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CASE NUMBER: DG-2025-CV-000206
PII COMPLIANT

**IN THE STATE COURT OF KANSAS**
**DISTRICT COURT OF DOUGLAS COUNTY**

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| KANSAS APPLESEED CENTER FOR LAW AND JUSTICE, INC., LOUD LIGHT, DISABILITY RIGHTS CENTER OF KANSAS, DOROTHY NARY, MARTHA HODGESMITH, ROBERT MIKESIC, and BENJAMIN SIMONS,<br><br>Plaintiffs,<br><br>v.<br><br>SCOTT SCHWAB, in his official capacity as the Kansas Secretary of State, and JAMIE SHEW, in his official capacity as Douglas County Clerk,<br><br>Defendants. | Original Action No.<br><br>DG-2025-CV-000206 |

**PLAINTIFFS' OPPOSITION TO THE REPUBLICAN NATIONAL COMMITTEE'S MOTION TO INTERVENE**

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## INTRODUCTION

Once it goes into effect in January, SB 4 will require Kansas election officials to reject any advance ballot received in the mail after 7 p.m. on election day, even if the postmark proves that the voter cast and relinquished the ballot ***on or even well before*** election day. It eradicates a three-day grace period that was enacted nearly unanimously by the Legislature in 2017 because thousands of voters were having their ballots thrown out due to mail delays. Since then, issues with the mail have only gotten worse and—*even with* the three-day grace period in place—voters have had their ballots thrown out because of mail delays. Douglas County had to reject over 200 ballots in the August 6, 2024 primary because they arrived after the three-day grace period, even though they were postmarked *in July*. SB 4 will disenfranchise many more voters, not only because of continuing mail issues, but also because Kansas has one of the shortest periods for voting by mail. It will be effectively impossible for many voters to successfully cast an advance ballot.

Plaintiffs are voters who seek to protect their own voting rights and non-partisan civic organizations that seek to protect the rights of the Kansas voters they serve. They challenge SB 4 as violating the Kansas Constitution's guarantees of equal protection, due process, and the right to vote. Defendants are the Secretary of State and the Douglas County Clerk. The Secretary has aggressively defended prior challenges to Kansas election laws and is doing the same here. Not only was this matter delayed for months as the Secretary attempted to remove this matter to federal court (a venue that he acknowledged would have made it impossible to adjudicate all of Plaintiffs' claims), the Secretary has already filed two motions to dismiss—one in federal court, and a second in this Court mere days after the federal court granted Plaintiffs' motion to remand.

Nevertheless, the Republican National Committee ("RNC") has moved to intervene as a defendant. Its motion should be denied. It is not entitled to intervene as of right because it can show neither (i) that it has a legally cognizable interest that will be substantially impaired by the

relief Plaintiffs seek, nor (ii) that the existing Defendants do not adequately represent its interest. *See* K.S.A. 60-224(a)(2). Both are required for intervention as of right. On the first element, the RNC cannot rely on a purported interest in protecting its supporters' voting rights, because SB 4 will cause ballots of voters who support Republicans (as well as other voters) to be thrown out. Therefore, the RNC tiptoes around an implied hope that SB 4 will cause *more* ballots cast for Democrats to be rejected, but the possibility of making it harder for others to vote is not a legitimate basis to intervene. On the second element, the RNC fails to show that its interests are not already adequately represented by the existing Defendants. Indeed, the RNC never identifies *any* daylight between its and the Secretary's defensive positions. The Secretary's pending motion to dismiss raises the *exact* same argument and cites the *exact* same Fifth Circuit decision that the RNC says it would put before the Court if allowed to intervene. In short, the Secretary is already representing the RNC's interests with vigor, eliminating any RNC claim to intervention as of right.

Permissive intervention would also be inappropriate here and only introduce unnecessary complications and delays into a proceeding that has already been substantially delayed by the Secretary's unsuccessful removal attempt. Any additional delay will further frustrate Plaintiffs' ability to achieve relief before SB 4 goes into effect. Nor will it benefit the Court for one of the major national political parties to inject partisan issues into what should be a nonpartisan dispute. Indeed, it was just a few years ago that the Kansas Legislature, by near unanimous consent and with the support of then-Secretary of State Kris Kobach, approved the three-day grace period to ensure that the ballots of Kansas voters of *all* political persuasions were not summarily rejected due to mail delays beyond their control.

For all these reasons, the RNC's motion to intervene should be denied.

