IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DEMOCRATIC PARTY OF VIRGINIA and DCCC,

Plaintiffs,

v.

ROBERT H. BRINK, in his official capacity as the Chairman of the Board of Elections; JOHN O'BANNON, in his official capacity as Vice Chair of the Board of Elections; JAMILAH D. LECRUISE, in her official capacity as the Secretary of the Board of Elections; and CHRISTOPHER E. PIPER, in his official capacity as the Commissioner of the Department of Elections,

Defendants.

Civil Action No. 3:21-CV-756

PLAINTIFFS' OPPOSITION TO PUBLIC INTEREST LEGAL FOUNDATION'S MOTION TO INTERVENE

Plaintiffs Democratic Party of Virginia ("DPVA") and DCCC, by and through counsel, file this Opposition to the Public Interest Legal Foundation's ("PILF") Motion to Intervene (ECF No. 5, PILF's "Motion"). For the reasons set forth below, Plaintiffs respectfully request that the Court deny the Motion.

INTRODUCTION

PILF is an Indiana-based organization with a history of misusing Virginia voter information obtained about Virginia voters from the Commonwealth—including voters' social security numbers ("SSNs"). PILF's motion to intervene makes no mention of this history, but instead asserts several purported interests in this action that do not—and under binding precedent,

cannot—pass muster. PILF claims it has a right to intervene to defend the challenged Virginia election laws largely based on PILF's purported general interests in "election integrity" and ensuring that state election laws are enforced. These generalized interests are insufficient under Fourth Circuit precedent, which does not permit intervention as of right upon concerns that would open court dockets to anyone and everyone. Moreover, the named Defendants share both of these general interests and are more than able—indeed, are best suited—to defend them in this litigation. The only other interest that PILF asserts to justify its intervention is its claim that it relies on the availability of voters' SSNs to facilitate its work to match and verify voter registration database information. PILF's prior attempts to do just that, however, demonstrate not only how deeply flawed PILF's methodology for its "work" is, but also why Virginia's requirement that voters provide their full SSN in order to vote is so dangerous and, ultimately, unjustifiable. PILF has also failed to establish that the existing parties to the litigation are inadequate to defend its purported interests. Defendants have made clear that they intend to vigorously defend this lawsuit, and though PILF (improperly) maligns the Commonwealth based on prior disagreements with some of the Commonwealth's (unrelated) decisions, its repeated requests that the Court delay activity in this case until January 18, 2022—three days after the new Governor will take office—strongly implies that PILF fully expects the incoming administration to satisfactorily defend this suit in a manner consistent with PILF's interests. Because PILF's Motion fails to satisfy the legal standard for either intervention as of right under Federal Rule of Civil Procedure 24(a) or permissive intervention under Rule 24(b), the Court should deny the Motion.

BACKGROUND

At issue in this action are two aspects of Virginia law that burden Plaintiffs' and thousands of Virginians' constitutional rights: (1) the requirement that Virginians disclose their full social

security number to register to vote (the "Full SSN Requirement"), and (2) the Commonwealth's inequitable notice and cure procedures for absentee ballot envelopes with technical defects (the "Inequitable Notice and Cure Process").

The problems caused by the Full SSN Requirement start before an eligible Virginian has even registered to vote. By requiring citizens of the Commonwealth to disclose their entire, nine-digit SSN in an age where exposure of that highly private information raises significant security concerns, Virginia not only burdens the individual right to vote, but significantly impairs Plaintiffs' free speech and associational rights, severely hindering their ability to successfully assist Virginians who would vote for and support Plaintiffs' candidates in registering to vote. Compl. ¶¶ 2–7, 18, 21–23, 95–109, 139–143, ECF No. 1. By contrast, the problems caused by the Inequitable Notice and Cure Process begin after a voter casts an absentee ballot. Under Virginia's current regime, only certain voters whose ballots are flagged for rejection due to a technical defect are given notice and a meaningful opportunity to cure their ballots and ensure their votes are counted. Other voters are denied the same notice and opportunity, and the result is often their disenfranchisement. These provisions impede not only the right to vote, but also Plaintiffs' First Amendment rights. *Id.* ¶¶ 8–14, 19–23, 125–137.

