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17 **Pro Hac Vice Application Forthcoming*

18 **ARIZONA SUPERIOR COURT**

19 **MARICOPA COUNTY**

21 REPUBLICAN NATIONAL COMMITTEE;
22 REPUBLICAN PARTY OF ARIZONA, LLC,
23 and YAVAPAI COUNTY REPUBLICAN
24 PARTY,

24 Plaintiffs,

25 v.

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

28 Defendant.

No. CV2024-050553

MOTION TO INTERVENE

(Assigned to the Hon. Frank Moskowitz)

1 **INTRODUCTION**

2 The Elections Procedures Manual (“EPM”) is the result of a statutorily mandated
3 process meant to “achieve and maintain the maximum degree of correctness, impartiality,
4 uniformity and efficiency on the procedures for early voting and voting,” and many aspects
5 of election administration. A.R.S. § 16-452(A). Absent clear guidance in the EPM, county
6 and municipal election officials can be left to guess as to the most appropriate way to
7 administer elections, and where ambiguity or gaps have been left in prior EPMs (or where
8 the EPM has not been timely updated), disparate and arbitrary treatment of voters has
9 resulted. The EPM is thus essential to ensuring Arizona’s elections are fair and its
10 procedures are predictable—no matter where a voter lives or who is administering elections
11 in their jurisdiction. By law, a new EPM must be approved by the end of each odd-numbered
12 calendar year, ensuring election officials have sufficient time to understand and implement
13 its procedures.

14 As the state’s chief election official, the Legislature has given the Secretary
15 considerable discretion to ensure the uniformity and predictability of election
16 administration across the state, and the enacted EPM has the force of law on the issues it
17 can address unless it directly contradicts express and mandatory statutory requirements. But
18 the EPM is not the Secretary’s fiat. The Secretary must consult county boards of supervisors
19 and election officials to inform them of the procedures that govern Arizona’s elections. The
20 Secretary, as he did here, may also consider public comments. And ultimately, the EPM is
21 only effective after the Governor and Attorney General approve the Secretary’s proposal.
22 The 2023 EPM provided a long-overdue update to the State’s election procedures, and
23 reflects changes made to address four years of intervening legislation, litigation, election
24 administration learnings, and factual developments, not least of all a once-in-a-lifetime
25 pandemic that necessitated changes to Arizona’s election procedures.

26 This lawsuit is the latest of an all-fronts assault on the EPM and threatens to displace
27 this thoughtful and critical process, thus burdening the voting rights of the members and
28 constituents of the Proposed Intervenor-Defendants Arizona Alliance for Retired

1 Americans (“Alliance”) and Voto Latino (together, “Proposed Intervenors.”). *See Petersen*
2 *v. Fontes*, No. CV2024-001942 (Maricopa Cnty. Super. Ct.); *Ariz. Free Enter. Club v.*
3 *Fontes*, No. S1300CV202300202 (Yavapai Cnty. Super. Ct.); *Ariz. Free Enter. Club v.*
4 *Fontes*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct.); *Strong Cmty. Found. of*
5 *Arizona, Inc. v. Maricopa Cnty.*, No. CV2024-002441 (Maricopa Cnty. Super. Ct.); *Ariz.*
6 *Free Enter. Club v. Fontes*, No. CV2024-002760 (Maricopa Cnty. Super. Ct.). Even more
7 alarming than the other lawsuits, in which Proposed Intervenors are similarly moving to
8 intervene, this suit seeks *the complete invalidation of the 2023 EPM*, an extraordinary
9 remedy that would wreak havoc on Arizona’s elections, undo the diligent and crucial efforts
10 of Arizona’s entire executive branch, and jeopardize the rights of Proposed Intervenors’
11 members and constituents. Plaintiffs alternatively seek to invalidate a laundry list of EPM
12 provisions that would burden qualified voters, including by excluding numerous Arizonans
13 from mail voting and presidential primary elections, allowing expanded third-party
14 challenges to early ballots, and completely disenfranchising otherwise qualified out-of-
15 precinct voters. Any one of these requests would make Arizona’s elections less free, fair,
16 and reflective of the state’s electorate; together, they threaten to disenfranchise countless
17 Arizonans.

18 Among the voters most endangered by Plaintiffs’ suit are those in Arizona’s
19 marginalized populations, including the state’s underserved Latino community and elderly
20 voters who are uniquely vulnerable to burdens on the right to vote. Proposed Intervenors
21 seek to represent the interests of these voters—which are unrepresented by the current
22 parties to the litigation—as well as their own substantial and legally protectable interests as
23 organizations dedicated to enfranchising and protecting the right to vote. Proposed
24 Intervenors readily meet the requirements for both intervention as of right and permissive
25 intervention under Arizona Rule of Civil Procedure 24. They have moved quickly to
26 intervene, and seek to defend against the potential disenfranchisement of their members and
27 constituents and the diversion of their limited resources. Though the Secretary shares the
28 objective of defending the 2023 EPM, he is not involved in targeted get-out-the-vote

1 (“GOTV”) programming or voter-advocacy efforts like Proposed Intervenors. Nor does he
2 share Proposed Intervenors’ particular organizational objectives—and ultimately he does
3 not have a specific stake in the civic participation of their members and constituents.
4 Furthermore, both the Alliance and Voto Latino are parties to other litigation that is directly
5 targeted by Plaintiffs’ action, which alone gives them a unique interest that is threatened by
6 this lawsuit and that they should be permitted to defend. Finally, both organizations have
7 regularly litigated—including as intervenors—issues related to election administration and
8 voting rights in Arizona. This includes intervention as defendants in two attacks on different
9 procedures in the prior version of the EPM.

