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13 *Defendant Arizona Alliance for Retired*
14 *Americans*

14 **Pro Hac Vice Application Forthcoming*

16 **ARIZONA SUPERIOR COURT**

17 **MARICOPA COUNTY**

18
19 RON GOULD, in his individual capacity,

20 Plaintiff,

21 v.

22 KRIS MAYES, in her official capacity as the
23 Attorney General of the State of Arizona,

24 Defendant.

No. CV2024-000815

MOTION TO INTERVENE

(Assigned to the Hon. Brad Astrowsky)

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1 INTRODUCTION

2 Plaintiff seeks extraordinary relief: a judicial permission slip that would allow
3 Arizona counties to eschew the state’s longstanding and detailed election law and
4 procedures and ***tally all ballots for the 2024 elections by hand in the first instance***, without
5 even attempting the use of certified, rigorously tested, and highly accurate electronic voting
6 machines. Plaintiff seeks this relief only as an individual, because the Mohave County
7 Board of Supervisors (the “Board”)—of which he is one of five members—wisely voted
8 *against* repeated proposals to conduct a full hand count, heeding calls from their county
9 attorney and the Attorney General that doing so would violate Arizona law (as well as
10 warnings from their Elections Director that doing so would be wholly impracticable). There
11 is currently no plan by the Board to conduct a full hand count in any coming election. As a
12 result, Plaintiff is asking the Court to issue an impermissible advisory opinion, apparently
13 hoping that, *if* he can convince the Court to provide some legal cover, he *might* then be able
14 to convince his fellow Board members to do what they were previously unwilling to do.
15 That this is an improper request for the judiciary is evident on its face. It also threatens to
16 inject chaos into ballot counting procedures, undermine voter confidence, seriously
17 jeopardize the timely certification of election results, and threaten Arizonans’ fundamental
18 right to vote, all during a presidential election year.

19 Proposed Intervenor-Defendant, the Arizona Alliance for Retired Americans (the
20 “Alliance”), is a nonprofit corporation whose membership includes approximately 50,000
21 retirees from public and private sector unions, community organizations, and individual
22 activists in every county in Arizona, including 2,606 members in Mohave County and
23 24,717 members in Maricopa County. The Alliance’s mission is to ensure social and
24 economic justice and to protect the civil rights of retirees after a lifetime of work, a mission
25 that it accomplishes by ensuring that its members have access to the franchise and can
26 meaningfully participate in Arizona’s elections, including by encouraging its members to
27 vote and ensuring that their votes are lawfully counted. The Alliance takes this mission
28 seriously and has repeatedly been involved in litigation in Arizona to protect that right—

1 including specifically as it relates to efforts to disrupt the orderly elections process by
2 engaging in impermissible hand counts.

3 Relevant here, the Alliance successfully sued in 2022 to prevent Cochise County's
4 Board of Supervisors from conducting a full hand count audit in violation of Arizona law.
5 *See Ruling, Ariz. All. for Retired Ams., Inc. v. Crosby*, No. CV-2022-00518 (Ariz. Sup. Ct.
6 Nov. 7, 2022). The court of appeals affirmed, holding that "the legislature provided for a
7 detailed method to verify the results from the electronically tabulated voting machines,"
8 which did not allow a full hand count in the first instance, and "counties must follow that
9 method unless and until the legislature determines otherwise." *Ariz. All. for Retired Ams.,*
10 *Inc. v. Crosby*, 537 P.3d 818, 824 (Ariz. Ct. App. 2023). Plaintiff's lawsuit follows *directly*
11 in Cochise County's misguided attempts to throw out Arizona's well-established and highly
12 accurate, efficient, and secure ballot-counting process, and replace it with an undefined,
13 chaotic, unreliable, impractical, and vulnerable full hand count. Indeed, the letter from the
14 Attorney General that Plaintiff repeatedly refers to in his complaint cites that case. *See Nov.*
15 *19, 2023 Ltr. From Att'y Gen. Mayes to Mohave County Bd. of Supervisors*, at 2 (Ex. A to
16 Pls.' Compl.).

17 Plaintiff's lawsuit is an attempt to reframe the fundamental issues presented in the
18 Alliance's case, hoping to get a different result. If successful, it threatens to hollow out the
19 Alliance's important victory in that prior litigation, and open the floodgates for counties to
20 conduct their own unique hand counts instead of following Arizona's longstanding and
21 proven election procedures. This would erode the Alliance's members' rights to have their
22 votes lawfully counted and frustrate the Alliance's organizational mission by forcing it to
23 divert its limited resources and change its planned programming to attempt to ameliorate
24 the significant threats hand counting poses to those rights. The Alliance accordingly has a
25 direct and substantial interest relating to the subject of the action, disposal of which may,
26 as a practical matter, impair or impede its ability to protect that interest. Because each of
27 the other factors for intervention are also met, the Alliance should be granted intervention
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1 as of right, or in the alternative, permissive intervention.¹

2 **BACKGROUND**

3 **A. Arizona courts have repeatedly limited hand counts to the procedures 4 expressly outlined in Arizona law.**