PILF, an Indiana-based organization,[1] moved to intervene on December 15, 2021.[2] In its Motion, PILF describes itself in neutral terms as "a nonprofit organization with special interests in the administration of election laws." PILF's Mem. in Supp. of Mot. to Intervene at 6, ECF No. 6

[1] *See Contact*, PILF, www.publicinterestlegal.org/contact (last visited Dec. 29, 2021).

[2] PILF alleges that it complied with Local Rule 7 and attempted to reach out to Plaintiffs' counsel prior to filing its Motion, but Plaintiffs' counsel has found no record of such an attempt in its received communications. Had Plaintiffs' counsel received such a communication, counsel would have responded to express Plaintiffs' intent to oppose PILF's intervention.

("PILF's "Mem."). Its website, however, takes a decidedly different tone, touting PILF's "aggressive[] litigati[on]" tactics and propensity to "weaponiz[e] data," and asserting that it has "built a nationwide database of combined voter rolls that allows credible data to be used in real-time" to "fight[] voter fraud."[3]

PILF's most meaningful tie to Virginia is one that its motion does not mention. In 2018, PILF was sued by the League of United Latin American Citizens ("LULAC") and four individuals over publications PILF created and sent to the national media—*Alien Invasion I* and *Alien Invasion II*—which "accused Virginia voters of 'committing multiple, separate felonies, from illegally registering to vote to casting an ineligible ballot.'" *LULAC – Richmond Region Council 4614 v. PILF*, No. 1:18-cv-00423, 2018 WL 3848404, at *1 (E.D. Va. Aug. 13, 2018) (quoting complaint). PILF based its accusations on information it obtained from the Commonwealth's voter registration data; the plaintiffs accused PILF of "drawing false conclusions from" that data and, in fact, the information that PILF published included names of properly voting citizens. *Id*.

PILF's "*Alien Invasion*" reports were not abstract accusations of wrongdoing: each was published with a several hundred-page appendix "containing voter registration forms, which included the names, home addresses, and telephone numbers of" the voters whom PILF alleged were "felons." *Id*. In some cases, the private information that PILF publicly blasted included the SSNs of voters, which PILF improperly obtained from the Commonwealth as a direct result of the Full SSN Requirement at issue in this litigation.[4] LULAC's lawsuit against PILF was ultimately

[3] *See About*, PILF, https://publicinterestlegal.org/about/ (last visited Dec. 29, 2021).

[4] *See, e.g.*, Jane C. Timm, *Vote Fraud Crusader J. Christian Adams Sparks Outrage*, NBC News (Aug. 27, 2017), *available at* Vote Fraud Crusader J. Christian Adams Sparks Outrage (nbcnews.com) (identifying a Fairfax County, Virginia voter who, despite being born in New Jersey, was tagged by PILF's Alien Invasion publications as a noncitizen voter "and found that his information was made public, including his full Social Security number"); *see also id.* ("[T]he

settled, and as part of that settlement PILF's lead attorney (who signed the motion to intervene in this case) issued an apology to several Virginia voters that PILF falsely accused of being illegal voters.[5]

Nevertheless, in moving to intervene in this action, one of the bases that PILF cites as entitling it to intervention as of right is its claim that it "directly relies on the existence of social security numbers in state voter registration databases to conduct [its] own work." PILF's Mem. at 5. Specifically, it states that, "[t]he existence of a social security number allows [PILF] to validate duplicate or improper registrations and provide these findings to election officials." *Id*. PILF claims that "[w]ithout th[at] data," its "ability to help improve election administration will be directly impacted." *Id*. The only other interest that PILF cites in this litigation is a generalized interest based on its purported organizational mission in "ensuring state election administration laws are enforced and expounding on the justifications and relationship to best election practices of these laws." *Id.* at 4–5; *see also id*. at 5 (claiming a generalized interest in "[e]nsuring election integrity and a state's ability to determine its elections").

