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

JUDICIAL WATCH, INC., et al.,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS, et al.,

Defendants.

Civil Action No. 1:24-cv-01867

PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE AS DEFENDANTS FILED BY ILLINOIS AFL-CIO AND ILLINOIS FEDERATION OF TEACHERS

Plaintiffs Judicial Watch, Inc., Illinois Family Action, Breakthrough Ideas, and Carol J. Davis ("Plaintiffs") submit this memorandum in opposition to the Illinois AFL-CIO and Illinois Federation of Teachers' Motion ("the Unions") to Intervene as Defendants in this action. ECF 14. As the Unions have no real interest in this case that is not already adequately represented by named Defendants, their motion should be denied.

INTRODUCTION

Plaintiffs' complaint seeks a court order directing Defendants to comply with the National Voter Registration Act of 1993 ("NVRA" or "the Act"), a federal statute that addresses voter registration practices and applies to Illinois. Plaintiffs allege that Illinois has failed to comply with Section 8 of the NVRA, which requires states to engage in a *multi-year* process to remove *ineligible* voters from their rolls. *See* ECF 1 at ¶¶ 10-14. Plaintiffs' prayer for relief asks the Court to enjoin Defendants from violating the NVRA and to comply with its mandate to implement a program to maintain accurate voter rolls. *See* ECF 1 at 22. As the officials who are responsible for NVRA compliance, Defendants are the appropriate parties to litigate this action. *Id*. at ¶¶ 8-9

It is settled law that Plaintiffs, as initiators of the complaint, control its scope and named parties, subject only to the rules of joinder. *See Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 91 (2005). The Unions have the burden to show why they should be made parties to this case. The Unions cannot show they have an interest in this case that will otherwise be unprotected. As set forth below, the Unions' stated basis for intervention is premised entirely upon misguided assumptions and speculation, and any interest is fully protected by the parties. Their motion should be denied.

ARGUMENT

I. The Court Should Deny the Unions' Motion to Intervene as of Right.

To establish intervention as of right under Fed. R. Civ. P 24(a), the Seventh Circuit requires

that a proposed intervenor show "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties[]." *Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 686 (7th Cir. 2023) (quoting *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019)). The intervenor "has the burden of establishing all four elements; the lack of even one requires that the court deny the motion." *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 797 (7th Cir. 2019) (citation omitted). While the Unions' motion is timely, it fails to satisfy the remaining three elements.

A. The Unions Fail to Establish an Interest Relating to The Subject Matter.

In the Seventh Circuit, intervention as of right requires "*more than* the minimum Article III interest," *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (emphasis added), or that the interest be "*at least as* significant as the injury required for Article III." *Bost*, 75 F.4th at 687 n.1 (emphasis added).

1. The Unions' claims about Plaintiffs' intended relief are unfounded and wildly inaccurate.

The Court should be aware that the Unions' assertions about the nature of this lawsuit and the relief Plaintiffs seek are not grounded in reality. *See, e.g.,* Unions' Mem., ECF 15 at 5, 8-9.[1] Without any basis, the Unions represent that this lawsuit seeks a "rushed, aggressive voter purge in a presidential election year." *Id.* at 9; *see id*. at 5 (lawsuit is a "dangerous attempt[] to wield" the NVRA "as a weapon to force states to remove more voters from the rolls," risking "erroneous removals, barely half a year before a highly anticipated presidential election"). The Unions variously contend that Plaintiffs are "targeting voters" who fail to respond to confirmation notices (*id*. at 5); that they seek "aggressive removal of voters from the rolls" (*id*.), thereby posing a

[1] Citations to page numbers are to those that the ECF system has applied (located in the top margin).

"threat" to "voting rights" (*id.* at 6); that voters face an "acute risk of being purged under Plaintiffs' proposed deregistration scheme" (*id*. at 9); that "Plaintiffs' requested relief is diametrically opposed" to the mission of ensuring the right to vote (*id*. at 12); and that Plaintiffs are making a "maximum effort" at an "aggressive voter purge that erroneously removes eligible voters" (*id*. at 14). To support this account, the Unions rely primarily on inflammatory language, repeating the same attack words over and over, *e.g.*, "target" (five times), "aggressive" (five times), "threat" (seven times) and "purge" (20 times). What they do *not* rely on is the complaint, which they appear not to have consulted, and which they do not cite, *even once*, in their brief.

