IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

COOK COUNTY REPUBLICAN PARTY,

Plaintiff,

v.

J.B. PRITZKER, in his official capacity as Governor of the State of Illinois; CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM J. CADIGAN, LAURA K. DONAHUE, WILLIAM R. HAINE, WILLIAM M. MCGUFFAGE, KATHERINE S. O'BRIEN, and CASANDRA B. WATSON, in their official capacities as Board Members of the Illinois State Board of Elections; KAREN A. YARBROUGH, in her official capacity as Cook County Clerk; and MARISEL A. HERNANDEZ, WILLIAM J. KRESSE, and JONATHAN T. SWAIN, in their official capacities as Commissioners of the Chicago Board of Election Commissioners,

Defendants,

and

DCCC,

Proposed Intervenor-Defendant.

No. 1:20-cv-04676

Hon. Robert M. Dow, Jr.

MOTION TO INTERVENE AS DEFENDANT

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendant DCCC ("Proposed Intervenor") moves to intervene as a defendant in the above-titled action.

The United States is in the midst of an unprecedented public health crisis; Illinois is no exception. The highly contagious coronavirus will continue to alter all Illinoisans' daily lives—including how they vote. Recognizing that the novel coronavirus will impact the November 3, 2020 general election (the "November Election"), the Illinois Legislature enacted Senate Bill 1863 ("SB 1863"), which makes various temporary changes to the State's election laws to ensure that all eligible Illinoisans have safe and meaningful opportunities to cast ballots in November. Plaintiff Cook County Republican Party now challenges these reasonable, common-sense measures, alleging a slew of speculative and disjointed claims in an effort to undermine the State's efforts to protect Illinois voters during an unprecedented public health crisis. In so doing, they pose a clear and direct threat to Proposed Intervenor's rights and legal interests.

For the reasons set forth below, Proposed Intervenor is entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Such intervention is needed to protect its substantial and distinct legal interests, which will otherwise be inadequately represented in this litigation. In the alternative, Proposed Intervenor requests permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed Answer is attached as Exhibit 1. Proposed Intervenor has also attached an opposition to Plaintiff's pending motion for preliminary injunction as Exhibit 2.

Proposed Intervenor sought from the named parties agreement to this motion. Defendants J.B. Pritzker, Karen A Yarbrough, Marisel A. Hernandez, William J. Kresse, and Jonathan T. Swain do not oppose intervention, while Defendants Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S.

O'Brien, and Casandra B. Watson take no position. Plaintiff has not yet provided a response to Proposed Intervenor. If Plaintiff objects to intervention, Proposed Intervenor respectfully requests that briefing on this motion, if any, be expedited.

I. BACKGROUND

On June 16, 2020, Defendant J.B. Pritzker, the Governor of Illinois (the "Governor"), signed SB 1863 into law, explaining that the legislation "would 'allow more people' to vote by mail and would address fears of voting in person due to COVID-19." *See* Complaint ("Compl."), ECF No. 1, ¶¶ 14–15 (quoting Press Release, *Gov. Pritzker Signs Legislation to Expand Vote by Mail, Promote Safe Participation in the 2020 Election*, State of Ill. (June 16, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21690). Among other temporary provisions,[1] SB 1863 requires local election officials to mail or email vote by mail applications to recent Illinois voters, "expands early voting hours at permanent polling places, improves the signature verification process[,] and makes election day a state holiday." Press Release, *supra*. The legislation also extends the period for voters to cure their provisional ballots from seven to 14 days, s*ee* 10 ILCS 5/2B-35(e), and implicates the State's election judges—who perform various tasks on election day, from arranging signage at polling locations, *see* 10 ILCS 5/7-41(c), to verifying signatures on mail ballots, *see* 10 ILCS 5/2B-20—by, among other things, permitting anyone age 16 or older to serve in this role. *See* 10 ILCS 5/2B-40(a). To effectuate the appointment of election judges, SB 1863 directs "[a]ll public and private secondary schools, community colleges, and universities [to] publish notification on their publicly accessible websites and notify their students of the opportunity to serve as an election judge for the 2020 general election." 10 ILCS 5/2B-40(b).

[1] *See, e.g.*, 10 ILCS 5/2B-5(c) (challenged provisions of SB 1863 "shall apply for the administration and conduct of the 2020 general election only" and will only "be in effect through January 1, 2021").

Plaintiff alleges that SB 1863 also "allows for ballot harvesting." Compl. ¶ 39. The source of this allegation appears to be various, disparate provisions of the legislation, one of which requires "[e]lection authorities [to] accept any vote by mail ballot returned, including ballots returned with insufficient or no postage," and permits them to "establish secure collection sites for the postage-free return of vote by mail ballots." 10 ILCS 5/2B-20(e); *see also* Compl. ¶ 43. Another provision of SB 1863 cited by Plaintiff—one that, they allege, "further ease[s] the harvesting of votes in Illinois," Compl. ¶ 44—permits "local political committees and candidates," 10 ILCS 5/2B-55(d), to request a list of those Illinoisans who "submitted [an] application and will receive an official ballot." 10 ILCS 5/2B-50(a).

Plaintiff initiated this lawsuit on August 10, 2020, alleging that SB 1863 "is designed to harvest Democratic ballots, dilute Republican ballots, and, if the election still doesn't turn out the way [the Governor] wants it, to generate enough Democratic ballots after election day to sway the result." Compl. ¶ 2. The complaint includes three causes of action. Count I alleges that SB 1863—specifically, those provisions "allowing ballot harvesting," making election day a state holiday, reforming the State's signature match laws, permitting "underage election judges," and "allowing 14 days to cure a defective provisional ballot"—will lead to voter fraud and consequent vote dilution in violation of the U.S. and Illinois Constitutions. *Id.* ¶¶ 61–70. Count II contends that the proactive distribution of vote by mail applications, which will allegedly result in a "sudden surge of absentee ballots," will directly disenfranchise voters in violation of the U.S. and Illinois Constitutions. *Id.* ¶¶ 71–75. And Count III claims that the distribution of the names and addresses of Illinoisans who requested mail ballots violates the guarantee of voting secrecy provided by the Illinois Constitution. *Id.* ¶¶ 76–80. Plaintiff asks this Court to enjoin the entirety of SB 1863. *Id.* at 19–20.

II. STANDARD OF LAW

Rule 24(a)(2) "imposes four requirements for intervention of right: '(1) timeliness, (2) an interest relating to the subject matter of the main action, (3) at least potential impairment of that interest if the action is resolved without the intervenor, and (4) lack of adequate representation by existing parties.'" *Illinois v. City of Chicago*, No. 17-cv-6260, 2018 WL 3920816, at *4 (N.D. Ill. Aug. 16, 2018), *aff'd*, 912 F.3d 979 (7th Cir. 2019). "Courts should construe Rule 24(a)(2) liberally and should resolve doubts in favor of allowing intervention." *Michigan v. U.S. Army Corps of Eng'rs*, No. 10-CV-4457, 2010 WL 3324698, at *2 (N.D. Ill. Aug. 20, 2010). "In accordance with this liberal construction, courts 'must accept as true the non-conclusory allegations of the motion' a proposed intervenor makes." *Elouarrak v. Firstsource Advantage, LLC*, No. 1:19-cv-03666, 2020 WL 291364, at *1 (N.D. Ill. Jan. 21, 2020) (quoting *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019)). "Accordingly, a court should not deny a motion to intervene unless it is certain that the proposed intervenor cannot succeed in its case under any set of facts which could be proved under the complaint." *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *2 (citing *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995)).

Under Rule 24(b), "the Court may, '[o]n timely motion, . . . permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.'" *City of Chicago*, 2018 WL 3920816, at *5 (alterations in original) (quoting Fed. R. Civ. P. 24(b)(1)). "A court may allow intervention under Rule 24(b) only if: (1) a claim or defense of the would-be intervenor has 'a question of law or fact in common' with the main action; and (2) the intervention request is timely." *Kostovetsky v. Ambit Energy Holdings, LLC*, 242 F. Supp. 3d 708, 728 (N.D. Ill. 2017) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000)).

III. ARGUMENT

A. Proposed Intervenor satisfies Rule 24(a)'s requirements for intervention as a matter of right.

Proposed Intervenor satisfies each of the four requirements of Rule 24(a)(2).

First, the motion is timely. "The test for timeliness is essentially one of reasonableness: 'potential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly.'" *City of Chicago*, 2018 WL 3920816, at *5 (quoting *Reich*, 64 F.3d at 321). To determine timeliness, courts consider "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances." *Id.* (quoting *Sokaogon Chippewa Cmty.*, 214 F.3d at 949).

Plaintiff filed its complaint and motion for preliminary injunction on August 10, 2020. This motion follows only two weeks later, and before any substantive activity in the case. Proposed Intervenor has attached to this motion its opposition to Plaintiff's motion for preliminary injunction, *see* Ex. 2, and so consideration of that motion can proceed on schedule. There has therefore been no delay, and no possible risk of prejudice to the other parties. *See Sokaogon Chippewa Cmty.*, 214 F.3d at 949. Proposed Intervenor acted promptly after it learned of this lawsuit and did not "drag[] its heels." *Fraternité Notre Dame, Inc. v. County of McHenry*, No. 15 CV 50312, 2019 WL 1595872, at *2 (N.D. Ill. Apr. 15, 2019) (quoting *Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 438 (7th Cir. 1994)). And, as discussed below, Proposed Intervenor will suffer prejudice absent intervention because its interests risk impairment and will not be adequately represented in this litigation. Proposed Intervenor therefore satisfies the timeliness requirement. *See, e.g.*, *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *2–3 (granting motions

to intervene filed up to 17 days after action commenced where court had "not yet issued any substantive decisions"); *cf. City of Chicago*, 2018 WL 3920816, at *5–9 (denying intervention on timeliness grounds where motion was filed nine months after action commenced and "[a]llowing intervention now would undoubtedly delay the proceedings to the detriment of the original parties' interests").

Second and ***third***, Proposed Intervenor has significant protectable interests in this lawsuit that might be impaired by Plaintiff's causes of action. A proposed intervenor "must have 'a "direct, significant[,] and legally protectable" interest in the question at issue in the lawsuit.'" *Elouarrak*, 2020 WL 291364, at *2 (alteration in original) (quoting *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013)). This interest "must be 'unique to the proposed intervenor,'" meaning the "interest is 'based on a right that belongs to the proposed intervenor rather than to an existing party in the suit.'" *Id.* (quoting *Wis. Educ. Ass'n*, 705 F.3d at 658; *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 798 (7th Cir. 2019)). In assessing whether such an interest is sufficiently "impair[ed] or impede[d]," Fed. R. Civ. P. 24(a)(2), courts "look[] to the 'practical consequences' of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967)). "If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *3 (quoting Fed. R. Civ. P. 24 advisory committee's note to 1966 amendment).

