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16 SUPERIOR COURT OF ARIZONA  
17 MARICOPA COUNTY

18 ARIZONA FREE ENTERPRISE CLUB,

19 Plaintiff,

20 v.

21 ADRIAN FONTES,

22 Defendant.

No. CV2024-002760

**MOTION TO INTERVENE**

(Assigned to the Hon. Susanna Pineda)

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1           The Democratic National Committee (“DNC”) and Arizona Democratic Party  
2 (“ADP”) (collectively, “Proposed Intervenors”) move to intervene to protect their members  
3 and constituents from harassment and intimidation when exercising their constitutionally  
4 protected right to vote. Plaintiff Arizona Free Enterprise Club (“AFEC”) urges this Court  
5 to invalidate numerous rules in Defendant Arizona Secretary of State’s 2023 Elections  
6 Procedure Manual (“EPM”). The provisions that AFEC challenges include certain  
7 prohibitions related to behavior around ballot boxes and polling places, including  
8 prohibitions against “taunting a voter or poll worker,” “threatening” voters and poll  
9 observers, and “confronting, questioning, photographing, or videotaping voters or poll  
10 workers in a harassing or intimidating manner.” Compl. ¶ 34(b)(i)–(iii). In seeking this  
11 relief, AFEC makes the surprising admission that it wants to “convey[] a message to others  
12 that the drop boxes are being watched and should be watched.” Compl. ¶ 38. That, not any  
13 trumped-up legal violations, is what this case is about.

14           To defend those rules and to protect their rights, as well as those of their members  
15 and constituents, Proposed Intervenors respectfully request that this Court allow them to  
16 intervene.

17           Proposed Intervenors satisfy the criteria for intervention as of right. As national and  
18 state political committees, they have significant, constitutionally protected interests in this  
19 action that, if successful, not only would subject their constituents and members to  
20 intimidation and harassment, but also would force them to expend significant resources.  
21 And the existing parties do not adequately represent Proposed Intervenors’ interests because  
22 they diverge from those of the Secretary, who represents all Arizonans—not just Proposed  
23 Intervenors or their members.

24           In all events, Proposed Intervenors satisfy the criteria for permissive intervention.  
25 Again, Proposed Intervenors have significant interests at stake in this litigation. By timely  
26 seeking to intervene, Proposed Intervenors will not prejudice any of the parties’ rights or  
27 the adjudication of this case. Nor does any other factor mitigate against Proposed  
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1 Intervenor—the national and state Democratic committees—from defending their and  
2 their members’ and constituents’ constitutionally protected interests.

3 For these reasons, Proposed Intervenor should be permitted to intervene as of right  
4 or, in the alternative, should be granted permissive intervention.<sup>1</sup>

### 5 **BACKGROUND**

6 AFEC challenges various provisions of the EPM. This manual, issued by the  
7 Secretary, “prescribes rules to achieve and maintain the maximum degree of correctness,  
8 impartiality, uniformity and efficiency on the procedures for early voting and voting, and  
9 of producing, distributing, collecting, counting, tabulating and storing ballots” in Arizona.  
10 A.R.S. § 16-452(A). The manual is approved by the Governor and the Attorney General.  
11 *Id.* § 16-452(B).

12 To challenge the EPM, AFEC commenced this suit on February 9, 2024. In it, AFEC  
13 brings three claims. Count I challenges the EPM’s provisions related to permissible conduct  
14 at ballot boxes and polling places. *See* Compl. ¶¶ 52–65. Count II challenges the provision  
15 allowing “federal only voters”—meaning, a voter who is eligible to vote only in races for  
16 federal office in Arizona—to vote in the upcoming Presidential Preference Election  
17 (“PPE”). *See id.* ¶¶ 66–75. And Count III challenges the criminal penalties related to the  
18 EPM rules challenged in Counts I and II. *See id.* ¶¶ 76–84.

