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9 *Attorneys for Proposed Intervenor*  
10 *Arizona Secretary of State Adrian Fontes*

11 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
12 **IN AND FOR THE COUNTY OF MARICOPA**

13 KARI LAKE, a married woman,  
14 Plaintiff,

15 vs.

16 STEPHEN RICHER, in his official  
17 capacity as Maricopa County Recorder,  
18 Defendant,

19 and

20 ADRIAN FONTES, in his official  
21 capacity as Arizona Secretary of State,  
22 Proposed Intervenor.

No: CV2023-051480

**SECRETARY OF STATE'S  
MOTION TO INTERVENE**

(Assigned to the Hon. John Hannah)

23 Arizona Secretary of State Adrian Fontes, as the state's chief election officer,  
24 moves to intervene to be a party to this action. Because the Secretary administers the  
25 statewide voter database, promulgates the rules which all counties must follow regarding  
26 the use of that database, and may be required to disclose records from the statewide

1 database in his own capacity, any ruling in this matter may impair the Secretary’s ability  
2 to protect the interests of Arizona’s voters, or subject him to a substantial risk of  
3 inconsistent obligations in his role administering the statewide voter database. Similarly,  
4 the Secretary should be permitted to intervene because the question of law at issue here—  
5 whether a voter’s signature that has been used to validate their vote and included in the  
6 statewide database can be disseminated—directly concerns his legal obligations as the  
7 state’s chief election officer and elected official. For these reasons, the Secretary’s  
8 motion to intervene (“Motion”) should be granted.  
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10 **I. Relevant Facts**

11 On April 25, 2023, Plaintiff Kari Lake filed a special action against the Maricopa  
12 County Recorder Steven Richer, the Maricopa County Election Directors Rey Valenzuela  
13 and Scott Jarrett, the Maricopa County Board of Supervisors and other election-related  
14 Maricopa County entities (“Maricopa Defendants”) seeking copies of all the early ballot  
15 affidavits on the outside of the envelopes voters use to return their early ballots. These  
16 images were sought on the basis that Plaintiff was “a candidate for Governor and Plaintiff  
17 with an ongoing election challenge.” (Compl. at ¶ 29). Plaintiff is no longer a candidate  
18 for governor, nor the plaintiff in an on-going election contest.  
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21 The Court granted (in part) the Maricopa Defendants’ motion to dismiss on June  
22 28, 2023, dismissing all the Maricopa Defendants except Maricopa County Recorder  
23 Steven Richer. An answer was filed by the Recorder on July 21, and on August 8, the  
24 Court set a status conference for August 24, 2023. Should the Secretary be authorized to  
25 intervene, counsel will be prepared to move at the schedule the parties and the Court set  
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1 at the August status conference and will not seek to delay the proceedings. The Plaintiff  
2 objects to the Secretary’s intervention, while the Defendant does not oppose it.

3 **II. Argument**

4 The ability to intervene in a suit to defend a person’s obligations has long been  
5 recognized by the courts. A court may be required to permit intervention due to a  
6 statutory obligation or upon the basis of an interest that is not otherwise presented or  
7 protected by the parties involved in the suit. Ariz. R. Civ. P. 24(a). A court may allow a  
8 party to join when the specific facts or legal issues in the case support a party’s  
9 intervention, or when a government actor is entrusted with administering procedures at  
10 issue in the litigation. *Id.* at (b). Whatever the basis for intervention, “Rule 24 is  
11 remedial and should be construed liberally in order to assist parties seeking to obtain  
12 justice in protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 269-70, ¶ 58 (App.  
13 2009). The allegations in the motion to intervene should be accepted as true. *Id.*

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16 Rule 24’s remedial purpose, to obtain justice, is best served by permitting the  
17 Secretary to intervene. The Secretary’s intervention serves a laudable objective, to  
18 ensure sensitive voter information—which is at the heart of protecting the integrity for  
19 approximately eighty percent of all votes cast in Arizona’s elections—receives consistent  
20 treatment in all fifteen Arizona counties.

21  
22 **A. The Secretary’s Motion to Intervene Is Timely.**

23 The Motion is timely, and no parties will be prejudiced by the Secretary’s  
24 intervention at this early stage of the litigation. The Defendants’ motion to dismiss was  
25 disposed of in late June, and just last week the Court set a status conference for August  
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1 24, 2023. “The timeliness requirement is a flexible one and . . . is normally left to the  
2 sound discretion of the trial court.” *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446  
3 (App. 1989). The most important consideration is whether intervention will prejudice  
4 existing parties, and the court should exercise its discretion and “look to the practical  
5 situation and the effect [of] allowing intervention,” *Winner Enterprises, Ltd. v. Super.*  
6 *Court in and for Cty. of Yavapai*, 159 Ariz. 106, 109 (App. 1998). “[T]he court should be  
7 reluctant to dismiss a request for intervention as untimely,” because the intervenor’s  
8 interests may be seriously harmed if intervention is denied. *Id.* Indeed, in extraordinary  
9 circumstances, permissive intervention is allowed after the entry of judgment. *Zenith*  
10 *Electronics Corp. v. Ballinger*, 220 Ariz. 257, 264 ¶25 (App. 2009).

