IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWEST DIVISION

MARK SPLONSKOWSKI, Plaintiff, v. ERIKA WHITE, in her capacity as State Election Director of North Dakota, Defendant.	)	Case No. 1:23-cv-00123-DMT-CRH

PLAINTIFF MARK SPLONSKOWSKI'S
RESPONSE IN OPPOSITION TO MOTION TO INTERVENE

Plaintiff Mark Splonskowski responds to the motion to intervene filed by the League of Women Voters of North Dakota ("Movant").

INTRODUCTION

Movant seeks to disrupt this litigation based on a flawed premise, namely that it will suffer economic strife and disenfranchisement if Federal Election Day statutes are enforced as written. This alleged harm is purely speculative and relies on a far-fetched assumption that adhering to a 175-year-old ballot deadline would lead to chaos, confusion, and voters not being able to adjust to a modest change in circumstances. Regardless of the legitimacy of Movant's supposed interest in the litigation, intervention as of right hinges on adequate representation, and Movant wrongly claims that Defendant is inadequate to represent Movant's interests in this case. This is especially bold, considering that Movant and Defendant share the exact same ultimate interest—to uphold North Dakota's current ballot receipt deadline. Movant go as far as to admit this directly, stating "The relief sought by LWVND is simply the dismissal of Plaintiff's suit, and the continued

enforcement of North Dakota election law, which would remedy the harm to all members." (Doc. 13 at 7.) That is Defendant's stated goal as well, rendering Movant's participation superfluous, and Movant's request to intervene meritless. Movants also seek permissive intervention at this Court's discretion. The duplicative nature of Movant's interest weighs heavily against permissive intervention, as does the fact that involving Movant would add logistical and financial strain on both the Court and current parties, especially given the redundancy its involvement would create.

The motion to intervene should be denied for at least six reasons.

First, Movant lacks standing to intervene. Movant does not demonstrate a concrete, particularized, and actual or imminent injury as required for Article III standing, instead speculating that a change in North Dakota's ballot deadline will certainly spell confusion and lead to missed deadlines. Because Movant alleges no impending injuries, Movant's arguments on associational and organizational standing must fail.

Second, Movant has no direct and recognized interests in the subject matter of this case. Movant claims it has interests in educating voters about North Dakota's election laws, and in the fact that many of Movant's members rely on mail voting. (Doc. 13 at 12.) Movant's alleged economic interests are not recognized under this Circuit's precedents, and its supposed interest in members' reliance on mail voting is that shared by all North Dakota voters—hardly direct, and instead generalized, tangential, and derivative.

Third, Movant has not demonstrated that its stated interest will be impaired by this litigation. Movant's feared harm to its logistical operations and disenfranchisement to members is highly speculative and makes the lofty assumption that a change in North Dakota's ballot deadline will lead to confusion, chaos, and many voters failing to adjust to a new deadline. Such highly speculative injuries fail to satisfy this prong of the test for intervention as of right.

Fourth, Movant has not demonstrated that the Defendant will not adequately protect its interests, a vital consideration. Defendant is legally bound to safeguard the voting rights of all North Dakota voters, including all of Movant's membership, including those who rely on mail ballot voting. There is no indication that Defendant is not vigorously defending this case, with the full assistance of North Dakota and its Attorney General. (Doc. 16 at 1-4.) The opposite is true—Defendant has moved to dismiss the complaint. (Doc. 9.) The presumption of Defendant's adequate representation as a government body is strengthened further by the *parens patriae* doctrine, which Movant can only overcome with a showing that its interests are not subsumed into those of the government defendant. Here, Defendant's representation of all North Dakota voters completely subsumes Movant's interests. Defendant also seeks the exact same outcome of this case as Movant does—to uphold North Dakota's current mail ballot deadline. Furthermore, Movant mirrors Defendant's arguments in its Proposed Motion to Dismiss, further indicating that Defendant will adequately represent Movant's interests.

Fifth, Movant failed to attach a pleading as required by Rule 24(c). Movant attached a Proposed Motion to Dismiss and a Declaration by their President alluding to the amorphous, speculative harms that fail on their own to establish a right to intervene. Rule 24 and this Circuit's precedent require such attached pleadings to indicate specific legal claims or defenses that Movant would raise, and here Movant gives no indication of what specific claims or defenses it would bring, relying again only on speculative, far-fetched fears of harm from a modest change in law. Indeed, Movant repeats Defendant's arguments while failing to indicate what unique claims it would bring outside of what Defendant also seeks—to uphold North Dakota's current ballot deadline.

