secretary separately filed a Petition for Discretionary Review of the district court's denial of his motion to dismiss. Index #88. The Court of Appeals 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 (Minn. Ct. App. Aug. 13, 2024).

Both the Republican Committees' intervention appeal and the Secretary's merits appeal were argued on January 16, 2025, in front of the same Court of Appeals panel. On March 24, 2025, the Court of Appeals ruled in the Secretary's appeal, reversed the district court, and ordered dismissal of Petitioners' suit. *See Minn. All. for Retired Ams. Educ. Fund v. Simon*, 19 N.W.3d 480 (Minn. Ct. App. 2025).

The Court of Appeals then ordered supplemental briefing on the issue of whether the Republican Committees' intervention appeal was moot, questioning whether the appeal was "no longer necessary and could provide no effective relief to the Republican [C]ommittees." *See Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1170, Order at 2 (Minn. Ct. App. Mar. 27, 2025). Both the Republican Committees and Petitioners explained that the Committees' appeal was not moot. As Petitioners emphasized, the intervention appeal was not moot "because the Alliance intends to seek further review from the Minnesota Supreme Court by the April 23, 2025 deadline." Minn. All. Mem. 1, No. A24-1170 (Minn. Ct. App. Apr. 9, 2025). Thus, as the Committees explained, they have "a right to file an opposition to [Petitioners'] petition for review, to participate in briefing and argument on the merits if any court grants further review, and to participate in any

future proceedings in the district court and beyond.” Republican Comms. Mem. 2, No. A24-1170 (Minn. Ct. App. Apr. 10, 2025). In other words, “‘an award of effective relief’ remains possible, and ‘a decision on the merits’ remains ‘necessary,’ in th[e intervention] appeal.” *Id.* (quoting *Snell*, 985 N.W.2d at 283); *see also Schroeder*, 950 N.W.2d at 73–75. The Committees also explained that “[e]ven if there were no prospect of further proceedings,” the Court should exercise its discretion to decide the intervention appeal. Republican Comms. Mem. 3, No. A24-1170 (Minn. Ct. App. Apr. 10, 2025).

Petitioners filed a Petition for Discretionary Review in this Court on April 23, 2025, underscoring that the case remains very much alive. Nevertheless, on May 27, 2025, the Court of Appeals dismissed the Republican Committees’ appeal as moot. It appeared to think that dismissal of Petitioners’ complaint ended the merits litigation and “rendered a decision on the Republican Committees’ intervention motion unnecessary.” *Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1170, Order at 3 (Minn. Ct. App. May 27, 2025). It also declined to exercise its discretion to resolve the question of intervention. *Id.*

LEGAL STANDARDS

A non-party can move to intervene on appeal. *In re Crablex, Inc.*, 762 N.W.2d 247, 251 (Minn. Ct. App. 2009). Under this circumstance, Minnesota Rule of Civil Procedure 24.01, which ordinarily governs mandatory intervention in the district court, “provide[s] guidance.” *Id.* “[I]ntervention may be granted if the application is timely, the applicant has an interest relating to the subject matter of the appeal, the applicant demonstrates that the decision on appeal may ‘as a practical matter impair or impede’ their ability to protect their own interests, and the applicant demonstrates that their interests are not adequately

represented by the current parties.” *Matter of Determination of Need for Env’t Impact Statement*, 2024 WL 2874140, at *2 (Minn. Ct. App. June 4, 2024) (quoting *Crablex*, 762 N.W.2d at 251).

Rule 24.01 “is designed to protect nonparties from having their interests adversely affected by litigation conducted without their participation.” *Erickson v. Bennett*, 409 N.W.2d 884, 887 (Minn. Ct. App. 1987). “The standard is similar to that used by the federal court in reviewing orders under Fed. R. Civ. P. 24(a)(2),” and Minnesota courts regularly look to federal intervention decisions as persuasive authority. *Miller v. Miller*, 953 N.W.2d 489, 493–94 (Minn. 2021) (cleaned up). Minnesota courts “liberally appl[y]” the intervention standards to “encourag[e] intervention whenever possible.” *Blue Cross/Blue Shield*, 509 N.W.2d at 396.