19 Proposed Intervenor are political committees and parties that support Democrats in  
20 Arizona. The DNC is a national committee, as that term is defined and used by 52 U.S.C.  
21 § 30101, dedicated to electing local, state, and national candidates of the Democratic Party  
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24 <sup>1</sup> As required by Arizona Rule of Civil Procedure 24(c), this Motion is accompanied  
25 by a Proposed Intervenor Answer, which is attached hereto as Exhibit 1, and a proposed  
26 form of order, lodged concurrently with this motion. Arizona Rule of Civil Procedure  
27 24(c)(1)(B) requires that a party seeking to intervene “attach as an exhibit to the motion a  
28 copy of the proposed pleading in intervention that sets out the . . . defense for which  
intervention is sought.” Proposed Intervenor submit this proposed Answer in compliance  
with this rule. If permitted to intervene, however, Proposed Intervenor would intend to  
move to dismiss this case before filing this proposed Answer.

1 to public office throughout the United States. To accomplish its mission, the DNC, among  
2 other things, assists state parties and candidates by providing active support through the  
3 development of programs benefiting Democratic candidates. The DNC works with  
4 individuals who affiliate and engage with it in Arizona, whom the DNC also considers to  
5 be members and constituents. These include all Democratic voters in the State, whom the  
6 DNC educates and works to ensure have access to the franchise.

7 The ADP is a state committee, as defined by 52 U.S.C. § 30101. ADP’s purpose is  
8 to elect candidates of the Democratic Party to public office throughout Arizona. To  
9 accomplish this purpose, ADP engages in vitally important activities, including supporting  
10 Democratic Party candidates; protecting the legal rights of voters; and ensuring that all  
11 voters have the meaningful ability to cast ballots in Arizona, including mail ballots. ADP  
12 has members and constituents from across Arizona, including many voters who regularly  
13 support and vote for candidates affiliated with the Democratic Party.

14 As set forth below, the DNC and ADP should be permitted to intervene to protect  
15 these interests, and those of their members and constituents.

## 16 ARGUMENT

17 Arizona Rule of Civil Procedure 24 allows for both intervention as of right and  
18 permissive intervention. As courts have repeatedly held, Rule 24 “is remedial and should  
19 be construed liberally in order to assist parties seeking to obtain justice in protecting their  
20 rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). Proposed Intervenors  
21 satisfy both the requirements for intervention as of right and for permissive intervention.<sup>2</sup>

### 22 A. Proposed Intervenors are entitled to intervene as of right under Rule 23 24(a).

24 The DNC and ADP are entitled to intervene as of right in this case. The Court must  
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26 <sup>2</sup> “Federal Rule of Civil Procedure 24 is substantively indistinguishable from  
27 Arizona Rule 24, [so Arizona’s courts] may look for guidance to federal courts’  
28 interpretations of their rules.” *Heritage Vill. II Homeowners Ass’n v. Norman*, 246 Ariz.  
567, 572 ¶ 19 (App. 2019).

1 allow intervention in a case when a party satisfies the four elements under Rule 24(a):  
2 “(1) the motion must be timely; (2) the applicant must assert an interest relating to the  
3 property or transaction which is the subject of the action; (3) the applicant must show that  
4 disposition of the action may impair or impede its ability to protect its interest; and (4) the  
5 applicant must show that the other parties would not adequately represent its interests.”  
6 *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13 (App. 2014).  
7 Here, all four requirements are met.

8 **1. The motion is timely.**

9 Proposed Intervenor’s motion is timely. The Complaint was filed on February 9,  
10 little more than a week ago. And Proposed Intervenors file this motion before the Court has  
11 heard argument or made any substantive rulings. Timeliness under Rule 24 is “flexible,”  
12 and the most important consideration “is whether the delay in moving for intervention will  
13 prejudice the existing parties to the case.” *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442,  
14 446 (App. 1989) (citation omitted). Given that all issues remain pending before the Court,  
15 no party will be prejudiced by Proposed Intervenors’ intervention, and the Court should  
16 therefore consider the motion timely. *See Winner Enters., Ltd. v. Superior Court*, 159 Ariz.  
17 106, 109–10 (App. 1988) (finding intervention “timely,” despite that “[t]he time frame in  
18 the trial court was extremely compressed,” when proposed intervenor sought intervention  
19 at least 21 days after notice of the proceeding).

