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Attorneys for Proposed Intervenor-Defendants
Vet Voice Foundation and Nevada Alliance for Retired Americans

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

REPUBLICAN NATIONAL COMMITTEE; NEVADA REPUBLICAN PARTY; DONALD J. TRUMP FOR PRESIDENT 2024, INC.; and DONALD J. SZYMANSKI,

Plaintiffs,

v.

CARI-ANN BURGESS, *in her official capacity as the Washoe County Registrar of Voters*; JAN GALASSINI, *in her official capacity as the Washoe County Clerk*; LORENA PORTILLO, *in her official capacity as the Clark County Registrar of Voters*; LYNN MARIE GOYA, *in her official capacity as the Clark County Clerk*; FRANCISCO AGUILAR, *in his official capacity as Nevada Secretary of State*,

Defendants.

Case No. 3:24-cv-00198-MMD-CLB

REPLY IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

INTRODUCTION

The Court should grant Proposed Intervenors' motion to intervene. Courts have repeatedly recognized that organizations like Vet Voice and the Alliance have direct, significant, and protectable interests in (1) the voting rights of their members and constituents and (2) their own resources, which would have to be diverted to protect their members and constituents against disenfranchisement if Plaintiffs are granted their requested relief. Plaintiffs readily admit that the practical effect of the relief they are seeking would be to discard an untold number of otherwise lawful votes. Indeed, that is their stated goal. Among the voters who are at heightened risk of disenfranchisement if Plaintiffs succeed are the Alliance's many senior members who rely on mail voting, as well as Nevada veterans and active service personnel, who are Vet Voice's constituents. Proposed Intervenors plainly have an interest in protecting the voting rights of their members and constituents, who disproportionately rely on mail voting. And their economic interests are far from "speculative." They have provided specific examples of the resources that Proposed Intervenors will have to divert to protect their members from disenfranchisement as a result of Plaintiffs' requested relief.

The existing defendants cannot adequately protect Proposed Intervenors' interests in this litigation because they do not share them. No defendant is charged with specifically protecting the interests of Proposed Intervenors' members—and they certainly do not share an interest in preserving Proposed Intervenors' resources. Plaintiffs' attempt to invoke a heightened presumption of adequate representation is therefore misplaced.

Finally, if there were ever a case for permissive intervention, it is this one. Proposed Intervenors bring not just the important perspective of voters who stand to be disproportionately impacted by Plaintiffs' claims, but also significant experience litigating identical issues in another virtually identical federal case brought by the RNC in Mississippi. They are therefore well positioned to usefully contribute to the expeditious resolution of this case.

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ARGUMENT

I. Vet Voice and the Alliance are entitled to intervene as of right under Rule 24(a).

Vet Voice and the Alliance are entitled to intervention as of right under Rule 24(a) because they have at least two significant, protectable interests in this case, and those interests may not be adequately represented by the existing parties. Plaintiffs' contrary arguments ignore settled case law and the allegations of their own complaint.

A. This case directly threatens Proposed Intervenors' significant, legally protectable interests.

By seeking to invalidate mail ballots that are mailed before election day but delivered after, this case threatens Vet Voice and the Alliance's significant, protectable interests in preserving their members' abilities to have their ballots counted, and in avoiding the need to divert resources from other mission-critical priorities to educate voters on the new risk posed to their voting rights as a result of the relief Plaintiffs seek, as well as urging them to turn out earlier, to limit the risk of that harm. Courts, including this Court, routinely recognize these interests as sufficient to support intervention as of right. *See, e.g.*, *Issa v. Newsom*, No. 2:22-CV-1044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (recognizing that these interests are "routinely found to constitute significant protectable interests"); *Paher v. Cegavske*, No. 3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (recognizing disruption to "organizational intervenors' efforts to promote the franchise" as impairment to "significant protectable interests"); Mot. to Intervene at 14–16, ECF No. 15 ("MTI") (citing cases).

