IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JUDICIAL WATCH, INC.; ILLINOIS FAMILY ACTION; BREAKTHROUGH IDEAS; and CAROL J. DAVIS,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS; and BERNADETTE MATTHEWS, in her capacity as the Executive Director of the Illinois State Board of Elections,

Defendants.

No. 1:24-cv-01867

Hon. Sara L. Ellis

MEMORANDUM IN SUPPORT OF THE ILLINOIS AFL-CIO AND ILLINOIS FEDERATION OF TEACHERS' MOTION TO INTERVENE AS DEFENDANTS

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INTRODUCTION

This lawsuit is part of a recent trend of dangerous attempts to wield the National Voter Registration Act ("NVRA")—a federal law enacted to make it *easier* for qualified voters to register and stay registered—as a weapon to force states to remove more voters from the rolls, raising serious risks of erroneous removals, barely half a year before a highly anticipated presidential election. Although similar efforts to purge states' voter rolls have failed in recent years—including one just a few weeks ago in the neighboring state of Michigan—three markedly similar suits were filed in other states just this month.[1] Plaintiffs Judicial Watch, Inc., Illinois Family Action, Breakthrough Ideas, and Carol J. Davis now bring this troubling effort to Illinois.

The Illinois AFL-CIO and the Illinois Federation of Teachers ("Proposed Intervenors") seek to intervene as Defendants in this matter to protect the significant rights of their members and constituents, as well as their own organizational interests, which would be impeded if Plaintiffs succeed in forcing aggressive removal of voters from the rolls, particularly in an election year. Proposed Intervenors are labor organizations, and the unfettered ability of their members to vote is critical for them to achieve their shared mission of achieving economic and social justice for all. This action is of particular threat to their members and their missions because Plaintiffs are targeting voters who fail to respond to an address confirmation notice that is mailed to their home. Many of Proposed Intervenors' members do not have a regular mailing address or spend long periods of time away from home, and as a result, they are uniquely vulnerable to being erroneously removed from the rolls based on Plaintiffs' theory of list maintenance. With nearly 900,000 members located in nearly every community in Illinois, it is a statistical certainty that at least one

[1] *See Republican Nat'l Comm. v. Benson*, No. 1:24-cv-262-JMB-RSK, ECF No. 1 (W.D. Mich. Mar. 13, 2024); *Pub. Int. Legal Found. Inc. v. Knapp*, No. 3:24-cv-1276-JFA, ECF No. 1 (D.S.C. Mar. 14, 2024); *Republican Nat'l Comm. v. Aguilar*, No. 2:24-cv-00518-CDS-MDC, ECF No. 1 (D. Nev. Mar. 18, 2024).

of Proposed Intervenors' members will find themselves on the wrong end of these purge efforts.

Beyond the threat that Plaintiffs' action poses to Proposed Intervenors' members, it will also directly harm Proposed Intervenors as organizations. This is because, in an attempt to mitigate the significant threat posed by Plaintiffs' requested relief, Proposed Intervenors will be forced to divert scarce resources away from mission-critical efforts and instead closely monitor the removal of voters, educate their members about this new threat to their voting rights, and work to help any impacted voters overcome it—all in the crucial last months leading up to the 2024 election. Given the stakes of this case, Proposed Intervenors cannot rely on Defendants to adequately represent their interests. Defendants are governmental entities with distinct administrative obligations, which may lead to a conflict in litigation objectives. Indeed, in voter purge cases in particular, state actors have often entered into consent decrees rather than litigate all of the relevant issues. Proposed Intervenors are accordingly entitled to intervene as of right.

In the alternative, Proposed Intervenors submit that the Court should grant them permissive intervention, as it would benefit from their important perspective as it considers the requirements of the NVRA and the impact that Plaintiffs' requested relief would have on lawful voters in Illinois.

BACKGROUND

I. Illinois's Obligations Under the National Voter Registration Act

The NVRA is a federal law that requires states to provide simplified, voter-friendly systems for registering to vote. In enacting the NVRA, Congress expressly aimed to *increase* access to the franchise, by establishing "procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" and by making it "possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2). Congress also made a finding in the NVRA that "discriminatory and unfair registration laws and procedures

can have a direct and damaging effect on voter participation . . . and disproportionately harm voter participation by various groups, including racial minorities." *Id.* § 20501(a)(3).