Plaintiff's challenge to SB 1863 would impair Proposed Intervenor's legally protected interests. Proposed Intervenor is a political organization dedicated to expanding the franchise and supporting the election of Democratic Party candidates. If Plaintiff succeeds and the legislation is enjoined, then Proposed Intervenor will suffer direct injury because fewer Democratic voters will

have an opportunity to vote and have their votes counted in the November Election. Without meaningful, reliable opportunities for mail voting—which SB 1863 provides through proactive distribution of vote by mail applications and improvements to the State's signature match system, among other salutary reforms—many Illinoisans will be forced to choose between risking their health to vote in person or suffering disenfranchisement. The result will be far less robust turnout among Democratic supporters in the November Election. Courts have routinely concluded that such interference with a political party's electoral prospects constitutes a direct injury that satisfies Article III standing, which goes beyond the requirement needed for intervention under Rule 24(a)(2) in this case. *See, e.g.*, *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87 (5th Cir. 2006) (recognizing that "harm to [] election prospects" constitutes "a concrete and particularized injury"); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding that "the potential loss of an election" is sufficient injury to confer Article III standing); *see also Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1651 (2017) (noting that intervenor by right only needs "Article III standing in order to pursue relief that is different from that which is sought by a party with standing"). Indeed, Proposed Intervenor has intervened in several voting cases this cycle on this very theory. *See Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (granting Proposed Intervenor and other organization intervention as of right after concluding that "advancing their overall electoral prospects" is "routinely found to constitute [a] significant protectable interest[]"); *Republican Nat'l Comm. v. Newsom*, No. 2:20-cv-01055-MCE-CKD, slip op. at 5 (E.D. Cal. June 10, 2020), ECF No. 38 (same)[2]; *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting Proposed Intervenor and other organizations intervention as of right where "Plaintiffs' success on their

[2] For the Court's convenience, this order is attached as Exhibit 3.

claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates").

Moreover, the disruptive and disenfranchising effects of Plaintiff's action would require Proposed Intervenor to divert resources to address restricted voting opportunities—another legally protected interest that is implicated by this lawsuit. *See, e.g.*, *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (concluding "new law injure[d] the Democratic Party by compelling the party to devote resources" that it would not have needed to devote absent new law), *aff'd*, 553 U.S. 181 (2008); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018) (finding standing where law "require[d] Democratic organizations . . . to retool their [get-out-the-vote] strategies and divert [] resources"), *rev'd on other grounds sub nom. Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc). Accordingly, Proposed Intervenor satisfies the second and third requirements of Rule 24(a)(2).

Fourth, Proposed Intervenor cannot rely on the parties in this case to adequately represent its interests. "This requirement for intervention as of right 'is satisfied if the applicant shows that representation of his interest "may be" inadequate; and the burden of making that showing should be treated as minimal.'" *City of Chicago*, 2018 WL 3920816, at *10 (quoting *Lake Inv'rs Dev. Grp., Inc. v. Egidi Dev. Grp.*, 715 F.2d 1256, 1261 (7th Cir. 1983)); *accord Planned Parenthood*, 942 F.3d at 799. "[T]he proposed intervenor 'should be treated as the best judge of whether the existing parties adequately represent his or her interests, and . . . any doubt regarding adequacy should be resolved in favor of the proposed intervenors.'" *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *6 (second alteration in original) (quoting *Miami Tribe of Okla. v. Walden*, 206 F.R.D. 238, 243 (S.D. Ill. 2001)).

While Defendants have an undeniable interest in defending the actions of state and local governments, Proposed Intervenor has a different interest: ensuring that every Democratic voter in Illinois has a meaningful opportunity to cast a ballot and have that ballot counted in the November Election. Courts have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011) ("[T]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))); *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *7 ("[T]he government only represents the citizen to the extent his interests coincide with the public interest. If the citizen stands to gain or lose from the litigation in a way different from the public at large, the *parens patriae* would not be expected to represent him." (quoting *Chiglo v. City of Preston*, 104 F.3d 185, 187–88 (8th Cir. 1997))). That is the case here. Proposed Intervenor has specific interests and concerns—from its overall electoral prospects to the most efficient use of its limited resources to promote get-out-the-vote-efforts—that neither Defendants nor any other party in this lawsuit share. *See Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where proposed intervenors "may present arguments about the need to safeguard Nevada[ns'] right to vote that are distinct from [state defendants'] arguments").

Accordingly, this is neither a case where "the prospective intervenor and the named party have 'the same goal'" and "there is a rebuttable presumption of adequate representation that requires a showing of 'some conflict' to warrant intervention," nor an instance where the "presumption of adequacy becomes even stronger [because] the representative party 'is a

governmental body charged by law with protecting the *interests* of the proposed intervenors.'" *Planned Parenthood*, 942 F.3d at 799 (emphasis added) (quoting *Wis. Educ. Ass'n*, 705 F.3d at 659; *Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 774 (7th Cir. 2007)). Rather, this is an instance where

> [a]lthough Defendants and the Proposed Intervenor[] fall on the same side of the dispute, Defendants' interests in the implementation of the [challenged law] differ from those of the Proposed Intervenor[]. While Defendants' arguments turn on their inherent authority as [government officials] and their responsibility to properly administer election laws, the Proposed Intervenor[is] concerned with ensuring [its] party members and the voters [it] represents have the opportunity to vote in the upcoming federal election, advancing [its] overall electoral prospects, and allocating [its] limited resources to inform voters about the election procedures. As a result, the parties' interests are neither "identical" nor "the same."

Issa, 2020 WL 3074351, at *3 (citation omitted); *see also U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *7 (granting intervention as of right where "[a]lthough Defendants are not directly adverse to the [proposed intervenors], their interests are not completely identical"); *City of Chicago*, 2018 WL 3920816, at *10 (similar). While Defendants might defend SB 1863 as a law properly passed by the Illinois Legislature, they cannot be expected to join Proposed Intervenor in promoting its more parochial interests. *See Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 974 (3d Cir. 1998) (granting motion to intervene as of right where private parties' interests diverged from government's interest in representation, and where "[t]he early presence of intervenors may serve to prevent errors from creeping into the proceedings, clarify some issues, and perhaps contribute to an amicable settlement"); *Ohio River Valley Envtl. Coal., Inc. v. Salazar*, No. 3:09-0149, 2009 WL 1734420, at *1 (S.D.W. Va. June 18, 2009) (granting motion to intervene as of right where defendant and proposed intervenor had identical goals but "difference in degree of interest could motivate the [intervenor] to mount a more vigorous defense" and "[t]he possibility that this difference in vigor could unearth a meritorious argument overlooked by the current Defendant justifies the potential burden on having an additional party in litigation").

In short, because its interests are not shared by the current parties to the litigation, Proposed Intervenor cannot rely on Defendants or anyone else to provide adequate representation. It has thus satisfied the four requirements for intervention as of right under Rule 24(a)(2). *See Issa*, 2020 WL 3074351, at *3–4; *Paher*, 2020 WL 2042365, at *3.

B. Alternatively, Proposed Intervenor satisfies Rule 24(b)'s requirements for permissive intervention.

Even if this Court were to find Proposed Intervenor ineligible for intervention as of right, it easily satisfies the requirements for permissive intervention under Rule 24(b), which "allows the [] court to consider a wide variety of factors" and "unlike the more mechanical elements of intervention as of right, [] leaves the district court with ample authority to manage the litigation before it." *Planned Parenthood*, 942 F.3d at 803. "Under [Rule 24] a [] court 'may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." *Id.* (quoting Fed. R. Civ. P. 24(b)(1)). "The Rule requires the court to consider 'whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights,' but otherwise does not cabin the district court's discretion." *Id.* (citation omitted) (quoting Fed. R. Civ. P. 24(b)(3)).

For the reasons discussed in Part I *supra*, Proposed Intervenor's motion is timely. Proposed Intervenor also has defenses to Plaintiff's claims that share common questions of law and fact—for example, Proposed Intervenor maintains that Plaintiff has failed to state a claim on which relief can be granted and lacks standing to brings this suit. *See* Exs. 1–2.

Most significantly, intervention will result in neither prejudice nor undue delay. Proposed Intervenor has an undeniable interest in a swift resolution of this action to ensure that SB 1863 is timely implemented to allow every eligible Illinoisan to cast a ballot—and have that ballot counted—in the November Election. Recognizing this urgency, Proposed Intervenor has already

prepared and attached to this motion an opposition to Plaintiff's pending motion for preliminary injunction. *See* Ex. 2. Given the fatal legal and factual shortcomings of Plaintiff's claims, Proposed Intervenor is confident that its intervention in this case—and the filings that it has and will continue to file—will result in expeditious resolution of this litigation.

IV. CONCLUSION

For the reasons stated above, Proposed Intervenor respectfully requests that the Court grant its motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it to intervene under Rule 24(b).[3]

[3] Alternatively, Proposed Intervenor respectfully requests that the Court allow it leave to participate in this matter as amicus curiae, and permit filing of its opposition to Plaintiff's motion for preliminary injunction (attached as Exhibit 2) as an amicus brief. *See, e.g.*, *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *9 n.2.

Respectfully Submitted,

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Attorneys for Proposed Intervenor-Defendant DCCC

**Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I, Kathleen A. Stetsko, certify that on August 25, 2020, I electronically filed the foregoing **MOTION TO INTERVENE AS DEFENDANT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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

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Defendants,

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Proposed Intervenor-Defendant.

No. 1:20-cv-04676

Hon. Robert M. Dow, Jr.

[PROPOSED] ANSWER TO PLAINTIFF'S COMPLAINT

Proposed Intervenor-Defendant DCCC ("Proposed Intervenor"), by and through its attorneys, submits the following Answer to Plaintiffs' Complaint. Proposed Intervenor responds to the allegations in the Complaint as follows:

INTRODUCTION

1. Voting is a fundamental, constitutional right that is central to our American democracy. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966).

ANSWER: Proposed Intervenor admits the allegations in Paragraph 1.

2. Governor J.B. Pritzker violated this right by signing into law a partisan voting scheme that is designed to harvest Democratic ballots, dilute Republican ballots, and, if the election still doesn't turn out the way he wants it, to generate enough Democratic ballots after election day to sway the result. *See* Public Act 101-0642 a/k/a SB 1863, 101st General Assembly ("SB 1863"). The remaining Defendants are charged with carrying out this partisan scheme.

ANSWER: Proposed Intervenor admits that Governor J.B. Pritzker signed Senate Bill 1863 into law. The remaining allegations in Paragraph 2 contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

3. This civil action for declaratory and injunctive relief is filed to stop SB 1863 from going into effect. The claims arise under the First and 14th Amendments of the U.S. Constitution; 42 U.S.C. Section 1983; 28 U.S.C. § 2201(a); and Article III, Section 4 of the Illinois Constitution.

ANSWER: Paragraph 3 contains mere characterizations, legal contentions, and conclusions to which no response is required.

PARTIES

4. Plaintiff, Cook County Republican Party (the "Republican Party"), is a registered political committee that is the vehicle for Republicans to advance their candidates and agenda in Cook County. The Republican Party includes among its ranks federal, state, and local elected officials and candidates, supported by thousands of grassroots activists, donors, and voters.

ANSWER: Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 4.

5. Defendant J.B. Pritzker ("Pritzker") is the governor of the State of Illinois and the chief executive responsible for implementing SB 1863, including its state holiday. He lives and works in Cook County, Illinois. His address for service of process is Office of the Governor, 100 W. Randolph St., 16-100, Chicago IL 60601.

ANSWER: Proposed Intervenor admits that Defendant J.B. Pritzker is the governor of the State of Illinois, with an office at 100 West Randolph Street, Suite 16-100, Chicago, Illinois 60601. The allegations in Paragraph 5 regarding the scope of Governor Pritzker's duties contain mere characterizations, legal contentions, and conclusions to which no response is required. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 5.

