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**Pro Hac Vice Application Forthcoming*

ARIZONA SUPERIOR COURT

YAVAPAI COUNTY

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED *et al*., Plaintiffs, v. YAVAPAI COUNTY *et al*., Defendants.	No. S1300CV202400175 (Assigned to the Hon. Tina Ainley) **PROPOSED INTERVENOR-DEFENDANTS ARIZONA ALLIANCE FOR RETIRED AMERICANS AND VOTO LATINO'S REPLY IN SUPPORT OF MOTION TO INTERVENE**

INTRODUCTION

Plaintiffs' lawsuit seeks wide-ranging, drastic relief to fundamentally reshape the administration of Arizona elections according to their own strained interpretations of state law. Their contention that Proposed Intervenors and the voters they represent have no interest in the case and will not be impacted if Arizona's election procedures—from drop boxes to signature matching to voting center locations to ballot curing and more—are completely remade to meet Plaintiffs' preferences, is not credible.

Proposed Intervenors have established that they have a right to intervene. Both organizations have protectable interests in safeguarding their members' and constituents' access to the franchise and avoiding the diversion of mission-critical resources. Notably, Plaintiffs largely do not contest Proposed Intervenors' interest in defending the fundamental right to vote. Instead, they put the cart far before the horse (and rewrite the intervention standard completely), arguing first that no harm will befall Proposed Intervenors because Plaintiffs' lawsuit is meritorious and seeks to enforce Arizona law. Further, Plaintiffs argue that Proposed Intervenors do not have an interest in intervention because the relief Plaintiffs seek—including the disenfranchisement of *all Yavapai County, Maricopa County, and Coconino County voters*—is not *certain* to occur. But the rule asks whether intervenors have an interest that *may* be harmed by the adjudication of the action, and applying that standard courts in Arizona have repeatedly found Proposed Intervenors' interests sufficient for intervention as of right. They have done so, moreover, when government actors are already parties, properly recognizing that government defendants have distinct interests and responsibilities and cannot adequately protect Proposed Intervenors' interests.

Alternatively, the Court should grant permissive intervention. Proposed Intervenors' participation here will neither delay litigation nor prejudice any party. To the contrary, the Proposed Intervenors' involvement will aid a prompt and informed resolution of this case: They are prepared to meet any schedule the Court sets and will be the only parties representing the interests of voters whose rights will be upended by the upheaval in Arizona's election administration that Plaintiffs seek.

ARGUMENT

I. Proposed Intervenors have a right to intervene.

Plaintiffs do not contest the timeliness of Proposed Intervenors' motion and admit that "Rule 24 is construed liberally" in favor of intervention. Pls.' Opp'n to Mot. to Intervene 1–2 ("Opp'n"); *see Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009) ("Rule 24 is remedial and should be construed liberally in order to assist parties seeking to obtain justice in protecting their rights."). Indeed, upon timely motion, the Court "*must* permit anyone to intervene who . . . claims an interest relating to the subject of the action," the disposal of which "*may* as a practical matter impair or impede" their "ability to protect that interest, unless existing parties adequately represent that interest." Ariz. R. Civ. P. 24(a)(2) (emphases added). Proposed Intervenors have shown that they have a right to intervene under Rule 24(a), and Plaintiffs' response provides no reason to find otherwise.

A. Proposed Intervenors have protectable interests that stand to be impaired or impeded by the disposition of this action.

Proposed Intervenors possess indisputable, significant, and protectable interests in both safeguarding the voting rights of their members and constituents and allocating their limited organizational resources free from impairment. *See* Mot. to Intervene 6–11 ("Mot."); *Saunders v. Superior Ct.*, 109 Ariz. 424, 425 (1973) (noting court must accept as true proposed intervenors' allegations in their motion to intervene). Either of these interests entitles them to intervene under Rule 24(a)'s expansive standard, which "does not require certainty" and "only requires that an interest 'may' be impaired or impeded." *Heritage Vill. II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 573 ¶ 22 (App. 2019) (reversing order denying intervention). This burden is "minimal." *Id.*

Plaintiffs gloss over Proposed Intervenors' interests, and instead distract: they wrongly accuse Proposed Intervenors of seeking unlawful elections, *see* Opp'n 4–5; recast Proposed Intervenors' specific interests as "generalized" to all Arizona voters, *id.* at 8; criticize Proposed Intervenors' organizational missions and mischaracterize them as "lobbyist/activist organizations," *id.* at 7; and suggest that, since it is uncertain Plaintiffs

will prevail, it is not guaranteed that Proposed Intervenors will be harmed, *id.* at 8–9. None of these arguments has merit.

