

1 Roy Herrera (032907)
2 Daniel A. Arellano (032304)
3 Jillian L. Andrews (034611)
4 Austin T. Marshall (036582)
5 **HERRERA ARELLANO LLP**
6 1001 North Central Avenue, Suite 404
7 Phoenix, AZ 85004
8 roy@ha-firm.com
9 daniel@ha-firm.com
10 jillian@ha-firm.com
11 austin@ha-firm.com
12 Telephone: (602) 567-4820

13 *Attorneys for Proposed Intervenor-*
14 *Defendant Mi Familia Vota*

15 IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
16
17 IN AND FOR THE COUNTY OF YAVAPAI

18 ARIZONA FREE ENTERPRISE CLUB, et al.,
19
20 Plaintiffs,
21
22 v.
23
24 ADRIAN FONTES,
25
26 Defendant.

No. S-1300-CV-202300202

**MI FAMILIA VOTA'S
MOTION TO INTERVENE**

(Assigned to the Honorable John D.
Napper)

27
28

1 **INTRODUCTION**

2 When a voter returns an early ballot, the voter must place the ballot in its designated
3 envelope, seal it, and sign an affidavit on the envelope verifying, under penalty of perjury,
4 the voter’s eligibility and that he or she personally voted the enclosed ballot. Once received,
5 the county recorder must verify the affidavit signature by comparing it against the signature
6 in the voter’s “registration record.” A.R.S. § 16-550(A). Recognizing that the term
7 “registration record” is broader than just “registration form,” and that a registration record
8 may include several of the voter’s *known* signatures from previously validated official
9 election documents, the 2019 Elections Procedures Manual (EPM) directs county recorders
10 to compare the affidavit signature against any of these known signatures in the registration
11 record, including from voter registration forms, signature rosters, and early ballot request
12 forms. EPM at § VI(A)(1). (Notably, a voter must present ID and, absent disability,
13 personally sign a signature roster, A.R.S. § 16-579(A)(1), (D), and a signature on an early
14 ballot request form is itself validated against the voter’s registration form, A.R.S. § 16-
15 544(C).) Once satisfied that the signatures correspond, the county recorder may proceed
16 with processing the ballot for tallying. A.R.S. § 16-550(A).

17 The 2019 EPM’s instruction—proposed by Secretary Hobbs and approved by
18 Attorney General Brnovich and Governor Ducey—has been in effect for over three years
19 and through two general election cycles. A new EPM is due later this year. A.R.S. § 16-
20 452(B). Yet Plaintiffs only now challenge the instruction, advancing a torturedly narrow
21 reading of the term “registration record” and doing so without any meaningful, let alone
22 justiciable, stake in the instruction’s application.

23 Plaintiffs’ claims threaten to deprive election officials of a critical tool to count each
24 citizen’s vote accurately and securely. Without it, counties are much more likely to reject
25 early ballots by the voters whom Proposed Intervenor Mi Familia Vota (MFV) has worked
26 tirelessly to register and turn out to vote. MFV should be allowed to intervene to defend the
27 EPM instruction and protect its unique interests.

1 **ARGUMENT**

2 Rule 24 of the Arizona Rule of Civil Procedure governs intervention. The rule is
3 “construed liberally” to “assist parties seeking to obtain justice in protecting their rights.”
4 *Planned Parenthood Ariz., Inc., v. Am. Ass’n of Pro-Life Obstetricians & Gynecologists*,
5 227 Ariz. 262, 279 ¶ 53 (App. 2011) (quoting *Dowling v. Stapley*, 221 Ariz. 251, 269–70 ¶
6 57 (App. 2009)). Under Rule 24(a)(2), a court *must* allow intervention by anyone who
7 “claims an interest relating to the subject of the action, and is so situated that disposing of
8 the action in the person’s absence may as a practical matter impair or impede the person’s
9 ability to protect that interest, unless existing parties adequately represent that interest.” If
10 a party does not merit intervention of right, the court may allow permissive intervention to
11 anyone who “has a claim or defense that shares with the main action a common question of
12 law or fact.” Ariz. R. Civ. P. 24(b)(1). MFV should be allowed to intervene under either
13 standard.

14 **I. This Court should grant Mi Familia Vota intervention as a matter of right.**

15 MFV is entitled to intervene as of right under Rule 24(a)(2). Under this Rule, a court
16 must permit a putative party to intervene when: “(1) the motion is timely; (2) the movants
17 claim an interest relating to the subject of the action; (3) the movants show that disposition
18 of the action may, as a practical matter, impair or impede their ability to protect their
19 interests; and (4) the movants show that existing parties do not adequately represent their
20 interests.” *Heritage Village II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 570 ¶ 10 (App.
21 2019) (citing *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13
22 (App. 2014)). MFV satisfies each factor.