6. Defendants Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S. O'Brien, and Casandra B. Watson are Board Members of the Illinois State Board of Elections (the "Board"), the board responsible for implementing SB 1863. The Board maintains one of its two primary offices at 100 W. Randolph, Suite 14-100, Chicago, IL 60601, where these Defendants may be served in their official capacities.

ANSWER: Proposed Intervenor admits that Defendants Charles W. Scholz, Ian K. Linnabary, William J. Cadigan, Laura K. Donahue, William R. Haine, William M. McGuffage, Katherine S. O'Brien, and Casandra B. Watson are members of the Illinois State Board of Elections (the "Board"), and that the Board maintains one of its two primary offices at 100 West Randolph Street, Suite 14-100, Chicago, Illinois 60601. The remaining allegations in Paragraph 6 contain mere characterizations, legal contentions, and conclusions to which no response is required.

7. Defendant Karen A. Yarbrough is Cook County Clerk, the executive charged with implementing SB 1863 in suburban Cook County. She lives and works in Cook County, Illinois and may be served at her place of business, located at 69 W. Washington Street, Suite 500, Chicago, IL 60602.

ANSWER: Proposed Intervenor admits that Defendant Karen A. Yarbrough is the Cook County Clerk, with an office located at 69 West Washington Street, Suite 500, Chicago, Illinois 60602. The allegations in Paragraph 7 regarding the scope of Ms. Yarbrough's duties contain mere characterizations, legal contentions, and conclusions to which no response is required. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 7.

8. Defendants Marisel A. Hernandez, William J. Kresse, and Jonathan T. Swain are Commissioners of the Chicago Board of Election Commissioners, charged with implementing SB 1863 in Chicago. They live and work in Cook County, Illinois and may be served at their place of business, located at 69 W. Washington Suite, Suite 600, Chicago, IL 60602.

ANSWER: Proposed Intervenor admits that Defendants Marisel A. Hernandez, William J. Kresse, and Jonathan T. Swain are members of the Boars of Election Commissioners for the City of Chicago, with an office located as 69 West Washington Street, Suite 600, Chicago, Illinois 60602. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 8.

JURISDICTION AND VENUE

9. This case raises claims under the First and 14th Amendments of the United States Constitution, 42 U.S.C. § 1983, and 28 U.S.C. § 2201(a). The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

ANSWER: Paragraph 9 contains mere characterizations, legal contentions, and conclusions to which no response is required.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(1) because Defendants Pritzker, Linnabary, Cadigan, McGuffage, O'Brien, Watson, Yarbrough, Hernandez, Kresse, and Swain reside in the Northern District of Illinois.

ANSWER: Paragraph 10 contains mere characterizations, legal contentions, and conclusions to which no response is required.

FACTUAL ALLEGATIONS

11. The Democrats in the Illinois General Assembly snuck through SB 1863 in five days, from May 18-22, 2020, by hijacking a bill about the Freedom of Information Act, amending it to advance their partisan election agenda, and rushing it to passage before the people of Illinois could weigh in with their opposition. *See* Bill Status of SB 1863.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 11.

12. SB 1863 was introduced in the Senate on February 15, 2019, as an amendment to the Freedom of Information Act, passed the Senate on April 4, 2019, underwent First Reading in the House on April 9, 2019, underwent Second Reading in the House on May 22, 2019, and languished for a year. *Id.*

ANSWER: Proposed Intervenor admits that Senate Bill 1863 was introduced in the Senate on February 15, 2019 as an amendment to the Freedom of Information Act, passed the Senate on April 4, 2019, underwent First Reading in the House on April 9, 2019, and underwent Second Reading in the House on May 22, 2019. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 12.

13. SB 1863 was suddenly rewritten in 2020 by House Floor Amendment 5, which was filed on May 19, 2020, and House Floor Amendment 6, which was filed on May 21, 2020. The bill passed the House later the same day, with only one Republican voting in favor. The Senate passed it the next day, with no Republicans voting in favor. *Id.*; *see also* Dan Petrella, "5 Million Illinois Voters to Receive Mail- in Ballot Applications after Gov. J.B. Pritzker Signs Temporary Vote-by-mail Expansion," Chicago Tribune, June 16, 2020.

ANSWER: Proposed Intervenor admits that House Floor Amendment No. 5 was filed on May 19, 2020, that House Floor Amendment No. 6 was filed on May 21, 2020, that Senate Bill 1863 passed the House on May 21, 2020 with one Republican voting in favor, and that Senate Bill 1863 passed the Senate on May 22, 2020 with no Republicans voting in favor. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 13.

14. On June 16, 2020, Pritzker signed SB 1863 into law as Public Act 101- 0642. *See* Bill Status of SB 1863.

ANSWER: Proposed Intervenor admits the allegations in Paragraph 14.

15. Pritzker claimed the law would "allow more people" to vote by mail and would address fears of voting in person due to COVID-19. *See* J.B. Pritzker, "Gov. Pritzker Signs Legislation to Expand Vote by Mail, Promote Safe Participation in the 2020 Election" Illinois.gov, June 16, 2020.

ANSWER: Proposed Intervenor admits the allegations in Paragraph 15.

16. But under prior law, every Illinois voter already had the right to vote by mail. 10 ILCS 5/19-1.

ANSWER: Paragraph 16 contains mere characterizations, legal contentions, and conclusions to which no response is required.

17. Thus, Pritzker's statement is pretextual and belies his real intent: to implement a partisan voting scheme that will open the door to voter fraud.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 17.

18. SB 1863 creates a partisan voting scheme that is designed to directly disenfranchise voters disfavored by Pritzker, to dilute the votes of those disfavored by Pritzker, and to violate the secrecy of voting in Illinois.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 18.

19. Many aspects of SB 1863 work together to create the scheme by which Pritzker plans to disenfranchise the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 19.

20. The scheme begins by putting as many ballots into play for the election as possible by mailing an application for a mail-in ballot to every voter who voted in the 2018 general election, the 2019 consolidated election, or the 2020 general primary election. 10 ILCS 5/2B-15(b). That amounts to roughly 5 million mail-in ballot applications, which were supposed to have been sent by August 1. *Id.*; *see also* Petrella, "5 Million Illinois Voters."

ANSWER: Proposed Intervenor admits that roughly 5 million Illinois voters will receive mail-in ballot applications. The remaining allegations in Paragraph 20 contain mere characterizations, legal contentions, and conclusions to which no response is required.

21. A high likelihood exists that applications were sent to people who may no longer be eligible to vote in Illinois. For example, the *Wall Street Journal* discovered that at least one former voter in Washington state recently received his ballot in the mail at his new address in Texas. *See* Scott Hogenson, "An Invitation in the Mail for Election Fraud," Wall Street Journal, Aug. 2, 2020. And that was in a state that implemented voting by mail years ago.

ANSWER: Proposed Intervenor admits that the cited example appeared in *The Wall Street Journal*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 21.

22. The states that use mail-in voting took years to perfect their process as they enlarged eligibility gradually before launching statewide. Implementing vote- by-mail is a learning process. State officials must identify qualified vendors for printing ballots, develop tracking systems so voters can be assured their ballots will arrive on time, and develop methods of reviewing signatures that reduce the number of rejected ballots. Doing so takes "decades, not months." Barry Burden et al., "More Voting by Mail Would Make the 2020 Election Safer for Our Health. But it Comes with Risks of Its Own," Washington Post, Apr. 6, 2020.

ANSWER: Proposed Intervenor admits that the quoted language appeared in *The Washington Post*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 22.

23. Attempting to implement a process overnight in a state as large as Illinois will inevitably lead to thousands of lost and delayed ballot applications and ballots. A recent election in another large state that rushed into voting by mail shows the perils that lie ahead for Illinois. Over 80,000 New York City Democratic presidential primary ballots were not counted in the June 23 election because they arrived late, lacked a postmark, failed to include a signature, or contained other defects. This number meant that a staggering 21% of the votes cast were not counted. *See* Carl Campanile et al., "Over 80,000 Mail-in Ballots Disqualified in NYC Primary Mess," New York Post, Aug. 5, 2020.

ANSWER: Proposed Intervenor admits that the cited example appeared in the *New York Post*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 23.

24. The hurried nature of implementation is not the only hurdle Illinois faces. Illinois state government is one of the most inept in the Union, and the public has no reason to expect a vote-by-mail system to work any more smoothly than a variety of projects Illinois has stumbled through in recent years.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 24.

25. For example, Illinois has suffered more than 120,000 cases of unemployment fraud during the ongoing COVID-19 pandemic. *See* Erin Heffernan, "More than 120,000 Cases of Unemployment Fraud Found in Illinois since March, Pritzker Says," St. Louis Post-Dispatch, Aug. 5, 2020.

ANSWER: Proposed Intervenor admits that the cited example appeared in the *St. Louis Post-Dispatch*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 25.

26. The government response has been underwhelming. ABC7 reported that nine of the ten fraud victims they spoke with were unable to reach the Illinois Department of Employment Security. *See* Samatha Chatman, "Illinois Unemployment IDES Debit Card Fraud a Growing Concern for Police," ABC7 Eyewitness News, July 16, 2020.

ANSWER: Proposed Intervenor admits that the cited example was reported by ABC7. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 26.

27. Illinois has even had ongoing difficulties with its most recent attempt to expand voting rights. In 2017, the Illinois legislature unanimously passed automatic voter registration. The following year, the *State Journal-Register* reported that Secretary of State Jesse "White's office said the [automatic registration] procedure won't be ready to go until next year when the state is finally expected to comply with the REAL ID law." *See* Doug Finke, "Nearly 187,000 Use Automatic Voter Registration," State Journal-Register, Dec. 18, 2018.

ANSWER: Proposed Intervenor admits that the Illinois Legislature unanimously enacted automatic voter registration in 2017, and that the quoted language appeared in *The State Journal-Register*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 27.

28. By early 2020, it emerged that 4,700 ineligible 16-year-olds had had their information sent to the State Board of Elections through the automatic voter registration program. *See* Dan Petrella, "Illinois Election Officials Reveal More Issues with Automatic Voter Registration," Chicago Tribune, Jan. 30, 2020. In addition, some U.S. citizens who had opted out of automatic voter registration, nevertheless, had their information forwarded to the State Board of Elections. *Id.*

ANSWER: Proposed Intervenor admits that the cited example appeared in the *Chicago Tribune*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 28.

29. Most alarmingly, 545 possible non-citizens were registered to vote, and at least 15 of them voted illegally in 2018 or 2019. *Id.* These problems caused several civil rights groups to sue the Secretary of State in this Court over his missteps in implementing the law over the last three years. *See Asian Americans Advancing Justice-Chicago, et al. v. Jesse White*, No. 1:20-cv-1478 (N.D. Ill.).

ANSWER: Proposed Intervenor admits that the cited example appeared in the *Chicago Tribune*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 29.

30. The sum of this incompetence from the leaders of state government shows that Illinois is woefully unprepared to implement a vote-by-mail system this year. Especially in light of the gross mismanagement of public finances, Illinois citizens have every reason to believe that the people tasked with protecting their right to vote are not up to the task of fulfilling their current obligations, to say nothing of new ones.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 30.

