

1 D. Andrew Gaona (028414)
2 Austin C. Yost (034602)
3 **COPPERSMITH BROCKELMAN PLC**
4 2800 North Central Avenue, Suite 1900
5 Phoenix, Arizona 85004
6 T: (602) 381-5486
7 agaona@cblawyers.com
8 ayost@cblawyers.com

6 Lalitha D. Madduri*
7 Justin Baxenberg*
8 Tina Meng Morrison*
9 Ian U. Baize*
10 **ELIAS LAW GROUP LLP**
11 250 Massachusetts Ave NW, Suite 400
12 Washington, D.C. 20001
13 T: (202) 968-4330
14 lmadduri@elias.law
15 jbaxenberg@elias.law
16 tmengmorrison@elias.law
17 ibaize@elias.law

13 *Attorneys for Proposed Intervenor-*
14 *Defendants Arizona Alliance for Retired*
15 *Americans and Voto Latino*

15 **Pro Hac Vice Application Forthcoming*

17 **ARIZONA SUPERIOR COURT**

18 **MARICOPA COUNTY**

20 ARIZONA FREE ENTERPRISE CLUB,

21 Plaintiff,

22 v.

23 ADRIAN FONTES, in his official capacity as
24 the Secretary of State of Arizona,

25 Defendant.

No. CV2024-002760

MOTION TO INTERVENE

(Assigned to the Hon. Susanna Pineda)

26 **INTRODUCTION**

27 Plaintiff seeks to invalidate provisions of the Elections Procedures Manual (“EPM”)
28 that prohibit threatening and intimidating behavior at polling places and drop boxes under

1 the guise of free speech. As demonstrated in 2022, the sort of activity in which Plaintiff
2 claims a right to engage is better understood as voter intimidation that deters qualified
3 Arizonans from exercising their fundamental right to vote. In late October 2022, when early
4 voting for the 2022 general election was well underway, armed and masked vigilantes
5 gathered in front of ballot drop boxes in Arizona. Like Plaintiff, they claimed a right to
6 monitor, observe, and photograph voters using drop boxes, purportedly in the name of
7 election integrity. But their effect was to intimidate and interfere with lawful voters'
8 exercise of their fundamental right to vote. A flurry of litigation ensued—including a
9 lawsuit filed by Proposed Intervenor-Defendants the Arizona Alliance for Retired
10 Americans (“Alliance”) and Voto Latino (together, “Proposed Intervenors”)—and the
11 armed drop box watchers were ultimately enjoined from continuing to intimidate voters in
12 that election.

13 Against this backdrop, the Secretary of State (“Secretary”) clarified prohibitions
14 against voter intimidation in the 2023 EPM. As the state’s chief election official, the
15 Legislature has given the Secretary considerable discretion to issue the EPM in order to
16 “achieve and maintain the maximum degree of correctness, impartiality, uniformity and
17 efficiency on the procedures for early voting and voting,” including at polling places and
18 drop boxes. A.R.S. § 16-452(A). But the Secretary does not enact the EPM alone—he
19 consults county boards of supervisors and election officials to inform the EPM’s directions
20 to ensure consistent administration of the state’s elections across its fifteen counties, and
21 the EPM is effective only after the Governor and Attorney General approve the Secretary’s
22 proposal. Once the EPM is effective, it has the force of law unless it directly contradicts
23 express and mandatory statutory requirements.

24 Plaintiff’s lawsuit attempts to unwind this process and invalidate important—and as
25 2022 proved, necessary—protections against electoral harassment, intimidation, and
26 vigilantism. Plaintiff’s putative constitutional challenge to the EPM’s voter intimidation
27 provisions, as well as its challenge to the EPM provisions confirming federal-only voters
28 may participate in the Presidential Preference Election, are immediate threats to the voting

1 rights of Proposed Intervenors’ members and constituents. Voter intimidation and
2 harassment have a substantial impact on members of historically marginalized populations
3 in particular, including Arizona’s Latino community.

4 Because Proposed Intervenors seek to represent the interests of these voters—which
5 are unrepresented by the current parties to the litigation—as well as their own substantial
6 and legally protectable interests as organizations dedicated to enfranchising their members
7 and protecting the right to vote, Proposed Intervenors readily meet the requirements for
8 intervention as of right, and in the alternative, permissive intervention, under Arizona Rule
9 of Civil Procedure 24. They have moved quickly to intervene, and while the Secretary
10 shares the objective of defending the 2023 EPM, he does not (and cannot) share Proposed
11 Intervenors’ particular organizational objectives or have a specific stake in ensuring the
12 civic participation of their members and constituents. Furthermore, both Proposed
13 Intervenors have been parties to litigation that involved voter intimidation tactics of the type
14 prohibited by the challenged EPM provisions, which Plaintiff now explicitly seeks to make
15 lawful. Finally, both organizations have regularly litigated—including as intervenors—
16 issues related to election administration and voting rights in Arizona.

17 Having satisfied the applicable legal standards, and given the grave threat Plaintiff’s
18 claims pose to their missions, members, and constituents, Proposed Intervenors should be
19 granted intervention as of right or, in the alternative, permissive intervention.

20 Proposed Intervenors have conferred with counsel for Plaintiff and Defendant for
21 their positions on this Motion. Defendant does not oppose this Motion, and Plaintiff objects.

22 **BACKGROUND**

23 The Alliance is a nonprofit corporation whose membership includes around 50,000
24 retirees from public and private sector unions, community organizations, and individual
25 activists in every county in Arizona, including 24,717 members in Maricopa County alone.
26 The Alliance’s mission is to ensure social and economic justice and protect the civil rights
27 of retirees after a lifetime of work, including by ensuring that its members have access to
28 the franchise and can meaningfully participate in Arizona’s elections.

