

1 Alexander Kolodin (SBN 030826)
2 Christopher Viskovic (SBN 035860)
3 Chris Ford (SBN 029437)

4 **KOLODIN LAW GROUP PLLC**
5 Alexander.Kolodin@KolodinLaw.com
6 CViskovic@KolodinLaw.com
7 CFord@KolodinLaw.com

8 3443 N. Central Ave. Ste. 1009
9 Phoenix, AZ 85012
10 Telephone: (602) 730-2985
11 Facsimile: (602) 801-2539

12 Sue Becker (MO 64721)*
13 **Public Interest Legal Foundation**
14 32 E. Washington Street, Suite 1675
15 Indianapolis, IN 46204
16 Tel: (317) 203-5599 Fax: (888) 815-5641

17 sbecker@publicinterestlegal.org

18 *Pro hac motion forthcoming

19 *Attorneys for Plaintiffs*

20 **SUPERIOR COURT OF THE STATE OF ARIZONA**

21 **FOR THE COUNTY OF MARICOPA**

22 LAURIE AGUILERA, a registered voter in
23 Maricopa County, Arizona; DOES I-X;

24 *Plaintiffs,*

25 v.

26 ADRIAN FONTES, in his official capacity as
27 Maricopa County Recorder; CLINT
28 HICKMAN, JACK SELLERS, STEVE
CHUCRI, BILL GATES AND STEVE
GALLARDO, in their official capacities as
members of the Maricopa County Board of
Supervisors; MARICOPA COUNTY, a
political subdivision of the State of Arizona;

Defendants.

Case no.: CV2020-014562

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

1 Plaintiffs hereby respond to and oppose the Arizona Democratic Party’s (“ADP”) motion to intervene (“**Motion**”), filed on Sunday, November 15, 2020.

3 In a remarkable change of position, ADP and its well-traveled national counsel led by Marc Elias, are now fighting against the right to vote. Indeed, out of the 78 cases filed by counsel for proposed intervenors, none take the position *against* the right to vote ... until this one.¹ Here, not unlike the positions previously taken by state political parties, Plaintiff Aguilera seeks to have her vote denial vindicated by either being allowed to cast a vote, or by the grant of declaratory relief that would force Defendants to conform their practices to Arizona election law before the next election. The right to vote has been a long-standing mantra of Mr. Elias’s litigation endeavors such that his sudden opposition to the right to vote can only be seen as a political stunt to, once again, interfere with Plaintiffs’ pursuit of justice in exchange for making a political statement as to the certainty of his candidate’s win in the election.

14 Yet, there is not a single political issue raised by Plaintiffs in this vote denial case. There is also no possible judgment in this case that could have a “direct, legal effect” on the rights of the state democratic party, which is necessary. *Dowling v. Stapley*, 221 Ariz. 251, 270, ¶ 58, (App. 2009). Moreover, the ADP and its candidates have no protected interest in whether county Defendants bring their election procedures and voting equipment into compliance with state law by the next election in 2022, or whether Ms. Aguilera is allowed to cure her ballot.

21 Proposed intervenors seek only to bring politics, additional lawyers, distraction, expansive scheduling orders, and divisive discourse into a straightforward case of vote denial that can move swiftly to resolution. Indeed, should time not allow Ms. Aguilera to cast her vote, the only remaining relief Plaintiffs seek is non-partisan, declaratory and injunctive in nature; to wit, to ensure that Maricopa County’s debacle of rejected ballots does not happen again in the next election and that all properly cast ballots are accurately

27 ¹ Excluding state court filings, a federal docket search alone identifies 78 cases as of
28 today that counsel for proposed intervenors have filed around the country seeking to enforce the right to vote.

1 counted in the future. If proposed intervenors are opposed to this relief, they are fighting
 2 against the right to a free and fair election, the right to vote and one’s right to have their
 3 vote counted.

4 **PROCEDURAL POSTURE**

5 From the moment when Plaintiffs filed their initial Complaint with this Court on
 6 November 4, Plaintiffs have sought only to have their rights to cast a ballot be
 7 acknowledged and the violations cured. *Aguilera v. Fontes*, Case No. CV2020-014083,
 8 *voluntarily dismissed without prejudice*, by Order dated 11/09/20) (“Aguilera I”). After
 9 both political parties intervened, Plaintiffs voluntarily dismissed their case to divest it from
 10 the political agendas of both parties. However, upon learning that the parties intended to
 11 resolve the equipment failures that Plaintiffs experienced without seeking to have any of
 12 the misread ballots cured, Plaintiffs moved to intervene to protect their rights. Ironically,
 13 after Plaintiffs allowed *both* political parties to intervene in their initial case, both parties
 14 objected to Plaintiffs’ intervention motion in their new case. *See Trump v. Hobbs*, Case
 15 No. CV2020-014248.