5 Arizona has successfully used electronic vote-tabulation equipment for over 50
6 years. The voting equipment used to count ballots undergoes thorough testing by
7 independent, neutral experts, *see* A.R.S. § 16-442(A), (B), as well as four independent
8 audits: two logic and accuracy tests before the election, *see* A.R.S. § 16-449(A), (B), a
9 limited hand count audit of a small percentage of ballots, *see* A.R.S. § 16-602(B), (F), and
10 post-election logic and accuracy testing, *see* 2023 Election Procedures Manual (“EPM”) at
11 243–44.²

12 Arizona law carefully prescribes—and expressly limits—how manual hand count
13 audits of ballots must be performed. They *must* start with small, random samples for a
14 limited number of races, and incrementally expand *only* on an individual race basis and *only*
15 if hand counts repeatedly differ from electronic tabulations by more than the designated
16 margin for error. *See generally* A.R.S. § 16-602. If, at any point, the hand count audit results
17 in a difference that is less than the designated margin when compared to the electronic
18 tabulation, the electronic tabulation results constitute the official count for the race and the
19 hand count audit must end. *Id.* § 16-602(C). Under Arizona law, a full hand count audit is
20 only authorized *after* repeated expanded hand count audits result in a difference greater than
21 the designated margin. *Id.*

22 This has not occurred in recent memory and there is no basis to presume it will occur
23 in Mohave County (or elsewhere) in the coming elections. In 2022, every county that
24 conducted a limited hand count audit found that there were either no discrepancies found

25 ¹ The Alliance has conferred with counsel for the existing parties have been advised that the
26 Attorney General has no objection to their intervention, while Plaintiff intends to object.

27 ² The EPM has the force of law unless it contradicts statutory requirements. *See* A.R.S. §
28 16-452; *Leibsohn v. Hobbs*, 254 Ariz. 1, 7 ¶ 22 (2022). The manual is available at
https://apps.azsos.gov/election/files/epm/2023/20231230_EPM_Final_Edits_406_PM.pdf
(Dec. 2023).

1 with the electronic tabulation, or that any discrepancies were within the acceptable margin.
2 *See Summary of Hand Count Results – 2022 Gen. Election*, ARIZ. SEC’Y OF STATE,
3 available at [https://azsos.gov/elections/results-data/election-information/2022-election-](https://azsos.gov/elections/results-data/election-information/2022-election-information/summary-hand-count-audits-0)
4 [information/summary-hand-count-audits-0](https://azsos.gov/elections/results-data/election-information/2022-election-information/summary-hand-count-audits-0) (last visited Jan. 19, 2024). This includes in
5 Mohave County, where Elections Director Allen P. Tempert reported no discrepancies with
6 the hand count audit, writing in his report: “All hand counts came out perfect.” *Mohave*
7 *Cnty. Hand Count / Early Ballot Audit Rep.*, MOHAVE CNTY. ELECTIONS DEP’T, available
8 at <https://apps.azsos.gov/election/2022/ghc/2022generalhandcountreport-mohave.pdf> (last
9 visited Jan. 19, 2024).

10 Despite the lack of any significant issues with the voting machines’ accuracy, as
11 evidenced through the published results of the counties’ mandatory limited hand count
12 audit, some elected officials have recently pursued a mission to conduct expanded hand
13 counts in the name of voter confidence or election integrity (while simultaneously casting
14 unfounded doubt on the accuracy of proven voting machines). For example, in 2022,
15 Representative and candidate Mark Finchem and candidate Kari Lake sued to ban the use
16 of voting machines and electronic ballot tabulation equipment in Maricopa and Pima
17 Counties, seeking to force county election officials to hand-count all ballots during the 2022
18 elections. *See Lake v. Hobbs*, 623 F. Supp. 3d 1015 (D. Ariz. 2022). A federal judge
19 dismissed their suit and denied a preliminary injunction, finding that conducting a full hand
20 count would not be in the public interest, and citing a lack of any evidence that a hand count
21 would be more accurate, the impossibility of conducting a hand count without enormous
22 resources, and the expectation that “the results of the election would be delayed.” *Id.* at
23 1019 n.1. The court also noted that plaintiffs had “articulated only conjectural allegations
24 of potential injuries” involving the use of electronic voting machines. *Id.* at 1032.

25 Then, in October 2022—mere days before the midterm elections—the Cochise
26 County Board of Supervisors voted to conduct a full hand count audit of all early ballots in
27 the first instance, without starting with a limited hand count audit. The Alliance sued for
28 mandamus relief, arguing that such a full hand count audit would violate Arizona law under

1 A.R.S. § 16-602, disrupt and delay the election certification process, and impair the
2 Alliance’s interest in ensuring its members’ votes were lawfully counted. *See Pet. for Writ*
3 *of Mandamus, Ariz. All. for Retired Ams., Inc.*, No. CV-2022-00518 (Ariz. Sup. Ct. Oct. 31,
4 2022). After conducting a several-hours long hearing that included witness testimony, the
5 superior court agreed and issued an order prohibiting Cochise County from conducting a
6 full hand count audit. Ruling, *Ariz. All. for Retired Ams* (Ariz. Sup. Ct. Nov. 7, 2022). The
7 Arizona Supreme Court denied the Board of Supervisors’ motion to transfer, and the matter
8 was heard by the Court of Appeals on July 18, 2023. On October 18, 2023, the Court of
9 Appeals issued an opinion affirming the trial court’s ruling, holding that, “the legislature
10 provided for a detailed method to verify the results from electronically tabulated voting
11 machines,” which did not involve a jurisdiction-wide hand count, and “counties must follow
12 that method unless and until the legislature determines otherwise.” *Ariz. All. for Retired*
13 *Ams.*, 537 P.3d at 824. Two Cochise County Supervisors have since been charged with
14 felony election interference for failing to timely certify the 2022 election results. *See*
15 *Indictment, State v. Judd*, No. 93-SGJ-56 (Ariz. Sup. Ct. Nov. 27, 2023).

