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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

1789 Foundation Inc., d/b/a Citizen AG,  
and Lindsey Graham,

*Plaintiffs,*

v.

Adrian Fontes, in his official capacity as  
Secretary of State,

*Defendant.*

Case No. 24-CV-02987-SPL

**PLAINTIFFS' RESPONSE IN  
OPPOSITION TO MOTION TO  
INTERVENE**

(Hon. Steven P. Logan)

Plaintiff respectfully submits this response in opposition to the Motion to Intervene as Defendants of One Arizona and the Arizona Alliance for Retired Americans (collectively, "Proposed Intervenors").

1 The Proposed Intervenor move to intervene as defendants in this action as of right  
2 under Rule 24(a)(2) of the Federal Rules of Civil Procedure and, alternatively, for  
3 permissive intervention under Rule 24(b). They have failed, however, to establish a right  
4 to intervene under either provision. Specifically, Proposed Intervenor's request for  
5 intervention under Rule 24(a)(2) identifies no legally protectable interest. The Proposed  
6 Intervenor claim an interest in protecting "the voting rights of their members and  
7 constituents as well as their own organizational resources." *Motion to Intervene as*  
8 *Defendants*, page 8. Protecting organizational resources is not a legally protected interest  
9 for purposes of intervention. Intervenor must show a direct and significant interest in  
10 an action, which cannot be a generalized or undifferentiated interest, such as the right to  
11 vote, which is shared by many other citizens in the state of Arizona. As such, they have  
12 failed to demonstrate a sufficient interest in this lawsuit that may be affected or impaired  
13 by the disposition of this litigation.

14 Moreover, Defendant Secretary of State Adrian Fontes ("Secretary") and  
15 Proposed Intervenor share the same objective: defending the integrity of elections and  
16 voter registration in this State. Proposed Intervenor cannot overcome the presumption  
17 that the Secretary, who has been sued in his official capacity as Arizona's Secretary of  
18 State, will adequately represent their interests. They have offered no evidence, for  
19 instance, to support the "very compelling showing" necessary to overcome the  
20 presumption that their interests are adequately represented by the Secretary. *See Arakaki*  
21 *v. Cayetano*, 324 F.3d 1078, 1086 (9<sup>th</sup> Cir. 2003) ("In the absence of a 'very compelling  
22 showing to the contrary,' it will be presumed that a state adequately represents its citizens  
23 when the applicant shares the same interest.").

24 Furthermore, the Proposed Intervenor have failed to demonstrate why the Court  
25 should exercise its discretion over their permissive intervention claim when the addition  
26 of unnecessary parties will not only bog down an otherwise straightforward challenge to  
27

1 the Secretary's custodial records requirements, but it will also increase litigation costs  
2 and cause undue delay or prejudice of the rights of the original parties.

### 3 **THE LEGAL STANDARD**

4 To intervene as a matter of right under Rule 24(a)(2), the movant must  
5 demonstrate: (1) the application for intervention is timely; (2) the applicant has a  
6 sufficient interest in the litigation; (3) the interest may be affected or impaired, as a  
7 practical matter, by the disposition of the action; and (4) the interest is not adequately  
8 represented by an existing party in the litigation. *Sagebrush Rebellion, Inc. v. Watt*, 713  
9 F.2d 525 (9<sup>th</sup> Cir. 1983) at 527.

10 Permissive intervention under Rule 24(b), on the other hand, allows for  
11 intervention under more relaxed conditions. The rule permits a party to intervene by  
12 demonstrating: (1) a timely application for intervention and (2) that the party's claim or  
13 defense shares a common question of law or fact with the underlying action. Fed. R. Civ.  
14 P. 24(b)(1). When reviewing a request for permissive intervention, the court must also  
15 consider whether permissive intervention would "unduly delay or prejudice the  
16 adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). But "[e]ven if an  
17 applicant satisfies those threshold requirements, the [Court] has discretion to deny  
18 permissive intervention." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9<sup>th</sup> Cir. 1988).

19 As more fully set forth below, Proposed Intervenors are not entitled to intervention  
20 as of right under Rule 24(a)(2) because they have failed to show (1) that the Secretary  
21 will not adequately represent their interests in this suit and (2) that they have a legally  
22 protectable interest that may be affected or impaired by this litigation sufficient to  
23 support intervention. Importantly, the Court should also exercise its discretion under  
24 Rule 24(b)(1) to deny permissive intervention for the following reasons. (1) There is a  
25 pressing need for swift resolution of this case. The plaintiff, for instance, requests relief  
26 because ongoing negligent maintenance of voter rolls will impair the equitable  
27 administration of the next election and because the Defendant has admitted that record  
28

retention and destruction schedules will make appropriate voter registration roll maintenance impossible as records become unavailable. (2) Inserting additional parties into this case will inevitably increase litigation costs, cause undue delay, and bring unnecessary complications that will prejudice the adjudication of the original parties' rights.