## BACKGROUND

Kansans have had the right to vote by advance ballot for nearly three decades, and thousands upon thousands of voters regularly exercise that right in the state's elections by requesting, receiving, completing, and then returning their advance ballots to election officials by mail. First Am. Pet. ¶ 1, Dkt. No. 22 ("Am. Pet."). This right, however, is meaningless if Kansas's election system is not designed to reliably count the ballots of those who timely cast their votes by mail, or if Kansas arbitrarily rejects ballots of lawful voters based on circumstances outside their control. The Kansas Legislature previously recognized that exactly this was happening when advance ballots were being delayed in the mail and rejected when the state imposed an election day receipt deadline for mail ballots. In response, in 2017, the Legislature enacted a law requiring election officials to count advance ballots postmarked by election day as long as they were received by the third day following the election. K.S.A. 25-1132(b). The law was championed by then-Secretary of State Kris Kobach and so broadly supported that the vote to pass it was nearly unanimous. Only a single legislator voted against it. Am. Pet. ¶ 2.

That 2017 law, commonly referred to as the "grace period" for receiving timely mailed ballots, quickly proved essential in protecting Kansans' most fundamental rights. In the 2020 general election, the Secretary of State's Office reported that *over 32,000 ballots* arrived at county election offices during the three days after election day and were counted as a result. *Id.* ¶ 3. Without the grace period, those ballots would have been thrown out, and those voters would have been disenfranchised. Since 2017, postal delays have only worsened. In fact, in September 2024 the Secretary himself wrote a letter to the U.S. Postal Service, reporting that Kansas voters' mail ballots were "failing to reach the county election office on time, even when voters have mailed them timely." *Id.* ¶ 4. Instead of moving to ensure that lawful voters were not being disenfranchised

for reasons beyond their control, the Legislature inexplicably responded by *repealing* the grace period entirely with the passage of SB 4. *Id.* ¶ 6. After that law goes into effect on January 1, 2026, election officials must reject ballots cast by lawful voters that are voted and postmarked by election day, unless the post office delivers them to election officials by 7 p.m. on election day. *Id.*

Plaintiffs—who consist of individual Kansas voters and non-partisan, pro-voting civic organizations whose operations would be undermined and constituents harmed by SB 4—filed suit challenging SB 4 on May 5, 2025, and filed an Amended Petition on June 9. *See* Dkt. No. 1; Dkt. No. 22. Plaintiffs assert that SB 4 violates the Kansas Constitution's guarantees of equal protection, due process, and the right to vote, and thus intend to file a motion for a temporary injunction before the law goes into effect in January.[1] The named Defendants are Kansas's chief election official, the Secretary of State, and the chief election officer of Douglas County, Kansas, which, as noted, has had to reject significant numbers of lawful ballots in recent elections due to mail delays. Am. Pet. ¶ 70. The Secretary has previously vigorously defended challenges to Kansas election laws and procedures, and this case has been no different.

Nevertheless, on July 3, the RNC moved to intervene as a defendant, claiming that it had an interest at stake in defending SB 4 and that the existing Defendants did not adequately represent that interest. *See generally* Dkt. No. 28. The RNC repeatedly justified its request to intervene by explaining it sought to draw this Court's attention to *RNC v. Wetzel*, 120 F.4th 200 (5th Cir. 2024) (cert. petition filed), a striking outlier of a decision in which a panel of the Fifth Circuit concluded that federal law preempted Mississippi's acceptance of mail ballots received within a specified period after election day. Dkt. No. 28 at 10, 13, 15.[2]

[1] Plaintiffs recently submitted a motion for entry of a scheduling order requesting that the Court enter Plaintiffs' proposed schedule to this end. Dkt. No. 47.

[2] The district court had rejected the challenge in a lengthy and well-reasoned opinion, *RNC v.*

One week later, on July 11, Defendant Schwab filed a notice of removal. *See* Dkt. No. 41. In that notice, the Secretary relied chiefly on *Wetzel*—the exact same case that the RNC repeatedly points to in its motion to intervene as reason to allow it to participate as a party in this action. *See* Not. of Removal at 5, *Kan. Appleseed Ctr. for Law & Justice v. Schwab*, No. 25-cv-2375 (D. Kan. July 11, 2025), ECF No. 1. Plaintiffs promptly moved to remand. Mot. for Remand, *Kan. Appleseed Ctr. for Law & Justice v. Schwab*, No. 25-cv-2375 (D. Kan. July 18, 2025), ECF No. 26. That same day, the Secretary filed a motion to dismiss Plaintiffs' claims in their entirety. Mem. in Support of Mot. to Dismiss, *Kan. Appleseed Ctr. for Law & Justice v. Schwab*, No. 25-cv-2375 (D. Kan. July 18, 2025), ECF No. 32. In that motion, the Secretary again repeatedly pointed to *Wetzel* as reason to dismiss Plaintiffs' claims. *Id.* at 4-6. The federal court granted Plaintiffs' motion for an extension of time to respond to the RNC's motion to intervene, setting the deadline as seven days after the federal court decided the motion to remand. Order, *Kan. Appleseed Ctr. for Law & Justice v. Schwab*, No. 25-cv-2375 (D. Kan. July 15, 2025), ECF No. 10.