1 The protection of the right to vote is critical to the Alliance achieving its mission
2 and, to this end, over the past several years, the Alliance has repeatedly been involved in
3 litigation implicating a range of voting-rights issues. This includes litigation in 2022, in
4 which the Alliance, alongside Voto Latino, sought emergency relief to enjoin exactly the
5 type of voter intimidation Plaintiff seeks to legalize. *See Ariz. All. for Retired Ams. v. Clean*
6 *Elections USA*, No. 2:22-cv-01823-MTL (D. Ariz.). The Alliance also brought successful
7 litigation to protect its members' voting rights when county officials sought to delay and
8 disrupt ballot counting and the canvass of election results in Cochise County in 2022, *see*
9 *Ariz. All. for Retired Ams. v. Crosby*, No. S0200CV202200552 (Cochise Cnty. Super. Ct.);
10 *Ariz. All. for Retired Ams. v. Crosby*, No. CV2022-00518 (Cochise Cnty. Super. Ct.), and
11 has moved to intervene in a similar suit in Mohave County this year, *see Gould v. Mayes*,
12 No. CV2024-000815 (Maricopa Cnty. Super. Ct.). The Alliance also sought and was
13 granted intervention as a defendant intervenor in two previously filed ongoing challenges
14 to EPM provisions governing the use of ballot drop boxes and signature-verification
15 procedures. *See Ariz. Free Enter. Club v. Fontes*, No. S1300CV202300202 (Yavapai Cnty.
16 Super. Ct.); *Ariz. Free Enter. Club v. Fontes*, No. S1300CV202300872 (Yavapai Cnty.
17 Super. Ct.). Finally, the Alliance has similarly moved to intervene to defend the validity of
18 the EPM in several other cases, all filed within the past few weeks, and all of which
19 threatens its members' ability to successfully cast a ballot in Arizona elections. *See Petersen*
20 *v. Fontes*, No. CV2024-001942 (Maricopa Cnty. Super. Ct.); *Strong Cmty's Found. of Ariz.,*
21 *Inc. v. Maricopa Cnty*, No. CV2024-002441 (Maricopa Cnty. Super. Ct.); *Republican Nat'l*
22 *Comm. v. Fontes*, No. CV2024-050553 (Maricopa Cnty. Super. Ct.).

23 Voto Latino is the largest Latino advocacy organization in the nation. Its mission is
24 to grow political engagement in historically underrepresented communities, especially in
25 its core constituency of young Latino voters. Since 2012, Voto Latino has registered over
26 60,000 voters in Arizona. To further its mission, Voto Latino spends significant resources
27 on voter education and mobilization initiatives, including voter-registration drives; email
28 and social-media campaigns; digital ads communicating directly with Latino voters; and

1 text banking to encourage voters to vote, remind them to update their voter registrations,
2 and inform them about available means of voting. Voto Latino also seeks to educate Latino
3 voters on issues that impact their community and where candidates stand on those issues.

4 Like the Alliance, Voto Latino has repeatedly been involved in Arizona litigation to
5 protect the right to vote, including challenges to the validity of important EPM procedures.
6 *See, e.g., Ariz. All. for Retired Ams. v. Hobbs*, No. CV-22-01374-PHX-GMS (D. Ariz.);
7 *Ariz. Free Enter. Club*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct.); *Strong Cmty.*
8 *Found. of Ariz., Inc.*, No. CV2024-002441 (Maricopa Cnty. Super. Ct.) (Alliance and Voto
9 Latino moved to intervene). Of particular relevance here, Voto Latino is a party to a federal
10 lawsuit challenging the documentary proof of citizenship (“DPOC”) provision that forms
11 the basis of Count II of Plaintiff’s complaint. *See Mi Familia Vota v. Fontes*, No. CV-22-
12 00509-PHX-SRB (D. Ariz.). As a result of Voto Latino’s litigation, the court in that case
13 found that the statutory provision underlying Plaintiff’s Count II in this new complaint is
14 preempted by federal law. *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2023
15 WL 8181307, at *7, *18 (D. Ariz. Sept. 14, 2023). Voto Latino has a strong interest in
16 participating in this litigation to ensure that this Court has a full understanding of those
17 proceedings and does not issue relief inconsistent with the conclusions of the federal court
18 on these issues.

19 ARGUMENT

20 Under Arizona Rule of Civil Procedure 24, a party is entitled to intervene where, on
21 timely motion, the party “claims an interest relating to the subject of the action, and . . .
22 disposing of the action in the person’s absence may as a practical matter impair or impede
23 the person’s ability to protect that interest, unless existing parties adequately represent that
24 interest.” Ariz. R. Civ. P. 24(a)(2). Alternatively, intervention may be permitted where the
25 motion is timely and a party “has a claim or defense that shares with the main action a
26 common question of law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). Rule 24 is a remedial rule
27 that “should be construed liberally in order to assist parties seeking to obtain justice in
28 protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). It is

1 “substantively indistinguishable” from Federal Rule of Civil Procedure 24 such that a court
2 “may look for guidance to federal courts’ interpretations of their rule.” *Heritage Vill. II*
3 *Homeowners Ass’n v. Norman*, 246 Ariz. 567, 572 ¶ 19 (App. 2019).

4 Proposed Intervenors satisfy both Rule 24 standards and their motion to intervene
5 should be granted. Consistent with Rule 24, Proposed Intervenors have attached a proposed
6 answer as their “pleading in intervention.” Ariz. R. Civ. P. 24(c).¹

7 **I. The Alliance and Voto Latino are entitled to intervene as of right.**

8 Proposed Intervenors are entitled to intervene as of right under Rule 24(a). The Court
9 must allow intervention where a proposed intervenor satisfies four elements:

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

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

14 Proposed Intervenors meet each of these requirements.

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

16 Proposed Intervenors timely filed this motion to intervene. Plaintiff filed this suit on
17 February 9, 2024. Proposed Intervenors file this motion to intervene along with their
18 proposed Answer on Wednesday, February 14—just three business days later—and before
19 any responsive pleadings have been filed.

