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ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

ARIZONA REPUBLICAN PARTY,

Plaintiff,

vs.

ADRIAN FONTES, et al..

Defendants.

Case No. CV2020-014553

**ARIZONA DEMOCRATIC PARTY'S
MOTION TO INTERVENE**

Expedited Election Matter

Hon. _____

Two days after Maricopa County (the “County”) completed its hand audit recount for the 2020 general election—finding *zero* discrepancies in the machine tabulated count—Plaintiff the Arizona Republican Party now wants the County to start the process over, this time auditing even more ballots. Their theory is that the Arizona Secretary of State, Attorney General, and Governor collectively misread Arizona election law when they promulgated the 2019 Election Procedures Manual, and confused the terms “precincts” and “polling places” when determining how many ballots are subject to a hand count audit.

1 Plaintiff's claims have no merit. And their requested remedy, if granted, would
2 significantly and unnecessarily delay the processing of ballots well past the eleventh hour,
3 when nearly all the ballots have been processed and counted. The Arizona Democratic
4 Party ("ADP") seeks to intervene as a defendant in this matter so that it may prevent this
5 intrusion on the vote tabulation process and protect the rights of its members and affiliated
6 candidates in Maricopa County. Two judges from this Court granted ADP's request for
7 intervention in Republican-sponsored lawsuits within the last week alone. The Honorable
8 Margaret Mahoney granted the ADP's request for intervention in *Aguilera v. Fontes*, No.
9 CV2020-014083 (Maricopa Cty. Super. Ct. Nov. 5, 2020), as did the Honorable Daniel
10 Kiley in *Donald J. Trump for President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa
11 Cty. Ct. Nov. 9, 2020). The same result should follow here.

12 ADP meets the applicable requirements for intervention under Rule 24 of the
13 Arizona Rules of Civil Procedure. ADP is dedicated to supporting the election of
14 Democratic candidates across Arizona and has a keen interest in the outcome of this
15 litigation. Any delay in the processing and tabulation of ballots in the state's most
16 populous county could result in missed deadlines that would impact races in which
17 Democratic candidates have competed. Further, the current Defendants do not adequately
18 represent ADP's interests in this litigation; ADP's interests may diverge from the interests
19 of the government defendants who are representatives of the Counties' interests in election
20 administration rather than active participants in the election contests on the ballot. ADP
21 should be permitted to intervene as of right, or, in the alternative should be granted
22 permissive intervention. As required by Arizona Rule of Civil Procedure 24(c), this
23 Motion is accompanied by a Proposed Answer, which is attached hereto as Exhibit 1, and a
24 proposed form of order, filed concurrently with this motion.

25 Counsel for ADP contacted counsel regarding this motion and was advised that the
26 Plaintiff does not object to ADP's intervention. Counsel for the County Defendants had not
27 yet responded to ADP's messages by the time of filing.

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ARGUMENT

1 Arizona Rule of Civil Procedure 24 allows for both intervention as of right and
2 permissive intervention, and is a “remedial” rule that should be “liberally construed with
3 the view of assisting parties in obtaining justice and protecting their rights.” *Bechtel v.*
4 *Rose In & For Maricopa Cty.*, 722 P.2d 236, 240 (Ariz. 1986) (citation omitted).

5 **A. ADP is entitled to intervene as of right under Rule 24(a).**

6 ADP is entitled to intervene as of right in this case. The Court must allow
7 intervention in any case where a party “claims an interest relating to the subject of the
8 action” and “disposing of the action in the person’s absence may as a practical matter
9 impair or impede the person’s ability to protect that interest, unless existing parties
10 adequately represent that interest.” Ariz. R. Civ. P. 24(a)(2). Rule 24 is a remedial rule
11 that “should be construed liberally in order to assist parties seeking to obtain justice in
12 protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶58 (App. 2009). Four
13 elements are necessary for a successful motion to intervene under Rule 24(a): “(1) the
14 motion must be timely; (2) the applicant must assert an interest relating to the property or
15 transaction which is the subject of the action; (3) the applicant must show that disposition
16 of the action may impair or impede its ability to protect its interest; and (4) the applicant
17 must show that the other parties would not adequately represent its interests.” *Woodbridge*
18 *Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶13 (App. 2014).

19 Here, all four requirements demonstrate the need for intervention. *First*, the motion
20 is timely. Plaintiff filed their Complaint just yesterday, and ADP files this motion before
21 the Court has heard argument or made any substantive rulings. Timeliness under Rule 24 is
22 “flexible” and the most important consideration “is whether the delay in moving for
23 intervention will prejudice the existing parties to the case.” *Weaver v. Synthes, Ltd.*
24 *(U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Given that all issues remain live before the
25 Court, no party will be prejudiced by ADP’s intervention, and the Court should therefore
26 consider the motion timely.