It is hard to overstate how empty and false this entire narrative is. To begin with, *Plaintiffs are not seeking relief prior to the election*. The complaint does not request or even mention preliminary, interim, or emergency relief of any kind. *See* ECF 1 at 22-23 (Prayer for Relief). It does not reference the 2024 election. Nor have Plaintiffs sought an expedited litigation schedule. To the contrary, they just agreed to a three-week extension of Defendants' time to answer. Nor do Plaintiffs intend to seek such relief. *See* Ex. 1, Decl. of Robert D. Popper ("Popper Decl.") at ¶ 5.

Moreover, the very structure of the NVRA *guarantees* that there can be no "rushed, aggressive voter purge." As Plaintiffs explained at length in their complaint, they allege Illinois violated the NVRA by not cancelling the registrations of voters who failed to respond to an address confirmation and then failed to vote in two consecutive general federal elections—in other words, a statutory period of *two to four years*. ECF 1 at ¶¶ 11-14,[2] 27-31, 37; *see* 52 U.S.C. § 20507(d)(1)(B). The only remedy Plaintiffs seek in this case is Defendants' compliance with existing federal law. ECF 1 at 22. Precisely *because* Plaintiffs' complaint only seeks compliance

[2] The Unions claim without support that Plaintiffs' lawsuit "largely ignores these mandatory safeguards." ECF 15 at 7. It is apparent from the face of the complaint that it does not "ignore" these requirements; Plaintiffs dedicate most of page three to describing them. ECF 1 at ¶¶ 10-23.

with the NVRA, it does not seek a rushed voter purge this year.[3] It is impossible for that years-long process to be completed before the election this fall. The "rushed, aggressive voter purge in an election year" the Unions claim to fear is a fantasy, and the Court should disregard it.[4]

The Unions decry this lawsuit as a "troubling effort" to institute "Plaintiff's theory of list maintenance" and "Plaintiff's proposed deregistration scheme" in Illinois. ECF 15 at 5, 9. Compliance with federal law is not "troubling"; it is a legal requirement for all within its jurisdiction. The NVRA's list maintenance mandates are not "Plaintiff's theory"; they are federal law codified at Title 52 of the United States Code. To the extent the NVRA constitutes a "scheme," it was developed by Congress. In the same vein, it is the NVRA itself that "force[s] states to remove" voters who fail to respond to confirmation notices and then do not vote in the statutory period. ECF 15 at 5; *see Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018) ("federal law makes this removal [under Section 8(d)(1)(B)] mandatory").

2. The Unions can claim no interest based on the relief Plaintiffs actually seek, which is compliance with the NVRA.

The Unions claim two interests justifying intervention: "(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 unlawfully purged from the rolls if Plaintiffs succeed." ECF 15 at 11-12. In particular, they anticipate, "in an election year," having to "develop and implement a system to educate the public about the impending voter purge, identify members at risk . . . aid these voters in checking their registration status, and, if mistakenly

[3] Nor have Plaintiffs ever sought a registration removal program that was rushed, reckless, or contrary to federal law. An example of a prior settlement (with Los Angeles County) is attached as Ex. 2. Note that it fully incorporates the NVRA's statutory waiting period. *See* Popper Decl. at ¶¶ 3-7.

[4] Plaintiffs respectfully submit that the Unions' mischaracterizations of what the complaint seeks and what the NVRA allows are so extravagant that they constitute a further reason to deny intervention, *viz.*, that the Unions will bring more heat than light to these proceedings.

purged, guide them through the process to restore their registrations." *Id*. at 12.

