UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MI FAMILIA VOTA; ARIZONA COALITION FOR CHANGE; ULISES VENTURA, Plaintiffs-Appellees, v. KATIE HOBBS, Defendant-Appellee, REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN SENATORIAL COMMITTEE, Intervenor-Defendants-Appellants.	No. 20-16932 On Appeal from United States District Court for Arizona, Phoenix Honorable Steven P. Logan Case No. 20 Civ. 1903 (SPL) **PLAINTIFFS-APPELLEES' MOTION TO DISMISS INTERVENORS' APPEAL**

PRELIMINARY STATEMENT

Plaintiffs-Appellees Mi Familia Vota, Arizona Coalition for Change, and Ulises Ventura ("Plaintiffs") are voter registration organizers in Arizona. They filed this case to extend Arizona's voter registration cutoff of October 5 ("Voter Registration Cutoff"), arguing that the COVID-19 pandemic had severely burdened their constitutional rights to register voters and that the Voter Registration Cutoff was unconstitutional as applied under these circumstances. The

District Court agreed, enjoined enforcement of the Arizona Voter Registration Cutoff, and extended voter registration in Arizona through October 23 to permit the registration of approximately 65,000 more voters. The Defendant, Arizona's Secretary of State, declined to appeal in the interest of affording clarity to Arizonans seeking to register and vote.

Now, the Republican National Committee and the Republication National Senatorial Committee (the "Republican Committees"), who were permitted to intervene below, seek to appeal the District Court's order, arguing that an extension of the voter registration deadline jeopardizes their candidates' chances of winning the election. That argument is fundamentally flawed under both the democratic system of government of this country and binding Supreme Court precedent, including the Supreme Court's ruling less than two months ago that the Republican National Committee had no standing to appeal an order enjoining enforcement of a state election law where, as here, the state had declined to appeal. *Republican Nat'l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151, at *1 (U.S. Aug. 13, 2020).

It is black-letter law that the Republican Committees lack standing as intervenors to prosecute this appeal when the Secretary of State has declined to do so. The Republican Committees should not even have been allowed to intervene in the first place.

This appeal should be summarily dismissed. Just as the Secretary of State concluded, Arizonans should be able to continue to register to vote without any cloud of uncertainty from pending litigation by the Republican Committees.

FACTS

Every year, Plaintiffs work tirelessly over many months to expand the voting franchise to as many Arizonans as possible, going door-to-door and holding registration drives at busy supermarkets, public schools, churches, and community centers. This year, their plan was to register 55,000 voters. In just two months, between January 13 and March 20, 2020, they registered 16,507 new voters.

But then COVID-19 struck Arizona. In an effort to stop the spread of the virus, the Governor of Arizona took extraordinary measures. A state of emergency was declared; schools were closed statewide; gatherings of ten people or more were forbidden; restaurants, bars, gyms, and movie theaters were closed; and, on March 30, the Governor issued a stay-at-home order and mandated social distancing in public.

During the statewide closure, Plaintiffs were unable to hold registration drives or do door-to-door registration. Instead, Plaintiffs attempted to register voters through online advertisements and text and phone drives, but these efforts were a poor substitute for in-person registration. Arizona's online voter registration portal requires a driver's license (which not all voters have) and many people in

the communities Plaintiffs serve lack the technology and capability to register online.

Plaintiffs filed suit, challenging the constitutionality of Arizona's Voter Registration Cutoff as applied under these circumstances. Arizona's Voter Registration Cutoff provides that: "An elector shall not vote in an election called pursuant to the laws of this state unless the elector has been registered to vote . . . before midnight of the twenty-ninth day preceding the date of the election." Ariz. Rev. Stat. Ann. § 16-120. This year, therefore, Arizonans would have had to register by October 5, or lose their right to vote in the November 3 election. Plaintiffs argued that—on the heels of five months of State-imposed shutdowns and social distancing—the Voter Registration Cutoff this year severely burdens Plaintiffs' First and Fourteenth Amendment rights to register their fellow Arizonans to vote, and sought an injunction to extend the Voter Registration Cutoff.

The District Court (Hon. Steven P. Logan) agreed, enjoined enforcement of the Voter Registration Cutoff, and directed the Defendant, Arizona Secretary of State Katie Hobbs, to extend voter registration until 5:00 p.m. on October 23, 2020. *See* Dkt. 35, attached as Ex. A. Judge Logan found that the Voter Registration Cutoff severely burdened Plaintiffs' constitutional rights this year "because of the large drop-off in registration during the months of the pandemic

restrictions." Ex. A at 7. "Before COVID-19, Plaintiffs were registering about 1,523 voters a week, which dropped to 282 a week during the restrictions. After COVID-19 restrictions were lifted, their registration numbers returned to almost the same as before the pandemic." *Id.* The Secretary of State's own data shows a huge drop off in the rate of registration in Arizona this year during the pandemic, as compared to registration rates in 2016 (the last presidential election year); from January to August 2016, Arizona netted 146,214 voters, but in the same period of time in 2020, Arizona netted only 62,565 voters, less than half as many. *See* Dkt. 30-1, attached as Ex. C, ¶¶ 3-7. Plaintiffs demonstrated that, according to the State's own data, "around 65,120 voters would be able to register in the three-week extension period," including an additional 25,000 voters registered by Plaintiffs and their larger coalition of Arizona voter registration organizers. Ex. A at 5.

Judge Logan held: "Ballot access is an extremely important right, and it has been restricted during this unprecedented time." Ex. A at 8. "Weighing the burden to Plaintiffs' constitutional rights and the administrative burden on the government, the Court concludes that Plaintiff has met their burden under *Anderson/Burdick*." *Id.* at 9. "Plaintiff has shown that fewer voters will be registered in this State if the deadline is not extended. As previously discussed, the harm suffered is loss of possibly tens of thousands of voter registrations, and a burden to Plaintiffs' First and Fourteenth Amendment rights to organize voters." *Id.* "Plaintiffs' interests

outweigh those of the government . . . . [A] core tenet of democracy is to be ruled by a government that represents the population. Due to COVID-19, a portion of the population is prevented from registering to vote, and thus the integrity of the election is undermined in a different way; that portion is going unrepresented. Extending the deadline would give more time for those voters to register and let their voices be heard through the democratic process." *Id.* at 9.

Following Judge Logan's order granting Plaintiffs' motion, Defendant Secretary of State announced she would not appeal: "With the General Election less than a month away, Arizonans deserve a quick resolution to this matter. Providing clarity is more important than pursuing this litigation."[1]

Prior to granting the preliminary injunction, Judge Logan had issued a one-line order granting the Republican Committees the right to intervene in the case. Dkt. 25, attached as Ex. B. The order was issued without the benefit of Plaintiffs' briefing in opposition to the motion and without reasoning.

The Republican Committees filed a notice of appeal.

ARGUMENT

As intervenors, the Republican Committees lack standing to pursue this appeal now that the Secretary of State, the named Defendant, has declined to

[1] @SecretaryHobbs, Twitter (Oct. 6, 2020; 1:37 AM), https://mobile.twitter.com/secretaryhobbs/status/1313352717407006725.

appeal (Part I). The Republican Committees also lack standing because they failed to establish below that they were entitled to intervene, either as a matter of right or permission (Part II). This appeal should be dismissed.

I. INTERVENORS LACK STANDING TO APPEAL WITHOUT THE SECRETARY

Because the Arizona Secretary of State has decided not to appeal the District Court's order, the Republican Committees lack standing to pursue an appeal on their own.

Where, as here, "no state official has expressed opposition" to the District Court's order because the Secretary of State has decided not to appeal, the Republican Committees "lack a cognizable interest" and cannot pursue the appeal on their own. *Republican Nat'l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151, at *1 (U.S. Aug. 13, 2020) (denying stay sought by intervenor RNC). The Supreme Court has "never before upheld the standing of a private party to defend the constitutionality of a state statute when state officials have chosen not to." *Hollingsworth v. Perry*, 570 U.S. 693, 715 (2013). This Court should not do so here.

