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IN THE SUPREME COURT

STATE OF ARIZONA

MARICOPA COUNTY RECORDER STEPHEN RICHER, in his official capacity, Petitioner, v. ARIZONA SECRETARY OF STATE ADRIAN FONTES, in his official capacity, Respondent.	No. CV-24-0221-SA **UNOPPOSED MOTION TO INTERVENE OF ARIZONA STATE SENATE PRESIDENT WARREN PETERSEN AND SPEAKER OF THE ARIZONA HOUSE OF REPRESENTATIVES BEN TOMA**

Warren Petersen, in his official capacity as the President of the Arizona State Senate, and Ben Toma, in his official capacity as the Speaker of the Arizona House of Representatives, respectfully move to intervene in this special action. Counsel for the Maricopa County Recorder and counsel for the Secretary of State have represented that they consent to the requested intervention. The Speaker and

President have lodged with this motion a proposed response to the special action petition.

ARGUMENT

No court rule specifically governs intervention in appellate forums, but Rule of Special Action Procedure 2(b) incorporates the intervention mechanisms in Arizona Rule of Civil Procedure 24. *See also Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022) ("[W]e have considered the 'policies underlying intervention' in the district courts" when adjudicating motions to intervene on appeal); *Ayres v. Red Cloud Mills Ltd.*, 167 Ariz. 474, 477 (App. 1990) (allowing intervention on appeal).

Under Rule 24, non-parties may intervene in an action either as of right or with permission of the court. Although the two intervention rubrics contemplate different criteria, Rule 24 as a whole "is remedial and should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights." *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists,* 227 Ariz. 262, 279, ¶ 54 (App. 2011) (internal citations omitted).

I. President Petersen and Speaker Toma Are Entitled to Intervene As of Right

"Intervention of right is appropriate when the party applying for intervention meets all four of the following conditions: (1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the

subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests." *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)). Each criterion is addressed below.

A. The Motion to Intervene is Timely

The timeliness of this motion is indisputable. By moving within one day of the commencement of this action and prior to any substantive ruling by the Court, the Speaker and President have acted with celerity in vindicating their interests. *See, e.g.*, *Heritage Village II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 571–72, ¶ 17 (App. 2019) (motion filed five days after applicants became aware that that their interests were at risk was timely); *Winner Enterprises, Ltd. v. Superior Court in & for County of Yavapai*, 159 Ariz. 106, 109 (App. 1988) (finding that motion to intervene in "extremely compressed" special action was timely when it was filed thirty days after initiation of lawsuit and 21 days after court entered preliminary injunction).

B. The Legislature Has a Protected Interest in the Full and Fair Implementation of Arizona's Election Laws

"To demonstrate a significant protectable interest, [the movant] must establish that the interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue," but "'[n]o specific legal or

equitable interest need be established.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n.*, 647 F.3d 893, 897 (9th Cir. 2011). "Instead, the 'interest' test directs courts to make a 'practical, threshold inquiry' and 'is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted); *see also Planned Parenthood*, 227 Ariz. at 279, ¶ 57.

The Framers of the Arizona Constitution not only authorized but affirmatively instructed the Legislature to "enact[] registration and other laws to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. art. VII, § 12. The interplay between several of those laws—including statutes protecting voting rights and recent enhancements to Arizona's documentary proof of citizenship requirements. *see, e.g.*, A.R.S. §§ 16-542, 16-544, 2022 Ariz. Laws ch. 99, 370—is squarely at issue in this special action.

In addition, the Speaker and President "are entitled to be heard" and intervene in any proceeding challenging the constitutionality of a state statute or rule. A.R.S. § 12-1841. Although the Maricopa County Recorder does not directly contest the constitutional validity of any specific statute, the petition certainly implicates substantial and consequential constitutional questions, including foundational principles of due process and fair notice.

When, as here, a proposed intervenor has "a significant protectable interest" in the case, there is "little difficulty concluding that the disposition of this case may, as a practical matter, affect it." *Calif. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006); *see also Heritage Vill. II*, 246 Ariz. at 573, ¶ 22 (reasoning that "[o]ur Rule, like its federal counterpart, does not require certainty, and only requires that an interest 'may' be impaired or impeded," and concluding that the onus of establishing impairment is a "minimal burden"); *Saunders v. Superior Court*, 109 Ariz. 424, 426 (1973) (noting that if intervention were denied, "[t]he principles of stare decisis would effectively dispose of [the applicants'] interest without any opportunity for them to be heard").

C. No Named Party Adequately Represents the Legislature's Interests

Neither the Maricopa County Recorder nor the Secretary of State could or would properly assert and safeguard the Legislature's singular interests. Courts have in sometimes interposed a "presumption" of adequate representation in cases involving governmental defendants. But as the U.S. Supreme Court recognized, "a presumption like that holds no purchase" when, as here, a different branch of government "may be expected to vindicate different points of view on the State's behalf." *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 197 (2022). While the Speaker and President largely concur with the Secretary of State's overall

litigation position, they espouse philosophical and institutional perspectives that differ deeply from those of the Secretary.

II. Alternatively, Permissive Intervention is Appropriate

If the Court finds that one or more of the prerequisites for intervention as of right remain unsatisfied, Rule 24(b) supplies an independent basis for the Speaker and President's permissive intervention.[1] The Court may allow permissive intervention when the applicant "has a claim or defense that shares with the main action a common question of law or fact." Ariz. R. Civ. P. 24(b)(1)(B).

Not only do the Maricopa County Recorder's claim and the Speaker and President's arguments share at least one common legal question, they are effectively coterminous in their subject matter. *See Zenith Elecs. Corp. v. Ballinger*, 220 Ariz. 257, 264, ¶ 25 (App. 2009) (allowing third party nonprofit seeking access to certain records produced in discovery under a protective order to intervene permissively, reasoning that "not only is [applicant's] motion timely, but it presents a common question of law or fact concerning the propriety of the protective order"); *see also Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002), *abrogated in part on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (noting that permissive intervenors "asserted defenses . . .

[1] As discussed *infra* Section I(A), this Motion is timely, which is a prerequisite to any variant of permissive intervention.

directly responsive to the claims for injunction asserted by plaintiffs. Intervenors satisfied the literal requirements of Rule 24(b)").

Further, the Speaker and President will not inject new factual issues that are outside the scope of the special action petition, and have lodged a proposed response in accordance with the Court's existing scheduling order. *See Bechtel v. Rose In & For Maricopa Cty.*, 150 Ariz. 68, 72 (1986) (applicant's willingness not to "prolong or unduly delay the litigation" weighs in favor of permissive intervention).

In sum, permitting the legislative leaders' intervention will not impede or encumber the expeditious disposition of this matter; to the contrary, their joinder will only ensure that the Court's adjudication of the special action petition is informed by the unique perspective and interests of Arizona's legislative branch. *See id.* (permissive intervention is favored when it "will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented").

CONCLUSION

For the foregoing reasons, the Court should allow Speaker Toma and President Petersen to intervene as of right or on a permissive basis.

Alternatively, the Speaker and President request leave to file their proposed response to the special action petition as an *amici curiae* brief and a waiver of the 2,000 word limit set by the Court's September 17, 2024 order.

RESPECTFULLY SUBMITTED this 18th day of September, 2024.

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