To further those pro-voter purposes, the NVRA imposes firm restrictions on a state's ability to remove a voter from its registration rolls. *See* 52 U.S.C. § 20507(a)(3)–(4), (b)–(d). A state may immediately remove a voter from the rolls in only rare circumstances, such as express requests or disenfranchising felonies. *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may not remove voters from the rolls without first complying with prescribed procedural minimums that Congress has mandated to minimize the risk of erroneous deregistration. *See id.* § 20507(a)(3)(C), (c), (d). For instance, states may *not* remove a voter by reason of change of residence *unless* that voter (1) confirms the change or (2) fails to respond to a notice and fails to vote for two general elections following that notice. *Id.* § 20507(d)(1). Thus, by design "the NVRA does not require states to immediately remove every voter who may have become ineligible." *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2024 WL 1128565, at *11 (W.D. Mich. Mar. 1, 2024) ("*PILF*").

Plaintiffs' lawsuit largely ignores these mandatory safeguards and focuses instead on the NVRA's affirmative list-maintenance obligations. Those obligations, however, are limited. The NVRA requires only that each state make "a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of [] the death of the registrant; or [] a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4). In other words, "Congress did not establish a specific program for states to follow for removing ineligible voters," *PILF*, 2024 WL 1128565 at *10; it just required states to undertake reasonable measures.

II. Proposed Intervenors

The Illinois AFL-CIO ("IL AFL-CIO") is a nonpartisan membership organization comprised of over 1,500 affiliated unions representing nearly 900,000 workers in Illinois. Ex. 1, Drea Decl. ¶ 5. Union members and their families can be found in nearly every community in the

state. *Id*. ¶ 6. IL AFL-CIO's mission is to achieve economic security and a fair economy that works for all, and it encourages its members to vote in every election to advance the interests of working families. *Id*. ¶¶ 9–10. IL AFL-CIO members include service workers, flight attendants, construction workers, parcel delivery personnel, and freight drivers, many of whom travel frequently and for long periods of time, and some of whom are in low-wage jobs that place them at risk of housing instability. *Id*. ¶¶ 8, 15. Even though these voters remain eligible to vote, Plaintiffs' requested relief would make them top targets for deregistration because they may not receive an address confirmation notice. Moreover, due to the sheer size and diversity of IL AFL-CIO's membership, *id*. ¶¶ 5–7, it is inevitable that some of its members will be at risk of deregistration due to mistakes in name matching. For example, research shows that databases used to match voters' names with citizens who have recently moved often inaccurately flag voters with common names for removal. Matching tools that rely too heavily on name searches also disproportionately flag minority voters because of how widespread certain first and last names are in those communities. It is therefore a virtual certainty that at least one person in IL AFL-CIO's large and diverse membership will be mistakenly removed from the voter rolls if Plaintiffs obtain their requested relief.

The Illinois Federation of Teachers ("IFT"), an affiliate of the IL AFL-CIO, is a nonpartisan membership organization comprised of 103,000 PreK-12 teachers, paraprofessionals and school-related personnel, higher education professionals, public employees, and retired teachers across Illinois. Ex. 2, Montgomery Decl. ¶ 5. In addition to supporting local unions and their members, IFT's mission is to improve the status of teachers, educational workers, and other workers to provide for better educational opportunities for all citizens, with a particular emphasis on supporting and promoting the ideals of a robust and socially just democracy. *Id*. ¶ 6. Like IL

AFL-CIO's broader membership, some IFT members make wages too low to afford permanent housing and, as a result, experience housing instability. *Id*. ¶ 11. These voters would be at acute risk of being purged under Plaintiffs' proposed deregistration scheme, although their housing instability does not affect their voting eligibility. IFT also represents more than 5,000 graduate students who work as teaching assistants and graduate assistants at Illinois's public colleges and universities for the duration of their programs, and many of these members maintain permanent residences elsewhere. *Id*. ¶ 12. And many of the roughly ten percent of IFT's membership that is higher education faculty travel during the summers to do research or complete fellowships. *Id*. ¶ 13. These transient members are at increased risk of being purged from the voter rolls under a program that targets voters based on a change of address.

