

**IN THE STATE COURT OF KANSAS
DISTRICT COURT OF DOUGLAS COUNTY**

KANSAS APPLESEED CENTER FOR
LAW AND JUSTICE, INC.; LOUD
LIGHT; and DISABILITY RIGHTS
CENTER OF KANSAS,

Petitioners,

v.

No: DG-2025-CV-000206

SCOTT SCHWAB, in his official capacity as
the Kansas Secretary of State; and JAMIE
SHEW, in his official capacity as DOUGLAS
COUNTY CLERK,

Respondents,

REPUBLICAN NATIONAL
COMMITTEE,

Proposed Intervenor-Respondent.

**REPLY IN SUPPORT OF
MOTION TO INTERVENE**

Plaintiffs say they fear delay. Their actions say otherwise. Plaintiffs waited at least a month before serving the Secretary, and only recently asked this Court to expedite proceedings. In contrast, the RNC hasn't delayed anything. The RNC took no position on the federal removal, and it stayed out of the remand dispute. As for speculative "additional delays," Opp. 6, the RNC takes no position on the parties' scheduling dispute, and it will abide by whatever deadlines the Court sets. The RNC's consistent track record in election cases shows that it adds value, not complication. *See* Interv. Br. 3 n.1.

Plaintiffs’ other fear is politics. But politics are a part of this case whether the RNC intervenes or not. Plaintiffs admit that their lawsuit will profoundly affect Kansas elections. *E.g.*, Pet. ¶¶3, 32. That no party represents the political interests at stake in this case is reason to ensure the RNC has a seat at the table—not to wall off one of the major political parties. That’s exactly why courts have held that political parties have a right to intervene in these cases. Their “distinct viewpoint as major-political-party organizations may aid the Court’s analysis of the ... complaint.” *New Ga. Project v. Raffensperger*, Doc. 154 at 3-4, 1:24-cv-3412 (N.D. Ga. 2024) (granting RNC intervention).

Plaintiffs also provide no good reason to deny the RNC permissive intervention. Their primary argument—adequate representation—is not part of the test for permissive intervention. *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 801 n.4 (7th Cir. 2019). Granting permissive intervention is the simplest path to resolving this motion, which is why countless courts have taken it. *See* Interv. Br. 3 n.1.

ARGUMENT

I. The RNC has a right to defend its electoral interests in this important election case.

Plaintiffs don’t dispute that the RNC filed a timely application and thus satisfies the first element of intervention as of right. *See McDaniel v. Jones*, 235 Kan. 93, 106, 679 P.2d 682 (1984). And the RNC stayed out of the way while the parties litigated issues ancillary to the merits. Plaintiffs’ counterarguments don’t rebut the remaining elements.

A. The great weight of authority supports the RNC's intervention.

Plaintiffs argue that the RNC hasn't identified "relevant authority supporting intervention." Opp. 15. The claim couldn't be further from the truth. The RNC cited a sample of numerous decisions where courts allowed political parties to intervene in election law cases. RNC Mem. 3 n.1. In at least half a dozen of those cases, the political parties were granted intervention as of right. *See LUPE v. Abbott*, 29 F.4th 299 (5th Cir. 2022); *LULAC v. Exec. Off. of the President*, Doc. 135, No. 1:25-cv-946 (D.D.C. 2025); *Libertarian Party of Mich. v. Johnson*, No. 2:12-cv-12782 (E.D. Mich. 2012); *Issa v. Newsom*, 2020 WL 3074351 (E.D. Cal.); *Citizens United v. Gessler*, 2014 WL 4549001 (D. Col.).

Plaintiffs' chief criticism is that there's no "decision by a Kansas court" allowing a political party to intervene in an election lawsuit. Opp. 15. But Plaintiffs fail to cite a Kansas case *denying* intervention to a political party for the same reason: the issue hasn't come up. Recent election litigation has been focused in a handful of States. Pennsylvania, for example, has seen endless lawsuits targeting the date requirement for absentee ballots. *See Eakin v. Adams Cnty. Bd. of Elections*, 149 F.4th 291, 301-04 (3d Cir. 2025). The RNC was an intervenor-defendant in those cases, securing wins at all levels of the federal judiciary. *Id.* at 303. Georgia, too, has seen dozens of recent lawsuits challenging everything from birthdate requirements to drop-box placements to application

deadlines.¹ Georgia courts have never denied the RNC intervention in those cases, despite at least a dozen opportunities to do so. That Kansas has seen comparatively few election lawsuits is only further reason that the Court shouldn't shut out one of the major political parties in this important case.