Plaintiffs provide no reason for this Court to reach a different conclusion here. With respect to Proposed Intervenors' associational interest, Plaintiffs do not dispute that Vet Voice and the Alliance serve members and constituents who rely heavily on mail ballots to vote. MTI at 7–10; Goldbeck Decl. ¶¶ 8–12, ECF No. 15-1; Bird Decl. ¶ 6, ECF No. 15-2. And courts across the country—including this one—have repeatedly held that mail voters "maintain significant protectable interests which would be impaired by" a lawsuit seeking to restrict mail voting. *Paher*, 2020 WL 2042365, at *2; MTI at 14–16 (citing cases). Plaintiffs' argument that this lawsuit does not threaten to *violate the constitutional right to vote* (because there is, they say, no constitutional

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right to vote by mail), Resp. in Opp'n to Vet Voice Mot. to Intervene at 2–4, ECF No. 55 ("MTI Opp'n"), misses the point entirely. The question at the intervention stage is not whether the relief Plaintiffs seek would be unconstitutional on the merits; it is whether Proposed Intervenors have some legally protected interests that would be "substantially affected *in a practical sense* by the determination made" in this case. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2021) (emphasis added). "For the purposes of Rule 24, impairment need not be based on technical legal impairment; rather, Rule 24 intervention is appropriate if a party's rights would be impaired in a 'practical sense.'" *Gen. Elec. Co. v. Wilkins*, No. 1:10-cv-00674-OWW-JLT, 2011 WL 533549, at *3 (E.D. Cal. Feb. 11, 2011) (quoting Fed. R. Civ. P. 24 advisory committee's notes to 1966 amendment). No surprise, then, that not one of the cases that Plaintiffs cite in arguing over the substance of the constitutional right to vote involved an intervention motion, nor that each such case that addressed the related issue of Article III standing found that voter and organizational plaintiffs had standing to sue.[1]

Plaintiffs cannot deny that this lawsuit threatens, as a practical matter, the ability of Proposed Intervenors' members and constituents to cast mail ballots that will be counted. Discarding mail ballots that would otherwise be counted is the *stated purpose* of this lawsuit: Plaintiffs seek an order "prohibiting Defendants from counting mail ballots for federal office for the November 2024 general election that are received by election officials after the day of the election." Compl. at 16, ECF No. 1. They seek this relief because they believe that those ballots—cast by undisputedly qualified voters—are less likely to be cast in their favor. *Id.* ¶¶ 56–60. It is undisputed that Proposed Intervenors' members and constituents rely heavily on voting by mail. *See* MTI at 7–10. Their mail ballots are therefore at risk of being thrown out if Plaintiffs' requested relief is granted. And, as courts have repeatedly recognized, protecting against such an outcome is

[1] *See DCCC v. Ziriax*, 487 F. Supp. 3d 1207, 1226–28 (N.D. Okla. 2020) (holding Oklahoma Democratic Party had both direct organizational standing and associational standing to challenge absentee ballot provisions) (collecting cases); *Mays v. LaRose*, 951 F.3d 775, 781 (6th Cir. 2020) (jailed plaintiff had standing to challenge absentee ballot request deadline); *Tex. Democratic Party v. Abbott*, 961 F.3d 389, 399–400 (5th Cir. 2020) (political party and individual voters had standing to challenge mail ballot restrictions); *All. for Retired Ams. v. Sec'y of State*, 240 A.3d 45, 48–49 (Me. 2020) (Alliance had standing to seek extension of ballot receipt deadline because its membership "consists of retired persons who, as a group, are older, more at risk from the pandemic than younger persons, and more likely to vote by absentee ballot for safety reasons").

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a direct, significant, and legally protectable interest sufficient for intervention as of right. *E.g.*, *Paher*, 2020 WL 2042365, at *2; *Issa*, 2020 WL 3074351, at *3; *see also Mi Familia Vota v. Fontes*, No. CV-22-00509-PHX-SRB, 2024 WL 862406, at *29–32 (D. Ariz. Feb. 29, 2024) (recognizing this interest as sufficient to support Article III standing).

Vet Voice and the Alliance also have significant protectable interests independent from their associational interest in their members' and constituents' voting rights, because the relief Plaintiffs seek will impact how Vet Voice and the Alliance allocate their resources, including financial resources as well as volunteer and staff time, as they prepare to educate and turn out their members and constituents for the 2024 elections. Courts have repeatedly recognized such interests as sufficient for intervention as of right, too. *E.g.*, *Issa*, 2020 WL 3074351, at *3; *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 306 (5th Cir. 2022); *see also Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015) (recognizing this interest as sufficient to support Article III standing). Again, Plaintiffs do not appear to dispute this well-settled legal proposition.