The Republican Committees' "status as an intervenor below, whether permissive or as of right, does not confer standing sufficient to keep the case alive in the absence of the State on this appeal. Although intervenors are considered parties entitled, among other things, to seek review by this Court, an intervenor's

right to continue a suit in the absence of the party on whose side intervention was permitted is contingent upon a showing by the intervenor that he fulfills the requirements of Art. III." *Diamond v. Charles*, 476 U.S. 54, 68 (1986) (citation omitted). "The State of [Arizona], by failing to appeal, has indicated no direct interest in upholding the [Voter Registration Cutoff] at issue here . . . Because the [Republican Committees] lack[] any judicially cognizable interest in the [Voter Registration Cutoff], [their] appeal [should be] dismissed for want of jurisdiction." *Id.* at 71.

For example, in the analogous case of *Hollingsworth v. Perry*, a case concerning the constitutionality of California Proposition 8's ban on same-sex marriage, the Supreme Court held that the intervenors—Proposition 8's official proponents—lacked standing to pursue the appeal after the State officials who had been named as defendants decided not to appeal the District Court's injunction. 570 U.S. at 705-06. The Court held the intervenors lacked standing to appeal, notwithstanding that they had been permitted to intervene below, because "the District Court had not ordered them to do or refrain from doing anything. To have standing, a litigant must seek relief for an injury that affects him in a personal and individual way." *Id.* (quotation omitted). The intervenors therefore had "no direct stake in the outcome of the appeal" and "[t]heir only interest in having the District Court order reversed was to vindicate the constitutional validity of a generally

applicable California law." *Id.* (quotation omitted). The Supreme Court "held that such a generalized grievance, no matter how sincere, is insufficient to confer standing. A litigant raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Id.* (quotations omitted).

The same is true here and the Republican Committees lack standing. It is axiomatic that an injury-in-fact must be "concrete and particularized" as well as "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (quotation omitted). In their briefing before the District Court, the Republican Committees articulated two purported injuries, neither of which is sufficiently concrete to rise to the level of an Article III case or controversy. First, the Republican Committees speculated that if the District Court were to grant Plaintiffs' motion and extend the Voter Registration Cutoff, the "environment" of the upcoming election would somehow be "fundamentally altered," thereby "hurt[ing] [the Republican Committees'] chances of prevailing in the election." Dkt. 15, attached as Ex. C at 4. Second, the Republican Committees claimed they would suffer an unspecified "diversion of organizational resources" as they would hypothetically incur costs in order to "maintain competitive parity"

in the upcoming election. *Id.* at 5. These two dubious arguments are one and the same—the Republican Committees claim that they will be injured by an extension of the voter registration period because they assume that a boost in statewide voter registrations will jeopardize their party's success in the November 3 general election. It is difficult to conceive of a more conjectural and nebulous injury-in-fact. The Republican Committees cannot prove nor ask the courts to take judicial notice of something that is unknowable: the voting intentions of Arizonans who *may* take advantage of the extension and register to vote between today and October 23, and then *may* go on to vote in the general election, and then *may* vote for a party other than the Republican party.

The Republican Committees can point to nothing in the District Court's order—which affords all eligible Arizonans*, regardless of party affiliation*, until October 23 to register to vote—that puts them at a competitive disadvantage or requires them to spend a single dollar. And even if they could, they certainly cannot establish that the District Court's party-neutral order *unfairly* disadvantages them. The Republican Committees' only grievance is with the people of Arizona; their claimed injury can only be addressed by moving Arizonans' hearts and minds. "Article III standing is not to be placed in the hands of concerned bystanders, who will use it simply as a vehicle for the vindication of value interests. No matter how deeply committed [the Republican Committees] may be

to upholding [the Voter Registration Cutoff] or how zealous their advocacy, that is not a particularized interest sufficient to create a case or controversy under Article III." *Hollingsworth*, 570 U.S. at 707 (citation and internal quotes omitted).

II. INTERVENTION SHOULD NOT HAVE BEEN GRANTED BELOW

The Republican Committees also lack standing to appeal because they should not have been permitted to intervene below. The District Court granted intervention in a single sentence order, Dkt 25, attached as Ex. D, without reasoning and without the benefit of Plaintiffs-Appellees' opposition papers which were filed shortly thereafter, and then declined to reconsider that order "due to the fast-turnaround needed in this case." Ex. A at 1 n.1.

"[A]n applicant seeking to intervene as of right has the burden to show that all four elements [of Rule 24(a)] are met." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (citations omitted). Here, the Republican Committees failed to show they had "a significant protectable interest relating to the property or transaction that is the subject of the action" and that the Arizona Secretary of State would "not adequately represent the [the Republican Committees'] interest." *Id.* "Failure to satisfy any one of the requirements is fatal to the application" to intervene. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009). Rule 24(b)(3) also requires that the Court "consider

whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

A. The Republican Committees Lacked a Significant Protectable Interest

A significantly protectable interest exists if: "(1) [the proposed intervenor] asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). The Republican Committees' asserted interest—"winning election or reelection," Ex. C at 4—was not sufficient because "[t]he requirement of a significantly protectable interest is generally satisfied when the interest is protectable under some law." *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003), *as amended* (May 13, 2003) (internal quotation marks omitted). No law protects the right to win an election. An extension of the voter registration period does not favor or disadvantage any particular political party. The proper forum for defending the Committees' interest in electoral victory is on the campaign trail, not in the courtroom.

B. The Secretary of State Adequately Defended the Voter Registration Cutoff

Even if the Republican Committees had a legally cognizable interest—which they do not—Defendant adequately represented such interests. "The most important factor in assessing the adequacy of representation is how the interest

compares with the interests of existing parties." *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation marks and citation omitted).

First, there is "an assumption of adequacy here when the government is acting on behalf of a constituency that it represents, which must be rebutted with a compelling showing." *Id.* (quotation marks and citation omitted). Defendant the Secretary of State "is Arizona's chief election officer who is responsible for overseeing and administering elections in Arizona." *Arizona Democratic Party v. Reagan*, No. 16 Civ. 3618, 2016 WL 6523427, at *6 (D. Ariz. Nov. 3, 2016) (citing Ariz. Rev. Stat. § 16-142(A)). Because Defendant is the State's highest elections official, a presumption of adequacy of representation existed.

Second, adequacy of representation is further presumed because Defendant and the Committees sought the same ultimate objective: to defend the Voter Registration Cutoff. A presumption of adequacy arises when an applicant for intervention and an existing party "share the same ultimate objective." *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted). To rebut this presumption, an applicant must make a compelling showing of inadequacy of representation. *Id.* (citation omitted). Where both a defendant and an intervenor-applicant seek to uphold the constitutionality of a challenged statute, they necessarily share the same ultimate objective. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2001). Here, according to the Republican Committees, "both

[Defendant] and the Proposed Intervenors [took] the position that the voter registration deadline . . . is constitutionally sound and fully enforceable." Ex. C at 7.

Third, "[b]ecause [the Committees] and [Defendant's] interests are essentially identical, the [Committees] may only defeat the presumption of adequate representation with a 'compelling showing' to the contrary." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 952 (9th Cir. 2009) (citation omitted). The Committees' speculation that they may have a different motivation than Defendant fails to carry this heightened burden. "[M]ere differences in litigation strategy are not enough to justify intervention as a matter of right." *Id.* at 954 (quotation marks and citation omitted); *see also United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002) (concluding that "any differences [the proposed intervenors] ha[d] were merely differences in strategy, which [we]re not enough to justify intervention as a matter of right").