First, Plaintiffs' suggestion that Proposed Intervenors claim an interest in "protecting unlawful conduct," *id.* at 4, presupposes that Plaintiffs will prevail on their claims. But Proposed Intervenors seek intervention precisely because Plaintiffs' claims that Defendants' enforcement of Arizona law is ultra vires lack merit and, if Plaintiffs are successful in forcing their misreading of the law onto Defendants, it threatens to directly harm the voting rights of Proposed Intervenors' members and constituents. Plaintiffs' insistence that they are right on the law does not make it so, and by their own characterization, this case is designed to change "the administration of the 2024 election." Compl. ¶ 11. Proposed Intervenors seek intervention to ensure that their members and constituents can lawfully and freely vote under Arizona's election laws.

What's more, Plaintiffs do not meaningfully contest that Proposed Intervenors have an interest in protecting the fundamental voting rights of their members and constituents. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964) ("It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote, and to have their votes counted." (citations omitted)). Instead, they recast Proposed Intervenors as having only a general interest in protecting all voters. *See* Opp'n 7. But Proposed Intervenors represent their specific members and constituents, who comprise some of the state's most vulnerable and marginalized communities—older, retired, and Latino Arizonans—whose access to the franchise is already difficult. *See* Mot. 3–5, 8–10. Plaintiffs do not dispute these critical facts, which give Proposed Intervenors a particularized interest in ensuring that their members and constituents are able to vote. *See* Mot. 4–5; *cf. Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (risk of member disenfranchisement confers organizational standing).

The fundamental voting rights of Proposed Intervenors' members and constituents are directly threatened by Plaintiffs' suit, which, even short of seeking disenfranchisement of nearly five million Arizonans, demands wide-ranging relief to transform voting

procedures. For example, Proposed Intervenors would be harmed by Plaintiffs' requested relief in Counts V and VI, which seek to reallocate the distribution of voting centers in Maricopa County on the basis of race. Compl. ¶¶ 171–81. Though Plaintiffs suggest that Proposed Intervenors have made only "[g]eneral averments" that these "election procedures somehow disproportionately benefit specific demographic subsets," that is *precisely* the basis of Plaintiffs' claims about the distribution of voting centers. Plaintiffs allege that "the location of voting centers in Maricopa County unlawfully makes it easier for Hispanics and Blacks to vote and more difficult for Whites and Native Americans," *id.* ¶ 72, and seek to redistribute voting centers to achieve "racial[] balance," *id.* at 40, disregarding population density in a manner that would make it more difficult for Proposed Intervenors' members and constituents to cast ballots.

Likewise, Plaintiffs' requested relief for Count XI, which seeks to impose additional burdens on voters who must verify the signatures on their early ballots, would harm the Alliance's members, who tend to be older and more likely to have signatures that change over time as the result of age, disability, or illness. This makes them particularly vulnerable to changes in ballot curing procedures, making it more difficult for them to have their votes counted. Mot. 9. Recognizing the Alliance's interest in signature matching issues, another Yavapai County court recently allowed them to intervene alongside government defendants to defend the state's signature matching policies. Order re: Nature of Proceedings, *Arizona Free Enter. Club v. Fontes*, No. S1300CV202300202 (Yavapai Cnty. Super. Ct. Apr. 21, 2023).

Plaintiffs' requested relief for Count XII would also directly harm Proposed Intervenors by requiring that all ballot drop boxes be continuously monitored by at least two election workers, Compl. ¶¶ 228–34, severely limiting counties' ability to operate drop boxes given their limited resources. Drop boxes provide a critical method for Proposed Intervenors' members and constituents—underserved voters who disproportionately rely on mail ballots to vote and often lack access to reliable mail service—to cast their ballots. Mot. 9–10. Again, recognizing their interest in this issue, another Yavapai County court recently

allowed them to intervene alongside government defendants in a similar case where plaintiffs sought to limit the use of drop boxes. *See* Order Re: Nature of Proceedings, *Ariz. Free Enter. Club v. Fontes*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct. Oct. 27, 2023).