A purge of Illinois's voter registration rolls will harm Proposed Intervenors' missions and cause them to divert their scarce resources. Drea Decl. ¶¶ 17–24; Montgomery Decl. ¶¶ 19–21. Because Proposed Intervenors have dedicated substantial resources toward voter registration, nearly all their members are registered to vote and vote at higher percentages than the general public. Drea Decl. ¶ 13; Montgomery Decl. ¶ 9. This achievement has allowed Proposed Intervenors to shift their focus toward other mission-critical goals, like getting out the vote, educating their members and constituents on where candidates stand on labor-related issues, and organizing around those issues. Drea Decl. ¶ 14; Montgomery Decl. ¶ 10. But a rushed, aggressive voter purge in a presidential election year would require them to redouble their previous efforts to ensure their members remain registered. Drea Decl. ¶ 17; Montgomery Decl. ¶ 15.

LEGAL STANDARD

Rule 24(a)(2) "is straightforward: the court *must* permit intervention if (1) the motion is timely; (2) the moving party has an interest relating to [the subject matter] at issue in the litigation; and (3) that interest may, as a practical matter, be impaired or impeded by disposition of the case."

Driftless Area Land Conservancy v. Huebsch, 969 F.3d 742, 746 (7th Cir. 2020). "A proposed intervenor who satisfies these three elements is *entitled* to intervene *unless* existing parties adequately represent his interests." *Id*. (emphasis in original). Courts "construe Rule 24(a)(2) liberally and should resolve doubts in favor of allowing intervention." *Michigan v. U.S. Army Corps of Eng'rs*, No. 10-CV-4457, 2010 WL 3324698, at *2 (N.D. Ill. Aug. 20, 2010). "In accordance with this liberal construction, courts must accept as true the non-conclusory allegations of the motion a proposed intervenor makes." *Elouarrak v. Firstsource Advantage, LLC*, No. 1:19-cv-03666, 2020 WL 291364, at *1 (N.D. Ill. Jan. 21, 2020) (quotation marks omitted).

Under Rule 24(b), the Court may, "[o]n timely motion, . . . permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). Permissive intervention should not be denied solely because a proposed intervenor failed to prove an element of intervention as of right. *Sec. Ins. Co. of Hartford v. Schipporeit, Inc*., 69 F.3d 1377, 1381 (7th Cir. 1995).

ARGUMENT

I. Proposed Intervenors satisfy Rule 24(a)'s requirements for intervention as a matter of right.

Proposed Intervenors satisfy each of the requirements of Rule 24(a)(2). The Court should therefore grant their motion to intervene as of right.

A. The motion is timely.

The motion to intervene is timely. To determine timeliness, courts consider "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is

denied; (4) any other unusual circumstances." *Lopez-Aguilar v. Marion Cnty. Sherriff's Dep't*, 924 F.3d 375, 388 (7th Cir. 2019) (quotation marks omitted).

Proposed Intervenors filed this motion before any substantive activity has occurred in the case, less than a month after Plaintiffs filed their Complaint. Both the initial status conference and Defendants' deadline to respond to the Complaint is more than five weeks away. There has been no delay, and there is no risk of prejudice to the other parties. Proposed Intervenors acted promptly after they learned of this lawsuit and therefore satisfy the timeliness requirement.

B. The disposition of this case will impair Proposed Intervenors' abilities to protect their interests.

Proposed Intervenors have significant protectable interests in this lawsuit that would be impaired by the voter purge Plaintiffs seek to compel. In assessing whether an interest is "impair[ed] or impede[d]," Fed. R. Civ. P. 24(a)(2), courts "look[] to the practical consequences of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quotation marks omitted). If a proposed intervenor would be "substantially affected in a practical sense" by the outcome of a case, "he should, as a general rule, be entitled to intervene." *U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *3 (quoting Fed. R. Civ. P. 24 advisory committee's note to 1966 amendment). The Seventh Circuit has "interpreted statements of the Supreme Court as encouraging liberality in the definition of an interest." *Lopez-Aguilar*, 924 F.3d at 392.[2]

Proposed Intervenors have at least two interests that warrant intervention in this lawsuit: (1) a direct organizational interest in avoiding the need to divert resources to protect their members' voting rights, and (2) an associational interest in ensuring their members are not

[2] Although the Seventh Circuit has stated that a proposed intervenor must have a "unique" interest, Rule 24(a)(2) "demands only that an interest belong to the would-be intervenor in its own right, rather than derived from the rights of an existing party." *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023). There is no requirement to demonstrate "a right that belongs *only* to the proposed intervenor, or even a right that belongs to the proposed intervenor *and not to* the existing party." *Id*. (emphasis in original).

unlawfully purged from the rolls if Plaintiffs succeed. The Seventh Circuit recently held that nearly identical interests satisfied Rule 24(a)(2)'s interest requirement. *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023) (recognizing organization's direct interest in avoiding diversion of resources to "get out the vote" should Illinois election law change and associational interest in preventing members' disenfranchisement). This Court should reach the same conclusion.

