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10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE DISTRICT OF ARIZONA**

12 Arizona State Legislature,

13 Plaintiff,

14 v.

15 Arizona Independent Redistricting
Commission, et al.,

16 Defendants.
17

No. CV 12-01211-PHX-ROS

**MOTION TO INTERVENE BY
MARICOPA COUNTY**

18 The Maricopa County Recorder Helen Purcell and Maricopa County
19 Elections Director Karen Osborne ("Maricopa County"), by and through
20 undersigned counsel, move pursuant to Fed. R. Civ. P. 24(a) for leave to
21 intervene as a defendant in this action. Maricopa County seeks intervention as a
22 matter of right pursuant to Fed.R.Civ.P. 24(a)(2), which provides as follows:

1 On timely motion, the court must permit anyone to intervene who:
2 ...claims an interest relating to the property or transaction that is
3 the subject of the action, and is so situated that disposing of the
4 action may as a practical matter impair or impede the movant's
5 ability to protect its interest, unless existing parties adequately
6 represent that interest.

7 Maricopa County's motion is timely, and

8 1. the County possesses a significantly protectable interest relating to
9 the subject of the action;

10 2. the County is so situated that the disposition of the action may as a
11 practical matter impair or impede its ability to protect that interest; and

12 3. the County's interest may be inadequately represented by the
13 parties to the action, all as required by Fed.R.Civ.P. Rule 24(a).

14 As one of fifteen counties responsible for conducting Arizona's 2014
15 primary and general elections, and as further described in the Affidavit of Karen
16 Osborne attached as Exhibit A hereto, the County has substantial legal, financial
17 and governmental interests to protect with regard to this litigation, and with
18 regard to redistricting and elections generally. The outcome of this lawsuit, both
19 legally and practically, will have a substantial impact on the County's ability to
20 comply with its statutory obligations to ensure that its 1.9 million voters are able
21 to vote, in their proper precinct and election districts, and to have their votes
22 counted.

In addition, the County is contractually and statutorily obligated to serve
the election needs of more than one hundred local governments within the

1 County in the 2014 August and November elections. These commitments are at
2 risk, dependent also on the outcome of the pending litigation. Where a party
3 would be substantially affected in any practical sense by the determination made
4 in an action, “[the party] should ... be entitled to intervene.” *Southwest Ctr. for*
5 *Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (citing Fed. R. Civ.
6 P. 24 advisory committee’s notes).

7 Finally, the County is required to indicate how its interests in the litigation
8 are not “adequately represented by existing parties.” Though the burden of
9 demonstrating a lack of adequate representation is on the prospective
10 intervenors, “the burden of showing inadequacy is ‘minimal’.” *Southwest Ctr.*,
11 268 F.3d at 823 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538
12 n.10 (1972)). A prospective intervenor “need only show that representation of its
13 interests by existing parties ‘may be’ inadequate.” *Southwest Ctr.*, 268 F.3d at
14 823.

15 Maricopa County needs to ensure that its unique local government
16 interests are adequately represented. The County’s 1.9 million voters constitute
17 60% of Arizona’s active registered voters. In addition more than half of the state’s
18 2014 voting precincts are in Maricopa County. As a result, the County is
19 compelled to protect the interests of its taxpayers and voters, especially in light of
20 the enormous exposure to its resources and operations, and the validity of the
21 numerous mandatory election events it must carry out over the next few weeks
22 and months.

1 The County's voting precincts are the building blocks for all electoral
2 districts and state, federal and local elections conducted by the County. Given
3 that eight of the nine Congressional Districts are contained wholly or partially
4 within Maricopa County, any changes to the Congressional Districts would force
5 the County to redraw and align all of its voting precincts.

6 Although the County takes no position on the merits, the circumstances
7 are such that the County has overwhelming interest in this lawsuit. For the
8 reasons stated herein, Maricopa County asks that this Court grant its motion to
9 intervene.