In support of its contention that the Commonwealth is unlikely to adequately defend its interests, PILF offers only speculation about differences in approach or tactic. PILF spuriously suggests that the current Defendants and their counsel are incapable of fully representing the

falsely accused legal voter, said he reached out to PILF over the publication of his complete Social Security number. In response, the group blamed the county for releasing the form without redacting it."); *see also id*. ("Reports PILF issued online included names, addresses and sometimes even complete Social Security numbers (which were later partially redacted) alongside the 'felonies upon felonies' these people may have committed.").

[5] *See, e.g*., Sam Levine, *Voter Fraud Activist Will Apologize to Citizens He Accused of Being Illegal Voters*, HuffPost (July 18, 2019), *available at* Voter Fraud Activist Will Apologize To Citizens He Accused Of Being Illegal Voters | HuffPost Latest News.

State's own interests due to partisan politics, while at the same time asking this Court to delay this action until such time as the new political administration takes power. *See id.* at 7 n.2.

LEGAL STANDARD

Intervention as of right under Federal Rule of Civil Procedure 24(a)(2) is permitted when the motion is timely and the proposed intervenor demonstrates that (1) it has a particularized, legally protectable interest in the action that will be directly affected by its outcome; (2) the protection of this interest would be impaired because of the action; and (3) the interest is not adequately represented by existing parties to the litigation. *See Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013); *League of Women Voters of Va. v. Va. State Bd. of Elections*, 458 F. Supp. 3d 460, 464-66 (W.D. Va. 2020). When a proposed intervenor shares their ultimate objective with that of an existing party, the existing party's representation is presumptively adequate and rebuttable only if the intervenor can show clearly adverse interests, collusion, or nonfeasance. *See Stuart*, 706 F.3d at 351–52. This burden is heightened when the existing party with whom the intervenor shares their ultimate objective is a government agency. *See id.* at 352.

Permissive intervention under Rule 24(b) is allowed at the Court's discretion only when the proposed intervenor establishes: "(1) that their motion is timely; (2) that their claims or defenses have a question of law or fact in common with the main action; and (3) that intervention will not result in undue delay or prejudice to the existing parties." *League of Women Voters of Va.*, 458 F. Supp. 3d at 464 (quoting *RLI Ins. Co. v. Nexus Servs., Inc.*, No. 5:18-cv-00066, 2018 WL 5621982, at *5 (W.D. Va. Oct. 30, 2018)). Even if the potential intervenor satisfies the requirements of Rule 24(b), permissive intervention is just that—permissive—and the decision to allow permissive intervention lies "within the sound discretion of the trial court." *Id.* (quoting *Smith v. Pennington*, 352 F.3d 884, 892 (4th Cir. 2003)).

ARGUMENT

I. PILF is not entitled to intervene as of right.

PILF bears the burden of establishing that it meets all three factors necessary to create a right to intervene: "All three tests must be met if [the proposed intervenor] is to prevail." *Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976). PILF fails to carry its burden.

A. PILF has not identified an interest sufficient to support intervention as of right, let alone one that may be impaired.

PILF does not assert any interests that can justify its intervention as of right. First, its purported interests in ensuring that state election administration laws are enforced and in election integrity, PILF's Mem. at 4–5, are highly generalized interests in which the Commonwealth Defendants not only share but have a more direct claim. PILF, after all, is a private Indiana-based organization that broadly asserts an interest in the enforcement of every state's election laws, while the Commonwealth Defendants are the election administrators who actually enforce the election laws at issue in Virginia. PILF's professed interests in election integrity and administration of the law are shared by every member of the general public. The only other interest that PILF purports entitles it to intervention as of right—being able to access the full SSN of Virginia's registered voters—is both contrary to Virginia law and is itself further evidence of the need to invalidate Virginia's Full SSN Requirement. It is not a basis to find that PILF has a right to intervene to assist the Commonwealth in defending the constitutionality of the law.