Plaintiffs' attempts to distinguish *LULAC* only show that they have no legitimate arguments against intervention. They start by claiming (Opp. 16) that intervention in that case was unopposed. It wasn't. The "LULAC Plaintiffs and the League Plaintiffs oppose[d] the motion" on the same grounds Plaintiffs oppose the RNC's application here. *Id.* Plaintiffs next say that unlike this case, *LULAC* didn't involve "nonpartisan organizations." Opp. 16. Again, the opinion they cite contradicts what they claim: "Two of the groups of Plaintiffs are groups of nonpartisan, not-for-profit organizations." Doc. 135 at 2, No. 1:25-cv-946. And the only reason the RNC filed affidavits in *LULAC* was because it had to establish Article III standing—a higher standard than the mere "interest" required by this court—to intervene as of right. *Cf.* Opp. 16. Here, at the pleading stage, "unanimous precedent" supports "acceptance of the proposed intervenor's well-pleaded allegations" where "the propriety of intervention must be determined before discovery." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819-20 (9th Cir. 2001) (collecting cases). Plaintiffs cite no Kansas case to the contrary.

¹ *E.g.*, *New Ga. Project v. Raffensperger*, Doc. 154, 1:24-cv-3412 (N.D. Ga. 2024); *Int'l All. of Theater Stage Emps. Local 927 v. Lindsey*, Doc. 84, No. 1:23-cv-4929 (N.D. Ga. 2024); *In re Ga. S.B. 202*, No. 1:21-mi-55555 (N.D. Ga.) (consolidating numerous cases in which the RNC was granted intervenor status).

LULAC also puts to rest Plaintiffs’ concerns about delay, partisanship, and discovery. Opp. 18. The RNC has stayed out of the *LULAC* parties’ discovery fights. Doc. 154, No. 1:25-cv-946. Even when the RNC requested briefing extensions, it did so only to join the other parties’ requests and “keep the briefing deadlines together.” *E.g., id.*, Doc. 164 at 3. This case is *LULAC* for Kansas, and the RNC should be involved.

Plaintiffs also fail to distinguish *Mi Familia Vota*. See Opp. 17. In that case, the district court dismissed the RNC’s intervention motion without prejudice because it granted the RNC intervention in a similar case, and then consolidated the cases on the “same date.” *Mi Familia Vota v. Fontes*, Docs. 57, 164, No. 2:22-cv-509 (D. Ariz. 2022). Since then, the RNC has appealed judgments and raised arguments that the State of Arizona would not. Last election cycle, the RNC secured emergency relief from the Supreme Court that the state defendants opposed. See *RNC v. Mi Familia Vota*, 145 S. Ct. 108 (2024). *Mi Familia Vota* confirms that the RNC brings to these cases a perspective that other parties will not because they don’t represent the interests of Republicans. Plaintiffs give this Court no good reason to shut out that perspective here.

B. Denying intervention will impair the RNC’s ability to protect its interests in this case.

Plaintiffs conflate the merits with the RNC’s interests. They claim that “a political party does not have a cognizable interest in opposing relief that would make it easier for all voters.” Opp. 7 (emphasis omitted). They assert that “if the Court enjoins SB 4, voting by mail will be easier in Kansas.” Opp. 10. And they argue that “accepting ballots

timely cast by lawful, eligible voters ... contributes to the integrity of the election.” Opp.