20 Timeliness under Rule 24 is “flexible,” and the most important consideration “is
21 whether the delay in moving for intervention will prejudice the existing parties to the case.”
22 *Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446 (App. 1989) (cleaned up). Here, there
23 has been no delay and granting the motion would not require altering any existing deadlines.
24 Because intervention would prejudice no party, the motion is timely.

25
26
27 ¹ While Rule 24 requires a “pleading,” Rule 12 requires that certain defenses be asserted by
28 motion prior to a responsive pleading. Ariz. R. Civ. P. 12(b). Accordingly, if granted
intervention, Proposed Intervenors intend to file a motion to dismiss prior to filing their
proposed Answer.

1 **B. The disposition of this case will impair Proposed Intervenors’ ability to**
2 **protect their interests and those of their members.**

3 Proposed Intervenors satisfy the intertwined second and third prongs of the standard
4 for intervention as of right: (1) they have an interest in the subject of this action, and
5 (2) disposition of this action may impair or impede their ability to protect their interests.
6 “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if it will
7 suffer a practical impairment of its interests as a result of the pending litigation.’”
8 *Wilderness Soc’y v. U.S. Forest Servs.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting
9 *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). “[I]t is
10 generally enough that the interest is protectable under some law, and that there is a
11 relationship between the legally protected interest and the claims at issue.” *Id.* (quoting
12 *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). In Arizona, “a would-be
13 intervenor must show only that impairment of its substantial legal interest *is possible* if
14 intervention is denied”—a burden courts consider “minimal.” *Heritage Vill. II*, 246 Ariz. at
15 572 ¶ 21 (quoting *Utah Ass’n of Cnty’s. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001)).
16 Proposed Intervenors easily clear this hurdle, because the relief Plaintiff seeks will harm
17 both Proposed Intervenors’ membership and constituents and the organizations themselves.

18 *First*, Proposed Intervenors have an interest in ensuring that their members and
19 constituents can exercise the franchise free from harassment and intimidation. *Cf., e.g.,*
20 *Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (risk
21 that some voters will be disenfranchised confers organizational standing); *Charles H.*
22 *Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (“A plaintiff need
23 not have the franchise wholly denied to suffer injury.”); *see also Bechtel v. Rose*, 150 Ariz.
24 68, 72 (1986) (explaining that standing poses higher bar than intervention because
25 intervenor “does not even have to be a person who would have been a proper party at the
26 beginning of the suit” (cleaned up)). If Plaintiff’s lawsuit is successful, it will permit and
27 encourage voter intimidation, impairing Proposed Intervenors’ members and constituents’
28 ability to freely cast ballots.

1 Plaintiff's lawsuit poses significant dangers to Proposed Intervenors. By their own
2 admission, Plaintiff seeks this Court's authorization to engage in the type of intimidating
3 behavior that a federal court enjoined in 2022. *See* Compl. for Declaratory Relief
4 ("Compl.") ¶ 38 ("AFEC members are not only interested in observing activity at drop
5 boxes, but they are also just as interested in conveying a message to others that the drop
6 boxes are being watched and should be watched."); *Ariz. All. for Retired Ams. v. Clean*
7 *Elections USA*, No. CV-22-01823-PHX-MTL, 2022 WL 17088041, at *1 (D. Ariz. Nov. 1,
8 2022) (enjoining defendants from "speak[ing] to or yell[ing] at an individual who that
9 Defendant knows is (i) returning ballots to the drop box, and (ii) who is within 75 feet of
10 the drop box"). Preventing this type of harassment and intimidation of their members and
11 constituents is of paramount importance to Proposed Intervenors. The voters who stand to
12 be most impacted by this sort of conduct at drop boxes are those who vote using early ballots
13 and live in communities that are underserved (or not served at all) by reliable mail service.
14 This includes voters in Arizona's most vulnerable and marginalized communities, such as
15 underserved minority communities and elderly voters where access to the franchise is
16 already difficult and burdensome—precisely Proposed Intervenors' members and
17 constituents.

18 Moreover, in Count II, Plaintiff seeks to invalidate EPM provisions permitting
19 federal-only voters to participate in the Presidential Preference Election. This is an issue of
20 particular significance to Voto Latino, which brought a federal lawsuit challenging the
21 underlying provisions, which resulted in an order on summary judgment from the federal
22 court finding that the statutory provisions underlying Count II is preempted by federal law.
23 *See Mi Familia Vota*, 2023 WL 8181307, at *7, *18. Plaintiff now attempts to invalidate
24 portions of the EPM that are consistent with the conclusions of the federal court in that case.
25 Voto Latino's interest as a party to that predecessor litigation warrants intervention in itself.
26 If Plaintiff prevails on these counts, it could create confusion around Arizona's DPOC laws,
27 burdening Voto Latino's constituents. Along with injecting confusion into the upcoming
28 election cycle, invalidating these EPM provisions could also open the door to the

1 disproportionate targeting of nonwhite and minority Arizonans.

2 *Second*, if the EPM’s voter intimidation provisions are invalidated, Proposed
3 Intervenor will be forced to divert resources from their mission-critical work to ensure that
4 their members are not threatened or disenfranchised as a result. This further constitutes a
5 protectable interest sufficient for intervention as of right. *See, e.g., E. Bay Sanctuary*
6 *Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (“[A]n organization has direct
7 standing to sue where it establishes that the defendant’s behavior has frustrated its mission
8 and caused it to divert resources in response to that frustration of purpose.”); *Mi Familia*
9 *Vota*, 2023 WL 8183070, at *10 (holding organizational plaintiffs had standing when voting
10 laws would require them to divert resources from other activities to assist their supporters
11 who might be disproportionately disenfranchised or discouraged from voting); *see also*
12 *Bechtel*, 150 Ariz. at 72 (stating that interest necessary for intervention is lower bar than
13 standing).

