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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

29 Darlene Yazzie, Caroline Begay, Leslie Begay,
30 Irene Roy, Donna Williams and Alfred McRoye,

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INTRODUCTION

1 Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor, Arizona
2 Advocacy Network (“AzAN”), moves to intervene as plaintiff in the above-titled action.

3 Plaintiffs, Darlene Yazzie, Caroline Begay, Leslie Begay, Irene Roy, Donna
4 Williams, and Alfred McRoye (collectively, “Plaintiffs”), challenge Arizona’s requirement
5 that election officials automatically reject all mail ballots that arrive after 7 p.m. on Election
6 Day, even if they were postmarked on or before Election Day (the “Election Day Receipt
7 Deadline”). Plaintiffs seek an Order declaring that the mail ballots of a limited set of
8 Arizona voters—members of the Navajo Nation living on the Navajo Nation Reservation—
9 shall be counted as long as they are postmarked by Election Day and received within ten
10 days following the election.

11 Proposed Intervenor AzAN is a non-profit, non-partisan organization that has
12 significant interests to protect in this litigation. Arizona’s Election Day Receipt Deadline
13 directly harms AzAN by burdening and disenfranchising voters, thus frustrating AzAN’s
14 mission of enfranchising and turning out voters in Arizona. Like Plaintiffs, AzAN seeks a
15 declaration that the Election Day Receipt Deadline is unconstitutional, but it seeks relief
16 that applies equally to *all* Arizona voters and is not limited to members of the Navajo Nation
17 living on Navajo tribal lands.

18 For the reasons set forth below, AzAN is entitled to intervene in this case as a matter
19 of right under Rule 24(a)(2). Intervention is needed not only to ensure the fairness of the
20 Election but also to safeguard the substantial and distinct legal interests of AzAN, which
21 will otherwise be inadequately represented (and potentially harmed) in the litigation. In the
22 alternative, AzAN should be granted permissive intervention pursuant to Rule 24(b). In
23 accordance with Rule 24(c), a proposed Complaint is attached as Exhibit 1. Counsel for
24 AzAN has conferred with the parties to this action, and has been advised that neither
25 Plaintiffs nor Defendants consent.

PROCEDURAL BACKGROUND

1
2 Plaintiffs initiated this action on August 26, 2020, by filing their Complaint for
3 Injunctive and Declaratory Relief. (Doc. 1.) Then, on September 2, 2020, Plaintiffs filed
4 their Emergency Motion for Preliminary Injunctive and Declaratory Relief and
5 Memorandum of Points and Authorities in Support Thereof. (Doc. 9.) Thereafter, on
6 September 3, 2020, Proposed Intervenor-Defendants filed their Motion to Intervene.
7 (Doc. 12.) Subsequently, on September 7, 2020, Plaintiffs filed their Motion for Emergency
8 Hearing on Motion for Preliminary Injunction and Permanent Injunction. (Doc. 21.)

STANDARD OF LAW

9
10 “Rule 24 traditionally receives liberal construction in favor of applicants for
11 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003);
12 *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 273 (D. Ariz. 2020) (quoting
13 *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011))
14 (“[A] liberal policy in favor of intervention serves both efficient resolution of issues and
15 broadened access to the courts.”).

16 “Courts in the Ninth Circuit employ a four-part test when analyzing intervention of
17 right:”

18 (1) the motion must be timely; (2) the applicant must claim a “significantly
19 protectable” interest relating to the property or transaction which is the subject
20 of the action; (3) the applicant must be so situated that the disposition of the
21 action may as a practical matter impair or impede its ability to protect that
interest; and (4) the applicant’s interest must be inadequately represented by
the parties to the action.

22 *Arizonans for Fair Elections*, 335 F.R.D. at 273 (quoting *Wilderness Soc.*, 630 F.3d at
23 1177). Courts are “required to accept as true the non-conclusory allegations made in support
24 of an intervention motion.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819
25 (9th Cir. 2001) (citation and quotation marks omitted).

26 Alternatively, a court may grant permissive intervention to a party under Rule 24(b)
27 “where the applicant for intervention shows ‘(1) independent grounds for jurisdiction;
28 (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have

1 a question of law or a question of fact in common.” *Arizonans for Fair Elections*, 335
2 F.R.D. at 276 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir.
3 2002)).

4 ARGUMENT

5 I. Intervention is appropriate under Rule 24(a)(2).

6 AzAN readily satisfies each of the four requirements of Rule 24(a)(2), and thus is
7 entitled to intervene as of right.