ARGUMENT

The Court should grant the Republican Committees intervention because they readily meet all requirements for intervention. If necessary, the Court should also grant the Republican Committees interim leave to file a brief in opposition to the petition for review.

I. THE COURT SHOULD GRANT THE REPUBLICAN COMMITTEES INTERVENTION.

A. This Motion Is Timely.

The Republican Committees have sought to intervene since the outset of the case, and have done so as promptly as possible in this Court, making their motion indisputably timely. “The timeliness of a motion to intervene must be determined on the basis of all the circumstances in each particular case.” *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225,

230 (Minn. 1979). “The factors to be considered in determining timeliness include how far the suit has progressed at time of intervention, the reason for the delay, and the possible prejudice of the delay to the existing parties.” *Id.* Minnesota courts construe the timeliness requirement, like Rule 24.01 generally, liberally and without an eye to technicalities. *Engelrup*, 224 N.W.2d at 488-89.

Here, the Republican Committees first tried to intervene in the district court approximately one month after Petitioners filed their complaint, before any “substantial litigation of the issues” had “commenced,” including discovery, any scheduling order, or an answer. *Id.* at 488 (cleaned up). In short, the case had not meaningfully progressed in any way, so no “existing part[y]” could conceivably claim that any “delay” by the Committees caused it “prejudice.” *SST*, 288 N.W.2d at 230. That is why the district court found—and Petitioners conceded—that the Committees’ motion to intervene was timely. *See* Index #60 at 10; Add. 32.

This motion is likewise timely. On April 23, 2025, Petitioners filed a deficient Petition for Discretionary Review, which the Court did not accept until May 21, 2025. *Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1134, Order (Minn. May 21, 2025). During this time, the Committees did not know whether the Court would dismiss the Petition as untimely. Then, on May 27, 2025, the Court of Appeals unexpectedly dismissed the intervention appeal as moot. *Minn. All. for Retired Ams. Educ. Fund v. Simon*, No. A24-1170, Order at 3 (Minn. Ct. App. May 27, 2025). The Committees filed this motion eight days after that order and less than two weeks after the Court accepted the Petition. Since that time, neither Petitioners nor the Secretary have made any filings in this

case. So it is inconceivable how the Committees' participation would "prejudice" either party. *SST*, 288 N.W.2d at 230.

Moreover, denying intervention here would severely prejudice the Republican Committees' litigation rights. The only alternative the Republican Committees have to direct appellate intervention is seeking discretionary review of the Court of Appeals' holding that their intervention appeal has become moot. But seeking such review will take time, and there is no guarantee this Court would find that appeal satisfies its criteria for discretionary review. Consequently, unless this Court allows intervention on appeal, the Republican Committees will almost certainly lose their opportunity to oppose review in this merits appeal. And if this Court grants merits review, the Republican Committees will likely lose their ability to fully participate in briefing and oral argument. The lower courts' inattention to the Republican Committees' right to intervene has cost them substantial litigation rights already. This Court should avoid the prospect of further injury to those interests and grant intervention.

B. The Republican Committees Have Interests In This Action.

The Republican Committees also have substantial cognizable interests at stake in this appeal. In defining what interests count, this 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.* (cleaned up).

The Republican Committees possess several such interests, each of which suffices to support intervention. Their main interest is in getting Republican candidates in Minnesota elected to office. DeJournett Decl. ¶¶ 5–6 (Ex. A). 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. *Id.* ¶¶ 8–10. The Committees also have an 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. *Id.* ¶¶ 12–22.

Courts around the country routinely recognize that these types of interests are legally cognizable and enjoy “legal protection.” *Miller*, 953 N.W.2d at 494 (cleaned up); *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) (per curiam) (political committees are injured when a law “unequally favors supporters of other political parties” (emphasis

omitted)); *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 a 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”). What is more, several of these cases concerned Article III standing, which is “more stringent” than the lower standard for intervention. *See Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1252 n.4 (10th Cir. 2001).

