UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FLORIDA RISING TOGETHER, INC.

Plaintiff,

v.

CORD BYRD, in his official capacity as Florida Secretary of State, et. al.,

No: 6:24-cv-1682-WWB-EJK

Defendants,

REPUBLICAN NATIONAL COMMITTEE and REPUBLICAN PARTY OF FLORIDA,

Proposed Intervenor-Defendants.

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

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PRELIMINARY STATEMENT

Plaintiff Florida Rising Together, Inc., respectfully requests that the Court deny the Republican National Committee and Republican Party of Florida (collectively, "Movants") motion to intervene (the "Motion"). First, Movants fail to meet Federal Rule of Civil Procedure 24(a)'s requirements for mandatory intervention. There, Movants alternatively assert (1) an interest adequately represented in this litigation and (2) an interest not implicated by this litigation. Movants also ask the Court to adopt an overly broad standard for permissive intervention under Federal Rule of Civil Procedure 24(b) that would render subsection b meaningless and allow for intervention in almost any circumstance, regardless of the particular legal issues or claims in the litigation. If the Court denies the Motion, Plaintiff has no objection to Movants participating as *amici curiae.*

1. Movants Do Not Meet the Standard for Mandatory Intervention

Intervention as a matter of right requires the moving party to meet four elements. The motion must (1) be timely, (2) claim an interest related to the substantive issues in the litigation, (2) demonstrate that the interest will be adversely impacted by the case, and (4) demonstrate that its interests are not adequately represented by parties already involved. Fed. R. Civ. P. 24(a)(2); *Chiles v. Thornburgh,* 865 F.2d 1197, 1213 (11th Cir. 1989). Movants fail to meet the second, third, and fourth elements, and the Motion should be denied.

A. Movants Assert a Generalized Interest That is Adequately Represented

Movants claim two interests justify mandatory intervention. Movants first assert that they have an interest "in ensuring that voter registration in Florida is conducted in a safe and secure manner," Motion at 4, and describe their specific interest in defending

lawful election rules, protecting the integrity of Florida's elections, and ensuring voter confidence in the election process. *Id.* at 7.

These interests are both generalized (indeed, the Plaintiff shares these interests) and identical to the interests of all named Defendants. The mission statement of the Secretary of State's office is to "contribute to the establishment of a stable and open state government by providing access to information and protecting democracy through the oversight of fair and accurate elections." FLA. DEP'T OF STATE, *Our Mission*, https://bit.ly/48kmxPQ (last visited Oct. 29, 2024). The County Defendants share that interest. *See* ORANGE CNTY. FL. ELECTIONS, https://www.ocfelections.com/ (last visited Oct. 29, 2024) ("Our Mission: **Ensure** the integrity of the electoral process. **Enhance** public confidence. **Encourage** citizen participation."); DUVAL CNTY., *Meet your Supervisor of Elections*, https://bit.ly/4fgsEHh (last visited Oct. 29, 2024) ("In the current age of elections, the most important priority is to build public trust through transparency" and Defendant Holland touts his work "restoring trust in local elections."); BROWARD SUPERVISOR OF ELECTIONS, https://browardvotes.gov/ (last visited Oct. 29, 2024) ("Security | Transparency | Excellence"); MIAMI-DADE COUNTY, CHRISTINA WHITE, SUPERVISOR OF ELECTIONS, https://bit.ly/3Ahcfn1 (last visited Oct. 29, 2024) (pledging to "instill trust and confidence by conducting elections that are fair, accurate, transparent and accessible for all voters of Miami-Dade County."). Given the identical interests in ensuring safe and secure voting processes in Florida that Movants and Defendants (and Plaintiff) share, Movants fail to demonstrate a unique interest in this litigation or to demonstrate that the Defendants' representation is inadequate to protect this interest.

Mandatory intervention caselaw is clear on the question of identical interests and adequacy of representation. "There is a presumption of adequate representation where an existing party seeks the same objectives as the interveners." *Stone v. First Union Corp*, 371 F.3d 1305, 1311 (11th Cir. 2004) (citing *Clark v. Putnam Cnty.*, 168 F.3d 458, 461 (11th Cir. 1999)). The Eleventh Circuit has denied mandatory intervention where, like here, movants had "an interest which is *identical"* to the county defendant and there was no evidence that the county defendant's representation would be inadequate. *Chiles,* 865 F.2d at 1215 (11th Cir.1989).