14 If Plaintiff prevails, Proposed Intervenor would need to redirect time and resources
15 to educate their members and constituents on the new, harsher environment for drop box
16 and in-person voters. Proposed Intervenor would also have to divert resources to mitigate
17 the chilling effects of such a remedy on their members and constituents and any resulting
18 uptick in voter harassment. Proposed Intervenor would need to reallocate resources meant
19 for other programming towards quelling members’ and constituents’ anxieties about using
20 drop boxes or voting in person, educating their voters about how to safely navigate the
21 voting process, and finding other potentially more burdensome voting alternatives. The
22 Alliance would need to reallocate resources meant for other programming for the
23 advancement of the rights and interests of retired Americans, while Voto Latino would have
24 to change its GOTV efforts and educate its constituents about the potential for harsher
25 DPOC rules arising out of Count II. Such diversions of Proposed Intervenor’s limited
26 resources constitute impairments of cognizable interests, thus satisfying the second and
27 third prongs for intervention as of right.

28 **C. Proposed Intervenor are not adequately represented in this case.**

1 Proposed Intervenors’ interests are not adequately represented by the parties
2 participating in this case. Plaintiff clearly does not represent Proposed Intervenors’ interests,
3 as Plaintiff seeks to invalidate provisions of the EPM that safeguard the voting rights and
4 physical safety of Proposed Intervenors’ members and constituents. Nor are Proposed
5 Intervenors’ particular interests here—namely, preventing the disenfranchisement of their
6 members and constituents and avoiding the diversion of their mission-critical resources—
7 shared by the Secretary, who possesses only a general obligation to serve as Arizona’s chief
8 elections officer, not a specific interest in mobilizing and educating retired or Latinx voters
9 and advocating on their behalf.

10 Courts have recognized that government officials like the Secretary “must represent
11 the interests of all people in [his jurisdiction],” and he therefore cannot give Proposed
12 Intervenors or their members’ interests “the kind of primacy” that Proposed Intervenors
13 themselves will. *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life Obstetricians &*
14 *Gynecologists*, 227 Ariz. 262, 279 ¶ 58 (App. 2011) (permitting adversely affected groups
15 to intervene in defense of a challenged statute). Indeed, where an original party to the suit
16 is a government entity whose position is “necessarily colored by its view of the public
17 welfare rather than the more parochial views of a proposed intervenor whose interest is
18 personal to it,” the burden of establishing inadequacy of representation by existing parties
19 is “comparatively light.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998).

20 For these reasons, courts allow organizations to intervene on the same side as
21 government officials in cases where the organization and its members have interests that
22 are distinct from the public at large. *See, e.g., Saunders v. Super. Ct. In & For Maricopa*
23 *Cnty.*, 109 Ariz. 424, 426 (1973) (holding that associations of policemen and firefighters
24 were not adequately represented by the Attorney General in challenge to state pension
25 system because “[t]he interest of petitioners is not common to other citizens in the state”);
26 *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011)
27 (allowing environmental group to intervene where it had different objectives than the U.S.
28 Forest Service); *Utah Ass’n of Cntys.*, 255 F.3d at 1255–56 (“[T]he government’s

1 representation of the public interest generally cannot be assumed to be identical to the
2 individual parochial interest of a particular member of the public merely because both
3 entities occupy the same posture in the litigation.”); *see also Trbovich v. United Mine*
4 *Workers of Am.*, 404 U.S. 528, 538 (1972) (finding that union was not adequately
5 represented by Secretary of Labor where its interests in the litigation were “related, but not
6 identical.”). The same is appropriate here, especially considering that the federal lawsuit
7 related to Count II was brought against the Secretary of State.

8 Consistent with this precedent, Arizona courts have recently allowed both the
9 Alliance and Voto Latino to intervene on the same side as the Secretary in similar litigation,
10 including litigation challenging the validity of various EPM provisions—just as Plaintiff
11 challenges here. *See* Order re: Nature of Proceedings, *Ariz. Free Enter. Club*, No.
12 S1300CV202300202 (Yavapai Cnty. Super. Ct. Apr. 21, 2023) (granting intervention to
13 nonprofit organizations, including the Alliance, in case seeking to invalidate EPM provision
14 regarding signature-verification procedures); Order Re: Nature of Proceedings, *Ariz. Free*
15 *Enter. Club*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct. Oct. 27, 2023) (granting
16 intervention to the Alliance and Voto Latino in case seeking to invalidate EPM provisions
17 authorizing use of ballot drop boxes). The same result is appropriate here: The Court should
18 grant Proposed Intervenors intervention as of right so that they may represent their unique
19 and substantial interests that stand to be harmed by Plaintiff’s requested relief.

20 **II. In the alternative, Proposed Intervenors should be granted permissive**
21 **intervention.**

22 In the alternative, the Court should grant Proposed Intervenors permissive
23 intervention because they have “a claim or defense that shares with the main action a
24 common question of law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). In particular, Proposed
25 Intervenors’ defenses depend on the same questions of law and fact surrounding the proper
26 interpretation of Arizona election law as the Secretary’s defenses will surely involve.

27 When this required common question of law or fact is present, Arizona courts may
28 consider other factors to decide whether to grant permissive intervention, including:

1 [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
3 probable relation to the merits of the case, [4] whether the intervenors'
4 interests are adequately represented by other parties, [5] whether intervention
5 will prolong or unduly delay the litigation, and [6] whether parties seeking
6 intervention will significantly contribute to full development of the
7 underlying factual issues in the suit and to the just and equitable adjudication
8 of the legal questions presented.

9 *Bechtel*, 150 Ariz. at 72 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326,
10 1329 (9th Cir. 1977)). Like Rule 24(a), Rule 24(b) should be liberally construed. *Id.* Here,
11 these factors favor permissive intervention.