## **ARGUMENT**

### **I. The Court should deny intervention by right to Proposed Intervenorors because they lack a direct and substantial "interest" that is not already adequately represented by the Secretary of State.**

The Proposed Intervenorors have failed to state a cognizable interest in this case. An applicant for intervention must demonstrate a "'significantly protectable interest.' An economic stake in the outcome of the litigation, even if significant, is not enough." *Greene v. United States*, 996 F.2d 973(9<sup>th</sup> Cir. 1993) at 976.

#### **A. The Proposed Intervenorors' members have no direct interest in the maintenance of voter registration rolls.**

One Arizona and the Arizona Alliance for Retired Americans cannot intervene in this case as of right because they cannot show that their asserted associational and organizational interests have a significant effect upon their rights. At issue in this action is whether the Secretary has been derelict in his duty to maintain adequate records of voter registration rolls and whether the Secretary has complied with Arizona and Federal law requiring regular maintenance of voter registration rolls. This lawsuit seeks to compel the Secretary to fulfill his duties under Federal and Arizona law, duties that accrue to him alone in his official capacity as Secretary and that are required by law to be performed by the Secretary as a public agent. Here, Proposed Intervenorors are not entitled to intervention under Rule 24(a) when they have not shown a nexus between the Secretary's legally-imposed obligations and the performance thereof and any activities

1 that the Proposed Intervenor undertake as nonprofits which are chartered for  
2 educational, charitable and public service activities.

3 **1. Proposed Intervenor’s organizational interests do not have a significant**  
4 **effect upon their rights.**

5 The Proposed Intervenor argue that their involvement is necessary to protect their  
6 get-out-the-vote programs, youth advocacy programs, and immigration support services,  
7 in the case of One Arizona, and to protect the mission of ensuring social and economic  
8 justice and protecting the civil rights of retirees after a lifetime of work, in the case of  
9 Arizona Alliance for Retired Americans. Specifically, they argue that these interests will  
10 be adversely affected by the Secretary’s compliance with voter registration maintenance  
11 provisions of Federal and Arizona law and that their intervention must be allowed to  
12 “protect the voting rights of their members and constituents as well as their own  
13 organizational resources” (Motion to Intervene, page 8). As held by the 9<sup>th</sup> Circuit, this  
14 type of “economic expectancy is not a legally protected interest for purposes of  
15 intervention.” *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. V.*  
16 *U.S. Dep’t of Agric.*, 143 Fed. Appx. 751, 753 (9<sup>th</sup> Cir. 2005) (citation omitted); *accord*  
17 *Mt. Hawley Ins. Co. v. Sandy Lake Props, Inc.*, 425 F.3d 1308, 1311 (11<sup>th</sup> Cir. 2005)  
18 (“mandatory intervention requires “something more than an economic interest”). But  
19 even if Proposed Intervenor could avoid this legal bar, their vague mention of resource  
20 diversion amounts to speculative and conclusory allegations that do not justify  
21 mandatory intervention. *See Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810,  
22 819 (9<sup>th</sup> Cir. 2001) (accepting only “non-conclusory allegations”); *Dilks v. Aloha*  
23 *Airlines*, 642 F.2d 1155, 1157 (9<sup>th</sup> Cir. 1981) (denying mandatory intervention where  
24 claimed interest was speculative).

25 **2. Proposed Intervenor’s associational interests do not have a significant**  
26 **effect upon their rights.**

The Proposed Intervenor also assert that they have a right to intervene on behalf of their members to protect their members' right to vote. However, intervention as of right is reserved for parties that demonstrate a direct and significant interest in an action. *Cal. Ex rel. Lockyer v. United States*, 450 F.3d 436, 441-42 (9<sup>th</sup> Cir. 2006). That interest must be particular to the movant and cannot be "generalized" or "undifferentiated." *Id.* At 441; *see also United States v. Arizona*, No. CV10-1413-PHX-SRB, 2010 WL 11470582, at \*10 (D. Ariz. Oct. 28, 2010) (finding that movant did not have direct and specific interest in the litigation in part because his "expressed interest [was] general" and "shared by many other citizens of the state of Arizona").