Last Thursday, October 16, the federal court granted Plaintiffs' motion and remanded the

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*Wetzel*, 742 F. Supp. 3d 587 (S.D. Miss. 2024), but a panel of the Fifth Circuit reversed. The Fifth Circuit's holding was not only contrary to the conclusions of every single court to consider the matter before, all of which rejected similar efforts to strike down extended ballot receipt deadlines, *see Bost v. Ill. State Bd. of Elections*, 684 F. Supp. 3d 720, 736 (N.D. Ill. 2023), *aff'd on other grounds*, 114 F.4th 634 (7th Cir. 2024), *cert. granted*, 145 S. Ct. 2751 (2025) (certiorari granted on standing); *Donald J. Trump for President, Inc. v. Way*, 492 F. Supp. 3d 354, 372 (D.N.J. 2020); *Bognet v. Sec'y Commw. of Pa.*, 980 F.3d 336, 353-54 (3d Cir. 2020), *cert. granted, judgment vacated sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021) (vacated as moot); *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 368 n.23 (Pa. 2020), as the Mississippi Attorney General points out in the petition for certiorari that it filed following the Fifth Circuit's decision, it was also entirely contrary to the plain text of the federal statutes at issue, the history of those statutes and mail voting in the United States, and Supreme Court precedent. Mississippi's Pet. for a Writ of Certiorari at 16-30, *Watson v. RNC*, No. 24-1260 (U.S. June 6, 2025). The only court to have considered the question after *Wetzel* similarly rejected the arguments that the RNC raised in that case and further rejected *Wetzel*'s reasoning. *See California v. Trump*, 786 F. Supp. 3d 359, 386 (D. Mass. 2025) (rejecting *Wetzel* and holding election day statutes "require only that all voters are cast by Election Day, not that they are received by that date").

case to this Court. *See* Order, *Kan. Appleseed Ctr. for Law & Justice v. Schwab*, No. 25-cv-2375 (D. Kan. Oct. 16, 2025), ECF No. 55. Two business days later, the Secretary filed a second motion to dismiss with this Court, again relying heavily on *Wetzel* to support his argument. Mem. in Support of Mot. to Dismiss at 5, 7, Dkt. No. 44.

## ARGUMENT

The Court should deny the RNC's motion to intervene as of right and, in the alternative, for permissive intervention. The RNC fails to establish that it has a right to intervene in this action where it neither identifies a cognizable, legally protectable interest that the action will impede, nor has it shown that the existing Defendants—including the Secretary, who has vigorously defended this matter so far, including in the precise manner that the RNC has indicated it would do so—do not adequately represent the RNC's interests in this litigation. Nor should the Court exercise its discretion to allow for permissive intervention. The RNC's involvement would only complicate this matter, would likely lead to additional delays, and would inject partisan politics into this case, which is simply not warranted by the facts or the issues before this Court.

### I. The RNC has failed to establish that it has a right to intervene in this action.

A movant may intervene as of right only if it shows (1) the resolution of this matter could "substantially impair or impede" its legally protectable interest, and (2) the existing parties do not "adequately represent that interest." K.S.A. 60-224(a)(2); *see McDaniel v. Jones*, 235 Kan. 93, 106, 679 P.2d 682, 694 (1984). The RNC fails to show either, thus its motion to intervene as of right must be denied.

#### A. The RNC has no legally protectable interest that would be substantially impaired by making voting easier.

In support of its motion to intervene, the RNC claims interests in (i) "Republican voters voting," (ii) "Republican candidates winning," (iii) defending an outlier decision issued by a

federal court of appeals that is not binding anywhere else, including in this Kansas state court, and (iv) "spending resources effectively." Dkt. No. 28 at 8-10. But none are sufficient to support intervention as of right.

### 1. The relief Plaintiffs seek will protect *all* Kansas voters from having their ballots rejected—including those who support Republican candidates.