12 *First*, Proposed Intervenors have distinct interests in ensuring their members and
13 constituents are not intimidated or disenfranchised and in avoiding the diversion of their
14 resources to last-minute voter-education initiatives and other responsive efforts. In
15 particular, invalidating EPM provisions relating to voter intimidation and DPOC would
16 disproportionately impact Proposed Intervenors and the communities they represent.

17 *Second*, as the only parties representing Arizona voters, Proposed Intervenors are
18 uniquely positioned to not only provide legal arguments relevant to Plaintiff's claims—as
19 discussed above, they are now litigating some of these very issues in other pending cases—
20 but also demonstrate the injuries to voters and voter-advocacy groups that would follow
21 from the relief Plaintiff seeks and the repeated misrepresentations of Arizona law that
22 Plaintiff has propounded in this lawsuit. Moreover, Proposed Intervenors and their counsel
23 have significant experience litigating election and voting-rights matters in this Court and, if
24 granted intervention, would substantially contribute to robust analysis of the relevant legal
25 and factual issues.

26 *Third*, as discussed above, Proposed Intervenors' interests are distinct from those of
27 the other parties in this case. The Alliance and Voto Latino represent their own
28 organizational interests and missions, as well as the interests of their individual members
and constituents who will need to overcome the hurdles Plaintiff's requested relief will
inevitably impose on Arizona voters who choose to vote by absentee ballot or in person.

Finally, Proposed Intervenors have promptly sought intervention, which will neither

1 delay the proceedings nor prejudice any party. To the contrary, Proposed Intervenors have
2 a particular interest in the expeditious resolution of this case to avoid uncertainty and
3 attendant harms to their organizational interests, members, and constituents.

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

6 **CONCLUSION**

7 For these reasons, Proposed Intervenors respectfully request that the Court grant
8 their motion and allow them to intervene as defendants in these proceedings.²

9 RESPECTFULLY SUBMITTED this 14th day of February, 2024.

10 **COPPERSMITH BROCKELMAN PLC**

11 By: /s/ D. Andrew Gaona

12 D. Andrew Gaona

13 Austin C. Yost

14 **ELIAS LAW GROUP, LLP**

15 Lalitha D. Madduri*

16 Justin Baxenberg*

17 Tina Meng Morrison*

18 Ian Baize*

19 *Attorneys for Proposed Intervenor-Defendants*
20 *Arizona Alliance for Retired Americans and*
21 *Voto Latino*

22 *Pro Hac Vice Application Forthcoming

23 ORIGINAL e-filed and served via electronic
24 means this 14th day of February, 2024, upon:

25 Honorable Susanna Pineda
26 c/o Myrna Mejia, Judicial Assistant
27 cvj12@jbaz.mc.maricopa.gov
28 Myrna.Mejia@JBAZMC.Maricopa.Gov

Veronica Lucero
Vlucero@davillierlawgroup.com

² Proposed Intervenors also respectfully request that the Court set a schedule regarding this Motion that allows for their participation in any briefing schedules and hearings that are held.

1 PhxAdmin@davillierlawgroup.com

2 Davillier Law Group LLC

3 4105 N. 20th St. Ste. 110

4 Phoenix, Arizona 85016

5 Timothy A. La Sota

6 tim@timlasota.com

7 Grand Canyon Legal Center

8 1835 E. Elliot Road Ste. 102

9 Tempe, Arizona 85284-1747

10 Richard P. Lawson

11 rlawson@americafirstpolicy.com

12 Jessica H. Steinmann

13 jsteinmann@americafirstpolicy.com

14 America First Policy Institute

15 1001 Pennsylvania Ave., NW, Suite 530

16 Washington, DC 20004

17 *Attorneys for the Plaintiff*

18 Kara Karlson

19 kara.karlson@azag.gov

20 Kyle Cummings

21 kyle.cummings@azag.gov

22 Assistant Attorneys General

23 2005 N. Central Avenue

24 Phoenix Arizona 85004-2926

25 *Attorneys for Secretary of State Adrian Fontes*

26 */s/ Diana J. Hanson*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 D. Andrew Gaona (028414)
2 Austin C. Yost (034602)
3 **COPPERSMITH BROCKELMAN PLC**
4 2800 North Central Avenue, Suite 1900
5 Phoenix, Arizona 85004
6 T: (602) 381-5486
7 agaona@cblawyers.com
8 ayost@cblawyers.com

9 Lalitha D. Madduri*
10 Justin Baxenberg*
11 Tina Meng Morrison*
12 Ian U. Baize*
13 **ELIAS LAW GROUP LLP**
14 250 Massachusetts Ave NW, Suite 400
15 Washington, D.C. 20001
16 T: (202) 968-4330
17 lmadduri@elias.law
18 jbaxenberg@elias.law
19 tmengmorrison@elias.law
20 ibaize@elias.law

21 *Attorneys for Proposed Intervenor-*
22 *Defendants Arizona Alliance for Retired*
23 *Americans and Voto Latino*

24 **Pro Hac Vice Application Forthcoming*

25 **ARIZONA SUPERIOR COURT**

26 **MARICOPA COUNTY**

27 ARIZONA FREE ENTERPRISE CLUB,

28 Plaintiff,

v.

ADRIAN FONTES, in his official capacity as
the Secretary of State of Arizona,

Defendant.

No. CV2024-002760

**[PROPOSED] ANSWER TO
VERIFIED SPECIAL ACTION
COMPLAINT**

(Assigned to the Hon. Susanna Pineda)

Proposed Intervenor-Defendants the Arizona Alliance for Retired Americans
("Alliance") and Voto Latino (together, "Proposed Intervenor") answer Plaintiff's Verified
Special Action Complaint ("Complaint") as follows:

1 1. Proposed Intervenors admit that the 2023 EPM became operative in December
2 2023. Paragraph 1 otherwise states a legal conclusion to which no response is required. To
3 the extent a response is required, Proposed Intervenors deny the allegations.