C. The Republican Committees Also Failed to Meet the Criteria for Permissive Intervention

Because the Secretary of State adequately represented the Republican Committees' interest in enforcing the Voter Registration Cutoff, permissive intervention was also inappropriate. *See United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 756 (9th Cir. 1993) (denying permissive intervention where the government party to the case made the same arguments as the intervenors, and

would adequately represent the intervenors' interests); *see also*, *e.g.*, *Perry*, 587 F.3d at 947 (upholding the district court's denial of permissive intervention based on the identity of interests of the intervenor applicant and a party to the suit); *Cal. v. Tahoe Reg'l Plan. Agency*, 792 F.2d 775, 779 (9th Cir. 1986) (upholding a district court's denial of permissive intervention where the court found that the proposed intervenor's interest was adequately represented).

CONCLUSION

The Republican Committees lack standing to pursue this appeal and it should be dismissed.

DATED this 6th day of October, 2020.

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By s/ Zoe Salzman

Matthew D. Brinckerhoff
Jonathan S. Abady
Zoe Salzman
Nick Bourland

OSBORN MALEDON, P.A.

Mary R. O'Grady
Joshua D. Bendor

FREE SPEECH FOR PEOPLE

John Bonifaz
Gillian Cassel-Stiga*
Ben Clements*
Ronald Fein

**Admission pending*

Attorneys for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF System.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Avanika Sharda

EXHIBIT A

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al., Plaintiffs, vs. Katie Hobbs, Defendant.	No. CV-20-01903-PHX-SPL **ORDER**

On September 30, 2020, two non-profit organizations, Mi Familia Vota and the Arizona Coalition for Change, and an individual voter organizer with Mi Familia Vota, Ulises Ventura (together "Plaintiffs"), filed a Complaint seeking a declaratory judgment (Doc. 1) and an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction against Defendant Arizona Secretary of State Katie Hobbs. (Doc. 2) On October 2, 2020, Defendant filed a Response in Opposition. (Doc. 16) Also on October 2, 2020, Intervenor-Defendants Republican National Committee and National Republican Senatorial Committee filed a Motion to Intervene. (Doc. 15) The Court granted the Motion to Intervene and the Clerk of Court filed the Intervenor-Defendants' Response in Opposition to the Plaintiffs' Motion (Doc. 26) and the Intervenor-Defendants' Answer. (Doc. 27)[1] The Court also granted Governor Douglas A. Ducey's Motion for Leave to File

[1] To the extent Plaintiffs argue the Court should reconsider its decision to grant Defendant-Intervenors leave to intervene, the request is untimely due to the fast-turnaround needed in this case and will not be considered by the Court.

Amicus Brief in Support of Defendant, which the Clerk of Court filed. (Doc. 29) Due to the urgent nature of this case, the Court held oral argument on the matter on Monday, October 5, 2020. The Court also exercises its discretion under Federal Rule of Civil Procedure 65(a)(2) to consolidate the trial on the merits with the hearing on the temporary restraining order and preliminary injunction. Furthermore, because the requested injunction is longer than 14 days, pursuant to Rule 65, the Court will treat Plaintiffs' request as a request for a preliminary injunction. For the reasons that follow, the preliminary injunction is granted as modified.[2]

I. BACKGROUND

Plaintiffs allege that if Defendant were to enforce the Arizona Voter Registration Deadline of October 5, 2020, their First and Fourteenth Amendment Rights would be burdened. (Doc. 1 at 17) They seek an extension of the voter registration deadline to October 27, 2020. Defendant alleges that (1) Plaintiffs are not likely to succeed on the merits of their claims, (2) Plaintiffs fail to show the enforcement of the deadline will cause irreparable injury, and (3) an extension of the deadline would result in hardship to election officials and result in public confusion. Intervenor-Defendants allege that (1) Plaintiffs' action is untimely, (2) Plaintiffs failed to join all necessary parties, (3) Plaintiffs lack standing, and (4) the deadline does not burden Plaintiffs' rights and is necessary to vindicate important state interests.

II. LEGAL STANDARDS

When deciding whether to grant a preliminary injunction, courts follow the test set out by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S.

---

[2] Rule 65 provides that no injunction shall issue except with the giving of security by the applicant for the payment of costs and damages that may be incurred by any party found to be wrongfully enjoined. Although the language is mandatory, courts have discretion as to the amount of the security and may dispense with the requirement when they conclude there is no likelihood of harm or when the plaintiff's constitutional rights are affected. *See Reed v. Purcell*, No. CV 10-2324-PHX-JAT, 2010 WL 4394289, at *5 (D. Ariz. Nov. 1, 2010). As the likelihood of harm to Defendant is low, Defendant has not requested a bond, and Plaintiffs' First and Fourteenth Amendment rights are affected, this Court will waive the bond requirement.

7 (2008). A plaintiff seeking a preliminary injunction must establish that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor and, (4) an injunction is in the public interest. *Id*. at 20. The Ninth Circuit has also approved a "sliding scale" test. "A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor. . . . Of course, plaintiffs must also satisfy the other *Winter* factors." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (internal citations and quotations omitted).

III. DISCUSSION

Due to the urgent nature of this matter, the Court will now address the request for the preliminary injunction with the merits of the case. *See* Rule 65(a)(2).

A. Plaintiffs' success on the merits

A plaintiff seeking an injunction must first establish likely success on the merits. *See supra* II. Before determining likelihood of success on the merits, the Court must also determine whether Plaintiffs have standing and whether the Complaint (Doc. 1) was timely filed.

i. Standing

Article III standing requires would-be plaintiffs to establish (1) injury in fact that is (2) fairly traceable to the challenged conduct of the defendant that is (3) likely to be redressed by a favorable judicial decision. *Friends of the Santa Clara River v. U.S. Army Corps of Eng'rs*, 887 F.3d 906, 918 (9th Cir. 2018). Defendant and Intervenor-Defendants argue that Plaintiffs lack standing because there has been no state action and because the harm suffered is not redressable. (Doc. 16 at 8–9; Doc. 26 at 8–10) Defendant and Intervenor-Defendants further argue that Plaintiffs failed to join all necessary parties and they should have also sued the 15 County Recorders of Arizona. (Doc. 16 at 9; Doc. 26 at 7) Plaintiffs argue they can establish standing because organizations have standing when their organizational mission is frustrated, and when they have diverted resources to combat

the conduct in question. (Doc. 2 at 6) (citing *Am. Diabetes Ass'n v. U.S. Dep't of the Army*, 938 F.3d 1147, 1154 (9th Cir. 2019)). The conduct in question here is enforcement of the voter registration deadline. (Doc. 2 at 6–7) The resources Plaintiffs expended include paying registration workers higher salaries, re-allocating staff to registration efforts, developing health and safety protocol, and engaging in extra fundraising and re-budgeting. (Doc. 2 at 7) Plaintiffs further argue that the County Recorders are not necessary parties because this Court has ruled on that issue in the past and found that because the Secretary of State promulgates the voter registration rules, the counties are bound by them. (Doc. 30 at 6) *See Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, at *7 (D. Ariz. Nov. 3, 2016).