10 Having satisfied the applicable legal standards, and given the grave threat Plaintiffs’
11 claims pose to their missions, members, and constituents, Proposed Intervenors should be
12 granted intervention as of right or, in the alternative, permissive intervention.

13 Proposed Intervenors have conferred with counsel for Plaintiffs and Defendant for
14 their positions on this Motion. Defendant does not oppose this Motion, and Plaintiffs object.

15 **BACKGROUND**

16 The Alliance is a nonprofit corporation whose membership includes around 50,000
17 retirees from public and private sector unions, community organizations, and individual
18 activists in every county in Arizona, including 24,717 members in Maricopa County alone.
19 The Alliance’s mission is to ensure social and economic justice and protect the civil rights
20 of retirees after a lifetime of work, including by ensuring that its members have access to
21 the franchise and can meaningfully participate in Arizona’s elections. To protect the right
22 to vote, the Alliance has been involved in litigation implicating a range of voting-rights
23 issues. This includes litigation that the Alliance successfully brought last election cycle to
24 obtain a writ of mandamus to compel the Cochise County Board of Supervisors to canvass
25 their election results. *See Ariz. All. For Retired Ams. v. Crosby*, No. S0200CV202200552
26 (Cochise Cnty. Super. Ct.); *Ariz. All. for Retired Ams. v. Crosby*, No. CV202200518
27 (Cochise Cnty. Super. Ct.). The Alliance has recently moved to intervene to defend against
28 an attempt to similarly delay and disrupt the canvass in Mohave County this cycle, *see*

1 *Gould v. Mayes*, No. CV2024-000815 (Maricopa Cnty. Super. Ct.), and to defend the
2 validity of certain provisions of the EPM, *see Petersen v. Fontes*, No. CV2024-001942
3 (Maricopa Cnty. Super. Ct.); *Strong Cmty. Found. of Ariz., Inc. v. Maricopa Cnty.*, No.
4 CV2024-002441 (Maricopa Cnty. Super. Ct.). The Alliance is also participating as a
5 defendant intervenor in two other ongoing challenges to the use of ballot drop boxes and
6 signature-verification procedures in Arizona elections. *See Ariz. Free Enter. Club v. Fontes*,
7 No. S1300CV202300202 (Yavapai Cnty. Super. Ct.); *Ariz. Free Enter. Club v. Fontes*, No.
8 S1300CV202300872 (Yavapai Cnty. Super. Ct.).

9 Voto Latino is the largest Latino advocacy organization in the nation. Its mission is
10 to grow political engagement in historically underrepresented communities, especially in
11 its core constituency of young Latino voters. Since 2012, Voto Latino has registered over
12 60,000 voters in Arizona. To further its mission, Voto Latino spends significant resources
13 on voter-education and -mobilization initiatives, including voter-registration drives; email
14 and social-media campaigns; digital ads communicating directly with Latino voters; and
15 text banking to encourage voters to vote, remind them to update their voter registrations,
16 and inform them about available means of voting. Voto Latino also seeks to educate Latino
17 voters on issues that impact their community and where candidates stand on those issues.
18 Like the Alliance, Voto Latino has repeatedly been involved in Arizona litigation to protect
19 the right to vote, including challenges to the validity of important EPM procedures. *See*,
20 *e.g.*, *Ariz. All. for Retired Ams. v. Hobbs*, No. CV-22-01374-PHX-GMS (D. Ariz.); *Ariz.*
21 *Free Enter. Club*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct.); *Strong Cmty.*
22 *Found. of Ariz., Inc. v. Maricopa Cnty.*, No. CV2024-002441 (Maricopa Cnty. Super. Ct.)
23 (Alliance and Voto Latino moved to intervene). In particular, Voto Latino is a party to a
24 federal lawsuit challenging the documentary proof of citizenship (“DPOC”) statutes that
25 form the basis of Counts III, IV, and V of Plaintiffs’ complaint. *See Mi Familia Vota v.*
26 *Fontes*, No. CV-22-00509-PHX-SRB (D. Ariz.). As a result of Voto Latino’s litigation, the
27 statutory provisions underlying Counts III and IV of the complaint were declared preempted
28 by federal law, and Voto Latino has a strong interest in participating in this litigation to

1 ensure that this Court has a full understanding of those proceedings and does not issue relief
2 inconsistent with the conclusions of the federal court on these issues.