Instead, Plaintiffs contend that Proposed Intervenors' economic harms are merely "speculative" and "conclusory." MTI Opp'n at 4–5. But there is nothing speculative or conclusory about the economic harms Proposed Intervenors will face if Plaintiffs succeed. Vet Voice CEO Janessa Goldbeck explains that a "key component" of Vet Voice's outreach in Nevada includes educating constituents "about the state's deadlines for counting mail ballots, including the current requirement set forth in Nevada law that ballots be postmarked and received by their local election office no later than four days after election day." Goldbeck Decl. ¶ 21. Plaintiffs' requested relief threatens to upend Nevada voting procedures, requiring Vet Voice to refocus its efforts away from other priorities toward educating its constituents on this late-breaking change. Similarly, Nevada Alliance President Thomas Bird explains: "If Plaintiffs are successful in preventing any mail ballots that are received after election day from being counted, even if timely submitted, then the Alliance plans to divert its limited resources to help its members sign up for various mail tracking systems." Bird Decl. ¶ 8. The Alliance will also "have to fundamentally reshape their voter education activities to emphasize the risk of mail ballots not being counted." *Id.* ¶ 9. These efforts would "come at the expense of other mission-critical priorities, such as advocating to lower the

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cost of prescription drugs, preserving social security and Medicare, and other voter education work, such as voter registration efforts." *Id.* ¶ 11. Courts have repeatedly upheld this type of allegation as sufficient to support *standing*, a higher bar. *See, e.g.*, *Nat'l Council of La Raza*, 800 F.3d at 1040–41; *March for Our Lives Idaho v. McGrane*, No. 1:23-cv-00107-AKB, 2023 WL 6623631, at *6 (D. Idaho Oct. 11, 2023); *Mi Familia Vota*, 2024 WL 862406, at *30 (similar).

B. Proposed Intervenors' interests are not adequately represented by the existing parties in this case.

The named defendants ("Government Defendants") do not share, and therefore cannot adequately represent, Proposed Intervenors' protectable interests. "The burden of showing inadequacy of representation is 'minimal' and satisfied if the applicant can demonstrate that representation of its interests 'may be' inadequate." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). That showing "is easily made when the party upon which the intervenor must rely is the government, whose obligation is to represent not only the interest of the intervenor but the public interest generally, and who may not view that interest as coextensive with the intervenor's particular interest." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001).

Thus, governmental party and private intervenor interests are not "identical," "the same," or "congruent" where the government defendants' arguments "turn[ed] on their inherent authority as state executives and their responsibility to properly administer election laws," while the intervenors were "concerned with ensuring their . . . members and the voters they represent have the opportunity to vote in the upcoming federal election, advancing their overall electoral prospects, and allocating their limited resources to inform voters about the election procedures." *Issa*, 2020 WL 3074351, at *3. Rather, "[c]ourts, including the Ninth Circuit, 'have permitted intervention on the government's side in recognition that the intervenors' interests are narrower than that of the government and therefore may not be adequately represented.'" *GP Mgmt. Corp. v. City of Los Angeles*, 339 F.R.D. 621, 624 (C.D. Cal. 2021) (citing *Arakaki*, 324 F.3d at 1087).

Plaintiffs' contrary argument misunderstands what it means for parties to share the "same ultimate objective" in the intervention context. It does not mean merely that the parties seek the

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"same relief." MTI Opp'n at 6. If that were "all it takes to defeat intervention, then intervention as of right will almost always fail," because a party must necessarily intervene "on one side of the 'v.' or the other." *Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 748 (7th Cir. 2020). That is not the law. Rather, "[t]he government's representation of the public interest may not be identical to the individual parochial interest of a particular group just because both entities occupy the same posture in the litigation." *Citizens for Balanced Use*, 647 F.3d at 899 (internal quotation marks omitted).

Instead, courts must specifically consider the precise interests asserted to assess "how the interest compares with the interests of existing parties." *Arakaki*, 324 F.3d at 1086. And here, Defendants' interests are not the same as the Proposed Intervenors' interests. The Government Defendants do not share either of Proposed Intervenors' two legally protectable interests in this case: (1) their interest in the ability of their members and constituents to cast effective votes, and (2) their interest in preserving and protecting their own limited resources from diversion. Defendants instead serve multiple conflicting interests, as government defendants often do. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538–39 (1972). Proposed Intervenors seek to protect their members' and constituents' voting rights and their own resources, "full stop," while Defendants must also "bear in mind broader public-policy implications." *Berger v. N.C. State Conf. of NAACP*, 597 U.S. 179, 196 (2022) (quoting *Trbovich*, 404 U.S. at 538–39).

