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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY, et al.;

Plaintiffs,

v.

KAREN FANN, et al.;

Defendants,

TYLER BOWYER, NANCY COTTLE, JAKE
HOFFMAN, ANTHONY KERN,
CHRISTOPHER M. KING, JAMES R. LAMON,
SAM MOORHEAD, ROBERT
MONTGOMERY, LORAIN PELLEGRINO,
GREG SAFSTEN, SALVATORE LUKE
SCARMARDO, KELLI WARD, MICHAEL
WARD, MICHAEL JOHN BURKE;

Proposed-Intervenors.

Case No. CV2020-016840

MOTION TO INTERVENE

1 Under Rule 24, individuals and entities may intervene in an action either as of right
 2 or with permission of the Court. Although the two intervention rubrics contemplate
 3 different criteria, Arizona courts have long recognized that Rule 24 as a whole “is remedial
 4 and should be construed liberally in order to assist parties seeking to obtain justice in
 5 protecting their rights.” *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life*
 6 *Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 54 (App. 2011) (internal citations
 7 omitted). Despite representing to undersigned counsel in prior litigation that it had a policy
 8 of not opposing intervention, Plaintiff Maricopa County has stated they will oppose
 9 intervention. Defendant has, to the best of undersigned counsel’s knowledge, not yet
 10 appeared nor taken a position on intervention.

11 “Intervention of right is appropriate when the party applying for intervention meets
 12 all four of the following conditions: (1) the motion must be timely; (2) the applicant must
 13 assert an interest relating to the property or transaction which is the subject of the action;
 14 (3) the applicant must show that disposition of the action may impair or impede its ability
 15 to protect its interest; and (4) the applicant must show that the other parties would not
 16 adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Arizona*
 17 *Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)).¹ Each criterion
 18 is met here.

19 There can be no question this motion is timely as it comes within one judicial day
 20 of the filing of Plaintiffs’ complaint.

21 In addition, Intervenors have several interests relating to the subject of the action
 22 and disposition of the action may impair or impede their ability to protect those interests.²
 23 All intervenors are registered Arizona voters and citizens of Arizona. Intervenors also
 24 include the following categories of persons (there is significant overlap):

25
 26 ¹ Pursuant to Rule 24(c), the Proposed Intervenors have attached a copy of their Proposed Answer-In-Intervention
 as **Exhibit 1**.

27 ² Because Federal Rule of Civil Procedure 24 is “substantively indistinguishable” from its state law analogue,
 28 Arizona courts “may look for guidance to federal courts’ interpretations of their rules.” *Heritage Village II*
Homeowners Ass’n v. Norman, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

1 *. The Arizona Republican Party’s complete slate of nominees for the office of
2 presidential elector (the “Republican Electors”).

3 *. The chairwoman and executive director of the Arizona Republican party,
4 chairmen of the Republican Party in various counties (as well as other Republican
5 leadership), and Republican elected officials.

6 *. Both an incoming and outgoing member of the Arizona State House.

7 *. Plaintiffs in prior election-related litigation.

8 Intervenors’ interests in the litigation track these categories.³

9 Plaintiffs’ Complaint recognizes that the Republican Electors have an obvious
10 interest in any investigation into whether they were improperly deprived of recognition as
11 Arizona’s true electors, especially one which may lead to further legislative action on their
12 behalf at either at the state or federal level. The only way the Republican Electors can
13 protect this interest is by helping to ensure that the state legislature gets all of the
14 information it needs to conduct a full and thorough investigation.

15 Defendants’ Complaint also claims that it is illegal for Defendants to disclose
16 certain categories of public records, which Defendants have historically been available to
17 Republican Party officials, elected officials, and candidates to help them more effectively
18 register voters and target political advertising. Accordingly, Intervenors have an interest
19 ensuring that they continue to have access to this information. An adverse ruling now, if
20 upheld on appeal, could establish precedent that could prevent them from gaining access
21 to such information during future election cycles. Since public records are available upon
22 request to any citizen of Arizona, all Intervenors also have an interest in ensuring that the
23 scope of Arizona public records law is not constrained through an adverse ruling in this
24 litigation.