Even more to the point, courts ordinarily 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 *2–3 (D. Nev. Apr. 28, 2020) (granting intervention to Democratic Party entities when a lawsuit would disrupt their organizational efforts); *Issa v. Newsom*, 2020 WL 3074351, at *1–4 (E.D. Cal. June 10, 2020) (same).

In line with this authority, this Court and other Minnesota courts have 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 Court had “granted the motion of the Republican Party of Minnesota to intervene as a respondent” in a suit against the Secretary seeking to deny ballot access to Donald Trump); *DSCC*, 950 N.W.2d at 284 (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 a 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 283–84.

This case squarely fits within the mold set by this line of precedent. Petitioners challenge the Witness Requirement, a prophylactic rule that aims to curb “voter fraud” and

to “safeguard[] voter confidence” in the State’s elections. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191–200 (2008). The Republican Committees and their candidates have an interest in seeking office in “contests untainted by” violations of that rule. *Shays*, 414 F.3d at 85. And they have an interest in avoiding the inevitable need to alter their get-out-the-vote efforts and trainings in the event the Witness Requirement is enjoined. *LUPE*, 29 F.4th at 306.

C. Disposition Of This Action May Impair The Republican Committees’ Ability To Protect Their Interests.

The Republican Committees’ interests may be impaired in this ongoing case—and, indeed, *will* be if the Court reverses the Court of Appeals’ merits holding.

The 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 the 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) (emphasis original) (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).

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

The Republican Committees are entitled to vindicate their interest in competing under the rules the Legislature has ordained “without establishing” that invalidating those rules “will disadvantage their [] election campaigns.” *Id.* at 91 (cleaned up). But if such a showing were needed, the Republican Committees would easily satisfy it. It is no secret that, in recent years, mail-in voting has favored Democrats over Republicans. In the 2022 general election, for instance, 46% of Democratic voters nationwide voted by mail, while only 27% of Republicans did so. Charles Stewart III, M.I.T. Election Data & Science Lab, *How We Voted in 2022*, at 10 (2023), <https://perma.cc/444Z-58ZY>. Minnesota is no exception to the general trend. In the 2024 presidential election, the Democratic strongholds of the Twin Cities region and St. Louis and Olmsted Counties also 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; *see also* DeJournett Decl. ¶¶ 30–46.

D. The Existing Parties Do Not Adequately Represent The Republican Committees’ Interests In This Case.

Finally, the Secretary cannot (and should not) adequately represent and protect the Republican Committees’ uniquely *partisan* interests.

The final requirement for intervention, inadequacy of representation, likewise imposes a “‘minimal’ burden” on the movant. *Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990) (quoting *Trbovich*, 404 U.S. at 538 n.10). The movant need only show that “the existing parties ‘may’ not adequately represent their interests.” *Id.* And if the movant has met the other three requirements, “he ordinarily should be allowed to intervene unless it is *clear* that the party will provide *adequate* representation.” *Id.* (emphasis added) (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). This language implies that there is a strong presumption

¹ *See 2024 General Election for U.S. President: Harris-Trump Margin by County*, Minn. Sec’y of State (Mar. 2025), <https://www.sos.mn.gov/media/oblfc41f/us-president-2024-official-results-map-margin-by-county.pdf>; *Absentee Data: Counts by County*, Minn. Sec’y of State (Nov. 2024), <https://www.sos.mn.gov/election-administration-campaigns/data-maps/absentee-data/>.

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 Charles A. Wright et al., *Federal Practice & Procedure* § 1909 (3d ed. 2024) (observing that the language of the federal rule may even shift the burden of persuasion to the existing parties to prove adequate representation).