1. PILF's generalized interests in election integrity or ensuring that state election laws are enforced are insufficient to support intervention as of right.

It is well settled that a proposed intervenor's interest must be distinct from an interest shared by the broader public. Federal district courts in Virginia (including this Court) have recognized this principle in denying motions to intervene in election cases where the proposed intervenors had more significant ties to Virginia or to the election laws in question. *See, e.g.*,

League of Women Voters of Va., 458 F. Supp. 3d at 465 (concluding Virginia voters were not entitled to intervention as of right or permissively in lawsuit challenging absentee voting provisions because the voters' asserted interest in protecting their right to vote from dilution "is no different as between any other eligible Virginian, and indeed, any other eligible American"); *see also Lee v. Va. Bd. of Elections*, No. 3:15-cv-357-HEH, 2015 2015 WL 5178993, at *3 n.7 (E.D. Va. Sept. 4, 2015) (Hudson, J.) (finding Virginia voters' asserted interest in the integrity of the Commonwealth's elections "too generalized to grant intervention as of right" in litigation challenging Virginia's voter identification law).

PILF's sweeping theory of intervention would allow it to participate as a party—as of right—in any federal lawsuit implicating "election integrity," rendering Rule 24(a)'s requirements meaningless. PILF's own cited cases demonstrate the insufficiency of its asserted general interests. *Cooper Techs., Co. v. Dudas*, for example, concerned a patent dispute in which the outcome bore directly on the intervenors' rights related to the specific patent at issue, not amorphous interests possessed by the general public. *See* 247 F.R.D. 510, 514–15 (E.D. Va. 2007). By contrast, PILF's purported interests in "ensuring [that] state election administration laws are enforced," "expounding on the justifications" for such laws, and safeguarding "election integrity" are all vague interests that any member of the public could articulate in this or in any other election law case. PILF's Mem. at 5. They cannot support intervention. *See, e.g.*, *League of Women Voters of Va.*, 458 F. Supp. 3d at 465.

In *Luna v. Cegavske*, PILF advanced the same sweeping theory of intervention that it does here, and the court rejected it. No. 2:17-cv-02666-JCM-GWF, 2017 WL 6512182, at *6 (D. Nev. Dec. 20, 2017) (denying intervention as of right where PILF's mission to seek "more stringent state regulation of elections and voter qualifications" and to have parts of the Voting Rights Act

"declared unconstitutional" failed to qualify as protectable interests, and emphasizing that PILF had no involvement in the administration of the law at issue and no affected members in Nevada), *report & recommendation adopted*, No. 2:17-CV-2666, 2018 WL 3731084 (D. Nev. Aug. 6, 2018). Other courts have come to similar conclusions. *See, e.g.*, Order Den. PILF's Mot. to Intervene at 1, *La Union Del Pueblo Entero v. Abbott*, No. 5:21-cv-00844 (W.D. Tex. 2021), ECF No. 121 (denying PILF's motion to intervene "because, to the extent that it is cognizable at all, the Foundation's ideological interest in 'election integrity' is adequately represented by the existing [State and County] Defendants and does not otherwise warrant permissive intervention").