25 Intervenors who are members of the Arizona State House have several additional
26 interests in this litigation. Firstly, since the House has the same subpoena power as the
27 Senate, they have an interest in ensuring that legislative subpoenas are complied with.

28

³ The list of interests set forth in this brief is intended to be by way of example and not limitation.

1 Secondly, Plaintiff has sought to quash the Senate’s subpoena on the basis that its members
2 failed to comply with that body’s internal rules for issuing subpoena. Intervenors have an
3 interest in ensuring that courts continue to treat disputes concerning their compliance with
4 their legislative body’s internal rules as nonjusticiable political questions and in avoiding
5 a ruling which could create chaos by conferring on outside persons standing to challenge
6 their compliance with the House’s internal rules. Plaintiffs also seek to import a common-
7 law rule from California constraining the situations in which legislators may issue
8 subpoenas. Intervenors have an interest in preventing such a rule from taking hold in
9 Arizona courts. Finally, Representative Kern has an interest in advancing the goals of the
10 “Joint Resolution” mentioned in Plaintiffs’ Complaint that he and ten other legislators
11 jointly signed. These goals include a full audit of the election results which compliance
12 with the subpoena will help facilitate.

13 Third, Intervenors were all Plaintiffs in *Bowyer v Ducey*. In that case, they sought
14 injunctive relief requiring Defendant-Intervenor Maricopa County to turn over many of the
15 same types of evidence that the Legislature’s subpoena seeks. One of Maricopa County’s
16 defenses in that action was that being required to produce such materials would cause them
17 irreparable harm as the County needed to have them available to produce them to the
18 Legislature. Intervenors therefore have an interest in ensuring that Plaintiffs cannot now
19 evade the cause of transparency in this action by playing both sides against the middle.

20 Finally, the other parties to this action would not adequately represent Intervenors’
21 interests. The Republican Electors are uniquely interested in being recognized as Arizona’s
22 true electors. In addition, Defendants cannot be expected to have as a primary goal
23 Republican officials’ or candidates’ continued access to the data they use to register voters
24 and assist Republican candidates. Finally, not all Defendants are Republicans and the more
25 leftward members of that group can be expected to slide with Plaintiffs.

26 Alternatively, for similar reasons, permissive intervention is appropriate as to those
27 Intervenors who are Republican Party officials as well as Representatives Kern and
28 Hoffman pursuant to ARCP 24(a) and is additionally appropriate as to Representatives

1 Kern and Hoffman pursuant to ARCP 24(b)(2).

2 **I. The Proposed Intervenors.**

3 Each of the following Intervenors are registered Arizona voters and nominees of the
4 Republican Party to be a Presidential Elector on behalf of the State of Arizona: Tyler
5 Bowyer, a resident of Maricopa County and a Republican National Committeeman; Nancy
6 Cottle, a resident of Maricopa County and Second Vice-Chairman of the Maricopa County
7 Republican Committee; Jake Hoffman, a resident of Maricopa County and member-elect
8 of the Arizona House of Representatives; Anthony Kern, a resident of Maricopa County
9 and a member of the Arizona House of Representatives; James R. Lamon, a resident of
10 Maricopa County; Samuel Moorhead, a resident of Gila County; Robert Montgomery, a
11 resident of Cochise County and Republican Party Chairman for Cochise County; Loraine
12 Pellegrino, a resident of Maricopa County; Greg Safsten, a resident of Maricopa County
13 and Executive Director of the Republican Party of Arizona; Kelli Ward, a resident of
14 Mohave County and Chair of the Arizona Republican Party; and Michael Ward, a resident
15 of Mohave County. The constitutes the full slate of the Arizona Republican party’s
16 nominees for presidential electors (the “Republican Electors”).

17 In addition to the above named Intervenors, there are three additional Intervenors.
18 All are registered Arizona voters and Republican party officials in Arizona: Michael John
19 Burke, a resident of Pinal County and Republican Party Chairman for Pinal County;
20 Christopher M. King, a resident of Pima County and Republican Party Vice Chairman of
21 Pima County; and Salvatore Luke Scarmardo, a resident of Mohave County and
22 Republican Party Chairman for Mohave County.

