

1 David R. Fox (NV Bar No. 16536)
Christopher D. Dodge (*pro hac vice*)
2 Marisa A. O’Gara (*pro hac vice*)
Elias Law Group LLP
3 250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
4 (202) 968-4490
dfox@elias.law
5 cdodge@elias.law
mogara@elias.law

6
7 Bradley S. Schrager (NV Bar No. 10207)
Daniel Bravo (NV Bar No. 13078)
Bravo Schrager LLP
8 6675 South Tenaya Way, Suite 200
Las Vegas, NV 89113
9 (702) 996-1724
bradley@bravoschrager.com
10 daniel@bravoschrager.com

11 *Attorneys for Proposed Intervenor-Defendants Rise Action Fund, Institute for a*
12 *Progressive Nevada, and Nevada Alliance for Retired Americans*

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF NEVADA

15 REPUBLICAN NATIONAL COMMITTEE,
16 *et al.*,

17 Plaintiffs,

18 v.

19 FRANCISCO V. AGUILAR, in his official
20 capacity as the Nevada Secretary of State, *et*
al.,

21 Defendants.
22

Case No. 2:24-cv-00518-CDS-MDC

**PROPOSED INTERVENORS’
RESPONSE TO PLAINTIFFS’
OBJECTIONS TO REPORT AND
RECOMMENDATION ON MOTION
TO INTERVENE**

23 **INTRODUCTION**

24 The National Voter Registration Act is a federal law enacted to make it *easier* for qualified
25 voters to register and *remain* registered. By filing this suit, Plaintiffs have chosen instead to
26 weaponize the NVRA against the very voters the law is meant to protect, seeking a rushed and
27 unlawful purge of the voter rolls ahead of the November general election. As Judge Couvillier’s
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1 well-reasoned report and recommendation explains, the relief Plaintiffs seek threatens to impair
2 important interests held by Rise Action Fund, the Institute for a Progressive Nevada, and the
3 Nevada Alliance for Retired Americans (“Proposed Intervenor”), groups committed to registering
4 voters and protecting the right to vote in Nevada. Judge Couvillier therefore recommended that
5 Proposed Intervenor be granted intervention both as of right under Rule 24(a) and permissively
6 under Rule 24(b). This Court should now adopt the report and recommendation.

7 As Judge Couvillier explained, Proposed Intervenor readily satisfy the requirements for
8 intervention. To start, each has a strong interest in protecting their members’ and constituents’
9 abilities to register to vote and remain registered. Plaintiffs’ suit threatens that important,
10 constitutionally-protected right by seeking a rushed purge of Nevada’s voter rolls. Such relief
11 creates an intolerable risk of disenfranchising Proposed Intervenor’s members and constituents,
12 including younger people, college students, and retirees. Granting the relief Plaintiffs seek would
13 also force each of the Proposed Intervenor organizations to divert its limited resources towards
14 stanching the harm from Plaintiffs’ demanded purge. Plaintiffs’ objection that these interests are
15 speculative ignores reality. Nowhere do Plaintiffs dispute the well-documented fact that voter
16 purges—particularly rushed ones in the months leading up to a major election—often remove
17 eligible voters, and particularly the sort of voters represented by Proposed Intervenor. Equally
18 deficient is Plaintiffs’ argument that Proposed Intervenor may just rely on the existing parties to
19 protect their interests. As Judge Couvillier found, the NVRA establishes statutorily-prescribed
20 objectives for the existing defendants—all of whom are Nevada election officials tasked with
21 enforcing the NVRA—that Proposed Intervenor simply do not share. Plaintiffs offer no good
22 reason to reject Judge Couvillier’s finding under Rule 24(a).

23 Plaintiffs’ objections to the report’s recommendation that intervention be granted under
24 Rule 24(b) are equally meritless. Plaintiffs do not even meaningfully dispute that Proposed
25 Intervenor satisfy the actual requirements for Rule 24(b)—that their motion to intervene was
26 “timely” and they raise defenses “that share[] with the main action a common question of law or
27 fact.” Fed. R. Civ. P. 24(b). Both requirements are plainly met here.

1 Plaintiffs baselessly suggest that Proposed Intervenor’s participation would delay the case.
 2 But Plaintiffs are obviously in no hurry. It took them over a month to properly complete pro hac
 3 vice motions, missing a court-ordered deadline in the process. *See* ECF Nos. 19, 33, 49, 56, 69–
 4 71. They stipulated to extend the deadline for filing a discovery plan and case management order.
 5 ECF No. 79. And, just four days before a hearing on the State Defendants’ motion to dismiss that
 6 had been set more than a week earlier, they asked the Court to postpone the hearing for no better
 7 reason than a handful of other briefing obligations. ECF No. 81. Moreover, when Proposed
 8 Intervenor’s filed a proposed motion to dismiss on April 15 to ensure that Plaintiffs could respond
 9 to their arguments on the same timeline as the State Defendants’ motion to dismiss, Plaintiffs opted
 10 to ignore it, pointedly responding only to the motion filed by the State Defendants. ECF No. 41.

11 In contrast, Proposed Intervenor’s have moved with noteworthy speed at every step: they
 12 moved to intervene just three days after suit was filed, have promised to follow any schedule set
 13 by the Court, promptly filed a proposed motion to dismiss, and now file this response a full week
 14 before its deadline to ensure briefing is complete before the upcoming June 18 motion to dismiss
 15 hearing. That effort reflects Proposed Intervenor’s strong stake in promptly resolving this case and
 16 ensuring that Plaintiffs do not obtain the harmful and baseless relief they seek.

17 The Court should adopt the report and recommendation; accept Proposed Intervenor’s
 18 proposed motion to dismiss (ECF No. 21); and permit this case to proceed promptly to resolution.

19 **BACKGROUND**

20 **I. Nevada’s Obligations Under the National Voter Registration Act**

21 The National Voter Registration Act of 1993 (“NVRA”) is a federal law the requires states
 22 to provide simplified, voter-friendly systems for registering to vote. In enacting the NVRA,
 23 Congress expressly intended to establish “procedures that will increase the number of eligible
 24 citizens who register to vote in elections for Federal office” and by making it “possible for Federal,
 25 State, and local governments to implement [the NVRA] in a manner that enhances the participation
 26 of eligible citizens as voters in elections for Federal office.” 52 U.S.C. § 20501(b)(1)–(2)
 27 (emphasis added). This purpose was consistent with the finding made by Congress, also in the
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1 NVRA, that “discriminatory and unfair registration laws and procedures can have a direct and
2 damaging effect on voter participation . . . and disproportionately harm voter participation by
3 various groups, including racial minorities.” *Id.* § 20501(a)(3).

4 To further those pro-voter purposes, the NVRA imposes strict restrictions on whether,
5 when, and how a state may remove a voter from its registration rolls. *See* 52 U.S.C. § 20507(a)(3)–
6 (4), (b)–(d). A state may immediately remove a voter from the rolls in only rare circumstances,
7 such as when a registrant requests to be deregistered or is convicted of a disenfranchising felony.
8 *See id.* § 20507(a)(3)(A)–(B). Otherwise, a state may not remove voters from the rolls without first
9 complying with prescribed procedural minimums that Congress has mandated to protect qualified
10 voters’ access to the franchise and minimize the risk of erroneous deregistration. *See id.* §
11 20507(a)(3)(C), (c), (d). For instance, a registrant may be removed from the rolls by reason of
12 change of residence, in most cases, only after failing to respond to a notice and failing to appear
13 to vote for two general elections following that notice. *Id.* § 20507(d)(1).