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13         Comparatively speaking, this is an easy case. The motion to dismiss was only  
14 recently disposed of, and no further substantive proceedings have occurred. The  
15 Secretary is prepared to join the status conference on August 24, and will not delay the  
16 case. The Secretary was only recently made aware of this case, and intervention at an  
17 earlier stage of the case would have wasted the parties’ and judicial resources, had the  
18 Maricopa Defendants’ motion to dismiss been granted in full. Given these factors, the  
19 Secretary’s Motion is timely. Because the Motion is timely, Rule 24 permits intervention  
20 as of right or permissively, as discussed below.

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22                 **B. The Secretary Can Intervene as a Matter of Right.**

23         The court must allow a person to intervene as of right if that person can “claim[]  
24 an interest relating to the subject of the action, and . . . disposing of the action in the  
25 person’s absence may as a practical matter impair or impede the person’s ability to  
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1 protect that interest, unless existing parties adequately represent that interest.” Ariz. R.  
2 Civ. P. 24(a)(2). “[I]f they can bring themselves within the terms of either of the  
3 conditions of the rule [allowing intervention as of right], they are *entitled* to intervene in  
4 the action.” *Saunders v. Super. Court in and for Maricopa Cnty.*, 109 Ariz. 424, 425  
5 (1973) (emphasis added).

6  
7 The Secretary is Arizona’s chief election officer. A.R.S. § 16-142(A). He is  
8 entrusted by state and federal law with administering the statewide voter database, and  
9 ensuring all counties have access to all the information necessary to perform their jobs in  
10 a uniform, efficient, and impartial manner. *See id.* (identifying the Secretary as the  
11 state’s chief election officer responsible for coordinating voter information pursuant to  
12 federal law). Arizona law requires the Secretary to “establish a single format [for voter  
13 registration information] to ensure that the submissions are uniform from all counties in  
14 this state, that all submissions are identical in format, including the level of detail for  
15 voting history, and that the information may readily be combined from two or more  
16 counties.” A.R.S. § 16-168(C). The Secretary shall “administer a statewide database . .  
17 .that contains the name and registration information of every registered voter in this state,  
18 . . . provide for maintenance of the database,” and ensure it complies with federal law.  
19 *Id.* at (J).

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22 Disposing of this action without allowing the Secretary to participate “as a  
23 practical matter may impair or impede” the Secretary’s obligation to ensure consistent  
24 use of the statewide database and compliance with state and federal law. Ariz. R. Civ. P.  
25 24(a). For example, signatures are included in the database to allow counties to “check  
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1 the voter's affidavit on the envelope containing the early ballot," and the ballot cannot be  
2 counted if the signature on the envelope and the signatures in the voter's record do not  
3 match. A.R.S. § 16-552(B). Voter signatures are used to verify the identity of the voter  
4 on a number of documents aside from ballots. Signatures from the statewide database are  
5 utilized to determine whether a voter asked to be added to the automatic early voter list,  
6 A.R.S. § 16-544(C), whether a candidate can secure a place on the ballot, A.R.S. § 16-  
7 321, whether an elected official faces recall, A.R.S. § 19-205, whether a candidate  
8 qualifies for funding for their political campaign through the Arizona Clean Elections  
9 Commission, A.R.S. § 16-946(B)(6), and whether a voter-backed initiative makes it to  
10 the ballot, A.R.S. § 19-112(A).<sup>1</sup> The maintenance and protection of voter signatures in  
11 the statewide database as part of the voter record is paramount. Indeed, the legislature  
12 has decreed the statewide database as a matter of statewide importance and entrusted the  
13 Secretary with its maintenance and protection. A.R.S. § 16-168(J). For these reasons,  
14 the Secretary has demonstrated a significant interest that may be impaired if this matter  
15 progresses without allowing him to intervene.

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19 Furthermore, the Secretary's interest in this matter is not already represented by  
20 the Recorder, because certain duties vis-a-vis the statewide database are borne solely by  
21 the Secretary under state and federal law. For example, the Maricopa County Recorder  
22 has no authority to require a different county to submit their voter registration system  
23 subject to his approval after testing the county's system for compatibility with the state  
24 system. A.R.S. § 16-168(J). The Secretary, however, may subject a county's voter

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26 <sup>1</sup> This list is not an exhaustive list of all the ways signatures from the database are used in various election processes, but it is a representative sample of the important role the integrity of the statewide database plays in Arizona's elections.