PILF's reliance on *Kobach v. U.S. Election Assistance Comm'n*, No. 13-cv-4095-EFM-DJW, 2013 WL 6511874 (D. Kan. Dec. 12, 2013), and *League of Women Voters of U.S. v. Newby*, 195 F. Supp. 3d 80, 88 (D.D.C. 2016), is also misplaced, as neither involved intervention as of right under Rule 24(a)(2). Additionally, PILF's motion to intervene in *Newby* was unopposed, in stark contrast to its motion here. *See Newby*, 195 F. Supp. 3d at 88. Moreover, although PILF cites *Kobach* as an example of a case where "similarly situated organizations have been granted permission [to intervene] in similar litigation," such a comparison is tenuous at best. PILF's Mem. at 2. The *Kobach* court explicitly acknowledged the unique interest that each proposed intervenor had in "increasing participation in the democratic process, or protecting voting rights . . . particularly amongst minority and underprivileged communities" as it pertained to that case. *See Kobach*, 2013 WL 6511874, at *4. PILF brings no such unique perspective or interest to this suit. Here, PILF's interests, as described by PILF itself, are indistinguishable from the Commonwealth's. *See* PILF's Mem. at 4–5. These interests are insufficient to justify intervention.

2. PILF's asserted interest in Virginia maintaining voters' full social security numbers cannot lawfully support intervention.

PILF's assertion that it has a particularized interest in Virginia maintaining voters' full SSNs "to assist . . . list maintenance assistance provided by [PILF] across the United States," PILF's Mem. at 8–9, also cannot sustain intervention. First, if PILF is in fact receiving and using voters' full SSNs, that would violate Virginia law. Second, PILF has previously proven that even if it could legally access SSN information (or access it following Virginia officials' failure to properly safeguard it, as has reportedly occurred[6]), its interest in using SSN information is highly dubious given its track record of falsely accusing lawful Virginia voters of being illegal voters. Finally, PILF's Motion implicitly acknowledges that PILF does not actually need voters' full SSNs to engage in its activities. Nor could PILF credibly claim otherwise: as Plaintiffs' Complaint notes, nearly every other state does not ask for or maintain full SSNs as part of the voter registration process. *See* Compl. ¶ 27.

PILF has no legal right or ability to acquire registered voters' SSNs—period. Given the highly sensitive nature of this information, Virginia law restricts the use and distribution of voters' SSNs. Although nonprofit organizations are permitted to review lists of registered voters and lists of persons who voted in any election, *see* Va. Code Ann. §§ 24.2-405(A), 24.2-406(A), Virginia law explicitly prohibits these organizations from receiving or reviewing any list that contains SSNs, or any part thereof, *see id.* §§ 24.2-405(C), 24.2-406(C).[7] PILF nonetheless suggests to this

[6] *See supra* n. 4.

[7] Virginia also limits how and for what purposes nonprofit organizations may use voter information—they may only access Virginia's voter registration lists to the extent the organization's only purpose is to "promote voter participation and registration." Va. Code Ann. § 24.2-405(A)(v); *see also id.* § 24.2-406(A) (restricting use). Officials are explicitly prohibited from providing *any* information from voter databases to organizations that have a different purpose. *Id.* §§ 24.2-405(A), 24.2-406(A).

Court that its mission would be threatened if it lost access to Virginia voters' full SSNs, but PILF cannot have a legally protected interest in accessing information that Virginia law *prohibits* it from accessing.

Recent history provides further reason for rejecting PILF's claimed interest in this information. As illustrated by the *LULAC* litigation, despite the legal prohibitions designed to minimize the risk that this sensitive personal data is exposed to the public, PILF did in fact previously acquire Virginians' full SSNs and publicized them in connection with false and unsubstantiated allegations that Virginia citizens were illegally voting. PILF was rightfully sued for this abusive conduct, ultimately admitted that it had wrongfully accused voters of illegal conduct, and avowed not to repeat this conduct in the future.[8] Remarkably, PILF makes no mention of any of this in its motion to intervene.

While PILF's purported interest in accessing highly sensitive voter information to which it has no legal right cannot provide a basis for intervention as of right, it does underscore the seriousness of Plaintiffs' concern that Virginia continues to require and maintain voters full SSNs at all. PILF is a foreign entity that, according to its own website, keeps a national compendium of voters' personal data. The security of this compendium is unknown, as is the extent to which it is accessible by PILF's members and disseminated beyond PILF. Alone, these facts are reason for serious concern; together with PILF's history of abusing voters' private information, that concern is dramatically heightened.

