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9 **ARIZONA SUPERIOR COURT**  
10 **MARICOPA COUNTY**

11 ARIZONA REPUBLICAN PARTY, ) No. CV2020-014553  
12 )  
Plaintiff, )  
13 )  
v. ) **MOTION TO INTERVENE**  
14 )  
ADRIAN FONTES, as Maricopa County )  
15 Recorder; and the MARICOPA COUNTY ) (Assigned to The Hon. John Hannah)  
BOARD OF SUPERVISORS, by and through )  
16 CLINT HICKMAN, JACK SELLERS, STEVE )  
CHUCRI, BILL GATES, AND STEVE )  
17 GALLARDO, )  
18 Defendants. )  
19 )

20 Pursuant to Rules 24(a) and 24(b), Ariz. R. Civ. P., Katie Hobbs, in her official capacity  
21 as Arizona Secretary of State (“Secretary”), moves to intervene as a defendant. The Secretary’s  
22 counsel has conferred with counsel for all parties and they do not oppose this Motion.<sup>1</sup>

23 \_\_\_\_\_  
24 <sup>1</sup> Given the expedited nature of this action, the Secretary requests leave to file this Motion  
25 without attaching a responsive pleading under Rule 24(c)(1)(B). Courts have held that seeking  
26 leave without attaching a proposed pleading “is a ‘purely technical’ defect which does not result  
in the ‘disregard of any substantial right.’” *Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183,  
1188 (9th Cir. 2009) (citation omitted). Even where “the literal terms of [the proposed pleading  
requirement] are not met,” courts will grant a motion to intervene that provides the “legal and

1 As the state’s Chief Elections Officer, the Secretary has a significant interest in the subject  
2 of this lawsuit, and a judgment in Plaintiffs’ favor would directly interfere with her important  
3 interests. Indeed, the first paragraph of Plaintiffs’ complaint alleges that the Secretary’s Elections  
4 Procedures Manual (“EPM”) “is in violation of state law,” yet they inexplicably failed to name  
5 her as a defendant. The Secretary has a right to intervene as a defendant under Rule 24(a), and  
6 alternatively, the Court should grant permissive intervention under Rule 24(b).

7 **I. Argument.**

8 **A. The Secretary Should Be Permitted to Intervene as a Matter of Right.**

9 Under Rule 24(a)(2), Ariz. R. Civ. P., “[o]n timely motion, the court must permit anyone  
10 to intervene who . . . claims an interest relating to the subject of the action, and is so situated that  
11 disposing of the action in the person’s absence may as a practical matter impair or impede the  
12 person’s ability to protect that interest, unless existing parties adequately represent that interest.”  
13 *See also* Ariz. R. Civ. P. 19(a) (necessary parties). Rule 24 is “remedial and should be construed  
14 liberally in order to assist parties seeking to obtain justice in protecting their rights.” *Planned*  
15 *Parenthood Arizona, Inc. v. Am. Ass’n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz.  
16 262, 279 ¶ 53 (App. 2011) (quotation omitted).

17 “Intervention of right is appropriate when the party applying for intervention meets all  
18 four of the following conditions: (1) the motion must be timely; (2) the applicant must assert an  
19 interest relating to the property or transaction which is the subject of the action; (3) the applicant  
20 must show that disposition of the action may impair or impede its ability to protect its interest;  
21 and (4) the applicant must show that the other parties would not adequately represent its  
22

23 \_\_\_\_\_  
24 factual grounds for intervention.” *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 474 (9th  
25 Cir. 1992); *see also IMH Special Asset NT 168 LLC v. Beck*, No. 1 CA-CV 19-0156, 2020 WL  
26 6192846, at \*5 ¶ 25 (Ariz. Ct. App. Oct. 22, 2020) (applying same standards in Arizona state  
court). The Secretary believes the Court can decide Plaintiffs’ claims on dispositive motions,  
and if granted intervention, she will timely submit such a motion based on the Court’s schedule.

1 interests.” *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13 (App.  
2 2014). The Secretary satisfies each of these requirements.