31. Among many of the practical deficiencies of the Illinois vote-by-mail scheme is that it does not comport with recommendations issued by the United States Postal Service. *See*

"Timeliness of Ballot Mail in the Milwaukee Processing & Distribution Center Service Area," Office of Inspector General, United States Postal Service, July 7, 2020.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 31.

32. According to the USPS Inspector General, "ballots requested less than seven days before an election are at a high risk of not being delivered, completed by voters, and returned to the election offices in time." *Id.* at 7.

ANSWER: Proposed Intervenor admits the allegations in Paragraph 32.

33. But Illinois allows voters to request an absentee ballot as late as October 29, 2020 – three business days before the election.

ANSWER: Proposed Intervenor admits the allegations in Paragraph 33.

34. Indeed, the Inspector General's report indicates that the Illinois deadline "put[s] ballots at high risk of not being delivered to voters before an election." *Id.* at 6.

ANSWER: Proposed Intervenor admits that the quoted language appeared in a report issued by the Office of Inspector General of the United States Postal Service. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 34.

35. Also, the Inspector General's report states that "election offices should be educated on the benefits [that Intelligent Mail Barcodes] provide." *Id.* at 7. Intelligent Mail Barcodes (IMbs) allow mailers and the Postal Service to track each ballot and would enable the Postal Service and election authorities to track ballots and identify delays. *Id.* at 4.

ANSWER: Proposed Intervenor admits the allegations in Paragraph 35.

36. SB 1863 makes no provision that mail ballots be tracked with IMbs or any other tracking device; therefore, thousands of voters will be disenfranchised when their ballots are lost in the mail.

ANSWER: Paragraph 36 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

37. For the ballots that are received by election authorities, the system for counting so many mail-in ballots will be overtaxed, leading to lax procedures for ensuring the secrecy of the ballot.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 37.

38. In addition to incompetence, SB 1863 will breed corruption. While other states may use mail-in voting, implementing a system overnight "in a state as notorious for election fraud as Illinois is" will open the door to criminal activity. *Nader v. Keith*, 385 F.3d 729, 733 (7th Cir. 2004). As the Seventh Circuit Court of Appeals already recognized, "Oregon, for example, has switched to a system of all- mail voting. O.R.S. § 254.465. But what works in the state of Oregon doesn't necessarily work in Illinois, especially in light of the colorful history of vote fraud we've seen." *Id*. at 734. (internal quotations omitted).

ANSWER: Proposed Intervenor admits that the quoted language appeared in *Nader v. Keith*, 385 F.3d 729 (7th Cir. 2004). The remaining allegations in Paragraph 38 contain mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

39. The provision of the voting scheme that is most important to committing voter fraud is ballot harvesting. SB 1863 allows for ballot harvesting, in which a paid, partisan operative may collect Democratic mail-in ballot applications and ballots to ensure that they are turned in and counted and may collect Republican mail-in ballot applications and ballots to ensure that they are not turned in and counted.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 39.

40. Ballot harvesting of mail-in ballots is the biggest concern for voter fraud, according to the bipartisan Report of the Commission on Federal Election Reform, chaired by former Democratic President Jimmy Carter and former Republican Secretary of State James Baker. "As the Carter-Baker Report observed, the 'electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud . . . . '" *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008). The report concludes, "Absentee ballots remain the largest source of potential voter fraud. . . . Vote buying schemes are far more difficult to detect when citizens vote by mail." "Building Confidence in U.S. Elections" at 46.

ANSWER: Proposed Intervenor admits that the quoted language appeared in *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008), and a report issued by the Commission on Federal

Election Reform. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 40.

41. Just last election cycle, a Republican Congressional victory was overturned and a new election ordered in North Carolina due to voter fraud via ballot harvesting. *See* "State Board unanimously orders new election in 9th Congressional District," North Carolina State Board of Elections. In that race, a paid political operative collected mail-in ballots from voters under the auspices of returning them to the election commission. Ballots marked for the Republican candidate were returned and ballots marked for the Democratic candidate were either altered or never turned in at all. *See* Doug Bock Clark, "The Tearful Drama of North Carolina's Election-Fraud Hearings," the New Yorker, Feb. 24, 2019.

ANSWER: Proposed Intervenor admits that the cited example appeared in a press release issued by the North Carolina State Board of Elections and *The New Yorker*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 41.

42. This Court need look no further than next door in East Chicago, Indiana, to find another race overturned for voter fraud in absentee ballots during the Democratic mayoral primary in 2003. *See* RuthAnn Robinson, "More vote fraud charges," The Times of Northwest Indiana, July 30, 2005.

ANSWER: Proposed Intervenor admits that the cited example appeared in *The Northwest Indiana Times*. Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the remaining allegations in Paragraph 42.

43. The provision of SB 1863 allowing for ballot harvesting reads, "Election authorities shall accept any vote by mail ballot returned, including ballots returned with insufficient or no postage . . ." 10 ILCS 5/2B-20(e). It does not require the ballot to be returned by the voter or his or her close family member or friend, as do the laws in many other states. *See* "Voting Outside the Polling Place," Table 10, National Conference of State Legislatures.

ANSWER: Paragraph 43 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

44. To further ease the harvesting of votes in Illinois, the names and addresses of all voters who request a ballot by mail must be given to any political committee and candidate which requests them. 10 ILCS 5/2B-55(d).

ANSWER: Paragraph 44 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

45. For those who fail to request a ballot by mail, they will be nagged to do so by political party operatives.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 45.

46. Cook County Clerk Karen A. Yarbrough foreshadowed the plans of her political party to do so when she sent the following message from her official county clerk Twitter account: "This election you may receive mail ballot applications from third parties, candidates and political parties, which they are allowed to send you." *See* Karen A. Yarbrough, Twitter, July 31, 2020.

ANSWER: Proposed Intervenor admits that the quoted language appeared on Twitter. Proposed Intervenor denies the remaining allegations in Paragraph 46.

47. Government officials like Yarbrough and Secretary of State Jesse White will blur the lines between their political and official positions in an effort to confuse voters about official government communications, as they have in past elections, and their efforts will be much more successful with so many voters by- mail subject to their solicitations.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 47.

48. The mail-in ballots may be returned as late as "election day up until the close of the polls." *Id*.

ANSWER: Paragraph 48 contains mere characterizations, legal contentions, and conclusions to which no response is required.

49. Pritzker needs workers to harvest the ballots, so SB 1863 creates an army of workers to harvest the ballots on election day by giving all government employees the day off from work. That includes teachers and students, as schools are required to close. 10 ILCS 5/2B-10.

ANSWER: Paragraph 49 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

50. Public sector union members at the largest government employer in the state, Chicago Public Schools, maintain a voter profile of 60.69% Democratic and only 4.25% Republican, according to an analysis of 2018 voter profiles. Allowing overwhelmingly Democratic public sector employees the day off to collect ballots, while private sector employees will be at work, will dilute the votes of the Republican Party.

ANSWER: Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations regarding the voter profile of public sector union members in Paragraph 50. Paragraph 50 otherwise contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

51. This scheme has been used before, and Pritzker intends to replicate the corruption. For example, the "U.S. Postal Service engaged in widespread violation of federal law by pressuring managers to approve letter carriers' taking time off [in 2016] to campaign for Hillary Clinton and other union-backed Democrats." Lisa Rein, "Postal Service Broke Law in Pushing Time Off for Workers to Campaign for Clinton, Investigation Finds," Washington Post, July 19, 2017.

ANSWER: Proposed Intervenor admits that the quoted language appeared in *The Washington Post*. Proposed Intervenor denies the remaining allegations in Paragraph 51.

52. The way to protect against voter fraud through ballot harvesting is by having an election judge disqualify the applications and ballots whose signatures do not match those on file with the election commission, so SB 1863 does away with this provision. Under prior law, ballots could be disqualified by one nonpartisan election judge, and the decision could be upheld by a panel of three judges. *See* 2019 10 ILCS 5/19-8(g-5).

ANSWER: Paragraph 52 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

53. SB 1863 requires that election judges be partisan, creates a presumption that a signature on a mail-in ballot is authentic, and requires all three partisan election judges to disqualify a mail-in ballot for an invalid signature. 2020 10 ILCS 5/2B-20. In other words, one Democratic election judge can veto the rejection of every single ballot in the locality, even if the other two judges rule that the ballot is fraudulent. *Id*.

ANSWER: Paragraph 53 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

54. SB 1863 does not even require that the election judge with veto power over thousands of fraudulent ballots be an adult or eligible to vote at all. Instead, it allows a 16-year-old, whose school is conveniently closed, to serve as the partisan election judge to determine voter validity. 10 ILCS 5/2B-40(a)(1). In case Pritzker is unable to notify enough students to serve in this partisan role, SB 1863 requires that all secondary schools do so. *Id*.

ANSWER: Paragraph 54 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

55. In addition to the mail-in ballot scheme, SB 1863 also disenfranchises Republican voters by changing the rules of the game for early voting and provisional ballots.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 55.

56. The change in the administration of provisional ballots is the failsafe measure to generate enough votes to win the election, even if all other measures do not produce the desired partisan result.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 56.

57. Under the prior law, a voter casting a provisional ballot had seven days in which to cure the ballot by showing the proper identification to the local election authority. 2019 ILCS 5/18A-15.

ANSWER: Paragraph 57 contains mere characterizations, legal contentions, and conclusions to which no response is required.

58. SB 1863 leaves the outcome of the election uncertain for fourteen days after election day to allow a voter casting a provisional ballot to cure the ballot by showing the proper identification to the local election authority. 10 ILCS 5/2B-35(e).

ANSWER: Paragraph 58 contains mere characterizations, legal contentions, and conclusions to which no response is required.

59. Under this scenario, the army of workers with the day off could show up to the polls on election day claiming to be any one of millions of voters who did not request a mail-in ballot and could cast a provisional ballot with no identification at all and a fraudulent signature. Then, if more votes are needed after election day, these same partisan workers will now have 14 days to go find the actual voters they impersonated and convince them to present their proper identification to the election authority, so the fraudulent vote will be counted.

ANSWER: Proposed Intervenor is without sufficient information or knowledge with which to form a belief as to the truth or falsity of the allegations contained in Paragraph 59.

60. Thus, the scheme is complete from fraudulent mail-in ballot applications to mail-in ballots, to early voting, to election day, and beyond.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 60.

COUNT I

SB 1863 violates the fundamental right to vote in the First and 14th Amendments and "the integrity of the election process" in Ill. Const. Art. III, Sec. 4 by vote-dilution disenfranchisement.

61. The allegations contained in all preceding paragraphs are incorporated herein by reference.

ANSWER: Proposed Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

62. The right to vote is protected by the First and 14th Amendments to the U.S. Constitution and is fundamental, *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966).

ANSWER: Paragraph 62 contains mere characterizations, legal contentions, and conclusions to which no response is required.

63. The right to have one's vote counted is well-established: "Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections . . . ." *Reynolds v. Sims*, 377 U.S. 533, 554 (1964).

ANSWER: Paragraph 63 contains mere characterizations, legal contentions, and conclusions to which no response is required.

64. The Illinois Constitution requires election integrity even greater than that found in the U.S. Constitution: "The General Assembly by law shall . . . insure . . . the integrity of the election process . . . ." Ill. Const. Art. III, Sec. 4.

ANSWER: Paragraph 64 contains mere characterizations, legal contentions, and conclusions to which no response is required.