23 **II. The Proposed Intervenors May Intervene as of Right.**

24 “Intervention of right is appropriate when the party applying for intervention meets
25 all four of the following conditions: (1) the motion must be timely; (2) the applicant must
26 assert an interest relating to the property or transaction which is the subject of the action;
27 (3) the applicant must show that disposition of the action may impair or impede its ability
28 to protect its interest; and (4) the applicant must show that the other parties would not

adequately represent its interests.” *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing Ariz. R. Civ. P. 24(a)(2)).⁴ Each criterion is met here.

A. The Motion to Intervene is Timely.

The timeliness of this Motion is not subject to reasonable dispute. By moving within one judicial day of the commencement of this action, prior to any hearing or substantive dispositions by the Court, and before Defendants have appeared, the Proposed Intervenors have acted with reasonable, if not extraordinary, celerity in vindicating their protected interests. Courts have routinely found intervention timely when sought much later than Proposed Intervenors have here.⁵ The result should be no different in this case.

B. The Proposed Intervenors Have Multiple Interests in the Subject of the Litigation and Disposition of the Action in their Absence May Impede Their Abilities to Protect those Interests.

Given that so many of the allegations in its Complaint concern Intervenors, Plaintiff Maricopa County cannot reasonably deny that Intervenors have an interest in this litigation. Even if some Intervenors lack standing to bring a claim that the Arizona Legislature is entitled to have its subpoena enforced, this is no impediment to their entitlement to participate in this action as intervenors. The “interest” sufficient for intervention as of right can be substantially more generalized and diffuse than the concrete “injury” required for standing, *see Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011) (“In general, an applicant for intervention need not establish . . . standing to intervene.”). Rather, the

⁴ Because Federal Rule of Civil Procedure 24 is “substantively indistinguishable” from its state law analogue, Arizona courts “may look for guidance to federal courts’ interpretations of their rules.” *Heritage Village II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 572, ¶ 19 (App. 2019).

⁵ *See, e.g., Heritage Vill. II*, 246 Ariz. at 571-72, ¶ 17 (motion filed five days after applicants became aware that their interests were at risk was timely); *Winner Enterprises, Ltd. v. Superior Court in & for County of Yavapai*, 159 Ariz. 106, 109 (App. 1988) (finding that motion to intervene in “extremely compressed” special action was timely when it was filed thirty days after initiation of lawsuit and 21 days after court entered preliminary injunction); *see also Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003) (“The district court did not abuse its discretion by finding Hoohuli’s motion [to intervene], 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 [defendant] filed its answer to the complaint.”).

1 “interest” requirement is satisfied by establishing “that the interest is protectable under
 2 some law and that there is a relationship between the legally protected interest and the
 3 claims at issue.” *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897
 4 (9th Cir. 2011).⁶ However, “[n]o specific legal or equitable interest need be established.”
 5 *Id.* “Instead, the ‘interest’ test directs courts to make a ‘practical, threshold inquiry’ and ‘is
 6 primarily a practical guide to disposing of lawsuits by involving as many apparently
 7 concerned persons as is compatible with efficiency and due process.’” *United States v. City*
 8 *of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (internal citations omitted); *see also*
 9 *Planned Parenthood*, 227 Ariz. at 279, ¶ 57 (holding that healthcare providers’ “liberty of
 10 conscience rights” were an interest sufficient to support intervention in litigation
 11 challenging abortion-related laws). In addition, Intervenors have interests independent of
 12 the Legislature’s ability to enforce its subpoena, which are discussed further below.

13 *i. Interests of Intervenors as Republican Electors*

14 Plaintiffs themselves have alleged that the Republican Electors have a direct interest
 15 in the outcome of this litigation. For example, Plaintiffs have alleged that:

16 *The purpose of the subpoena [at issue in this litigation] is to provide the*
 17 *information to counsel for the losing candidate [i.e. President Trump] so that*
 18 *he might attempt to use it to overturn the elections results.*

19 Complaint ¶ 88. Plaintiffs have further alleged that:

20 *The same day as the special meeting by the Senate Judiciary Committee Plus*
 21 *One [which led to the subpoena being issued], members of the Arizona*
 22 *Legislature signed what purported to be a “Joint Resolution.” It requested*
 23 *“that the alternate 11 electoral votes be accepted for Donald J. Trump or to*
 24 *have all electoral votes nullified completely until a full forensic audit can be*
 25 *conducted.” It further “resolved that the United States Congress is not to*

27 ⁶ Because Arizona's rules are substantially similar to the Federal Rules of Civil Procedure, Arizona Courts
 28 “give significant weight to federal interpretations of those rules.” *Jaynes v. McConnell*, 238 Ariz. 211, 214,
 358 P.3d 632, 635 (App. 2015).