Finally, PILF's Motion implicitly acknowledges that PILF can fulfill its "mission" without voters' full SSNs. To support its claim that it has spent "a significant amount of resources studying voter rolls[] and working with states to clean up their voter rolls," PILF points to two lawsuits it

[8] *See supra* n. 5.

filed against election officials in Pennsylvania. *See* PILF's Mem. at 5–6. But Pennsylvania only collects, at most, the last four digits of registrants' SSNs, and even that information is not statutorily required for voters to register to vote. *See* 25 Pa. C.S.A. Elections § 1327 (omitting SSNs from the list of required information registrants must provide).[9] Further, Pennsylvania law does not entitle political entities or the public to have access to any voter information except names, addresses, dates of birth, and voting history. *See* 25 Pa. C.S.A. Elections § 1404. If Pennsylvania is indicative of what PILF needs to fulfill its purported interests, removing Virginia's requirement for full SSNs poses no threat to PILF.

PILF has failed to state any cognizable interest, let alone a legal interest that stands to be impaired. Instead, PILF's Motion underscores Plaintiffs' concerns that Virginia's collection and maintenance of voters' full SSNs unnecessarily exposes Virginians to the misuse and abuse of their private data by foreign entities and interests. PILF has failed to articulate a single qualifying interest in this action, and PILF's Motion to intervene as of right must be denied.

B. PILF's purported interest is adequately represented by the existing parties.

Even if PILF's interests in defending the challenged laws were sufficient to satisfy the first requirement for intervention as of right, they would fail the second requirement because they are adequately represented by the existing parties in this litigation. *See* Fed. R. Civ. P. 24(a)(2) (requiring proposed intervenor to show that "existing parties" do not "adequately represent [its] interest").

As this Court previously recognized, in voting rights cases where a government entity is the defendant, a proposed intervenor must make a "strong showing of inadequacy" to establish a

[9] *See Pennsylvania Voter Registration Application*, https://www.vote.pa.gov/Resources/Documents/Voter_Registration_Application_English.pdf (last accessed Dec. 29, 2021).

right to intervention. *See Lee*, 2015 WL 5178993, at *2 (denying a motion to intervene brought by Virginia officeholders, registrars, and voters in a lawsuit challenging Virginia's voter identification laws) (quoting *Stuart*, 706 F.3d at 351). Adequate representation is presumed "when the party seeking intervention has the same ultimate objective as a party to the suit," requiring the proposed intervenor to "demonstrate adversity of interest, collusion, or nonfeasance" to defeat the presumption. *Westinghouse Elec. Corp.*, 542 F.2d at 216. This burden is further heightened when a potential intervenor and government agency defendant "share the same ultimate objective," including sustaining the constitutionality of a statute. *Stuart*, 706 F.3d at 352. Allowing a proposed intervenor to insert itself with less than a strong showing in such situations "would place a severe and unnecessary burden on government agencies as they seek to fulfill their basic duty of representing the people in matters of public litigation." *Id.*

This Court applied this binding case law in *Lee v. Virginia Board of Elections*, in which the proposed intervenors were a Virginia candidate, local elections officials, and voters who, like PILF, questioned the original defendants' ability to represent their interests. The proposed intervenors in *Lee* argued that they should be allowed to intervene to make arguments that they did not believe the Attorney General was likely to make. 2015 WL 5178993, at *3. This Court properly found that such arguments failed to meet the requisite strong showing to overcome the presumption of adequate representation. *Id.* at *2 & n.4. It should reach the same conclusion here.