23 **A. MFV’s motion is timely.**

24 An intervention motion’s timeliness hinges principally on 1) “the stage at which the
25 action has progressed before intervention is sought” and 2) “whether the applicant was in a
26 position to seek intervention at an earlier stage of the proceedings.” *Id.* (quoting *Winner*
27 *Enters., Ltd. v. Superior Court*, 159 Ariz. 106, 109 (App. 1988)). Courts evaluate these
28 factors in the overriding context of “whether the delay in moving for intervention will

1 prejudice the existing parties in the case.” *State ex rel. Napolitano v. Brown & Williamson*
2 *Tobacco Corp.*, 196 Ariz. 382, 384 ¶ 5 (2000).

3 MFV’s motion is timely. Plaintiffs commenced this action on March 7, 2023. MFV
4 moved to intervene on March 17. The Secretary has not answered, and the Court has held
5 no substantive hearings. Indeed, little time has been passed in which MFV could have
6 moved to intervene earlier, and MFV’s intervention in this action would prejudice no party.

7 **B. The disposition of this case will impair Mi Familia Vota’s ability to**
8 **protect its interests.**

9 A proposed intervenor must demonstrate “such an interest in the case that the
10 judgment would have a direct legal effect upon his or her rights and not merely a possible
11 or contingent effect.” *Dowling*, 221 Ariz. at 270 ¶ 58.

12 MFV has an interest in the subject of this action, and granting Plaintiffs’ requested
13 relief would impair that interest. MFV is a civic engagement non-profit organization whose
14 mission is to unite Latino, immigrant, and allied communities through, citizenship
15 workshops, voter registration, and voter participation. MFV implements non-partisan field
16 and media strategies to increase voter registration and voter participation. In doing so, MFV
17 educates Latino voters about how to cast early ballots in Arizona, including how each voter
18 must sign the early ballot affidavit for their vote to be tabulated.

19 Plaintiffs’ requested relief would harm Latino voters by taking away county
20 recorders’ tools to verify early ballot affidavit signatures, thereby making it harder for these
21 voters to exercise their right to vote and impeding MFV’s efforts to register and turn out
22 this community. Latino and other minority voters experience higher rejection rates of their
23 mail-in ballot signatures than do white voters. *See Mike Baker, Rejected Mail Ballots Are*
24 *Showing Racial Disparities*, N.Y. Times (Feb. 2, 2022),
25 <https://www.nytimes.com/2022/02/02/us/mail-voting-black-latino.html>. Lest this trend
26 continue and worsen in Arizona, MFV seeks to intervene and protect its efforts to register
27 and turn out these voters. If recorders are forced to reject a greater share of signatures
28 because they lack crucial validation tools, MFV will need to expend additional resources to

1 contact and educate Latino voters whose signatures are more likely to be rejected on
2 signature curing procedure.

3 Recognizing “Rule 24 ‘is remedial and should be liberally construed’” Arizona
4 courts agree the Rule “does not require certainty, and only requires that an interest ‘may’
5 be impaired or impeded.” *Heritage Village II Homeowners Ass’n v.*, 246 Ariz. at 573 ¶ 22.
6 MFV has made the required showing.

7 **C. No party adequately represents Mi Familia Vota’s interests.**

8 MFV’s interests are not adequately represented by the parties in this case. MFV is
9 uniquely focused on Latino voters and the Latino community’s ability to effectuate its
10 voting power. No other party is dedicated specifically to engaging with and protecting this
11 voting demographic and therefore cannot adequately represent this interest. *See Planned*
12 *Parenthood Ariz., Inc.*, 227 Ariz. at 279 ¶ 58 (because “[t]he state must represent the interests
13 of all people in Arizona . . . the state might not give [other parties] interests ‘the kind of
14 primacy’ that these applicants would” (citation omitted)). The Secretary, as a public officer
15 representing competing constituencies across the entire State, cannot be expected to give
16 particular attention to MVF’s interests in the way MVF can itself. “Because it cannot be
17 said that the state necessarily represents th[is] applicant[],” *id.*, MFV should be permitted
18 to intervene.

19 **II. Alternatively, this Court should grant Mi Familia Vota permissive**
20 **intervention.**

21 MVF also satisfies the standard for permissive intervention because it “has a claim
22 or defense that shares with the main action a common question of law or fact.” Ariz. R. Civ.
23 P. 24(b)(1)(B). MFV’s defenses in favor of the EPM’s signature verification instruction,
24 both procedurally and on the merits, turn on what can a county recorder may consider in
25 validating a signature, how signatures are actually verified, and who may bring suit to
26 challenge those procedures.