But Plaintiffs are not requesting any "purge" this year, let alone one that is "rushed," "aggressive," or a "threat," nor is there any reason to believe this Court would order one. Accordingly, the Unions cannot base an interest justifying intervention on the need to respond to it.[5] They cannot have a legally protectable interest based on an outcome that has no chance of occurring. Moreover, any claimed fear of disenfranchisement is particularly hollow given the specific protections incorporated in the NVRA. Removal for change of address is a multi-year process encompassing two general federal elections. Thus, even if the parties concluded a settlement agreement *next week*, and if confirmation notices were sent immediately, no removals could result from that until after November 2026. Nor would any voter be at risk of disenfranchisement in the interim. As the NVRA makes clear, and as the complaint acknowledged, registrants who failed to return a confirmation notice may still vote on election day. 52 U.S.C. § 20507(d)(2)(A); *see* ECF 1 at ¶ 14. Once such a registrant has "appeared to vote" (52 U.S.C. § 20507(d)(1)(B)(ii)), the registration is no longer inactive and the removal "clock" is stopped.

The Unions nevertheless predict that Plaintiffs' requested relief (compliance with federal law) will remove eligible voters from the rolls. *See id.* at 14 n.3 ("inevitable circumstance" that members will "arrive at the polls only to find that they are no longer registered under Plaintiffs' proposed list-maintenance regime"); *id.* at 8 ("a virtual certainty that at least one person" in the organization will be "mistakenly removed from the voter rolls"). As indicated above, under the

[5] The tasks the Unions claim they would have to "develop and implement" are singularly unconvincing. For example, they claim a need "to educate the public about the impending voter purge." ECF 15 at 12. The NVRA has applied to Illinois now for **thirty-one years**. If compliance with that federal statute represents a threat to eligible voters, as the Unions argue, one would think they would *already* be using resources to educate their members about Section 8's mandate. And their claim that they will need to divert resources to "guide [eligible voters] through the process to restore their registrations" after they are erroneously removed (*id.*) is speculation on top of speculation. As stated in the text, there will be no reckless "purge," this year or any year; but even if there were, the Unions have presented no non-conclusory evidence that voters would seek their guidance, or that they would actually use their resources this way.

NVRA a removal is not finally consummated for years, and until that happens inactive registrants are never disenfranchised even for a moment. But more to the point, the Unions cannot base an interest on the fact that election officials may, in the future, make mistakes. Remember that an interest warranting intervention must be "at least as significant as the injury required for Article III." *Bost*, 75 F.4th at 687 n.1. We all may be subject to an official's mistake *in the future*. But that possibility alone is too speculative to confer standing. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2212 (2021) (risk of accidental or intentional release of allegedly misleading credit information in the future was too speculative to support standing). Indeed, if it were otherwise, then every individual voter in the state, along with every association to which they belonged, could claim an interest in this case—and, for that matter, in every other voting case.[6]

The NVRA, naturally, only requires the removal of ineligible registrants. Accordingly, it is conjecture to argue that any relief would affect the voting rights of eligible registrants.[7] No one, including the Unions, has an interest in making sure that ineligible voters remain on the rolls. The decision denying intervention in *Judicial Watch v. Logan*, 2:17-cv-8948 (C.D. Cal. 2017) is squarely on point. *See* Ex. 3 (Order Denying Mi Familia Vota Education Fund, et al.'s Motion to Intervene, July 12, 2018) ("*Logan*"). In *Logan*, plaintiff Judicial Watch alleged that Los Angeles County and California had failed to comply with Section 8, and sought relief in the form of compliance with the Act. Private organizations sought to intervene, making the same arguments

[6] Interestingly, in their proposed motion to dismiss, the Unions reference "the "robust procedures used by Illinois, which resulted in *hundreds of thousands of voters* being removed from the rolls between the last two federal elections." Proposed Mot. to Dismiss, ECF 14-1 at 8; *see also id.* at 11 (Illinois "regularly removes hundreds of thousands of voters [because] they have moved"); *id*. at 17 (counties "removed tens of thousands of voters over [a two-year period] because they moved"). The Unions do not mention that the removals they tout may also lead to mistakes. (Nor do they refer to them as "purges.")