In affirming the denial of a motion to intervene, the Eleventh Circuit has reasoned that the "alleged interest is shared with . . . all citizens . . . Because this interest is so generalized it will not support a claim for intervention of right." *Athens Lumber Co. Inc., v. Fed. Election Comm'n*, 690 F.2d 1364, 1366 (11th Cir. 1982). The court went further, adding that intervention "must fail because its interest is adequately represented" by the government. The movant's interest in that case was "precisely the interest" of the defendant, and because both "have the same objective, we presume that the [movant's] interest is adequately represented." *Id.*; *see also United States v. City of Miami,* 278 F.3d 1174, 1179 (11th Cir. 2002) (denial of motion to intervene where interests are the same and no argument that parties' objectives are "mutually exclusive.")

Recently, the Eleventh Circuit reiterated its presumption that "a proposed intervenor's interest is adequately represented when an existing party pursues the same ultimate objective as the party seeking intervention." *Burke v. Ocwen Fin. Corp.*, 833 F. App'x 288, 293 (11th Cir. 2020) (quoting *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993)); *see also United States v. State*

of Georgia, 19 F.3d 1388, 1394 (11th Cir. 1994) (same). The court in *Burke* continued "[w]hen, as here, that existing party is a government entity, [w]e presume that the government entity adequately represents the public, and we require the party seeking to intervene to make a strong showing of inadequate representation." *Burke*, 833 F. App'x at 293 (cleaned up).

This "strong showing" requirement reflects the government's particular expertise and legal obligations. "[W]hen a statute comes under attack, it is difficult to conceive of an entity better situated to defend it than the government. It is after all the government that, through the democratic process, gains familiarity with the matters of public concern that lead to the statute's passage in the first place." *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013). Notably, the Fourth Circuit in *Stuart* also considered the potential impacts on the government's ability to effectively litigate its interests. "Finally, to permit private persons and entities to intervene in the government's defense of a statute upon only a nominal showing would greatly complicate the government's job. Faced with the prospect of a deluge of potential intervenors, the government could be compelled to modify its litigation strategy to suit the self-interested motivations of those who seek party status, or else suffer the consequences of a geometrically protracted, costly, and complicated litigation." *Id.*

Regarding their stated interest in voter confidence and the integrity of elections, Movants fail to rebut the presumption that the Defendants will adequately represent those interests. The Motion's adequate representation section focuses exclusively on the separate, partisan interest claimed. The entirety of the argument presented is based on the interests of "Republican candidates," "Republican Party resources," "Republican

voters," and the "Republican Party." Motion at 12–13. Nowhere does the Motion assert that Movants' interest in election integrity or secure elections is not adequately represented by Defendants. Accordingly, the Motion should be denied.

B. Movants Purport to Assert an Interest Not Implicated in this Litigation

Movants also confusingly rely on "an interest in Republican candidates winning," "promoting their chosen candidates," and "advancing the overall electoral prospects" of Republican candidates. Motion at 8. Movants emphasize that their interest is in "electing *Republicans* or conserving the resources of the *Republican Party*." *Id.* at 9. Movant's expressly assert that this "interest is inherently partisan." *Id.* at 13.

Although this partisan interest is admittedly unique from Defendants' interests, it cannot justify the Motion because it is simply not an interest implicated by this litigation. There is nothing either directly or indirectly partisan in the Complaint. This is a nonpartisan, civil rights action, with claims based on the Equal Protection Clause of the United States Constitution, the Voting Rights Act, and the National Voter Registration Act. The claims presented apply to all voters and prospective voters—those affiliated with any party and those registered with No Party Affiliation (NPA)—and the remedies sought would likewise benefit all voters and prospective voters. Neither the word "Republican" nor "Democrat" appears anywhere in the Complaint. When Plaintiff prevails, the changes it seeks will apply equally without regard to party affiliation.[1]

[1] Of note, of the four county Defendants, two of the Supervisors of Elections (those for Orange and Duval Counties) are Republicans and two (those for Miami-Dade and Broward Counties) are Democrats.