16 In this lawsuit, Plaintiff seeks judicial permission to ignore these clear
17 pronouncements that expanded hand counts are not permitted absent specific statutory
18 authority. Plaintiff’s attempt to create his own hand count procedure would subvert the
19 careful ballot-counting procedures that the Legislature has already enshrined in Arizona
20 law, risk the accuracy of the election results in a presidential year, and threaten the timely
21 certification of election results.

22 **B. Proposed Intervenor-Defendant**

23 The Alliance seeks to intervene in this matter on behalf of itself and its members.
24 The Alliance is a nonprofit corporation organized under section 501(c)(4) of the Internal
25 Revenue Code. Its membership includes approximately 50,000 retirees from public and
26 private sector unions, community organizations, and individual activists in every county in
27 Arizona, including over 2,600 in Mohave County and over 24,000 in Maricopa County. The
28 Alliance is a chartered affiliate of the Alliance for Retired Americans, which is one of the

1 country's leading grassroots senior organizations and engages in important political efforts
2 to protect and preserve programs vital to the health and economic security of older
3 Americans.

4 The Alliance's mission is to ensure social and economic justice and to protect the
5 civil rights of retirees after a lifetime of work. The Alliance accomplishes this mission by
6 ensuring that its members have access to the franchise and can meaningfully participate in
7 Arizona's elections. As part of this work, the Alliance advocates for transparency in election
8 procedures, including the vote-counting process. The Alliance also educates its members
9 on election procedures through written materials, volunteer-led trainings, and responding
10 directly to questions from voters. In particular, the Alliance works to ensure its members
11 are confident in their ability to vote and in the accuracy of each election by providing up-
12 to-date resources on changes to voting laws and election processes.

13 Based on these organizational interests, Arizona courts have recently permitted the
14 Alliance to intervene in two pending cases challenging Arizona election procedures. *See*
15 Order re: Nature of Proceedings, *Ariz. Free Enter. Club v. Fontes*, No. S-1300-CV-2023-
16 00872 (Ariz. Sup. Ct. Oct. 27, 2023) (challenging legality of drop boxes); Order re: Nature
17 of Proceedings, *Ariz. Free Enter. Club v. Fontes*, No. S-1300-CV-2023-00202 (Ariz. Sup.
18 Ct. Apr. 21, 2023) (challenging signature verification procedures).

19 ARGUMENT

20 Under Arizona Rule of Civil Procedure 24 and Arizona Rule of Procedure for Special
21 Actions 2(b), a party is entitled to intervene as of right where, on timely motion, the party
22 "claims an interest relating to the subject of the action, and . . . disposing of the action in
23 the person's absence may as a practical matter impair or impede the person's ability to
24 protect that interest, unless existing parties adequately represent that interest." Ariz. R. Civ.
25 P. 24(a)(2). Alternatively, a court may grant permissive intervention where the motion is
26 timely and a party "has a claim or defense that shares with the main action a common
27 question of law or fact." *Id.* at 24(b)(1)(B). Rule 24 is a remedial rule that "should be
28 construed liberally in order to assist parties seeking to obtain justice in protecting their

1 rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). It is “substantively
2 indistinguishable” from Federal Rule of Civil Procedure 24 such that a court “may look for
3 guidance to federal courts’ interpretations of their rules.” *Heritage Vill. II Homeowners*
4 *Ass’n v. Norman*, 246 Ariz. 567, 572 ¶ 19 (App. 2019).

5 The Alliance satisfies both Rule 24 standards and its motion to intervene should be
6 granted. Consistent with Rule 24(c)(2), the Alliance has attached a proposed answer as its
7 “pleading in intervention.” *See* Ex. A.³

8 **I. The Alliance is entitled to intervene as of right.**

9 The Alliance is entitled to intervene as of right under Rule 24(a). The Court must
10 allow intervention where a proposed intervenor satisfies four elements:

11 (1) the motion must be timely; (2) the applicant must assert an interest relating
12 to the property or transaction which is the subject of the action; (3) the
13 applicant must show that disposition of the action may impair or impede its
14 ability to protect its interest; and (4) the applicant must show that the other
parties would not adequately represent its interests.

15 *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 13 (App. 2014).

16 The Alliance meets each of these requirements.

17 **A. The motion to intervene is timely.**

18 The Alliance timely filed this motion to intervene. Plaintiff filed this suit on January
19 12, 2024. The Alliance files this motion to intervene along with its proposed Answer on
20 January 22, 2024—a little over a week after the case was filed, before any responsive
21 pleadings have been filed, and before the Defendant the Attorney General has even
22 appeared. Timeliness under Rule 24 is “flexible,” and the most important consideration “is
23 whether the delay in moving for intervention will prejudice the existing parties to the case.”