3 ARGUMENT

4 Under Arizona Rule of Civil Procedure 24, a party is entitled to intervene where, on
5 timely motion, the party “claims an interest relating to the subject of the action, and . . .
6 disposing of the action in the person’s absence may as a practical matter impair or impede
7 the person’s ability to protect that interest, unless existing parties adequately represent that
8 interest.” Ariz. R. Civ. P. 24(a)(2). Alternatively, intervention may be permitted on timely
9 motion where the moving party “has a claim or defense that shares with the main action a
10 common question of law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). Rule 24 is a remedial rule
11 that “should be construed liberally in order to assist parties seeking to obtain justice in
12 protecting their rights.” *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009). It is
13 “substantively indistinguishable” from Federal Rule of Civil Procedure 24 such that a court
14 “may look for guidance to federal courts’ interpretations of their rule.” *Heritage Vill. II*
15 *Homeowners Ass’n v. Norman*, 246 Ariz. 567, 572 ¶ 19 (App. 2019).

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

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

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

22 (1) the motion must be timely; (2) the applicant must assert an interest relating
23 to the property or transaction which is the subject of the action; (3) the
24 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.

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

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 Proposed Intervenors meet each of these requirements.

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

3 Proposed Intervenors timely filed this motion to intervene. Plaintiffs filed this suit
4 on February 9, 2024. Proposed Intervenors file this motion to intervene along with their
5 proposed Answer on Wednesday, February 14—just three business days later—and before
6 any responsive pleadings have been filed.

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

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

15 Proposed Intervenors satisfy the intertwined second and third prongs of the standard
16 for intervention as of right: (1) they have an interest in the subject of this action, and
17 (2) disposition of this action may impair or impede their ability to protect their interests.
18 “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if it will
19 suffer a practical impairment of its interests as a result of the pending litigation.’”
20 *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quoting
21 *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). “[I]t is
22 generally enough that the interest is protectable under some law, and that there is a
23 relationship between the legally protected interest and the claims at issue.” *Id.* (quoting
24 *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). In Arizona, “a would-be
25 intervenor must show only that impairment of its substantial legal interest *is possible* if
26 intervention is denied”—a burden courts consider “minimal.” *Heritage Vill. II*, 246 Ariz. at
27 572, ¶ 21 (quoting *Utah Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001)).
28 Proposed Intervenors easily clear this hurdle, because the relief Plaintiffs seek will harm

1 both Proposed Intervenors’ membership and constituents and the organizations themselves.

2 *First*, Proposed Intervenors have an interest in ensuring that their members and
3 constituents can exercise the franchise free from unnecessary obstacles and in preventing
4 the disenfranchisement of the voters they represent. *Cf., e.g., Sandusky Cnty. Democratic*
5 *Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (risk that some voters will be
6 disenfranchised confers organizational standing); *Charles H. Wesley Educ. Found., Inc. v.*
7 *Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005) (“A plaintiff need not have the franchise wholly
8 denied to suffer injury.”); *see also Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (explaining that
9 intervention poses a lower bar than standing because intervenor “does not even have to be
10 a person who would have been a proper party at the beginning of the suit” (cleaned up)). If
11 Plaintiffs’ lawsuit is successful, the entire EPM or key provisions of the EPM will be
12 invalidated, guaranteeing electoral chaos and disenfranchisement—impairing Proposed
13 Intervenors’ interest in safeguarding the right to vote of their members and constituents.

14 In particular, Count I of the Complaint seeks to enjoin enforcement of the entire
15 EPM, which exists to ensure that Arizona’s elections are conducted in a fair, uniform, and
16 lawful manner. Without the EPM, Proposed Intervenors’ members and constituents who
17 live in all 15 of the state’s counties are likely to be subjected to disparate election policies
18 and procedures. And having intervened to defend the EPM in a variety of litigation
19 throughout the state, Proposed Intervenors have a significant interest in preserving the entire
20 document. Proposed Intervenors are also all too aware that the effects of a dramatic
21 upheaval to the law like the one Plaintiffs seek will be magnified for the Latino and elderly
22 Arizonans they represent, many of whom already face significant hurdles to accessing the
23 franchise.

