IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-2992

JUDICIAL WATCH, INC., *et al.*,

Plaintiffs,

v.

JENA GRISWOLD, et al.,

Defendants.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO VOTO LATINO'S AND VOTE.ORG'S MOTION TO INTERVENE AS DEFENDANTS

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Plaintiffs Judicial Watch, Inc., et al., ("Plaintiffs") submit this memorandum in opposition to Voto Latino's and Vote.org's ("Movants") motion to intervene. Doc. No. 17.

INTRODUCTION

The complaint in this action seeks declaratory and injunctive relief to enforce the National Voter Registration Act of 1993 ("NVRA"). Plaintiffs chose to name the chief State election official, who is charged by law with ensuring compliance with the NVRA, and the State of Colorado, which is subject to the NVRA. Doc. No. 1, ¶¶ 8-9. Plaintiffs' sole and narrow claim against these Defendants is for violations of Section 8(a)(4) of the NVRA, which requires them to employ reasonable efforts to remove from the voter rolls voters who have died or have moved. *Id.* ¶ 73 (Count I). In other words, Plaintiffs request enforcement of the NVRA only with respect to ineligible voters. The only remedy sought is compliance with existing law. (*Id.*, Prayer for Relief.)

It is settled law that Plaintiffs, as initiators of the complaint, control its scope and named parties, subject only to the rules of joinder. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 91 (2005).

Yet, Movants, who can *never* be named defendants because they are private parties not subject to the NVRA, seek to intervene as Defendants here. Their papers suggest they intend to transform the nature of this case to cover issues outside the scope of the complaint (including remedies Plaintiffs do not seek) and matters litigated by other parties in other proceedings. Movants' motion is based on the unwarranted assumption that any court-ordered relief will remove *eligible* registrants from the rolls in violation of federal law. They speculate that presently unknown and unrequested relief that *might* be imposed at the remedial stage of this litigation *might* violate federal law. Movants' worst fears, unsupported by facts or the record, do not support intervention.

As set forth below, Movants' motion to intervene fails at every step. They do not show that a likely court order would disenfranchise eligible voters, nor even explain why it would cost Movants resources even if this happened. Movants apply the wrong standard for determining whether government Defendants would adequately represent them, and then fail to make the necessary showing. Movants' request for permissive intervention fails to identify any specific claim or defense they have, and every discretionary factor weighs against them. Accordingly, the Court should deny Movants' request to intervene as of right or permissively under Rule 24.

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ARGUMENT

I. The Court Should Deny Movants' Request for Intervention As Of Right.

Movants first seek to intervene as of right under Rule 24(a)(2), which permits intervention if (1) the motion is timely; (2) the movant claims an interest in the property or transaction which is the subject of the action; (3) that interest may as a practical matter be impaired by the action; and (4) that interest is not adequately represented by existing parties. *U.S. v. Albert Inv. Co.*, 585 F.3d 1386, 1391 (10th Cir. 2009) (citations and quotations omitted). Though the Tenth Circuit

follows "a somewhat liberal line in allowing intervention," *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001), the "central concern in deciding whether intervention is proper is the practical effect of the litigation on the applicant for intervention." *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1121 (10th Cir. 2019), quoting *San Juan Cty. v. U.S.*, 503 F.3d 1163, 1193 (10th Cir. 2007) (en banc). Movants fail to establish three of the four requirements.[1]

A. Movants Have No "Significantly Protectable Interest" That Will be Impaired Without Their Participation.

Intervention as of right requires an interest in the subject matter of the litigation that is "direct, substantial, and legally protectable." *Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996) (citations omitted); *see also Donaldson v. United States*, 400 U.S. 517, 531 (1971) (must be "a significantly protectable interest"). Though "[t]he threshold for finding the requisite legally protectable interest is not high," an "intervenor must specify a particularized interest rather than a generalized grievance." *Am. Ass'n of People with Disabilities v. Herrera*, 257 F.R.D. 236, 246 (D.N.M. 2008) (internal quotation and citation omitted). Movants may not "raise interests or issues that fall outside of the issues raised in the lawsuit." *Id.*, citing *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 525 (5th Cir. 1994).