Other courts have recently found there to be standing when organizational plaintiffs' efforts to gather ballot initiative signatures this year were frustrated due to COVID-19. *See, e.g.*, *Fair Maps Nevada v. Cegavske*, No. 320CV00271MMDWGC, 2020 WL 2798018, at *6 (D. Nev. May 29, 2020). Furthermore, an injunction against the Secretary of State would redress the harm alleged by Plaintiffs. *Reagan*, 2016 WL 6523427, at *7. Thus, the Court finds Plaintiffs have sufficiently established organizational standing by showing their organizational mission was frustrated, that they have diverted resources to combat the effects of COVID-19, and that the County Recorders are not necessary parties to this action because they answer to the Defendant.

ii. Timeliness

Defendant and Intervenor-Defendants also argue the claim is untimely due to the *Purcell* doctrine as well as the equitable doctrine of laches. (Doc. 16 at 10–11; Doc. 26 at 2–7) They argue that (1) Plaintiffs should have brought the claim earlier, when it was clear COVID-19 was having an impact on registration, and (2) election rules should not be changed on the "eve of an election." (Doc. 16 at 10–11, Doc. 26 at 2–7) The *Purcell* doctrine comes from Supreme Court case *Purcell v. Gonzales*, 549 U.S. 1 (2006). *Purcell* discourages courts from creating or altering election rules close to elections to avoid voter confusion. *Id.* at 4–5. This Court has previously held that the *Purcell* doctrine does not

apply to the extension of election deadlines because the requested remedy is "asking [election] officials to continue applying the same procedures they have in place now, but for a little longer." *Arizona Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR, 2020 WL 5423898, at *13 (D. Ariz. Sept. 10, 2020). The Court finds the current case no different.

The laches doctrine bars claims when there is "unreasonable delay" in bringing the suit that "prejudices the opposing party or the administration of justice." *Arizona Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922 (D. Ariz. 2016) (internal citations omitted). "To determine whether delay was unreasonable, a court considers the justification for the delay, the extent of the plaintiff's advance knowledge of the basis for the challenge, and whether the plaintiff exercised diligence in preparing and advancing his case." *Id.* at 923. Here, Plaintiffs told the Court during the October 1, 2020 scheduling conference that they were waiting to bring this claim until they knew the harm could be redressed by extending the voter registration deadline, and thus establish standing, and reasserted that argument in their Reply brief and in oral argument. (Doc. 30 at 8) The State's COVID-19 restrictions were lifted in August. Plaintiff Mi Familia Vota has been able to register about 1,094 voters per week since the last week of August, as opposed to the less than 200 registered during the restrictions. (Doc. 2-1 at 6) Plaintiff Arizona Coalition for Change has been able to register 1,343 voters in August and September. (Doc. 2-2 at 4–5) Plaintiffs argue they will be able to register about 2,000 voters in three weeks, and that their coalition will be able to register 25,000 more voters if the deadline is extended. (Doc. 30 at 2) Plaintiffs also assert that, based on new State data, around 65,120 voters would be able to register in the three-week extension period, if it is granted. (Doc. 30 at 2) Thus, because Plaintiffs needed the September data to establish standing and to diligently prepare their case, the Court finds the claim is not laches-barred.

iii. *Anderson*/*Burdick* test

When a plaintiff alleges a violation of voter rights under the First and Fourteenth Amendments, courts apply the *Anderson/Burdick* balancing or sliding scale test. *Soltysik*

v. Padilla, 910 F.3d 438, 449 n.7 (9th Cir. 2018). The "character and magnitude" of the state-imposed burden on the plaintiff is weighed against the strength of the state's interest and whether the burden is necessary given the state interest. *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d 1019, 1025 n.2 (9th Cir. 2016). In *Burdick v. Takushi*, the Supreme Court held that if the restriction on First and Fourteenth Amendment rights is severe, the restriction must be "narrowly drawn" to advance a "compelling" state interest. 504 U.S. 428, 434 (1992). If the restriction is less severe, the more flexible balancing test applies. *Id.* If the restriction is non-discriminatory and reasonable, a state's "important regulatory interests" are usually enough justification for the rule. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Generally, when the constitutional challenge is to an electoral system the governmental interest is given more weight than when the challenge is to a discrete election rule. *See generally Pub. Integrity All., Inc.*, 836 F.3d 1019.

Plaintiffs argue the burden is severe because the deadline combined with COVID-19 restricts ballot access. (Doc. 2 at 8–9) Plaintiffs cite other courts that have applied the stricter balancing test in light of COVID-19. (Doc. 2 at 9–10) Some but not all those cases are relevant here; the cases resolving voter registration deadlines are more helpful than those regarding ballot initiative petitions. *See, e.g.*, *Democratic Nat'l Comm. v. Bostelmann*, No. 20-CV-249-WMC, 2020 WL 5627186, at *17–22 (W.D. Wis. Sept. 21, 2020) (extending Wisconsin's statutory voter registration deadline and absentee ballot deadlines); *Gallagher v. N.Y. State Bd. of Elections*, No. 20 CIV. 5504 (AT), 2020 WL 4496849, at *16–18, 23 (S.D.N.Y. Aug. 3, 2020) (extending New York's statutory mail-in ballot postmark deadline in light of COVID-19). Here, Defendant argues that the burden is not severe, and the Court should instead apply the more flexible balancing test, based on a holding in the Eastern District of California. (Doc. 16 at 11–12) That court found that the burden was not severe on a political party attempting to register voters when voters could have registered without in-person contact and when the state COVID-19 restrictions exempted election-related activities. *Common Sense Party v. Padilla*, No. 220CV01091MCEEFB, 2020 WL 3491041, at *1, 6 (E.D. Cal. June 26, 2020). Defendant-

Intervenors argue that the challenge is to the electoral system and thus the governmental interest should bear more weight in the analysis. (Doc. 26 at 11)

The Court finds, similarly as it did in regard to the *Purcell* doctrine, that the challenge is to the enforcement and execution of one rule and not the whole system, and thus the government's interest will not be given extra weight. The Court further finds Plaintiffs have shown the burden is severe, unlike the plaintiffs in *Padilla*, because of the large drop-off in registration during the months of the pandemic restrictions, as discussed below.

Plaintiffs offer data that shows that they could not reach the same number of voters during the pandemic months. (Doc. 2 at 8) Before COVID-19, Plaintiffs were registering about 1,523 voters a week, which dropped to 282 a week during the restrictions. (Doc. 2 at 8–9) After COVID-19 restrictions were lifted, their registration numbers returned to almost the same as before the pandemic. *See supra* III.A.ii. Defendant argues the right was not restricted and that more voters have registered in 2020 than during the 2016 presidential election. (Doc. 16 at 12) Plaintiff rebuts this argument by showing with state and census data that the State population has grown since 2016, and that the voter registration did not grow proportionally this year. (Doc. 30 at 3; Docs. 30-2, 30-3, 30-4, 30-5, 30-6, 30-7, & 30-8) Defendant argued at oral argument that the changes in the data collection methods caused the discrepancy. Defendant also argues voter registration is not an in-person activity and thus the cases Plaintiffs cite involving in-person activities (*e.g.*, signature gathering for ballot initiative measures) are distinguishable. (Doc. 16 at 14–15) Defendant-Intervenors argue that registering to vote "has never been easier" because voters can register online and via telephone, and also point to the signatures collected for ballot measures as proof that in-person solicitation could still occur during COVID-19 restrictions. (Doc. 26 at 10–16)

While this Court acknowledges the efforts made by the Secretary and the State to make voter registration easier, the Court is also cognizant of the large population of Arizona that lacks access to the internet. Registering to vote has never been easier for *some*,

though others are not so fortunate. Ballot access is an extremely important right, and it has been restricted during this unprecedented time. Furthermore, the change in data collection from 2016 to now does not account for the percentage drop in voter registration, particularly considering the great deal of population growth.