24 Moreover, Counts III, IV, and V threaten to sow confusion surrounding the state of
25 the law following litigation over the issues addressed in these counts, in which Voto Latino
26 is itself a party. Specifically, through these counts, Plaintiffs seek to invalidate EPM
27 provisions regarding how county recorders verify the citizenship of prospective voters. This
28 is an issue of paramount importance to Voto Latino, which brought a federal lawsuit

1 challenging the underlying provisions, which resulted in an order on summary judgment
2 from the federal court finding that the statutory provisions underlying Counts III and IV are
3 preempted by federal law. *See Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB,
4 2023 WL 8181307, at *7, *18 (D. Ariz. Sept. 14, 2023). Plaintiff the Republican National
5 Committee also participated in that litigation. Yet with these counts it now attempts to
6 invalidate portions of the EPM that adhere to the conclusions of the federal court in that
7 case. Voto Latino’s interest as a party to that predecessor litigation warrants intervention in
8 itself. If Plaintiffs prevail on these counts, it could create confusion around Arizona’s DPOC
9 laws, burdening Voto Latino’s constituents. It could also open the door to the
10 disproportionate targeting of nonwhite and minority Arizonans, including among Proposed
11 Intervenors’ members and constituents. These fears of harassment, confusion, and voter
12 intimidation—and the impact that having to redress them would have on the organization—
13 is what drove Voto Latino to bring the related federal litigation in the first place. Those
14 interests similarly entitle it to intervene to protect against those harms in this litigation, as
15 well.

16 Similarly, Plaintiffs’ Counts VI and VIII are by Plaintiffs’ own admission intended
17 to expand the window for third parties to challenge early voters’ ballots. *See* Compl. ¶ 94.
18 These challenges, too, are likely to affect and potentially disenfranchise Proposed
19 Intervenors’ nonwhite members and constituents, in particular, as part of communities that
20 have historically been targeted for disparate treatment and because many lack the resources
21 that facilitate overcoming such challenges.

22 Proposed Intervenors would also be harmed by Plaintiffs’ requested relief in Count
23 VII, which seeks to prohibit voters from requesting that their absentee ballot be sent out of
24 state, burdening the franchise of voters who may not be in Arizona during a particular
25 election. Many of the Alliance’s members are older and face greater hurdles to voting in
26 person, and therefore disproportionately rely on mail ballots and would suffer
27 correspondingly disproportionate harm because of Plaintiffs’ requested relief.

28 Finally, Count IX of Plaintiffs’ Complaint would disenfranchise Proposed

1 Intervenor’s members and constituents who inadvertently end up in the wrong precinct on
2 election day. Because many of Proposed Intervenor’s members and constituents lack the
3 resources to correct such innocent mistakes, they will be disproportionately harmed should
4 Plaintiffs succeed on this claim.

5 *Second*, if the EPM is invalidated in whole or in part, Proposed Intervenor will be
6 forced to divert resources from their mission-critical work to ensure that their members are
7 not disenfranchised as a result. This further constitutes a protectable interest sufficient for
8 intervention as of right. *See, e.g., E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663
9 (9th Cir. 2021) (“[A]n organization has direct standing to sue where it establishes that the
10 defendant’s behavior has frustrated its mission and caused it to divert resources in response
11 to that frustration of purpose.”); *Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB,
12 2023 WL 8183070, at *10 (D. Ariz. Feb. 16, 2023) (holding organizational plaintiffs had
13 standing when voting laws would require them to divert resources from other activities to
14 assist their supporters who might be disproportionately disenfranchised or discouraged from
15 voting); *see also Bechtel*, 150 Ariz. at 72 (stating that interest necessary for intervention is
16 lower bar than standing).

17 Proposed Intervenor would need to redirect time and resources to educate their
18 members and constituents on the new election procedures, including the complete reversion
19 to a prior version of the EPM. Proposed Intervenor would also have to divert resources to
20 mitigate the chilling effects that those radical changes could have on its members’
21 willingness to vote. The Alliance would need to reallocate resources meant for other
22 mission-critical programming for the advancement of the rights and interests of retired
23 Americans towards quickly educating voters about potential obstacles to voting, including
24 the inability of voters to cast provisional ballots in the event they are in a precinct other than
25 their own. Voto Latino would have to change its GOTV efforts and divert resources towards
26 educating its constituents about the potential for harsher DPOC rules, as well as the other
27 potentially disenfranchising effects of Plaintiffs’ lawsuit. Further, in the event the EPM is
28 invalidated in its entirety, both Proposed Intervenor would need to effectively fill the

1 vacuum it leaves behind, namely by explaining the uncertain state of Arizona election law
2 to their members. Such diversions of Proposed Intervenors' limited resources constitute
3 impairments of cognizable interests, thus satisfying the second and third prongs for
4 intervention as of right.

5 **C. Proposed Intervenors' interests are not adequately represented.**

6 Proposed Intervenors' interests are not adequately represented by the parties
7 participating in this case. Plaintiffs do not represent Proposed Intervenors' interests, as
8 Plaintiffs seek to invalidate the EPM, which safeguards the right to vote of Proposed
9 Intervenors' members and constituents. Nor are Proposed Intervenors' particular interests
10 here—namely, preventing the disenfranchisement of their members and constituents and
11 avoiding the diversion of their mission-critical resources—shared by the Secretary, who
12 possesses only a general obligation to serve as Arizona's chief elections officer, not a
13 specific interest in mobilizing and educating retired or Latino voters and advocating on their
14 behalf.