24 *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989) (quotation omitted). Here,

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28 ³ While Rule 24 requires a “pleading,” Rule 12 requires that certain defenses be asserted by
motion prior to a responsive pleading. Ariz. R. Civ. P. 12(b). Accordingly, if granted
intervention, the Alliance intends to file a motion to dismiss prior to filing its Answer.

1 granting the motion would not require altering any existing deadlines. Because the
2 Alliance’s intervention would prejudice no party, the motion is timely.

3 **B. The disposition of this case will impair the Alliance’s ability to protect**
4 **its interests and those of its members.**

5 The Alliance satisfies the interrelated second and third prongs of the standard for
6 intervention as of right: (1) it has an interest in the subject of this action, and (2) disposition
7 of this action may impair or impede its ability to protect its interest. “[A] prospective
8 intervenor ‘has a sufficient interest for intervention purposes if it will suffer a practical
9 impairment of its interests as a result of the pending litigation.’” *Wilderness Soc’y v. U.S.*
10 *Forest Serv.*, 630 F.3d 1173, 1179 (2011) (quoting *Cal. ex rel. Lockyer v. United States*,
11 450 F.3d 436, 441 (9th Cir. 2006)). “It is generally enough that the interest is protectable
12 under some law, and that there is a relationship between the legally protected interest and
13 the claims at issue.” *Wilderness Soc’y*, 630 F.3d at 1179 (quoting *Sierra Club v. EPA*, 995
14 F.2d 1478, 1484 (9th Cir. 1993)). In Arizona, “a would-be intervenor must show only that
15 impairment of its substantial legal interest *is possible* if intervention is denied”—a burden
16 courts consider “minimal.” *Heritage Vill. II*, 246 Ariz. at 572, ¶ 21 (quoting *Utah Ass’n of*
17 *Cnty. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001)). The Alliance easily clears this
18 hurdle, because the relief Plaintiff seeks will negatively impact members of the Alliance
19 and the Alliance itself.

20 *First*, as Arizona citizens and voters, the Alliance’s members have a significant
21 interest in ensuring their votes are lawfully counted, which is an essential part of the right
22 to vote. *See Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (“The right to vote includes
23 the right to have the ballot counted.” (internal quotation omitted)). Indeed, the Alliance
24 recently brought a successful lawsuit to prohibit Cochise County from conducting a full
25 hand count audit of ballots on precisely this interest. Ruling, *Ariz. All. for Retired Ams.*, No.
26 CV-2022-00518 (Ariz. Sup. Ct. Nov. 7, 2022); *see also Ariz. All. for Retired Ams.*, 537 P.3d
27 at 820 (affirming trial court’s ruling). The Alliance’s interest is even stronger here, where
28 *all ballots* stand to be *exclusively* hand-counted—not just in an audit—in direct violation of

1 Arizona law’s clear mandate that “[e]lectronic ballot tabulating systems shall be used for
2 every election, except in the rare circumstance when electronic tabulation is not
3 practicable.” EPM at 200 (citing A.R.S. §§ 16-622(A), 16-449, 16-468, 16-602, 16-621).
4 And Plaintiff expressly seeks to limit the Alliance’s victory in its prior lawsuit by requesting
5 declaratory relief that the court’s holding in that case “only applies to conducting a full hand
6 count audit” and does not prevent a full hand count “without any use of vote tabulating
7 machines[.]” Compl. at 11. The Alliance has a protectable interest in preserving its victory
8 in its prior lawsuit and to safeguard its interests stemming from that separate litigation.

9 The Alliance also has an interest in ensuring that its members’ ballots are protected
10 by the rigorous standards that ensure the accuracy, security, and privacy of electronic vote-
11 counting. If Plaintiff prevails, counties could exclusively hand-count all ballots for the
12 upcoming 2024 election cycle. But there are no standards in Arizona law to guide such a
13 hand count, let alone ensure its accuracy or security. And expansive hand counts are rife for
14 potential abuse. *See, e.g.,* Dartunorro Clark, NBC NEWS, *Cyber Ninjas, company that led*
15 *Arizona GOP election ‘audit,’ is shutting down* (Jan. 6, 2022), available at
16 [https://www.nbcnews.com/politics/politics-news/cyber-ninjas-company-led-arizona-gop-
17 election-audit-shutting-down-n1287145](https://www.nbcnews.com/politics/politics-news/cyber-ninjas-company-led-arizona-gop-election-audit-shutting-down-n1287145). As a result, Plaintiff’s requested relief threatens to
18 subject voters to lawless hand-counting, stripping those voters of all existing procedural
19 safeguards designed to protect the accuracy of the count and potentially their privacy, and
20 seriously impairing the Alliance’s ability to protect its members’ voting rights.

