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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDICIAL WATCH, INC., et al., Plaintiffs, v. DEAN C. LOGAN, et al., Defendants.	Case No. 2:17-cv-08948-R-SK **REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF MI FAMILIA VOTA EDUCATION FUND, ROCK THE VOTE, AND LEAGUE OF WOMEN VOTERS OF LOS ANGELES**

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1 I. **INTRODUCTION**

2 Plaintiffs' opposition to Movants' motion for intervention as of right
3 completely mischaracterizes Movants' interests at stake in this action and rests on
4 the false premise that Movants must meet a heightened burden for intervention.
5 But the Ninth Circuit applies Rule 24(a) "liberally in favor of potential
6 intervenors." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir.
7 2001) (citations omitted). The Ninth Circuit mandates a broad construction of the
8 rule, and its "review is 'guided primarily by practical considerations,' not technical
9 distinctions." *Id*. (citations omitted). Movants have more than met the burden of
10 demonstrating that their interest in protecting their members and marginalized
11 communities' voting rights could be significantly impaired by the outcome of this
12 case, and that Defendants may not adequately represent the interests of Movants
13 and the communities Movants represent. Accordingly, Plaintiffs' unfounded
14 objection should be rejected and intervention should be allowed.

15 Even if the Court does not grant intervention as of right, the Court should
16 grant permissive intervention. The basic requirements for permissive intervention
17 have been established, as evidenced by Movants' proposed answer, which
18 demonstrates that Movants have defenses common to the main action.
19 Furthermore, given the early posture of the case, there is no chance of undue delay
20 or unfair prejudice by intervention, which Plaintiffs all but acknowledge by
21 conceding that this motion is timely under Rule 24(a). This is particularly true
22 because Movants will participate in this case on the schedule established for the
23 existing parties; will avoid unnecessary delays or duplication of efforts in areas
24 satisfactorily addressed and represented by the existing Defendants; and will
25 coordinate all future proceedings with the parties.[1]
26

27 [1] Defendant Padilla does not oppose permissive intervention, and takes no position on the motion for intervention as of right. ECF No. 42, at 2, Defendant Padilla's
28 Response ("Padilla Response"). Defendant Logan took no position on the motion. ECF No. 48, Defendant Logan's Response.

II. DISCUSSION

A. Intervention As of Right Must Be Granted Because Movants Have a Direct Interest in this Case that Defendants Cannot Adequately Represent.

Under Federal Rule of Civil Procedure 24(a)(2), a court must allow a party to intervene where, as here: (1) the motion to intervene is timely; (2) the movant has a "'significantly protectable' interest relating to the property or transaction that is the subject of the action;" (3) the disposition of the action could impair or impede movant's ability to protect that interest; and (4) the movant's interest may not be adequately represented by the existing parties to the lawsuit. *Sw. Ctr.*, 268 F.3d at 817 (quoting *Northwest Forest Resource Council ("NFRC") v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)). Plaintiffs do not challenge the timeliness of the motion, implicitly agreeing that the motion occurs at an appropriate stage of the proceedings and will not prejudice the existing parties. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (citing the factors courts weigh in determining timeliness). Plaintiffs' arguments concerning the remaining three factors are without merit.

1. Movants, their members, and the voters they engage have a significant and direct interest in ensuring that the resolution of this case does not result in the disenfranchisement of eligible voters

Movants – organizations whose collective mission is to ensure that marginalized communities get registered to vote and become lifelong participants in our democracy – have an important stake in the procedures used to remove registered voters from the rolls. Plaintiffs cannot dispute that the right to vote is a protected interest, and that removal of eligible persons from the rolls interferes with that right. Instead, Plaintiffs resort to an argument that entirely begs the question: that intervenors have nothing at stake in this litigation because Plaintiffs

purportedly seek the removal only of "*ineligible* voters." Plaintiffs' Memorandum of Points and Authorities in Opposition to Motion to Intervene Opposition (hereafter "Opp."), ECF No. 47 at 3 (emphasis in original). The essential question in this case is precisely what programs and procedures are best suited to identifying and removing *only* ineligible persons, consistent with the NVRA, without *also* removing thousands of *eligible* voters such as Movants' members and the communities they register to vote.