20 **2. Proposed Intervenors have interests at stake in this litigation.**

21 The DNC and ADP, as well as their members and constituents, have significant  
22 rights at stake in this litigation. Those rights include both organizational and associational  
23 interests.

24 Under Rule 24(a)(2), a proposed intervenor “must assert an interest relating to the  
25 property or transaction which is the subject of the action.” *Woodbridge*, 235 Ariz. at 28  
26 ¶ 13; *accord* Ariz. R. Civ. P. 24(a)(2). This interest must be “direct and immediate.”  
27 *Weaver*, 162 Ariz. at 447 (quoting *Miller v. City of Phoenix*, 51 Ariz. 254, 263 (1938)).  
28

1 Such interests include, as courts have held, an organizational interest from needing “to  
2 expend additional resources . . . should [a challenged] election law change” or “an  
3 associational interest on behalf of its members . . . should the law change” and threaten  
4 those members’ votes. *Bost v. Ill. St. Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023);  
5 *see La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022) (holding that  
6 sufficient interests include a political committee’s need to “expend significant resources”  
7 based on a new election law and that law “regulat[ing] the conduct of the Committees’  
8 volunteers and poll watchers”); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640,  
9 663 (9th Cir. 2021) (“[A]n organization has direct standing to sue where it establishes that  
10 the defendant’s behavior has frustrated its mission and caused it to divert resources in  
11 response to that frustration of purpose.”). And “in a case involving ‘a public interest  
12 question’ that is ‘brought by a public interest group,’ the ‘interest requirement may be  
13 judged by a more lenient standard.” *La Union del Pueblo Entero*, 29 F.4th at 305–06  
14 (citation omitted).

15 Here, Proposed Intervenors have direct, immediate interests in this action.

16 *First*, Proposed Intervenors have several organizational interests. Should AFEC  
17 succeed in this action, Proposed Intervenors would need to expend significant additional  
18 resources (in time, effort, and expense) in training employees, volunteers, and voters on the  
19 changes to the EPM’s rules related to voter intimidation at drop boxes and polling places.  
20 These changes would be necessary both to develop strategies and educate voters—as well  
21 as poll observers—related to navigating potential intimidation and how to cast votes despite  
22 the presence of intimidating behavior. These expenditures “to educate their members on the  
23 election procedures . . . are routinely found to constitute significant protectable interests.”  
24 *Issa v. Newsom*, No. 2:20-cv-1044, 2020 WL 3074351, at \*3 (E.D. Cal. June 10, 2020); *see*  
25 *Bost*, 75 F.4th at 687 (finding an interest sufficient where a political party “would have to  
26 expend additional resources . . . should the law change”). And changes to those EPM rules  
27 would “unquestionably regulate[] the conduct of [Proposed Intervenors’] volunteers” and  
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1 others at voting locations. *La Union del Pueblo Entero*, 29 F.4th at 306. In short, a judgment  
2 for AFEC would require Proposed Intervenors to expend significant resources, including  
3 financial ones—the “quintessential rights Rule 24(a) protects.” *Id.* at 305.

4 *Second*, Proposed Intervenors also have associational interests in this action. A  
5 political entity has an “associational interest on behalf of its members” to challenge or  
6 defend a law that might affect those members’ right to vote. *Bost*, 75 F.4th at 687; *see also*  
7 *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 & n.7 (2008) (holding, in the  
8 more demanding context of standing, that a political party had “standing to challenge the  
9 validity of” a law that imposed voting requirements on the party’s members).