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Movants contend they have an interest because their "missions and registration efforts will be directly impaired if more aggressive voter purges are instituted and qualified voters … are improperly removed." Doc. No. 17 at 8. The key, specific claim both Movants make is that they would have to divert resources to notify "registrants of such purges," and "identify steps …

[1] Plaintiffs do not contest timeliness. However, in the context of permissive intervention and the factors a court may consider, the prejudice that results from delay is distinct from the prejudice that results from admitting additional parties who are already adequately represented and have nothing to contribute. There is prejudice of the latter kind. *See infra* at point II.

registrants can take to maintain their registration." Doc. No. 17-2, ¶ 7; *see* Doc. No. 17-1, ¶ 9 ("Voto Latino would need to expend additional resources and staff time to educate Colorado's Latinx voters on when and how to maintain their voter registration."). None of this amounts to a protectable interest.

Most basically, the NVRA and this lawsuit seek the removal of *ineligible* registrants. Section 8(a)(4) commands the removal of two kinds of voters: those who have died, and those who have moved out of a jurisdiction. 52 U.S.C. § 20507(a)(4). For those who have moved (and have not informed the state), they may only be removed from the rolls *after* (1) they are sent, and do not answer, a forwardable, pre-addressed, postage-paid card requesting address confirmation, *and* (2) they fail to vote, appear to vote, or contact the registrar for the next two general federal elections—basically, a period of from two to four years. *Id.* § 20507(d)(1)(B), (d)(2). A registrant may still vote during that period, which halts the removal process for that voter. *Id.* § 20507(e).

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Removing registrants who are dead or are now living in other jurisdictions simply does not affect the interests of *eligible* registrants. No law guarantees a registrant who is no longer eligible to vote in Colorado a protected right to stay registered there. But further, the interests Movants claim relate to their efforts to *register* voters. Nothing about this litigation will impair Movants' current or future efforts (whatever they may be) to register voters in Colorado. Movants' claim that they might have to take steps to "educate" voters to "maintain" their registrations falls apart upon any close examination. Federal law *requires* states to send address confirmation notices, and then to remove any registrants who fail to respond, following a very generous waiting period of from two to four years. What education can be offered other than to remind voters to open mail from the government, or, if they choose not to, to vote at least once every two federal elections?

Furthermore, Movants' argument about potential relief is speculation on top of speculation. The protectable interest they claim is that (1) Plaintiffs *might* seek relief, (2) which Defendants *might* not adequately contest, (3) which the Court *might* order, (4) which will violate the voting rights of those Movants seek to assist, (5) in a way that compels Movants to divert their resources. In their brief, Movants rely heavily on adjectives and adverbs, referring to "broad and aggressive voter purge efforts," "aggressive purging," "overly aggressive voter purges," and "over-inclusive and over-aggressive voter purging efforts." Doc. No. 17 at 2, 4, 5, 6, 11. But they never say what, exactly, they fear, let alone identify any paragraph in the complaint that inspired this fear. It is baseless conjecture to suggest that Plaintiffs would ever request an "aggressive voter purge," that government Defendants would agree it, or that this Court would order it. *Id.* at 2.[2] Indeed, *Movants have not identified a single case in which court-ordered relief on an NVRA claim caused eligible voters to be improperly removed*. Plaintiffs do not know of any such case.

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The cases Movants do cite concerned relief that Plaintiffs do *not* seek in their complaint. In *Bellitto v. Snipes*, No. 16-cv-61474, 2016 U.S. Dist. LEXIS 128840 (S.D. Fla. Sept. 21, 2016), the intervenors' argument that "court-ordered 'voter list maintenance' sought by Plaintiffs … could itself violate the NVRA," was more than speculation, given that the plaintiffs argued that the defendants must use jury recusal forms to conduct list maintenance. *Bellitto v. Snipes*, No. 16-cv-61474-Bloom/Valle, 2018 U.S. Dist. LEXIS 103617, *54 (S.D. Fla. Mar. 30, 2018). The court found that this was not required by the NVRA. *Id.* at *56-58. *Pub. Int. Legal Found., Inc. v.*

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[2] Movants imply that court-ordered relief here would either violate other provisions of the NVRA or Section 2 of the Voting Rights Act. *See* 52 U.S.C. § 10301. In fact, there could never be a massive and immediate purge ordered pursuant to the NVRA, because it requires states to send an address confirmation notice *and* wait two federal elections with no response or voting activity before removing a registration. 52 U.S.C. § 20507(d)(1).