The first interest that the RNC claims in this litigation—specifically, its interest in "Republican voters voting"—cannot support intervention because that interest would be *served*, *not* impaired or impeded, by the relief Plaintiffs seek. To be sure, courts regularly recognize that political parties have a legitimate interest in ensuring that voting is not made *more difficult* for their supporters. *See, e.g.*, *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (holding political party had interest sufficient to support intervention in lawsuit to *defend* a grace period for counting mail ballots against a legal challenge); *Issa v. Newsom*, 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *2-3 (E.D. Cal. June 10, 2020) (granting political party intervention in lawsuit where requested relief would have reduced availability of absentee voting); *Paher v. Cegavske*, No. 3:20-cv-00243-MMC-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (same). But the inverse is not true; a political party does *not* have a cognizable interest in opposing relief that would make it *easier* for *all* voters—including those who support their candidates—to vote. *See, e.g.*, *RNC v. Burgess*, No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254, at *3 (D. Nev. July 17, 2024) (holding RNC had no standing to challenge a mail ballot receipt grace period because Republican candidates "face no harms . . . when all Nevada voters are uniformly given greater access to the ballot box") (appeal filed).

### 2. There is no legally cognizable interest in suppressing the votes of political opponents.

Perhaps recognizing that its interest in "Republican voters voting" cannot support

intervening to defend a law that would reject ballots cast by many Republicans, the RNC also alludes to the possibility that, on balance, more ballots cast for Democrats than Republicans would be thrown out under SB 4, and so claims its interest in "Republican candidates winning" supports intervention. Dkt. No. 28 at 9. This claimed interest fails twice over.

*First*, it is speculative. The RNC presents no evidence or argument that rejecting ballots that arrive by mail after election day in Kansas will make it easier for Republican candidates to win elections in this state. *See Burgess*, 2024 WL 3445254, at *2-3 (rejecting as "inherently speculative" the RNC's suggestion that "mail ballots received . . . after Election Day will favor Democratic candidates"). Providing nothing more than a vague hint that SB 4 *might* disproportionately disenfranchise Democratic voters compared to Republican voters, and thereby improve the RNC's "electoral prospects," Dkt. No. 28 at 9, falls below the showing, required by Kansas law, that disposition of this suit may "as a practical matter" "substantially impair or impede" the RNC's interests. K.S.A. 60-224(a)(2).

*Second*, and more fundamentally, though voters and the partisan entities that represent them have a substantial interest in ensuring *their* voters' votes are counted, there is *no* corresponding cognizable interest in *preventing others* from having their votes counted. *See Liebert v. Wisconsin Elections Comm'n*, 345 F.R.D. 169, 173 (W.D. Wis. 2023) (denying RNC intervention in suit over Wisconsin's witness requirement because the plaintiffs sought "to *eliminate* a requirement" on voting, "not add one"); *cf. Short v. Brown*, 893 F.3d 671, 677 (9th Cir. 2018) (finding law that made it "easier for some voters to cast their ballots by mail" did not "burden anyone's right to vote"). But that is just what the RNC asks this Court to conclude here: that it has a cognizable interest in defending a state law *because the RNC thinks that causing thousands of ballots by eligible voters across the state of Kansas to be thrown out will boost the*

*Republican Party's chances in Kansas elections*. This Court should reject that invitation and hold that the RNC does not have a legally protectable interest in suppressing votes merely because it speculates that more supporters of its opponents are likely to be disenfranchised than Republican voters.

### 3. The RNC has no legally protectable interest in extending a precedent it likes from one jurisdiction to another.

The RNC's asserted interest in defending an out-of-jurisdiction ruling by a panel of the Fifth Circuit of the U.S. Court of Appeals can be dismissed in short order. Leaving aside that the Secretary has already moved to dismiss based on the same Fifth Circuit decision (*Wetzel*) that the RNC also seeks to bring before the Court in this lawsuit, the RNC has no legally protectable interest in extending a precedent it likes from one jurisdiction to another. The Kansas Supreme Court has rejected intervention based on an assertion of such an interest. *See Ternes v. Galichia*, 297 Kan. 918, 922, 305 P.3d 617, 621 (2013) (denying law firm's motion to intervene to oppose motion to dismiss in medical malpractice suit when the "only legal interest that the intervenors have in the present action is the speculative effect of this action on an independent lawsuit" against the law firm for malpractice). And the federal cases that the RNC cites to support that supposed interest are readily distinguishable—in both, the intervenors' interests were much more directly affected by the outcome of the particular litigation. *See Stone v. First Union Corp.*, 371 F.3d 1305, 1307-09 (11th Cir. 2004) (allowing employees to intervene as plaintiffs in suit by another employee against mutual former employer, when employees previously tried to proceed as a class action but the district court denied class certification); *Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 314 (D.C. Cir. 2015) (allowing nonprofit corporation that received a regulatory decision from the FEC directly benefiting it to intervene to defend that decision against a challenge by an advocacy group requesting the FEC to reverse the decision).