No presumption of adequate representation therefore applies, and Proposed Intervenors need only show that the Government Defendants' representation of their interests "may be" inadequate. *Citizens for Balanced Use*, 647 F.3d at 898 (citation omitted). That standard is satisfied here because the Secretary of State is an "elected official who may feel allegiance to the voting public." *Berger*, 597 U.S. at 198. The Government Defendants must also consider "the expense of defending [the Ballot Receipt Deadline] out of [state] coffers," when that money could go to some other enforcement priority. *Clark v. Putnam County*, 168 F.3d 458, 461–62 (11th Cir. 1999). And the Government Defendants do not have prior experience defending against *identical* challenges in other states, as the Proposed Intervenors here do. Tellingly, "[t]he government has taken no position on the motion to intervene in this case. Its silence on any intent to defend the intervenors'

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special interests is deafening." *Utah Ass'n of Cntys.*, 255 F.3d at 1256 (cleaned up). These considerations indicate that the Government Defendants may not defend the Ballot Receipt Deadline as forcefully or effectively as Proposed Intervenors.

Plaintiffs complain that Vet Voice and the Alliance "identify no arguments they intend to make that the State Defendants would be unwilling to raise." MTI Opp'n at 8. But Ninth Circuit law imposes no such requirement. To the contrary, intervenors "need only show the *possibility* of inadequate representation." *Utah Ass'n of Counties*, 255 F.3d at 1254 (emphasis added). Rule 24 "does not require an absolute certainty that . . . existing parties will not adequately represent [the intervenors'] interests." *Citizens for Balanced Use*, 647 F.3d at 900. It is enough that the government's competing interests "may interfere with the Proposed Intervenors' mission and interests." Report and Recommendation, *Republican Nat'l Comm. v. Aguilar*, No. 2:24-cv-00518-CDS-MDC (D. Nev. May 24, 2024), ECF No. 68 (recommending granting motion to intervene of the Alliance and others).[2]

Had Proposed Intervenors waited, their motion would likely have been denied as untimely. This is a fast-moving election law case—Plaintiffs are seeking to alter the rules for conducting the 2024 general election in Nevada, which is less than six months away. Plaintiffs' suggested "wait and see" approach would prejudice not just Proposed Intervenors, but also existing parties and the Court, by requiring emergency motion practice at some unspecified later date to ensure that Vet Voice and the Alliance are able to protect their interests. *Cf. Garza v. City of Los Angeles*, 918 F.2d 763, 777 (9th Cir. 1990) ("In determining whether a motion to intervene is timely, a court must consider whether intervention will cause delay that will prejudice the existing parties."). And at that point, Proposed Intervenors would almost certainly face objections to the timeliness of their motion. *See Pub. Interest Legal Found. v. Benson*, No. 1:21-cv-929, 2022 WL 21295936, at *11 (W.D. Mich. Aug. 25, 2022) ("[T]he motion to intervene, which was filed while the parties were already briefing their motion to dismiss, is arguably untimely."). Rule 24 does not impose such a catch-22.

[2] In any event, Proposed Intervenors' proposed answer asserts that Plaintiffs lack a private right of action to enforce the Election Day Statutes, ECF No. 15-3 at 8, a defense that none of the motions to dismiss filed in this case to date have raised, *see* ECF No. 59; ECF No. 60.

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Finally, although Plaintiffs do not raise the argument and thus forfeit it, the subsequent grant of Intervenor-Defendant DNC's unopposed motion to intervene does not change the analysis. Rule 24 grants a right to intervene where a movant satisfies its elements, "unless *existing parties* adequately represent [its] interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). Other proposed intervenors are not "existing parties."[3] And excluding Vet Voice and the Alliance simply because Plaintiffs decided they would rather proceed against DNC and therefore did not oppose DNC's later-filed intervention motion would be contrary to "the purpose of Rule 24: to 'dispose of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *Keyser v. Tanfield Grp.*, No. EDCV 11-00236 VAP (DTBx), 2011 WL 13224829, at *4 (C.D. Cal. Oct. 13, 2011) (quoting *So. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). Plaintiffs do not get to pick and choose which interested parties may intervene to defend against their litigation.

II. Alternatively, the Court should grant permissive intervention under Rule 24(b).

If ever there were a case for permissive intervention, it is this one. Vet Voice and the Alliance represent constituencies that are among those most directly affected by the Plaintiffs' challenge to the Ballot Receipt Deadline, they have intervened and extensively briefed dispositive motions in an identical challenge brought by the RNC in Mississippi, and they are therefore uniquely well situated to contribute to the expeditious resolution of this case. Plaintiffs raise three arguments in opposition to permissive intervention, but none holds water.