3 **1. The Secretary’s Motion Is Timely.**

4 First, there is no question that the Secretary’s motion is timely. In deciding whether a  
5 motion to intervene is timely, Arizona courts consider “the stage to which the lawsuit has  
6 progressed,” “whether the applicant could have attempted to intervene earlier,” and “whether the  
7 delay in moving for intervention will prejudice the existing parties in the case.” *State ex rel.*  
8 *Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384 ¶ 5 (2000). Plaintiffs  
9 filed this action yesterday, and this motion to intervene is being filed less than 24 hours later.  
10 The Secretary acted as quickly as possible under the circumstances, and allowing her to intervene  
11 at this early stage will not prejudice any other parties.

12 **2. The Secretary Has an Interest in the Subject of This Action, Which**  
13 **Would Be Impaired by Disposition of This Case.**

14 Second, the Secretary has an interest relating to the subject matter of this action, in the  
15 form of ensuring that Plaintiffs do not prevail in their attempt to invalidate a provision in the  
16 Secretary’s Elections Procedures Manual (“EPM”) or interfere with Defendants’ ability to timely  
17 complete the canvass and certify the election results. If Plaintiffs were to succeed in obtaining a  
18 Court order requiring that Maricopa County perform a hand count audit based on a sampling of  
19 “precincts” (but not vote centers), such a judgment “would have a *direct* legal effect upon [the  
20 Secretary’s] rights.” *Woodbridge Structured Funding, LLC*, 235 Ariz. at 28 ¶ 15.

21 Indeed, it would interfere with the Secretary’s canvassing duties. Under A.R.S. § 16-  
22 642(A), the Maricopa County Board of Supervisors must approve its canvass on or before  
23 Monday, November 23, 2020. See *Hunt v. Campbell*, 19 Ariz. 254, 279 (1917) (describing a  
24 board of supervisors’ duty to canvass an election). The Board’s timely completion of the canvass  
25 is critical, as the Secretary must, “[o]n the fourth Monday following a general election . . .  
26 canvass all offices for which the nominees filed nominating petitions and papers with the

1 secretary of state.” A.R.S. § 16-648(A). This year, that deadline is November 30, 2020, and the  
2 Secretary has already secured an appointment with the Governor, the Attorney General, and the  
3 Chief Justice to complete the canvass on that date. What’s more, the overlay of a presidential  
4 election means the United States Constitution (Article II, § 1 and the Twelfth Amendment) and  
5 the Electoral Count Act, 3 U.S.C. § 15, impose additional deadlines and requirements on the  
6 Secretary. Thus, delaying Maricopa County’s canvass would have cascading harmful effects that  
7 directly impact the Secretary.

8       Such a judgment would also directly conflict with the interpretation and requirement the  
9 Secretary adopted – with approval from the Attorney General and the Governor – in the EPM.  
10 *See* EPM Ch. 11 § III.A. The Secretary “is responsible for overseeing and administering elections  
11 in Arizona,” *Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL  
12 6523427, at \*6 (D. Ariz. Nov. 3, 2016), and to that end, she “prescribe[s] rules to achieve and  
13 maintain the maximum degree of correctness, impartiality, uniformity and efficiency on  
14 [election] procedures[.]” A.R.S. § 16-452(A). Plaintiffs ask the Court to compel Maricopa  
15 County to perform a hand count sampling of “precincts,” but the Secretary has adopted a  
16 different requirement in the EPM, which is binding on all counties, not just Maricopa County.<sup>2</sup>  
17 In the end, the Secretary is a necessary party because the Court simply cannot grant Plaintiffs’  
18 requested relief without also invalidating provisions in the Secretary’s EPM. *See* Ariz. R. Civ.  
19 P. 19(a) (a person is a necessary party when, “in that person’s absence, the court cannot accord  
20 complete relief among existing parties”).