[7] The Unions point out that their members "vote at higher percentages than the general public." (Unions' Mem. at 5). This makes them *less* likely to be removed from the registration lists under the NVRA. *See* 52 U.S.C. § 20507(d)(1) (voter may be removed after he or she both fails to respond to a mailed notice and *fails to vote* in two federal election cycles).

about the possibility of improper removals that the Unions make here. While acknowledging "a legally protected interest to ensure that eligible voters maintain their right to vote and remain on the voter rolls," the court opined that "there is no relationship between this interest and the claims at issue. Plaintiffs request that Defendants reasonably attempt to remove *ineligible* voters from the voter rolls. Removing ineligible voters from the voter rolls will not affect eligible voters' rights." *Logan* at 2. The court concluded that the proposed intervenors had failed to show the interest required for intervention as of right. *Id*. *Judicial Watch, Inc. v. Griswold*, No. 20-2992, 2021 U.S. Dist. LEXIS 179454 (D. Colo. 2021), concerned a similar set of claims brought under the NVRA. The proposed intervenors there likewise argued that the plaintiffs "seek to remove more voters from Colorado voter rolls, which is all but certain to lead to the removal of lawful, eligible voters." *Id*. at *9. In denying intervention, the court pointed out that "proposed intervenors have not shown that deciding this case according to the law could result in the inadvertent removal of eligible voters," or that "such problems occur[] when a program is implemented pursuant to a court remedy," or "how their fears would materialize in this particular case." *Id*. at 11. The Unions likewise have shown none of these things.

The Unions' citation to *Bost* is unavailing. *Bost* involves a challenge to a state election law. The Democratic Party of Illinois attempted to intervene as a defendant.[8] The interests at stake in *Bost* differ from this case because the relief requested there would *invalidate* an election-related law (*viz*., the deadline for receipt of ballots cast by Illinois voters) *prior* to the 2024 elections. The Seventh Circuit found that the Democratic Party of Illinois stated an organizational interest where it would "have to reallocate resources" to "educate voters on *a change in the law*." *Bost*, 75 F.4th

[8] Even though the would-be intervenor in *Bost* demonstrated interests in the case, the motion to intervene was denied ultimately because the named defendants (the same defendants in this case) adequately represent them. The Seventh Circuit affirmed the denial of intervention. *Bost*, 75 F.4th at 691.

at 689 (emphasis added). In this case, the complaint seeks to enforce compliance with a decades-old statute, and the relief sought will not take place before this year's election. The Unions have not demonstrated a need to reallocate resources to educate voters about a 31-year-old statute.[9]

B. The Unions Fail to Show their Interests Would Be Impaired Absent Intervention.

Impairment of a legally protected interest "depends on whether the decision of a legal question involved in the action would as a practical matter foreclose rights of the proposed intervenors in a subsequent proceeding." *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982) (citation omitted). Determining whether the interest is foreclosed "is measured by the general standards of *stare decisis*." *Revelis v. Napolitano*, 844 F. Supp. 2d 915, 925 (N.D. Ill. 2012) (citation omitted).

As the Unions cannot demonstrate that they have a significant protectable interest in this action, they likewise fail to show that its disposition will impair any interest. But even if they could, the Unions do not point to any right that would be "foreclosed in a subsequent proceeding" if they are not made parties to this action. To the contrary, they acknowledge that the NVRA provides for a private right of action for those aggrieved by a violation of the statute. ECF 15 at 13. If Illinois were to institute a program that violates the NVRA's safeguards against improper removals, a proceeding could be brought under *See* 52 U.S.C. § 20510. Indeed, there is nothing to preclude an action under that provision if Illinois were to mistakenly remove a voter from the rolls. In *Logan*, the court found that the proposed intervenors "are not substantially affected by the