14 Thus, by design “the NVRA does not require states to immediately remove every voter
15 who may have become ineligible.” *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2024 WL
16 1128565, at *11 (W.D. Mich. Mar. 1, 2024) (“*PILF*”). Rather, Congress determined that some
17 delay in the removal of voters from the rolls is worthwhile because it minimizes the risk that voters
18 will be wrongly deregistered. As a result of these safeguards against immediate purging of a voter,
19 a single “snapshot” of a county’s voter rolls can “in no way be taken as a definitive picture of what
20 a county’s registration rate is.” *Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019).

21 Plaintiffs’ lawsuit largely ignores these congressionally-mandated safeguards and focuses
22 instead on the NVRA’s affirmative list-maintenance obligations. Those obligations, however, are
23 very limited. The NVRA requires only that each state make “a reasonable effort to remove the
24 names of ineligible voters from the official lists of eligible voters by reason of [] the death of the
25 registrant; or [] a change in the residence of the registrant.” 52 U.S.C. § 20507(a)(4). In other
26 words, “Congress did not establish a specific program for states to follow for removing ineligible
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1 voters,” *PILF*, 2024 WL 1128565, at *10, it just required reasonable measures, and only with
2 respect to voters who move or die.

3 **II. Plaintiffs’ Suit**

4 Plaintiffs—the Republican National Committee; the Nevada Republican Party; and Scott
5 Johnston, a registered Republican voter—filed suit on March 18th against Secretary of State
6 Aguilar; Lorena Portillo, the Registrar of Voters for Clark County; William “Scott” Hoen, the
7 Clerk for Carson City, as well as Amy Burgans, Staci Lindberg, and Jim Hindle, the County Clerks
8 for Douglas County, Lyon County, and Storey County, respectively. *See* Complaint, ECF No. 1.

9 The complaint lodges a single claim that the Defendants violated their list-maintenance
10 obligations under Section 8 of the NVRA. *See id.* ¶¶ 93–97 (citing 52 U.S.C. §20507(a)(4)). In
11 addition to a declaratory judgment that Defendants are violating Section 8, and an injunction
12 barring them from further such violations, they also request: “An order instructing Defendants to
13 develop and implement reasonable and effective registration list-maintenance programs to cure
14 their failure to comply with section 8 of the NVRA and to ensure that ineligible registrants are not
15 on the voter rolls.” *Id.* at 18 (Prayer for Relief).

16 The gravamen of Plaintiffs’ complaint is that Defendants *must* be violating the NVRA
17 because, they allege, several Nevada counties presently have improbably high voter registration
18 rates. *See id.* ¶¶ 48–78. But nowhere do Plaintiffs identify a specific deficiency with Nevada’s
19 current practices, nor do they identify any specific, presently registered voter whose presence on
20 the rolls violates the NVRA. The complaint instead relies upon a single snapshot of the voter rolls
21 in a few Nevada counties, nowhere accounting for the fact that the NVRA *by congressional design*
22 requires only reasonable list-maintenance efforts, not perfect ones, and necessarily requires states
23 to delay for years before removing many potentially ineligible voters, in order to avoid the
24 overzealous removal of eligible voters. Other federal courts have warned against just such reliance
25 on a “snapshot,” which can “in no way be taken as a definitive picture of what a county’s
26 registration rate is, ‘much less any indication of whether list maintenance is going on and whether
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1 it's . . . reasonable.” *Bellitto*, 935 F.3d at 1208 (affirming trial court’s ruling that Florida’s list-
2 maintenance procedures were “reasonable” under the NVRA).

3 In view of these and other pleading deficiencies, Proposed Intervenors filed a proposed
4 motion to dismiss on April 15, *see* ECF No. 21, while the Secretary of State filed his own motion
5 to dismiss later the same day, *see* ECF No. 26. The various county defendants joined in the
6 Secretary’s motion. *See* ECF Nos. 27–28, 30–31, 38. Plaintiffs opted to respond only to the
7 Secretary of State’s motion. ECF Nos. 40, 41. The Court initially scheduled a hearing on the
8 Secretary’s motion to dismiss for June 7, 2024. *See* ECF No. 67. After Plaintiffs requested a
9 continuance, *see* ECF No. 81, the Court moved the hearing to June 18, 2024. *See* ECF No. 83.

10 **III. Proposed Intervenors and their Interests in This Case**

11 **Rise.** Rise is a student-led 501(c)(4) nonprofit organization that runs student-focused
12 statewide advocacy and voter mobilization programs in Nevada, among other states. To advance
13 its mission of fighting for free public higher education and ending homelessness, housing
14 insecurity, and food insecurity among college students, Rise is committed to empowering and
15 mobilizing students in the political process and has recently focused a significant portion of its
16 efforts on students in Nevada. *See* ECF No. 7-2, Declaration of Christian Solomon (“Solomon
17 Decl.”) ¶¶ 5, 9. Recognizing that Nevada had few, if any, statewide organizations committed
18 specifically to promoting the interests of young people and students between the ages of 18 and
19 27, Rise expanded to the state in 2023 and hired a State Director to build out the organization’s
20 operations. *Id.* ¶ 6. Within its first year, Rise’s Nevada chapter held a training at UNLV, hired and
21 trained several organizers devoted to engaging UNLV students, and recruited several campus
22 fellows. *Id.* ¶ 8. Rise anticipates recruiting and training additional lead campus organizers at other
23 Nevada campuses this year, including at UNR. *Id.* It also plans to hire a Deputy Director to further
24 build upon the group’s work in the state. *Id.*

25 While Rise’s Nevada chapter shares the organization’s broader national mission, it also
26 strives to be responsive to the concerns of its student constituents within Nevada. Rise’s first
27 training at UNLV coincided with the December 6, 2023, mass shooting on the UNLV campus,
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1 forcing Rise’s employees and student attendees into lockdown. *Id.* ¶¶ 5, 10. In response, the
2 Nevada chapter has made organizing students around gun safety issues a top goal. *Id.* ¶ 10. The
3 Nevada chapter also has made student debt relief and financial assistance a policy focus, and is in
4 the process of recruiting volunteers and organizers to hold phone banks educating Nevada college
5 students about the Biden Administration’s SAVE Plan,¹ which offers affordable repayment plans
6 to students, but which many students lack sufficient awareness of. *Id.* ¶ 9.

7 To build political support for these policy goals, Rise plans to make organizing and
8 educating its student constituents about the 2024 general election a major priority. *Id.* ¶ 11. It is
9 planning extensive efforts to register students on campus, and also to ensure that already-registered
10 students *stay* registered. *Id.* Rise’s goal is to have its organizers and volunteers reach each student
11 at UNLV three to five times, whether through phone banking or direct conversation, ahead of the
12 2024 general election, and it has also adopted specific goals for student voter registration and
13 turnout. *Id.* This election-focused work is important to Rise’s mission, which hinges on its ability
14 to build political power with the student population. *Id.* ¶ 5–7, 11, 13.