4 2. Proposed Intervenors admit that changes have been made from the 2019 EPM
5 to the 2023 EPM, and that the 2019 EPM was the previously operative version.

6 3. Paragraph 3 states a legal conclusion to which no response is required. To the
7 extent a response is required, Proposed Intervenors deny the allegations.

8 4. Paragraph 4 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenors deny the allegations.

10 5. Paragraph 5 states a legal conclusion to which no response is required. To the
11 extent a response is required, Proposed Intervenors deny the allegations.

12 6. Paragraph 6 states a legal conclusion to which no response is required. To the
13 extent a response is required, Proposed Intervenors deny that Plaintiff is entitled to any
14 relief whatsoever.

15 **PARTIES, JURISDICTION, AND VENUE**

16 7. Proposed Intervenors lack sufficient knowledge or information to form a belief
17 as to the truth or falsity of the allegations in Paragraph 7 and therefore deny them.

18 8. Proposed Intervenors lack sufficient knowledge or information to form a belief
19 as to the truth or falsity of the allegations in Paragraph 8 and therefore deny them.

20 9. Proposed Intervenors lack sufficient knowledge or information to form a belief
21 as to the truth or falsity of the allegations in Paragraph 9 and therefore deny them.

22 10. Proposed Intervenors lack sufficient knowledge or information to form a belief
23 as to the truth or falsity of the allegations in Paragraph 10 and therefore deny them.

24 11. Admit.

25 12. Paragraph 12 states a legal conclusion to which no response is required. To the
26 extent a response is required, Proposed Intervenors deny the allegations.

27 13. Admit that the office of Defendant Adrian Fontes, named in his official
28 capacity as the Secretary of State of Arizona, is in Maricopa County. To the extent

1 Paragraph 13 states a legal conclusion, no response is required. To the extent a response is
2 required, Proposed Intervenor admits the allegations.

3 14. Paragraph 14 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenor denies the allegations.

5 15. Paragraph 15 states a legal conclusion to which no response is required. To the
6 extent a response is required, and the Court finds it has jurisdiction, Proposed Intervenor
7 admits the allegations.

8 GENERAL ALLEGATIONS

9 16. Paragraph 16 states a legal conclusion to which no response is required. To the
10 extent a response is required, Proposed Intervenor admits the allegations.

11 17. Proposed Intervenor admits that Governor Hobbs approved the 2023 EPM and
12 that the cited document contains the quoted language.

13 18. Proposed Intervenor admits that the Attorney General Mayes approved the
14 2023 EPM.

15 19. Paragraph 19 states a legal conclusion to which no response is required. To the
16 extent a response is required, Proposed Intervenor admits that the quoted language appears
17 in the cited statute.

18 20. Paragraph 20 states a legal conclusion to which no response is required. To the
19 extent a response is required, Proposed Intervenor admits the allegations.

20 21. Paragraph 21 states a legal conclusion to which no response is required. To the
21 extent a response is required, Proposed Intervenor admits the allegations.

22 22. Paragraph 22 states a legal conclusion to which no response is required. To the
23 extent a response is required, Proposed Intervenor admits the allegations.

24 23. Paragraph 23 states a legal conclusion to which no response is required. To the
25 extent a response is required, Proposed Intervenor denies the allegations.

26 24. Proposed Intervenor lacks sufficient knowledge or information to form a belief
27 as to the truth or falsity of the allegations in Paragraph 24 and therefore denies them.

28 25. Paragraph 25 states a legal conclusion to which no response is required. To the

1 extent a response is required, Proposed Intervenor's admit that the cited document contains
2 the quoted language. To the extent Paragraph 25 characterizes the quoted language or its
3 legal significance, Proposed Intervenor's deny those characterizations.

4 26. Paragraph 26 states a legal conclusion to which no response is required. To the
5 extent a response is required, Proposed Intervenor's deny the allegations.

6 27. Paragraph 27 states a legal conclusion to which no response is required. To the
7 extent a response is required, Proposed Intervenor's deny the allegations.

8 28. Paragraph 28 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenor's admit that the quoted language appears
10 without the alterations in the cited statute. To the extent Paragraph 28 characterizes the
11 quoted language or its legal significance, Proposed Intervenor's deny those
12 characterizations.

13 29. Paragraph 29 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor's admit that the cited document contains
15 the quoted language. To the extent Paragraph 29 characterizes the quoted language or its
16 legal significance, Proposed Intervenor's deny those characterizations.

17 30. Paragraph 30 states a legal conclusion to which no response is required. To the
18 extent a response is required, Proposed Intervenor's admit that the cited document contains
19 the quoted language without emphasis or alterations. To the extent Paragraph 30
20 characterizes the quoted language or its legal significance, Proposed Intervenor's deny those
21 characterizations.

22 31. Paragraph 31 states a legal conclusion to which no response is required. To the
23 extent a response is required, Proposed Intervenor's deny the allegations.

24 32. Paragraph 32 states a legal conclusion to which no response is required. To the
25 extent a response is required, Proposed Intervenor's deny the allegations.

26 33. Paragraph 33 states a legal conclusion to which no response is required. To the
27 extent a response is required, Proposed Intervenor's deny the allegations.

28

1 34. Paragraph 34 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenors deny the allegations.

3 35. Paragraph 35 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenors deny the allegations.

5 36. Paragraph 36 states a legal conclusion to which no response is required. To the
6 extent a response is required, Proposed Intervenors deny the allegations.

7 37. Paragraph 37 states a legal conclusion to which no response is required. To the
8 extent a response is required, Proposed Intervenors deny the allegations.

9 38. Proposed Intervenors lack sufficient knowledge or information to form a belief
10 as to the truth or falsity of the allegations in Paragraph 38 and therefore deny them.

11 39. Paragraph 39 states a legal conclusion to which no response is required. To the
12 extent a response is required, Proposed Intervenors lack sufficient knowledge or
13 information to form a belief as to the truth or falsity of the allegations in Paragraph 39 and
14 therefore deny them.