#### 4. The RNC's interest in spending its resources effectively also is not threatened by this lawsuit.

Nor will the RNC's interest in "spending resources effectively" be impaired or impeded by the resolution of this case. Dkt. No. 28 at 10. Far from it: if the Court enjoins SB 4, voting by mail will be easier in Kansas, and the RNC will not have to spend resources to get its constituents to mail their ballots as far in advance of election day as possible to guard against the significant risk that they are rejected due to mail delays. And since Kansas has had a grace period for several election cycles, the relief Plaintiffs seek would hardly "change the entire election landscape," as the RNC dramatically claims. *Id.* at 11. To the contrary, it is SB 4 that threatens to change the current election landscape. In any event, the RNC offers no evidence—no declarations, exhibits, or anything else—substantiating this claimed interest or showing how it would be impaired by the relief Plaintiffs seek. *See Tarpon Towers II, LLC v. City of Sylvania*, 586 F. Supp. 3d 755, 757 (N.D. Ohio 2022) (rejecting intervention motion in part because the interests identified by the proposed intervenor were "subjective, speculative, and unsubstantiated").

#### 5. Neither election integrity nor concerns about voter confidence can properly support intervention here.

The RNC also peppers its brief with vague and unspecified references to "maintaining the integrity of the election process" and protecting "voter confidence," Dkt. No. 28 at 8-9, but courts have found that such generalized interests are simply not the type of "direct, significant and legally protectable" interests that justify intervention. *See Liebert*, 345 F.R.D. at 173 (rejecting RNC's claimed interests in maintaining "integrity" of election as too "abstract" and "general" to support intervention). Moreover, in this case, the RNC has it exactly backwards: accepting ballots timely cast by lawful, eligible voters—and not requiring their rejection because of mail delays that can be arbitrary and are often entirely out of voters' control—contributes to the integrity of the election

process and voter confidence for obvious reasons: it ensures that the outcome of elections is actually representative of the voters who voted in them. In contrast, the result that the RNC seeks—the wholesale rejection of thousands of ballots each election and the removal of any guarantee that a timely cast and mailed ballot will in fact be counted—is what would undermine election integrity and threaten voter confidence. The RNC may prefer that outcome as a matter of policy, but that does not give it a right to be a party to this lawsuit.

**B. The existing Defendants adequately represent the RNC's claimed interests.**

The RNC also has failed to show that it has a right to intervene for a separate, independent reason: it cannot show that the existing Defendants fail to adequately represent the RNC's claimed interests. In fact, the RNC fails to identify even a *single* decision from a Kansas court allowing a private party to intervene to defend a state law where the law was already being defended by a state defendant. *But see Montoy v. State*, 278 Kan. 765, 767, 102 P.3d 1158, 1160 (2005) (affirming denial of citizen group's request to intervene to defend against a challenge to Kansas's education funding system because the proposed intervenor's interests were "adequately represented by the State").

The RNC attempts to elide the complete lack of support for its position by arguing that the Secretary and the RNC have different *motives* for defending SB 4, but that is not the right question. Instead, the critical question is whether the RNC and the Secretary share the same *objective* of defending the law. *Hodes & Nauser, MDs, P.A. v. Moser*, No. 2:11-CV-02365-CM-KMH, 2011 WL 4553061, at *3 (D. Kan. Sept. 29, 2011) (explaining "different motivations" is not sufficient to show inadequate representation when the state shares the proposed intervenor's "objective" of defending the law). Courts presume adequate representation when the governmental defendant and the proposed intervenor have the same ultimate objective. *See, e.g.*, *Tri-State Generation & Transmission Ass'n, Inc. v. New Mexico Pub. Regul. Comm'n*, 787 F.3d 1068, 1072-73 (10th Cir.

2015) ("Even though a party seeking intervention may have different ultimate motivations from the governmental agency, where its objectives are the same, we presume representation is adequate.") (cleaned up). The Secretary and the RNC have the same objective—to defend SB 4—so intervention is improper. Other courts have come to this conclusion in similar cases. *See, e.g.*, *Yazzie v. Hobbs*, No. CV-20-08222-PCT-GMS, 2020 WL 8181703, at *3 (D. Ariz. Sept. 16, 2020) (denying RNC motion to intervene as a defendant when it and the state shared the same "ultimate objective" of defending a ballot receipt deadline, despite the RNC's claims that it had distinct interests in "elect[ing] Republican candidates and protect[ing] Republican voters").