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

25 For these reasons, courts allow various types of organizations to intervene on the
26 same side as government officials in cases where the organization and its members have
27 interests that are distinct from the public at large. *See, e.g., Saunders v. Super. Ct. In & For*
28 *Maricopa Cnty.*, 109 Ariz. 424, 426 (1973) (holding that associations of policemen and

1 firefighters were not adequately represented by the Attorney General in challenge to state
2 pension system because “[t]he interest of petitioners is not common to other citizens in the
3 state”); *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir.
4 2011) (allowing environmental group to intervene where it had different objectives than the
5 U.S. Forest Service); *Utah Ass’n of Cnty.*, 255 F.3d at 1255–56 (“[T]he government’s
6 representation of the public interest generally cannot be assumed to be identical to the
7 individual parochial interest of a particular member of the public merely because both
8 entities occupy the same posture in the litigation.”); *see also Trbovich v. United Mine*
9 *Workers of Am.*, 404 U.S. 528, 538 (1972) (finding that union was not adequately
10 represented by Secretary of Labor where its interests in the litigation were “related, but not
11 identical.”). The same is appropriate here, especially considering that the federal lawsuit
12 related to Counts III and IV was brought *against* the Secretary of State.

13 Consistent with this precedent, Arizona courts have recently allowed both the
14 Alliance and Voto Latino to intervene on the same side as the Secretary when the validity
15 of various EPM provisions was challenged. *See* Order Re: Nature of Proceedings, *Ariz. Free*
16 *Enter. Club*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct. Oct. 27, 2023) (granting
17 intervention to the Alliance and Voto Latino in case seeking to invalidate EPM provisions
18 authorizing use of ballot drop boxes); Order re: Nature of Proceedings, *Ariz. Free Enter.*
19 *Club*, No. S1300CV202300202 (Yavapai Cnty. Super. Ct. Apr. 21, 2023) (granting
20 intervention to nonprofit organizations, including the Alliance, in case seeking to invalidate
21 EPM provision regarding signature-verification procedures). This Court should do the same
22 because no party, including the Secretary, adequately represents Proposed Intervenors’
23 interests.

24 **II. In the alternative, Proposed Intervenors should be granted permissive**
25 **intervention.**

26 In the alternative, the Court should grant Proposed Intervenors permissive
27 intervention because they have “a claim or defense that shares with the main action a
28 common question of law or fact.” Ariz. R. Civ. P. 24(b)(1)(B). In particular, Proposed

1 Intervenor’s defenses depend on the same questions of law and fact surrounding the proper
2 interpretation of Arizona election law at issue in this case.

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:

5 [1] the nature and extent of the intervenors’ interest, [2] their standing to raise
6 relevant legal issues, [3] the legal position they seek to advance, and its
7 probable relation to the merits of the case, [4] whether the intervenors’
8 interests are adequately represented by other parties, [5] whether intervention
9 will prolong or unduly delay the litigation, and [6] whether parties seeking
intervention will significantly contribute to full development of the
underlying factual issues in the suit and to the just and equitable adjudication
of the legal questions presented.

10 *Bechtel*, 150 Ariz. at 72 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326,
11 1329 (9th Cir. 1977)). Here, these considerations favor permissive intervention. Like Rule
12 24(a), Rule 24(b) should be liberally construed. *Id.* Here, these factors favor permissive
13 intervention.

14 *First*, Proposed Intervenors have distinct interests in ensuring their members and
15 constituents are not disenfranchised and in avoiding the diversion of their resources to last-
16 minute voter-education initiatives and other responsive efforts. In particular, invalidating
17 EPM provisions—be it the EPM in its entirety or just those provisions relating to DPOC,
18 changes to the AEVL, or early ballot challenges—would disproportionately impact
19 Proposed Intervenors and the communities they represent.

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

1 *Third*, as discussed above, Proposed Intervenors’ interests are distinct from those of
2 the other parties in this case. The Alliance and Voto Latino represent their own
3 organizational interests and missions, as well as the interests of their individual members
4 who will need to overcome the hurdles Plaintiffs’ requested relief will inevitably impose on
5 them.

6 *Finally*, Proposed Intervenors have promptly sought intervention, which will neither
7 delay the proceedings nor prejudice any party. To the contrary, Proposed Intervenors have
8 a particular interest in the expeditious resolution of this case to avoid uncertainty and
9 attendant harms to their organizational interests, members, and constituents.

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

12 CONCLUSION

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

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

16 **COPPERSMITH BROCKELMAN PLC**

17 By: /s/ D. Andrew Gaona

18 D. Andrew Gaona
19 Austin C. Yost

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27 *Arizona Alliance for Retired Americans and*
28 *Voto Latino*

**Pro Hac Vice Application Forthcoming*

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

3 Honorable Frank Moskowitz
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24 *Defendants Arizona Alliance for Retired*
25 *Americans and Voto Latino*

26 **Pro Hac Vice Application Forthcoming*

27 **ARIZONA SUPERIOR COURT**

28 **MARICOPA COUNTY**

29 REPUBLICAN NATIONAL COMMITTEE;
30 REPUBLICAN PARTY OF ARIZONA, LLC,
31 and YAVAPAI COUNTY REPUBLICAN
32 PARTY,

33 Plaintiffs,

34 v.