Sixth, allowing Movant to intervene is not in the interest of justice and will lead to undue delay of the litigation, a factor weighing against permissive intervention. Movant seeks to add much redundancy to the litigation, in addition to the inherent burdens created by involving Movant's leadership, members, and counsel in this case. Granting intervention would greatly complicate this matter with no corresponding benefit, as Defendant is more than adequately representing Movant's interests. Movant has not shown its participation as *a party* is necessary or even helpful to the Court's disposition of Plaintiff's Complaint. Movant's participation thus far confirms this as it offers no distinct, concrete legal claim and that Movant will simply echo Defendant's legal arguments. Movant is free to file an *amicus curiae* brief to offer its perspective without adding undue delay and complication.

ARGUMENT

I. The Court Should Deny Intervention as of Right.

In the Eighth Circuit, prospective intervenors must achieve Article III standing and satisfy the requirements of Fed. R. Civ. P. 24(a) in order to intervene as of right. *Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996). This Circuit has paraphrased the requirements of Rule 24(a) to require an intervenor to establish that it:

> (1) ha[s] a recognized interest in the subject matter of the litigation that (2) might be impaired by the disposition of the case and that (3) will not be adequately protected by the existing parties.

Id. at 1299. Additionally, Fed. R. Civ. P. 24(c) requires an intervening party to submit a "pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c).

Here, Movant fails to establish Article III standing, fails to qualify for intervention as of right under Rule 24(a), and failed to submit a pleading setting out a claim or defense for which intervention is sought. Therefore, this Court should deny Movant's Motion to Intervene.

A. Movant Lacks Standing.

To intervene as of right, the Eighth Circuit requires that intervenors establish Article III standing. *Mausolf*, 85 F.3d at 1300. To demonstrate standing, Movant must show: (1) injury, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). This Circuit also requires that the injury be "concrete, particularized, and either actual or imminent." *Curry v. Regents of the Univ.*, 167 F.3d 420, 422 (8th Cir. 1999).

Movant shows no concrete, particularized, and actual or imminent injury, but simply fears that a change in North Dakota's ballot deadline will lead to a chaotic scene of confusion in which Movant must expend considerable resources educating members and voters on a changed law, and to widespread disenfranchisement of mail voters who are unable to comply with a new deadline. Movant offers no evidence to indicate that its fears will become reality—because they will not—and so this alleged injury is entirely speculative and assumes that its members and other North Dakota voters lack the competence to adjust to a change mandated by long-standing federal law. Movant claims its injury is not speculative, and that over 200 ballots in North Dakota's 2022 elections would have been discarded under a differnt deadline. (Doc. 13 at 7 n.1.) Not so. Imagining history under different circumstances does not establish certain future injury.

Because Movant has not established any concrete, particularized, and actual or imminent injury, there is no causation or redressability to be analyzed. There is nothing certain or impending about the circumstances Movant imagines. North Dakota voters will adjust to a different ballot deadline, as many voters in other states already do. Movant's discussion on associational and organizational standing relies on the assumption that injury exists. It does not, and so it fails to establish standing under those theories.

Because Movant lacks an actual injury that is certainly impending, Movant does not have standing, and does not qualify for intervention as of right.

B. Movant Does Not Have a Recognized Interest in the Subject Matter of the Litigation.

To intervene as of right, the movant must demonstrate a sufficient interest in the subject matter of the action. Fed. R. Civ. P. 24(a)(2). Not just any interest will do. This Circuit requires successful movants to "have an interest in the subject matter of the litigation… that is 'direct,' as opposed to tangential or collateral… and 'recognized,' [meaning both] substantial and legally protectable." (citations and internal quotations omitted). *United States v. Union Elec. Co.*, 64 F.3d 1152, 1161 (8th Cir. 1995); *see also United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 839 (8th Cir. 2009).