First, Proposed Intervenors share a common mission to ensure their members have the right and opportunity to vote in every election. Drea Decl. ¶¶ 9–10; Montgomery Decl. ¶ 6. Plaintiffs' requested relief is diametrically opposed to this mission; as discussed *supra* Background II, a rushed, aggressive voter purge is statistically certain to put some of their members' access to the franchise at risk. Accordingly, Plaintiffs' requested relief would require Proposed Intervenors to start new programs to ensure their prior work achieving near-universal registration among their membership is not undone. Drea Decl. ¶¶ 17–20; Montgomery Decl. ¶¶ 15–18.

This would be no easy feat—particularly in an election year when Proposed Intervenors must conduct robust issue-advocacy work, campaign for certain candidates, and get members out to vote. *See* Drea Decl. ¶¶ 21–23; Montgomery Decl. ¶¶ 19–21. Although Proposed Intervenors are not currently planning to run targeted voter registration programs this year, if Plaintiffs are successful, Proposed Intervenors will need to develop and implement a system to educate the public about the impending voter purge, identify members at risk of being purged from the voter rolls, aid these voters in checking their registration status, and, if mistakenly purged, guide them through the process to restore their registrations. *See* Drea Decl. ¶¶ 17–20; Montgomery Decl. ¶¶ 15–18. The time, effort, and expense needed to conduct these unplanned programs will necessarily be diverted from these organizations' pre-planned activities. *See* Drea Decl. ¶¶ 21–24; Montgomery Decl. ¶¶ 19–20. Well-settled precedent supports Proposed Intervenors' substantial

legal interest in avoiding impairment of their missions due to a need to divert resources. *See, e.g.*, *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021); *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015).

Second, Proposed Intervenors have a substantial legal interest in ensuring that their members and constituents remain registered to vote. Federal courts routinely recognize that interest as a basis for intervention in NVRA Section 8 cases. *See, e.g.*, *Bellitto v. Snipes*, No. 16-cv-61474, 2016 WL 5118568, at *3 (S.D. Fla. Sept. 21, 2016) (granting union intervention as of right in Section 8 case); *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799 (E.D. Mich. 2020) (granting organization permissive intervention in Section 8 case); Order, *Daunt v. Benson*, 1:20-cv-522 (W.D. Mich. Sept. 28, 2020), ECF No. 30 (same); Order, *Voter Integrity Proj. NC, Inc. v. Wake Cnty. Bd. of Elections*, No. 5:16-cv-683 (E.D.N.C. Dec. 1, 2016), ECF No. 26 (granting voters permissive intervention in Section 8 case). Indeed, the NVRA itself creates a cause of action to challenge improper removal of registered voters, 52 U.S.C. § 20510(b), and organizations like Proposed Intervenors often bring successful claims to prevent the very sort of statewide voter purge Plaintiffs here seek to compel. *See, e.g.*, *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1156 (S.D. Ind. 2018); *Common Cause/N.Y. v. Brehm*, 344 F. Supp. 3d 542, 558–59 (S.D.N.Y. 2018). If organizations like Proposed Intervenors have an interest in asserting rights under the very statute Plaintiffs invoke, there can be no doubt that the same interest satisfies Rule 24(a)(2)'s "liberal[] . . . definition of an interest." *Lopez-Aguilar*, 924 F.3d at 392.

This lawsuit threatens to impair Proposed Intervenors' interest in defending their members' and constituents' access to the franchise because Plaintiffs' requested relief places their members at heightened risk of disenfranchisement. In *Bellitto*, for example, the district court permitted a union with tens of thousands of members in Florida to intervene because "the interests of its

members would be threatened by [any] court-ordered 'voter list maintenance' sought by Plaintiffs," a "potential harm" the court found "particularly great in light of the upcoming 2016 General Election." 2016 WL 5118568, at *2. That is precisely the situation Proposed Intervenors—unions with nearly 900,000 members in Illinois—find themselves in here.