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 (cleaned up). To begin, the Secretary simply does not (and should not) share the Committees’ objectives. The Committees’ ultimate interest in this action is “winning [e]lection[s]” for the Republican Party. *Shays*, 414 F.3d at 86. The Secretary, by contrast, must serve the public at large. *Screws v. United States*, 325 U.S. 91, 130 (1945) (Rutledge, J., concurring in the result) (explaining that a State official’s “sworn oath” and “first duty are to uphold the Constitution, then only the law of the state which too is bound by the charter”). He therefore *could not* “vindicate such an interest while acting,” as he must, “in good faith.” *LUPE*, 29 F.4th at 309. Because the Secretary’s responsibilities transcend the “narrower interest” of the Republican Committees, his representation is necessarily inadequate. *Trbovich*, 404 U.S. at 539 (cleaned up).

The Secretary’s institutional obligations also pull him in multiple—and sometimes conflicting—directions that do not permit him to defend the Witness Requirement as zealously as the Committees would. He must balance “the expense of defending [it] out of [state] coffers,” *Clark v. Putnam County*, 168 F.3d 458, 461–62 (11th Cir. 1999), the “social and political divisiveness of the election issue,” and his “own desires to remain [a]

politically popular and effective leader[],” *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993) (per curiam). Those considerations may dictate litigation positions that diverge from the Committees’ preferred course. The Committees, for example, would prefer a ruling upholding the Witness Requirement on the merits that the RNC could then invoke as a precedent in its other lawsuits, whereas the Secretary may prioritize threshold defenses, such as standing, that leave the merits undecided. *See LUPE*, 29 F.4th at 308.

Recent history confirms that the Secretary may not vigorously defend the Legislature’s duly-enacted election safeguards. Five years ago, the Secretary consented to a judgment that a state-law restriction on collecting completed ballots from other voters violated federal law. *DSCC*, 950 N.W.2d at 285. In follow-on litigation, moreover, the Secretary refused to appeal a temporary injunction of the law’s enforcement. *See id.* at 284. But because the Republican Committees had intervened, they appealed the injunction order, which this Court reversed unanimously with respect to the collection restriction. *Id.* at 285, 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 this Court, his interests are simply not naturally in sync with the Republican Committees’ interests—and he does not adequately represent them.

The Secretary’s litigation conduct to date underscores those concerns. He took “no position on the motion to intervene” in district court, a silence that is “deafening” considering the Committees’ partisan and competitive interests. *Utah Ass’n of Cnty.*, 255

F.3d at 1256 (cleaned up). Then, he argued in direct opposition to the Republican Committees that the appeal regarding the denial of intervention was moot. *See* Sec’y Mem. 1, No. A24-1170 (Minn. Ct. App. Apr. 10, 2025). If the Secretary actively opposes the Committees’ interests, it cannot be “clear” that he will defend them “adequately.” *Jerome Faribo Farms*, 464 N.W.2d at 570 (cleaned up).

In sum, the Secretary’s divergent obligations, objectives, and litigation choices establish at least the possibility—if not the certainty—that he will not safeguard the Committees’ distinct and legally cognizable interests. Because Minnesota courts resolve any doubt in favor of intervention, *see Norman*, 383 N.W.2d at 678, the Court should permit the Republican Committees to participate as defendants.

For all of the foregoing reasons, the Court should grant the Republican Committees intervention.

II. IF NECESSARY, THE COURT SHOULD GRANT THE COMMITTEES INTERIM LEAVE TO FILE A BRIEF IN OPPOSITION TO THE PETITION FOR REVIEW.

Because the Court of Appeals did not rule on the Committees’ intervention at the same time it ruled on this merits appeal—and only later (and erroneously) declared the Republican Committees’ intervention appeal moot—the Committees acknowledge that the Court may not be able to resolve their motion to intervene before the deadline, a mere seven days from today, for parties to file oppositions to the petition for review. The Committees therefore ask the Court, if necessary, to grant them interim leave to file an opposition to the petition for review pending the Court’s ruling on this motion.

While the Committees seek intervention rather than *amici curiae* status, granting them interim leave to file an opposition would be akin to granting them *amici curiae* status pending resolution of the motion. The factors supporting *amici curiae* status likewise support granting such interim leave in these circumstances.