Here, Movant claims that it has "a legally protectable interest in ensuring that North Dakota law is followed and that absentee ballots post-marked before Election Day are properly counted if received during the thirteen-day canvassing period following Election Day." (Doc. 13 at 11.) It further claims that "[i]f Plaintiff's relief were granted, LWVND and its members and broader community would suffer immediate confusion, imminent strain on limited resources, and possibly irreversible disenfranchisement." *Id*. Even if this were factually true, which it is not, wishing to *promote* a specific, organizational priority that has nothing to do with the relief sought in the Complaint does not merit intervention. The question is whether Movant has a *direct and recognized interest* in *this* matter. It does not.

Movant articulates its interests as centering on (1) its "ongoing advocacy and education efforts" about voting and mail voting and (2) the "regular use of mail-in voting by LWVND members in past North Dakota elections." (Doc. 13 at 12.) Neither of these supposed interests rise to the level of being direct and recognized. Movant expends resources on voter education

regardless of the ballot deadline, and its interest in the use of mail voting is no different than that shared by any other North Dakota voter.

Movant's concern about expending more resources if the ballot deadline adheres to federal law is purely speculative, and it is unlikely that informing LWVND members and other voters of the new deadline would demand any additional expense beyond what Movant already expends to promote the existed ballot deadline. Movant does not claim anything to the contrary. The "immediate confusion" and "imminent strain" Movant fears are hardly certain or imminent.

Even assuming, *arguendo*, that Movant's injuries are not speculative, they still fail to support intervention because they are ultimately economic in nature. The Eighth Circuit instructs that basic economic interests do not qualify as legally protectable interests. In *Curry*, this Circuit ruled that movant students' economic interests in attempting to uphold the current student activity fee system at the University of Minnesota "simply does not rise to the level of a legally protectable interest necessary for mandatory intervention." *Curry v. Regents of the Univ.*, 167 F.3d at 422-423; *see also Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d 567 at 571 (8th Cir. 1998) (stating that the would-be intervenors' economic interests in the existing action were too speculative to be deemed "direct, substantial, and legally protectable" interests); *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (stating that an economic stake in the outcome of an action is not sufficient to demonstrate a "significantly protectable interest"). Movant's speculative, economic interests in having to spend resources on advocacy and education efforts—something it already does in the ordinary course of business—are not legally protectable interests under this Circuit's precedent.

Movant's other expressed interest is the concern that a change in North Dakota's mail ballot deadline would impede some members' use of mail voting. A desire to use mail voting under

the current mail deadline is an interest shared by all voters in North Dakota, making such an interest generalized, not particularized. A generalized interest or grievance is inadequate to invoke the jurisdiction of this Court. *See Nolles v. State Comm. for the Reorganization of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (finding plaintiffs lacked standing because they "are attempting to bring a generalized grievance shared in common by all the voters in Nebraska who voted to repeal LB 126").

Additionally, granting intervention based on indirect and unrecognized interests poses real risks to party and judicial resources. In *Bullock*, the District of Montana found that the movant's interest in protecting its members' voting rights was "not dissimilar to the interests of any number of politically involved organizations in Montana." *Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, 2020 U.S. Dist. LEXIS 167715, at *5 (D. Mont. Sep. 14, 2020). Similarly, Movant asserts a general interest in voting rights that is shared by "any number of politically involved organizations" in North Dakota. *Id.* Permitting Movant to participate *as a party* on that basis alone would risk opening the floodgates to waves of politically motivated interest groups (or activists) that would drain resources without any corresponding benefit, an important consideration both for this Court and the parties.

Movant alleges interests of a highly speculative, and generalized nature. Movant's alleged economic interests are not recognized under this Circuit's precedent, and Movant's alleged interest in mail voting is an interest shared by all voters in North Dakota—which is, by definition, generalized, tangential, and collateral. Because Movant fails to establish a direct and recognized interest in this litigation's subject matter, Movant has not satisfied the Rule 24(a) standard.

C. Movant's Stated Interest Will Not Be Impaired by the Litigation.

Movant must also show that its interest is one that "might be impaired by the disposition of the litigation." *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 997 (8th Cir. 1993). Movant asserts that it will suffer economic and logistical hardship if federal law is enforced, and that some of its members may be "disenfranchised" by such enforcement. Even assuming these interests are direct, particularized, and recognized interests, Movant has failed to show how this case will impair those interests in a way that justifies intervention.