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

37 Defendant.

No. CV2024-050553

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

(Assigned to the Hon. Frank Moskowitz)

38 Intervenor-Defendants the Arizona Alliance for Retired Americans (“Alliance”) and Voto Latino (together, “Proposed Intervenor”) answer Plaintiffs’ Verified Special

1 Action Complaint (“Complaint”) as follows:

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

4 2. Proposed Intervenors admit that the 2023 EPM is 268 pages long and covers a
5 variety of election administration topics.

6 3. Proposed Intervenors lack sufficient knowledge or information to form a belief
7 as to the truth or falsity of the allegations in Paragraph 3 and therefore deny them.

8 4. Deny.

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

11 **PARTIES**

12 6. Proposed Intervenors lack sufficient knowledge or information to form a belief
13 as to the truth or falsity of the allegations in Paragraph 6 and therefore deny them.

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

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

18 9. Proposed Intervenors admit that Adrian Fontes is the Secretary of State of
19 Arizona. Paragraph 9 otherwise states legal conclusions to which no response is required.
20 To the extent a response is required, proposed Intervenors deny the allegations.

21 **JURISDICTION AND VENUE**

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

24 11. Paragraph 11 states a legal conclusion to which no response is required. To the
25 extent a response is required, and this Court finds it has jurisdiction, Proposed Intervenors
26 admit the allegations.

27 12. Paragraph 12 states a legal conclusion to which no response is required. To the
28 extent a response is required, Proposed Intervenors admit the allegations.

1 GENERAL ALLEGATIONS

2 13. Paragraph 13 states a legal conclusion to which no response is required. To the
3 extent a response is required, Proposed Intervenor admits that the cited provision contains
4 the quoted language.

5 14. Paragraph 14 states a legal conclusion to which no response is required. To the
6 extent a response is required, Proposed Intervenor admits that the cited statute contains the
7 quoted language.

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

10 16. Paragraph 16 states a legal conclusion to which no response is required. To the
11 extent a response is required, Proposed Intervenor admits that the cited statute contains the
12 quoted language.

13 17. Paragraph 17 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor admits the allegations.

15 18. Paragraph 18 states a legal conclusion to which no response is required. To the
16 extent a response is required, Proposed Intervenor admits that the cited document contains
17 the quoted language. To the extent Paragraph 18 characterizes the quoted language or its
18 legal significance, Proposed Intervenor denies those characterizations.

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

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

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

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

27 23. Admit.

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1 belief as to the truth or falsity of the remaining allegations in Paragraph 35 and therefore
2 deny them.

3 36. Paragraph 36 states a legal conclusion as to the contents of the EPM to which
4 no response is required. To the extent a response is required, Proposed Intervenors admit
5 that the 2023 EPM is 268 pages and covers various election administration topics. Proposed
6 Intervenors otherwise lack sufficient knowledge or information to form a belief as to the
7 truth or falsity of the allegations in Paragraph 36 and therefore deny them.

8 37. Paragraph 37 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenors lack sufficient knowledge or
10 information to form a belief as to the truth or falsity of the allegations in Paragraph 37 and
11 therefore deny them.

12 38. Paragraph 38 states a legal conclusion to which no response is required. To the
13 extent a response is required, Proposed Intervenors admit that the quoted language appears
14 without the alterations in the cited statute. To the extent Paragraph 38 characterizes the
15 quoted language or its legal significance, Proposed Intervenors deny those
16 characterizations.

17 39. Paragraph 39 states a legal conclusion to which no response is required. To the
18 extent a response is required, Proposed Intervenors admit that the quoted language appears
19 without the alterations in the cited statute. To the extent Paragraph 39 characterizes the
20 quoted language or its legal significance, Proposed Intervenors deny those
21 characterizations.

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

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

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

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1 43. Paragraph 43 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenor deny the allegations.

3 44. Paragraph 44 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenor deny the allegations.

5 45. Paragraph 45 states a legal conclusion to which no response is required. To the
6 extent a response is required, Proposed Intervenor deny the allegations.

7 46. Paragraph 46 states a legal conclusion to which no response is required. To the
8 extent a response is required, Proposed Intervenor deny the allegations.

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

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

13 49. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

14 **COUNT II**

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

16 51. Paragraph 51 states a legal conclusion to which no response is required. To the
17 extent a response is required, Proposed Intervenor admit that the quoted language appears
18 without the alterations in the EPM as cited. To the extent Paragraph 51 characterizes the
19 quoted language or its legal significance, Proposed Intervenor deny those
20 characterizations.

21 52. Paragraph 52 states a legal conclusion to which no response is required. To the
22 extent a response is required, Proposed Intervenor admit that the quoted language appears
23 without the alterations in the cited statute. To the extent Paragraph 52 characterizes the
24 quoted language or its legal significance, Proposed Intervenor deny those
25 characterizations.