65. The provision of SB 1863 allowing ballot harvesting will lead to fraudulent votes being counted, thus diluting lawful votes for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 65.

66. The provision of SB 1863 giving a paid holiday to government workers will lead to fraudulent votes being counted, thus diluting lawful votes for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 66.

67. The provision of SB 1863 presuming that mail-in ballot signatures are valid and giving one partisan election judge veto power over the other two judges in rejecting the signature will lead to fraudulent votes being counted, thus diluting lawful votes for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 67.

68. The provision of SB 1863 allowing for underage election judges will lead to fraudulent votes being counted, thus diluting lawful votes for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 68.

69. The provision of SB 1863 allowing 14 days to cure a defective provisional ballot will lead to fraudulent votes being counted, thus diluting lawful votes for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 69.

70. The vote-dilution disenfranchisement resulting from the voting scheme of SB 1863 violates the First and 14th Amendments to the U.S. Constitution and Ill. Const. Art. III, Sec. 4.

ANSWER: Paragraph 70 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

COUNT II

SB 1863 violates the fundamental right to vote in the First and 14th Amendments and "the integrity of the election process" in Ill. Const. Art. III, Sec. 4 by direct disenfranchisement.

71. The allegations contained in all preceding paragraphs are incorporated herein by reference.

ANSWER: Proposed Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

72. The provisions of SB 1863 requiring 5 million mail-in ballot applications to be sent, failing to include a tracking system for ballots, and allowing them to be requested three business days before the election will directly disenfranchise many voters. The sudden surge in absentee ballots will cause many ballot applications and ballots to never arrive or arrive too late, and it will cause completed ballot applications and ballots to get lost or delayed in the return process, thus directly disenfranchising voters for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 72.

73. The provision of SB 1863 allowing ballot harvesting will lead to ballots being collected by paid, partisan, political operatives and never turned into the election authority, thus directly disenfranchising voters for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 73.

74. The provision of SB 1863 giving a paid holiday to government workers will lead to ballots being collected by paid, partisan, political operatives and never turned into the election authority, thus directly disenfranchising voters for candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 74.

75. The direct disenfranchisement resulting from the voting scheme of SB 1863 violates the First and 14th Amendments to the U.S. Constitution and Ill. Const. Art. III, Sec. 4.

ANSWER: Paragraph 75 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

COUNT III

SB 1863 violates the "secrecy of voting" in Ill. Const. Art. III, Sec. 4.

76. The allegations contained in all preceding paragraphs are incorporated herein by reference.

ANSWER: Proposed Intervenor incorporates by reference all of its responses in the preceding and ensuing paragraphs as if fully set forth herein.

77. The Illinois Constitution requires voter secrecy greater than that in the U.S. Constitution: "The General Assembly by law shall . . . insure secrecy of voting . . . ." Ill. Const. Art. III, Sec. 4.

ANSWER: Paragraph 77 contains mere characterizations, legal contentions, and conclusions to which no response is required.

78. The provision of SB 1863 giving to political committees and candidates the names and addresses of those who request a ballot by mail violates the secrecy of those voters wishing to vote by mail.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 78.

79. The provision of SB 1863 expanding the number of mail-in ballots by millions will overrun the process of counting mail-in ballots, thus revealing secret ballots cast for and against candidates of the Republican Party.

ANSWER: Proposed Intervenor denies the allegations in Paragraph 79.

80. The revelation of voter information resulting from the voting scheme of SB 1863 violates Ill. Const. Art. III, Sec. 4.

ANSWER: Paragraph 80 contains mere characterizations, legal contentions, and conclusions to which no response is required. To the extent a response is required, Proposed Intervenor denies the allegations.

PRAYER FOR RELIEF

Plaintiff, Cook County Republican Party, respectfully requests this Court:

a. Declare that SB 1863 violates the fundamental right to vote in the First and 14th Amendments to the U.S. Constitution and "the integrity of the election process" in Ill. Const. Art. III, Sec. 4 by vote-dilution disenfranchisement;

b. Declare that SB 1863 violates the fundamental right to vote in the First and 14th Amendments to the U.S. Constitution and "the integrity of the election process" in Ill. Const. Art. III, Sec. 4 by direct disenfranchisement;

c. Declare that SB 1863 violates the "secrecy of voting" in Ill. Const. Art. III, Sec. 4;

d. Enjoin Defendants from enforcing SB 1863;

e. Award Plaintiff its costs and attorneys' fees under 42 U.S.C. § 1988; and

f. Award any further relief to which Plaintiff may be entitled.

ANSWER: The remaining Paragraphs of the Complaint consist of Plaintiff's request for relief, to which no response is required. To the extent that any response is deemed necessary, Proposed Intervenor denies that Plaintiff is entitled to any of the requested relief or any other relief.

AFFIRMATIVE DEFENSES

Proposed Intervenor sets forth its affirmative defenses without assuming the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated here is intended or shall be construed as an admission that any particular issue or subject matter is relevant to the allegations in the Complaint. Proposed

Intervenor reserves the right to amend or supplement its affirmative defenses as additional facts concerning defenses become known.

Proposed Intervenor alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff fails to state a claim on which relief can be granted.

WHEREFORE, Proposed Intervenor respectfully requests that this Court:

1. Deny that Plaintiff is entitled to any relief;
2. Dismiss the Complaint in its entirety, with prejudice; and
3. Grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

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**Pro hac vice application forthcoming*

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

COOK COUNTY REPUBLICAN PARTY,

Plaintiff,

v.

J.B. PRITZKER, in his official capacity as Governor of the State of Illinois; CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM J. CADIGAN, LAURA K. DONAHUE, WILLIAM R. HAINE, WILLIAM M. MCGUFFAGE, KATHERINE S. O'BRIEN, and CASANDRA B. WATSON, in their official capacities as Board Members of the Illinois State Board of Elections; KAREN A. YARBROUGH, in her official capacity as Cook County Clerk; and MARISEL A. HERNANDEZ, WILLIAM J. KRESSE, and JONATHAN T. SWAIN, in their official capacities as Commissioners of the Chicago Board of Election Commissioners,

Defendants,

and

DCCC,

Proposed Intervenor-Defendant.

No.: 1:20-cv-04676

Hon. Robert M. Dow, Jr.

PROPOSED INTERVENOR-DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Recognizing that "COVID-19 presents a severe public health emergency," the Illinois Legislature has "ma[de] certain modifications to the administration and conduct of the elections for the November 2020 general election" (the "November Election"). 10 ILCS 5/2B-1. As Governor Pritzker noted, Senate Bill 1863 ("SB 1863") helps to "ensur[e] all eligible residents can wield their right to vote in a way that doesn't risk their personal health."[1] Among other provisions, SB 1863 directs election officials to send vote by mail applications to recent voters, permits the establishment of secure sites for postage-free return of mail ballots, and allows local political committees and candidates to request a list of voters who requested mail ballots for the November Election. *See generally* Motion for Preliminary Injunction ("Mot."), ECF No. 6, Ex. A.

In response to these sensible measures, Plaintiff alleges a massive, far-reaching conspiracy—involving not only Defendants, but also Illinois's legislature, its state employees, and even its high schoolers—to disenfranchise Republican voters. But in stringing together its farfetched, unsupported allegations of electoral malfeasance, Plaintiff fails to justify the extraordinary remedy of injunctive relief. Plaintiff's dissatisfaction with the policies adopted by the Legislature does not amount to a constitutional violation, especially where, as here, it fails to plead—let alone prove—that it or its supporters will suffer any sort of injury, disenfranchisement or otherwise, as a result of SB 1863. Simply stated, Plaintiff cannot use the U.S. and Illinois Constitutions as tools to undo the reasonable, lawful changes that the Illinois Legislature enacted in response to a global health crisis. For this reason and those that follow, Proposed Intervenor respectfully requests that the Court deny Plaintiff's motion for preliminary injunction.

[1] Press Release, *Gov. Pritzker Signs Legislation to Expand Vote by Mail, Promote Safe Participation in the 2020 Election*, State of Ill. (June 16, 2020), https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21690.

I. BACKGROUND

For convenience and economy, Proposed Intervenor incorporates the background section included in its motion to intervene. *See* Motion to Intervene as Defendant, ECF No. __, at 3–4.

II. STANDARD OF LAW

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *accord Money v. Pritzker*, Nos. 20-cv-2093, 20-cv-2094, 2020 WL 1820660, at *7 (N.D. Ill. Apr. 10, 2020) ("Preliminary injunctive relief . . . 'should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.'" (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997))). In the Seventh Circuit, the moving party "must make a threshold showing" that: (1) it will suffer irreparable harm absent preliminary injunctive relief, (2) there is no adequate remedy at law, and (3) it has a "reasonable likelihood of success on the merits." *Turnell v. CentiMark Corp.*, 796 F.3d 656, 661–62 (7th Cir. 2015). "If the movant makes the required threshold showing," then the court considers (4) whether the balance of harms favors the moving party and (5) the public interest. *Id.* at 662.

III. ARGUMENT

In its motion for preliminary injunction, Plaintiff parrots the outlandish allegations in its complaint, but fails to support its claims with even a shred of persuasive evidence. Plaintiff lacks standing to assert these causes of action, let alone to prevail on them, and fails at each step of the preliminary injunction analysis. Its motion should therefore be denied.

A. Plaintiff will suffer no injury absent an injunction.

The U.S. Supreme Court's "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction," which is consistent with its "characterization of injunctive relief as an extraordinary remedy that

may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22; *accord Michigan v. U.S. Army Corps of Eng'rs*, No. 10-CV-4457, 2010 WL 5018559, at *13 (N.D. Ill. Dec. 2, 2010). Plaintiff ultimately fails at this first step of the analysis.

The *only* injury that Plaintiff identifies in its motion is that its supporters will be "depriv[ed] of the fundamental right to vote if" SB 1863 is not enjoined. Mot. at 5. As discussed below, this injury is wholly and fatally speculative, devoid of any sort of factual basis or evidentiary support. Plaintiff also suggests that mail voting has led to an epidemic of voter fraud, particularly as a result of "ballot harvesting," that risks harm to it. Mot. at 7. But all Plaintiff can muster to support this purportedly widespread corruption is a 2005 report from the Commission on Federal Election Reform (the "Report") and a handful of news articles. *See id.* at 7–9, 11. This evidence is far from compelling. The Report does not qualify as peer-reviewed research, which remains the gold standard for validating research and determining the reliability of evidence. *See, e.g.*, Fed. Judicial Ctr., *Reference Manual on Scientific Evidence* 13 (3d ed. 2011). And none of the articles—which concern isolated, past instances of electoral malfeasance in jurisdictions *outside* Illinois—suggest, let alone clearly show, that the reforms provided by SB 1863 will lead to an increase in voter fraud.

None of Plaintiff's evidence comes close to showing that expanding access to mail voting in Illinois will lead to disenfranchisement, increased voter fraud, or diminished public confidence. Repeating the fiction of widespread voter fraud, even in a court of law, does not make it true—as evidenced by the repeated rejection of attempts to limit voting opportunities based on similarly speculative allegations.[2] Accordingly, Plaintiff has not demonstrated a risk of irreparable harm.