10. Each statement (and the many others like them) suffer from three errors.

First, Plaintiffs assume they will prevail on the merits. Opp. 10. But at this stage, “the Court cannot assume” that Plaintiffs will “ultimately prevail on the merits in resolving a motion to intervene.” *Pavek v. Simon*, 2020 WL 3960252, at *3 (D. Minn. Jul. 12). Rather, “[a]ssuming the truth of the RNC’s factual claims and the validity of its legal theories on the merits,” the correct question is whether an order in Plaintiffs’ favor would harm “the RNC and its members and contribute to the ‘illegal structuring of a competitive environment’ in which the RNC and its members compete.” *LULAC*, Doc. 135 at 7; *cf. Shays v. FEC*, 414 F.3d 76, 85 (D.C. Cir. 2005).

Second, Plaintiffs’ arguments misunderstand the RNC’s interests. The RNC doesn’t claim interests in “preventing others from having their votes counted” or making it “harder to vote.” *Contra* Opp. 7, 8 (emphasis omitted). Plaintiffs don’t dispute that the injunction they demand would alter the “election landscape” for the RNC’s “members.” *Cf. LUPE*, 29 F.4th at 307. That alteration is enough to give the RNC a legally protectible interest here. *Id.*

Third, the RNC’s “partisan interests” are distinct from the merits. *Contra* Opp. 8. Whether ballots received after election day are valid has nothing to do with what the RNC, the State, the Plaintiffs, or the Court “prefer ... as a matter of policy.” *Contra* Opp. 11. It turns on whether federal law requires ballots to be “received by state officials” by the “day for the election.” *RNC v. Wetzel*, 120 F.4th 200, 203-04 (5th Cir.

2024). The RNC's partisan *interests* are at stake in part because rules allowing for late-arriving ballots tend to benefit Democrats—a fact on which both the RNC and DNC agree. *See LULAC*, Doc. 135 at 6-7; *LULAC I*, 2025 WL 1187730 at *33-35, *46-48. The Court need not take partisan sides to credit those practical interests, which is why the district court in *LULAC* found that both the RNC and the DNC had standing on those grounds.

Plaintiffs' opposition is plagued by these false assumptions. Their arguments fail for other reasons, too. Plaintiffs argue, for example, that the RNC doesn't have an interest in defending its win in *RNC v. Wetzel*. Opp. 9. Plaintiffs bring up *Ternes v. Galichia*, but in that case “[t]he intervenors essentially intervened as plaintiffs” in an attempt “to compel Ternes to proceed with his [medical-malpractice] litigation ... even though the intervenors suffered no harm from the actions of that defendant.” 297 Kan. 918, 920-21, 305 P.3d 617, 620 (2013). Here, the RNC is intervening as a *defendant* in a case where there's already a concrete dispute, to stop the Plaintiffs' “collateral attack on the *Wetzel* decision.” *LULAC*, Doc. 135 at 11. *Wetzel* “directly implicates the RNC's private, partisan interests in a particular set of election procedures.” *Id.* The RNC has a concrete, practical interest in defending that precedent. Kansas law doesn't disagree.

C. No party represents the RNC's partisan interests.

Plaintiffs denigrate the RNC's partisan interests in elections, but they don't claim that any other party can represent those interests. Plaintiffs are avowedly “nonpartisan.” Opp. 16. And state defendants “are unlikely to be adequate representatives of these

private, partisan interests.” *LULAC*, Doc. 135 at 11 (citing *Warth v. Seldin*, 422 U.S. 490, 499–500 & n.12 (1975)). That’s because the State represents “the public interest.” *Coal. of Ariz./N.M. Cnty. for Stable Econ. Growth v. DOI*, 100 F.3d 837, 845 (10th Cir. 1996). But the RNC’s interest is “partisan.” *LUPE*, 29 F.4th at 309. “Neither the State nor its officials can vindicate such an interest while acting in good faith.” *Id.*

Plaintiffs confuse divergence of *interests* with divergence of *arguments*. As defendants who oppose Plaintiffs’ claims, the State and the RNC likely will raise similar arguments. But that they “both believe [Plaintiffs’ relief] should be denied ... does not mean that [they] have identical positions or interests.” *Georgia v. U.S. Army Corps of Eng’rs*, 302 F.3d 1242, 1259-60 (11th Cir. 2002). In removing to federal court, the State has already sought relief that the RNC didn’t seek and didn’t join. And the State’s non-response to intervention confirms that it does not share “identical” interests with the RNC. *Cf. Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 197 (2022).