15 Plaintiffs’ suit particularly threatens to harm the student population that Rise advocates for
16 and seeks to serve. *Id.* ¶ 13. Many college students live away from their family homes or places of
17 residence for long periods of time while at school, often changing temporary places of residence
18 repeatedly without abandoning their permanent residence, but without immediate access to mailed
19 notices sent to their permanent addresses that might advise them that their registration is at risk of
20 cancellation. *Id.* Other college students establish permanent residences in their new college
21 communities, but may move frequently—every year, or even every semester—within the same
22 small geographic area. *Id.* Students in both categories are particularly at risk for
23 disenfranchisement in a rushed purging process in the months ahead of a major general election of
24 the sort that Plaintiffs seek here. Plaintiffs’ suit is therefore a direct attack on the very voters Rise
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26 ¹ See generally The White House, Fact Sheet: The Biden-Harris Administration Launches the
27 SAVE Plan, the Most Affordable Student Loan Repayment Plan Ever to Lower Monthly Payments
28 for Millions of Borrowers (Aug. 22, 2023), <https://perma.cc/6WKP-M2ER>.

1 seeks to organize, empower, and advocate for. And if Plaintiffs' suit is successful, Rise will have
2 to retool its efforts in Nevada to focus on assisting students in determining their registration status,
3 and re-registering if they are in fact purged. *Id.* ¶¶ 13, 15. Such retooling will disrupt Rise's
4 preelection planning and also come at the expense of work on its other mission-critical goals. *Id.*
5 14. In particular, Rise expects that it will have to focus its volunteer phone banking efforts on
6 educating students about the purge and informing them about how to confirm their registration
7 status. *Id.* This volunteer-intensive effort would diminish Rise's plan to phonebank on other
8 mission-critical efforts, such as informing students about the SAVE Plan and other financial
9 assistance and loan repayment programs. *Id.* ¶¶ 9, 14.

10 ***Institute for a Progressive Nevada.*** The Institute for a Progressive Nevada ("IPN") is a
11 progressive, non-partisan, and non-profit organization that educates, empowers, and engages
12 Nevadans to build a state where everyone has a fair opportunity to succeed. Its core mission is to
13 ensure that every Nevadan knows how to vote and how to do so confidently. *See* ECF No. 7-3,
14 Declaration of Shelbie Swartz ("Swartz Decl.") ¶ 4. As part of its civic education and voting rights
15 work, IPN publishes a non-partisan voter guide every election cycle. *Id.* This guide includes
16 comprehensive instructions on how to register and how to vote in Nevada. *Id.* IPN also hosts its
17 own voter registration platform. *Id.* The organization also engages in targeted advertising
18 campaigns—chiefly through social media and radio—to educate citizens about its core policy
19 areas. The organization presently has a dozen employees. *Id.* ¶¶ 3, 4.

20 Plaintiffs' suit is a direct affront to IPN's mission to empower all Nevadans to vote, in
21 effect asking for a rushed purge process that would result in eligible voters being tossed off the
22 rolls. *Id.* ¶¶ 4, 5. IPN would need to take several major steps in response. First, the organization
23 would have to retool its voter guide to educate the public about the purge and add material
24 informing voters about how to confirm their registration status. *Id.* ¶ 5. Second, it would have to
25 refocus its limited advertising to spread awareness about the purge to alert people to the need to
26 check their registration. *Id.* Such a campaign would eat into IPN's limited financial resources,
27 likely delaying the hiring of new employees and making it more difficult to meet payroll for
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1 existing employees. *Id.* And it would also reduce IPN’s ability to advertise about other issues,
2 including spreading awareness of different voting methods within Nevada. *Id.* Nonetheless, given
3 the centrality of voting to its mission, IPN strongly believes it would have to commit these
4 resources to such an advertising campaign, even at the expense of other objectives. *Id.*

5 ***The Alliance.*** The Alliance for Retired Americans is a nonpartisan 501(c)(4) membership
6 organization with over 4.4 million members nationwide. *See* ECF No. 7-4, Declaration of Thomas
7 Bird (“Bird Decl.”) ¶ 3. Its mission is to ensure the social and economic justice and full civil rights
8 that retirees have earned after a lifetime of work, with a particular emphasis on safeguarding the
9 right to vote. *Id.* ¶ 4. The Alliance’s Nevada chapter, the Nevada Alliance for Retired Americans,
10 has roughly 20,000 members comprising retirees from numerous public and private sector unions,
11 members of community organizations, and individual activists. *Id.* ¶ 3. It works with 20 affiliated
12 chapters—comprised of other union and community groups—across Nevada. *Id.* ¶ 9. A major
13 focus of the Alliance’s work is attending these chapter meetings to speak with members about key
14 policy goals, such as preserving Social Security and Medicare. *Id.* ¶ 10.

15 Because Alliance members are mostly retirees, and are registered to vote at very high rates,
16 they are disproportionately vulnerable when voting rolls are aggressively purged. *Id.* ¶ 6. Other
17 characteristics of this group also contribute to making them particularly vulnerable to wrongful
18 removal from the rolls in hurried or uncareful purges, including that many retirees move within
19 Nevada after retiring and many travel out of state for long periods. *Id.* ¶ 5. Both of these scenarios
20 make it more likely that a voter will either miss a notice or fail to receive it in time, increasing the
21 voter’s risk of wrongful deregistration. *Id.* ¶ 6. For instance, a retiree who spends a lengthy period
22 of time caring for grandchildren at another family member’s home, or enjoying retirement at a
23 second home, may miss a crucial notice of cancellation if that notice is sent only to the retiree’s
24 home address. *Id.* ¶ 5. Beyond that, the Alliance’s sheer size gives it a substantial stake in this case:
25 Given the Alliance’s roughly 20,000 members, it is all but certain that a rushed purge would put
26 many of those members’ voter registrations in jeopardy.

1 A purge of Nevada’s election rolls would also require the Alliance to refocus its efforts on
2 educating its members about registration issues, an area it does not traditionally focus on since
3 most of its members are long-registered voters. *Id.* ¶¶ 7–9. In a presidential year such as 2024, the
4 Alliance has a wide range of organizational goals to achieve: getting out the vote, educating its
5 members and constituents about where candidates stand on the Alliance’s key issues, and
6 organizing around those issues. *Id.* ¶ 10. A purge would undermine those efforts in several ways.
7 *Id.* Alliance leadership would need to devote time and effort to preparing materials and
8 presentations about the purge, and would then need to use scarce presentation and organizing time
9 at chapter meetings to walk members through how to confirm their registrations, as well as to
10 answer members’ questions. *Id.* ¶¶ 9, 10. Alliance leadership and volunteers would also need to
11 assist any members who were deregistered. *Id.* ¶ 8. All this would divert the Alliance’s resources
12 from other essential organizing tasks, and thereby frustrate its mission.

13 **IV. Judge Couvillier’s Recommendation to Grant Intervention**

14 In view of their interests above, Proposed Intervenors moved swiftly to intervene in this
15 case once it was filed. Proposed Intervenors filed their motion to intervene on March 21—a mere
16 three days after the complaint was filed. *See* ECF No. 7. The motion became fully briefed on April
17 11. *See* ECF No. 20. On May 24, Judge Couvillier issued a report recommending that the motion
18 be granted under both Rule 24(a) and 24(b). *See* ECF No. 68 (“R&R”).