[2] *See, e.g.*, *People First of Ala. v. Sec'y of State*, No. 20-12184, 2020 WL 3478093, at *7 (11th Cir. June 25, 2020) (concluding that state's "interest for maintaining the photo ID and witness requirements do not outweigh" burdens on voters where evidence "suggests that Alabama has not found itself in recent years to have a significant absentee-ballot fraud problem"); *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1036

B. Plaintiff has not demonstrated a likelihood of success on the merits.

"If it is plain that the party seeking the preliminary injunction has no case on the merits, the injunction should be refused regardless of the balance of harms." *Green River Bottling Co. v. Green River Corp.*, 997 F.2d 359, 361 (7th Cir. 1993). Such is the case here. Plaintiff lacks standing to bring its wholly speculative claims, relies on noncognizable legal theories, and cannot succeed on the merits given that it provides not even a shred of compelling evidence to supports its case.

1. Plaintiff lacks standing to pursue its claims.

A party moving for a preliminary injunction must demonstrate Article III standing. *See, e.g.*, *Speech First, Inc. v. Killeen*, No. 19-2807, 2020 WL 4333565, at *5 (7th Cir. July 28, 2020). Here, Plaintiff lacks standing to bring its claims because its alleged injuries are wholly and irremediably "conjectural" and "hypothetical," and neither "actual [n]or imminent" as required by Article III. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)). The gravamen of Plaintiff's complaint is that SB 1863 will lead to voter fraud, which will in turn dilute the votes of Plaintiff's supporters, disenfranchise Plaintiff's supporters, and violate the secrecy of the ballot. But its assertions that several provisions of the legislation will result in "ballot harvesting" and various methods of corruption, Mot. at 7–9, are premised on assumptions that third parties will take a series of independent actions, all in a coordinated scheme that is not supported by any allegations of fact, let alone any actual evidence. Instead, each of these purported injuries is supported only by unfounded and speculative assertions that strain logic and credulity and fail to establish injuries sufficient for standing.

(9th Cir. 2020) (en banc) (rejecting fraud-based justification for ballot collection ban where "[t]here has never been a case of voter fraud associated with ballot collection charged in Arizona" (quoting *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 852 (D. Ariz. 2018))); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2748301, at *7 (D. Nev. May 27, 2020) (denying preliminary injunction where "Plaintiffs' claims of voter disenfranchisement are speculative at best").

As to Count I, courts have repeatedly held that a speculative injury of vote dilution—as Plaintiff asserts in this cause of action—does not confer Article III standing. *See, e.g.*, *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2748301, at *4 (D. Nev. May 27, 2020) (no standing where "Plaintiffs fail to show a nexus between the alleged violations and their claimed injury" because they "fail to more than speculatively connect the specific conduct they challenge . . . and the claimed injury" of "vote dilution"); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) ("[T]he risk of vote dilution[is] speculative and, as such, [is] more akin to a generalized grievance about the government than an injury in fact.").

Plaintiff's claim in Count II that SB 1863 will "disenfranchise[] those same voters directly" is equally unfounded. Mot. at 11. Plaintiff provides *no* credible allegations—and certainly no evidence—that paid operatives will throw out Republican votes in November. All it points to is the isolated instance of a *Republican* operative engaging in electoral malfeasance in North Carolina, *see id.*, which provides no support for its speculative claim that such impropriety will occur in Illinois, let alone as a result of SB 1863.[3] And Plaintiff does not even attempt to explain, let alone persuasively, how expanded mail voting and an improved process for determining the validity of provisional ballots—in other words, ensuring that *as many eligible voters as possible* can cast ballots in the November Election—will deprive those same voters of their choice for president, and thus cause injury to Plaintiff. It therefore lacks standing to bring Count II.[4]

[3] Significantly, while Plaintiff repeatedly asserts that SB 1836 "allow[s] for ballot harvesting," Mot. at 3, it ignores that the legislation neither amends nor supplants preexisting restrictions on third-party ballot collection. *See* 10 ILCS 5/19-6; 10 ILCS 5/19-13. Any asserted injury from "ballot harvesting" is therefore neither traceable to SB 1863 nor redressable by its injunction. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (injury must be "traceable to the challenged conduct" and "likely to be redressed by a favorable judicial decision").

[4] Plaintiff further claims that SB 1863, and the disenfranchisement it will allegedly facilitate, will undermine confidence in elections. *See* Mot. at 12. But even if Plaintiff plausibly claimed that mail voting will lead to

Lastly, Plaintiff's contention in Count III that SB 1863 will violate the "secrecy of voting" again hypothesizes, without even attempting to provide support, that operatives will systematically perpetrate fraud upon voters by discarding their ballots. Moreover—and equally fatal to its claim—Plaintiff does not allege that its purported injury of identification of secret ballots is different than that of any other voter in Illinois. *See Lujan*, 504 U.S. at 573–74 (holding that plaintiff "claiming only harm to his and every citizen's interest in proper application of the Constitution and laws . . . does not state an Article III case or controversy").

Absent allegations or evidence of actual, imminent, non-hypothetical injuries attributable to SB 1863, Plaintiff's claims fall well short of conferring Article III standing and cannot support issuance of a preliminary injunction. *See Speech First*, 2020 WL 4333565, at *5.

2. Count I fails to state a claim upon which relief can be granted.

Even if Plaintiff had standing to bring its claims, it cannot show a likelihood of success on the merits if it fails to state a claim upon which relief can be granted. *See, e.g.*, *Village of Old Mill Creek v. Star*, Nos. 17 CV 1163, 17 CV 1164, 2017 WL 3008289, at *18 n.37 (N.D. Ill. July 14, 2017). Such is the case for Count I, which rests on a fundamentally unsound premise: that SB 1863, which *expands* the franchise for Illinois voters during the pandemic, violates the constitutional right to vote of Plaintiff's supporters. Plaintiff argues that SB 1863 will dilute the votes of its supporters through the casting of illegal ballots. But while it is true that vote dilution *might* be a viable basis for federal voting claims in certain contexts—such as when laws are crafted that structurally devalue one group's votes over another's, *see, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 563–64 (1964)—it is also true that "[t]he Constitution is not an election fraud statute." *Minn.*

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disenfranchisement—it has not—the claimed injury of diminished confidence in the electoral process is precisely the sort of generalized grievance that "does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573–74.

Voters Alliance v. Ritchie, 720 F.3d 1029, 1031 (8th Cir. 2013) (quoting *Bodine v. Elkhart Cty. Election Bd.*, 788 F.2d 1270, 1271 (7th Cir. 1986)). There is simply no authority for transmogrifying the vote dilution line of cases into a weapon that voters may use to enlist the federal judiciary *to make it more difficult for millions of their fellow citizens to vote*, based entirely on unfounded and speculative fears of voter fraud. *Cf. Short v. Brown*, 893 F.3d 671, 677–78 (9th Cir. 2018) ("Nor have the appellants cited any authority explaining how a law that makes it easier to vote would violate the Constitution."). To the contrary, courts have routinely—and appropriately—rejected such efforts, *see Minn. Voters Alliance*, 720 F.3d at 1031–32; *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 406–07 (E.D. Pa. 2016), and Plaintiff does not cite a single case holding that the prospect of voter fraud diluting lawfully cast ballots can sustain an election law challenge.[5] Because Count I is premised on a nonviable legal theory, it cannot support a preliminary injunction. *See Star*, 2017 WL 3008289, at *18 n.37.

3. Counts I and II fail on the merits.

As Plaintiff correctly notes, *see* Mot. at 6–7, courts apply the *Anderson-Burdick* balancing test when parties claim that an election law violates their right to vote. *See, e.g.*, *Common Cause Ind. v. Individual Members of Ind. Election Comm'n*, 800 F.3d 913, 916–17 (7th Cir. 2015). But as discussed above, Plaintiff's claimed injuries—direct disenfranchisement and vote dilution—are

[5] The cases on which Plaintiff relies do not support this theory. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam), *Crawford v. Marion County Election Board*, 472 F.3d 949, 952 (7th Cir. 2007), *aff'd*, 553 U.S. 181 (2008), and *Ohio Republican Party v. Brunner*, 544 F.3d 711, 713 (6th Cir. 2008), *vacated*, 555 U.S. 5 (2008), all suggest that the need to prevent voter fraud is a cognizable state interest, *not* that private parties can use vote dilution as an offensive cudgel with which to deny the franchise to other voters by challenging election laws. *Reynolds*, as discussed above, guards against dilution caused by the structural devaluation of votes in the apportionment context, and is therefore wholly inapplicable here. 377 U.S. at 563–64. And *United States v. Saylor*, 322 U.S. 385, 389 (1944), merely permits the criminalization of voter fraud, which is not at issue in this case. *See also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (citing *Saylor*); *Baker v. Carr*, 369 U.S. 186, 208 (1962) (same). In short, although each of these cases alludes to vote dilution in some way, none recognizes the cause of action that Plaintiff asserts.

wholly speculative and unsupported by any evidence. Because Plaintiff has not demonstrated that SB 1863 "hinder[s its supporters'] exercise of the franchise . . . . the statute need only withstand rational-basis review." *Cortés*, 218 F. Supp. 3d at 407–09 (applying rational basis review where plaintiffs' "vote-dilution theory is based on speculation that fraudulent voters may be casting ballots elsewhere in the" state); *accord Planned Parenthood of Ind. & Ky., Inc. v. Comm'r of Ind. State Dep't of Health*, 888 F.3d 300, 314 (7th Cir. 2018), *rev'd in part on other grounds sub nom. Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780 (2019). Under rational basis review, there need only be "a clear, rational relationship between" the state interest and the challenged law. *Claussen v. Pence*, 826 F.3d 381, 387 (7th Cir. 2016).

The State easily satisfies this requirement. In the midst of the ongoing coronavirus pandemic, Illinois has a highly compelling interest in reducing in-person contact and making voting easier. Illinois has witnessed over 220,000 COVID-19 cases, with more than 8,100 deaths attributed to the disease.[6] The pandemic shows no signs of abating, let alone by the November Election, and the State has responded to this crisis in myriad ways[7]—including enacting SB 1863. Mail voting will be the safest method for most Illinoisans to vote; accordingly, the State has an interest in facilitating voting by mail not only as a matter of public health, but also to ensure that its citizens are not disenfranchised. Sending vote by mail applications to millions of voters removes

[6] *See Illinois Coronavirus Map and Case Count*, N.Y. Times, https://www.nytimes.com/interactive/2020/us/illinois-coronavirus-cases.html (last visited Aug. 25, 2020).

[7] For example, Governor Pritzker has issued disaster proclamations, *see Executive Orders*, State of Ill. Coronavirus (COVID-19) Response, https://coronavirus.illinois.gov/s/resources-for-executive-orders (last visited Aug. 25, 2020); Chicago Public Schools are beginning the schoolyear with remote instruction, *see Final Reopening Framework: Successfully Learning at Home This Fall*, Chi. Pub. Schs. (Aug. 18, 2020), https://www.cps.edu/school-reopening-2020; and colleges and universities in Illinois are implementing a host of safety precautions, including limiting the number of students on campus. *See* Marissa Nelson, *Illinois Universities, Colleges Prepare for Fall Classes Amid COVID-19*, WTTW (Aug. 11, 2020), https://news.wttw.com/2020/08/11/illinois-universities-colleges-prepare-fall-classes-amid-covid-19.

a crucial administrative hurdle to permitting widespread mail voting, and SB 1863's other challenged provisions—improving the signature verification and cure process, establishing ballot drop-off locations, and supplying a sufficient number of election judges to process mail ballots—will ensure that each Illinoisan's vote gets counted.