21 *Second*, Plaintiff’s requested relief would frustrate the Alliance’s mission and require
22 it to divert time and resources from its preplanned mission-critical activities to ensure its
23 members’ votes are counted and mitigate the harm from a full hand count. This includes
24 having to divert its limited resources toward educating its members about this fundamental
25 shift in Arizona election administration, including efforts to attempt to bolster the
26 confidence of their members to mitigate the chilling effects that such a decision could have
27 on their willingness to vote, and ensuring counties comply with their legal duty to use
28 electronic tabulating equipment when practicable. And because a full hand count will likely

1 delay and disrupt the election certification process, this also threatens the Alliance’s efforts
2 to ensure that its members’ voices are heard. Further, if Plaintiff is successful, it will likely
3 spur similarly interested actors to pursue full hand counts in other parts of the State,
4 requiring an even more extensive diversion of resources beyond Mohave County.

5 Resources spent by the Alliance to ensure that its members’ votes are properly
6 counted would otherwise be used on other mission-critical efforts like phone banking drives
7 to get out the vote among the Alliance’s members. The resulting diversion of the Alliance’s
8 scarce resources is a sufficient harm to give the Alliance an interest for intervention here.
9 *See, e.g., E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (“[A]n
10 organization has direct standing to sue where it establishes that the defendant’s behavior
11 has frustrated its mission and caused it to divert resources in response to that frustration of
12 purpose.”); Order at 15–17, *Mi Familia Vota v. Fontes*, No. 2:22-cv-00509, (D. Ariz. Feb.
13 16, 2023), ECF No. 304 (finding organizational plaintiffs had standing when voting laws
14 would require them to divert resources from other activities to assist their supporters who
15 could be disproportionately disenfranchised or discouraged from voting); *Crawford v.*
16 *Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d* 551 U.S. 181 (2008)
17 (finding that political party entity suffered injury in fact because challenged law
18 “compell[ed] the party to devote resources” in response).

19 **C. The Alliance is not adequately represented in this case.**

20 The Alliance’s interests are not adequately represented by the parties participating
21 in this case. Plainly, the Plaintiff does not represent the Alliance’s interests, as he proposes
22 an interpretation of Arizona law that is antithetical to the Alliance’s interests and which the
23 Alliance strongly disputes is valid. And the Alliance’s particularized interests in this case—
24 preventing the disenfranchisement of its members and avoiding the diversion of mission-
25 critical resources—are also not shared by the Defendant Attorney General. The Attorney
26 General has a general obligation to serve as the chief law enforcement officer for Arizona’s
27 more than seven million inhabitants, not a specific organizational interest in mobilizing
28 retired voters or advocating on their behalf. Where a Defendant “must represent the interests

1 of all people in [his jurisdiction],” he cannot give the Alliance or its members’ interests “the
2 kind of primacy” that the Alliance itself will. *Planned Parenthood Ariz., Inc. v. Am. Ass’n*
3 *of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 58 (App. 2011)
4 (permitting adversely affected groups to intervene in defense of a challenged statute).

5 Consistent with these principles, courts allow various types of organizations to
6 intervene on the same side as government officials in cases where the organization and its
7 members have interests that are distinct from the public at large. *See, e.g., Saunders v.*
8 *Super. Ct. In & For Maricopa Cnty.*, 109 Ariz. 424, 426 (1973) (holding associations of
9 policemen and firefighters not adequately represented by Attorney General in challenge to
10 state pension system because “[t]he interest of petitioners is not common to other citizens
11 in the state”); *Utah Ass’n of Cntys.*, 255 F.3d at 1255–56 (“[T]he government’s
12 representation of the public interest generally cannot be assumed to be identical to the
13 individual parochial interest of a particular member of the public merely because both
14 entities occupy the same posture in the litigation.”); *see also Trbovich v. United Mine*
15 *Workers of Am.*, 404 U.S. 528, 538 (1972) (finding union was not adequately represented
16 by Secretary of Labor where its interests in the litigation were “related, but not identical”).

17 Indeed, recently, two Arizona courts allowed the Alliance to intervene on the same
18 side as the Secretary of State in actions challenging Arizona’s election procedures. *See*
19 *Order re: Nature of Proceedings, Ariz. Free Enter. Club*, No. S-1300-CV-2023-00872 (Ariz.
20 Sup. Ct. Oct. 27, 2023) (challenging legality of drop boxes); *Order re: Nature of*
21 *Proceedings, Ariz. Free Enter. Club*, No. S-1300-CV-2023-00202 (Ariz. Sup. Ct. Apr. 21,
22 2023) (challenging signature verification procedures). Similarly, here, the Court should
23 grant the Alliance intervention because no party, including the Attorney General,
24 adequately represents the Alliance’s interests.

25 **II. In the alternative, the Alliance should be granted permissive intervention.**

26 In the alternative, the Court should grant the Alliance permissive intervention
27 because it has “a claim or defense that shares with the main action a common question of
28 law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). In particular, the Alliance’s defenses depend on

1 the same questions of law and fact surrounding the proper interpretation of Arizona election
2 law as the Attorney General’s defenses will surely involve.