Here, the Proposed Intervenor's asserted interests are precisely that: generalized and undifferentiated. In other words, an interest in protecting their members' right to vote is not at all unique to the Proposed Intervenor. Rather, this is precisely the type of unspecified, widely shared interests the court refused to recognize in *Miracle v. Hobbs*, 333 F.R.D. 151, 155 (D. Ariz. 2019) (holding that the court was "unmoved by the highly generalized argument that Proposed Intervenor have an interest in upholding the constitutionality of the [challenged] law...").

**B. The disposition of this case will not impair Proposed Intervenor's ability to protect their or their members' interests.**

Because the Proposed Intervenor have failed to articulate any protectable "interest" in this lawsuit, it also follows that they cannot demonstrate that "the disposition of the action may, as a practical matter[,] impair or impede [their] ability to protect [that] interest." *Am. Ass'n of People With Disabilities v. Herrera*, 257 F.R.D. 236, 252 (D.N.M. 2008) (stating that "[w]here no protectable interest is present, there can be no impairment of the ability to protect it."). And even if an applicant proves that he possesses a sufficient legal interest in the underlying dispute, intervention as of right remains improper if the applicant fails to establish that a "resolution of the plaintiff's claims actually will affect the applicant." *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9<sup>th</sup> Cir. 2002).

**1. A judgment in Plaintiff's favor will not impair nor affect Proposed Intervenor's putative interests.**

The Proposed Intervenor's have failed to demonstrate how their claimed associational interests – to protect their members' right to vote – may be impaired by the outcome of this litigation. To the contrary, this litigation is intended to make voting secure and to enforce the Secretary's obligations under Federal and Arizona law regarding voter registration maintenance. Indeed, the Plaintiff and its members are just as concerned about voter registration and the right to vote as the Proposed Intervenor's are. Enforcing the Secretary's obligations under Federal and State law to maintain an accurate voter registration roll assists Proposed Intervenor's mission of ensuring that every one of their members' valid votes counts.

Likewise, the Proposed Intervenor's organizational interests – expending resources – is not a discernable interest that could be impaired by the outcome of this proceeding. At any rate, they fail to explain how an equitable judgment – that the Secretary be required to follow existing law – has *any* tangible impact on their need to expend significant additional resources (in time, effort, and expense) in voter education programs, distributing materials that educate voters, youth advocacy programs or immigration support services.

**2. A judgment in Plaintiff's favor will not affect Proposed Intervenor's**

Further, Proposed Intervenor's have not adequately explained how a judgment in Plaintiff's favor will affect their spending and issue-advocacy. For instance, and organization “cannot manufacture the injury by incurring litigation costs or simply choosing to spend money on fixing a problem that otherwise would not affect the organization at all. It must instead show that it would have suffered some other injury if it had not diverted resources to counteracting the problem.” *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1088 (9<sup>th</sup> Cir. 2010) (internal citation omitted).



1 Instead, they have offered little more than conclusory statements that neglect to  
 2 explain how, if the Court were to decide the merits of this case in Plaintiff's favor, such  
 3 resolution would lead to a need to increase expenditures to advance Proposed  
 4 Intervenor's organizational and associational interests. *See Berg*, 268 F.3d 810 at 819-  
 5 20 (courts may take allegations of a proposed intervenor's interests as true, but the  
 6 allegations must be "well-pleaded, nonconclusory allegations").

7 In *Arizona School Boards Association Inc v. State of Arizona*, 252 Ariz. 219  
 8 (2022), the Supreme Court of Arizona stated that "other federal courts that have held that  
 9 an organization cannot establish standing if the only injury arises from the effect of [a  
 10 challenged action] on the organizations' lobbying activities, or when the service  
 11 impaired is pure issue-advocacy." *Id* at 224 (cleaned up); *see also Sierra Club v. Morton*,  
 12 405 U.S. 727, 739 (1972) (recognizing that if a lobbyist/advocacy group had standing to  
 13 challenge government policy with no injury other than injury to its advocacy would  
 14 eviscerate standing doctrine's actual injury requirement).

15 **C. Proposed Intervenor's purported interests are adequately represented by**  
 16 **the Secretary.**

17 The final requirement under Rule 24(a) is whether the interests of the Proposed  
 18 Intervenor are inadequately represented by the existing parties. "The most important  
 19 factor in determining the adequacy of representation is how the interest compares with  
 20 the interests of existing parties." *Arakaki*, 324 F.3d at 1085 (citation omitted). "When an  
 21 applicant for intervention and an existing party have the same ultimate objective, a  
 22 presumption of adequacy of representation arises. If the applicant's interest is identical  
 23 to that of one of the present parties, a compelling showing should be required to  
 24 demonstrate inadequate representation." *Id.* (internal citations omitted).