19 Beginning with intervention as of right under Rule 24(a), Judge Couvillier found that
20 Proposed Intervenors’ motion was indisputably timely, as it was filed “only a few days after the
21 Plaintiffs filed their Complaint on March 18, 2024.” R&R at 3. Given that promptness, Judge
22 Couvillier found “[t]here is no prejudice” to the existing parties and no delay on the part of
23 Proposed Intervenors. *Id.* Judge Couvillier next concluded that Proposed Intervenors “have
24 sufficient protectable interests” in this case. *Id.* at 4–5. Specifically, Judge Couvillier found that
25 Proposed Intervenors had at least two discrete interests at stake here: (1) a need to protect their
26 own members and constituents from the voter roll purge demanded by Plaintiffs in their complaint;
27 and (2) a need to guard against being “forced to divert their resources” as a response to any relief
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1 granted in this case. *Id.* at 4–6. Judge Couvillier recognized that those two interests are at risk of
2 impairment given the relief sought in the complaint. *Id.* at 5. Finally, Judge Couvillier determined
3 that the existing defendants may not adequately represent Proposed Intervenor because of their
4 duty to balance the NVRA’s competing “twin objectives” of “easing barriers to registration and
5 voting, while at the same time protecting the electoral integrity and the maintenance of accurate
6 voter rolls.” *Id.* at 6; *accord Bellitto*, 935 F.3d at 1198 (same). Judge Couvillier thus found
7 Proposed Intervenor satisfied Rule 24(a).

8 Judge Couvillier also found that Proposed Intervenor satisfied Rule 24(b). *See* R&R at 7–
9 8. He reemphasized the timeliness of Proposed Intervenor’s motion and noted—as Plaintiffs
10 nowhere dispute—that Proposed Intervenor raise arguments and defenses in common with the
11 main action. *Id.* at 7. Judge Couvillier rejected Plaintiffs’ argument that Proposed Intervenor were
12 required to identify an independent basis for jurisdiction, correctly recognizing that requirement is
13 unnecessary in federal question cases such as this one. *Id.* at 7 (citing *Freedom from Religion*
14 *Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011)). Finding no risk of undue delay or
15 prejudice from Proposed Intervenor’s involvement in this case, Judge Couvillier concluded that
16 permissive intervention was appropriate under Rule 24(b).

17 On June 7, Plaintiffs filed objections to Judge Couvillier’s report and recommendation. *See*
18 ECF No. 85 (“Pls.’ Objections”). While Proposed Intervenor’s deadline to respond to the
19 objections is June 21, they file this response ahead of time to ensure that the matter is fully briefed
20 ahead of the June 18 hearing presently scheduled on the Secretary’s motion to dismiss.

21 LEGAL STANDARD

22 The district court reviews *de novo* those portions of the magistrate judge’s report and
23 recommendation that have been properly objected to. *See* Fed. R. Civ. P. 72(b)(3). Those portions
24 not properly objected to are reviewed for clear error. *See McDonnell Douglas Corp. v. Commodore*
25 *Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

26 With respect to intervention, “Rule 24 traditionally receives liberal construction in favor
27 of applicants for intervention.” *Arkaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *see also*

1 *W. Expl. LLC v. U.S. Dep't of Interior*, No. 3:15-cv-00491-MMD-VPC, 2016 WL 355122, at *2
2 (D. Nev. Jan. 28, 2016) (noting Rule 24's liberal construction and "focus[] on practical
3 considerations rather than technical distinctions").

4 The Ninth Circuit "require[s] applicants for intervention as of right pursuant to Rule
5 24(a)(2) to meet a four-part test":

6 (1) the motion must be timely; (2) the applicant must claim a "significantly
7 protectable" interest relating to the property or transaction which is the subject of
8 the action; (3) the applicant must be so situated that the disposition of the action
9 may as a practical matter impair or impede its ability to protect that interest; and
10 (4) the applicant's interest must be inadequately represented by the parties to the
11 action.

12 *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (quoting *Cal. ex rel.*
13 *Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006)).

14 "Rule 24(b) permits the Court to allow anyone to intervene who submits a timely motion
15 and 'has a claim or defense that shares with the main action a common question of law or fact.'" *Nevada v. United States*, No. 3:18-cv-569-MMD-CBC, 2019 WL 718825, at *2 (D. Nev. Jan. 14,
16 2019) (quoting Fed. R. Civ. P. 24(b)(1)(B)).

17 ARGUMENT

18 **I. Judge Couvillier correctly determined Proposed Intervenors may intervene as of 19 right under Rule 24(a).**

20 Judge Couvillier appropriately applied controlling law to the facts of this case in
21 determining that Proposed Intervenors are entitled to intervene as of right under Rule 24(a).
22 Plaintiffs' objections offer no basis to reject his conclusions, and accordingly the Court should
23 adopt Judge Couvillier's well-supported report.

24 **A. Proposed Intervenors have significantly protectable interests that may be 25 impaired by this case.**

26 As Judge Couvillier recognized, Proposed Intervenors "have sufficient protectable
27 interests" at risk here to satisfy Rule 24(a). *See* R&R at 5; *see generally supra* Background § III.
28 Proposed Intervenors' burden on this score is modest—they need not show that impairment is "an
absolute certainty." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 900 (9th
Cir. 2011). Rather, in keeping with Rule 24's liberal construction in favor of intervention, their

1 interests need only be “‘substantially affected in a practical sense by the determination made in an
2 action.’” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (quoting Fed.
3 R. Civ. P. 24 advisory committee note to 1966 amendment). As Judge Couvillier explained, this
4 is a “practical, threshold inquiry, and [n]o specific legal or equitable interest need be established,”
5 R&R at 5 (quoting *Citizens for Balanced Use*, 647 F.3d at 897), and the standard is more lenient
6 than Article III’s standing requirements. *See Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991).
7 After determining the applicant has a protectable interest, courts typically have “little difficulty
8 concluding,” the disposition of the case may affect such interest. *Lockyer*, 450 F.3d at 442 (citing
9 *Berg*, 268 F.3d at 822). As the report sets out, Proposed Intervenors have at least two protectable
10 interests at risk of impairment here. *See* R&R at 5.