The Court asked the Defendant to address the administrative burdens on the state in its Response, and Defendant did not do so, beyond referring to difficulties with voters who register too close to the election requesting an early voting ballot. (Doc. 16 at 13) Those voters may not receive or return their ballots in time to be counted. (Doc. 16 at 13) Early voting closes on October 23, 2020. Defendant also argues that election officials will have to process early votes alongside new voter registration if the deadline is extended. (Doc. 16 at 13) Defendant generally cites the state interest in orderly elections. (Doc. 16 at 12) Intervenor-Defendants argue that the deadline is necessary to ensure voters have lived in the state for 29 days before voting (a state voter eligibility requirement), that Defendant needs time to verify voter residency before Election Day, and that extending the deadline will result in voter confusion. (Doc. 26 at 15–16)

The Court recognizes the importance of reducing voter confusion and ensuring Arizona's other voter regulations are able to be upheld. However, the Court takes note that 31 other states have later voter deadlines than Arizona, many of which allow voters to register when they show up to vote on Election Day. Furthermore, the Intervenor-Defendants' argument that the October 5, 2020 deadline is necessary to enforce the State's 29-day residency rule is unpersuasive, considering Arizona voters are required to present proof of residency at the polls on Election Day. Finally, the Court agrees with Plaintiffs' point made in oral argument that voter confusion will be minimal. Voters who are already registered will not need to bother with the new deadline, and those voters that were unable to register before October 5, 2020 now have extra time. The Court acknowledges the difficulty with early voting requests coming in after the deadline for early voting has passed, and notes that Plaintiffs admitted during oral argument that even a shorter extension would help cure their harm.

Weighing the burden to Plaintiffs' constitutional rights and the administrative burden on the government, the Court concludes that Plaintiff has met their burden under *Anderson/Burdick*. However, finding the State's concerns about early voting requests to be compelling, the court will take them into account when granting relief.

B. <u>Plaintiff's harm in the absence of relief</u>

Plaintiff has shown that fewer voters will be registered in this State if the deadline is not extended. *See supra* III.a.iii. As previously discussed, the harm suffered is loss of possibly tens of thousands of voter registrations, and a burden to Plaintiffs' First and Fourteenth Amendment rights to organize voters. To the extent that Intervenor-Defendants argue Plaintiffs cannot establish harm based on expenditures made to register voters, Plaintiffs made no such argument and thus it will not be considered by the Court.

C. <u>The balance of equities and the public interest</u>

When the government is a party, the balance of equities and public interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of equities has been addressed in the *Anderson/Burdick* analysis. Plaintiffs' interests outweigh those of the government. The public interest factor cuts both ways, though it ultimately falls in favor of Plaintiffs. Voter confusion undermines public trust in the electoral process, and it is highly important that Defendant retains a sense of integrity in its procedures. However, a core tenet of democracy is to be ruled by a government that represents the population. Due to COVID-19, a portion of the population is prevented from registering to vote, and thus the integrity of the election is undermined in a different way; that portion is going unrepresented. Extending the deadline would give more time for those voters to register and let their voices be heard through the democratic process.

IV. <u>CONCLUSION</u>

The Court finds that Plaintiffs have established standing, made a timely claim, and met their burden under the *Anderson/Burdick* test. Defendant and Defendant-Intervenors have failed to show the administrative burden on the state outweighs the burden on Plaintiffs' First and Fourteenth Amendment rights. However, taking into account the Early

Voting deadline of October 23, 2020 and the issues that may arise with voters requesting early voting ballots after that deadline, the Court will grant a preliminary injunction on the voter registration deadline until October 23, 2020 to alleviate any potential problems with belated requests for any Early Voting ballots beyond that date. Accordingly,

IT IS ORDERED that Plaintiffs' request for a preliminary injunction (Doc. 2) is **granted as modified**.

IT IS FURTHER ORDERED that Defendant is preliminarily enjoined from enforcing the A.R.S. § 16-120 October 5, 2020 voter registration cutoff.

IT IS FURTHER ORDERED that Defendant shall direct the County Recorders to accept all voter registration applications received by 5:00 p.m. on October 23, 2020 and process them in time for eligible voters to vote in the November 3, 2020 general election.

IT IS FURTHER ORDERED that the Court exercises its discretion and waives the requirement of a security bond accompanying this preliminary injunction.

IT IS FURTHER ORDERED that this case is **dismissed**.

IT IS FURTHER ORDERED that the Clerk of Court shall terminate this action.

Dated this 5th day of October, 2020.

Honorable Steven P. Logan
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mi Familia Vota, Arizona Coalition for Change, and Ulises Ventura; Plaintiffs, -against- Katie Hobbs, in her official capacity as Arizona Secretary of State, Defendant.	No. 20 Civ. 1903 (SPL)

Declaration of Zoe Salzman

ZOE SALZMAN, an attorney duly admitted *pro hac vice* in the District of Arizona, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a partner with the law firm of Emery Celli Brinckerhoff Abady Ward & Maazel LLP, attorneys for Plaintiffs Mi Familia Vota, Arizona Coalition for Change, and Ulises Ventura.

2. I respectfully submit this declaration in further support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.

3. Attached hereto as Exhibit A is a true and correct copy of the Arizona Secretary of State's "State of Arizona Registration Report" from January 2016, *available at* https://apps.azsos.gov/election/voterreg/2016-01-01.pdf (last visited October 5, 2020). According to this official report, 3,254,397 Arizonans were registered to vote as

of January 2016. *See* Ex. A at 1, 5 (highlighted text).

4. Attached hereto as Exhibit B is a true and correct copy of the Arizona Secretary of State's "State of Arizona Registration Report" from August 2016, *available at* https://apps.azsos.gov/election/voterreg/2016-08-01.pdf (last visited Oct. 5, 2020). According to this official report, 3,400,611 Arizonans were registered to vote as of August 2016. *See* Ex. B at 1, 5 (highlighted text).

5. Attached hereto as Exhibit C is a true and correct copy of the Arizona Secretary of State's "State of Arizona Registration Report" from January 2020, *available at* https://azsos.gov/sites/default/files/2020_0121_January_State_Voter_Registration.pdf (last visited Oct. 5, 2020). According to this official report, 3,926,649 Arizonans were registered to vote as of January 2020. *See* Ex. C at 1, 5 (highlighted text).

6. Attached hereto as Exhibit D is a true and correct copy of the Arizona Secretary of State's "State of Arizona Registration Report" from August 2020, *available at* https://azsos.gov/sites/default/files/State_Voter_Reigstration_2020_Primary.pdf (last visited Oct. 5, 2020). According to this official report, 3,989,214 Arizonans were registered to vote as of August 4, 2020. *See* Ex. D at 1, 5 (highlighted text).

7. Per the Secretary of State's own data in Exhibits A–D, cited above, from January to August 2016, the total number of Arizonans registered to vote increased from 3,254,397 to 3,400,611, a net gain of 146,214 voters. From January to August 2020, the total number of Arizonans registered to vote increased from 3,926,649 to 3,989,214, a

net gain of only 62,565 voters. In short, from January to August 2016, Arizona netted more than twice as many additional voters than during the same period in 2020.

8. According to the Declaration of Arizona State Elections Director Sambo Dul (Dkt. 18-3), as of October 1, 2020, 4,160,915 Arizonans are currently registered to vote. *Id.* ¶ 10. As noted above, 3,989,214 Arizonans were registered to vote as of August 4, 2020. Ex. D at 1, 5 (highlighted text). Thus, between August 4 and October 1, 2020, Arizona's voter rolls increased by 171,701 registered voters—a post-shutdown registration average of 2,960 net additional voters per day. If registrations were to continue at this rate throughout an extension of the Voter Registration Cutoff to October 27, 2020, Arizona would gain a net additional 65,120 registered voters.

9. Attached hereto as Exhibit E is a true and correct copy of Governor Doug Ducey's June 25, 2020 press release titled, "Governor Ducey: 'Arizonans Safer At Home,'" *available at* https://azgovernor.gov/governor/news/2020/06/governor-ducey-arizonans-safer-home (last visited Oct. 5, 2020).

10. Attached hereto as Exhibit F is a true and correct copy of a page from the Secretary of State's website titled, "Voting In This Election," *available at* https://azsos.gov/elections/voting-election (last visited Oct. 5, 2020).