To underscore both the reasonableness and necessity of SB 1863, Proposed Intervenor notes that the provisions that Plaintiff paints as dangerous and unprecedented are in fact commonplace in 2020. At least nine states will automatically mail *ballots*—not merely applications—to voters this November, while another ten (Illinois included) are sending absentee ballot applications.[8] Secure drop-boxes are quickly becoming a popular method to ensure safe and postage-free return of mail ballots.[9] Election day is observed as a holiday in many states,[10] and others, including Maryland, Minnesota, and Texas, also permit individuals as young as 16 to serve as election judges or clerks.[11] Numerous states require a strong showing to prevent voter

[8] *See* Kate Rabinowitz & Brittany Renee Mayes, *At Least 83% of American Voters Can Cast Ballots by Mail in the Fall*, Wash. Post (Aug. 20, 2020), https://www.washingtonpost.com/graphics/2020/politics/vote-by-mail-states/.

[9] *See, e.g.*, Lissandra Villa, *Ballot Drop Boxes Are Emerging as a Vote-by-Mail Alternative—but They Have Critics, Too*, Time (Aug. 20, 2020), https://time.com/5881310/ballot-drop-boxes-usps. Incidentally, even if this provision did newly allow for third-party ballot collection, as Plaintiff contends, *but see supra* n.3, according to the non-comprehensive source Plaintiff cites in its motion, *see* Mot. at 4 n.5, numerous states permit voter assistance from individuals other than family members and close friends. *See VOPP: Table 10: Who Can Collect and Return an Absentee Ballot Other Than the Voter*, Nat'l Conf. of State Legislatures (Aug, 14, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-10-who-can-collect-and-return-an-absentee-ballot-other-than-the-voter.aspx.

[10] S*ee* Chris Cillizza, *Why Isn't Election Day a National Holiday Yet?*, CNN (Apr. 13, 2020), https://www.cnn.com/2020/04/13/politics/ralph-northam-election-day/index.html)

[11] *See Election Judges*, Md. State Bd. of Elections, https://elections.maryland.gov/get_involved/election_judges.html (last visited Aug. 25, 2020); *Become an Election Judge*, Office of Minn. Sec'y of State, https://www.sos.state.mn.us/elections-voting/get-involved/become-an-election-judge (last visited Aug. 25, 2020); *Student Election Clerk Information*, Tex. Sec'y of State, https://www.sos.state.tx.us/elections/pamphlets/seci.shtml (last visited Aug. 25, 2020); *see also* Barbara Sprunt, *Wanted: Young People to Work the Polls This November*, NPR (Aug. 5 2020), https://www.npr.org/2020/08/05/894331965/wanted-young-people-to-work-the-polls-this-november (describing need for student

disenfranchisement over alleged signature mismatches,[12] and permit the curing of provisional ballots at least 14 days after a general election.[13] In short, election features that Plaintiff conclusorily condemns as corruptive are entirely mainstream and innocuous.

Because the State's interest in expanding safe and meaningful access to mail voting outweighs any burden Plaintiff could conceivably assert for its supporters—and thus far, it has failed at even that initial step—Counts I and II cannot succeed on the merits.

4. Plaintiff cannot succeed on Count III.

a. Count III is barred by the Eleventh Amendment.

The Eleventh Amendment to the U.S. Constitution bars Plaintiff's request that this Court consider whether certain provisions of SB 1863 violate the *Illinois* Constitution. The U.S. Supreme Court explained decades ago in *Pennhurst State School & Hospital v. Halderman* that "the principles of federalism that underlie the Eleventh Amendment" prohibit a federal court from granting "relief against state officials on the basis of state law, whether prospective or retroactive." 465 U.S. 89, 106 (1984); *accord Elim Romanian Pentecostal Church v. Pritzker*, 962 F.3d 341, 345 (7th Cir. 2020). *Pennhurst* announced a bright line rule that has since been applied countless times by federal courts. Simply put: "[T]he Eleventh Amendment precludes [a] District Court from adjudicating plaintiffs' claim that [state law] violate[s the] State's Constitution." *All. of Am. Insurers v. Cuomo*, 854 F.2d 591, 604 (2d Cir. 1988). Because Plaintiff asks the Court to determine

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election volunteers given that "58% of poll workers in the 2018 general election were over 60, an age that is linked to a higher risk for complications with COVID-19").

[12] *See VOPP: Table 14: How States Verify Voted Absentee Ballots*, Nat'l Conf. of State Legislatures (Apr. 17, 2020), https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx.

[13] *See Provisional Ballots*, Nat'l Conf. of State Legislatures (Oct. 15, 2018), https://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx.

whether *state defendants* are violating *state law*, the Eleventh Amendment bars Count III.[14]

b. Count III fails to state a claim on which relief can be granted.

Even if this Court could consider Count III, Plaintiff does not state a cognizable claim. It fails to cite *any* authority to support a cause of action under Article III, Section 4 of the Illinois Construction—because it cannot. No court, federal or state, has adjudicated an alleged violation of "secrecy of voting" under the Illinois Constitution. Indeed, in asserting such a claim, Plaintiff takes the "secrecy of voting" clause entirely out of context. The clause provides that "[t]he General Assembly by law shall . . . insure secrecy of voting and the integrity of the election process." Ill. Const. art. III, § 4. Following this mandate, "[s]everal provisions of the Election Code were obviously enacted by the legislature for the purpose of ensuring the secrecy of the ballot." *Pullen v. Mulligan*, 561 N.E.2d 585, 605 (Ill. 1990). The Legislature's decision to maintain secrecy of the ballot while simultaneously expanding mail voting is a policy decision, which Plaintiff essentially asks this Court to override in favor of Plaintiff's own preferred policy of restricting mail voting. However, the Illinois Constitution gives policymaking authority for ensuring secrecy of voting to the *Legislature*, not to this Court—or, for that matter, to Plaintiff. *Cf. League of Women Voters of Mich. v. Sec'y of State*, No. 353654, 2020 WL 3980216, at *10 (Mich. Ct. App. July 14, 2020) (explaining that constitutional provision granting state legislature authority to enact laws to preserve purity of elections did not allow "Court to implement a policy different from that chosen by the Legislature"), *appeal denied*, 946 N.W.2d 307 (Mich. 2020).

c. Count III fails on the merits.

Even if the Court were to examine the merits of Count III, Plaintiff has no chance of

[14] To the extent Counts I and II are premised on violations of the Illinois Constitution, the Eleventh Amendment precludes this Court's adjudication of those claims as well.

success, as it has failed to show that SB 1863 undermines the secrecy of voting. *See People ex rel. Foxx v. Agpawa*, 105 N.E.3d 846, 856 (Ill. Ct. App. 2018) (waiving claim under Article III, Section 4 of Illinois Constitution where complainant "fail[ed] to cite to any authority to support his contention that [challenged statutes] somehow affect the uniformity of how elections are conducted"). Plaintiff's suggestion that political operatives will use lists of vote by mail applicants, to which they are entitled under SB 1863, to "bundle [ballots] to submit, alter, or discard as they wish" is baseless. Mot. at 13. But even assuming that political operatives would perpetrate such systematic fraud—Plaintiff, again, has provided no support for this assumption—any violation of the secret ballot would be a result of *fraud*, not SB 1863's provision of the applicant list, which simply states *who* is planning to vote by mail, not *which candidates* those voters are supporting.

Plaintiff's speculation, moreover, that "[t]he massive increase in mail-in ballots will overwhelm local election authorities and undermine the systems for not identifying ballots" fares no better. *Id*. Plaintiff provides no explanation—let alone evidence—of this hypothetical parade of horribles. *Cf. Pullen*, 561 N.E.2d at 607 ("We will not obligate voters, at the risk of disfranchisement, to monitor the election officials to ensure that they do nothing to jeopardize the secrecy of the ballot, particularly where nothing in the Election Code prohibits the election officials from acting in the manner questioned.").

Finally, courts have long held that mail voting does not violate the secrecy of the ballot. *See, e.g., Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1183 (9th Cir. 1988). In *Peterson v. City of San Diego*, 666 P.2d 975 (Cal. 1983), for example, the California Supreme Court held that mail voting does not violate a constitutional provision that "[v]oting shall be secret," Cal. Const. art. II, § 7, because "the secrecy provision . . . was never intended to preclude reasonable measures to facilitate and increase exercise of the right to vote such as absentee and

mail ballot voting." *Peterson*, 666 P.2d at 978. So too here. There is no reason to "assume that the secrecy provision was designed to serve a purpose other than its obvious one of protecting the voter's right to act in secret, when such an assumption would impair rather than facilitate exercise of the fundamental right." *Id*. As such, Plaintiffs cannot succeed on the merits of Count III.

C. The balance of harms weighs strongly against an injunction.

As discussed in Part I *supra*, Plaintiff has not shown *any* likely injury absent an injunction. By striking contrast, enjoining SB 1863 would have a devastating impact on Illinoisans' ability to participate in the November Election. Plaintiff suggests that the State "can claim no special harm that will result from conducting the election without the provisions of SB 1863 because Illinois has conducted every election over the past two centuries without" these provisions. Mot. at 14. But this cursory argument ignores that the November Election will be *unlike* any that has come before it. The Legislature's decision to proactively distribute vote by mail applications, and to make that process easier, more reliable, and more efficient, is a necessary response to an unprecedented public health crisis. Whether by necessity or choice, many Illinois voters will continue to exercise social distancing and remain sheltered in their homes in early November. Without meaningful opportunities to vote by mail, voters will be forced to choose between casting a ballot in person or safeguarding their health—resulting in effective disenfranchisement.

Recognizing that ballot applications have already been mailed, Plaintiff requests injunction of other critical components of SB 1863, *see* Mot. at 15, each of which provide Illinoisans with meaningful opportunities to vote by mail. The provisions of the legislation that Plaintiff (inaccurately) claims facilitate "ballot harvesting"—namely, releasing lists of vote by mail applicants to organizations and candidates and providing ballot drop-boxes—ensure that all Illinoisans, even those who cannot afford postage or lack access to the postal service, can safely

access the franchise during the pandemic. Declaring the November Election a state holiday will allow more voters to cast ballots or assist with the election, and the latter interest is also served by expanding the population of potential election judges at a time when traditional volunteers are particularly vulnerable to COVID-19. *See supra* n.11. Finally, the reformed and expanded process for curing defective ballots will ensure that fewer voters—many of whom will be voting by mail for the first time—are disenfranchised for arbitrary reasons.

In short, these provisions, working together, help Defendants ensure a safe, efficient election that minimizes the risk of disenfranchisement. If this Court were to prevent these measures, then countless Illinoisans—including those who are unwilling or unable to incur health risks by voting in person—will risk disenfranchisement. "The denial of the opportunity to cast a vote that a person may otherwise be entitled to cast—even once—is an irreparable harm." *People First of Ala. v. Sec'y of State*, No. 20-12184, 2020 WL 3478093, at *9 (11th Cir. June 25, 2020) (quoting *Jones v. Governor*, 950 F.3d 795, 828 (11th Cir. 2020)); *see also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) ("[O]nce the election occurs, there can be no do-over and no redress."); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1258 (N.D. Fla. 2016) ("This isn't golf: there are no mulligans.").