The date of the general election is different every year it is held, which means the ballot receipt deadline is different for every general election. Presumably, Movant's education efforts adapt to reflect each election's deadlines. In the event this litigation results in a change to the ballot receipt deadline, Movant will simply do what it does *right now*—adapt its education efforts to reflect the new deadline. This lawsuit will not impact Movant's ability to engage in its regular education efforts, nor will those efforts require any more effort than they normally do.

State and local governments will expend considerable resources to educate North Dakotans about the ballot receipt deadline, whatever it is, which further undermines Movant's claim that chaos and confusion will ensue if federal law is enforced. Any claim to the contrary rests on events that have not occurred and are not likely to occur. (Doc. 13 at 13.) The Sixth Circuit has denied intervention where proposed intervenors were "more concerned about what will transpire *in the future*" and where proposed intervenors sought to "inject … issues that are not yet before the court." *United States v. Michigan*, 424 F.3d 438, 444 (6th Cir. 2005) (emphasis in original). "An interest that is . . . contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy the rule" governing intervention as of right. *Wash. Elec. Coop., Inc. v. Mass. Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d Cir. 1990); *see also Ungar v. Arafat*, 634

F.3d 46, 51-52 (1st Cir. 2011) ("An interest that is too contingent or speculative — let alone an interest that is wholly nonexistent — cannot furnish a basis for intervention as of right.")). Even in the unlikely event that relief is granted in the months preceding the next general election, the Court is capable of crafting a remedy to account for this circumstance, if necessary. Simply put, Movant's fears are not ripe for consideration, and cannot establish a *right* to intervene here.

Moreover, Movant has provided only a vague declaration to support its alleged interest, and has offered no data or other evidence to support its claim that enforcing federal law will prevent it from educating voters about the ballot receipt deadline. In such circumstances, the Eighth Circuit has deemed a movant's alleged interests speculative *per se*. *See Standard Heating & Air Conditioning Co. v. City of Minneapolis*, 137 F.3d at 572.

Movant's failure to demonstrate impairment is another reason to deny intervention under Rule 24(a).

D. Defendant Is Adequately Representing Movant's Interest.

"A putative intervenor under Rule 24(a) must show that none of the parties adequately represents its interests." *North Dakota ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015). Although the burden of showing inadequate representation usually is minimal, "[w]hen one of the parties is an arm or agency of the government, and the case concerns a matter of sovereign interest, the bar is raised, because in such cases the government is presumed to represent the interests of all its citizens." *Mausolf*, 85 F.3d at 1303 (emphasis and internal quotation marks omitted). This doctrine is known as *parens patriae*, and both Movant and Defendant acknowledge it in their recent filings. The presumption of adequate representation can be rebutted only by a strong showing of inadequate representation, which can be proven, for instance, by Movant

showing its interest is distinct from and cannot be subsumed by the public interest represented by the government entity. *Id*. Movant does not make that showing.

In *Curry*, several students sued the Regents of the University of Minnesota for using proceeds from their Student Service Fees to fund certain student groups with ideologies with which the students disagreed. *Curry v. Regents of the Univ.*, 167 F.3d at 421. Three of the affected student organizations moved to intervene in the case, arguing that the case attacked their First Amendments rights and right to funding under the University's system. *Id*. The Eighth Circuit found that "[a]lthough the Movants' motives may be distinguishable from the University's, the Movants' and the University's interests are the same: both want the current fee system upheld," and that the "University's interest in defending the mandatory student fee system that has been created to support student organizations encompasses the Movants' asserted interests." *Id*. at 423.

Like in *Curry*, Movant's ultimate interest is the same as Defendant's interest—to ensure North Dakota's current mail ballot deadline is upheld. While Movant asserts that it would suffer unique harms to its educational efforts and members' ease of voting, the outcome it seeks is identical to that of Defendant. As in *Curry*, this nearly identical similarity prevents Movant from rebutting the *parens patriae* presumption.