11. Attached hereto as Exhibit G is a true and correct copy of Governor Doug Ducey's December 31 2019 press release titled, "New Census Report Ranks Arizona Third In Percentage Growth Rate," *available at* https://azgovernor.gov/node/4604 (last visited Oct. 5, 2020).

12. Attached hereto as Exhibit H is a true and correct copy of a page

from the Secretary of State's website titled, "Voting by Mail: How to Get a Ballot-by-Mail," *available at* https://azsos.gov/votebymail (last visited Oct. 5, 2020).

13. Attached hereto as Exhibit I is a true and correct copy of a page from the Secretary of State's website titled, "Proof of Citizenship Requirements," *available at* https://azsos.gov/elections/voting-election/proof-citizenship-requirements (last visited Oct. 5, 2020).

Dated: October 5, 2020

ZOE SALZMAN

EXHIBIT C

STATECRAFT
LAW • GOVERNMENT • CRISIS MANAGEMENT
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003
(602) 382-4078

Kory Langhofer, Ariz. Bar No. 024722
kory@statecraftlaw.com
Thomas Basile, Ariz. Bar. No. 031150
tom@statecraftlaw.com

Attorneys for Proposed Intervenors Republican National Committee and National Republican Senatorial Committee

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Mi Familia Vota, *et al.*, Plaintiffs, v. Katie Hobbs, in her official capacity as the Arizona Secretary of State, Defendant.	No. 2:20-cv-01903-SPL **MOTION TO INTERVENE**

The Republican National Committee ("RNC") and the National Republican Senatorial Committee ("NRSC" and, together with the RNC, the "Proposed Intervenors") respectfully move to intervene in this action pursuant to Fed. R. Civ. P. 24. "Rule 24 traditionally receives liberal construction in favor of applicants for intervention," *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003), and, as detailed below, the Proposed Intervenors' participation in these proceedings will not only protect their cognizable legal interests in the uniform and consistent enforcement of Arizona's voter registration laws, but

will facilitate the informed and expeditious resolution of the issues presented in the Complaint.

ARGUMENT

I. The Proposed Intervenors Are Entitled to Intervene As of Right

Intervention must be permitted

> when the proposed intervenor claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). The Ninth Circuit has distilled this provision to a four-part rubric. "A party seeking to intervene as of right must meet four requirements: (1) the applicant must timely move to intervene; (2) the applicant must have a significantly protectable interest relating to the property or transaction that is the subject of the action; (3) the applicant must be situated such that the disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by existing parties." *Arakaki*, 324 F.3d at 1083; *see also Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998); *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002). "In evaluating whether Rule 24(a)(2)'s requirements are met, we normally follow 'practical and equitable considerations' and construe the Rule 'broadly in favor of proposed intervenors.' We do so because '[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (internal citations omitted). Each of the four elements is addressed below.

A. This Motion Is Timely

Any contention that the Proposed Intervenors tarried unreasonably before seeking to intervene is implausible on its face. This Motion was filed less than 48 hours after the Plaintiffs initiated their suit. The Proposed Intervenors' diligence in moving to intervene, compounded with the lack of pending discovery and the absence of any prior rulings on the

merits, militate strongly in favor of granting the Motion. *See Arakaki*, 324 F.3d at 1084 ("The district court did not abuse its discretion by finding Hoohuli's motion, filed three weeks after the filing of Plaintiffs' complaint, timely."); *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) ("Applicants filed their motion to intervene in a timely manner, less than three months after the complaint was filed and less than two weeks after the Forest Service filed its answer to the complaint."); *Silver v. Babbitt*, 166 F.R.D. 418, 424 (D. Ariz. 1994) (allowing intervention when complaint was filed on February 17 and intervenor filed application on March 3).

Indeed, this Court has allowed motions to intervene that were preceded by a far longer temporal lapse, particularly when, as here, the Court has not yet resolved substantive issues in dispute and any alleged dilatoriness did not prejudice any named party. *See, e.g.*, *Acosta v. Huppenthal*, CV 10-623 TUC-AWT, 2012 WL 12829994, at *2 (D. Ariz. Feb. 6, 2012) ("It is true that the Motion to Intervene was filed more than fourteen months after Plaintiffs' initial Complaint and that it was filed after Defendant's Motion to Dismiss and Plaintiffs' Motion for Preliminary Injunction had been fully briefed and argued before the Court. However, no discovery has taken place and briefing on the parties' summary judgment motions is still ongoing."); *Equal Employment Opportunity Comm'n v. AutoZone, Inc.*, CV 06-1767-PCT-PGR, 2006 WL 8440511, at *1 (D. Ariz. Oct. 31, 2006) ("[T]he motion to intervene was timely brought because it was filed some nine weeks after the commencement of this action."); *Gila River Indian Cmty. v. United States*, CV10-1993 PHX-DGC, 2010 WL 4811831, at *2 (D. Ariz. Nov. 19, 2010) (six-week delay was not unreasonable, noting that intervention would not disrupt previously issued scheduling order). The Motion hence easily satisfies the timeliness criterion.

B. The Proposed Intervenors Have a Significant Protectable Interest in the Litigation

The Proposed Intervenors "have a significant protectable interest in the action." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). "To demonstrate a significant protectable interest, [the movant] must establish that the

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

interest is protectable under some law and that there is a relationship between the legally protected interest and the claims at issue," but "'[n]o specific legal or equitable interest need be established.'" *Id.* "Instead, the 'interest' test directs courts to make a 'practical, threshold inquiry' and 'is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted).

An "interest" sufficient for intervention at least arguably can be more generalized and diffuse than an "injury" necessary for standing. *See Prete v. Bradbury*, 438 F.3d 949, 955 n.8 (9th Cir. 2006) (noting circuit split and declining to decide the question). The Proposed Intervenors' interest in this dispute, however, is so direct and palpable that the relief sought by the Plaintiffs would exact at least two cognizable legal injuries on them.

First, a distinct injury inheres in the existence of an unlawfully structured competitive electoral environment. The notion of competitive standing is not novel, and posits that a candidate or political party may challenge an election law or procedure that unlawfully "hurts the candidate's or party's own chances of prevailing in the election." *Townley v. Miller*, 722 F.3d 1128, 1135 (9th Cir. 2013) (internal citation omitted); *see also Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011) (affirming that "the 'potential loss of an election' was an injury-in-fact sufficient to give a local candidate and Republican party officials standing"). The deadline governing the submission of voter registration is a pillar of the "structur[e] of th[e] competitive environment," and Plaintiffs' requested relief would "fundamentally alter the environment in which [the Proposed Intervenors] defend their concrete interests (e.g. their interest in . . . winning [election or] reelection)." *Shays v. Federal Election Comm.*, 414 F.3d 76, 85-86 (D.C. Cir. 2005); *cf.* Wright & Miller, 7C FED. PRAC. & PROC. CIV. § 1908.1 (3d ed.) ("[I]n cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention.").

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

Second, and relatedly, an organization incurs a cognizable injury by a "frustrat[ion]" of "its mission," which "cause[s] it to divert resources in response to that frustration of purpose." *East Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1265 (9th Cir. 2020); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (holding that an alleged "impair[ment]" of organization's ability to carry out its mission engendered standing, explaining that "[s]uch concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitutes far more than simply a setback to the organization's abstract social interests"); *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006) (observing that "the goal of a political party is to gain control of government by getting its candidates elected" and that this interest can sustain legal standing). The Proposed Intervenors have predicated their own extensive voter registration efforts in Arizona on the statutorily fixed deadline of October 5, 2020. *See* Ariz. Rev. Stat. § 16-120. By upending this critical fixed premise of the electoral environment, the order sought by the Plaintiffs will impel the Proposed Intervenors to allocate additional scarce resources to voter registration activities in Arizona to ensure that they maintain competitive parity. *See infra* Section I.C.