25 Proposed Intervenor argues that their interest in their members' right to vote  
 26 differs from the Secretary's broader interest in protecting all Arizona voters. But even if  
 27 they have a reason for defending the rights of a *particular* section of voters, that the  
 28



1 Secretary doesn't share, the Secretary's objective of defending the rights of *all* voters  
2 covers their interest. The District of Arizona rejected an identical argument raised by the  
3 Republican Party when it sought to intervene to defend an election law. *Yazzie v. Hobbs*,  
4 CV-20-08222-PCT-GMS, 2020 WL 8181703, at \*3 (D. Ariz. Sept. 16, 2020).

5 In *Yazzie*, the Republican Party argued that the Secretary (the named defendant)  
6 was "not in the position to represent the narrower interests of Republican candidates."  
7 *Id.* The court disagreed. It found that this argument did not "call into question" the  
8 Secretary's "sincerity, will[, ] or desire to defend the [challenged law]." *Id.* And even  
9 though the Secretary may "not share the exact stances of Republican Movants," the court  
10 held that she was "more than capable of defending the [statute] without the Republican  
11 Movants' assistance." *Id.* This holds true here. No conflicting interest exists here. The  
12 Secretary seeks to uphold and defend his office's management of voter registration rolls,  
13 just as Proposed Intervenors seek to uphold and defend their members' valid voter  
14 registrations.

15 Furthermore, Proposed Intervenors failed to articulate an argument that they  
16 intend to make if intervention is granted that they believe the Secretary is unwilling or  
17 incapable of making. *See Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 275  
18 (D. Ariz. 2020) (citation omitted) ("[M]ere disagreement over the best way to approach  
19 litigation is insufficient to meet the 'compelling showing' necessary to demonstrate  
20 inadequate representation when interests have aligned.").

21 In the absence of actual divergence in objectives between the Proposed Intervenors  
22 and the Secretary – which neither applicant has managed to articulate – the Secretary  
23 remains an adequate representative of the Proposed Intervenors' ostensible interests, and  
24 the presumption of adequacy should prevail.

## 25 **II. The Court should deny permissive intervention to Proposed Intervenors.**

26 The Court has broad discretion to deny any permissive intervention that may  
27 "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ.  
28

P. 24(b)(3). In general, intervention is foreclosed where it would unduly delay or prejudice the original parties and where the movant's interests are "adequately represented by the existing parties." *Pest Comm. V. Miller*, 648 F. Supp. 2d 1202, 1214 (D. Nev. 2009) (citing *Venegas v. Skaggs*, 867 F.2d 527, 530-31 (9<sup>th</sup> Cir. 1989)). Such is the case here: the Secretary and the Proposed Intervenors each seek to protect the adequacy of procedures ensuring voter registration roll maintenance. Given the need to adequately maintain voter registration rolls in advance of elections, adding the Proposed Intervenors as parties would unnecessarily delay this litigation. Even if the Proposed Intervenors could "satisfy[y] the criteria for permissive intervention," it is well within the Court's discretion to deny their Motion to prevent it from muddying this case with needless additional filings. *Miracle*, 333 F.R.D. at 156.

In sum, Proposed Intervenors' Motion fails to argue, much less establish, that they meet the requirements to intervene either by right or by permission. Accordingly, the Court should deny the Proposed Intervenors' Motion.

### **III. Alternatively, the Court should prohibit redundant briefing.**

If the Court grants this motion, it should impose strict limits on all submissions to prevent unnecessary delay, duplication, and prejudice to existing parties and to judicial economy. The District of Arizona has wisely heeded such requests, constraining intervenors in election-related disputes, and Plaintiff requests that this Court do the same. *See Mi Familia Vota v. Hobbs*, No. 2:21-cv-01423-DWL, 2021 WL 5217875, at \*8-9 (D. Ariz. Oct. 14, 2021) (citing *Arizona Democratic Party v. Hobbs*, 2020 WL 6559160, at \*1 (D. Ariz. 2020)).

### **CONCLUSION**

For the foregoing reasons, the Court should deny the Proposed Intervenors' Motion to Intervene pursuant to Rule 24(a) and Rule 24(b) or, alternatively, restrict their participation to allow only independent briefing not addressed by the original parties in

1 this matter.

2 Dated: February 14, 2025

3 Respectfully submitted,

4 By: /s/Neal Carter

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19 **ORIGINAL** e-filed and served via electronic means

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