27 Once a proposed intervenor has established that a defense shares common legal and
28 factual issues with the underlying case, as MVF has done, courts may consider other factors,

1 including: 1) “the nature and extent of the intervenors’ interest;” 2) “their standing to raise
2 relevant legal issues;” 3) “the legal position they seek to advance, and its probable relation
3 to the merits of the case;” 4) “whether the intervenors’ interests are adequately represented
4 by other parties;” 5) “whether intervention will prolong or unduly delay the litigation;” and
5 6) “whether parties seeking intervention will significantly contribute to full development of
6 the underlying factual issues in the suit and to the just and equitable adjudication of the
7 legal questions presented.” *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (citation omitted).
8 These factors all weigh in favor of MFV’s motion.

9 First, MFV has a strong interest in promoting turnout by Latino voters, and its efforts
10 to do so will be directly affected by Plaintiffs’ restrictive reading of A.R.S. § 16-550. MFV
11 represents a community that faces unique obstacles in the voting process, and part of MFV’s
12 core mission is preventing additional obstacles from arising.

13 Second, MFV expends resources to educate and activate Latino voters during
14 elections. If Plaintiff’s statutory interpretation is adopted, MFV will need to divert
15 additional resources toward communities whose members are more likely to have their
16 signatures improperly rejected.

17 Third, MFV seeks to argue that Plaintiffs’ claims are procedurally barred and that
18 A.R.S. § 16-550 by its terms allows the EPM instruction at issue. These issues go to the
19 core of this case.

20 Fourth, MFV’s interests are not adequately represented by other parties. The
21 Secretary, as a public officer representing the entire State, cannot be expected to give
22 particular attention to MFV’s interests in the way MFV can itself. *See Planned Parenthood*
23 *Ariz., Inc*, 227 Ariz. at 279 ¶ 58.

24 Fifth, this case is in its infancy and no delay will result by MFV joining this action
25 to defend its interests.

26 Sixth and last, MFV will aid the Court by fully briefing the legal and factual issues
27 presented in this case. Intertwined with its unique interests, MFV is in the best position to
28 present unique background relating to Latino voters in Arizona who will be affected by the

1 Court's decision.

2 **CONCLUSION**

3 Because MFV has satisfied the standard for both mandatory and permissive
4 intervention, the Court should allow its intervention.

5
6 Dated: March 21, 2023

Respectfully submitted,

7 */s/ Roy Herrera*

Roy Herrera

8 Daniel A. Arellano

9 Jillian L. Andrews

Austin T. Marshall

10 HERRERA ARELLANO LLP

11 1001 North Central Avenue, Suite 404

12 Phoenix, AZ 85004

13 *Attorneys for Proposed Intervenor-*
14 *Defendant Mi Familia Vota*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 21st day of March, 2023, I electronically transmitted a
3 PDF version of this document to the Office of the Clerk of the Superior Court, Yavapai
4 County, for filing using the AZTurboCourt System. I further certify that a copy of the
5 foregoing was sent via email this same date to:

6 Kory Langhofer (kory@statecraftlaw.com)

7 Thomas Basile (tom@statecraftlaw.com)

8 **STATECRAFT PLLC**

649 North Fourth Avenue, First Floor

9 Phoenix, Arizona 85003

10 *Attorneys for Plaintiffs*

11 Craig A. Morgan (CMorgan@ShermanHoward.com)

12 **SHERMAN & HOWARD L.L.C.**

2555 East Camelback Road, Suite 1050

13 Phoenix, Arizona 85016

14 *Attorneys for Arizona Secretary of State Adrian Fontes*

15 D. Andrew Gaona (agaona@cblawyers.com)

16 Austin C. Yost (ayost@cblawyers.com)

17 **COPPERSMITH BROCKELMAN PLC**

2800 North Central Avenue, Suite 1900

18 Phoenix, Arizona 85004

19 Aria C. Branch (abranche@elias.law)

20 John Geise (jgeise@elias.law)

21 Lali Madduri (lmadduri@elias.law)

Dan Cohen (dcohen@elias.law)

22 Ian Baize (ibaize@elias.law)

ELIAS LAW GROUP LLP

23 250 Massachusetts Ave NW, Suite 400

24 Washington, D.C. 20001

25 *Attorneys for Proposed Intervenor-Defendant Arizona Alliance for Retired Americans*

26
27 /s/ Jillian L. Andrews

28

1 Roy Herrera (032907)
2 Daniel A. Arellano (032304)
3 Jillian L. Andrews (034611)
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5 **HERRERA ARELLANO LLP**
6 1001 North Central Avenue, Suite 404
7 Phoenix, AZ 85004
8 roy@ha-firm.com
9 daniel@ha-firm.com
10 jillian@ha-firm.com
11 austin@ha-firm.com
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No. S-1300-CV-202300202

**MI FAMILIA VOTA'S
PROPOSED ANSWER IN
INTERVENTION**

(Assigned to the Honorable John D.
Napper)

22
23 Intervenor-Defendant Mi Familia Vota (MFV) answers Plaintiffs' Verified Special
24 Action Complaint as follows:

- 25 1. Admitted.
26 2. Paragraph 2 contains no factual allegation or allegation applying law to fact to
27 which any response is required.
28 3. Denied.