11 *First*, Proposed Intervenors have a substantial interest in ensuring that their members and
12 constituents are able to register to vote, remain registered to vote, and successfully participate in
13 the upcoming general election. *See* Solomon Decl. ¶¶ 12–15; Bird Decl. ¶¶ 4, 7–10. As Judge
14 Couvillier noted, the relief sought by Plaintiffs creates a substantial risk that eligible voters—
15 including Proposed Intervenors’ members and constituents—will be removed from the rolls. *See*
16 R&R at 5. Numerous courts have recognized this risk as a well-established basis for intervening
17 in NVRA Section 8 cases that seek to have voters purged from the rolls. *See Bellitto v. Snipes*, No.
18 16-cv-61474, 2016 WL 5118568, at *2–3 (S.D. Fla. Sept. 21, 2016) (granting organization
19 intervention of right in Section 8 case); *see also Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F.
20 Supp. 3d 795, 799 (E.D. Mich. 2020) (granting organization permissive intervention in Section 8
21 case); Order, *Daunt v. Benson*, 1:20-cv-522 (W.D. Mich. Sept. 28, 2020), ECF No. 30 (same);
22 Order, *Voter Integrity Proj. NC, Inc. v. Wake Cnty. Bd. of Elections*, No. 5:16-cv-683 (E.D.N.C.
23 Dec. 1, 2016), ECF No. 26 (granting voters permissive intervention in Section 8 case). In *Bellitto*,
24 for example, the district court permitted a union with tens of thousands of members in Florida to
25 intervene because “the interests of its members would be threatened by [any] court-ordered ‘voter
26 list maintenance’ sought by Plaintiffs,” a “potential harm” the court found “particularly great in
27 light of the upcoming 2016 General Election.” *Bellitto*, 2016 WL 5118568, at *2. That is precisely
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1 what the Alliance seeks to do here on behalf of its nearly 20,000 members in Nevada, most of
2 whom are retired union workers, Bird Decl. ¶ 3, and what Rise seeks to do on behalf of politically
3 marginalized students, Solomon Decl. ¶¶ 5–6, 13, 15; *cf. Am. Unites for Kids v. Rousseau*, 985
4 F.3d 1075, 1096–97 (9th Cir. 2021) (holding organizations may sue on behalf of non-member
5 constituents even under the more-demanding Article III test).

6 The NVRA itself reflects Proposed Intervenors’ interest here. The law creates a cause of
7 action to challenge improper removal of registered voters. 52 U.S.C. § 20510(b). And
8 organizations like Proposed Intervenors often bring successful claims under that provision to
9 prevent the very sort of statewide voter purge Plaintiffs here seek to compel. *See, e.g., Common*
10 *Cause/N.Y. v. Brehm*, 344 F. Supp. 3d 542, 558–59 (S.D.N.Y. 2018) (holding that plaintiff
11 adequately alleged as-applied NVRA Section 8 claim challenging New York’s registration
12 removal policy); *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1156 (S.D. Ind. 2018)
13 (similar). Congress, by creating such a cause of action in the NVRA itself, recognized the very
14 interest that the Proposed Intervenors seek to vindicate here through intervention—preventing
15 improper removal of their members from Nevada’s voter rolls. And courts within this Circuit have
16 recognized an organization’s interest in protecting its members voting rights satisfies the “more
17 stringent” requirement of Article III, which “compels the conclusion that they have an adequate
18 interest” for purposes of Rule 24. *Yniguez*, 939 F.2d at 735; *see also Mi Familia Vota v. Fontes*,
19 No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *29–32 (D. Ariz. Feb. 29, 2024) (finding
20 organizations had standing to protect members’ voting rights); *March for Our Lives Idaho v.*
21 *McGrane*, No. 1:23-CV-00107-AKB, 2023 WL 6623631, at *7 (D. Idaho Oct. 11, 2023) (similar).

22 In their objections, Plaintiffs insist that the risk of removing eligible voters from the rolls
23 is too speculative to supply Proposed Intervenors with an interest in this case. *See* Pls.’ Objections
24 at 6. But as the Eleventh Circuit explained in another NVRA case, while “a maximum effort at
25 purging voter lists could minimize the number of ineligible voters . . . those same efforts might
26 also remove eligible voters.” *Bellitto*, 935 F.3d at 1198; *see also Winfrey*, 463 F. Supp. 3d at 801–
27 02 (similar, and granting intervention). Such a “maximum effort” is precisely what Plaintiffs seek
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1 here. And it is well-established that “voter purges have often had the effect of clearing eligible
 2 voters from state registration lists and in a manner that tends to discriminate by race and
 3 nationality.” Lydia Hardy, *Voter Suppression Post-Shelby: Impacts and Issues of Voter Purge and*
 4 *Voter ID Laws*, 71 Mercer L. Rev. 857, 866 (2020).² Indeed, just several months ago, a county
 5 clerk in Michigan improperly removed over 1,000 voters from the rolls, including an active-duty
 6 Air Force officer, at the demand of conservative organizations.³

7 The risk of errant removal of Proposed Intervenors’ members and constituents is
 8 particularly acute here because they represent people who face heightened risk from any court-
 9 ordered purge. As explained, younger voters, and students in particular, are disproportionately
 10 likely to be purged because they move frequently and are often away from their voting residence
 11 for prolonged periods of time. *See* Solomon Decl. ¶ 13. Plaintiffs’ requested relief therefore
 12 threatens the significant—indeed, constitutionally-protected—interests of the student constituents
 13 that Rise seeks to organize, empower, and turn out to vote. *See id.* ¶¶ 13, 15. Any
 14 disenfranchisement of student voters impairs Rise’s ability to organize such voters as a political
 15 force in pursuit of Rise’s student-oriented mission. *Id.* Similarly, the Alliance’s approximately
 16 20,000 members also face challenges that increase their likelihood of being purged, as many of
 17 their members move or travel frequently, and spend long periods away from their residence. Bird
 18 Decl. ¶¶ 3, 5–6. And IPN seeks to empower *all* Nevadans to know how to vote and to be able to
 19 vote with confidence, a goal frustrated by the rushed purge Plaintiffs seek. Swartz Decl. ¶¶ 4, 5.
 20 Plaintiffs’ demand for a rushed and far-ranging purge therefore creates an intolerable risk of harm
 21 to each of the Proposed Intervenors. As Judge Couvillier recognized, it is irrelevant that Proposed
 22

23 ² *See also* ECF No. 20 at 3 n.1 (collecting additional authority on the risk voter purges pose to
 eligible voters).

24 ³ Alexandra Berzon & Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting Voter Rolls*,
 25 N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>;
 26 Peg McNichol, *Voter rolls targeted in run-up to November election, highlighted by*
 27 *recent efforts in Waterford*, The Oakland Press (Mar. 18, 2024),
 28 <https://www.theoaklandpress.com/2024/03/18/voter-rolls-targeted-in-run-up-to-november-election/>.

1 Intervenor do not know with “absolute certainty” which of their members or constituents will be
2 harmed. R&R at 5. Rule 24 imposes no such requirement. *See Citizens for Balanced Use*, 647 F.3d
3 at 900 (“stress[ing]” that Rule 24 “does not require an absolute certainty that a party’s interests
4 will be impaired”).

5 It is also no answer, as Plaintiffs suggest, to say that Proposed Intervenor may “litigate
6 the potential improper removal of their members once they have been” removed. Pls.’ Objections
7 at 8. Given the timing of Plaintiffs’ suit, Proposed Intervenor would likely lack sufficient time to
8 file their own NVRA Section 8 suit in response to any improper purging of the voter rolls
9 attributable to this suit. Moreover, the *stare decisis* effect of Plaintiffs’ suit might preclude such a
10 claim to begin with, leaving Proposed Intervenor no choice but to seek to intervene now. That
11 “[P]roposed [I]ntervenor here have no alternative forum where they can” protect their interests
12 further supports their intervention. *Lockyer*, 450 F.3d at 442. And common sense dictates that any
13 dispute over Nevada’s voter rolls be resolved in one civil action rather than several.