26 53. Paragraph 53 states a legal conclusion to which no response is required. To the
27 extent a response is required, Proposed Intervenor deny the allegations.

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1 54. Paragraph 54 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenor admit that the cited documents contain
3 the quoted language without alterations. To the extent Paragraph 54 characterizes the quoted
4 language or its legal significance, Proposed Intervenor deny those characterizations.

5 55. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

6 **COUNT III**

7 56. Proposed Intervenor incorporate by reference the foregoing responses.

8 57. Paragraph 57 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenor admit that the quoted language appears
10 without the alterations in the EPM as cited. To the extent Paragraph 57 characterizes the
11 quoted language or its legal significance, Proposed Intervenor deny those
12 characterizations.

13 58. Paragraph 58 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor admit that the quoted language appears
15 without the alterations in the EPM as cited. To the extent Paragraph 58 characterizes the
16 quoted language or its legal significance, Proposed Intervenor deny those
17 characterizations.

18 59. Paragraph 59 states a legal conclusion to which no response is required. To the
19 extent a response is required, Proposed Intervenor admit that the quoted language appears
20 without the alterations in the cited statutes. Proposed Intervenor also admit that the PPE is
21 held on the Tuesday immediately following March 15 of each year in which the President
22 of the United States is elected. To the extent Paragraph 59 characterizes the quoted language
23 or its legal significance, Proposed Intervenor deny those characterizations.

24 60. Paragraph 60 states a legal conclusion to which no response is required. To the
25 extent a response is required, Proposed Intervenor admit that the quoted language appears
26 without the alterations in the cited statute. To the extent Paragraph 60 characterizes the
27 quoted language or its legal significance, Proposed Intervenor deny those
28 characterizations.

1 61. Paragraph 61 states a legal conclusion to which no response is required. To the
2 extent a response is required, Proposed Intervenor deny the allegations.

3 62. Paragraph 62 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenor admit that the cited documents contain
5 the quoted language without alterations. To the extent Paragraph 62 characterizes the quoted
6 language or its legal significance, Proposed Intervenor deny those characterizations.

7 63. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

8 **COUNT IV**

9 64. Proposed Intervenor incorporate by reference the foregoing responses.

10 65. Paragraph 65 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 the alterations in the EPM as cited.

13 66. Paragraph 66 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenor admit that the quoted language appears
15 without the alterations in the EPM as cited. To the extent Paragraph 66 characterizes the
16 quoted language or its legal significance, Proposed Intervenor deny those
17 characterizations.

18 67. Paragraph 67 states a legal conclusion to which no response is required. To the
19 extent a response is required, Proposed Intervenor admit that the quoted language appears
20 without the alterations in the cited statute.

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

23 69. Paragraph 69 states a legal conclusion to which no response is required. To the
24 extent a response is required, Proposed Intervenor admit that the cited documents contain
25 the quoted language without alterations. To the extent Paragraph 69 characterizes the quoted
26 language or its legal significance, Proposed Intervenor deny those characterizations.

27 70. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.
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1 **COUNT V**

2 71. Proposed Intervenors incorporate by reference the foregoing responses.

3 72. Paragraph 72 states a legal conclusion to which no response is required. To the
4 extent a response is required, Proposed Intervenors admit that the quoted language appears
5 without the alterations in the EPM as cited. To the extent Paragraph 72 characterizes the
6 quoted language or its legal significance, Proposed Intervenors deny those
7 characterizations.

8 73. Paragraph 73 states a legal conclusion to which no response is required. To the
9 extent a response is required, Proposed Intervenors admit that the quoted language appears
10 without the alterations in the EPM as cited. To the extent Paragraph 73 characterizes the
11 quoted language or its legal significance, Proposed Intervenors deny those
12 characterizations.

13 74. Paragraph 74 states a legal conclusion to which no response is required. To the
14 extent a response is required, Proposed Intervenors admit that the quoted language appears
15 without the alterations in the cited statute. To the extent Paragraph 74 characterizes the
16 quoted language or its legal significance, Proposed Intervenors deny those
17 characterizations.

18 75. Paragraph 75 states a legal conclusion to which no response is required. To the
19 extent a response is required, Proposed Intervenors admit that the quoted language appears
20 without the alterations in the cited statute. To the extent Paragraph 75 characterizes the
21 quoted language or its legal significance, Proposed Intervenors deny those
22 characterizations.

23 76. Paragraph 76 states a legal conclusion to which no response is required. To the
24 extent a response is required, Proposed Intervenors deny the allegations.

25 77. Paragraph 77 states a legal conclusion to which no response is required. To the
26 extent a response is required, Proposed Intervenors admit that the cited documents contain
27 the quoted language without alterations. To the extent Paragraph 77 characterizes the quoted
28 language or its legal significance, Proposed Intervenors deny those characterizations.