10 RESPECTFULLY SUBMITTED this 31st day of January, 2014.

11 WILLIAM G. MONTGOMERY
12 MARICOPA COUNTY ATTORNEY

13 By: /s/ M. Colleen Connor
14 M. COLLEEN CONNOR
15 Deputy County Attorney
16 Attorneys for Maricopa County
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of January, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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16 /s/Jennifer Christiansen

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No. CV 12-01211-PHX-ROS

EXHIBIT LIST

Exhibit A: Affidavit of Karen Osborne date 01/29/2014

EXHIBIT A

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

EXHIBIT ONE

**AFFIDAVIT OF KAREN OSBORNE REGARDING ELECTION
ADMINISTRATION FOR THE 2014 ELECTIONS**

The undersigned, having been first duly sworn and cautioned, and competent to testify to the matters stated herein, does upon her oath, state the following of her personal knowledge, information and belief:

1. I am the Director of Elections for Maricopa County. In that capacity, I am responsible for numerous duties of the Maricopa County Recorder and Maricopa County Board of Supervisors related to conduct of the 2014 Primary and General Elections, including all aspects of administering these elections for more than 1.9 million voters¹ in Maricopa County, and in particular, implementing voting precinct and electoral district boundary changes, conducting candidate filing, ballot printing early voting and related duties.
2. I am also knowledgeable about election administration duties and voting systems in Arizona's other counties, having served as Secretary of State for the State of Arizona in 1988, and as Assistant Secretary of State for fourteen years, with statewide responsibilities for election administration. Since 1987 I have provided training and technical assistance for certified election officers from all of Arizona's counties through the State Election Officer Certification Program and have served on the Secretary of State Election Officer Education, Training and Certification Advisory Committee.
3. In 2011, all Arizona counties reviewed their own election districts and redistricted as necessary to meet federal and state criteria for voting precincts, justice court precincts, supervisorial, special health care, and community college districts following release of the 2010 census data, 2011 judicial productivity data from the Arizona Supreme Court, and adoption of the State's Legislative District and Congressional District lines approved by the Arizona Independent

¹ January 2014 Active Voter Registration Count:
http://www.azsos.gov/election/VoterReg/Active_Voter_Count.pdf

Redistricting Commission. The Counties' redistricting programs were accompanied by considerable staff work, demographic, community and geographic analysis, and public hearings.

4. Maricopa County has more than 1,949,000 active, registered voters, or 60% of the total number of registered voters in the State. Eight of the nine Congressional Districts are either wholly or partially contained in Maricopa County.

VOTING PRECINCTS

5. County voting precincts are the building blocks for all electoral districts and state, federal and local elections conducted by the County. There are more than 1,600 voting precincts in Arizona, 724 of which are in Maricopa County. State law mandates that the County's voting precinct boundaries align with and match the State's Legislative and Congressional district boundary lines. The voting precinct, Legislative and Congressional District lines must also align with the County's own justice court, board of supervisors, community college, and special health care electoral district lines (A.R.S. §§ 16-411(A), 15-1441, 48-5541.01).

6. County election districts, voting registration systems, ballot printing, election boardworkers, polling places, counting and tabulation systems are all dependent on "precinct-bound" electoral district boundaries. Arizona's laws are rigid with regard to registering voters by precinct, voting and tabulation which must occur by precinct. For example, voters must vote only in the precincts of their residence; their ballots may only be counted as valid -- and the final tabulation and canvasses for all state, federal and local races and questions must tally -- only those votes which are cast by voters from their proper voting precinct "homes."

7. If the State is enjoined from using the current Congressional District maps, County Recorders and County Boards of Supervisors in Arizona would be unable to proceed with various election duties for the 2014 elections because of the State's complex precinct-based voting and election requirements. The County's election district boundaries include the 724 voting precincts, 26 justice court precincts, and the 5 districts for the board of supervisors, community college district, and special health care district. (A.R.S. §§ 16-411, 22-101, 22-125, 11-212, 15-1441, 48-5541.01).

8. Pursuant to A.R.S. § 16-411, the Maricopa County Board of Supervisors was required to complete the re-precincting of voters based on final state, county and federal district lines prior to December 1, 2013. That statutory deadline has passed. If the County was presented with new Congressional District lines, the County would need at least 45 days to complete a new re-precincting process.