1 *consider a slate of electors from the State of Arizona until the Legislature*
 2 *deems the election to be final and all irregularities resolved.”*

3 Complaint ¶ 43 (the “Joint Resolution”).

4 If these allegations are true, then the Republican Electors indisputably⁷ have a
 5 strong interest in the outcome of this litigation insofar as Defendant alleges the subpoena
 6 was issued for their benefit and to advance the goal of the Joint Resolution in ensuring that
 7 their rivals, the Democratic Party’s electors, are not considered by Congress.

8 *ii. Interests of Intervenors as Republican Party Officials and Elected*
 9 *Officials*

10 As set forth above, Kelli Ward is the Chairwoman of the Arizona Republican Party,
 11 Greg Safsten is the Executive Director of the Arizona Republican Party, and certain other
 12 Intervenors are county chairs of the Republican Party or otherwise in leadership positions
 13 for the Republican Party. Yet other Intervenors (Kern and Hoffman) are elected officials,
 14 specifically current or incoming members of the Arizona House of Representatives.⁸

15 One of the items sought by the Subpoena, which Plaintiffs allege is confidential by
 16 law, is the “personally identifying information for **every registered voter in Maricopa**
 17 **County, including their addresses, dates of birth, political party affiliation, whether**
 18 **they voted in the November 3, 2020 general election, and if so, what type of ballot they**
 19 **cast.”** Complaint ¶ 47 (Plaintiffs find this request so egregious as to necessitate their use
 20 of bold font in the original).⁹ However, such information is public record. *See e.g.* A.R.S.
 21 §§ 16-161(A), 16-153. As pertains to Intervenors, there is a long history of this type of
 22 information being made available to both political parties and campaigns. Republican party
 23 officials use such information both to help with voter registration efforts and assist their
 24 nominees’ efforts to win their election. Both candidates and political parties also use such
 25 information to help decide which voters to target advertising to, as well as for other

26 ⁷ Under Arizona law, it is actually the Republican Electors, and not President Trump himself, that are candidates for
 27 office. A.R.S. § 16-212(A).

28 ⁸ No concession is made that the Republican Electors are not also elected officials.

⁹ Importantly, no data that was sought by the Legislature would in any way reveal how any given voter voted.

1 purposes. The current availability of such data allows political candidates and parties to
2 direct political advertising in an extremely granular fashion. Republican party officials and
3 members of the Legislature seeking re-election frequently use this currently-available data
4 to construct mailing campaigns targeting, for example: (i) Independent voters, (ii) over the
5 age of 55 (iii) who cast early ballots, (iv) in at least three of the past four elections (v)
6 located in a particular legislative district. The loss of the ability to do so in the future would
7 represent a fundamental upheaval in the way that campaigns are conducted in Maricopa
8 County. Accordingly, a declaration that such information was protected from disclosure,
9 especially if sustained on appeal, would adversely impact the ability of party officials to
10 do their jobs and elected officials, like Kern and Hoffman, to run their next campaign.

11 Both candidates and Republican Party officials also have an interest in election
12 transparency and integrity to ensure a level playing field for themselves or their candidates
13 respectively. Intervenors believe that this interest is best served by maximizing the degree
14 of oversight, including legislative oversight, in our elections.

15 Furthermore, as any Arizonan can make a public records request and all Intervenors
16 are citizens of Arizona. Therefore, all Intervenors also have an interest in ensuring that the
17 scope of Arizona public records law is not curtailed by the decision in this action.