3 When this required common question of law or fact is present, Arizona courts may
4 consider other factors to decide whether to grant permissive intervention, including: (1) “the
5 nature and extent of the intervenors’ interest,” (2) “their standing to raise relevant legal
6 issues,” (3) “the legal position they seek to advance, and its probable relation to the merits
7 of the case,” (4) “whether the intervenors’ interests are adequately represented by other
8 parties,” (5) “whether intervention will prolong or unduly delay the litigation,” and (6)
9 “whether parties seeking intervention will significantly contribute to full development of
10 the underlying factual issues in the suit and to the just and equitable adjudication of the
11 legal questions presented.” *Bechtel*, 150 Ariz. at 72 (1986) (quoting *Spangler v. Pasadena*
12 *City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). Like Rule 24(a), Rule 24(b) should
13 be liberally construed. *Id.* Here, each factor weighs in favor of granting the Alliance
14 permissive intervention.

15 *First*, the Alliance has distinct interests in ensuring that county Elections
16 Departments use automatic tabulating equipment. The Alliance is dedicated to vindicating
17 its members’ fundamental right to vote, including the right to have their votes counted. Full
18 hand counts in the first instance instead of using electronic equipment—which have no basis
19 in Arizona law and no guardrails to protect voters’ ballots—present an overwhelming
20 obstacle to the Alliance’s ability to safeguard its members’ voting rights. These types of
21 interests have been sufficient to allow the Alliance to intervene in election-related litigation
22 in the past, including here in Arizona. *See, e.g., Ariz. Free Enter. Club*, No. S-1300-CV-
23 2023-00202. If anything, the Alliance’s interest is only heightened here, where Plaintiff’s
24 challenge threatens to effectively undo the protections the Alliance previously obtained for
25 its members in guarding against the harms of a full hand count in litigation it brought against
26 Cochise County last general election cycle. *See Ariz. All. for Retired Ams.*, 537 P.3d 818.

27 *Second*, the Alliance and its members stand to be directly harmed by the relief
28 Plaintiff seeks in this case. The Alliance has over 2,000 members in Mohave County alone.

1 If Plaintiff is successful in obtaining his requested relief—which he admits is a precursor to
2 his pressing a decision by the Mohave County Board to conduct a full hand count in the
3 coming election—it threatens the voting rights of those members, both because hand
4 counting has been repeatedly shown to be highly error-prone and far more likely to result
5 in an inaccurate count, threatening disenfranchisement if their ballots are miscounted, but
6 also by injecting unnecessary delay and uncertainty into the process, undermining the
7 integrity of the election. These are threats not only to voters who live in the County, but
8 because of the impact that it would have on the conclusive determination of statewide races,
9 to the Alliance’s members statewide. Further, a decision in Plaintiff’s favor would likely
10 initiate similar efforts in different counties around the state, directly threatening the
11 Alliance’s members in those other counties as well. Finally, if Plaintiff is successful, the
12 Alliance will be directly harmed, as it will be forced to divert mission-critical time and
13 resources persuading counties to comply with their legal duty to use safe and reliable
14 electronic tabulating equipment and—in the case any decide to undertake a full hand
15 count—will have to similarly divert its limited resources to educate its members about this
16 sea change in election administration, including by creating new materials, organizing
17 volunteer trainings, and fielding calls from confused or concerned members.

18 *Third*, the Alliance’s interests are distinct from those of other parties in this case.
19 The Alliance represents both its own organizational interests as well as the interests of its
20 individual members who will need to overcome the hurdles Plaintiff’s requested relief will
21 inevitably impose on Arizona voters.

22 *Fourth*, the Alliance seeks intervention promptly, and its intervention will not delay
23 the proceedings.

24 *Lastly*, the Alliance will contribute to the full factual development of this case. Not
25 only does it come to the Court with the unique perspective of its members and the harm that
26 Plaintiff’s request for relief threatens them, but as the plaintiff in the prior, related Cochise
27 County litigation, the Alliance is uniquely well situated to inform the Court both about the
28 impact those prior efforts had on lawful Arizona voters, and the arguments made,

1 considered, and rejected in the course of that litigation.

2 Because Rule 24 is liberally construed to protect the rights of all interested parties,
3 the Court should permit intervention in this case.

4 **CONCLUSION**

5 For these reasons, the Alliance requests that the Court grant its Motion to Intervene
6 and participate in these proceedings as a Defendant.

7 RESPECTFULLY SUBMITTED this 22nd day of January, 2024.

8 **COPPERSMITH BROCKELMAN PLC**

9 By: /s/ D. Andrew Gaona

10 D. Andrew Gaona
Austin C. Yost

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16 *Arizona Alliance for Retired Americans*

17 **Pro Hac Vice Application Forthcoming*

18 ORIGINAL e-filed and served via electronic
19 means this 22nd day of January, 2024, upon:

20 Honorable Brad Astrowsky
21 Maricopa County Superior Court
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/s/ Diana J. Hanson _____

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EXHIBIT A

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14 **Pro Hac Vice Application Forthcoming*

15
16 **ARIZONA SUPERIOR COURT**
17 **MARICOPA COUNTY**

18 RON GOULD, in his individual capacity,
19 Plaintiff,

20 v.