To the extent the Motion relies on this admittedly partisan interest, the Motion should be denied because that partisan interest will not be impeded or impaired by this litigation. In fact, because this is a non-partisan, voting rights and civil rights action, allowing intervention on partisan grounds will necessarily delay the proceedings, unreasonably expand the scope of this litigation, and may prejudice adjudication of Plaintiff's non-partisan claims.

Movants assert that their partisan interest will be impaired because political parties have an "inherent and intense interest in elections," and that alone is sufficient to justify mandatory intervention. Motion at 10. By that standard, every and any political party and voter advocacy organization would be able to intervene in every and any voting rights case.

But Rule 24(a) imposes a greater burden on parties seeking to intervene. *United States v. State of Alabama*, 2006 WL 2290726, at *4 (M.D. Ala. Aug. 8, 2006) ("the proposed intervenors cannot establish entitlement to intervention by relying on the conclusory and bald allegation of a mere 'perception' of partisan politics. As a practical matter, this allegation could be made regardless of which individual is appointed to carry out the HAVA implementation."); *Common Cause Rhode Island v. Gorbea*, 2020 WL 4365608 at *5 n.5 (D.R.I. July 30, 2020), (denying Republican state and national party committees' motion to intervention based on "desire to protect their voters");[2] *see also Bost v. Illinois State Bd. of Elections,* 75 F.4th 682, 690 (7th Cir. 2023) (rejecting intervention by Democratic Party of Illinois based solely in its partisan nature and

[2] On appeal, the denial was reversed "for the purposes of appeal only." *Common Cause Rhode Island v. Gorbea,* 970 F.3d 11, 14 (1st Cir. 2020). The appeal was voluntarily dismissed ten days later. 2020 WL 8299593 (1st Cir. Aug. 17, 2020).

reasoning that "[i]f that were the case, then the default rule would simply be that intervention as of right is automatic. That has never been our law."); *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, 2020 WL 6591397, at *2 (M.D.N.C. June 24, 2020) (denying intervention by state and national political parties based on its partisan interests and reasoning that "[w]hile Proposed Intervenors' interest in the outcome of elections might be different from that of the present parties, the present parties are more than capable of supporting and defending the voting process in place presently.").

This case presents a nonpartisan challenge to a provision of Florida's voter registration process. The claims asserted and remedies sought will apply to all voters and prospective voters in Florida, without regard to party affiliation (or the lack of affiliation). Movants fail to identify how this action will impair its partisan interests because it will not. Instead, the Motion makes broad and conclusory allegations about potential changes to the "election landscape" that they—like every other voter, voting advocacy organization, election official, or political party—will have to accommodate. Such general and hypothetical impediments do not meet the requirements for mandatory intervention. *See Stone*, 371 F.3d at 1310 (speculative and general claimed impairments are insufficient to support intervention); *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995) (denying intervention when movants could only show a generalized and speculative interest).

Movants' partisan interests are not implicated by this litigation. The Court should deny mandatory intervention.

2. The Court Should Exercise its Discretion and Deny Permissive Intervention

Movants also ask the Court to exercise its discretion and grant permissive intervention under Federal Rule of Civil Procedure 24(b). In so doing, the Court must determine whether the Movants have a claim or defense that shares a common question of law or fact with underlying action, as well as whether intervention will delay or prejudice the original parties' rights. *See* Fed. R. Civ. P. 24(b). Although this is an arguably more relaxed standard than the mandatory-intervention standard, it remains a standard that the Court must carefully consider and is not automatic or the foregone conclusion that the Motion casually suggests. And, as discussed above, "Intervenors do not come alone—they bring along more issues to decide" and "more discovery requests." *South Carolina v. North Carolina*, 558 U.S. 256, 288 (2010) (Roberts, C.J., concurring and dissenting).