In short, the Proposed Intervenors' interests in (1) preserving a predicable, fair and equitable electoral environment underpinned by the enforcement of neutral and generally applicable statutes, and (2) avoiding a diversion of organizational resources caused by last-minute displacements of key statutorily deadline easily suffice for intervention.

C. The Order Sought By Plaintiffs Would Directly Impair the Proposed Intervenors' Protectable Interests

"Generally, after finding that a proposed intervenor has a significant protectable interest, courts have little difficulty concluding that the disposition of the case may affect it." *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Ampam Riggs Plumbing Inc.*, CV-14-00039-PHX-DGC, 2014 WL 1875160, at *5 (D. Ariz. May 9, 2014); *see also Sw. Center for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) ("We follow the guidance of Rule 24 advisory committee notes that state that '[i]f an absentee would be

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.'").

Should the Plaintiffs obtain the relief they seek, the Proposed Intervenors will be impelled to redirect substantial funds and manpower to restarting their voter registration efforts in Arizona, and to educate prospective Republican registrants about the extended registration deadline. As explained in the Declaration of Brian Seitchik (attached hereto as Exhibit A), each additional week during which the voter registration deadline is extended will cost the Republican Committees approximately $37,000. The Republican Committees' personnel will also be compelled to expend substantial time and resources developing alternative voter registration, get-out-the-vote drives, and Election Day operation strategies to account for the new reality and educating voters, volunteers, staff, and contractors regarding the change in Arizona's election rules. *See* Seitchik Decl. ¶¶ 8-9.

The political, financial and logistical dislocations that a ruling in Plaintiffs' favor would inevitably engender for the Proposed Intervenors constitutes an impairment of their protected interests. *See OCA-Greater Houston v. Texas*, 867 F.3d 604, 612 (5th Cir. 2017) (finding that the need to "educate voters about Texas's [voter assistance laws]" was "an undertaking that consumed [the plaintiff's] time and resources in a way they would not have been spent" and so gave rise to organizational standing); *Common Cause Indiana v. Lawson*, 937 F.3d 944, 951 (7th Cir. 2019) (finding organizational standing where "the Organizations will be forced to spend resources cleaning up the mess" caused by challenged voter roll maintenance" and will "expend[] resources educating voters and community activities" about the issue); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1165–66 (11th Cir. 2008) (same conclusion where "[t]he organizations reasonably anticipate that they will have to divert personnel and time to educating volunteers and voters" about registration issues).

D. No Existing Party Adequately Represents the Proposed Intervenors' Interests

"The burden of showing inadequacy of representation is 'minimal,'" *Citizens for*

Balanced Use v. Montana Wilderness Ass'n, 647 F.3d 893, 898 (9th Cir. 2011), and while it increases "when the government is acting on behalf of a constituency that it represents," *id.*, it is easily discharged in this case.

Although both the Secretary and the Proposed Intervenors take the position that the voter registration deadline prescribed by Ariz. Rev. Stat. § 16-120(A) is constitutionally sound and fully enforceable, "the government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" *Id.* at 899 (internal citation omitted); *see also Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1255 (10th Cir. 2001); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994) (allowing industry representatives' intervention in challenge to logging regulation that could affect existing timber contracts, noting that "[t]he government must represent the broad public interest, not just the economic concerns of the timber industry"); *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("[W]e look skeptically on government entities serving as adequate advocates for private parties"); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) ("[I]t is well-established that governmental entities generally cannot represent the 'more narrow and parochial financial interest' of a private party."); *Nat. Res. Def. Council v. McCarthy*, 16-CV-02184-JST, 2016 WL 3880702, at *4 (N.D. Cal. July 18, 2016) ("[T]he Proposed Intervenors are specifically concerned with their own interests in the water supplies affected by the challenged water standards, which are distinct from the interests of the EPA in defending its procedural scheme. The Court therefore cannot conclude that the EPA 'will undoubtedly make' all of the Proposed Intervenors' arguments."); *Arizona v. Jewell*, CV-15-00245-TUC-JGZ, 2016 WL 3475333, at *2 (D. Ariz. Jan. 25, 2016) ("Although [proposed intervenor] seeks the same general outcome as both the Plaintiffs and the other Plaintiff-Intervenors," its own uniquely situated interests supported intervention as of right).

This truism assumes particular salience in the electoral context. While the Secretary's "arguments turn on [her] inherent authority . . . [and] responsibility to properly

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures." *Issa v. Newsom*, 220CV01044MCECKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020). Here, the Secretary has not asserted any ability or intention to safeguard the explicitly political, electoral and strategic interests that underlie the Proposed Intervenors' participation in these proceedings.

More specifically, the Proposed Intervenors' interests diverge from those of the Secretary in at least three respects.

First, the Secretary's stated opposition to the Proposed Intervenors' participation in this action is an *ipso facto* indicator of inadequate representation. *See Utah Ass'n of Ctys.*, 255 F.3d at 1256 ("The government has taken no position on the motion to intervene in this case. Its 'silence on any intent to defend the [intervenors'] special interests is deafening.'") (internal citation omitted); *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 997 (10th Cir. 2009) (citing government's opposition to coordinating filings with proposed intervenor in concluding that "we are convinced that [proposed intervenor] has established a possibility of inadequate representation").

Second, the Secretary's consent to a consolidation of the Plaintiffs' motion for preliminary relief with a trial on the merits pursuant to Fed. R. Civ. P. 65 and apparent position that this dispute presents pure questions of law bespeak a critical disagreement with the Proposed Intervenors, who believe that the litigation entails significant factual questions. Specifically, the Proposed Intervenors intend to present to the Court evidence that the Secretary will not—in the form of data and declarations relating to the collection of ballot measure petition signatures during the relevant time period—which undermines the Plaintiffs' allegation of a "burden" on their First and Fourteenth Amendment rights. *See generally Berg*, 268 F.3d at 823-24 (observing that "the interests of government and the private sector may diverge. On some issues Applicants will have to express their own unique private perspectives and in essence carry forward their own interests").

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

Third, the Secretary has not confirmed any intention to prosecute a vigorous and expedited appeal of an adverse ruling. *See Americans United for Separation of Church & State v. City of Grand Rapids*, 922 F.2d 303, 306 (6th Cir. 1990) ("We agree with the District of Columbia Circuit that a decision not to appeal by an original party to the action can constitute inadequate representation of another party's interest."); *Fisher-Borne v. Smith*, 14 F. Supp. 3d 699, 709 (M.D.N.C. 2014) (government's refusal to appeal "may . . . suggest that Movants are not adequately represented by existing parties"); *see also Wildearth Guardians*, 573 F.3d at 997 (noting the possibility of inadequate representation by government agency and pointing out that "government policy may shift"); *Virginia v. Ferriero*, CV 20-242 (RC), 2020 WL 3128948, at *4 (D.D.C. June 12, 2020) (commenting that "it is not difficult to see that the interests of Movants and the federal government 'might diverge during the course of the litigation,' *id.* at 736 particularly since the federal government 'remains free to change its strategy' as the case proceeds" (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 730 (D.C. Cir. 2003))). Should the Secretary decline to immediately appeal in such circumstances, only the Proposed Intervenors—by virtue of the direct injury to their legal interests that an adverse ruling would inflict, *see supra* Section I.B and I.C—would have standing to independently commence an appeal. *See generally United States v. Windsor*, 570 U.S. 744 (2013) (intervenor must have Article III standing to pursue its own appeal). The very real possibility that the Proposed Intervenors may well be the only party possessing the incentive and willingness to vindicate the enforcement of Arizona's voter registration deadline underscores at least a potential incongruence of interests with the Secretary. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 & n.10 (1972) ("The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate"; proof of certain divergence is not necessary).