15 40. Paragraph 40 states a legal conclusion to which no response is required. To the
16 extent a response is required, Proposed Intervenors deny the allegations.

17 41. Paragraph 41 states a legal conclusion to which no response is required. To the
18 extent a response is required, Proposed Intervenors deny the allegations.

19 42. Paragraph 42 states a legal conclusion to which no response is required. To the
20 extent a response is required, Proposed Intervenors deny the allegations.

21 43. Paragraph 43 states a legal conclusion to which no response is required. To the
22 extent a response is required, Proposed Intervenors deny the allegations.

23 44. Paragraph 44 states a legal conclusion to which no response is required. To the
24 extent a response is required, Proposed Intervenors deny the allegations.

25 45. Paragraph 45 states a legal conclusion to which no response is required. To the
26 extent a response is required, Proposed Intervenors deny the allegations.

27 46. Paragraph 46 states a legal conclusion to which no response is required. To the
28 extent a response is required, Proposed Intervenors deny the allegations.

1 47. Paragraph 47 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenor deny the allegations.

3 48. Paragraph 48 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenor deny the allegations.

5 49. Paragraph 49 states a legal conclusion to which no response is required. To the
6 extent a response is required, Proposed Intervenor deny that Plaintiff is entitled to any
7 relief whatsoever.

8 50. Paragraph 50 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenor deny that Plaintiff is entitled to any
10 relief whatsoever.

11 51. Paragraph 51 states a legal conclusion to which no response is required. To the
12 extent a response is required, Proposed Intervenor deny the allegations. Proposed
13 Intervenor also deny that Plaintiff is entitled to any relief whatsoever.

14 **COUNT I**

15 52. Proposed Intervenor incorporate by reference the foregoing responses.

16 53. Paragraph 53 states a legal conclusion to which no response is required. To the
17 extent a response is required, Proposed Intervenor admit that the cited document contains
18 the quoted language without alterations. To the extent Paragraph 53 characterizes the quoted
19 language or its legal significance, Proposed Intervenor deny those characterizations.

20 54. Paragraph 54 states a legal conclusion to which no response is required. To the
21 extent a response is required, Proposed Intervenor admit that the language in 54(a)-(h)
22 appears without emphasis in the cited pages of the 2023 EPM. Proposed Intervenor
23 otherwise deny the allegations.

24 55. Paragraph 55 states a legal conclusion to which no response is required. To the
25 extent a response is required, Proposed Intervenor deny the allegations.

26 56. Paragraph 56 states a legal conclusion to which no response is required. To the
27 extent a response is required, Proposed Intervenor deny the allegations.
28

1 57. Paragraph 57 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenor admits that the quoted language appears
3 in the cited statute.

4 58. Paragraph 58 states a legal conclusion to which no response is required. To the
5 extent a response is required, Proposed Intervenor admits that the quoted language appears
6 in the cited statute.

7 59. Paragraph 59 states a legal conclusion to which no response is required. To the
8 extent a response is required, Proposed Intervenor admits that the quoted language appears
9 in the cited statute.

10 60. Paragraph 60 states a legal conclusion to which no response is required. To the
11 extent a response is required, Proposed Intervenor admits that the quoted language appears
12 without alterations in the cited statute.

13 61. Paragraph 61 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor denies the allegations.

15 62. Paragraph 62 states a legal conclusion to which no response is required. To the
16 extent a response is required, Proposed Intervenor denies the allegations.

17 63. Paragraph 63 states a legal conclusion to which no response is required. To the
18 extent a response is required, Proposed Intervenor denies the allegations.

19 64. Paragraph 64 states a legal conclusion to which no response is required. To the
20 extent a response is required, Proposed Intervenor denies the allegations.

21 65. Paragraph 65 states a legal conclusion to which no response is required. To the
22 extent a response is required, Proposed Intervenor denies the allegations. Proposed
23 Intervenor also denies that Plaintiff is entitled to any relief whatsoever.

24 **COUNT II**

25 66. Proposed Intervenor incorporates by reference the foregoing responses.

26 67. Paragraph 67 states a legal conclusion to which no response is required. To the
27 extent a response is required, Proposed Intervenor admits that the cited document contains
28 the quoted language without alterations. To the extent Paragraph 67 characterizes the quoted

1 language or its legal significance, Proposed Intervenor deny those characterizations.

2 68. Paragraph 68 states a legal conclusion to which no response is required. To the
3 extent a response is required, Proposed Intervenor deny the allegations.

4 69. Paragraph 69 states a legal conclusion to which no response is required. To the
5 extent a response is required, Proposed Intervenor admit that the cited document contains
6 the quoted language. To the extent Paragraph 69 characterizes the quoted language or its
7 legal significance, Proposed Intervenor deny those characterizations.

8 70. Paragraph 70 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenor deny the allegations.

10 71. Paragraph 71 states a legal conclusion to which no response is required. To the
11 extent a response is required, Proposed Intervenor admit that the quoted language appears
12 without emphasis in the 2023 EPM as cited, but to the extent Paragraph 71 characterizes
13 the quoted language or its legal significance, Proposed Intervenor deny those
14 characterizations.

15 72. Paragraph 72 states a legal conclusion to which no response is required. To the
16 extent a response is required, Proposed Intervenor admit that the quoted language appears
17 without alterations in the statute as cited, but to the extent Paragraph 72 characterizes the
18 quoted language or its legal significance, Proposed Intervenor deny those
19 characterizations.

20 73. Paragraph 73 states a legal conclusion to which no response is required. To the
21 extent a response is required, Proposed Intervenor deny the allegations.

22 74. Paragraph 74 states a legal conclusion to which no response is required. To the
23 extent a response is required, Proposed Intervenor deny the allegations.