"Even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied, the court may refuse to allow intervention." *Worlds v. Dep't of Health & Rehab. Servs.*, 929 F.2d 591, 595 (11th Cir. 1991) (cleaned up)). Permissive intervention is within the Court's "full discretionary powers." *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 712 (11th Cir. 1991), *cert. denied*, 502 U.S. 953 (1991).

The Eleventh Circuit has affirmed the denial of permissive intervention when it would result in "expanded discovery, and the possibility that the existing parties would be forced to litigate new issues." *Burke,* 833 F. App'x, at 293 n.2. The Middle District of Florida reached a similar conclusion in denying permissive intervention in *Vazzo v. City of Tampa*, 2018 WL 1629216 (M.D. Fla. Mar. 15, 2018), *report and recommendation adopted sub nom. Vazzo v. City of Tampa, Fla.*, 2018 WL 1620901 at *5 (M.D. Fla. Apr. 4, 2018) ("intervention in the underlying cause of action would unduly delay and prejudice

the adjudication of the original parties' rights. When a court grants intervention, the intervenor becomes a party to the cause of action [and] . . . . have the ability to: depose witnesses; make discovery requests; submit discovery motions; and introduce new issues in litigation," invariably leading to unnecessary delay and "would prejudice the rights of the original parties by complicating the discovery process and consuming additional resources of the original parties (and the court).")

Other United States Courts of Appeals agree that a "common question of law or fact" alone does not justify permissive intervention. *Acra Turf Club, LLC v. Zanzuccki*, 561 F. App'x 219, 222 (3d Cir. 2014) (when interests of party match those of an existing party, "the applicant's contributions to the proceedings would be superfluous and that any resulting delay would be 'undue.'"); *T-Mobile Ne. v. Town of Barnstable,* 969 F.3d 33, 41-42 (1st Cir. 2020) (denying permissive intervention when there is no showing that local government defendant would not represent movant's interests and noting that "multiplying the number of parties in a case will often lead to delay."); *Planned Parenthood of Wis., Inc. v. Kaul,* 942 F.3d 793, 803-04 (7th Cir. 2019) (denying intervention by the state legislature based on concern its participation "would likely infuse additional politics into and an already politically-divisive area of law and needlessly complicate this case.").

Movants suggest that the Court's consideration of the Motion under Rule 24(b) is narrowly limited to whether there is a common question of law or fact and whether there will be undue delay or prejudice. The Court's authority under the rule is not that limited. *See, e.g.*, *Chiles*, 865 F.2d at 1213 ("The district court has the discretion to deny intervention even if both those requirements are met."). Additionally, although Movants need not assert inadequacy of representation to seek permissive intervention, the Court's

discretion under 24(b) is broad and allows consideration of any factors that may cause delay or prejudice to the parties, including duplication or redundancy of arguments caused by identity of interests, or the unnecessary expansion of the litigation by introducing extraneous issues (like wholly partisan issues irrelevant to the claims Plaintiff has asserted in this action).

Movants' claim to permissive intervention under Rule 24(b) suffers from similar deficiencies as their mandatory-intervention argument under Rule 24(a). Movants assert their common interest with the Defendants is "the legal validity of the challenged rules." Motion at 15. As to this interest, the Motion offers no assertion that Defendants will fail to, or are unable to, defend those rules. Despite assurances to follow any briefing schedules, the inclusion of additional parties seeking to litigate the exact same issues as those the Defendants are required to protect will unreasonably risk delay and duplication and undermine judicial efficiency.

Even more problematically, Movants also seek to insert "inherently partisan" interests and issues into this litigation *(see supra* § 1.B). These partisan interests do not present common claims or defenses. If the Court allows intervention, Movants' introduction and litigation of partisan interests will inevitably "delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Because intervening parties, once admitted, have the same rights and privileges as any other party, it will be challenging, time-consuming, and prejudicial to force Plaintiffs to engage on those partisan interests, which are not part of this case.