As in *Lee*, PILF's alleged objectives are entirely derivative of the Commonwealth's. PILF argues that only *it* can inform this Court about "the compelling *state* interests behind certain election administration procedures," because only PILF is "unimpaired by any restraint in defending them." PILF's Mem. at 5 (emphasis added). Putting aside the absurdity of such an assertion from an Indiana organization with no evident ties to the Commonwealth, at best this

simply demonstrates that PILF has a different view on the "particulars" of how the case should be approached. Under binding Fourth Circuit precedent, that is insufficient to overcome the presumption of adequacy. *See Lee*, 2015 WL 5178993, at *3 & n.6 (finding *Stuart v. Huff* "controlling" and noting that "'the relevant and settled rule is that disagreement over how to approach the conduct of the litigation is *not* enough to rebut the presumption of adequacy . . . . There will often be differences of opinion among lawyers over the best way to approach a case. It is not unusual for those who agree in principle to dispute the particulars'" (quoting *Stuart*, 706 F.3d at 353–54)); *see also Westinghouse Elec. Corp.*, 542 F.2d at 216; *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 275 (D. Ariz. 2020).

PILF also implies that it should be permitted to intervene because the Commonwealth may not act as PILF would like due to past unrelated actions—but this, too, fails to sustain PILF's burden of proving inadequacy. Faced with similar innuendo from the proposed intervenors in *Lee*, this Court properly denied intervention. 2015 WL 5178993, at *3. Other courts have done the same. *See, e.g.*, *Arizonans for Fair Elections*, 335 F.R.D. at 275 (denying intervention as of right to state legislators who sought to intervene in a case where a state actor was already defending, because the proposed intervenors failed to demonstrate anything more than a potential disagreement over "the best way to approach litigation") (citation omitted); *Miracle v. Hobbs*, 333 F.R.D. 151, 156 (D. Ariz. 2019) (denying intervention as of right because a proposed intervenor "must do more than allege—and superficially at that—partisan bias to meet" the standard). PILF's repeated requests that the Court delay this case until the governor's office changes hands in mid-January indicates that even PILF does not believe its interests will be inadequately represented for the duration of this litigation.

For all these reasons, the Court should deny PILF's request to intervene as of right pursuant to Rule 24(a).

II. PILF's motion for permissive intervention should be denied.

PILF's alternative request that it be granted permissive intervention under Rule 24(b) is equally unwarranted. Permissive intervention "lies within the sound discretion of the trial court," *Smith*, 352 F.3d at 892 (citation omitted), but there are three circumstances in which permissive intervention should be denied. First, "where . . . intervention as of right is decided based on the government's adequate representation, the case for permissive intervention diminishes or disappears entirely." *Va. Uranium, Inc. v. McAuliffe*, 2015 WL 6143105, at *4 (W.D. Va. Oct. 19, 2015) (quoting *Tutein v. Daley*, 43 F.Supp.2d 113, 131 (D. Mass.1999)). Second, when there would be no appreciable "benefit to the process, the litigants, or the court," denial is appropriate. *Lee*, 2015 WL 5178993, at *4. Third, permissive intervention is inappropriate if it would "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Each circumstance applies here.

First, as discussed, PILF has utterly failed to defeat the presumption that Defendants are unable to adequately represent any purported interest PILF may have. *See* Sec. I.B, *supra*. Second, PILF's offer to serve as *de facto* expert witness to this Court based on its unspecified "particularized experience to this case that will allow the issues to be more thoroughly developed and provide this court additional insight into the questions of the case," PILF's Mem. at 2, is neither permitted by the Rules nor likely to provide a "benefit to the process, the litigants, or the court," *Lee*, 2015 WL 5178993, at *4. As previously noted, even in its area of so-called "expertise" (i.e., matching voter databases), PILF has proven itself to be thoroughly incompetent. Instead, and third, PILF's intervention in this matter is far more likely to cause confusion, delay, and unnecessary

complications, all while raising no new questions of law. *See* Fed. R. Civ. P. 24(b)(3). Rule 24(b), therefore, counsels against permitting PILF to intervene in this case.

CONCLUSION

For these reasons, pursuant to Rule 24(a) and Rule 24(b), the Court should deny PILF's motion to intervene.

Dated: December 29, 2021

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to all parties.

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