27 *Second* and *third*, ADP clearly has important rights at stake that would be impaired
28 if the Court were to grant Plaintiff’s requested relief. Given that this matter could

1 potentially impact whether the County will be able to canvass its results on time, it plainly
2 affects the proper counting of votes of ADP’s members and constituents. *See State v. Key*,
3 128 Ariz. 419, 421 (App. 1981) (noting the right to have one’s vote counted as
4 “fundamental”). Additionally, ADP is a critical participant in the electoral process and has
5 a statutory right and responsibility to send observers to the hand count audit. A.R.S. § 16-
6 602(B)(7). To ensure a predictable, fair and equitable electoral environment, ADP will
7 have to divert scarce resources and allocate unexpected volunteer hours to observe any
8 additional hand count audit that would be ordered. These interests are readily sufficient to
9 merit intervention.

10 *Fourth*, ADP’s interests would not be adequately represented by the Defendants
11 named in this lawsuit. ADP’s particular interest in this case is not shared by the County
12 Defendants, whose stake in this lawsuit is defined solely by their statutory duties to
13 conduct elections. ADP’s interest is in ensuring that their affiliated voters have their votes
14 counted in a timely, orderly manner in accordance with state and federal law, and that it
15 does not have to disrupt organizational plans to accommodate unexpected and extra-
16 statutory counting procedures. Because these interests are meaningfully different than
17 those of election administrators, political actors are routinely granted intervention in
18 actions where election officials are named as defendants. *See, e.g., Donald J. Trump for*
19 *President, Inc. v. Hobbs*, No. CV2020-014248 (Maricopa Cty. Ct. Nov. 9, 2020) (ADP
20 granted intervention in election dispute); *Aguilera v. Fontes*, No. CV2020-014083
21 (Maricopa Cty. Super. Ct. Nov. 5, 2020) (same); *Maricopa County Republican Party et al.*
22 *v. Reagan et al.*, No. CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting
23 intervention to political parties and other interested political actors in election dispute); *Mi*
24 *Familia Vota v. Hobbs*, No. 20-cv-01093 (D. Ariz. Oct. 2, 2020) (granting intervention to
25 political party in election dispute); *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-
26 CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (“While [government]
27 Defendants’ arguments turn on their inherent authority as state executives and their
28 responsibility to properly administer election laws, Proposed [political party] Intervenors

1 are concerned with ensuring their party members and the voters they represent have the
2 opportunity to vote in the upcoming federal election, advancing their overall electoral
3 prospects, and allocating their limited resources to inform voters about the election
4 procedures.”).

5 **B. In the alternative, ADP should be granted permissive intervention.**

6 In the alternative, ADP should be permitted to intervene as a party who “has a claim
7 or defense that shares with the main action a common question of law and fact.” Ariz. R.
8 Civ. P. 24(b)(1). When this standard is met, Arizona courts may consider other factors to
9 guide its decision as to whether to grant permissive intervention, including: (1) “the nature
10 and extent of the intervenors’ interest,” (2) “their standing to raise relevant legal issues,”
11 (3) “the legal position they seek to advance, and its probable relation to the merits of the
12 case,” (4) “whether the intervenors’ interests are adequately represented by other parties,”
13 (5) “whether intervention will prolong or unduly delay the litigation,” and (6) “whether
14 parties seeking intervention will significantly contribute to full development of the
15 underlying factual issues in the suit and to the just and equitable adjudication of the legal
16 questions presented.” *Bechtel*, 722 P.2d at 240. As with Rule 24(a), Rule 24(b) should
17 similarly be liberally construed. *Dowling*, 221 Ariz. at 272 ¶ 67 (citing *Bechtel v. Rose*,
18 150 Ariz. 68, 72 (1986)). Ultimately, whether a party may intervene under Rule 24(b) is
19 left to the adjudicating court’s decision. *See id.* at ¶ 16 (concluding trial court did not abuse
20 its discretion in performing Rule 24(b) analysis).

21 Here, each factor weighs in favor of permitting ADP’s permissive intervention. *Cf.*
22 *Ariz. Democratic Party v. Hobbs*, No. 2:20-cv-01143-DLR, ECF No. 60 (D. Ariz. June 26,
23 2020) (granting permissive intervention to political party entities). First, ADP has a distinct
24 interest in the lawful administration of this election without interference from Plaintiff
25 during the processing of ballots. Second, as a participant in the hand count audit process
26 itself, ADP opposes any eleventh-hour expansion of that process, particularly where the
27 sought expansion is not contemplated by state law and will have no bearing on the ultimate
28 results of this election. Third, ADP’s interest is distinct from other parties, as only ADP

1 can represent both its organizational interests and the interests of individual voters—
2 including ADP’s affiliated candidates, members, and constituents—who have an interest in
3 the orderly administration of the tabulation process and in the finality of election results.
4 Fourth, ADP seeks intervention promptly, on the day after the Complaint was filed, and
5 thus its intervention will not delay the proceedings. Lastly, ADP will contribute to full
6 factual development of this case, because it can present evidence regarding the impact of
7 delaying the counting of ballots after the County complied with the letter of the
8 law. Because Rule 24 should be “liberally construed” to protect the rights of all parties,
9 *Dowling*, 221 Ariz. at 272 ¶ 67, the Court should permit intervention in this case.

10 **CONCLUSION**

11 For these reasons, ADP requests that the Court grant its Motion to Intervene.
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1 DATED: November 13, 2020
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19 **Pro hac vice application to be filed*

20 *Attorneys for the Arizona Democratic Party*