18 *iii. Interests of Intervenors as Members of the Arizona House of*
19 *Representatives*

20 Representatives Kern and Hoffman are members of the Arizona House of
21 Representatives, which has the same power as the Senate to subpoena the production of
22 documents. *See e.g.* A.R.S. § 41-1154. As such, they have a further interest in making sure
23 that legislative subpoenas are complied with, and not flouted, and would be independently
24 harmed by any precedent weakening the Legislature’s subpoena power.

25 Further, the first count of Plaintiffs’ Complaint asks this Court to ascertain whether
26 the Legislature has complied with its own rules in issuing the Subpoena. *See e.g.* Complaint
27 ¶ 66 (“While state law would permit the Senate president to issue subpoenas, the rules of
28 the Senate provide her a more narrow power and by rule the Senate Rules take precedence

1 over statute. Accordingly, the subpoenas were issued in contravention of Senate rule and
2 are of no effect.”), *See further* Complaint ¶¶ 62-65. Representatives Kern and Hoffman
3 have an interest in ensuring that whether members of a legislative body have complied with
4 that body’s internal rules remains a non-justiciable political question. *See e.g. Brown v.*
5 *Hansen* 973 F.2d 1118, 1122 (3d Cir. 1992) (“courts generally refuse to scrutinize a
6 legislature's choice of or compliance with internal rules and procedures.”). And they
7 certainly have an interest in avoiding the chaos that would ensue from a finding that persons
8 who are not members of the Legislature, such as Maricopa County, have standing to
9 challenge members’ compliance with their body’s internal rules.

10 Additionally, Plaintiffs seek, on the basis of a California Supreme Court decision,
11 to have this Court recognize a severe restriction on the legislature’s right to issue
12 subpoenas. Complaint ¶ 59. Particularly, they seek to have the Court declare that legislative
13 subpoenas are proper only if they are authorized by ordinance, serve a valid legislative
14 purpose, and are “pertinent” to the subject matter of an investigation. *Id.* Such a rule, if
15 established, would diminish Representative Kern and Hoffman’s subpoena powers as
16 members of the Arizona State Legislature and invite Arizona Courts to make political
17 decisions about what materials are “pertinent” to the members of the legislature such as
18 themselves.

19 Finally, Representative Kern is a signatory to the “Joint Resolution” discussed in
20 the previous subsection seeking a full legislative audit and for congress not to recognize
21 the Democratic Electors pending the outcome of such an audit. He further seeks to
22 intervene to gain the materials he and his fellow signatories need to conduct such an audit.

23 *iv. Interests of Intervenors as Parties to Bowyer v Ducey and Other*
24 *Election-Related Litigation*

25 Finally, Plaintiffs point to various election-related lawsuits that have been dismissed
26 this cycle to excuse their compliance with the Subpoena (while concerningly omitting suits
27 in which the County did not prevail). Complaint ¶¶ 31 and 32. As Intervenors were also
28 parties to several of those cases, this highlights their connection to the instant litigation as

1 well as their usefulness in fleshing out what went on in those matters and providing an
 2 opposing perspective.¹⁰

3 More importantly, however, Intervenors were all Plaintiffs in *Bowyer v Ducey*. In
 4 that case, Intervenors sought an injunction requiring Maricopa County to produce, among
 5 other things, “all servers, software, voting machines, tabulators, printers, portable media,
 6 logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all
 7 election materials related to the November 3, 2020 Arizona election s[e]ized and
 8 impounded for forensic audit and inspection by the Plaintiffs.” Maricopa County’s Motion
 9 to Dismiss (*Boyer v Ducey*) 7:6-11 [**Exhibit 2**] (quoting Plaintiffs’ Motion for Temporary
 10 Restraining Order and Preliminary Injunction).