14 Judge Couvillier also found that Proposed Intervenor have a second protectable interest at
15 stake in this case. *See* R&R at 5. Specifically, granting Plaintiffs their requested relief here would
16 “force[] [Proposed Intervenor] to divert their resources in order to combat” the consequences of
17 such relief. *Id.* This conclusion was amply supported by unrefuted declaration testimony from
18 Proposed Intervenor. For example, IPN’s mission to empower all Nevadans to vote would require
19 it to take prophylactic measures in response to the far-ranging purge Plaintiffs seek. In particular,
20 it would have to retool and update its non-partisan voter guide, which instructs Nevadans on how
21 to navigate the registration and voting process. Swartz Decl. ¶ 5. This task would require diverting
22 the time of IPN’s small number of employees away from other mission-critical tasks ahead of the
23 election. *Id.* Moreover, because empowering people to vote is at the core of IPN’s mission, the
24 organization anticipates allocating its limited financial resources to sponsor an advertising
25 campaign educating voters about the purge and instructing them on how to confirm their
26 registration status. *Id.* Given the organization’s modest resources, this campaign would restrict
27 IPN’s ability to make payroll, and also limit its ability to launch other planned advertising
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1 campaigns, including one focusing on educating Nevadans about different methods of voting. *Id.*
2 These costs harm IPN’s ability to pursue its mission. *Id.*

3 Unrefuted declaration testimony confirms that both Rise and the Alliance would suffer
4 similar harms. As explained, Rise plans to organize volunteer phone banks to educate students
5 about their various options for loan repayment assistance and other college aid plans, including
6 the recently announced SAVE Plan. *See* Solomon Decl. ¶¶ 9, 14. If Plaintiffs prevail, however,
7 Rise will have to redirect some of these efforts towards educating students about the purge and
8 how to confirm their registration status. *Id.* That severely harms Rise’s mission, which includes
9 helping its student constituents pay for their education. *Id.* ¶¶ 5, 14–15. Granting Plaintiffs’ relief
10 will therefore “substantially affect[]” Rise “in a practical sense.” *Berg*, 268 F.3d at 822. Similarly,
11 the Alliance will have to use its limited volunteer resources to prepare materials educating its
12 members about how to confirm their registration status, and then distribute these materials to
13 members through social media channels, email, and at chapter meetings. Bird Decl. ¶¶ 7–10. This
14 effort will reduce the Alliance’s ability to speak to its members about other key policy goals,
15 including protecting social security and Medicare. *Id.*

16 Like their interest in protecting their members and constituents’ right to vote, Proposed
17 Intervenor’s interest in protecting their own organizational missions and resources can suffice to
18 provide Article III standing. *See, e.g., E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th
19 Cir. 2021) (“[A]n organization has direct standing to sue where it establishes that the defendant’s
20 behavior has frustrated its mission and caused it to divert resources in response to that frustration
21 of purpose.”). This second interest therefore provides a more than sufficient independent basis for
22 granting intervention under Rule 24. *See Yniguez*, 939 F.2d at 735.

23 Plaintiffs’ only response to this second interest in their objections is to again claim that it
24 is too speculative. *See* Pls.’ Objections at 8–9. But nowhere do Plaintiffs refute the well-established
25 fact that rushed and last-minute voter purges—the sort sought here—often toss eligible voters from
26 the rolls. *See supra* § I(A), n.2. It is therefore not speculative at all that, in the event of any court-
27 sanctioned purge, Proposed Intervenor’s will each have to divert resources to educating their
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1 members about how to confirm their registration status and assisting those who were removed.
2 *See, e.g.*, Solomon Decl. ¶ 14 (explaining Rise would have to “refocus [its] volunteer phone
3 banking efforts towards educating students about the purge and how to confirm their registration
4 status”); Bird Decl. ¶ 8 (similar for the Alliance); *see also* Swartz Decl. ¶ 5 (explaining IPN would
5 have to divert resources to launch a paid advertising campaign educating voters about the purge
6 and how to confirm their registration status). Plaintiffs have no answer to this unrefuted testimony,
7 which makes clear that Proposed Intervenors would each divert resources as a matter of course if
8 Plaintiffs prevail. Judge Couvillier therefore rightly concluded that Proposed Intervenors’ interest
9 in avoiding this risk provides its own sufficient basis for intervention.

10 **B. Existing parties may not adequately represent Proposed Intervenors.**

11 “[T]he requirement of inadequacy of representation is satisfied if the applicant shows that
12 representation of its interests ‘*may be*’ inadequate.” *W. Exp!*, 2016 WL 355122, at *3 (quoting
13 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)) (emphasis added); *see also*
14 *Trbovich*, 404 U.S. 528, 538 n.10 (1972). That is precisely what Judge Couvillier found, *see* R&R
15 at 5–6, and with good reason.

16 Under the NVRA, state election officials must “establish procedures that will increase the
17 number of eligible citizens who register to vote in elections for Federal office and “enhance[] the
18 participation of eligible citizens as voters in elections for Federal office.” 52 U.S.C. § 20501(b)(1)–
19 (2). But, at the same time, the NVRA requires them “to protect the integrity of the electoral
20 process” and “to ensure that accurate and current voter registration rolls are maintained.” *Id.* §
21 20501(b)(3)–(4). As the Eleventh Circuit observed, “[t]hese twin objectives—easing barriers to
22 registration and voting, while at the same time protecting electoral integrity and the maintenance
23 of accurate voter rolls—naturally create some tension.” *Bellitto*, 935 F.3d at 1198; *see also*
24 *Winfrey*, 463 F. Supp. 3d at 801 (similar). In adopting these twin objectives, Congress has required
25 state and local election officials—including the existing defendants—to “balance [] competing
26 interests.” *Bellitto*, 935 F.3d at 1198.

1 In contrast, Proposed Intervenor do not need to balance any “competing interests”—their
2 interest in this litigation is in ensuring that their members and constituents are not purged from the
3 voter rolls, and in maximizing access to the franchise across Nevada. Bird Decl. ¶ 7; Swartz Decl.
4 ¶ 5; Solomon Decl. ¶ 14. For that reason, several courts have found in NVRA cases that civic
5 organizations are not adequately represented by State Defendants who must balance the NVRA’s
6 twin statutory objectives. *See e.g., Bellitto*, 2016 WL 5118568, at *2; *Winfrey*, 463 F. Supp. 3d at
7 801; *cf. Kobach v. U.S. Election Assistance Comm’n*, No. 13-CV-4095-EFM-DJW, 2013 WL
8 6511874, at *4 (D. Kan. Dec. 12, 2013) (explaining in NVRA litigation “that the existing
9 government Defendants have a duty to represent the public interest, which may diverge from the
10 private interest of Applicants”). And that is a particularly appropriate conclusion here in view of
11 the Ninth Circuit’s admonition that “intervention of right does not require an absolute certainty . .
12 . . that existing parties will not adequately represent [an intervenor’s] interests.” *Citizens for*
13 *Balanced Use*, 647 F.3d at 900. In view of the clearly distinct interests held by Proposed
14 Intervenor and State Defendants, Judge Couvillier properly found that Proposed Intervenor
15 satisfied their “minimal” burden on this factor. *W. Expl.*, 2016 WL 355122, at *3 (quoting *Watt*,
16 713 F.2d at 528); *accord* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice &*
17 *Procedure* § 1909 (3d ed. 2024) (explaining that “in most cases” the “applicant is the best judge
18 of the representation of the applicant’s own interests”).