21 KRIS MAYES, in her official capacity as the
22 Attorney General of the State of Arizona,
23 Defendant.

No. CV2024-000815

[PROPOSED] ANSWER

(Assigned to the Hon. Brad Astrowsky)

24 Intervenor-Defendant, the Arizona Alliance for Retired Americans (the “Alliance”),
25 answers Plaintiff’s Complaint as follows:

26 **PARTIES**

27 1. The Alliance admits that Plaintiff is a Supervisor of the Mohave County Board
28 of Supervisors and that he is seeking a declaration of the court in his individual capacity

1 only. The remainder of Paragraph 1 contains mere characterizations, legal contentions, and
2 conclusions to which no response is required. To the extent a response is required, the
3 Alliance denies the allegations.

4 2. The Alliance admits that Defendant is the Attorney General of the State of
5 Arizona and that she is being sued in her official capacity. The remainder of Paragraph 2
6 contains mere characterizations, legal contentions, and conclusions to which no response is
7 required. To the extent a response is required, the Alliance denies the allegations.

8 **JURISDICTION AND VENUE**

9 3. The Alliance is without sufficient information to form a belief as to the truth
10 or falsity of the allegations in Paragraph 3, and therefore denies them.

11 4. Paragraph 4 states legal conclusions to which no response is required. To the
12 extent a response is required, the Alliance denies the allegations.

13 5. Paragraph 5 states legal conclusions to which no response is required. To the
14 extent a response is required, and the court were to find it has jurisdiction, the Alliance
15 admits that venue would be proper in Maricopa County.

16 **FACTUAL ALLEGATIONS**

17 6. Paragraph 6 contains mere characterizations, legal contentions, and
18 conclusions to which no response is required. To the extent a response is required, the
19 Alliance denies the allegations.

20 7. Paragraph 7 contains mere characterizations, legal contentions, and
21 conclusions to which no response is required. To the extent a response is required, the
22 Alliance denies the allegations.

23 8. Admitted.

24 9. The Alliance admits that on July 20, 2023, the Mohave County Elections
25 Department submitted an analysis regarding tabulating the 2024 elections by hand. The
26 Alliance states that the analysis speaks for itself, and therefore the Alliance denies the
27 remaining allegations.

28 10. Admitted.

1 11. Admitted.

2 12. The Alliance admits that on October 18, 2023, the Arizona Court of Appeals
3 affirmed the Superior Court’s ruling in *Arizona All. For Retired Americans, Inc. v. Crosby*,
4 537 P.3d 818 (Ariz. App. Ct. 2023). The remainder of Paragraph 12 states a legal conclusion
5 to which no response is required. To the extent a response is required, the Alliance denies
6 the allegations.

7 13. Paragraph 13 states a legal conclusion to which no response is required. To the
8 extent a response is required, the Alliance denies the allegations.

9 14. Paragraph 14 states a legal conclusion to which no response is required. To the
10 extent a response is required, the Alliance denies the allegations.

11 15. Paragraph 15 states legal conclusions to which no response is required. To the
12 extent a response is required, the Alliance denies the allegations.

13 16. Paragraph 16 states legal conclusions to which no response is required. To the
14 extent a response is required, the Alliance denies the allegations.

15 17. Admitted.

16 18. The Alliance admits that the Attorney General sent a letter to the Mohave
17 County Board of Supervisors on November 19, 2023. The Alliance states that the letter
18 speaks for itself, and to the extent the allegations in Paragraph 18 mischaracterize the
19 Attorney General’s letter, the Alliance denies the allegations.

20 19. The Alliance admits that the quoted language appears in the Attorney
21 General’s November 19, 2023, letter without emphasis. The remainder of Paragraph 19
22 contains mere characterizations to which no response is required. To the extent a response
23 is required, and the allegations mischaracterize the Attorney General’s letter, the Alliance
24 denies the allegations.

25 20. The Alliance states that the Attorney General’s November 19, 2023, letter
26 speaks for itself, and to the extent the allegations in Paragraph 20 mischaracterize the
27 Attorney General’s letter, the Alliance denies the allegations.

28

1 21. The Alliance states that the Attorney General’s November 19, 2023, letter
2 speaks for itself, and to the extent the allegations in Paragraph 21 mischaracterize the
3 Attorney General’s letter, the Alliance denies the allegations. The remainder of Paragraph
4 21 contains mere characterizations, legal contentions, and legal conclusions to which no
5 response is required. To the extent a response is required, the Alliance denies the
6 allegations.

7 22. Admitted.

8 23. Admitted.

9 24. Admitted.

10 25. The Alliance is without sufficient information to form a belief as to the truth
11 or falsity of the allegations in Paragraph 25 of the Complaint and therefore denies them.

12 26. Paragraph 26 contains mere characterizations, legal contentions, and legal
13 conclusions to which no response is required. To the extent a response is required, the
14 Alliance denies the allegations.

15 27. Paragraph 27 contains mere characterizations, speculation, and legal
16 conclusions to which no response is required. To the extent a response is required, the
17 Alliance denies the allegations.

18 28. Admitted.

19 29. Admit that Supervisor Lingenfelter voted “no” on the question of whether to
20 conduct a hand count. The remainder of the allegations in Paragraph 29 are mere argument,
21 characterizations, and speculation to which no response is required. To the extent a response
22 is required, the Alliance denies the allegations.

23 30. Admitted.