10 Here, AFEC’s lawsuit threatens the rights of the DNC’s and ADP’s members.  
11 Through this suit, AFEC asks this Court to invalidate certain provisions in the EPM related  
12 to conduct around drop boxes and polling places. *See, e.g.*, Compl. ¶¶ 34, 51. Those EPM  
13 rules prohibit, for example, “[i]ntentionally following individuals delivering ballots”;  
14 “[u]sing threatening, insulting, or offensive language to a voter or poll worker”; and  
15 “[d]irectly confronting, questioning, photographing, or videotaping voters or poll workers  
16 in a harassing or intimidating manner.” Compl. ¶ 34(a)(ii), (b)(ii)–(iii) (citations to EPM  
17 omitted). Striking these and other EPM rules would “convey[] a message to others that the  
18 drop boxes are being watched and should be watched,” Compl. ¶ 38, and risks creating an  
19 environment of harassment and intimidation. It would risk voter suppression by scaring  
20 away voters who fear experiencing “threatening” language and being “follow[ed]” home.  
21 It would risk defeat for Democratic candidates whose voters may fear being “confront[ed],”  
22 “question[ed],” and “videotap[ed]” in a “harassing and intimidating matter.” And it would  
23 risk Proposed Intervenors’ members who work as poll observers and would toil in such  
24 conditions. For proof, one need look no further than the most recent Arizona election. *See,*  
25 *e.g.*, Yvonne Wingett Sanchez, *Alleged voter intimidation at Arizona drop box puts officials*  
26 *on watch*, Wash. Post (Oct. 20, 2022 8:47 p.m. EDT) (describing the “homegrown patrol  
27 and monitoring operations,” including one alleged incident where “a group of people  
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1 hanging out near the ballot dropbox film[ed] and photograph[ed] [a couple],” “accus[ed]  
2 [them] of being a mule,” and “followed [them] out [of] the parking lot in one of their cars  
3 continuing to film”).

4 And AFEC’s challenge to the ability of “federal only voters” to vote in PPEs, *see*  
5 Compl. ¶¶ 66–75, risks disenfranchising voters entirely—at least as to AFEC’s claim to  
6 block “voters who are not registered as state-party voters to vote in the PPE.” Compl. ¶ 74;  
7 *see also id.* ¶¶ 66–75. For all of these reasons, this suit directly implicates the rights of  
8 Proposed Intervenors’ members. *See Sandusky Cnty. Democratic Party v. Blackwell*, 387  
9 F.3d 565, 573–74 (6th Cir. 2004) (*per curiam*) (“Appellees have standing to assert, at least,  
10 the rights of their members who will vote in the November 2004 election.”).

11 Proposed Intervenors therefore show an adequate interest in this action.

12 **3. Those interests will be impaired by an adverse ruling of the Court.**

13 Similarly, “disposition of the action may impair or impede [Proposed Intervenors’]  
14 ability to protect [their] interest[s].” *Woodbridge*, 235 Ariz. at 28 ¶ 13. “[A] would-be  
15 intervenor must show only that impairment of its substantial legal interest is possible if  
16 intervention is denied. This burden is minimal.” *Heritage Vill. II Homeowners Ass’n*, 246  
17 Ariz. at 572 ¶ 21 (quoting *Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir.  
18 2001)); *see id.* at ¶ 22 (adopting rule). When a proposed intervenor has protectible interests  
19 in the outcome of litigation, courts have “little difficulty concluding” that its interests will  
20 be impaired. *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th  
21 Cir. 2011) (citation omitted).

22 Here, as explained above, a judgment in AFEC’s favor would impede Proposed  
23 Intervenors’ interests, including their organizational and associational interests. AFEC  
24 specifically requests a declaratory judgment “that the challenged EPM rules do not have the  
25 force of law” and “that A.R.S. § 16-452(C) does not apply to the challenged EPM rules.”  
26 Compl. ¶¶ 49–50. Such a judgment, however, would require Proposed Intervenors to retrain  
27 employees, volunteers, and voters. *See supra* Part A.2. And invalidating these EPM rules,  
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1 including those that protect voters and poll observers, would risk disenfranchising voters,  
2 including those who are members and constituents of the DNC and ADP. *See id.*; *La Union*  
3 *del Pueblo Entero*, 29 F.4th at 307 (“The Committees have established that their interest  
4 may be impaired if they are denied intervention. . . . If the district court either partially or  
5 fully grants the relief sought by the plaintiffs here, the Committees will have to expend  
6 resources to educate their members [including poll observers] on the shifting situation in  
7 the lead-up to the 2022 election.”).