### 21           **3. Defendants Cannot Adequately Represent the Secretary’s Interests.**

22       Third, while the existing defendants will no doubt defend this action and represent their  
23 own interests well, they cannot adequately represent the Secretary’s unique interests. When

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24 <sup>2</sup> Beyond that, it is impossible for Maricopa County to do a precinct-based hand count, because  
25 it did not have any precinct-based polling locations in the 2020 General Election, as permitted  
26 by Arizona law. A.R.S. § 16-411(B)(4) (counties “may authorize the use of voting centers in  
place of or in addition to specifically designated polling places”).

1 evaluating Rule 24’s nearly identical federal counterpart, courts hold that “[t]he burden of  
2 showing inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate  
3 that representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use v. Montana*  
4 *Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki v. Cayetano*, 324 F.3d  
5 1078, 1086 (9th Cir.2003)).

6 Here, the Secretary has a duty to oversee the administration of the election in all fifteen  
7 counties. She has a duty to ensure the orderly and uniform administration of the election, and  
8 she has an important interest in making sure that election results are timely certified so all  
9 Arizona voters and candidates get the finality they deserve. This interest differs from  
10 Defendants’ narrower interest in upholding its procedures and preserving its interests within  
11 Maricopa County. The existing defendants thus have no reason to make the same arguments the  
12 Secretary intends to make, because her duties and interests are distinct from and broader than  
13 theirs. *Cf. Heritage Vill. II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 571 ¶ 15 (App. 2019)  
14 (representation was inadequate when the existing parties’ “interests diverged” from the  
15 intervenors’ interests). The Secretary intends to offer arguments and defenses related to her  
16 ability to oversee the administration of the election on a statewide level, and she can offer insight  
17 about the EPM drafting and approval process, including the fact that the challenged provisions  
18 have long existed in prior versions of the EPM, and the reasons she adopted the language at issue  
19 in this lawsuit. As the state’s Chief Elections Officer, the Secretary should have a right to raise  
20 defenses that are unique to her interests.

21 For all these reasons, the Court should allow the Secretary to intervene as a matter of  
22 right.

23 **B. The Secretary Should Be Granted Permissive Intervention.**

24 Alternatively, the Secretary should be granted permissive intervention. Under Rule  
25 24(b)(1)(B), Ariz. R. Civ. P., “[o]n timely motion, the court may permit anyone to intervene who  
26 . . . has a claim or defense that shares with the main action a common question of law or fact.”

1 Courts may also grant permissive intervention to “a state governmental officer or agency” if any  
2 claims or defenses are “based on . . . any regulation, order, requirement, or agreement issued  
3 or made under a statute administered by the officer or agency.” Ariz. R. Civ. P. 24(b)(2). Both  
4 reasons for permissive intervention exist here.

5 The Secretary has timely moved to intervene (within one day), and as detailed above, her  
6 defenses “have a question of law or fact in common” with the claims brought by Plaintiffs. The  
7 claims also turn on the legality of provisions in the EPM, which the Secretary adopted under  
8 A.R.S. § 16-452. Given the early stage of this case and the expedited nature of election litigation,  
9 the Secretary’s intervention will not delay or prejudice the ability of the parties to adjudicate  
10 their rights. Ariz. R. Civ. P. 24(b)(3) (“[T]he court must consider whether the intervention will  
11 unduly delay or prejudice the adjudication of the original parties’ rights.”). To the contrary,  
12 resolving Plaintiffs’ claims based on both the County Defendants’ and the Secretary’s defenses  
13 in a single action is the most efficient way to ensure that the issues here are resolved in a fair and  
14 uniform way.

15 At bottom, even if the Court does not allow the Secretary to intervene as of right, the  
16 Court should allow permissive intervention.

17 **II. Conclusion.**

18 For all these reasons, the Secretary requests that the Court grant this Motion, excuse the  
19 requirement of a proposed responsive pleading, and allow the Secretary to intervene as a  
20 defendant.

21 RESPECTFULLY SUBMITTED this 13th day of November, 2020.

22 **COPPERSMITH BROCKELMAN PLC**

23 By /s/ Roopali H. Desai

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25 D. Andrew Gaona  
26 Kristen Yost

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1 ORIGINAL efiled and served via email  
2 this 13th day of November, 2020, upon:

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