[9] Other cases cited by the Unions are also unpersuasive. Both *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) and *Nat'l Council of La Raza v. Cegayske*, 800 F.3d 1032, 1040 (9th Cir. 2015), cited by the Unions, did not involve purely speculative injuries; in both cases, the plaintiff organizations *had already* diverted or expended resources to counteract the violation they alleged. Here, the Unions have not shown that they will ever have to divert resources as a result of relief in this case. *Bellitto v. Snipes*, No. 16-cv-61474, 2016 U.S. Dist. LEXIS 128840 (S.D. Fla. Sep. 20, 2016) is neither substantive nor instructive. There, the district court entered an extremely short order granting an **unopposed** motion to intervene.

outcome of this action as it pertains to only *ineligible* voters." *Logan* at 3. It observed that the proposed intervenors "speculate that eligible voters risk wrongful removal from voter rolls. Should that occur, [they] may bring a separate, private cause of action to vindicate these voters' rights." *Id*.

C. Defendants Adequately Represent the Unions' Interests.

This Circuit has recognized a three-tiered approach for determining adequacy of representation under Rule 24. *Planned Parenthood*, 942 F.3d at 799. The default rule, where the movant must show that representation 'may be' inadequate, applies whenever the interests of the intervenor are "materially different" than that of the representative party. *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 749 (7th Cir. 2020). But in cases where the intervenor and the representative party "share the same goal," or where the "representative party 'is a governmental body charged by law with protecting the interests of the proposed intervenors,'" a rebuttable presumption of adequacy applies. *Planned Parenthood*, 942 F.3d at 799 (citation omitted). Under all three standards, the Unions have the burden to show their interests are not adequately represented. *Bost*, 75 F.4th at 688.

1. The presumption of adequacy applies because the Unions' interests are not materially different from Defendants' interests, which Defendants are charged by law to enforce.

This Circuit applies the presumption of adequacy in two circumstances. First, if the intervenors and the representative party "share the same goal," then the court applies the presumption that can be overcome only if the intervenors show "some conflict" between them and the representative party. *Planned Parenthood*, 942 F.3d at 799 (citation omitted). Second, if the representative party is a governmental body charged by law with representing the interests of the intervenors, then adequacy is presumed and can only be rebutted by showing "gross negligence or

bad faith." *Id.* (citing *Ligas v. Maram*, 478 F.3d 771, 774 (7th Cir. 2007)).

There is no question that the presumption of adequacy applies here because the named Defendants are charged by law with representing the interests of all Illinois voters, including those who are the Unions' members. Defendant Illinois State Board of Elections is an independent state agency created under the laws of the State of Illinois. It is the sole statewide agency in Illinois responsible for supervising the administration of registration and election laws throughout the State. Its powers and duties include: "(2) Disseminat[ing] information to and consult[ing] with election authorities concerning the conduct of elections and registration . . ."; "(6) Requir[ing] such statistical reports regarding the conduct of elections and registration from election authorities as may be deemed necessary"; "(7) Review[ing] and inspect[ing] procedures and records relating to conduct of elections and registration as may be deemed necessary, and [] report[ing] violations of election laws . . . "(8) Recommend[ing] . . . legislation to improve the administration of elections and registration"; "(9) Adopt[ing], amend[ing] or rescind[ing] rules and regulations in the performance of its duties," and most broadly, "(12) Supervis[ing] the administration of the registration and election laws throughout the State." 10 ILCS 5/1A-8. It must maintain the Illinois centralized statewide voter database, which is required by the Help America Vote Act of 2002 and compiled from each election authority within the state. 10 ILCS 5/1A-25.

The other Defendant is Illinois' chief state election official, Bernadette Matthews. As chief state election official, she is charged by law to "issue such opinions or directions as [she] deems necessary to insure that the National Voter Registration Act of 1993" is implemented uniformly in Illinois. 26 Ill. Adm. Code § 216.100(c). Both are represented by the Attorney General of Illinois, who is charged by law with defending all actions brought against the State.[10] 15 ILCS 205/4.