19 Plaintiffs’ response is to insist that the NVRA’s twin objectives in fact *confirm* the State
20 Defendants will adequately represent the Proposed Intervenor. *See* Pls.’ Objections at 11. But that
21 makes little sense in view of the NVRA’s own text, and requires this Court to “simply ignore[] the
22 second—equally weighty—express legislative purpose of the [National Voter Registration] Act.”
23 *Winfrey*, 463 F. Supp.3d at 801 (granting intervention in NVRA case). That dooms Plaintiffs’
24 argument on this factor because they nowhere grapple with the fact that Proposed Intervenor will
25 litigate this case without the “tension” and need for “balance” the NVRA imposes on the other
26 defendants. *Id.* (quoting *Bellitto*, 935 F.3d at 1198). At bottom, “while intervenors’ principal
27 interest is in ensuring that all eligible voters are allowed to vote,” the elected officials must balance
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1 competing public policy interests that Proposed Intervenor are not ultimately responsible for.
2 *Kasper v. Hayes*, 651 F. Supp. 1311, 1313 (N.D. Ill.), *aff'd sub nom. Kasper v. Bd. of Election*
3 *Comm'rs*, 810 F.2d 1167 (7th Cir. 1987).

4 Because they cannot evade the discrete interests the NVRA itself creates for the State
5 Defendants, Plaintiffs attempt to crank up the standard Proposed Intervenor must satisfy.
6 Specifically, they suggest the Court must presume Proposed Intervenor are adequately
7 represented by the existing defendants because they share the same “ultimate objective.” *See*
8 *Appeal* at 10. But that is wrong for several reasons.

9 To start, the “ultimate objective” standard does not apply here. That doctrine—to the extent
10 it survived recent Supreme Court case law, *see infra*—applies only when putative intervenors share
11 “identical” interests with an existing party. *Citizens for Balanced Use*, 647 F.3d at 899; *see also*
12 *Arakaki v. Cayetano*, 324 F.3d 1078, 1086–87 (9th Cir. 2003) (applying presumption where
13 proposed intervenor’s interest is “identical to that of one of the present parties” but not where “the
14 intervenors’ interests are narrower than that of the government and therefore may not be adequately
15 represented”). As Judge Couvillier recognized, *see R&R* at 6, that is by *definition* not the case here
16 because the NVRA prescribes “competing interests,” *Bellitto*, 935 F.3d at 1198, to the State
17 Defendants that Proposed Intervenor do not share. And while Plaintiffs half-heartedly try to
18 distinguish it, *see Pls.’ Objections* at 12–13, the Ninth Circuit’s decision in *Citizens for Balanced*
19 *Use* is illustrative. In that case, various environmental organizations sought to intervene to defend
20 a U.S. Forest Service order governing the use of motor vehicles in a national forest. *See* 647 F.3d
21 at 899. The Forest Service was already defending its order as “statutorily mandated” by federal
22 law. *Id.* But the proposed intervenors wanted to promote the “broadest possible restrictions on
23 recreational uses” in the forest. *Id.* That sufficed for intervention because the divergent interests
24 and views “represent[ed] more than a mere difference in litigation strategy”—they reflected
25 “fundamentally differing points of view between Applicants and the Forest Service on the
26 litigation as a whole.” *Id.* The same is true here—the State Defendants have an interest in showing
27 that Nevada’s list-maintenance procedures “suffice to comply with [the state’s] statutory mandate”
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1 under the NVRA. *Id.* Proposed Intervenors, in contrast, seek the “broadest possible” reading of the
2 NVRA’s removal protections to ensure maximum protection for voters under the law. *Id.*

3 Despite the discrete interests held by Proposed Intervenors and the State Defendants,
4 Plaintiffs suggest the presumption still should apply because the State Defendants and Proposed
5 Intervenors each seek “dismissal of the suit.” Pls.’ Objections at 12. But the Ninth Circuit has
6 squarely rejected that notion: “[T]he government’s representation of the public interest may not be
7 ‘identical to the individual parochial interest’ of a particular group just because ‘both entities
8 occupy the same posture in the litigation.’” *Citizens for Balanced Use*, 647 F.3d at 899 (quoting
9 *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)).

10 There is also good reason to doubt the continued viability of the “presumption” relied upon
11 by Plaintiffs. In *Berger v. North Carolina State Conference of the NAACP*, the Supreme Court
12 reiterated its view that even when state parties pursue “related” interests to political actors, those
13 interests are not properly considered “identical.” 597 U.S. 179, 196 (2022) (quoting *Trbovich*, 404
14 U.S. at 538–39). The Court explained that “[w]here ‘the absentee’s interest is similar to, but not
15 identical with, that of one of the parties,’ that normally is not enough to trigger a presumption of
16 adequate representation.” *Id.* (quoting 7C Wright & Miller, *Federal Practice & Procedure* § 1909
17 (3d ed. 2022)). The Court stressed this standard will rarely be met where the existing parties are
18 state officials because such parties must “bear in mind broader public-policy implications,” *id.*,
19 such as balancing the NVRA’s policy goals. *Berger* thus “calls into question whether the
20 application of such [an ultimate objective] presumption is appropriate.” *Callahan v. Brookdale*
21 *Senior Living Cmty., Inc.*, 42 F.4th 1013, 1021 n.5 (9th Cir. 2022) (declining to apply test and
22 “offer[ing] no opinion as to whether it remains good law in light of *Berger*”).

23 Plaintiffs urge this Court to simply set aside *Berger* (and *Callahan*) on the basis that the
24 purported intervenors there were state legislators, rather than private parties. *See* Pls.’ Objections
25 at 11–12. But they ignore that *Berger* rooted its holding in *Trbovich*, a case in which the Supreme
26 Court “addressed a request to intervene by a *private party* who asserted a related interest to that of
27 an existing government party.” *Berger*, 597 U.S. at 195 (citing *Trbovich*, 404 U.S. 528) (emphasis
28

1 added). *Trbovich* concerned a union member who sought to intervene in a lawsuit brought by the
2 Secretary of Labor concerning a union election. *Id.* at 195–96. The overlap in interests there was
3 far greater than in this case; the Supreme Court went so far as to say that, under Title IV, “‘the
4 Secretary . . . in effect [was] the union member’s lawyer’ for the purpose of enforcing [his] rights”
5 against his union. *Trbovich*, 404 U.S. at 539. “Even so,” the Supreme Court rejected the notion
6 that the union member was adequately represented by the Secretary. *Berger*, 597 U.S. at 196. “The
7 Court acknowledged that the Secretary’s and the union member’s interests were ‘related,’ but it
8 emphasized that the interests were not ‘identical’—the union member sought relief against his
9 union, full stop; meanwhile, the Secretary also had to bear in mind broader public-policy
10 implications.” *Id.* (quoting *Trbovich*, 404 U.S. at 538–39). Thus, *Berger* recognized that
11 longstanding Supreme Court case law has refused to “endorse a presumption of adequacy”—even
12 in cases involving *private* intervenors with highly similar interests to an existing governmental
13 party—and instead “held that a movant’s burden in circumstances like these ‘should be treated as
14 minimal,’” *id.* (quoting *Trbovich*, 404 U.S. at 538 n.10). Plaintiffs’ cramped view of *Berger* fails
15 to account for any of this analysis and ignores *Trbovich* altogether.