16 Plaintiffs have since discovered new information that supports their allegations that
 17 Ms. Aguilera’s first ballot was canceled and not counted at all. The new information also
 18 indicates that it is impossible to confirm which, if any, of the votes that Mr. Drobina marked
 19 on his ballot were ever counted by Defendants’ tabulator. For these violations, Plaintiffs
 20 seek justice and resolution through the filing of this declaratory and injunction action.

21 As discussed below, because ADP can show no basis to intervene either as a matter
 22 of right or permissively, its motion should be denied.

23 **ARGUMENT**

24 While Rule 24² is “remedial” and generally “construed liberally,” the right to
 25 intervene is not without limits: “a prospective intervenor must have such an interest in the
 26 case that the judgment would have a **direct legal effect** upon his or her rights and not
 27 merely a possible or contingent effect.” *Dowling v. Stapley*, 221 Ariz. 251, 270, ¶ 58, 211

28 ² Rule references are to the Arizona Rules of Civil Procedure unless otherwise indicated.

1 P.3d 1235, 1254 (App. 2009) (emphasis added); accord, *Woodbridge Structured Funding,*
 2 *LLC v. Arizona Lottery*, 235 Ariz. 25, 28, ¶ 13, 326 P.3d 292, 295 (App. 2014)
 3 (“*Woodbridge*”) (“mere possible or contingent equitable effect is insufficient”); *see* Rule
 4 24(a).

5 **I. Intervention as of right under Rule 24(a) is not warranted.**

6 As ADP noted, intervention as of right is appropriate only if the proposed intervenor
 7 meets four conditions: (1) files its motion timely; (2) “assert[s] an interest” in the subject
 8 of the action; (3) shows that disposition of the action without the intervenor “may impair
 9 or impeded its ability to protect its interest”; and (4) demonstrates that “other parties would
 10 not adequately represent its interests.” *Woodbridge*, 235 Ariz. at 28, ¶ 13, 326 P.3d at 295
 11 (App. 2014); *see* Rule 24(a). Plaintiffs do not contest the first factor; as to the other three,
 12 ADP simply does not meet the standard.

13 **ADP does not assert an interest:** ADP contends that because voting is a
 14 “fundamental” right, and the issues raised in Plaintiffs’ Complaint concern how ballots
 15 were cast in the 2020 general election, ADP “and its members and constituents” have an
 16 interest in the subject of the action. However, ADP as an organization does not vote; thus,
 17 the principle that voting is a fundamental right does not apply to ADP. To the extent that
 18 ADP mentions “members and constituents,” it does not identify any of them and is not
 19 requesting permission for any of them to intervene. In short, ADP, as the sole proposed
 20 intervenor, cannot articulate an interest in the subject of this matter based on the
 21 fundamental right to vote.

22 Moreover, although ADP claims to be a “critical participant in the electoral
 23 process,” it has no more right to participate in the process than any other group or member
 24 of the public. Moreover, its work ended with the election. Plaintiffs’ rights remain.

25 **ADP does not show an impaired interest:** As to the third factor, “Movants also
 26 must show that disposition of the action ‘may as a practical matter impair or impede’ their
 27 ability to protect their interests.” *Heritage Vill. II Homeowners Ass’n v. Norman*, 246 Ariz.
 28 567, 572, ¶ 18, 443 P.3d 964, 969 (App. 2019) (*as amended* May 22, 2019) (citing Rule

1 24(a)(2)). Here, ADP has no interest to protect because the relief sought is that Ms.
 2 Aguilera’s one vote be counted, and that injunctive and declaratory relief be granted to
 3 ensure that what happened to Mr. Drobina and others, never happen again. Even if ADP
 4 asserts that it has a right to deny Ms. Aguilera’s vote be counted, it still has no interest
 5 because one vote will not change the election outcome that they seek to protect. Nor does
 6 proposed intervenor give indication how the addition of one vote to the county’s vote totals,
 7 a provision for members of the public to observe (but not participate in) the electronic
 8 adjudication process, and prospective declaratory relief, could affect the orderly and timely
 9 tabulation of ballots. Arizona Democratic Party’s Motion to Intervene 3:17-18.