8 *First*, this motion is timely. Plaintiffs filed their Complaint on August 26, 2020; this
9 motion follows less than three weeks later, before any significant action in the case and
10 before any answer has been filed. There has been no delay, and there is no possible risk of
11 prejudice to the other parties. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d
12 1297, 1302 (9th Cir. 1997); *see also Arizonans for Fair Elections*, 335 F.R.D. at 273
13 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004))
14 (“Timeliness is a flexible concept; its determination is left to the district court’s
15 discretion.”).

16 *Second* and *third*, AzAN has significant protectable interests in this lawsuit that will
17 be impaired if the relief granted by the Court is limited to the narrow relief requested by
18 Plaintiffs. “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if
19 it will suffer a practical impairment of its interests as a result of the pending litigation.’”
20 *Wilderness Soc.*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450
21 F.3d 436, 441 (9th Cir.2006)). Further, “[i]t is generally enough that the interest is
22 protectable under some law, and that there is a relationship between the legally protected
23 interest and the claims at issue.” *Wilderness Soc.*, 630 F.3d at 1179 (quoting *Sierra Club v.*
24 *EPA*, 995 F.2d 1478, 1484 (9th Cir.1993)). In assessing whether such an interest is
25 sufficiently “impair[ed] or impede[d],” Fed. R. Civ. P. 24(a)(2), courts “look[] to the
26 ‘practical consequences’ of denying intervention.” *Nat. Res. Def. Council v. Costle*, 561
27 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir.
28 1967)).

1 Here, AzAN has a legally protectible interest sufficient to support intervention. It is
2 a non-profit, non-partisan organization devoted to defending and deepening Arizona's
3 commitment to democracy, including by advocating for meaningful voting rights and access
4 to the ballot. Arizona's Election Day Receipt Deadline directly harms AzAN by burdening
5 and disenfranchising voters. This, in turn, frustrates AzAN's mission of enfranchising and
6 turning out voters in Arizona. In the past, AzAN has had to expend and divert additional
7 funds and resources that it would otherwise spend on other mission-critical voter education
8 and engagement efforts to ensure that voters are not disenfranchised by Arizona's Election
9 Day Receipt Deadline. The need for urgent relief is particularly compelling for the
10 upcoming November election given the global COVID-19 pandemic, the resulting expected
11 surge in voting by mail, and the recent widely publicized issues with delivery delays by the
12 United States Postal Service ("USPS").¹

13 Unless the Court grants AzAN the relief it seeks in its Complaint (Exhibit 1 to this
14 motion), AzAN will have to continue to expend and divert additional funds and resources
15 to ensure that voters are not disenfranchised by Arizona's Election Day Receipt Deadline.
16 The effects of the Deadline on voters throughout Arizona and, relatedly, on AzAN's
17 resources are particularly acute because of the extraordinary circumstances caused by the
18 COVID-19 pandemic and USPS's delays in service. While AzAN agrees with Plaintiffs'
19 descriptions of these circumstances and the adverse effects on members of the Navajo
20 Nation living on Navajo tribal lands, Plaintiffs request relief limited to that group of voters.
21 By contrast, AzAN seeks uniform, statewide relief for all Arizonans who will vote by mail
22 in the November Election.

23 Although AzAN broadly supports the relief that Plaintiffs seek, limiting the remedy
24 to only a subset of voters would compromise AzAN's legally protected interests in two
25 concrete ways. First, AzAN would have to expand voter education efforts to ensure that

26
27 ¹ See, e.g., Ellie Kaufman, *Postal service warns nearly every state it may not be*
28 *able to deliver ballots in time based on current election rules*, CNN, available at
<https://www.cnn.com/2020/08/14/politics/usps-warn-states-mail-in-ballot-delivery/index.html> (last accessed September 9, 2020).

1 most Arizona voters are aware that the Election Day Receipt Deadline and not a postmark
2 deadline applies to them. Second, AzAN would have to combat voter confusion because
3 different ballot submission deadlines would apply to different voters, and, as a result, an
4 already confusing voting scheme would become even more difficult for voters to understand
5 and navigate. In short, meaningful relief from the Election Day Receipt Deadline can only
6 come if any remedy applies statewide. To ensure that its own interests in uniform, statewide
7 relief is protected, AzAN should be heard in this litigation.