Movant admits that it shares with Defendant an *identical* goal, stating, "The relief sought by LWVND is simply the dismissal of Plaintiff's suit, and the continued enforcement of North Dakota election law, which would remedy the harm to all members." (Doc. 13 at 7.) Defendant has zealously sought to uphold the current law, including filing a motion to dismiss, with the Attorney General participating as the representative of North Dakota and all its citizens. Given that LWVND's membership consists entirely of North Dakota voters, and that Defendant seeks to

uphold the law on their behalf, there is no disparity whatsoever between Defendant's and Movant's interest, and Movant, by its own admission, seeks the same exact outcome as Defendant.

Movant relies on *Ubbelohde*, in which the Eighth Circuit ruled that intervention was appropriate for movants whose interests reflected downstream issues in a water management dispute in a river system, whereas the existing governmental parties had to balance both upstream and downstream interests, which were in direct conflict with each other. *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1025 (8th Cir. 2003).

Ubbelohde does not support intervention. There, the existing government parties had no choice but to represent conflicting interests. Here, there are no divergent or conflicting interests. Defendant seeks the same thing as Movant. That Movant claims to care more about what happens before ballots are cast does not change this.

The Seventh Circuit's opinion in *Bost* supports denying Movant's motion. *Bost* involved a similar challenge to Illinois' mail ballot deadline. There, the court found that the Illinois State Board of Elections adequately represented the Democratic Party of Illinois, which attempted to intervene as of right. *Bost v. Ill. State Bd. of Elections*, 2023 U.S. App. LEXIS 19346, at *12-13 (7th Cir. 2023). The court denied intervention as of right because movant made no showing of conflict between themselves and Illinois' election board and pointed to no arguments they would make that the defendant had not already made. *Id*. Likewise, here Movant has proposed no unique arguments, but simply mirrors those already set out by Defendant in their Proposed Motion to Dismiss. (Doc. 13-1.) Moreover, in *Bost*, the movant was a state political party seeking the same thing as the state—to maintain the state's current mail ballot deadline. Although the court held that adequate representation existed because of movants' failure to rebut the presumption, the fact that a *political party*—whose interests surely were much more likely to diverge from a government

defendant—was found to be adequately represented by the state is a compelling indicator that *parens patriae* is a lofty presumption to rebut. The presumption is strengthened further here by Defendant's Response to the Motion to Intervene, where Defendant states that she will ensure that Movant's interests are represented in this case, as are the interests of all North Dakota voters. (Doc. 16 at 3-4.)

Movant has failed to show that any of its interests or arguments differ from those of Defendant. This is fatal to its request to intervene.

E. Movant Failed to Attach a Pleading as Required Under Federal Rule of Civil Procedure 24(c).

Additionally, Movant has not attached a pleading as required by Rule 24(c). A motion to intervene must state grounds for intervention and "be accompanied by a pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). A motion to dismiss is not a pleading. *See* Fed. R. Civ. P. 7(a).

Movant did attach two documents to its motion (Docs. 13-1-13-2), but neither describes what claim or defense Movant will raise if this litigation proceeds. Instead, Movant's filings include generalized statements of Movant's work and alleged hypothetical harms.

This Circuit has ruled on this issue in the past, detailing what pleadings must do to sufficiently set out a claim or defense. In one instructive case, a business association concerned with utility services attempted to intervene in a case regarding wastewater dumping. The intervenors submitted a statement of interest instead of a pleading as required under Rule 24(c), but the Eighth Circuit upheld this statement of interest as fulfilling Rule 24(c) because it provided sufficient notice to the court and parties of the movants' interests. *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 834. (8th Cir. 2009). Recently in the Minnesota District Court, this sort of statement of interest was distinguished from an intervenor's similar memorandum which did

not indicate what kind of legal claim it would bring, which the court found to be a "critical issue," and the lack of a specific claim was a fatal flaw in the intervenor's pleading. *Keech v. Sanimax USA, LLC*, 2020 U.S. Dist. LEXIS 9752 at fn. 1 (D. Minn. Jan. 21, 2020).

Like the intervenors in *Keech*, Movant here has failed to set out a claim or defense for which intervention is sought because its filings offer no detail on what specific legal claims or defenses they would bring against Plaintiff. For this reason, the Court must deny intervention under Rule 24(c).

For these reasons, Movant's request for intervention as of right should be denied.

