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ARIZONA SUPERIOR COURT
COUNTY OF MARICOPA

15 DONALD J. TRUMP FOR PRESIDENT,
16 INC., a federal political committee;
17 REPUBLICAN NATIONAL
18 COMMITTEE, a federal political
19 committee; and the ARIZONA
20 REPUBLICAN PARTY, a political party
21 committee,

22 Plaintiffs,

23 vs.

24 KATIE HOBBS, in her official capacity as
25 Secretary of State of Arizona; ADRIAN
26 FONTES, in his official capacity as the
27 Maricopa County Recorder; and JACK
28 SELLERS, STEVE CHUCRI, BILL
GATES, CLINT HICKMAN, and STEVE
GALLARDO, in their respective official
capacities as members of the Maricopa
County Board of Supervisors.

Defendants.

Case No. CV2020-014248

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

Expedited Election Matter

Hon. Daniel Kiley

1 This lawsuit is a repackaged version of a lawsuit filed and then quickly dismissed in
2 this Court last week, *Aguilera v. Fontes*, Case No. 2020-014083, which perpetuated a now-
3 debunked conspiracy theory known online as “SharpieGate.” While the parties and claims
4 may slightly differ, the bottom line is the same: both sets of plaintiffs seek to create
5 confusion and undermine confidence in the validity of the 2020 general election. This
6 remedy, if granted, would throw the processing of ballots into disarray well past the
7 eleventh hour, when nearly all the ballots have been processed and counted. The Arizona
8 Democratic Party (“ADP”) seeks to intervene as a defendant in this matter so that it may
9 prevent this intrusion on the vote tabulation process and protect the rights of its members
10 and affiliated candidates in Maricopa County. The Honorable Margaret Mahoney granted
11 the Arizona Democratic Party’s (“ADP”) request for intervention in *Aguilera*, and the
12 same results should follow here.

13 ADP meets the applicable requirements for intervention under Rule 24 of the
14 Arizona Rules of Civil Procedure. ADP is dedicated to supporting the election of
15 Democratic candidates across Arizona and has a keen interest in the outcome of this
16 litigation. An unknown but not insignificant number of ADP-affiliated voters could risk
17 not having their votes counted if Plaintiffs are able to cease the canvass in pursuit of their
18 partisan ends. Further, the current Defendants do not adequately represent ADP’s interests
19 in this litigation; ADP’s interests may diverge from the interests of the government
20 defendants who are representatives of the Maricopa County and State governments, rather
21 than active participants in the election contests on the ballot. ADP should be permitted to
22 intervene as of right, or, in the alternative should be granted permissive intervention. As
23 required by Arizona Rule of Civil Procedure 24(c), this Motion is accompanied by a
24 Proposed Answer, which is attached hereto as Exhibit 1, and a proposed form of order,
25 filed concurrently with this motion.

26 Counsel for Intervenor-Defendants contacted the counsel for both County and State
27 Defendants and was advised that they take no position on ADP’s intervention. Plaintiffs’
28 counsel had not yet responded to ADP’s messages by the time of filing.

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ARGUMENT

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

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

ADP is entitled to intervene as of right in this case. The Court must allow intervention in any case where a party “claims an interest relating to the subject of the action” and “disposing of the action in the person’s absence may as a practical matter impair or impede the person’s ability to protect that interest, unless existing parties adequately represent that interest.” Ariz. R. Civ. P. 24(a)(2). Rule 24 is a remedial rule that “should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶58 (App. 2009). Four elements are necessary for a successful motion to intervene under Rule 24(a): “(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. Ariz. Lottery*, 235 Ariz. 25, 28 ¶13 (App. 2014).

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

1 *Second and third*, ADP clearly has important rights at stake that would be impaired
2 if the Court were to grant Plaintiffs’ requested relief. Given that this matter concerns how
3 ballots cast in a critically important election are tabulated, it plainly affects the
4 fundamental voting rights of ADP and its members and constituents. *See State v. Key*, 128
5 Ariz. 419, 421 (App. 1981) (noting the right to vote as “fundamental”). As a critical
6 participant in the electoral process, ADP has interests in preserving a predictable, fair and
7 equitable electoral environment. These interests are readily sufficient to merit intervention.

8 *Fourth*, ADP’s interests would not be adequately represented by the Defendants
9 named in this lawsuit. ADP’s particular interest in this case—protecting itself and
10 its members and constituents from disenfranchisement—is not shared by the County or
11 State Defendants, whose stake in this lawsuit is defined solely by its statutory duties to
12 conduct elections. ADP’s interest is in winning the general election by ensuring that as
13 many of their affiliated voters can vote as possible. Because these interests are
14 meaningfully different than those of election administrators, political actors have routinely
15 been permitted to intervene in actions where election officials are named as defendants.
16 *See, e.g., Aguilera v. Fontes*, No. CV2020-014083 (Maricopa Cty. Super. Ct. Nov. 5,
17 2020); *Maricopa County Republican Party et al. v. Reagan et al.*, No. CV2018-013963
18 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention to political parties and
19 other interested political actors in election dispute); *Mi Familia Vota v. Hobbs*, No. 20-cv-
20 01093 (D. Ariz. Oct. 2, 2020) (granting intervention to political party in election dispute);
21 *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *4 (E.D.
22 Cal. June 10, 2020) (“While [government] Defendants’ arguments turn on their inherent
23 authority as state executives and their responsibility to properly administer election laws,
24 Proposed [political party] Intervenors are concerned with ensuring their party members
25 and the voters they represent have the opportunity to vote in the upcoming federal election,
26 advancing their overall electoral prospects, and allocating their limited resources to inform
27 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 requested remedy will create confusion and undermine
23 the confidence in the validity of the 2020 general election. Third, ADP’s interest is distinct
24 from other parties, as only ADP can represent both its organizational interests and the
25 interests of individual voters, including ADP’s members and constituents, whose ballots
26 may be not counted as a result of Plaintiffs’ requested remedy. Fourth, ADP seeks
27 intervention promptly—on the first business day after the Complaint was filed—and thus
28 its intervention will not delay the proceedings. Lastly, ADP will contribute to full factual

1 development of this case, because it can present evidence regarding voters whose right to
2 vote and have their votes counted would be threatened as a result of Plaintiffs' request to
3 cease tabulation. Because Rule 24 should be "liberally construed" to protect the rights of
4 all parties, *id.*, the Court should permit intervention in this case.

5 **CONCLUSION**

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

7 DATED: November 9, 2020

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10 By: /s Sarah R. Gonski

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25 **Pro hac vice application to be filed*

26 *Attorneys for the Arizona Democratic Party*