8 **Fourth**, AzAN's interests are not represented by any existing party to this case.
9 Courts consider "three factors in determining the adequacy of representation": (1) whether
10 the interest of a present party is such that it will undoubtedly make all of a proposed
11 intervenor's arguments; (2) whether the present party is capable and willing to make such
12 arguments; and (3) whether a proposed intervenor would offer any necessary elements to
13 the proceeding that other parties would neglect. *Arakaki*, 324 F.3d at 1086. "The 'most
14 important factor' in assessing the adequacy of representation is 'how the interest compares
15 with the interests of existing parties.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*,
16 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). This fourth
17 intervention element "requires a 'minimal' showing and is satisfied if existing parties'
18 representation of its interest 'may be' inadequate." *Arizonans for Fair Elections*, 335 F.R.D.
19 at 275 (quoting *Citizens*, 647 F.3d at 898).

20 Here, all three factors are met. First, while Plaintiffs and AzAN share similar injuries
21 from the Election Day Receipt Deadline, they differ in terms of remedy. Although AzAN
22 agrees with Plaintiffs that Navajo voters living on tribal lands are uniquely harmed by the
23 Receipt Deadline and experience disproportionate injury, AzAN's mission extends to all
24 voters across Arizona, who Plaintiffs do not plan to represent. As a result, Plaintiffs do not
25 have sufficiently congruent interests "such that [they] will undoubtedly make all of"
26 AzAN's arguments, which includes the argument that *all* Arizona voters are entitled to
27 relief here. *Arakaki*, 324 F.3d at 1086. This divergence of interests and objectives satisfies
28 the fourth requirement of Rule 24(a)(2). *See, e.g., Allied Concrete & Supply Co. v. Baker*,

1 904 F.3d 1053, 1068 (9th Cir. 2018); *Californians for Safe & Competitive Dump Truck*
2 *Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998).

3 **II. Alternatively, AzAN satisfies Rule 24(b)'s requirements for permissive**
4 **intervention.**

5 Even if this Court were to find AzAN ineligible for intervention as of right, AzAN
6 satisfies the requirements for permissive intervention under Rule 24(b). "Permissive
7 intervention lies within the sound discretion of the Court." *Gila River Indian Cmty. v.*
8 *United States*, No. CV10-1993 PHX-DGC, 2010 WL 4811831, at *1 (D. Ariz. Nov. 19,
9 2010). A court may grant permissive intervention to a party under Rule 24(b) "where the
10 applicant for intervention shows '(1) independent grounds for jurisdiction; (2) the motion
11 is timely; and (3) the applicant's claim or defense, and the main action, have a question of
12 law or a question of fact in common.'" *Arizonans for Fair Elections*, 335 F.R.D. at 276
13 (quoting *City of Los Angeles*, 288 F.3d at 403). Additionally, "[i]n exercising its discretion to
14 grant or deny permissive intervention, a court must consider whether the intervention will
15 'unduly delay or prejudice the adjudication of the'" original parties' rights. *Venegas v.*
16 *Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting Fed. R. Civ. P. 24(b)(3)).

17 Here, AzAN meets all three requirements for permissive intervention. First, there is
18 an independent ground for jurisdiction over AzAN's claims. *See* Ex. 1 (asserting claims
19 under the First and Fourteenth Amendments and asserting jurisdiction under 42 U.S.C. §
20 1983; 28 U.S.C. §1331; and 28 U.S.C. § 2201 and 2202). Second, for the reasons discussed
21 *supra*, AzAN's motion is timely, filed less than three weeks after Plaintiffs' Complaint was
22 filed and before Defendant has filed an answer. Third, AzAN's claims and Plaintiffs' claims
23 share common questions of law and fact. *See* Ex. 1 (incorporating by reference large
24 portions of Plaintiffs' factual allegations).

25 Lastly, intervention will result in neither prejudice nor undue delay. AzAN has an
26 undeniable interest in a swift resolution of this action so that it can ensure that its get-out-
27 the-vote and voter education efforts for the 2020 election are successful. AzAN is confident
28

1 that its intervention in this case, and its filings that will follow, will result in expeditious
2 resolution of this litigation.

3 **CONCLUSION**

4 For the reasons stated above, AzAN respectfully requests that the Court grant its
5 motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it
6 to intervene under Rule 24(b).

7
8 Dated: September 11, 2020

/s Sarah R. Gonski

9 Sarah R. Gonski (Bar No. 032567)

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** Seeking Pro Hac Vice Admission*

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I electronically transmitted the attached document to the Clerk’s Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Daniel R. Graziano

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