Plaintiffs have not demonstrated *any* likely injury that would occur absent an injunction, let alone disenfranchisement. As discussed above, they are litigating against a mere apparition of alleged fraud that vanishes under the light of even limited scrutiny. And by contrast, "disenfranchisement could be, even more concretely, claimed in the absence of" SB 1863, given the safeguards it provides to Illinois voters. *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2089813, at *12 (D. Nev. Apr. 30, 2020).

D. The public interest would not be served by an injunction.

Enjoining SB 1863—which would likely disenfranchise eligible voters—will not serve the public interest. "By definition, '[t]he public interest . . . favors permitting as many qualified voters to vote as possible.'" *League of Women Voters*, 769 F.3d at 247 (alterations in original) (quoting *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012)). This includes not only Proposed Intervenor's supporters, but *all* eligible Illinoisans who would risk disenfranchisement if Plaintiff receives its requested relief. *See Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of Am., Inc.*, 549 F.3d 1079, 1100 (7th Cir. 2008) (public interest "includes the ramifications of granting or denying the preliminary injunction on nonparties to the litigation"). By contrast, the public interest would most assuredly be *ill*-served if voters' constitutional rights were violated to combat nonexistent voter fraud. *See, e.g.*, *Common Cause/Ga. v. Billups*, 439 F. Supp. 2d 1294, 1359–60 (N.D. Ga. 2006). This is particularly true given that Illinois already polices potential electoral fraud by other means. *See Paher*, 2020 WL 2089813, at *7 ("Plaintiffs' overarching theory that having widespread mail-in votes makes the Nevada election more susceptible to voter fraud seems unlikely where the Plan essentially maintains the material safeguards to preserve election integrity.").[15]

IV. CONCLUSION

For the foregoing reasons, Proposed Intervenor respectfully requests that this Court deny Plaintiff's motion for preliminary injunction.

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[15] For example, it is a felony to buy votes, 10 ILCS 5/29-1; to prevent someone from voting through force or intimidation, 10 ILCS 5/29-4; to vote more than once during the same election, 10 ILCS 5/29-5; to destroy, deface, or forge a ballot, 10 ILCS 5/29-6, or to stuff a ballot box with a forged ballot, 10 ILCS 5/29-8. Special provisions also apply to mail ballots, making it a felony to intimidate or unduly influence someone to vote by mail or to "mark[] or tamper[] with a vote by mail ballot of another person." 10 ILCS 5/29-20.

Respectfully Submitted,

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**Pro hac vice application forthcoming*

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DARRELL ISSA, JAMES B. OERDING, JERRY GRIFFIN, MICHELLE BOLOTIN, and MICHAEL SIENKIEWICZ,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity as Governor of the State of California, and ALEX PADILLA, in his official capacity as Secretary of State of California,

Defendants.

REPUBLICAN NATIONAL COMMITTEE; NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE; and CALIFORNIA REPUBLICAN PARTY,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity as Governor of California; and ALEX PADILLA, in his official capacity as California Secretary of State,

Defendants.

No. 2:20-cv-01044-MCE-CKD
(and related case)
No. 2:20-cv-01055-MCE-CKD

MEMORANDUM AND ORDER

On May 8, 2020, California Governor Gavin Newsom issued Executive Order N-64-20, which requires all California counties to implement all-mail ballot elections for the November 3, 2020, federal elections ("Executive Order"). By way of the above-captioned related actions, two sets of Plaintiffs seek to enjoin enforcement of that Executive Order by Defendants, Governor Newsom and California's Secretary of State Alex Padilla: (1) the Republican National Committee, the National Republican Congressional Committee, and the California Republican Party (collectively, "RNC Plaintiffs"); and (2) one congressional candidate and four individual California voters, including members of the Republican, Democratic, and Independent Parties (collectively, "Issa Plaintiffs").

The Democratic Congressional Campaign Committee and the Democratic Party of California (collectively, "Proposed Intervenors") now move to intervene as defendant-intervenors in both cases as a matter of right under Federal Rule of Civil Procedure 24(a)(2).[1, 2] Alternatively, the Proposed Intervenors seek permissive intervention under Rule 24(b). The RNC Plaintiffs do not oppose the Proposed Intervenors' request, but the Issa Plaintiffs have filed an opposition. Defendants have not responded, and the Proposed Intervenors have filed Reply briefs. For the reasons set forth below, the Proposed Intervenors' Motions to Intervene are GRANTED.[3]

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[1] All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure, unless otherwise noted.

[2] See Mot. Intervene, Case No. 2:20-cv-01044-MCE-CKD, ECF No. 12, and Mot. Intervene, Case No. 2:20-cv-01055-MCE-CKD, ECF No. 18.

[3] The Court granted the Proposed Intervenors' Requests for Expedited Briefing Schedule on the present Motions. See Stip. and Order, Case No. 20-cv-01044-MCE-CKD, ECF No. 14, and Stip. and Order, No. 20-cv-01055-MCE-CKD, ECF No. 20. Due to the expedited briefing schedule and because oral argument would not have been of material assistance, the Court ordered these matters submitted on the briefs. See E.D. Local Rule 230(g).

STANDARD

An intervenor as a matter of right must meet all requirements of Rule 24(a)(2) by showing:

> (1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.
>
> In evaluating whether these requirements are met, courts are guided primarily by practical and equitable considerations. Further, courts generally construe [the Rule] broadly in favor of proposed intervenors. A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.

United States v. City of Los Angeles, 288 F.3d 391, 397–98 (9th Cir. 2002) (citations and internal quotation marks omitted).

Alternatively, under Rule 24(b)(1), a party may be given permission by the court to intervene if that party shows "(1) independent grounds for jurisdiction; (2) the motion is timely filed; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." Northwest Forest Res. Council v. Glickman, 82 F.3d 825, 839 (9th Cir. 1996).

ANALYSIS

A. Timeliness of Application

Three factors must be evaluated to determine whether a motion to intervene is timely:

> (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay. Delay is measured from the date

> the proposed intervenor should have been aware that its interests would no longer be protected adequately by the parties, not the date it learned of the litigation.

United States v. State of Wash., 86 F.3d 1499, 1503 (9th Cir. 1996). "Timeliness is to be determined from all the circumstances" in the court's "sound discretion." NAACP v. New York, 413 U.S. 345, 366 (1973).

The Issa Plaintiffs do not dispute the timeliness of the Proposed Intervenors' request. Both the Issa and RNC Plaintiffs filed their Complaints on May 21 and 24, 2020, respectively, and the Proposed Intervenors filed the Motions to Intervene on June 3, 2020. To date, no substantive proceedings have occurred, and this Court has ordered all Plaintiffs to file any motions for preliminary injunction by June 11, 2020. The Court thus finds the Motions to Intervene are timely.

B. Significant Protectable Interest and Disposition May Impair or Impede Ability to Protect Interest

A proposed intervenor has a "'significant protectable interest' in [the] action if (1) it asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the plaintiff's claims." City of Los Angeles, 288 F.3d at 398 (quoting Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998)). "The 'interest' test is not a clear-cut or bright-line rule, because '[n]o specific legal or equitable interest need be established.'" Id. (quoting Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993)). Under the interest test, courts are required "to make a practical, threshold inquiry" to discern whether allowing intervention would be "compatible with efficiency and due process." Id. (citations and internal quotation marks omitted).

An applicant may satisfy the requirement of a "significant protectable interest" if the resolution of the plaintiff's claims will affect the applicant for intervention. Montana v. United States Envt'l Prot. Agency, 137 F.3d 1135, 1141–42 (9th Cir. 1998). The requisite interest need not even be direct as long as it may be impaired by the outcome of the litigation. Cascade Nat'l Gas Corp. v. El Paso Nat'l Gas Co., 386 U.S. 129, 135–36 (1967). "If an absentee would be substantially affected in a practical sense by the

determination made in an action, he should, as a general rule, be entitled to intervene." Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 822 (9th Cir. 2001) (quoting Fed. R. Civ. P. 24 advisory committee's notes).

The Proposed Intervenors cite three protectable interests as the basis for their intervention: (1) asserting the rights of their members to vote safely without risking their health; (2) advancing their overall electoral prospects; and (3) diverting their limited resources to educate their members on the election procedures. Contrary to the arguments of the Issa Plaintiffs, such interests are routinely found to constitute significant protectable interests. As another federal district court recently held,

> Proposed Intervenors argue that Plaintiffs' success on their claims would disrupt the organizational intervenors' efforts to promote the franchise and ensure the election of Democratic Party candidates . . . . Proposed Intervenors have sufficiently shown that they maintain significant protectable interests which would be impaired by Plaintiffs' challenge to the Plan's all-mail election provisions.

Paher v. Cegavske, Case No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020). Furthermore, if both the Issa and RNC Plaintiffs were to succeed on their claims, then the Proposed Intervenors would have to devote their limited resources to educating their members on California's current voting-by-mail system and assisting those members with the preparation of applications to vote by mail. See Crawford v. Marion Cty. Elec. Bd., 472 F.3d 949, 951 (7th Cir. 2007). Finally, as the Proposed Intervenors point out, their interests are very similar to those of the Issa Plaintiffs. See Proposed Intervenors' Reply, Case No. 2:20-cv-01044-MCE-CKD, ECF No. 23, at 3 n.3. Therefore, the Court concludes that significant protectable interests have been demonstrated.

C. No Existing Adequate Representation

When determining whether a proposed intervenor's interests are adequately represented, the following factors are considered:

> (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; (2) whether the present party is capable and willing to make such

> arguments; and (3) whether the would-be intervenor would offer any necessary elements to the proceedings that such other parties would neglect.

City of Los Angeles, 288 F.3d at 398 (citations omitted). The burden of showing that existing parties may inadequately represent the proposed intervenor's interests is a minimal one. The applicant need only show that "the representation of [its] interest 'may be' inadequate." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 (1972). Any doubt as to whether the existing parties will adequately represent the intervenor should be resolved in favor of intervention. Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist., 983 F.2d 211, 216 (11th Cir. 1993).

Although Defendants and the Proposed Intervenors fall on the same side of the dispute, Defendants' interests in the implementation of the Executive Order differ from those of the Proposed Intervenors. While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures. See Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 899 (9th Cir. 2011) ("[T]he government's representation of the public interest may not be identical to the individual parochial interest of a particular group just because both entities occupy the same posture in the litigation.") (citations and internal quotation marks omitted). As a result, the parties' interests are neither "identical" nor "the same." See Berg, 268 F.3d at 823 (rebutting presumption of adequacy by showing the parties "do not have sufficiently congruent interests"). The Court thus finds that absent intervention, the interests of the Proposed Intervenors may not be adequately represented.

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In sum, because all of the factors have been met, the Court finds the Proposed Intervenors are entitled to intervene as a matter of right under Rule 24(a)(2).[4]

CONCLUSION

For the reasons set forth above, the Proposed Intervenors' Motions to Intervene are GRANTED. The deadline for the Proposed Intervenors to answer or otherwise respond to the Complaints shall be the same as the deadline, or any continued deadline, set for Defendants to answer or otherwise respond.

IT IS SO ORDERED.

Dated: June 10, 2020

MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE

[4] Because the Court finds intervention is appropriate under Rule 24(a)(2), it need not consider whether intervention is alternatively appropriate under Rule 24(b).