Plaintiffs point out that some “[c]ourts presume adequate representation when the governmental defendant and the proposed intervenor have the same ultimate objective.” Opp. 11. But Kansas courts don’t. Under Kansas law, “the opposing party has the burden of showing the applicant’s interest is adequately represented by the existing parties.” *McDaniel*, 235 Kan. at 106-07. No presumption applies. Plaintiffs resist that black-letter law by arguing that *McDaniel* didn’t concern a state defendant. Opp. 12. But they cite no authority abrogating *McDaniel* when a state defendant is a party. Nor would that distinction make sense. The reason “the opposing party has the burden” to show

adequate representation is that the “provisions of 60–224(a) are to be liberally construed” in favor of intervention. *McDaniel*, 235 Kan. at 106-07. The Court should reject the Plaintiffs’ contrary presumption that contradicts Kansas precedent.

Montoy v. State disproves the Plaintiffs’ novel presumption. 278 Kan. 765, 102 P.3d 1158 (2005). If Plaintiffs were right, the Supreme Court would have simply observed that the State was a defendant. Instead, it analyzed the interests and concluded that “[t]he legislature’s rejection of all proposals for tax increases to finance schools” showed that the State would adequately oppose tax increases—the intervenor’s interest. *Id.* Applying that reasoning, government defendants “are unlikely to be adequate representatives of [the RNC’s] private, partisan interests.” *LULAC*, Doc. 135 at 11.

II. Alternatively, the Court should grant permissive intervention.

Plaintiffs recognize that this Court has “discretion to grant permissive intervention to the RNC in this case.” Opp. 17-18. The dozens of courts who have allowed the RNC to intervene in election cases like this one counsels in favor of exercising that discretion here. National political committees “are not marginally affected individuals; they are substantial organizations with experienced attorneys who might well bring perspective that others miss or choose not to provide.” *Nielsen v. DeSantis*, 2020 WL 6589656, at *26-27 (N.D. Fla.).

Plaintiffs chiefly cite adequate representation by the State. Opp. 18. But this Court need not address adequate representation, since permissive intervention “does not require the [proposed intervenor] to demonstrate that its interests are inadequately

represented under any standard.” *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 801 n.4 (7th Cir. 2019). Contrary to Plaintiffs’ suggestions, the Tenth Circuit didn’t hold otherwise. *See Tri-State Generation & Transmission Ass’n v. N.M. Pub. Regul. Comm’n*, 787 F.3d 1068, 1075 (10th Cir. 2015) (holding that while a court “may consider” adequate representation, it’s “not a required part of the test for permissive intervention”).

Plaintiffs’ fears of delay, complication, or prejudice are also unfounded. Plaintiffs don’t contest that the RNC filed a timely application, and they can’t credibly pin any delay on the RNC. They ignore the RNC’s assurances that it will comply with deadlines, but that “promise” undermines claims of undue delay. *Emerson Hall Assocs. v. Travelers Cas. Ins. Co. of Am.*, 2016 WL 223794, *2 (W.D. Wis. Jan. 19). Regardless, Plaintiffs make no attempt to explain why any delay or complication would be “undu[e]” or “prejudice the adjudication of the original parties’ rights.” K.S.A. 60-224(b)(3). “Undue’ means not normal or appropriate.” *Appleton v. Comm’r*, 430 F. App’x 135, 138 (3d Cir. 2011) (quoting Webster’s II New Riverside University Dictionary 1259 (1988)). “Whatever additional burdens” adding the RNC as a defendant to this case may pose, “those burdens fall well within the bounds of everyday case management.” *Berger*, 597 U.S. at 200. Permissive intervention is thus “the most prudent and efficient course” to resolving this motion. *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. United States*, 2002 WL 32350046, *3 (W.D. Wis. Nov. 20).

CONCLUSION

The Court should grant the application and allow the RNC to intervene.

Dated: October 30, 2025

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 30, 2025, a true and correct copy of the foregoing was emailed to all counsel of record and electronically filed using the e-filing system, which will send a notice of electronic filing to all counsel of record.

/s/ Edward D. Greim

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