1 registration systems to such tests. *Id.* Likewise, federal law requires the state’s chief  
2 election officer—not the counties—to ensure people can register to vote when obtaining  
3 certain government benefits, and specifically prohibits that information be used for any  
4 other purpose. 52 U.S.C. §§ 20504, 20506. This includes signatures from forms  
5 processed and submitted by those government agencies to the Secretary. *Id.* When it  
6 comes to the information maintained in and distributed from the statewide voter database,  
7 the buck stops with the Secretary. He must have the right to intervene to uphold his legal  
8 obligations.  
9

10         Additionally, as a statewide elected official, the Secretary can address the “best  
11 interest of the State” concern in a way that the county Defendant, given his smaller  
12 constituency, may not be able to. This does not mean that the County Defendants did not  
13 properly invoke the best interest of the state. But an elected official with a state-wide  
14 constituency, responsible for administering a massive database in a manner that works for  
15 the largest and smallest counties, has different insights; the Secretary should be allowed  
16 to assert these different and important perspectives.  
17

18         Because the Secretary’s statutorily proscribed role in administering the statewide  
19 voter database may be impaired if this suit is resolved without his participation, and  
20 because certain duties regarding the statewide voter database falls solely within the  
21 Secretary’s jurisdiction and are therefore not represented by the parties currently in this  
22 litigation, the Court should grant the Secretary’s Motion to intervene as of right pursuant  
23 to Rule 24(a).  
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1                   **C. The Secretary Should be Permitted to Intervene as an Impacted Party.**

2                   If intervention as of right is not warranted, the Secretary should still be allowed  
3 permissive intervention. A person may intervene if he “has a claim or defense that shares  
4 with the main action a common question of law or fact.” Ariz. R. Civ. P. 24 (b)(1).  
5 Additionally, a state governmental officer or agency may be permitted to intervene if a  
6 “claim or defense is based on a statute administered by the officer or agency, or any  
7 regulation, order, requirement, or agreement issued or made under a statute administered  
8 by the officer or agency.” *Id.* at (b)(2). In deciding whether to permit intervention, a  
9 court “must consider whether the intervention will unduly delay or prejudice” the rights  
10 of the original parties to the action. *Id.* at (b)(3).

11                   The Complaint, in a nutshell, seeks copies of the ballot affidavit signatures, which  
12 have been added to the voter’s record in the statewide voter database. Whether voter  
13 signatures from the statewide database can be disclosed to third-parties is a claim that the  
14 Secretary has a legally-mandated interest in. Arizona law requires the statewide voter  
15 database to include “any other information regarding registered voters that the [filing  
16 officer] maintains electronically . . and all data relating to [early voters] including ballot  
17 requests and returns.” A.R.S. § 16-168(C)(10)-(11). A decision that the voter affidavit  
18 signature is not part of the voter’s record and not protected from disclosure pursuant to  
19 A.R.S. § 16-168(F), could change how counties maintain this and other voter  
20 information, including what is provided to the statewide voter database, which the  
21 Secretary is charged with maintaining. The Secretary should be permitted to intervene,  
22 both because he has an interest arising from the claims and defenses already at issue in  
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1 this litigation, and further because he has defenses based on the statutes and regulations  
2 he is charged by law to administer in his role as an elected official.

3 Permissive intervention should be liberally granted when the existing parties are  
4 not prejudiced by the intervention. *Dowling*, 221 Ariz. at 269-70. This Motion was  
5 brought soon after the resolution of the motion to dismiss, and before any additional  
6 substantive briefing or discovery has occurred. The Secretary has a deep understanding  
7 of the legal and factual matters at issue here and is prepared to join the lawsuit without  
8 delay, so there should be no prejudice to the existing parties. The Court should grant the  
9 Secretary's Motion to intervene.  
10

11 **CONCLUSION**

12 The Secretary's Motion to Intervene should be granted. He has satisfied the  
13 requirements to intervene as a matter of right, or, in the alternative, permissive  
14 intervention. A proposed Answer has been attached as an exhibit to this Motion pursuant  
15 to Ariz. R. Civ. P. 24(c)(1)(B).  
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19 RESPECTFULLY SUBMITTED this 17th day of August, 2023.

20  
21 KRISTIN K. MAYES

22 /s/ Kara Karlson  
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1 ORIGINAL of the foregoing E-FILED  
2 This 17th day of August, 2023, with  
3 AZTURBOCOURT, and copies e-served/mailed to:

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