11 Maricopa County moved to intervene in that matter (something prior Plaintiffs and
 12 current Intervenors) did not oppose. Upon being granted leave to intervene, Maricopa
 13 County filed a Motion to Dismiss claiming that it would suffer irreparable harm if the Court
 14 were to order such relief for three reasons, one of which was that that:

15 *[M]embers of the legislature, including the chairman of the committee with*
 16 *jurisdiction over election procedures, have requested the County to perform*
 17 *an “election day demonstration” of the County’s voting equipment in early*
 18 *to mid-December in order to determine what changes to Arizona election*
 19 *law, if any, should be considered when the time comes to file bills in early*
 20 *January. The order the Plaintiffs request would frustrate the legislators’*
 21 ***important objective** to continue to improve elections and voting in Arizona.*

22 Maricopa County’s Motion to Dismiss (*Boyer v Ducey*) 7:17-23 (emphasis supplied). Yet
 23 now that the Legislature has actually sought production of many of these items, the County
 24 claims that it has done so for “no valid legislative purpose[.]” Complaint ¶ 74, and that
 25 continued fact-finding which may lead to legislation being introduced in the near future
 26

27 ⁸ For example, Defendants characterize the trial court in *Ward v Jackson Court* as finding “that the evidence did not
 28 show . . . an erroneous vote count.” Complaint 7:2-3. However, the trial court in that case actually found that, to the
 contrary, there were “mistakes” in the vote count. December 4, 2020 Minute Entry Ruling (*Ward v Jackson*) p 8.
<https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1930>.

1 does not constitute an investigation because “no votes were taken and no follow up meeting
2 was set” Complaint ¶ 86. Further, the County seeks to slow-play this production, past the
3 beginning of session and past date Congress is scheduled to meet to consider the electors,
4 by seeking to have this case designated as a “tier three” matter. Complaint ¶ 13.

5 In other words, Maricopa County (successfully) sought dismissal of Intervenors’
6 claims in previous litigation, in part by admonishing them that the appropriate path to
7 investigation and reform ran through the Legislature, to whom the County was so eager to
8 produce the items that Intervenors sought that it alleged it would suffer irreparable harm
9 by depriving the Legislature of those items by turning them over to Intervenors. Now, after
10 Intervenors and many others have successfully pushed for the Legislature to formally
11 subpoena these items in aid of its own investigation, Maricopa County claims that these
12 items were only available through an election challenge. Complaint ¶ 81; *See also*,
13 Complaint ¶ 82 (“No law provides the Legislature the power to act as a ‘Court Above the
14 Supreme Court,’ to hold its own investigation of an election[.]”). What Defendants seek,
15 in actuality, is a world in which they can use the Legislature as an excuse not to produce
16 evidence to parties like Intervenors and parties like Intervenors as an excuse not to produce
17 evidence to the Legislature. Among the reasons that Intervenors seek to be included in this
18 litigation to prevent both sides from being played against one another in this fashion to
19 defeat the cause of transparency and election integrity.

20 In addition, *Boyer v Ducey* is currently on appeal. One of the types of relief that
21 Intervenors requested as Plaintiffs in that matter was that the Legislature be permitted to
22 designate Arizona’s electors, instead of merely accepting the slate certified by Hobbs.
23 Insofar as the considerations of time are pressing before Congress meets, Intervenors have
24 a keen interest in any attempts by the Legislature to obtain the information it needs to make
25 an informed decision as to what electors are most appropriate for it to pick.

26 **D. No Current Party Adequately Represents Intervenors’ Interests**

27 Intervenors’ independent interests will not be fully and adequately represented by
28 either the Plaintiffs or the Defendants in this action.

1 As an initial matter, Intervenors are directly opposed to Plaintiffs. Plaintiffs are
2 seeking to quash the very subpoena that Intervenors wish to see upheld.

3 In addition, the Legislature cannot be expected to have as its primary concern
4 representing the interests of the Republican Electors in investigating the propriety of their
5 supposed defeat. Nor can it be expected to have as a primary focus the protection of
6 Republican officials' continued access to data sources so they can continue to support
7 Republican candidates. *See, e.g., Maricopa County Republican Party et al. v. Reagan et*
8 *al.*, No. CV2018-013963 (Maricopa Cty. Super. Ct. Nov. 9, 2018) (granting intervention
9 to political parties and other interested political actors in election dispute); *Mi Familia Vota*
10 *v. Hobbs*, No. 20-cv-01093 (D. Ariz. Oct. 2, 2020) (granting intervention to political party
11 in election dispute); *see also Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL
12 3074351, at *4 (E.D. Cal. June 10, 2020) ("While [government] Defendants' arguments
13 turn on their inherent authority as state executives and their responsibility to properly
14 administer election laws, Proposed [political party] Intervenors are concerned with
15 ensuring their party members and the voters they represent have the opportunity to vote in
16 the upcoming federal election, advancing their overall electoral prospects, and allocating
17 their limited resources to inform voters about the election procedures."). Nor, by way of
18 further example, will all Defendants necessarily share Representative Kern's desire to
19 advance the goals of the Joint Resolution as not all defendants are signatories to the Joint
20 Resolution. Indeed, some Defendants may actually wish for Plaintiffs to prevail (Defendant
21 Quezada, for example, is Democrat and a noted bastion of the Legislature's left wing).