1 4. Denied.

2 5. Denied.

3 **JURISDICTION**

4 6. MFV admits that the Court has jurisdiction under Article 6, § 14 of the Arizona
5 Constitution, but denies jurisdiction exists under A.R.S. §§ 12-1831 or -2021, or the
6 Arizona Rules of Procedure for Special Actions.

7 7. MFV is without sufficient information to form a belief as to the truth or falsity
8 of the allegations in Paragraph 10 of the Verified Complaint and therefore denies them.

9 **PARTIES**

10 8. MFV is without sufficient information to form a belief as to the truth or falsity
11 of the allegations in Paragraph 8 and therefore denies them.

12 9. MFV is without sufficient information to form a belief as to the truth or falsity
13 of the allegations in Paragraph 9 and therefore denies them.

14 10. MFV is without sufficient information to form a belief as to the truth or falsity
15 of the allegations in Paragraph 10 and therefore denies them.

16 11. Admitted.

17 **GENERAL ALLEGATIONS**

18 12. Admitted.

19 13. Admitted.

20 14. MFV admits that voters are not required to provide documentary proof of
21 identity or additional personal information when casting an early ballot by mail. MFV
22 denies the remaining allegations in Paragraph 14.

23 15. Admitted.

24 **Definition of a “Registration Record”**

25 16. Paragraph 16 contains no factual allegation or allegation applying law to fact
26 to which any response is required.

27 17. Admitted.

28 18. Admitted.

1 19. Admitted.

2 20. Admitted.

3 21. Admitted.

4 22. MFV admits that A.R.S. § 16-161(A) states that a completed and submitted
5 registration form “constitute[]s an official public record of the registration of the elector.”
6 To the extent Paragraph 22 alleges that A.R.S. § 16-161(A) purports to define the term
7 “registration record” as used in A.R.S. § 16-550(A), it is denied.

8 23. MFV denies that “record of the registration of the elector,” as used in A.R.S.
9 § 16-161(A), defines the term “registration record” as used in A.R.S. § 16-550(A). MFV
10 further denies that a “registration record,” as used in A.R.S. § 16-550(A), is limited to the
11 items listed in Paragraph 23.

12 **EPM Provisions Governing Signature Verification**

13 24. Admitted.

14 25. Admitted.

15 26. Admitted.

16 27. MFV admits the Elections Procedures Manual reads as quoted. MFV is
17 without sufficient information to form a belief as to the truth or falsity of the remaining
18 allegations in Paragraph 27 of the Verified Complain and therefore denies them.

19 28. Denied.

20 29. Denied.

21 30. Denied.

22 31. Denied.

23 32. Denied.

24 33. Denied.

25 **COUNT I**

26 34. MFV incorporates by reference each of its preceding admissions, denials, and
27 statements as if fully set forth in this paragraph.

28 35. Admitted.

1 **AFFIRMATIVE DEFENSES**

2 1. Plaintiffs' claims are barred in whole or in part for failure to state a claim upon
3 which relief can be granted.

4 2. Plaintiffs' claims are barred because Plaintiffs lack standing.

5 3. Plaintiffs' claims are barred by the doctrine of laches.

6 4. Plaintiffs' claims are barred by the doctrine of unclean hands, estoppel, and
7 waiver.

8 5. MFV reserves the right to assert additional affirmative defenses, including, but
9 not limited to, those set forth in Rule 8(d) of the Arizona Rules of Civil Procedure, as
10 additional facts are discovered.

11
12 WHEREFORE, having fully answered Plaintiffs' Verified Complaint, MFV prays
13 for judgment as follows:

14 A. That the Court dismiss Plaintiffs' Verified Special Action Complaint;

15 B. That judgment be entered in favor of MFV and against Plaintiffs on Plaintiffs'
16 Verified Special Action Complaint and that Plaintiffs take nothing thereby;

17 C. That MFV be awarded its reasonable attorney fees and costs; and

18 D. For such other and further relief as the Court deems just.

19
20 Dated: March 21, 2023

Respectfully submitted,

21 /s/ Roy Herrera

22 Roy Herrera

23 Daniel A. Arellano

Jillian L. Andrews

24 Austin T. Marshall

HERRERA ARELLANO LLP

25 1001 North Central Avenue, Suite 404

26 Phoenix, AZ 85004

27 *Attorneys for Proposed Intervenor-*
28 *Defendant Mi Familia Vota*