Winfrey, 463 F. Supp. 3d 795, 799 (E.D. Mich. 2020) is inapposite because the court there granted permissive intervention. Even so, the allegations were dramatically different. The plaintiffs' complaint specified, *by name*, 4,887 Detroit voters who were alleged to be dead or duplicate registrations that should be removed from the rolls. *See* Complaint, *Pub. Interest Legal Found., Inc. v. Winfrey*, No. 2:19-cv-13638 (E.D. Mich. Dec. 10, 2019), Doc. No. 1 at 14, ¶¶ 40-42 & 16, ¶ 47; *see id*. Ex. D, Doc. No. 1-5 at 2-3 and at 4-6 (discussing registrations alleged to be ineligible), Ex. E, Doc. No. 1-6 (spreadsheet of names), Ex. G, Doc. No. 1-8 (spreadsheet of names). Such allegations might well lead a court to find "an elevated risk of removal of legitimate registrations." *Winfrey*, 463 F. Supp. 3d at 799.

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A case that *is* analogous is *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. 2017). The claims there mirrored those alleged here, including high registration rates, high inactive rates, and low removals under Section 8(d)(2); and the relief sought was compliance with the NVRA. The district court denied intervention to two private intervenors, in an order that was later vacated when the case settled. Order Denying Motions to Intervene, *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. July 12, 2018), Doc. No. 76, *vacated sub nom. Judicial Watch, Inc. v. Padilla*, Nos. 18-56102 & 18-56105, 2019 U.S. App. LEXIS 8347 (9th Cir. Mar. 20, 2019) (attached to this memorandum). The court acknowledged that the movants' goals included "improv[ing] voter registration efforts" and "involv[ing] more citizens in the political process by assisting and mobilizing voters," and that, as a result, they had a "legally protected interest to ensure that eligible voters maintain their right to vote and remain on the voter rolls." *Id.* at 2. However, the Court reasoned that this did not amount to a "significantly protectable interest" supporting intervention, because "there is no relationship between this interest and the claims at issue. Plaintiffs request

that Defendants reasonably attempt to remove *ineligible* voters from the voter rolls. Removing ineligible voters from the voter rolls will not affect eligible voters' rights." *Id.*[3]

No doubt, Movants have preferences as to how the NVRA should be enforced, but these cannot justify intervention. *See Texas v. U.S.*, 805 F.3d 653, 657 (5th Cir. 2015) ("[A]n intervenor fails to show a sufficient interest when he seeks to intervene solely for ideological … reasons; that would-be intervenor merely *prefers* one outcome to the other.") (citations omitted). Nor is it justified by the mere fact that Movants engage in voter registration; otherwise, dozens of organizations and individuals would have automatic access to every NVRA Section 8 lawsuit alleging state failures to remove ineligible voters. If the court permits one ideological organization to intervene, "it may need to let others similarly situated intervene." *Herrera*, 257 F.R.D. at 259.

For all of the foregoing reasons, Movants have failed to state a significantly protectable interest in this case sufficient to justify intervention.[4]

B. Movants Have Not Overcome the Presumption of Adequate Representation by the Government Defendants.

Generally, Rule 24(a)(2)'s requirement of a showing of inadequacy of representation is satisfied "where the applicant 'shows that representation of his interest *may* be inadequate'–a 'minimal' showing." *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regulation*

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[3] Movants' concerns about the remedies Plaintiffs may seek are belied by the actual terms of the settlement agreement in that case, and the consent judgment in another NVRA case involving Plaintiff Judicial Watch. *See* Settlement Agreement, *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. Jan. 3, 2019), Doc. No. 96-1; Consent Judgment, *Judicial Watch v. Grimes*, 3:17-cv-94 (E.D. Ky. July 3, 2018), Doc. No. 39. Indeed, the *Logan* movants abandoned their appeal of the intervention denial just days after they saw the settlement agreement.

[4] Movants must also show that denial of intervention "may as a practical matter impair or impede their ability to protect their interest." *Utah Ass'n of Counties*, 255 F.3d at 1253. However, by its nature "the question of impairment is not separate from" interest. *Id.* (citation omitted). Just as Movants cannot show a protectable interest, they cannot show that one has been impaired.

Comm'n, 787 F.3d 1068, 1072 (10th Cir. 2015) (citations omitted). The "divergence of interest 'need not be great.'" *Id.*, quoting *Natural Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1346 (10th Cir. 1978).