First, the Republican Committees have filed this motion by the deadline for requests to participate as *amici curiae*. See Minn. R. Civ. App. P. 129.01(b).

Second, as explained, the Republican Committees have several private and public interests that are implicated in this appeal and Petitioners' ongoing effort to enjoin enforcement of the Witness Requirement. See Minn. R. Civ. App. P. 129.01(c).

Third, the Republican Committees' opposition would support the Secretary and encourage the Court to deny the petition for review for several reasons. In the first place, the Legislature's recent statutory changes underscore that this case does not present important or unclear questions of law warranting this Court's review. See Minn. R. Civ. App. P. 117, subd. 2(a), (d). The Minnesota Legislature has amended the Witness Requirement since this litigation began, and a new version is in effect for future elections. 2024 Minn. Laws, ch. 112, art. 2, § 12, subd. 3. The new law makes compliance even easier by broadening who may serve as a witness. This change further weakens Petitioners' already-tenuous standing and merits theories, reducing the likelihood the Court would address a significant legal question with statewide impact in this appeal.

The Committees' opposition brief will also explain that the Court of Appeals' merits decision aligns with the overwhelming majority of state and federal courts that have interpreted witness requirements, so it upholds, rather than departs from, the "accepted and

usual course of justice.” Minn. R. Civ. App. P. 117, subd. 2(c). Every court to consider the question—other than the district court in this case—has ruled that witness requirements do not violate Section 201. *See, e.g., Thomas v. Andino*, 613 F. Supp. 3d 926, 959–62 (D.S.C. 2020); *People First of Ala. v. Merrill*, 467 F. Supp. 3d 1179, 1223–25 (N.D. Ala. 2020). And every appellate precedent, save one repudiated by the Third Circuit, has applied the Materiality Provision only to rules governing voter registration, not to ballot-casting rules like witness requirements. *See, e.g., Pa. State Conf. of NAACP Branches v. Schmidt*, 97 F.4th 120, 129–30 (3d Cir. 2024) (repudiating *Migliori v. Cohen*, 36 F.4th 153 (3d Cir. 2022)). Denying, rather than granting, review would thus maintain “harmon[y in] the law.” Minn. R. Civ. App. P. 117, subd. 2(d).

The Republican Committees’ opposition brief will further demonstrate that the decision below should stand. The Court of Appeals committed no legal error when it reached the straightforward conclusion, in harmony with the weight of authority from this Court and other courts, that the Witness Requirement does not violate Section 201 or the Materiality Provision. Even if this Court were in the business of error correction—which it is not, *see* Minn. R. Civ. App. P. 117, subd. 2—there is no error to correct.

Finally, the Republican Committees’ opposition brief is “desirable” because it will aid the Court in adjudicating the petition for review. Minn. R. Civ. App. P. 129.01(c). The Republican Committees have unique expertise and insight into the questions presented in this case. The Republican Committees have submitted countless briefs in federal and state court, aiding in the informed adjudication of complex electoral issues. More specifically, the Republican Committees have extensive experience litigating challenges to state

absentee voter requirements, including their counsel's participation as lead counsel in the recent watershed Third Circuit appeal interpreting the Materiality Provision. *See Pa. State Conf. of NAACP Branches*, 97 F.4th at 129–30. The Committees' opposition brief would use their expertise to explain that the petition for review represents an outlier stance that rests on fundamental misconceptions regarding federal law and States' authority to regulate elections.

CONCLUSION

The Court should grant the Republican Committees leave to intervene and, if necessary, interim leave to file a brief in opposition to the petition for review.

Dated: June 4, 2025

Respectfully submitted,

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**Admitted pro hac vice in District Court*

***Application for pro hac vice pending*

CERTIFICATE OF DOCUMENT LENGTH

I hereby certify that this motion complies with Minnesota Rule of Civil Appellate Procedure 132.02, and the length and typeface requirements of Rule 132.01 and Rule 132.02. The motion was prepared with proportional font using Microsoft Word 365, which reports that it contains 6,417 words, exclusive of caption, tables, and signature block.

Dated: June 4, 2025

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