8 Proposed Intervenors therefore also show a potential impairment of their interests.

9 **4. No party represents the Proposed Intervenors’ interests.**

10 Finally, Proposed Intervenors must show that “the other parties would not adequately  
11 represent [their] interests.” *Woodbridge*, 235 Ariz. at 28 ¶ 13; *accord* Ariz. R. Civ. P.  
12 24(a)(2). Because the future course of litigation is difficult to predict, the test is whether  
13 representation “*may* be inadequate”—not whether it “*will* be, for certain, inadequate.” *La*  
14 *Union del Pueblo Entero*, 29 F.4th at 307–08 (citation omitted). This burden is “minimal.”  
15 *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted). And “when the proposed  
16 intervenors’ concern is not a matter of ‘sovereign interest,’ there is no reason to think the  
17 government will represent it.” *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996); *see*  
18 *also Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998).

19 Here, the Secretary does not share the same interests as Proposed Intervenors.  
20 “[P]rivate interests are different in kind from the public interests of the State or its officials.”  
21 *La Union del Pueblo Entero*, 29 F.4th at 309.

22 The Secretary is entrusted with a general obligation to Arizona voters—not a  
23 particular competitive interest in fielding or electing candidates or mobilizing and turning  
24 out certain voters. The Secretary’s interests in this litigation are defined by his statutory  
25 duties to conduct elections and to administer Arizona’s election laws. *See, e.g.*, A.R.S. § 16-  
26 142(A)(1). By comparison, Proposed Intervenors face significant harm to their core  
27 missions of mobilizing and educating Democratic voters and electing Democratic  
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1 candidates if the EPM is invalidated, even in part.

2  
3 Therefore, because the Secretary “must represent the interests of all people in  
4 Arizona,” he cannot give Proposed Intervenors or their members’ interests “the kind of  
5 primacy” that Proposed Intervenors will. *Planned Parenthood Ariz., Inc. v. Am. Ass’n of*  
6 *Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279 ¶ 58 (App. 2011) (permitting  
7 adversely affected group to intervene in defense of a challenged statute); *Coal. of Ariz./N.M.*  
8 *Cnty. for Stable Econ. Growth v. Dep’t of the Interior*, 100 F.3d 837, 845 (10th Cir. 1996)  
9 (government defendants necessarily represent “the public interest” rather than the proposed  
10 intervenors’ “particular interest[s]” in protecting their resources and the rights of their  
11 candidates and voters.).

12 Further, “the government’s representation of the public interest may not be ‘identical  
13 to the individual parochial interest’ of a particular group just because ‘both entities occupy  
14 the same posture in the litigation.’” *Citizens for Balanced Use*, 647 F.3d at 899 (citation  
15 omitted) (allowing environmental group to intervene where it had different objectives than  
16 the U.S. Forest Service); *see also Utah Ass’n of Cnty.*, 255 F.3d at 1255–56 (“[T]he  
17 government’s representation of the public interest generally cannot be assumed to be  
18 identical to the individual parochial interest of a [political candidate] merely because both  
19 entities occupy the same posture in the litigation.”).

20 For these reasons, courts have repeatedly permitted political parties to intervene in  
21 cases involving election administration, even where government officials are named as  
22 defendants—including in Arizona. *See, e.g., Arizona Democratic Party v. Hobbs*, No. CV-  
23 20-01143-PHX-DLR, 2020 WL 6559160, at \*1 (D. Ariz. June 26, 2020) (allowing parties,  
24 including the RNC, to intervene in case brought by the DNC and ADP); *see also Issa*, 2020  
25 WL 3074351, at \*3 (“While [government] Defendants’ arguments turn on their inherent  
26 authority as state executives and their responsibility to properly administer election laws,  
27 the Proposed [political party] Intervenors are concerned with ensuring their party members  
28 and the voters they represent have the opportunity to vote in the upcoming federal election,

1 advancing their overall electoral prospects, and allocating their limited resources to inform  
2 voters about the election procedures.”).

3 Proposed Intervenors have met this prong too; at the very least, the Secretary may  
4 not adequately represent their interests, and this potential inadequacy is all that is necessary  
5 to support intervention.