Plaintiffs' suggestion that the relief they seek—including the disenfranchisement of two-thirds of the state's voters, *see* Compl. 42—is uncertain to be ordered, *see* Opp'n 5, 9, misstates the standard on intervention. Plaintiffs conflate having a "direct" legal effect with having a *guaranteed* effect. *Id.* at 8. Rule 24(a) does not demand omniscience. Instead, its liberal standard requires that "court[s] *must* permit" intervention where the disposal of an action "*may* as a practical matter impair or impede" Proposed Intervenors' interests. Ariz. R. Civ. P. 24(a) (emphases added). Arizona courts apply the rule as written, emphasizing that it "does not require certainty" and "only requires that an interest 'may' be impaired or impeded." *Heritage Vill. II*, 246 Ariz. at 573 ¶ 22. Throwing out the ballots cast by Proposed Intervenors' members and constituents would unquestionably have a "direct legal effect upon [their] rights," Opp'n 8 (emphasis omitted) (citing *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 326 P.3d 292, 295 (App. 2014)), as would any of the lesser relief Plaintiffs seek, *see* Mot. 7–11; *cf., e.g.*, *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) ("A plaintiff need not have the franchise wholly denied to suffer injury.").

Moreover, Proposed Intervenors have an additional protectable interest in avoiding the diversion of limited resources from their mission-critical work to ensure that their members and constituents are not unreasonably burdened, deterred, or prevented from voting because of this case. *See* Mot. 10–11. This is not merely a "manufacture[d] . . . injury," Opp'n 6—the expenditures Proposed Intervenors would be forced to incur are informed by their extensive experience facilitating the voting rights of the communities they serve, *see* Mot. 10–14. Proposed Intervenors wrongly suggest that Proposed Intervenors are solely engaged in lobbying and litigation, Opp'n 6, ignoring that Proposed Intervenors work directly to enfranchise their members and constituents, as described in the motion. Mot. 4–

5(describing, e.g., Voto Latino's registration of 60,000 Arizonans in the past decade). Plaintiffs' personal opinion that "it strains credulity" that Proposed Intervenors educate their members and constituents on voting issues, Opp'n 6, does not change the fact that this is precisely the work Proposed Intervenors do every day, *see* Mot. 4–5. As a result, if Plaintiffs succeed in remaking Arizona's elections, it would force Proposed Intervenors to reallocate resources from other mission-critical election-year activities, including voter-registration and get-out-the-vote efforts, to inform their members and constituents about the fallout and try to ameliorate some of the vast negative effects to their members and constituents. *See* Mot. 10–11. This type of interest is sufficient to satisfy Article III standing—a higher bar than Rule 24(a)'s protectable-interest requirement. *See, e.g.*, *Lane v. Holder*, 703 F.3d 668, 674 (4th Cir. 2012) ("An organization may suffer an injury in fact when a defendant's actions impede its efforts to carry out its mission"). As such, it is more than adequate to support intervention. *See Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015) ("[A]n interest is sufficient [for intervention] if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim."); *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (intervenor "does not even have to be a person who would have been a proper party at the beginning of the suit" (citation omitted)).[1]

B. Defendants do not adequately represent Proposed Intervenors' interests.

Proposed Intervenors also have demonstrated that the existing parties may not adequately represent their interests. Plaintiffs admit that "government officials do not always adequately represent a private organization's discrete interests," *id.* at 12, but they go awry in again ignoring that Proposed Intervenors have a unique stake in their members'

[1] While Plaintiffs rely on *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905 (D.C. Cir. 2015), to claim that Proposed Intervenors "must show some nexus between [their] efforts and the specific legal issue in dispute" to "have a credible interest in this case," Opp'n 6, that case concerned the higher threshold for standing and did not involve intervention. But even if *Food & Water Watch* was applicable, Proposed Intervenors satisfy its standard because they have demonstrated a "nexus" between their efforts to enfranchise and educate their voters and "the specific legal issues" in this case; namely, procedures governing election administration in Arizona.

and constituents' ability to vote and preserving their limited resources—which Defendants do not share, *see Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) ("The most important factor in determining the adequacy of representation is how the interest compares with the interests of existing parties."). A general obligation to administer elections in accordance with Arizona law is different from specific, parochial interests in mobilizing, educating, and ensuring that specific groups (like Proposed Intervenors' members and constituents) can vote. Mot. 11. Because Proposed Intervenors have specific interests in the outcome of the litigation that are "not common to other citizens in the state," they "should be entitled to their own legal representation." *Saunders*, 109 Ariz. at 426.[2]

Plaintiffs erroneously suggest that Proposed Intervenors must overcome a "presumption of adequacy of representation[.]" Opp'n 11–13. In fact, Arizona courts routinely allow intervenors to participate in cases on the same side as governmental defendants with whom they share a desired outcome *without* applying any such presumption. *See, e.g., Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279 ¶ 58 (App. 2011) (granting intervention to applicants seeking to defend constitutionality of law alongside State); *Saunders*, 109 Ariz. at 426 (similar). Indeed, Proposed Intervenors have repeatedly (and recently) been granted intervention alongside government officials in cases that threatened their members' and constituents' voting rights and their ability to advance their missions. *See supra* p. 4. Just as in those cases, Defendants' interest in defending election administrators is distinct from Proposed Intervenors' unique organizational interests. *See* Mot. 11–13.