But this minimal showing is not the standard where, as here, Movants seek to intervene alongside government agencies with the same ultimate objective. *Tri-State*, 787 F.3d at 1072, citing *City of Stillwell, Okla. v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir. 1996). In such circumstances, courts "presume representation is adequate." *Id.*, citing *Bottoms v. Dresser Indus., Inc.*, 797 F.2d 869, 872 (10th Cir. 1986). To overcome this presumption, movants must make "a concrete showing of circumstances" of inadequate representation, such as "collusion between the representative and an opposing party," adversity of interests between the representative and movant, or "that the representative failed to represent" the movant's interest. *Bottoms*, 797 F.2d at 872-73.[5]

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Movants fail even to acknowledge this presumption of adequacy, much less to rebut it. Movants instead contend that existing Defendants will not adequately represent their interests, which are "unique" and motivated by their desire to protect young and Latino voters from "inadvertent removal." Doc. No. 17 at 11. Discussing the basis for the inapplicable "minimal" standard, Movants explain that the existing Defendants' stake in these proceedings is "defined solely by … statutory duties under state law and the NVRA." *Id.* at 12. In contrast, Movants contend that their missions make them "better positioned to serve as zealous advocates for voters within" certain vulnerable communities, which "more than meet[s] the 'minimal' burden required

[5] Note that Defendants "represented that they do not oppose" this motion, suggesting that collusion with Plaintiffs or adversity of interests with Movants is unlikely. Doc. No. 17 at 3.

by this prong of Rule 24(a)'s test." *Id.* But different *motives* do not mean different objectives. Although parties seeking intervention "may have different 'ultimate motivation[s]' from the governmental agency, where its objectives are the same, we presume representation is adequate." *Tri-State*, 787 F.3d at 1072, citing *Ozarks*, 79 F.3d at 1042; *see also Stuart v. Huff*, 706 F.3d 345, 353 (4th Cir. 2013) (intervenors' "stronger, more specific interests" do not establish adversity to rebut the presumption of adequacy of representation "since would-be intervenors will nearly always have intense desires that are more particular than the state's"). Both Movants and Defendants have the same ultimate objective in defending current list maintenance practices. Defendants have shown no reluctance to defend this action. *See Tri-State*, 787 F.3d at 1074 (finding adequacy of representation where movants presented no evidence Attorney General was reluctant to defend the action); *see also San Juan Cnty.*, 503 F.3d at 1206 (opinion of Hartz, J.).

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Unable to show collusion or adversity of interests, Movants rely on inapposite case law. *Bellitto*, *supra* (2016 U.S. Dist. LEXIS 128840) was a district court decision in the Eleventh Circuit, which does not apply this Circuit's presumption of adequacy. *See Sierra Club, Inc. v. Leavitt*, 488 F.3d 904, 910 (11th Cir. 2007) (characterizing the presumption of adequacy raised by common objectives as a "weak" one). *Kobach v. U.S. Election Ass. Comm'n*, Case No. 13-cv-4095, 2013 U.S. Dist. LEXIS 173872 (D. Kan. Dec. 12, 2013) was decided under the standards governing permissive intervention. And even there the movants could show *actual* adversity of interests. The plaintiff, Kansas Secretary of State Kris Kobach, was a vocal supporter of the documentary proof-of-citizenship requirement at issue. He sued the U.S. Election Assistance Commission (EAC) when the agency's director denied Kansas' request to include a citizenship requirement on the federal form. 2013 U.S. Dist. LEXIS 173872, at *5-6. Two of the four EAC

Commissioners voted in favor of Kansas' request. *See Kobach v. U.S. Election Ass. Comm'n*, 772 F.3d 1183, 1188 (10th Cir. 2014). The movants opposed the citizenship requirement and could clearly show an adversity of interest with those two EAC defendants. *Winfrey*, 463 F. Supp. 3d at 799-800, was decided under the standards governing permissive intervention, and so merely found that the movants' interests were "distinct" from those of the government defendants—not adverse.

Finally, this is not the case where Movants possess unique knowledge or expertise beyond that of the defendant government officials. *See, e.g.*, *Nat'l Farm Lines v. Interstate Commerce Com.*, 564 F.2d 381, 383 (10th Cir. 1977). In fact, Movants possess no expertise as defendants regarding the issues in this case. The removal of ineligible voters by reason of death or change of address pursuant to Section 8 of the NVRA is the exclusive province of state and county officials. Private citizens and advocacy organizations, such as Movants, have no authority or responsibility under state or federal law to perform list maintenance.