22 Finally, Maricopa County is a political subdivision of the state making both Plaintiff
23 and Defendants essentially different branches of the same organization. Adequate
24 representation of non-state actors necessitates their involvement. A failure to vigorously
25 oppose Plaintiff's Complaint would leave Intervenors and the Arizona Legislature no
26 remedy in this or future actions relating to elections, something that this court should find
27 abhorrent under Arizona's Constitution.
28

1 **III. In the Alternative, Permissive Intervention is Appropriate Because of the**
 2 **Proposed Intervenors’ Interest in the Proceedings, the Procedural Posture of the**
 3 **litigation, and the Absence of any Prejudice to any Existing Party as a Consequence**
 4 **of their Intervention.**

5 Alternatively, Intervenors Hoffman, Kern, Bowyer, Cottle, Montgomery, Safsten,
 6 Kelli Ward, Burke, King, and Scarmardo should be granted permissive intervention. If the
 7 Court finds that one or more of the prerequisites for intervention as of right remain
 8 unsatisfied, Rule 24(b) supplies an independent basis for Proposed Intervenors’
 9 permissible intervention.¹¹ The Court may allow permissive intervention when the
 10 applicant “has a claim or defense that shares with the main action a common question of
 11 law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). As with Rule 24(a), Rule 24(b) should similarly
 12 be liberally construed. *Dowling v. Stapley*, 221 Ariz. 251, 272 ¶ 67 (App. 2009) (citing
 13 *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986)).

14 Representatives Kern and Hoffman, as members of the Arizona legislature
 15 interested in seeing that body’s subpoena enforced, share the defenses of their colleagues
 16 who have been named as Defendants in this action and their grounds for asserting those
 17 (expected) defenses.

18 Additionally, as concerns representatives Kern and Hoffman, intervention is
 19 appropriate under ARCP 24(b)(2), which provides that: “On timely motion, the court may
 20 permit a state governmental officer or agency to intervene if a party's claim or defense is
 21 based on: (A) a statute administered by the officer or agency; or (B) any regulation, order,
 22 requirement, or agreement issued or made under a statute administered by the officer or
 23 agency.” The present action is based on a subpoena issued pursuant to A.R.S. § 41-1154,
 24 etc., which was drafted by, and is administered by, the legislature and its members.

25 Meanwhile, those Intervenors who are Republican party officials share similar
 26 defenses to those of the Defendants when it comes to whether the voter information that

27 _____
 28 As discussed previously, this Motion is undisputedly timely, which is a prerequisite to any variant of permissive intervention.

1 they have relied on for many years is, in fact, protected from disclosure. Namely, that such
2 information is already, by law, in the public domain.

3 **CONCLUSION**

4 While they reserve the right to invoke any and all legal arguments, claims or
5 crossclaims that may bear on the questions in dispute, the Proposed Intervenors are
6 prepared to adhere to all deadlines and schedules established by the Court. In sum,
7 permitting the intervention will not impede or encumber the expeditious disposition of this
8 matter; to the contrary, the Proposed Intervenors' joinder will only ensure that the Court's
9 adjudication of the parties' claims and defenses is informed by the perspective interests of
10 all interested participants.

11 Accordingly, for the foregoing reasons, this Court should find the Proposed
12 Intervenors are entitled to intervene as of right, pursuant to Ariz. R. Civ. P. 24(a). In the
13 alternative, the Court should in its discretion permit Proposed Intervenors to intervene,
14 pursuant to Ariz. R. Civ. P. 24(b).

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16 Respectfully submitted this 21st day of December, 2020

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