CANDIDATE ELECTIONS

9. For the August 26, 2014 Primary Election, the Secretary of State, the County Election Departments, and City Clerks will begin accepting nomination petitions for federal, statewide, legislative, county, city and precinct level offices on April 28, 2014 and ending on May 28, 2014 (A.R.S. § 16-311). Nomination petition signatures and the eligibility of the candidates and those who have signed their petitions may be challenged by any qualified elector pursuant to A.R.S. § 16-351 no later than 5:00 p.m. on June 11, 2014.

10. For candidates seeking a nomination other than by a Primary Election to appear on the November 4, 2014 General Election ballot (independent candidates), those candidates also are required to file their nomination petition signatures with the appropriate filing officer during the period that started on April 28, 2014 and ends on May 28, 2014. (A.R.S. § 16-341). The calculation of the number of nomination petition signatures required and boundaries within which candidates could gather signatures of registered voters will be determined as of March 1, 2014 (A.R.S. § 16-322).

11. There are more than 20,000 county and precinct level offices in Arizona, more than half of which are in Maricopa. For the office of precinct committeeman in Maricopa County, there are 11,966 precinct committeemen positions that could be filled by election in the Primary Election (4,852 for the Democratic Party, 6,383 for the Republican Party and 731 for the Libertarian Party).

BALLOT PRINTING

12. The Primary Election ballot is created by establishing voting databases for each of the 724 voting precincts that must contain the appropriate federal, state, county and precinct offices for voters affiliated with the 4 recognized political parties and independent voters. Assuming that each of the 4 recognized parties will have candidates seeking a federal office, the Elections Department must prepare a different ballot style for the 4 recognized political parties and independent voters for each of the 724 voting precincts resulting in 2,896 different styles that must be created, programmed for tabulation, and printed (A.R.S. §§ 16-461, 16-503) in time for early voting (A.R.S. §§ 16-542, 16-545) and for mailing to registered absent uniformed services voters and overseas voters. (A.R.S. § 16-543). In addition, the County must print a separate federal election ballot for registered voters who used a Federal Form, but failed to prove U.S. citizenship. If all four of the recognized parties have a candidate seeking the party nomination for the eight Congressional Districts within the County, the County would have to print 2,896 additional ballot styles.


13. The ballot layout must be finalized in time for printing for early voting, which begins on July 31, 2014, because the early ballots must be identical to the regular, official ballots for use in the primary and general elections (A.R.S. § 16-545). For registered absent uniformed services voters and overseas voters (A.R.S. § 16-543), the Primary Election ballots shall be transmitted to the voters no later than 45 days before the election, or July 12, 2014. With that deadline, the Elections Department must complete the ballot layout for the thousands of ballot styles to begin sending the ballot files to the printer in June of 2014. In the event the nomination petition court challenges (A.R.S. § 16-351) are not resolved by the date of the printing deadline, the Elections Department will refrain from sending the select ballot files that contain the challenged office to the printer as long as possible.

14. If the Congressional District lines are changed and the voting precinct boundaries need to be adjusted to match final revised Congressional lines, there will be delays in overlaying and hand-inputting new/revised geographic lines onto the County's voter registration automated system, and then converting those results into the ballot database management system. The County would also have to print and mail new voter registration cards listing the appropriate Congressional District for nearly 2 million voters. (A.R.S. § 16-412)

15. For all these reasons, the compressed nature of Arizona's election schedule, the mechanics and complexities of its election laws, the proximity of the forthcoming election, and to avoid delays which will disenfranchise or confuse voters, Arizona's counties must have definitive voting lines for the 2014 elections.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 29th day of January, 2014.


Karen Osborne

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**[PROPOSED] ORDER
GRANTING MOTION TO
INTERVENE**

Pursuant to Fed.R.Civ.P. 24(a) and good cause appearing therefore,

IT IS HEREBY ORDERED granting the motion to intervene as a defendant
filed by the Maricopa County Recorder Helen Purcell and Maricopa County
Elections Director Karen Osborne.

DATED this ____ day of _____, 2014.

United States District Judge