24 31. The Alliance is without sufficient information to form a belief as to the truth
25 or falsity of the allegations in the first sentence of Paragraph 31, or the allegation that
26 Supervisor Gould intends to continue raising the issue and voting in favor of using hand
27 counting, and therefore denies them. The remainder of Paragraph 31 contains mere
28

1 characterizations, speculation, and legal conclusions to which no response is required. To
2 the extent a response is required, the Alliance denies the allegations.

3 **COUNT ONE**
4 **DECLARATORY RELIEF**

(Pursuant to A.R.S. § 12-1831 *et seq.*)

5 32. The Alliance incorporates by reference each of its preceding admissions,
6 denials, and statements as if fully set forth in this paragraph.

7 33. Paragraph 33 states a request for relief to which no response is required. To
8 the extent a response is required, the Alliance denies that Plaintiff is entitled to relief.

9 34. The Alliance is without sufficient information to form a belief as to the truth
10 or falsity of the allegations in Paragraph 34, and therefore denies them. In *Arizona Alliance*
11 *for Retired Americans, Inc. v. Crosby*, 537 P.3d 818, 824 ¶ 19 (Ariz. Ct. App. 2023), the
12 Arizona Court of Appeals affirmed that the Cochise County Board of Supervisors did not
13 have “independent authority” to conduct a full hand count audit in the first instance,
14 reasoning: “Because the legislature provided for a detailed method to verify the results from
15 electronically tabulated voting machines, counties must follow that method unless and until
16 the legislature determines otherwise.” The same reasoning applies to Plaintiffs’ argument
17 here. Two Cochise County Supervisors were charged with felony election interference
18 following their failed attempt to implement an unlawful full hand count audit. *See*
19 *Indictment, State of Arizona v. Judd*, No. 93-SGJ-56 (Ariz. Sup. Ct. Nov. 27, 2023).

20 35. The Alliance admits that Plaintiff has voted twice to hand count ballots. The
21 Alliance is without sufficient information to form a belief as to the truth or falsity of the
22 remaining allegations in the first two sentences in Paragraph 35. The final sentence of
23 Paragraph 35 contains a legal conclusion to which no response is required. To the extent a
24 response is required, the Alliance denies the allegations.

25 36. Paragraph 36 contains pure speculation to which no response is required. To
26 the extent a response is required, the Alliance is without sufficient information to form a
27 belief as to the truth or falsity of the allegations in Paragraph 36, and therefore denies them.
28

1 37. Paragraph 37 contains pure speculation to which no response is required. To
2 the extent a response is required, the Alliance is without sufficient information to form a
3 belief as to the truth or falsity of the allegations in Paragraph 37, and therefore denies them.

4 38. Paragraph 38 states legal conclusions and mischaracterizations to which no
5 response is required. To the extent a response is required, the Alliance denies the
6 allegations.

7 39. Paragraph 39 states a request for relief to which no response is required. To
8 the extent a response is required, the Alliance denies that Plaintiff is entitled to relief.

9 40. Paragraph 40 states a request for relief to which no response is required. To
10 the extent a response is required, the Alliance denies that Plaintiff is entitled to relief.

11 41. Paragraph 41 states a request for relief to which no response is required. To
12 the extent a response is required, the Alliance denies that Plaintiff is entitled to relief.

13 42. Paragraph 42 states a request for relief to which no response is required. To
14 the extent a response is required, the Alliance denies that Plaintiff is entitled to relief.

15 **REQUEST FOR RELIEF**

16 The Alliance denies that Plaintiff is entitled to any relief.

17 **GENERAL DENIAL**

18 The Alliance denies every allegation in the Complaint that is not expressly admitted
19 herein.

20 **AFFIRMATIVE DEFENSES**

- 21 1. Plaintiff's claims are barred in whole or in part for failure to state a claim upon
22 which relief can be granted.
- 23 2. Plaintiff's claims are barred because Plaintiff lacks standing.
- 24 3. Plaintiff's claims are barred because Plaintiff's claims are not yet ripe, and
25 seek an impermissible advisory opinion from the Court based on speculation about what
26 might happen in the future, and are not subject to any exceptions to the doctrines of ripeness
27 or mootness.
- 28

1 4. The Alliance reserves the right to assert additional affirmative defenses,
2 including, but not limited to, those set forth in Rule 8(d) of the Arizona Rules of Civil
3 Procedure, as additional facts are discovered.

4
5 WHEREFORE, having fully answered Plaintiff's Complaint, the Alliance prays for
6 judgment as follows:

7 A. That the Court dismiss Plaintiff's Complaint;

8 B. That the judgment be entered in favor of the Alliance and against Plaintiff on
9 Plaintiff's Complaint and that Plaintiff take nothing thereby;

10 C. That the Alliance be awarded its reasonable attorneys' fees and costs; and

11 D. For such other and further relief as this Court, in its inherent discretion, deems
12 appropriate.

13 RESPECTFULLY SUBMITTED this 22nd day of January, 2024.

14 **COPPERSMITH BROCKELMAN PLC**

15 By: /s/ D. Andrew Gaona

16 D. Andrew Gaona
 Austin C. Yost

17 **ELIAS LAW GROUP, LLP**

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