Finally, it is worth addressing Movants' claims that political parties have always been permitted to intervene in election or voting-related cases. Although Plaintiffs dispute that claim, even if it were true historically, the presumption is meritless in facially nonpartisan voting rights litigation. Hyperpartisan election-related litigation has expanded in recent years, as have partisan-driven attempts to influence elections administration. These developments risk undermining the fair and democratic administration of elections (the very principles Movants purport to value and hope to defend). *See, e.g.,* G. Gordon, M. Weil, et al. , *The Dangers or Partisan Incentives for Election Officials*, THE BIPARTISAN POLICY CENTER & ELECTION REFORMERS NETWORK, Apr. 6, 2022, https://bit.ly/3YcTLvW ("If Americans intend to maintain a democratic system of government, we must reimagine election administration to reduce or remove partisan incentives and strengthen the firewall between politics and the administration of the voting process."); *A Democracy Crisis in the Making*, PROTECT DEMOCRACY, https://bit.ly/3Yjgczy (last visited Oct. 29, 2024) ("As the 2024 election approaches, state legislatures continue to propose and enact laws that . . . . abandon long-standing principles of nonpartisan election administration and instead allow for — or even encourage — dysfunction, misinformation, confusion, or manipulation by partisan actors."); W. Wilder, D. Tisler, & W. Weiser, *The Election Sabotage Scheme and How Congress Can Stop It*, BRENNAN CTR. FOR JUSTICE, Nov. 8, 2021, https://bit.ly/4hlLYoo ("partisan interference in election administration is part of a broader "election sabotage" or "election subversion" campaign, a national push to enable partisans to distort democratic outcomes."). For these reasons, a presumption of intervention for political parties in non-partisan voting rights cases is inappropriate.

Considering this context, Plaintiff respectfully requests that the Court consider the potentially adverse impacts of partisan interests and influence of the effective and efficient adjudication of this expressly nonpartisan litigation in exercising its discretion under Rule 24(b). Movants' interests are either identical to Defendants, and therefore likely to be duplicative, redundant, and burden and delay this matter; or they are "inherently partisan," lacking any common issue of law or fact and risking prejudice to the fair adjudication of the Plaintiff's claims. Permissive intervention should be denied.

3. Plaintiffs Do Not Oppose Participation by Movants as *Amici Curiae*

In *Vazzo,* the movant claimed that its participation as parties in the litigation would provide a "helpful, alternative viewpoint" that would help the court in its adjudication of the matter. *Vazzo*, 2018 WL 1629216, at *6. The Middle District of Florida recognized the potential value of that contribution, but it concluded that it was outweighed by the risk of prejudicing the rights of the original parties and denied the motion to intervene. However, the court in Vazzo concluded that it could benefit from the proffered alternative viewpoint by allowing the movant to participate in the case as *amici curiae. Id.* ("An amicus curiae does not become a party to the case, but it can still provide the court with its viewpoints and legal arguments . . . . Because allowing a non-party to become an amicus curiae will permit the original parties to run their own case, granting amicus curiae is the strongly preferred option. The availability of such alternative avenues of expression reinforces our disinclination to drive district courts into multi-cornered lawsuits by indiscriminately granting would-be intervenors party status and all the privileges pertaining thereto.") (cleaned up); *see also Republican Nat'l Committee et al. v. Wetzel et al.*, No. 1:24-cv-25-LG-RPM, ECF No. 47 at 1–2 (S.D. Miss. Mar. 7, 2024) (denying motion to intervene in case challenging state law as violating federal election law, reasoning that "the currently

existing parties to this lawsuit adequately represent the interests of the movants," but permitting movants to submit amicus briefs).

Movants make an argument identical to that in *Vazzo*, arguing that their intervention will bring "a diversity of viewpoints." Motion at 15. If the Court agrees that Movants can add some value to its adjudication of the case, it should follow the guidance of *Vazzo* and *Wetzel* and permit Movants to participate as *amici.* Plaintiff does not oppose Movants' limited participation as *amici.*

CONCLUSION

For the foregoing reasons, the Motion to Intervene should be denied.

Respectfully submitted this 30th day of October, 2024.

/s/ Christopher J. Merken

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CERTIFICATE OF SERVICE

I, Christopher J. Merken, certify that on October 30, 2024, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Christopher J. Merken
Christopher J. Merken