10 The Court thus should disregard ADP’s arguments relating to the third factor and
 11 find that this factor also weighs in Plaintiffs’ favor.

12 **ADP cannot demonstrate that the County cannot represent its interest:** ADP
 13 asserts that the County does not share ADP’s “particular” interest, which it identifies as
 14 “protecting itself” and its members and constituents – none of whom seek to intervene –
 15 from disenfranchisement. While the relevant statutes govern the mechanics of how a
 16 county must hold an election, it cannot be denied that a county’s overarching objective
 17 should be to ensure voter enfranchisement or minimize disenfranchisement.³ ADP simply
 18 does not explain how the County, given such objectives, cannot adequately represent
 19 ADP’s interest. Nor, again, does proposed intervenor provide any reason for this Court to
 20 believe that Defendants do not share its interest in the orderly and timely tabulation of
 21 ballots.

22 **II. The Court should deny permissive intervention under Rule 24(b).**

23 ADP does not demonstrate that it has “a claim or defense” that shares a common
 24 question of law or fact with any claim the County might assert. Rule 24(b)(1)(B). When

25 ³ E.g. Jan Fifiield, Conservative group asks court to hold Maricopa County recorder
 26 accountable for sending incorrect voting instructions, AZCENTRAL, Oct. 30, 2020, at
 27 [https://www.azcentral.com/story/news/politics/elections/2020/10/29/nonprofit-asks-
 28 court-hold-county-recorder-contempt-court-sending-incorrect-voting-
 instructions/6078710002/](https://www.azcentral.com/story/news/politics/elections/2020/10/29/nonprofit-asks-court-hold-county-recorder-contempt-court-sending-incorrect-voting-instructions/6078710002/) (last visited Nov. 5, 2020) (County attorney argues that its
 actions were minimize voter disenfranchisement).

1 evaluating whether to grant permissive intervention, courts, in their discretion, “consider a
2 number of factors such as the nature and extent of the intervenor’s interest, his or her
3 standing to raise relevant issues, legal positions the proposed intervenor seeks to raise, and
4 those positions' probable relation to the merits of the case.” *Dowling*, 221 Ariz. at 272, ¶¶
5 67, 68, 211 P.3d at 1256. Courts also “consider whether intervention would unduly delay
6 or prejudice the adjudication of the rights of the original parties.” *Id.* at ¶ 67, 211 P.3d at
7 1256.

8 Of these various factors, standing is particularly relevant. “Standing generally
9 requires an injury in fact, economic or otherwise, caused by the complained-of conduct,
10 and resulting in a distinct and palpable injury giving the plaintiff a personal stake in the
11 controversy's outcome.” *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406, ¶ 8, 207
12 P.3d 654, 659 (App. 2008). Here, ADP’s assertions fall short. ADP does not assert any
13 palpable injury to itself; instead, it alleges general concerns regarding the tabulation of
14 votes that are shared by all Arizonians, if not all Americans. While our Supreme Court has
15 stated that individual voters have standing to raise these concerns, *Ariz. Pub. Integrity All.*
16 *v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *6-7 (Nov. 5, 2020), it has
17 made no such pronouncement with respect to political parties.

18 **CONCLUSION**

19 Because proposed intervenor has no interest in whether Ms. Aguilera is allowed to
20 cure her spoiled ballot properly, or whether the Court instructs Defendants to ensure that
21 their voting procedures and equipment complies with Arizona election law in the next
22 election, it has no cognizable interest under Rule 24 and its motion should be denied. As
23 we saw with Plaintiffs’ first case, the addition of intervenors just complicated procedures,
24 deadlines, discovery and served to disrupt and distract from the vote denial Plaintiffs
25 suffered. Last, it is the interest of judicial efficiency and equity to deny the unwanted
26 injection of political agendas and needless diversion of resources and let the Court review
27 and decide the facts and legal issues of this case as Plaintiffs present it.

28 Based on the foregoing, the Court should deny ADP’s motion to intervene.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted this 15th day of November, 2020.

By /s/ Alexander Kolodin

Alexander Kolodin
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012

Attorneys for Plaintiffs

I CERTIFY that a copy all documents will be served upon Defendants in conformity with the applicable rules of procedure.

By /s/Christopher Alfredo Viskovic

Christopher Alfredo Viskovic
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012