As discussed *supra* Background II, many of Proposed Intervenors' members are disproportionately likely to be purged because they either do not have a permanent address or spend long periods of time away from home, *see* Drea Decl. ¶¶ 15–16; Montgomery Decl. ¶¶ 11–14, and are therefore likely to be targeted as candidates for deregistration and miss an address confirmation notice. And due to the error-prone nature of name-matching databases and the size and diversity of Proposed Intervenors' membership, any aggressive "list-maintenance" program would necessarily cause some members to be mistakenly purged.

As one Court of Appeals has recognized, "a maximum effort at purging voter lists could minimize the number of ineligible voters, but those same efforts might also remove eligible voters." *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019). The "maximum effort" Plaintiffs seek here would thus expose Proposed Intervenors' members and constituents to a substantial risk of illegal removal. Accordingly, Proposed Intervenors' intervention is necessary to prevent an aggressive voter purge that erroneously removes eligible voters from the registration list.[3]

[3] Illinois's same-day registration opportunities do not diminish these interests. To counteract the threat that Plaintiffs' requested relief poses to their members, Proposed Intervenors will have to divert resources, well before voting begins, toward establishing an education campaign to inform members about the impending voter purge and developing a plan to aid voters who are ultimately deregistered. And same-day registration is not a cure-all for a cancelled voter registration. In the inevitable circumstance that some of Proposed Intervenors' members arrive at the polls only to find that they are no longer registered under Plaintiffs' proposed list-maintenance regime, they will be required to show two forms of identification, one with a current address, and may need to produce these materials at a different location. The burden of accomplishing these steps, especially when it is unexpected, may be insurmountable for many of Proposed Intervenors' working members.

C. Proposed Intervenors' interests are not adequately represented in this case.

Finally, Proposed Intervenors cannot rely on the parties in the case to adequately represent their interests. The Seventh Circuit has established a three-tiered methodology for evaluating inadequacy of representation, which focuses on a "discriminating comparison" of the interests of the existing party and the interests of the party attempting to intervene. *Bost*, 75 F.4th at 688. Those tiers are: (1) the default liberal rule, which is satisfied "if the applicant shows that representation of his interest may be inadequate," (2) an "intermediate approach" that applies where "the interest of the [proposed intervenor] is identical to that of an existing party" and requires "a showing of some conflict to warrant intervention," and (3) a stricter standard that applies when the representative party is specifically "charged by law with protecting the interests of the proposed intervenors." *Driftless*, 969 F.3d at 747 (quotation marks omitted).

The default rule applies here because Proposed Intervenors' interests are distinct from the existing parties' interests. As another court recognized, "the interests of election officials in voting roll maintenance are sufficiently distinct from those of . . . their constituents to warrant intervention by those who could be impacted by the results of the maintenance process." *Winfrey*, 463 F. Supp. 3d at 799 (E.D. Mich. 2020) (citing *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018)). That is because Defendants are tasked with balancing the "twin objectives" of the NVRA—"easing barriers to registration and voting, while at the same time protecting electoral integrity and the maintenance of accurate voter rolls." *Bellitto*, 935 F.3d at 1198. By contrast, Proposed Intervenors have "[t]he mission and interest . . . explicitly to pursue the second of the expressly recognized interests that motivated Congress to enact [the NVRA]," *Winfrey*, 463 F. Supp. 3d at 801, which is to eliminate "barriers to registration and voting," *Bellitto*, 935 F.3d at 1198. Accordingly, Proposed Intervenors' and Defendants' "interests and objectives overlap in certain respects but are importantly different." *Driftless*, 969 F.3d at 748.

Moreover, a "discriminating comparison" of Proposed Intervenors' interests to the interests of Defendants reveals further differences. *Bost*, 75 F.4th at 688. As discussed above, Proposed Intervenors have an interest in preserving their organizational resources, which they will need to divert if Plaintiffs are successful, but Defendants are not "interested in [Proposed Intervenors'] financial expenditures, the execution of [their] mission[s], or the elements of [their] work that will suffer if resources are diverted elsewhere." *Id.* at 689. Nor do Defendants share Proposed Intervenors' interest in vindicating their members' voting rights. Defendants' "obligations are to the general public," not to Proposed Intervenors or their members. *See Driftless*, 969 F.3d at 748. While Defendants and Proposed Intervenors will both likely oppose Plaintiffs' action, "the stakes for each of them are different." *Id*. The numerous differences between the interests of Proposed Intervenors and Defendants requires this court to apply the default rule to assess adequacy of representation.