II. The Court Should Deny Permissive Intervention.

This Court "may permit" intervention where the proposed intervenor "has 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). However, the Court must also "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). This Court has wide discretion in deciding to grant or deny a motion for permissive intervention. *H.J. Martin & Son, Inc. v. Ferrellgas, Inc.*, Case No. 1:20-cv-054, 2020 WL 6122525, *1, (D.N.D. Oct. 16, 2020).

Here, this Court should exercise its discretion to deny permissive intervention because Movant has no separate claim or defense, and intervention would unduly delay the adjudication of original parties' rights.

A. Movant Has No Separate Claim or Defense.

"[T]he words 'claim or defense' manifestly refer to the kinds of claims or defenses that can be raised in courts of law as part of an actual or impending law suit." *Diamond v. Charles*, 476 U.S. 54, 76 (1986) (O'Connor, J., concurring). So, while Rule 24 does not require a "direct

personal or pecuniary interest in the subject of the litigation," the Rule "plainly *does* require an interest sufficient to support a legal claim or defense which is 'founded upon [that] interest.'" *Id.* at 77 (emphasis in original) (citation omitted).

As discussed previously, Movant has asserted no legal claim or defense in its Motion to Intervene, nor in its proposed Motion to Dismiss and Headrick Declaration. Movant asserts no legal claim against Plaintiff, but rather theorizes that enforcing federal law might impose burdens on certain LWVND members and require Movant to educate voters about the ballot receipt deadline. Movant offers no specific claim or defense, much less a separate one. Rather, the proposed Motion to Dismiss repeats many of Defendant's legal arguments.

Because Movant has asserted no claim or defense—let alone a separate claim or defense—it has failed to meet this criterion of permissive intervention.

B. Movant Will Duplicate Efforts, Add to the Parties' Burdens, and Cause Undue Delay and Expense if Permitted to Intervene.

The principal consideration in ruling on a permissive intervention motion is whether the proposed intervention would "unduly delay or prejudice the adjudication of the parties' rights." *South Dakota v. United States DOI*, 317 F.3d 783, 787 (8th Cir. 2003) (citing *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 73 (2d Cir. 1994); 7C Wright, Miller & Kane, Federal Practice and Procedure § 1913, at 379). Additionally, adequacy of representation is a legitimate consideration in the calculus for permissive intervention. *Id.*

Movant's failure to identify a separate claim or defense and its repeating Defendant's arguments demonstrate that Movant's contributions will be superfluous and a drain on the resources of the parties and the Court. *See Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, 2020 U.S. Dist. LEXIS 167715, at *7 (denying permissive intervention as "intervention would simply be piling onto the arguments advanced by the other parties to this

litigation"). Movant's actions so far are duplicative of Defendant's and promise to unduly delay the litigation by imposing further burdens on this Court's time and resources. Granting Movant's permissive intervention would unnecessarily increase the time, effort, and costs expended by both parties and this Court by involving more parties and counsel in discovery, scheduling, and other logistics, causing undue delay in the adjudication, without any corresponding benefit. Movant has already given a preview of what may be to come if intervention is granted, for the Reply in Support of Movant's Motion to Intervene indicates a stubborn disregard for this Circuit's precedent and strong possibility that Movant will complicate this case, ignoring Defendant's more-than-adequate representation of the matter at hand.

Movant is free to provide its perspective through an *amicus curiae* brief without the same delay to adjudication that would occur by allowing intervention. *See Curry v. Regents of the Univ.*, 167 F.3d at 421 (noting that a magistrate judge denied permissive intervention but allowed participation as *amici*); *North Dakota v. Heydinger*, 288 F.R.D. 423, 432 (D. Minn. Dec. 21, 2012) ("While there is no need to add additional parties to the dispute at this time, Movants may, at some point in the litigation, offer a perspective or arguments different from those of the parties that may indeed be helpful to the fair and just resolution of the issues presented in this case. If such a situation should arise, they may request participation as *amici curiae* to allow for the presentation of those positions to the Court."). Plaintiff consents to Movant filing such an *amicus curiae* brief.

CONCLUSION

Movant shares the ultimate goal with Defendant, who is adequately representing Movant's interest and the interest of all North Dakota voters. Any delay or prejudice caused by Movant would thus be undue. For these reasons, the Court should deny the Motion to Intervene.

Dated: September 15, 2023.

Respectfully submitted,

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