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18 **ARIZONA SUPERIOR COURT**
19 **COUNTY OF MARICOPA**

20 AGUILERA, et al.,
21 Plaintiffs,
22 vs.
23 FONTES, et al.,
24 Defendants.

Case No. CV2020-014083

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

Expedited Election Matter

Hon. Margaret Mahoney

25 This lawsuit is a wolf dressed up in sheep's clothing. Based on the anecdotal and
26 unconfirmed account of a single voter's experience voting with a sharpie marker, Plaintiffs
27 request carte blanche access to Maricopa County's ballot processing facilities—after in-
28 person voting has already concluded—to “observe the counting of ballots and the
adjudication of voter intent.” Compl. at 6. This drastic remedy has the potential, if granted,
to throw the processing of ballots in Arizona's largest county into disarray at the eleventh
hour. The Arizona Democratic Party (“ADP”) seeks to intervene as a defendant in this

1 matter so that it may prevent this extra-legal intrusion on the vote tabulation process and
2 protect the rights of its members and affiliated candidates in Maricopa County.

3 ADP meets the applicable requirements for intervention under Rule 24 of the
4 Arizona Rules of Civil Procedure. ADP is dedicated to supporting the election of
5 Democratic candidates across Arizona and has a keen interest in the outcome of this
6 litigation. An unknown but not insignificant number of ADP-affiliated voters could be
7 disenfranchised if Plaintiffs are able to sit and challenge voter intent based on no apparent
8 knowledge or understanding of the applicable standards. Further, the current Defendants
9 do not adequately represent ADP's interests in this litigation; ADP's interests may diverge
10 from the interests of the government defendants who are representatives of the Maricopa
11 County government, rather than active participants in the election contests on the ballot.
12 ADP should be permitted to intervene as of right, or, in the alternative should be granted
13 permissive intervention. As required by Arizona Rule of Civil Procedure 24(c), this
14 Motion is accompanied by a Proposed Answer, which is attached hereto as Exhibit 1, and a
15 proposed form of order, filed concurrently with this motion.

16 Counsel for Intervenor-Defendants contacted the Maricopa County Attorney's
17 Office to ascertain their position on this motion, but were informed that the County
18 Defendants had not yet been served in this case and so take no position. Plaintiffs' counsel
19 opposes ADP's intervention.

20 **ARGUMENT**

21 Arizona Rules of Special Actions 2(b) provide that the court "may allow other
22 persons to intervene subject to the provisions of Rule 24 of the Rules of Civil Procedure."
23 Arizona Rule of Civil Procedure 24 allows for both intervention as of right and
24 permissive intervention, and is a "remedial" rule that should be "liberally construed with
25 the view of assisting parties in obtaining justice and protecting their rights." *Bechtel v.*
26 *Rose In & For Maricopa Cty.*, 722 P.2d 236, 240 (Ariz. 1986) (citation omitted).

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

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

15 Here, all four requirements demonstrate the need for intervention. *First*, the motion
16 is timely. Plaintiffs filed their complaint just ten hours ago, and ADP files this motion
17 before the Court has heard argument or made any substantive rulings. The first hearing
18 is currently scheduled for this afternoon, and Defendants have not yet been served.
19 Timeliness under Rule 24 is “flexible” and the most important consideration “is whether
20 the delay in moving for intervention will prejudice the existing parties to the case.”
21 *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989). Given that all
22 issues remain live before the Court, no party will be prejudiced by ADP’s intervention,
23 and the Court should therefore consider the motion timely.

24 *Second* and *third*, ADP clearly has important rights at stake that would be impaired
25 if the Court were to grant Plaintiffs’ requested relief. Given that this matter concerns how
26 ballots cast in a critically important election are observed, processed, and counted, it
27 plainly affects the fundamental voting rights of ADP and its members and constituents. *See*
28 *State v. Key*, 128 Ariz. 419, 421 (App. 1981) (noting the right to vote as “fundamental”).

1 As a critical participant in the electoral process, ADP has interests in preserving a
2 predictable, fair and equitable electoral environment. Any last-minute changes to that
3 environment—especially where it upends settled administration of neutral election laws—
4 also risks harming the ADP by requiring it to expend additional scarce resources ensuring
5 that its affiliated voters are not unduly disadvantaged by Plaintiffs new observation and
6 challenge regimes. These interests are readily sufficient to merit intervention.

7 *Fourth*, ADP’s interests would not be adequately represented by the Defendants
8 named in this lawsuit. ADP’s particular interest in this case—protecting itself and
9 its members and constituents from disenfranchisement—is not shared by the County
10 Defendants, whose stake in this lawsuit is defined solely by its statutory duties to conduct
11 elections. ADP’s interest is in winning the November election by ensuring that as many of
12 their affiliated voters can vote as possible, and in not being required to expend or divert
13 substantial additional resources to do so. Because these interests are meaningfully different
14 than those of election administrators, political actors have routinely been permitted to
15 intervene in actions where election officials are named as defendants. *See, e.g., Maricopa*
16 *County Republican Party et al. v. Reagan et al.*, No. CV2018-013963 (Maricopa Cty.
17 Super. Ct. Nov. 9, 2018) (granting intervention to political parties and other interested
18 political actors in election dispute); *Mi Familia Vota v. Hobbs*, No. 20-cv-01093 (D. Ariz.
19 Oct. 2, 2020) (granting intervention to political party in election dispute); *see also Issa v.*
20 *Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10,
21 2020) (“While [government] Defendants’ arguments turn on their inherent authority as
22 state executives and their responsibility to properly administer election laws, Proposed
23 [political party] Intervenors are concerned with ensuring their party members and the
24 voters they represent have the opportunity to vote in the upcoming federal election,
25 advancing their overall electoral prospects, and allocating their limited resources to inform
26 voters about the election procedures.”).

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

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

17 Here, each factor weighs in favor of permitting ADP’s permissive intervention. *Cf.*
18 *Ariz. Democratic Party v. Hobbs*, No. 2:20-cv-01143-DLR, ECF No. 60 (D. Ariz. June 26,
19 2020) (granting permissive intervention to political party entities). First, ADP has a distinct
20 interest in the constitutional and lawful administration of this election without interference
21 from Plaintiffs during the processing of ballots. Second, ADP will oppose the issue at the
22 very heart of this case: whether the ballots cast by voters will be subjected to further
23 unwarranted challenge by Plaintiffs. Third, ADP’s interest is distinct from other parties, as
24 only ADP can represent both its organizational interests and the interests of individual
25 voters, including ADP’s members and constituents, whose ballots may be invalidated by
26 Plaintiffs. Fourth, ADP seeks intervention promptly—on the same day the Complaint was
27 filed—and thus its intervention will not delay the proceedings. Lastly, ADP will contribute
28 to full factual development of this case, because it can present evidence regarding voters

1 who would likely be disenfranchised as a result of Plaintiffs' new challenge
2 process. Because Rule 24 should be "liberally construed" to protect the rights of all parties,
3 *id.*, the Court should permit intervention in this case.

4 **CONCLUSION**

5 For these reasons, ADP requests that the Court grant its Motion to Intervene.

6
7 DATED: November 5, 2020

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9
10 By: /s Sarah R. Gonski

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25 **Pro hac vice application to be filed*

26
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