[10] The Unions endorsed Attorney General Raoul when he was running for that office. *See* Labor Tribune, Illinois AFL-CIO General Election endorsements, June 26, 2018, available at

Defendants' duties necessarily encompass the duty to ensure that the registrations of Illinois voters, including the Unions' members who are eligible and registered to vote in Illinois, are not unlawfully cancelled. There is no suggestion—and the Unions make no argument and present no evidence—that there is any "gross negligence or bad faith" on the part of Defendants or the Attorney General. Thus, the presumption of adequate representation applies here, and has not been rebutted. Accordingly, the Unions are not entitled to intervene as of right.

Alternatively, and even if the "charged by law" rule did not apply, the presumption of adequate representation would still apply here because the Unions' goals and those of Defendants are the same. This fact is readily established by the Unions' proposed motion to dismiss and proposed answer. ECF 14-1, ECF 14-2. In these documents the Unions defend Illinois' compliance with the NVRA and seek dismissal of the complaint. Because the Unions share the same goals with Defendants, a "rebuttable presumption of adequate representation" applies requiring the intervenors to show "some conflict" to rebut the presumption. *Driftless*, 969 F.3d at 747 (citation omitted). The Unions have neither argued for nor presented evidence of any conflict that would rebut the presumption of adequacy.[11] Again, the Unions are not entitled to intervene as of right.

2. The Unions fail to meet the more lenient default standard of adequacy.

Whenever proposed intervenor has interests that are "materially different" than the representative party, then the default standard applies, which can be met if the moving party shows representation 'may be' inadequate. *Driftless*, 969 F.3d at 749; *Planned Parenthood*, 942 F.3d at

https://labortribune.com/illinois-afl-cio-general-election-endorsements; Press Release, January 22, 2018, Raoul Wins CTU Endorsement in Bid to Become Illinois Attorney General, available at https://kwameraoul.com/news/press-releases/raoul-wins-ctu-endorsement-bid-become-illinois-attorney-general/. It is safe to assume they would not have done so if they did not believe he would protect Union members' voting rights.

[11] Because the Unions failed to argue or present evidence in their motion papers that would rebut the presumption of adequacy, they have waived the argument, and are foreclosed from raising it on reply.

799 (citation omitted). While this standard is the most lenient, it is not without teeth. Even if the presumption of adequate representation did not apply here (it does), the Unions could not meet the default standard. As proposed intervenors, they still have the burden to show that representation may be inadequate. Proposing "*hypothetical* conflicts" are not enough to meet this burden where the moving party cannot point to any existing "possible conflicts" between their interests and the representative party. *Bost*, 75 F.4th at 690.

The Unions advanced three arguments as to why representation is inadequate. First, the Unions suggest the NVRA's twin goals renders representation inadequate. ECF 15 at 15. Second, "numerous differences" of interests allegedly mean that the Defendants cannot adequately represent the Unions. ECF 15 at 16. Finally, they argue that a hypothetical settlement may jeopardize Union members' voting rights, warranting intervention. ECF 15 at 16-17. All three arguments are without merit.

The NVRA's twin goals of increased registration of eligible voters and removal of ineligible registrants does not constitute an automatic ground for intervention by every public interest group that favors one of those goals over the other. The Unions' claim that these interests are somehow "in tension" with each other and render representation inadequate solely because Defendants "must balance the NVRA's competing objectives" is unavailing. *Id.* at 16. The NVRA's goals are not "competing"; rather, the statute is designed to increase the registration of *eligible* voters while removing *ineligible* voters from rolls. Simply put, both goals can be accomplished at the same time. In any event, the question under Rule 24 adequacy prong is whether the Defendants' interests are in tension with the Unions, not whether the statute's objectives are in tension with each other. Otherwise, every public interest group with a different view of the NVRA would automatically be entitled to intervention under Rule 24. That is not the law.