6 \* \* \*

7 In the end, courts have frequently granted intervention to political parties in other  
8 challenges to the Secretary’s EPM. *See, e.g., Ariz. Republican Party v. Richer*, 255 Ariz.  
9 363, 359 ¶ 10 (App. 2023), *review granted on other grounds* (Jan. 9, 2024). This Court  
10 should do so here as well; Proposed Intervenors meet the criteria for intervention as of right.

11 **B. In the alternative, permissive intervention would aid the court.**

12 In the alternative, the DNC and ADP should be permitted to intervene as parties that  
13 “ha[ve] a claim or defense that shares with the main action a common question of law and  
14 fact.” Ariz. R. Civ. P. 24(b)(1). When this standard is met, a court may consider certain  
15 other factors to guide its decision whether to grant permissive intervention. *See Bechtel v.*  
16 *Rose*, 150 Ariz. 68, 78 (1986) (identifying factors). Those factors weigh in favor of, at a  
17 minimum, permissive intervention.

18 To start, the participation of the DNC and ADP will not “prolong or unduly delay  
19 the litigation.” *Id.* at 72 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326,  
20 1329 (9th Cir. 1977)). The DNC and ADP have moved to intervene little more than a week  
21 after this case was filed, and before any substantive merits briefing has occurred. And  
22 Proposed Intervenors are prepared to adhere to the deadlines set by the Court.

23 Nor will participation of Proposed Intervenors “prejudice the adjudication of the  
24 original parties’ rights.” Ariz. R. Civ. P. 24(b)(3); *see also Bechtel*, 150 Ariz. at 72  
25 (considering “the legal position the[] [intervenors] seek to advance, and its probable relation  
26 to the merits of the case” (quoting *Spangler*, 552 F.2d at 1329)). The DNC and ADP will  
27 raise defenses that have legal questions in common with the parties’ claims and defenses.  
28

1 That is, the DNC and ADP will defend the EPM, as well as the specific provisions AFEC  
2 challenges. *See, e.g., Edwards v. Vos*, No. 20-CV-340, 2020 WL 6741325, at \*1 (W.D. Wis.  
3 June 23, 2020) (“[T]he [intervenors] have a defense that shares common questions of law  
4 and fact with the main action—namely, they seek to defend the challenged election laws to  
5 protect their and their members’ stated interests in, among other things, the integrity of [the  
6 state’s] elections.”).

7 Beyond this, the DNC and ADP have significant interests at stake in this litigation,  
8 as outlined above, which would be undermined by the relief AFEC seeks. *See Bechtel*, 150  
9 Ariz. at 72 (examining “the nature and extent of the intervenors’ interest” (quoting  
10 *Spangler*, 552 F.2d at 1329)). And given their interests and experience in elections in  
11 Arizona, intervention “will [also] significantly contribute to full development of the  
12 underlying factual issues in the suit and to the just and equitable adjudication of the legal  
13 questions presented.” *Id.*

14 Additionally, their interests are not adequately represented by the Secretary, as also  
15 detailed above. *See id.* (considering “whether the intervenors’ interests are adequately  
16 represented by other parties”).

17 Ultimately, Rule 24, including the provisions related to permissive intervention,  
18 “should be construed liberally in order to assist parties seeking to obtain justice in protecting  
19 their rights.” *Dowling*, 221 Ariz. at 270 ¶ 58 (citation omitted). For the reasons set forth  
20 above, permitting the intervention of the DNC and ADP is consistent with Rule 24 and will  
21 permit Proposed Intervenors to protect their rights and the rights of their members.

## 22 CONCLUSION

23 For these reasons, the DNC and ADP respectfully request that this Court grant their  
24 motion to intervene.

1 Dated: February 20, 2024

Respectfully submitted,

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1 **Certificate of Service**

2 I hereby certify that on this 20th day of February, 2024, I electronically submitted a  
3 PDF version of this document to the Office of the Clerk of the Superior Court, Maricopa  
4 County, for filing using the AZTurboCourt system. I further certify that a copy of the  
5 foregoing was sent via email this same date to:

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