First, Plaintiffs repeat their argument that the State Defendants adequately represent Vet Voice and the Alliance's interests. That is wrong for the reasons already discussed. And, while courts may consider the mandatory intervention factors among other "discretionary" factors in analyzing permissive intervention, they may not "deny permissive intervention solely because a

[3] *See, e.g.*, *Friends of the Boundary Waters Wilderness v. U.S. Army Corps of Eng'rs*, No. 19-cv-2493 (PJS/LIB), 2020 WL 6262376, at *12 (D. Minn. Apr. 9, 2020) ("Plaintiffs fail to highlight any case in which a Court denied a motion to intervene based on a proposed intervenor's interest arguably being adequately protected by another proposed intervenor. Instead, the Courts have held that a proposed intervenor is required to demonstrate its interest is not adequately protected by *existing* parties."); *Dumont v. Lyon*, No. 17-cv-13080, 2018 WL 8807229, at *7 (E.D. Mich. Mar. 22, 2018) (holding that when "motion to intervene was filed, the only comparator[s] for purposes of analyzing the adequacy of representation" were the named defendants, not other proposed intervenors).

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proposed intervenor failed to prove an element of intervention as of right." *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 804 (7th Cir. 2019); *see also Maverick Gaming LLC v. United States*, No. 3:22-cv-05325-DGE, 2022 WL 4547082, at *4 (W.D. Wash. Sept. 29, 2022) ("[I]nadequate representation is not required under Rule 24(b)[.]").

Second, the Plaintiffs forecast that "Vet Voice and the Alliance's participation will delay proceedings and prejudice the parties." MTI Opp'n at 10. Not so. Proposed Intervenors have committed to be bound by any case schedule set by the Court or agreed to by the parties. MTI at 21 n.12; *see Thomas v. Andino*, 335 F.R.D. 364, 371 (D.S.C. 2020) (crediting a similar commitment and granting permissive intervention). In fact, Proposed Intervenors share Plaintiffs' interest in expeditious resolution of this case. *See* Goldbeck Decl. ¶ 21 (emphasizing need to "understand[]" and "properly educate our constituents on the specific legal landscape in which their ballots will be cast."). Plaintiffs' concerns ring particularly hollow in light of their non-opposition to the DNC's later-filed motion to intervene in this case, as well as the RNC's decision in a previous iteration of this same litigation to *not* oppose Vet Voice and the Alliance's intervention. *Republican Nat'l Comm. v. Wetzel*, No. 1:24-cv-25-LG-RPM (S.D. Miss. Feb. 27, 2024), ECF No. 34. Plaintiffs' highly selective concerns about "delay" and "prejudice" are nothing more than an attempt to carefully select their preferred opponents. And Plaintiffs "can hardly be said to be prejudiced by having to prove a lawsuit [they] chose to initiate." *Sec. Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995).

Finally, Plaintiffs wrongly contend that Proposed Intervenors have "provided the Court with no reasons to believe their participation would help the Court resolve the issues in this case." MTI Opp'n at 10–11. In fact, Vet Voice and the Alliance—and their counsel—have significant experience litigating the very issues raised in Plaintiffs' complaint, having recently completed nearly seventy-five pages of briefing on cross-motions for summary judgment in a substantially identical case brought by the RNC in Mississippi. *See* Intervenors' Memoranda, *Republican Nat'l Comm. v. Wetzel*, No. 1:24-cv-25-LG-RPM, ECF Nos. 62, 77, 89 (S.D. Miss. 2024). They are therefore uniquely well situated to provide the Court with useful and thorough briefing and argument on a highly expedited timeline. Vet Voice and the Alliance are also particularly well

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situated to provide the court with useful context regarding the Ballot Receipt Deadline's disproportionate impact on seniors, veterans, and military voters.[4]

CONCLUSION

For the reasons above, Vet Voice and the Alliance respectfully ask that the Court grant their motion to intervene under Rule 24(a)(2) or, in the alternative, under Rule 24(b).

Dated: May 31, 2024

Respectfully submitted,

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[4] Participation as amicus is not, as Plaintiffs suggest, an adequate substitute. MTI Opp'n at 11. *See Freedom from Religion Found., Inc. v. Geithner*, 262 F.R.D. 527, 530 (E.D. Cal. 2009) ("The filing of an amicus brief to the court seems a meager substitute in comparison, and would deny the potential intervenors a voice in key junctures of this litigation.").

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of May, 2024, a true and correct copy of this REPLY IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS was served via the United States District Court's CM/ECF system on all parties or persons requiring notice.

By: */s/ Dannielle Fresquez*
Dannielle Fresquez, an Employee of
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