The RNC also misstates the legal standard, claiming that *Plaintiffs* bear the burden of showing that the RNC's interests will not be adequately represented by the existing Defendants. Dkt. No. 28 at 12. The RNC bases this assertion on a case in which the Kansas Supreme Court placed the burden of showing inadequate representation on the opposing party in a case where the original parties were *private* parties. *See McDaniel*, 235 Kan. at 106-07. But the RNC ignores that the Kansas Supreme Court does not appear to have applied the same burden when it has considered a motion to intervene in a case such as this one, where the challenged law was already being defended by a *state* defendant. Thus, in *Montoy v. State*, the Court affirmed the denial of a citizen group's request to intervene to defend against a challenge to Kansas's education funding system because the proposed intervenor's interests were "adequately represented by the State." 278 Kan. at 767. This makes sense: Kansas law tasks the Kansas Attorney General with defending suits in which the "constitutionality of any law of this state is at issue," K.S.A. 75-702(b), and there is no reason to doubt his ability to do so here.

This approach is also consistent with that of other courts that have presumed the state defendant will adequately represent any private party's interest in defending the law, absent a "very

compelling showing to the contrary." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); *see also, e.g.*, *Entergy Ark., LLC v. Thomas*, 76 F.4th 1069, 1071 (8th Cir. 2023) ("Where a proposed intervenor's asserted interest is one that a governmental entity who is a party to the case is charged with protecting, we presume that the government's representation is adequate."); *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 799 (7th Cir. 2019) (holding a government defendant is presumed to adequately represent private party's interest in defending a law absent a showing of "gross negligence or bad faith"); *Tri-State*, 787 F.3d at 1072-73; *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013) (adopting test applied by "every circuit to rule on the matter" that requires a "more exacting" showing for intervention where "the proposed intervenor shares the same objective as a government party"); *Rodriguez-Williams v. Johnson*, 542 P.3d 632, 642 (Wyo. 2024) ("Given that the State Defendants and the Proposed Intervenors share th[e] same goal, we presume the State Defendants' representation is adequate.").

In such cases, courts have required would-be intervenors to make a "concrete showing of circumstances" that the defendants' representation is inadequate. *Tri-State*, 787 F.3d at 1073 (cleaned up). "These circumstances include a showing that there is collusion between the representative and an opposing party, that the representative has an interest adverse to the applicant, or that the representative failed to represent the applicant's interest." *Id.* (cleaned up). The RNC does not come close to any of these showings here. Instead, it speculates that the Secretary may not "present the same arguments" and might be "less likely to exhaust all appellate options" and "more likely to settle" than the RNC. Dkt. No. 28 at 13. Not only are most of these differences simply differences in approaches to litigation, the RNC presents no evidence or argument that any of it is likely to happen in this matter. To the contrary, the Secretary is vigorously litigating this case. Moreover, he has already moved to dismiss—twice—citing the same Fifth

Circuit opinion the RNC said it would present to the Court if it intervened. *See* Mem. in Support of Mot. to Dismiss at 4-6, *Kan. Appleseed Ctr. for Law & Justice, Inc. v. Schwab,* No. 25-cv-2375 (D. Kan. July 18, 2025), ECF No. 32; Mem. in Support of Mot. to Dismiss at 5-7, Dkt. No. 44. The RNC's "purely speculative" suggestion that its interests might diverge from the Secretary's at some "unspecified time in the future" cannot justify intervention. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1307 (9th Cir. 1997).[3]

Finally, even if the RNC could show (and it has not) that it is likely that the Secretary's approach to this litigation will diverge from the RNC's preferred approach, intervention rules would "have no meaning" if "disagreement with an existing party over trial strategy qualified as inadequate representation." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 181 (2d Cir. 2001). Courts regularly reject the contention that an intervenor's desire to pursue different litigation tactics or to present different arguments is enough to warrant intervention. *See, e.g.*, *Guenther v. BP Ret. Accumulation Plan*, 50 F.4th 536, 543 (5th Cir. 2022) ("Differences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest."); *Sec. & Exch. Comm'n v. LBRY, Inc.*, 26 F.4th 96, 99-100 (1st Cir. 2022) ("A proposed intervenor's desire to present an additional argument or a variation on an argument does not establish inadequate representation"); *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 954 (9th Cir. 2009) (explaining the failure of existing defendants to defend suit in the "exact manner" as proposed intervenor does not support intervention); *Jenkins by Jenkins v. State of Mo.*, 78 F.3d 1270, 1275 (8th Cir. 1996) ("A difference of opinion concerning litigation strategy or individual aspects of a remedy does not overcome the presumption of adequate

[3] On the possibility that the State may fail to appeal or would settle, the RNC's motion is also premature. The parties have not discussed settlement and, given the Secretary's history of vigorously litigating challenges to election laws, the prospect seems exceedingly unlikely.

representation.").