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In short, Movants here have not identified a single point of adversity between them and Defendants that would rebut the presumption of adequacy. This failing alone is sufficient grounds for denying Movants' motion to intervene as of right.

II. The Court Should Deny Movants' Request for Permissive Intervention.

In the alternative, Movants seek to intervene permissively. Doc. No. 17 at 13-15. A court may allow such intervention provided the applicant demonstrates "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B).

Movants' request for permissive intervention fails at the "claim or defense" threshold. With respect to defenses, Movants are not subject to the NVRA because it only applies to "States" and not private parties. *See* 52 U.S.C. § 20502 ("the term 'State' means a State of the United States

and the District of Columbia"); *see also Voting for Am., Inc. v. Steen*, 732 F.3d 382, 399 (5th Cir. 2013) (the NVRA's requirements do not apply to private registration volunteers). Thus, as a private party, it is unclear what defenses Movants have, much less share, with Defendants with whom they seek to intervene alongside. Movants fail to identify any claims they may have relating to Colorado's list maintenance practices. For example, Movants do not contend that these practices violate state or federal law by improperly removing voters. Indeed, Movants appear to believe that Defendants are complying with federal law. But that is an opinion, not an affirmative claim or defense under Rule 24. Movants vaguely assert a common question of law or fact involving the "legality of Colorado's current list maintenance program." Doc. No. 17 at 14. Unmoored from any claim or defense, however, this does not satisfy the requirements established by Rule 24(b)(1)(B).

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Even if this threshold is met, the decision to allow or deny intervention lies within the court's discretion. *Herrera*, 257 F.R.D. at 259, citing *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th Cir. 1990). In exercising this discretion, the court is required by Rule 24(b)(3) "to consider whether the intervention will 'unduly delay or prejudice' the adjudication of the rights of existing litigants." *DeJulius v. New Eng. Health Care Empls. Pension Fund*, 429 F.3d 935, 943 (10th Cir. 2005), quoting Rule 24(b). In addition, a court may also consider "whether the would-be intervenor's input adds value to the existing litigation; [] whether the petitioner's interests are adequately represented by the existing parties; and [] the availability of an adequate remedy in another action." *Lower Ark Valley Water Conservancy Dist. v. U.S.*, 252 F.R.D. 687, 691 (D. Colo. 2008) (citation omitted).

The Tenth Circuit has affirmed the denial of permissive intervention where the addition of parties "would only clutter the action unnecessarily" without adding any corresponding benefit to

the litigation. *Arney v. Finney*, 967 F.2d 418, 421-22 (10th Cir. 1992). Likewise, there is no benefit to this litigation in allowing intervention because Movants cannot assist with the factual exposition of liability in this case. Movants do not claim any firsthand knowledge about how Colorado conducts its list maintenance program. Instead, Movants simply claim a generalized interest in defending Colorado's existing list maintenance program. On this record, Movants will contribute nothing to the development of the underlying factual issues in this case, especially during the liability stage. In this posture, it is impossible to see how they would provide any "value to the existing litigation." *Lower Ark Valley Water Conservancy Dist.*, 252 F.R.D. at 691.

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Moreover, any delay caused by Movants' addition to the litigation would be *undue* delay, because Movants are already adequately represented by existing parties. As demonstrated above, Movants have not overcome the presumption that they are adequately represented, given that they share the same ultimate objectives and interests as the current Colorado Secretary of State, represented by the Colorado Attorney General's office. *See Tri-State*, 787 F.3d at 1075 (affirming denial of permissive intervention where intervenor was adequately represented); *Herrera*, 257 F.R.D. at 259 ("[g]iven that the Court finds that the Defendant is adequately representing" prospective intervenors' interests, "it would be inappropriate to allow them to intervene permissively, with the delays to the resolution of the case such intervention would entail"), citing *Ozarks*, 79 F.3d at 1043.

Equitable considerations also counsel against permissive intervention. If the court permits one ideological organization to intervene, "it may need to let others similarly situated intervene." *Herrera*, 257 F.R.D. at 259. Given Movants' political positions regarding this case, as well as countless other voter advocacy organizations that share this exact interest, and their admitted lack

of knowledge about the relevant facts and adequate representation by existing parties, Movants' participation would unduly delay and prejudice the parties and proceedings.