1 78. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

2 **COUNT VI**

3 79. Proposed Intervenor incorporate by reference the foregoing responses.

4 80. Paragraph 80 states a legal conclusion to which no response is required. To the
5 extent a response is required, Proposed Intervenor admit that the quoted language appears
6 without the alterations in the EPM as cited. To the extent Paragraph 80 characterizes the
7 quoted language or its legal significance, Proposed Intervenor deny those
8 characterizations.

9 81. Paragraph 81 states a legal conclusion to which no response is required. To the
10 extent a response is required, Proposed Intervenor admit that the quoted language appears
11 without the alterations in the cited statute. To the extent Paragraph 81 characterizes the
12 quoted language or its legal significance, Proposed Intervenor deny those
13 characterizations.

14 82. Paragraph 82 states a legal conclusion to which no response is required. To the
15 extent a response is required, Proposed Intervenor deny the allegations.

16 83. Paragraph 83 states a legal conclusion to which no response is required. To the
17 extent a response is required, Proposed Intervenor admit that the cited documents contain
18 the quoted language without alterations. To the extent Paragraph 83 characterizes the quoted
19 language or its legal significance, Proposed Intervenor deny those characterizations.

20 84. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

21 **COUNT VII**

22 85. Proposed Intervenor incorporate by reference the foregoing responses.

23 86. Paragraph 86 states a legal conclusion to which no response is required. To the
24 extent a response is required, Proposed Intervenor admit that the quoted language appears
25 without the alterations in the EPM as cited. To the extent Paragraph 86 characterizes the
26 quoted language or its legal significance, Proposed Intervenor deny those
27 characterizations.

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1 the quoted language without alterations. To the extent Paragraph 95 characterizes the quoted
2 language or its legal significance, Proposed Intervenor deny those characterizations.

3 96. Proposed Intervenor deny that Plaintiffs are entitled to any relief whatsoever.

4 **COUNT IX**

5 97. Proposed Intervenor incorporate by reference the foregoing responses.

6 98. Paragraph 98 states a legal conclusion to which no response is required. To the
7 extent a response is required, Proposed Intervenor admit that the quoted language appears
8 without the alterations in the EPM as cited. To the extent Paragraph 98 characterizes the
9 quoted language or its legal significance, Proposed Intervenor deny those
10 characterizations.

11 99. Paragraph 99 states a legal conclusion to which no response is required. To the
12 extent a response is required, Proposed Intervenor admit that the quoted language appears
13 without the alterations in the EPM as cited. To the extent Paragraph 99 characterizes the
14 quoted language or its legal significance, Proposed Intervenor deny those
15 characterizations.

16 100. Paragraph 100 states a legal conclusion to which no response is required. To
17 the extent a response is required, Proposed Intervenor admit that the quoted language
18 appears without the alterations in the EPM as cited. To the extent Paragraph 100
19 characterizes the quoted language or its legal significance, Proposed Intervenor deny those
20 characterizations.

21 101. Paragraph 101 states a legal conclusion to which no response is required. To
22 the extent a response is required, Proposed Intervenor deny the allegations.

23 102. Paragraph 102 states a legal conclusion to which no response is required. To
24 the extent a response is required, Proposed Intervenor deny the allegations.

25 103. Paragraph 103 states a legal conclusion to which no response is required. To
26 the extent a response is required, Proposed Intervenor admit that the cited documents
27 contain the quoted language without alterations. To the extent Paragraph 103 characterizes
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1 the quoted language or its legal significance, Proposed Intervenors deny those
2 characterizations.

3 104. Proposed Intervenors deny that Plaintiffs are entitled to any relief whatsoever.

4 **DEMAND FOR RELIEF**

5 105. Proposed Intervenors deny that Plaintiffs are entitled to any relief.

6 **GENERAL DENIAL**

7 106. Proposed Intervenors deny every allegation that is not expressly admitted
8 herein.

9 **AFFIRMATIVE DEFENSES**

10 107. Plaintiffs' claims are barred in whole or in part for failure to state a claim upon
11 which relief can be granted.

12 108. Plaintiffs' claims are barred because Plaintiffs lack standing.

13 109. Plaintiffs' claims are barred because they seek relief inconsistent with the
14 Arizona and U.S. Constitutions and federal law.

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

18 WHEREFORE, having fully answered the Complaint, Proposed Intervenors pray
19 for judgment as follows:

20 A. That the Court dismiss the Complaint;

21 B. That judgment be entered in favor of Proposed Intervenors and against
22 Plaintiffs on the Complaint and that Plaintiffs take nothing thereby;

23 C. That Proposed Intervenors be awarded reasonable attorneys' fees and costs;
24 and

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

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

2 **COPPERSMITH BROCKELMAN PLC**

3 By: /s/ D. Andrew Gaona

4 D. Andrew Gaona

Austin C. Yost

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9 Ian Baize*

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11 *Arizona Alliance for Retired Americans and*
12 *Voto Latino*

13 *Pro Hac Vice Application Forthcoming

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

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