"Under the lenient default standard, [Proposed Intervenors] need only show that the [Defendants'] representation 'may be' inadequate, and the burden of making that showing should be treated as minimal." *Driftless*, 969 F.3d at 749 (quotation marks omitted). The default rule is satisfied if a proposed intervenor can show some conflict, "potential or otherwise," with the existing parties' litigation strategy. *Cf. Bost*, 75 F.4th at 690. Here, because Defendants must balance the NVRA's competing objectives, their interests are necessarily in tension with Proposed Intervenors' sole interest in protecting the registration status of their members and constituents, and this tension may lead to different approaches to resolving this litigation.

For example, Defendants may choose to settle this case, as the Michigan Secretary of State recently did in a Section 8 challenge lodged shortly before the 2020 presidential election. *See* Stipulation of Dismissal, *Daunt v. Benson*, No. 1:20-cv-522-RJJ-RSK (W.D. Mich. Feb. 16, 2021),

ECF No. 58. And any settlement will entail list-maintenance measures that jeopardize Proposed Intervenors' interests. That potential conflict in litigation objectives between Defendants and Proposed Intervenors creates "substantial doubt," *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2022 WL 21295936, at *11 (W.D. Mich. Aug. 25, 2022), as to adequate representation. *See, e.g.*, *Paher v. Cegavski*, No. 3:20-cv-00243, 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2010) (granting intervention as of right where proposed intervenors "may present arguments about the need to safeguard Nevada[ns'] right to vote that are distinct from [state defendants'] arguments"). And because of this significant potential conflict, this intervention is easily distinguishable from *Bost*, where the court found that the proposed intervenor was "not entitled to intervention as of right" because it made *no* "showing of conflict—potential or otherwise." 75 F.4th at 690.

In short, because Proposed Intervenors' interests are not shared by the current parties to the litigation, and because there is a potential conflict between their litigation objectives, Proposed Intervenors cannot rely on Defendants or anyone else to provide adequate representation.

II. Alternatively, Proposed Intervenors should be granted permissive intervention under Rule 24(b).

Proposed Intervenors also satisfy the requirements for permissive intervention under Rule 24(b). First, their motion is timely, and intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See supra* Argument I(A). Second, Proposed Intervenors' interests are different from the existing litigants': neither Plaintiffs nor Defendants share Proposed Intervenors' substantive policy goals or resource-diversion concerns. *See supra* Argument I(B). And Proposed Intervenors will raise common questions of law in opposing Plaintiffs' suit—in particular, whether the relief Plaintiffs seek would itself violate the NVRA.

This Court also has good reason to exercise its discretion to grant Proposed Intervenors' motion because their participation will aid the Court's resolution of this case. The district court's

analysis in *Winfrey*, 463 F. Supp. 3d at 799, is instructive on this point. There, as here, plaintiffs sued governmental defendants, seeking an aggressive voter purge, and pro-voting organizations moved to intervene "for the purpose of challenging the plaintiff's claims with a view toward ensuring that no unreasonable measures are adopted that could pose an elevated risk of removal of legitimate registrations." *Id*. The court noted that there was an important perspective missing from this lawsuit: Plaintiffs' "sole goal" was "to compel the City to *remove* from the rolls voters whom it claims are ineligible" and Defendants had an obligation to balance the NVRA's twin objectives, but there was no party exclusively advocating to ensure that eligible voters are retained on or restored to the rolls. *Id*. at 801 (emphasis in original). The voting rights organizations' intervention was therefore warranted to ensure "a fulsome consideration of both competing interests, vigorously advocated by appropriately interested parties concerned with each side of the balancing test," which would "unquestionably . . . be helpful to the Court when . . . called upon to strike the required balance and decide whether the defendants' program of list maintenance is 'reasonable' within the meaning of the statute." *Id*. This Court will similarly benefit from hearing from voters and pro-voting organizations who will be most directly affected by this case's resolution.

CONCLUSION

Proposed Intervenors respectfully request that the Court grant their motion to intervene.

April 2, 2024

Respectfully Submitted,

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**Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I, Sarah F. Weiss, certify that on April 2, 2024, I electronically filed the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

I certify under penalty of perjury that the foregoing is true and correct.

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