Furthermore, even if a presumption of adequate representation applies, it is "weak" and "not difficult" to overcome. *Clark v. Putnam County*, 168 F.3d 458, 461 (11th Cir. 1999). Proposed Intervenors must only "show[] that representation of [their] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Id*.

[2] Contrary to Plaintiffs' assertions, *see* Opp'n 11, *Saunders* confirms that Defendants do not adequately represent Proposed Intervenors' interests because the latter represent interests that are "not common to [all] other citizens in the state," 109 Ariz. at 426.

(quoting *Trbovich*, 404 U.S. at 538 n.10); *see also United States v. City of Los Angeles*, 288 F.3d 391, 402 (9th Cir. 2002). *Planned Parenthood Arizona* illustrates this point. There, both healthcare professionals and individual legislators sought to intervene as defendants in a case challenging the lawfulness of an abortion statute. 227 Ariz. at 279 ¶ 58. On appeal, the court affirmed grant of intervention to the former and denial of intervention to the latter. Although the healthcare intervenors and the State both sought to defend the challenged law, the Court of Appeals recognized that "the state must represent the interests of *all* people in Arizona," including some who opposed the statute. *Id.* (emphasis added). This universal perspective was enough to warrant the healthcare professionals' intervention to defend more specific and parochial interests. *See id.* at 279–80 ¶¶ 58, 60. Here, Proposed Intervenors occupy a similar role: They seek intervention not only to enforce Arizona law, but also to protect the voting rights of their members and constituents and the allocation of their limited resources. By contrast, as Plaintiffs point out, Opp'n 12–13, the *Planned Parenthood* court upheld the denial intervention to individual legislators whose *only* stated interest was defending the lawfulness of the challenged law—the exact interest shared by the State.

Plaintiffs also claim that representation is adequate here because Proposed Intervenors and Defendants share the same "ultimate objective": defeating Plaintiffs' lawsuit. Opp'n 12. But seeking the same litigation outcome does not mean that different parties share the same specific goals; "[a]fter all, a prospective intervenor must intervene on one side of the 'v.' or the other and will have the same general goal as the party on that side. If that's all it takes to defeat intervention, then intervention as of right will almost always fail." *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 688 (7th Cir. 2023) (cleaned up). Nor does sharing "the same posture in the litigation" mean that a government's "representation of the public interest generally" is "identical to the individual parochial interest" of Proposed Intervenors. *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001) (finding inadequate representation because general public interest "may differ from the would-be intervenor's particular interest").

Plaintiffs also suggest that Proposed Intervenors must identify specific arguments they will make that Defendants will not make to prove inadequate representation, Opp'n 10, but the law imposes no such burden. Moreover, it is *already* clear that Proposed Intervenors' interests do not align precisely with Defendants. Proposed Intervenors seek to ensure that their members and constituents maintain ready access to vote centers and drop boxes, while Defendants necessarily represent both election administrators who must consider administrative burdens (e.g., costs of staffing drop boxes) *and* the interests of other voters whose needs (e.g., distribution of vote centers) might diverge from Proposed Intervenors' members and constituents. Because Proposed Intervenors' interests are "more parochial," than a government defendant's whose "views are necessarily colored by its view of the public welfare," *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998), Proposed Intervenors are entitled to their own representation. One or more Defendants might also decide that it is more cost effective to change their election procedures than defend certain claims or continue to litigate after an adverse ruling, while Proposed Intervenors would continue to advocate for their members' and constituents' right to vote under existing election procedures. *Cf. Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1001 (8th Cir. 1993) ("[I]f the case is disposed of by settlement rather than by litigation, what the state perceives as being in its interest may diverge substantially from the [proposed intervenors'] interests."); *see also Wineries of Old Mission Peninsula Ass'n v. Township of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022) ("[I]n assessing whether a proposed intervenor has fulfilled this [inadequacy of representation] requirement, courts must remember that certainty about future events is not required.").