Movants attempt to avoid these requirements and considerations by explaining they and Judicial Watch have "starkly differing perspectives" and that permissive intervention is routine in "similar cases." Doc. No. 17 at 14. It is not. In *Logan*, the court held that the movants, as organizations concerned with the protection of "*eligible* voters," did not share a common question of law or fact in an NVRA lawsuit "to enforce and remove ineligible voters." Ex. 1 (attached) at 4. Further, cases where intervention has been granted differed from the instant case. As explained above, the plaintiffs in *Winfrey* and *Bellitto* sought additional relief beyond the text of the NVRA, and two defendants in *Kobach* clearly held positions adverse to the intervenors. *See supra* at 5-6, 9. A more recent grant of permissive intervention in an NVRA case in the Middle District of Pennsylvania cited the Third Circuit's "policy preference which, as a matter of judicial economy, favors intervention over subsequent collateral attacks." Order, *Judicial Watch, Inc. v. Comm. of Penn.*, No. 20-cv-708-CCC (M.D. Pa. Nov. 19, 2020), Doc. No. 50 at 3. Plaintiffs have found no Tenth Circuit case adopting this policy preference.

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Plaintiffs respectfully submit that a grant of permissive intervention is not a minor matter and should not be "routinely" granted. There is an important constitutional issue involved. Granting intervention in the absence of a sufficient stake in the proceedings risks having the Court issue orders in response to parties who are essentially strangers to the litigation. Such orders would be advisory opinions, which the Court has no constitutional authority to issue. *See generally Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645 (2017).

III. There Are Better Alternatives to Granting Full Intervention.

There are reasonable alternatives to granting full intervention at the liability stage. Most obviously, Movants could participate as amici curiae. Insofar as their concerns are ideological—traceable to what Movants themselves describe as their "starkly differing perspective[]" regarding enforcement of the NVRA (Doc. No. 17 at 14)—they may fully express their views as amici.

A second option suggests itself as well. All of Movants' speculation about relief that Plaintiffs might seek, Defendants might concede, and the Court might order concerns relief that would be imposed, if at all, during any *remedial* stage of these proceedings. The District Court for the District of New Mexico recently explained the practice in this Circuit of allowing courts to decide intervention at each stage of a case, and to limit the scope of intervention based on a movant's actual interest. *U.S. v. City of Albuquerque*, No. CIV 14-1025 JB\SMV, 2020 U.S. Dist. LEXIS 103158, at *278-79 (D.N.M. June 12, 2020) (discussing *San Juan Cty.*, 503 F.3d at 1189). The court explained that the practice is not unique to the Tenth Circuit, but derives from the Advisory Committee's notes to Rule 24(a), which endorse the use of appropriate conditions or restrictions concerning intervention. *Id.* at *277-78 (collecting cases). The court's discussion shows that intervention is not an all-or-nothing choice, and that limited intervention can be granted respecting issues for which an intervenor has a sufficient interest. *See also Bradley v. Milliken*, 620 F.2d 1141, 1142-43 (6th Cir. 1980) (petitioner permitted to intervene at remedial phase for a limited purpose); *Fox v. Glickman Corp.*, 355 F.2d 161, 164-65 & n.3 (2d Cir. 1965) (intervention was properly denied during liability phase but should be allowed during the damages phase).

A denial of the instant motion would not foreclose the opportunity for Movants to return and file a renewed motion to intervene during remedial proceedings (if any). Intervention limited

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to the remedial stage would be beneficial for several reasons. First, with the benefit of a developed record, the Court could at that time undertake an informed evaluation of critical intervention considerations, which it cannot do on the current record. More specifically, the Court could determine whether there is indeed any threat of impairment to Movants' alleged interests and whether Movants' interests are adequately represented by government Defendants.

In the alternative, in the event the Court decides to grant the instant motion, it could limit Movants' participation to any remedial stage. While Plaintiffs do not concede *any* substance to Movants' reasons for seeking intervention, an order limiting their participation to the remedial stage would completely address every single concern they stated in their motion. At the same time, it would avoid "clutter[ing] the action unnecessarily" (*Arney*, 967 F.2d at 421) during motions practice and discovery.

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CONCLUSION

For the foregoing reasons, the Court should deny the pending motion to intervene.

December 31, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2020, I served a true and complete copy of the foregoing PLAINTIFFS' MEMORANDUM IN OPPOSITION TO VOTO LATINO'S AND VOTE.ORG'S MOTION TO INTERVENE AS DEFENDANTS upon all parties through ECF:

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