16 Plaintiffs also criticize Proposed Intervenors for not “com[ing] forward with any evidence”
17 that their interests are distinct from the State Defendants, Pls.’ Objections at 13, but it is not
18 Proposed Intervenors’ “burden at this stage in the litigation to anticipate” such “specific
19 differences.” *Berg*, 268 F.3d at 824; *see also Wineries of the Old Mission Peninsula Ass’n v.*
20 *Township of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022) (“In assessing whether a proposed
21 intervenor has fulfilled this [inadequacy of representation] requirement, courts must remember that
22 certainty about future events is not required.”). Moreover, here, the NVRA itself provides ample
23 evidence of the risk of inadequate representation. The cases that Plaintiffs also point to where
24 courts have denied intervention in NVRA involved very different facts. *See* Pls.’ Objections at 14.
25 For example, in *Green v. Bell*, No. 3:21-cv-00493-RJC-DCK, 2023 WL 2572210 (W.D.N.C. Mar.
26 20, 2023), the court denied intervention where it was sought two months after the complaint was
27 filed. Similarly, *Pub. Int. Legal Found. v. Benson*, No. 1:21-CV-929, 2022 WL 21295936, at *1

1 (W.D. Mich. Aug. 25, 2022), the motion was “arguably untimely” when it was “filed while the
2 parties were already briefing their motion to dismiss.” In contrast, Judge Couvillier here repeatedly
3 stressed the timely nature of Proposed Intervenors’ efforts to intervene. *See* R&R at 3, 7. These
4 factually distinct cases offer no reason to set aside Judge Couvillier’s sound finding on this factor.

5 **II. Judge Couvillier correctly determined Proposed Intervenors may intervene**
6 **permissively under Rule 24(b).**

7 Judge Couvillier further recommended that Proposed Intervenors be granted permissive
8 intervention under Rule 24(b). *See* R&R at 7–8. As he explained, Proposed Intervenors have
9 consistently acted in a timely manner; their participation poses no risk of prejudice or undue delay;
10 and Proposed Intervenors’ raise common arguments and defenses with the main action. *Id.*

11 Plaintiffs do not meaningfully dispute these findings. Nor could they—permissive
12 intervention is discretionary, and Judge Couvillier had ample basis to conclude permissive
13 intervention is appropriate. The few objections Plaintiffs do raise simply rehash earlier flawed
14 arguments and offer this Court no reason to depart from Judge Couvillier’s sound report.

15 *First*, Plaintiffs repeat their claim that the State Defendants adequately represent Proposed
16 Intervenors. *See* Pls.’ Objections at 15. But as explained, the existing Defendants’ duty under the
17 NVRA to balance the statute’s competing twin goals means that these officials do not share the
18 same interests as Proposed Intervenors. *See supra* § I(B). Regardless, Proposed Intervenors need
19 not meet all the requirements for intervention of right for permissive intervention to be warranted.
20 *See Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 804 (7th Cir. 2019).

21 *Second*, Plaintiffs repeat their baseless assertion that Proposed Intervenors will delay the
22 case, a claim entirely at odds with proceedings to date. *See* Pls.’ Objections at 16. In reality,
23 Plaintiffs are the only parties to cause delay thus far, having—in the mere three months this case
24 has been pending—already missed a court-ordered deadline, ECF No. 33, moved to extend the
25 time for filing a case schedule and discovery plan, ECF No. 79, and moved to continue a hearing
26 on the State Defendants’ pending motion to dismiss, ECF No. 81. Proposed Intervenors have, in
27 contrast, moved with alacrity, including by filing this response far ahead of its deadline to ensure
28 the matter is fully briefed ahead of the June 18 hearing.

1 Third, Plaintiffs claim that Proposed Intervenor have not raised sufficiently distinct
2 arguments from the State Defendants, *see* Pls.’ Objections at 17, but this argument is misplaced.
3 Tellingly, they cite no authority suggesting this is a basis for denying permissive intervention, but
4 they also ignore that Proposed Intervenor’s briefing dedicates significantly more attention to
5 certain issues only briefly touched upon by State Defendants. *Compare, e.g.*, ECF No. 21 at 12–
6 13 (discussing Plaintiffs’ alleged diversion of resources injury, *with* ECF No. 26 at 9 (more limited
7 argument on this point). They also ignore that Proposed Intervenor filed their proposed motion to
8 dismiss *before* the State Defendants filed their own; Proposed Intervenor had no obligation to
9 guess at what arguments the State Defendants might separately raise in their own motion to
10 dismiss. Finally, this litigation is in its earliest stages and that—given the diverging interests
11 Proposed Intervenor and State Defendants have under the NVRA, *supra* § I(B)—it is far too early
12 to determine categorically that Proposed Intervenor will not raise distinct arguments and
13 viewpoints moving forward. *Cf. Coastkeeper v. Santa Maria Valley Water Conservation Dist.*, No.
14 CV-19-08696-AB-LPRX, 2020 WL 1139217, at *2 (C.D. Cal. Jan. 15, 2020) (recognizing that a
15 public entity’s “different legal obligations could constrain [it] from taking certain positions or
16 require them to take positions contrary to the Intervenor’s interests”); *see also Cal. Valley Miwok*
17 *Tribe v. Salazar*, 281 F.R.D. 43, 47 (D.D.C. 2012) (explaining that government defendant’s
18 “unique obligations to the serve general public” raised doubts it could “be found to adequately
19 represent the interests of potential intervenors”).!

20 In sum, Plaintiffs offer no good reason to reject Judge Couvillier’s well-founded
21 recommendation that Proposed Intervenor be granted intervention under Rule 24(b), and they
22 notably fail to make any argument that adopting Judge Couvillier’s recommendation under Rule
23 24(b) would constitute abuse of discretion. *See Perry*, 587 F.3d at 955.

24 CONCLUSION

25 For the reasons above, the Court should adopt Judge Couvillier’s report and
26 recommendation and grant Proposed Intervenor’s motion to intervene.
27
28

1 Dated: June 13, 2024

Respectfully submitted,

2 **ELIAS LAW GROUP LLP**

3
4 By: /s/ Bradley S. Schrager

5 David R. Fox (NV Bar No. 16536)
6 Christopher D. Dodge (*pro hac vice*)
7 Marisa A. O’Gara (*pro hac vice*)
8 **Elias Law Group LLP**
9 250 Massachusetts Ave NW, Suite 400
10 Washington, DC 20001
11 (202) 968-4490
12 dfox@elias.law
13 cdodge@elias.law
14 mogara@elias.law

15 Bradley S. Schrager (NV Bar No. 10207)
16 Daniel Bravo (NV Bar No. 13078)
17 **Bravo Schrager LLP**
18 6675 South Tenaya Way, Suite 200
19 Las Vegas, NV 89113
20 (702) 996-1724
21 bradley@bravoschrager.com
22 daniel@bravoschrager.com

23 *Attorneys for Proposed Intervenor-*
24 *Defendants*

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of June, 2024 a true and correct copy of the forgoing PROPOSED INTERVENORS' RESPONSE TO PLAINTIFFS' OBJECTIONS TO REPORT AND RECOMMENDATION ON MOTION TO INTERVENE was served via the United States District Court's CM/ECF system on all parties or persons requiring notice.

By: /s/ Danielle Fresquez
Danielle Fresquez, an Employee of
Bravo Schrage LLP

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