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

II. In the Alternative, the Court Should Allow Permissive Intervention

Even if the Court finds that one or more of the prerequisites for intervention as of right remain unsatisfied, it should allow the Proposed Intervenors to intervene permissively, pursuant to Rule 24(b). That provision contemplates intervention by "anyone" who "has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), provided that intervention will not "unduly delay or prejudice the adjudication of the original parties' rights," *id.* 24(b)(3). As apprehended by the Ninth Circuit, Rule 24(b) countenances permissive intervention "where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997). Proposed Intervenors plainly meet each of these requirements, as this Court recently acknowledged when granting intervention to the RNC in a similar case involving challenges to rules for the 2020 election. *See Ariz. Democratic Party v. Hobbs*, Doc. 60, No. 2:20-cv-01143-DLR (D. Ariz. June 26, 2020) (granting intervention to the RNC and noting that "given the importance of the issues Plaintiffs raise, the Court will benefit from hearing all perspectives").

A. The Court Has Jurisdiction to Hear the Proposed Intervenors' Defenses and Arguments

The Proposed Intervenors' participation in these proceedings is sustained by the same jurisdictional basis that undergirds the entirety of this action—*i.e.*, the presence of claims arising under the Constitution and laws of the United States. *See* 28 U.S.C. § 1331. As the Ninth Circuit has explained, the necessity of a jurisdictional predicate for intervention "stems . . . from our concern that intervention might be used to enlarge inappropriately the jurisdiction of the district court" by supplying a diversity of citizenship that otherwise is lacking among the named parties or, alternatively, divesting the Court of jurisdiction over cases that previously featured diversity of citizenship. *See Freedom from*

Religion Found., Inc. v. Geithner, 644 F.3d 836, 843 (9th Cir. 2011). By contrast, when the main action is predicated on federal question jurisdiction, the requirement to demonstrate an independent jurisdictional basis for intervention arises "only where a proposed intervenor seeks to bring new state-law claims," *id.* at 844, which is not the case here.

B. The Motion to Intervene Is Timely

The mere two-day interregnum between the initiation of this action and the filing of the instant Motion was not unreasonable, nor did it inflict any articulable prejudice on any party. The Court has not yet issued any substantive rulings on the merits, and intervention does not threaten to upend the resolution of any previously settled issues or the existing parameters of the litigation. *See, e.g.*, *San Jose Mercury News, Inc. v. U.S. Dist. Court*, 187 F.3d 1096, 1101 (9th Cir. 1999) (allowing permissive intervention when motion was filed 12 weeks into the litigation, deeming the delay not unreasonable and noting the lack of prejudice); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 n.10 (9th Cir. 2002) (affirming grant of permissive intervention, reasoning that "because the intervention motions were filed near the case outset and the defendant-intervenors said they could abide the court's briefing and procedural scheduling orders, there was no issue whatsoever of undue delay"), *abrogated in part on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011); *WildEarth Guardians v. Zinke*, CV-18-00048-TUC-JGZ, 2018 WL 3475441, at *2 (D. Ariz. July 19, 2018) (allowing intervention on both mandatory on permissive grounds, noting that "[t]his case is at an early stage and briefing on Defendants' pending motion to dismiss has not closed").

C. The Proposed Intervenors' Arguments Will Relate to the Same Factual and Legal Questions Already in Dispute and Will Contribute to an Informed Adjudication of Plaintiffs' Claims

Not only do the Plaintiffs' claims and the Proposed Intervenors' arguments share at least one common legal question, they are effectively coterminous in their subject matter. *See generally Andrews v. Triple R. Distrib., LLC*, CV 12-346-TUC-HCE, 2012 WL 3779932, at *2 (D. Ariz. Aug. 31, 2012) ("The determination of whether a

STATECRAFT LAW • GOVERNMENT • CRISIS MANAGEMENT

'common question' exists is liberally construed." (internal citation omitted)). The Proposed Intervenors are prepared to litigate on the legal terrain delineated in the Plaintiffs' Complaint—*i.e.*, the constitutional validity and enforceability of Arizona's voter registration deadline. While they reserve the right to invoke any and all arguments that may bear on the Plaintiffs' claims, the Proposed Intervenors do not intend to raise additional claims, counterclaims or cross-claims against any party. *See A.D. v. Washburn*, CV-15-01259-PHX-NVW, 2016 WL 5464582, at *5 (D. Ariz. Sept. 29, 2016) (concluding that permissive intervenor's desire to defend the statute challenged by the plaintiffs provided the requisite common question of law and fact); *WildEarth Guardians*, 2018 WL 3475441, at *4 (finding common question when "[b]oth the [proposed intervenor] and Defendants seek to defend the validity and adequacy of" challenged agency plan); *contrast Melendres v. Arpaio*, 07-2513-PHX-MHM, 2008 WL 4446696, at *2 (D. Ariz. Sept. 30, 2008) (denying permissive intervention where issues raised by proposed intervenor "seem to be predicated on entirely separate events" relating to the alleged activities of a non-party).

In sum, by proffering an otherwise unrepresented perspective—animated by their singular electoral and partisan stake in the enforcement of Arizona's statutory voter registration deadline—while respecting the litigation parameters demarcated by the Court and the named parties, the Proposed Intervenors will contribute to the informed adjudication of the case without unreasonably augmenting or prolonging the proceedings. *See Feldman v. Arizona Sec'y of State's Office*, CV-16-01065-PHX-DLR, 2016 WL 4973569, at *2 (D. Ariz. June 28, 2016) (finding that political party committee intervenors "bring a different perspective to the complex issues raised in this litigation. The Court might benefit from hearing these viewpoints."). The Court accordingly should permit their intervention.

STATECRAFT
LAW · GOVERNMENT · CRISIS MANAGEMENT

III. If Intervention is Denied, the Court Should Accept the Proposed Intervenors' Response to the Motion for Temporary Restraining Order as an *Amicus Curiae* Brief and Allow Proposed Intervenors to Renew Their Motion After Judgment Is Entered

Should the Court find that the Proposed Intervenors are not entitled to intervene as of right and decline to permit them to intervene permissively, it should, in the alternative, allow the Proposed Intervenors leave to (1) file their proposed Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction as a brief of *amici curiae*, and (2) renew this Motion to Intervene if and to the extent that the Secretary (a) enters into a settlement of the Plaintiffs' claims and/or (b) declines to appeal on an expedited basis any final judgment entered in favor of the Plaintiffs on any claim. *See Fisher-Borne*, 14 F. Supp. 3d at 710 (allowing limited intervention to preserve right of appeal).

CONCLUSION

For the foregoing reasons, the Court should permit the Proposed Intervenors to intervene in this action either as of right or on a permissive basis, pursuant to Fed. R. Civ. P. 24.

RESPECTFULLY SUBMITTED this 2nd day of October, 2020.

STATECRAFT PLLC

By: */s/ Thomas Basile*

Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003

Counsel for Proposed Intervenors Republican National Committee and National Republican Senatorial Committee

STATECRAFT
LAW • GOVERNMENT • CRISIS MANAGEMENT

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2020, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for Filing, which will send notice of such filing to all registered CM/ECF users.

By: *_/s/Thomas Basile_*
Thomas Basile

STATECRAFT
LAW · GOVERNMENT · CRISIS MANAGEMENT

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al., Plaintiffs, vs. Katie Hobbs, Defendant.	No. CV-20-01903-PHX-SPL **ORDER**

Having reviewed the Republican National Committee and the National Republican Senatorial Committee's timely Motion to Intervene (Doc. 15) filed pursuant to Fed. R. Civ. P. 24,

IT IS ORDERED that the Motion to Intervene (Doc. 15) is **granted**.

IT IS FURTHER ORDERED that the Clerk of Court shall file the lodged Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (lodged at Doc. 19).

IT IS FURTHER ORDERED that the Clerk of Court shall file the lodged Answer to the Complaint (lodged at Doc. 20).

Dated this 2nd day of October, 2020.

Honorable Steven P. Logan
United States District Judge