In sum, the Secretary is "more than capable of defending the constitutionality of the Receipt Deadline without the [RNC's] assistance." *Yazzie*, 2020 WL 8181703, at *4. The Court should thus find the RNC has failed to carry its burden of meeting the inadequacy of representation requirement and deny its motion.

**C. The RNC fails to identify relevant authority supporting intervention.**

It is also telling that, as noted above, the RNC fails to identify a single decision by a Kansas court to allow intervention under facts comparable to here. Though it claims *Farmers Group, Inc. v. Lee* supports intervention in cases "such as these," Dkt. No. 28 at 9, there the Kansas Court of Appeals held only that potential "*violations* of constitutional rights can warrant intervention." 29 Kan. App. 2d 382, 386, 28 P.3d 413, 417 (2001) (emphasis added).[4] In stark contrast, here the RNC does not—and cannot—claim its constitutional rights might be violated by the relief sought by Plaintiffs. Besides, the facts in *Farmers Group* are far removed from the facts here. The intervenors in *Farmers Group* sought to modify an injunction enforcing a nondisclosure agreement between a former employee and employer so that the employee could testify in court on topics covered by the agreement, arguing that the nondisclosure agreement violated their due process rights by depriving them of relevant testimony. *Id.* at 383-86. The facts of that case simply are not germane to whether the RNC has a legally protectable interest in defending a law that threatens to disenfranchise voters, particularly when the State is already adequately defending the law.

Failing to find support in Kansas law, the RNC instead leans heavily on a federal district court's decision to allow the RNC to intervene to defend President Trump's omnibus executive

[4] RNC attributes this decision to the Kansas Supreme Court, *see* Dkt. No. 28 at 9, but the decision cited is in fact from the Kansas Court of Appeals.

order on elections. *See* Order at 9, *League of United Latin Am. Citizens* (*LULAC*) *v. Exec. Off. of the President*, No. 1:25-cv-946 (D.D.C. June 12, 2025), ECF No. 135. But the RNC neglects to mention several important aspects of that decision. To start, unlike here, the parties did not oppose the RNC's motion to intervene in the executive order action. *Id.* at 2. Next, the Democratic National Committee is also a plaintiff in that action, and the court emphasized that it found the RNC had standing to intervene "for many of the same reasons" the DNC had standing to sue. *Id.* at 6. But Plaintiffs here are voters and nonpartisan organizations, so there is no such symmetry. And the court's decision to grant intervention relied heavily on *actual evidence* the RNC offered to support its interests (presented via a sworn declaration attached to its motion), while here the RNC presents *no* evidence in support of its claimed interests. For all these reasons, the *LULAC* decision is not "persuasive guidance." *Ternes*, 297 Kan. at 921 (explaining federal decisions "may" be "persuasive guidance" on motions to intervene).

The RNC also argues that political parties have often intervened in election cases—but the cases it cites show that intervention is proper when a party's voters would be *harmed* by the relief sought, or if the party *itself* is directly regulated by the challenged law. *See La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 307 (5th Cir. 2022) (allowing party committees to intervene to defend law that regulated poll watchers because under Texas law the parties themselves appointed the poll watchers); *Citizens United v. Gessler*, No. 14-CV-002266-RBJ, 2014 WL 4549001, at *1 (D. Colo. Sept. 15, 2014) (allowing party committee to intervene to defend Colorado law that imposed reporting and disclosure requirements on election communications and independent expenditures and so directly regulated parties); *Issa*, 2020 WL 3074351, at *3 (allowing party committee to intervene to defend law providing for all-mail elections against the RNC challenge to restrict voting by mail). The RNC's citation to *Bost v. Illinois State Bd. of Elections*, 75 F.4th

682 (7th Cir. 2023), for the proposition that political parties "have successfully intervened in numerous election cases," Dkt. No. 28 at 8, is particularly off base. Though the court there found the Democratic Party of Illinois had a protectable interest in defending Illinois's ballot receipt grace period against a Republican challenge (the opposite of the situation here), the court nonetheless *denied* intervention because its interests were adequately represented by the state. *Bost*, 75 F.4th at 687-90.