24 75. Proposed Intervenor lack sufficient knowledge or information to form a belief
25 as to the truth or falsity of the allegations in Paragraph 75 and therefore deny them.

26 **COUNT III**

27 76. Proposed Intervenor incorporate by reference the foregoing responses.

28 77. Paragraph 77 states a legal conclusion to which no response is required. To the

1 extent a response is required, Proposed Intervenor's admit that the cited document contains
2 the quoted language without alterations. To the extent Paragraph 77 characterizes the quoted
3 language or its legal significance, Proposed Intervenor's deny those characterizations.

4 78. Paragraph 78 states a legal conclusion to which no response is required. To the
5 extent a response is required, Proposed Intervenor's deny the allegations.

6 79. Paragraph 79 states a legal conclusion to which no response is required. To the
7 extent a response is required, Proposed Intervenor's admit that the 2023 EPM cover to cover
8 is almost 400 pages long (counting over 100 pages of calendars and sample forms), but
9 otherwise deny the allegations.

10 80. Paragraph 80 states a legal conclusion to which no response is required. To the
11 extent a response is required, Proposed Intervenor's admit that the quoted language appears
12 without the alterations in the cited statute.

13 81. Paragraph 81 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor's admit that the cited document contains
15 the quoted language. To the extent Paragraph 81 characterizes the quoted language or its
16 legal significance, Proposed Intervenor's deny those characterizations.

17 82. Paragraph 82 states a legal conclusion to which no response is required. To the
18 extent a response is required, Proposed Intervenor's admit that the cited document contains
19 the quoted language. To the extent Paragraph 82 characterizes the quoted language or its
20 legal significance, Proposed Intervenor's deny those characterizations.

21 83. Paragraph 83 states a legal conclusion to which no response is required. To the
22 extent a response is required, Proposed Intervenor's deny the allegations.

23 84. Paragraph 84 states a legal conclusion to which no response is required. To the
24 extent a response is required, Proposed Intervenor's deny the allegations.

25 **CONCLUSION**

26 85. Paragraph 85 states a legal conclusion to which no response is required. To the
27 extent a response is required, Proposed Intervenor's deny the allegations.

28 86. Paragraph 86 states a legal conclusion to which no response is required. To the

1 extent a response is required, Proposed Intervenor deny the allegations.

2 87. Paragraph 87 states a legal conclusion to which no response is required. To the
3 extent a response is required, Proposed Intervenor deny the allegations. Proposed
4 Intervenor also deny that Plaintiff is entitled to any relief whatsoever.

5 **DEMAND FOR RELIEF**

6 88. Proposed Intervenor deny that Plaintiff is entitled to any relief.

7 **GENERAL DENIAL**

8 89. Proposed Intervenor deny every allegation that is not expressly admitted
9 herein.

10 **AFFIRMATIVE DEFENSES**

11 90. Plaintiff's claims are barred in whole or in part for failure to state a claim upon
12 which relief can be granted.

13 91. Plaintiff's claims are barred because Plaintiff lacks standing.

14 92. Plaintiff's claims are barred because they seek relief inconsistent with the
15 Arizona and U.S. Constitutions and federal law.

16 93. Proposed Intervenor reserve the right to assert additional affirmative
17 defenses, including, but not limited to, those set forth in Rule 8(d) of the Arizona Rules of
18 Civil Procedure, as additional facts are discovered.

19 WHEREFORE, having fully answered the Complaint, Proposed Intervenor pray
20 for judgment as follows:

21 A. That the Court dismiss the Complaint;

22 B. That judgment be entered in favor of Proposed Intervenor and against
23 Plaintiff on the Complaint and that Plaintiff take nothing thereby;

24 C. That Proposed Intervenor be awarded reasonable attorneys' fees and costs;
25 and

26 D. For such other and further relief as the Court, in its inherent discretion, deems
27 appropriate.
28

1 RESPECTFULLY SUBMITTED this 14th day of February, 2024.

2 **COPPERSMITH BROCKELMAN PLC**

3 By: /s/ D. Andrew Gaona

4 D. Andrew Gaona
5 Austin C. Yost

6 **ELIAS LAW GROUP, LLP**

7 Lalitha D. Madduri*
8 Justin Baxenberg*
9 Tina Meng Morrison*
10 Ian Baize*

11 *Attorneys for Proposed Intervenor-Defendants*
12 *Arizona Alliance for Retired Americans and*
13 *Voto Latino*

14 **Pro Hac Vice Application Forthcoming*

15 ORIGINAL e-filed and served via electronic
16 means this 14th day of February, 2024, upon:

17 Honorable Susanna Pineda
18 c/o Myrna Mejia, Judicial Assistant
19 cvj12@jbaz.mc.maricopa.gov
20 Myrna.Mejia@JBAZMC.Maricopa.Gov

21 Veronica Lucero
22 Vlucero@davillierlawgroup.com
23 PhxAdmin@davillierlawgroup.com
24 Davillier Law Group LLC
25 4105 N. 20th St. Ste. 110
26 Phoenix, Arizona 85016

27 Timothy A. La Sota
28 tim@timlasota.com
Grand Canyon Legal Center
1835 E. Elliot Road Ste. 102
Tempe, Arizona 85284-1747

Richard P. Lawson
rlawson@americafirstpolicy.com
Jessica H. Steinmann
jsteinmann@americafirstpolicy.com
America First Policy Institute
1001 Pennsylvania Ave., NW, Suite 530

1 Washington, DC 20004

2 *Attorneys for the Plaintiff*

3 Kara Karlson

4 kara.karlson@azag.gov

5 Kyle Cummings

6 kyle.cummings@azag.gov

7 Assistant Attorneys General

8 2005 N. Central Avenue

9 Phoenix Arizona 85004-2926

10 *Attorneys for Secretary of State Adrian Fontes*

11 */s/ Diana J. Hanson*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

RETRIEVED FROM DEMOCRACYDOCKET.COM