None of the other authorities Plaintiffs rely on, *see* Opp'n 10, holds that Defendants are adequate stand-ins for Proposed Intervenors. Unlike in *Arakaki*, where the Ninth Circuit found the interests of prospective native Hawaiian intervenors were adequately represented in large part because existing intervenors to the case already represented the same constituency, *see* 324 F.3d at 1087, there is no aligned party here with whom Proposed Intervenors share their parochial interests. In both *Gonzalez v. Arizona*, 485 F.3d 1041 (9th

Cir. 2007), and *One Wisconsin Institute, Inc. v. Nichol*, 310 F.R.D. 394 (W.D. Wis. 2015), proposed intervenors were denied intervention to defend challenged laws alongside government defendants—but, unlike here, none of those proposed intervenors possessed an interest in preventing the potential disenfranchisement of their voters. Instead, they sought to enforce laws that restricted voters generally, and thus shared the same interests as the existing state defendants. *See Gonzalez*, 485 F.3d at 1052; *One Wis. Inst.*, 310 F.R.D. at 397. Plaintiffs' other cited cases are similarly distinguishable and unavailing. *See Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 774–75 (7th Cir. 2007) (denying intervention where alleged interest could not be affected by litigation); *Entergy Ark., LLC v. Thomas*, 76 F.4th 1069, 1071 (8th Cir. 2023) (denying intervention where government actor was charged with protecting proposed intervenors' asserted interests and proposed intervenor identified no parochial interest in litigation).[3]

In short, Proposed Intervenors have unique interests sufficient to meet the "minimal" burden of showing inadequate representation. *See* Mot. 7–11. Indeed, Arizona courts in other election cases have granted intervention to Proposed Intervenors alongside government defendants under similar circumstances. This Court should do the same.[4]

[3] No more persuasive is Plaintiffs' argument that, because Proposed Intervenors previously opposed intervention of parties seeking to intervene on the same side as the government in two unrelated cases, they should not be able to intervene here. *See* Opp'n 13–14. Those prior cases involved political-party movants who did *not* represent voters facing potential disenfranchisement, as Proposed Intervenors do here. Moreover, intervention was granted in *Arizona Alliance for Retired Americans v. Hobbs*, No. 2:22-cv-01374-GMS (D. Ariz. Sept. 23, 2022), notwithstanding Proposed Intervenors' opposition.

[4] Plaintiffs' suggestion that Proposed Intervenors should be limited to participation as amici curie is misplaced. Proposed Intervenors have met the requirements for intervention as of right and are thus *entitled* to intervene to protect their distinct interests. *See supra* Section I; *John F. Long Homes, Inc. v. Holohan*, 97 Ariz. 31, 33 (1964) (where Rule 24(a) has been met, the court "has no discretion to deny the motion and [the court's] granting of the motion is required by Rule 24(a)"). And, since no Defendant represents Proposed Intervenors' parochial interest in ensuring their members' and constituents' continued access to the franchise, amicus status would not allow Proposed Intervenors to fully protect their interests or aid the court in resolution of this case.

II. Alternatively, Proposed Intervenors should be granted permissive intervention.

Even if the Court does not grant intervention as of right, all the relevant factors favor permitting intervention. Plaintiffs address only two of the factors, *see* Opp'n 14–15, and even then offer only irrelevant and ultimately unavailing arguments.

First, Plaintiffs suggest that adding parties and attorneys will inevitably prolong or delay these proceedings. *Id.* at 15. But Proposed Intervenors have an interest in the *expeditious* resolution of this case to prevent harms to their organizational interests, members, and constituents. Proposed Intervenors filed their intervention motion less than a week after this case began and stand ready to meet any schedule the Court sets.

Second, Plaintiffs argue that the Court should "give [] no weight" to Proposed Intervenors' ability to contribute meaningfully to this case, Opp'n 15, but that is an important factor Arizona courts consider in deciding whether to grant permissive intervention, *see Bechtel*, 150 Ariz. at 72. As Proposed Intervenors have explained—and as Plaintiffs ignore—Proposed Intervenors are uniquely positioned to offer arguments and evidence relevant to Plaintiffs' claims both because of their unique organizational and associational interests and also because they are now litigating similar issues in other cases. *See* Mot. 13–14. Proposed Intervenors would also be the only parties opposing relief who would focus exclusively on the injuries to voters and voter-advocacy groups.

At minimum, Proposed Intervenors should be permitted to intervene because they would aid in the full development of the relevant factual and legal issues, given their representation of actual voters who stand to be most impacted by changes to the challenged election procedures and their robust experience in litigating similar issues. And Proposed Intervenors would diligently coordinate with Plaintiffs, Defendants, and the Court to maintain efficient proceedings and ensure that Arizona's 2024 elections are administered consistent with state law.

CONCLUSION

For these reasons, the Court should grant Proposed Intervenors' motion to intervene.

RESPECTFULLY SUBMITTED this 27th day of March, 2024.

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