Likewise, "numerous differences of interests" are not sufficient to show inadequate representation. As the Fourth Circuit has said, "stronger, more specific interests do not adverse interests make—and they surely cannot be enough to establish inadequacy of representation" as "intervenors will nearly always have intense desires that are more particular than the state's (or else why seek party status at all)." *Stuart v. Huff*, 706 F.3d 345, 353 (4th Cir. 2013). *See also Bost*, 75 F.4th at 690 (while "the comparison of interests determines which of the three adequacy tests applies," this "comparison alone cannot also make the showing required under the default rule to prove inadequacy. If that were the case, then the default rule would simply be that intervention as of right is automatic. That has never been our law."). Allowing a diversity of interests to overcome adequacy "would simply open the door to a complicating host of intervening parties with hardly a corresponding benefit." *Stuart*, 706 F.3d at 353; *Common Cause Ind. v. Lawson*, 2018 U.S. Dist. LEXIS 30917, at *15 (S.D. Ind. Feb. 27, 2018) (small "differences between the State's interest and those of the [proposed intervenor]" does not show inadequate representation).

Finally, it is pure conjecture at this point to suggest that a future settlement agreement that has neither been proposed nor agreed to would somehow jeopardize the Unions' resource allocations and their members' voting rights. As noted *supra*, Plaintiffs have never and would never agree to any settlement that imperils voters' rights, nor is there any reason to believe Defendants would do so. And the NVRA's own restrictions guard against any unlawful removals by way of settlement. But even if those protections did not exist, such "*hypothetical* conflicts" do not show inadequacy under the default standard. *Bost*, 75 F.4th at 690.

The Unions fail to point to any material argument that Defendants cannot at this stage adequately represent all of their interests. Accordingly, the Unions have not satisfied their burden under Rule 24(a)(2) and their request for intervention as of right should be denied.

II. The Unions' Request for Permissive Intervention Should Also Be Denied.

In the alternative, the Unions seek to intervene permissively. Under Rule 24(b)(1), a district court "may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." *Planned Parenthood*, 942 F.3d at 803. "Whether to allow permissive intervention is a highly discretionary decision." *Bost*, 75 F.4th at 690. The Court is required to consider "undue delay and prejudice to the rights of the original parties," but is otherwise left "with ample authority to manage the litigation before it." *Id.* at 691 (quoting *Planned Parenthood*, 942 F.3d at 803). While a district court may not "deny permissive intervention solely because a proposed intervenor failed to prove an element of intervention as of right," it may consider "the elements of intervention as of right as discretionary factors" in weighing permissive intervention. *Id.* at 804 (citations omitted).

The Unions' request for permissive intervention fails the "claim or defense" threshold. The only legal issue before the Court in this case is whether Illinois is following the NVRA's mandates. The Unions have no part to play in the list maintenance procedures required by Section 8. That responsibility lies with the named Defendants. The Unions can offer no defense to liability that Defendants cannot present. They cannot have any direct knowledge or evidence of the state's compliance efforts beyond what Defendants themselves can provide, so they cannot contribute to factual exposition or discovery.

The Unions' presence in this case is not necessary; nor will it be helpful. Their intervention "would only clutter the action unnecessarily" without adding any corresponding benefit to the litigation. *See Arney v. Finney*, 967 F.2d 418, 421-22 (10th Cir. 1992) (affirming the denial of permissive intervention). The Unions may have *opinions* on Illinois' compliance with the NVRA and the statute itself, but that does not mean that they should be *parties* to this case. *See Bethune*

Plaza, Inc. v. Lumpkin, 863 F.2d 525, 533 (7th Cir. 1988) (courts should avoid intervention when it risks "turn[ing] the court into a forum for competing interest groups, submerging the ability of the original parties to settle their own dispute"). The addition of unnecessary parties will prejudice Plaintiffs, who will be required to respond to their additional, unnecessary filings. These particular intervenors, moreover, have shown an unhelpful propensity to resort to exaggeration and hyperbole. *See supra* at I.A.1. This will not aid in the determination of the legal questions before the Court or facilitate an efficient resolution in this case. *See* Fed. R. Civ. P. 1 (Rules of Civil Procedure should be employed "to secure the just, speedy, and inexpensive determination of every action and proceeding").

CONCLUSION

For the reasons set forth above, the Unions' Motion to Intervene should be denied.

May 10, 2024

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