The RNC also cites *DNC v. Hobbs* and *Mi Familia Vota v. Hobbs*, *see* Dkt. No. 28 at 3 n.1, but those cases miss the mark. The RNC omits that it was *denied* intervention in the original case (brought by a nonpartisan plaintiff) before it was consolidated with the DNC's case, and that when the court ultimately granted intervention, it was unopposed. Order at 3-6, *Mi Familia Vota v. Hobbs*, No. 2:22-cv-509 (D. Ariz. June 23, 2022), ECF No. 57; Order, *DNC v. Hobbs*, No. 2:22-cv-01369 (D. Ariz. Aug. 24, 2022), ECF No. 18. Indeed, *Mi Familia Vota* makes clear why intervention is not warranted here. There, just like here, "the government [was] representing its constituency, and despite [the RNC's] arguments to the contrary, Movants and Defendants share the same objective: defending the constitutionality of [a state law]." Order at 3, *Mi Familia Vota v. Hobbs*, No. 2:22-cv-509 (D. Ariz. June 23, 2022), ECF No. 57. The court rejected the RNC's argument that intervention was necessary to allow the RNC and related entities to "advance . . . uniquely Republican interests," concluding instead that "a would-be intervenor's partisan motivation—vis-à-vis the government's obligations to its entire constituency, regardless of political affiliation—does not alone call into question the government's sincerity, will or desire to defend the challenged law." *Id.* (cleaned up).

## II. The Court should also decline to grant the RNC permissive intervention.

The Court should also decline to exercise its discretion to grant permissive intervention to

the RNC in this case. A court "may" allow a party to intervene when it has a "claim or defense" that "shares with the main action a common question of law or fact." K.S.A. 60-224(b)(1)(B); *see Jones v. Bordman*, 243 Kan. 444, 448, 759 P.2d 953, 958 (1988) (permissive intervention is "wholly within the discretion of the district court"). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." K.S.A. 60-224(b)(3). For many of the same reasons that the RNC has no right to intervene, the Court should deny the RNC's request for permissive intervention.

Even if any of the RNC's asserted interests are cognizable or plausible (and for the reasons discussed, they are not), they are already adequately represented by the State, and that alone is sufficient to deny its request for permissive intervention. *See Tri-State*, 787 F.3d at 1075 (affirming denial of permissive intervention on ground that existing parties adequately represented interests of proposed intervenor); *Tutein v. Daley*, 43 F. Supp. 2d 113, 131 (D. Mass. 1999) ("The case for permissive intervention diminishes or disappears entirely" "where intervention as of right is decided based on the government's adequate representation.") (cleaned up). Further, the RNC fails to show that it will "offer any additional defenses or claims relevant to the issue to be decided that would not already be fully and completely advocated by [the existing defendants]." *Kane Cnty., Utah v. United States*, 597 F.3d 1129, 1136 (10th Cir. 2010) (cleaned up) (affirming denial of permissive intervention on this ground). Indeed, the RNC is no better situated to intervene than "any other member of the public who cares deeply about the outcome of the litigation." *Id.* (cleaned up). In short, the RNC's intervention would not meaningfully assist the Court in resolving this case. If anything, it is likely to hinder it. Permitting the RNC to intervene now would only complicate discovery and "result in undue delay in adjudication of the merits, without a corresponding benefit to existing litigants, the courts, or the process." *Stuart*, 706 F.3d at 355; *see*

*Democracy N.C. v. N.C. State Bd. Of Elections*, No. 1:20-cv-457, 2020 WL 6589359, at *2 (M.D.N.C. June 30, 2020) (denying RNC intervention because it would require "additional examination of witnesses, cross-examination of witnesses, or the presentation of additional evidence" and so cause "unnecessary and undue delay"). Delay would be particularly prejudicial here, where speed is of the essence. After SB 4 goes into effect in January 2026, the organizational Plaintiffs will begin to suffer the harms of the law as they are forced to divert resources from other mission-critical voter registration work to efforts to educate voters on SB 4 to ensure they cast their ballots in time for them to be counted. And the individual voter Plaintiffs will be at risk of disenfranchisement if the law is not enjoined by the August 2026 primaries. Adding another party to the case will only make it more difficult to efficiently resolve this matter and achieve clarity for everyone before the next election.

If the Court nonetheless concludes that it would be helpful to hear the RNC's perspective, it could allow the RNC to submit an amicus curiae brief stating its views, rather than intervening. That would permit the RNC the opportunity to be heard without delaying or complicating the litigation. *See Gannon v. State*, 302 Kan. 739, 744, 357 P.3d 873, 877 (2015) (affirming denial of motion to intervene but recognizing that proposed intervenor could file an amicus brief).

## CONCLUSION

The Court should deny the RNC's motion to intervene.

Respectfully submitted, this 23rd day of October, 2025.

*/s/ Nicole Revenaugh*
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**Appearing Pro Hac Vice*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 23, 2025, a true and correct copy of the above document was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send notice of electronic filing to all counsel of record.

*/s/ Nicole Revenaugh*
Nicole Revenaugh