Plaintiffs' lawsuit demands that Los Angeles County change its removal procedures to ensure that more voters are removed from the rolls. But there is a wide range of procedures states can use to identify ineligible voters, consistent with their obligations under the NVRA, some carrying a greater risk of targeting eligible voters than others. Movants have a strong and undeniable interest in preventing changes that carry an unwarranted danger of purging eligible voters, and in refuting Plaintiffs' unfounded allegations that the sheer number of active and inactive voters in Los Angeles County somehow translates into "ineligible" voters being on the voter rolls.

The likelihood that particular purge practices will cancel the registrations of *eligible* voters is anything but speculative; indeed, it is a frequent problem in election administration. Many of the numerous methodologies being promoted and tested throughout the country have resulted in eligible voters being wrongfully purged from the rolls. For example, Florida's use of Systematic Alien Verification for Entitlements (SAVE) data to identify ineligible voters in 2012 resulted in a 30 percent error rate in Dade County alone. Ex. A,[2] Liz Kennedy and Danielle Root, *Keeping Voters off the Rolls*, Center for American Progress (2017), at 12. Prior to the 2000 presidential election, Florida's dependence on unreliable felony conviction data resulted in 12,000 voters misidentified as ineligible – in an election that turned

[2] All references to exhibits are to exhibits attached to the Declaration of Anna Do filed concurrently herewith.

on some 600 votes. *Id.* at 10. In 2012, Texas relied on faulty data that repeatedly matched active Texas voters with deceased voters across the county. *Id.* at 10.

Another program, the Interstate Voter Registration Cross-Check program ("Cross-Check"), which purports to identify persons allegedly registered to vote in two different states, is the subject of a research study finding that it would impede *more than 1,000 legitimate votes* for every double vote prevented by the strategy. Ex. B, Sharad Goel, Marc Meredith, Michael Morse, David Rothschild, and Houshmand Shirani-Mehr, *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, Working Paper (October 24, 2017). Plaintiff Judicial Watch itself has insisted on including the Cross-Check program in at least one settlement it has been party to, making Plaintiffs' dismissal of the possibility of such outcomes ring particularly hollow. Ex. C, Settlement Agreement, *Judicial Watch, Inc. v. Husted*, 2:12-cv-00792 (S.D. Ohio January 10, 2014) ¶ 2(b).

Plaintiff Judicial Watch, as well as plaintiffs in other similar cases, has also advocated using non-voting as a basis for initiating voter purges – a practice which Movants oppose because it can also result in erroneous cancellation of valid voter registrations. *Id.* at ¶ 2(i) (agreement with Ohio requiring state to initiate removal process based on non-voting in two election cycles); *cf. Ohio A. Philip Randolph Institute v. Husted*, 838 F.3d 699 (6th Cir. 2016) (finding that program using voters' failure to vote as trigger for beginning removal process violates Section 8 of NVRA), *cert. granted*, 137 S.Ct. 2188 (May 30, 2017). *See also* Ex. D, Consent Decree, *American Civil Rights Union v. Sheriff/Tax Assessor-Collector William "Clint" McDonald*, 2:14-cv-12-AM-CW (W.D. Tex. Mar. 17, 2015) at 7 (agreement with Terrell County, Texas, requiring program to using non-voting in two election cycles as trigger for beginning removal process). Movants have a direct and significant interest in ensuring their members and the voters they have registered do not see their registrations cancelled based on faulty programs and

procedures such as those described above.

Movants' interests in defending against Plaintiffs' claims are particularly strong because of the communities they represent. All three Movants work to register and engage marginalized and infrequent voters in the electoral process, including low-income, non-college and college youth, and Latinos and other people of color. Declaration of Ben Monterroso ("Monterroso Decl."), ¶ 6[3]; Declaration of Jennifer Tolentino (ECF No. 31-5) ("Tolentino Decl."), ¶ 5; Declaration of Marilu Guevara (ECF No. 31-6) ("Guevara Decl.") ¶ 4. These are the very voters most vulnerable to wrongful removal even when they are registered to vote in the jurisdiction where they live, as they move more frequently, may not receive or respond to postcard mailings questioning their registration status,[4] and may be infrequent voters without long voting histories. Monterroso Decl., ¶¶ 7, 8; Tolentino Decl., ¶ 8; Guevara Decl., ¶ 7. Statistics bear this out in states that have undertaken aggressive removal programs.

For example, between 2012 and 2016, Ohio's contested voter removal program resulted in the purging of ten percent of voters in heavily African-American, low-income neighborhoods near downtown Cincinnati as compared to only four percent in a surrounding suburb. *See* Ex. A, at 12. Of the voters targeted in Georgia's controversial 2016 voter removal program, African Americans were eight times more likely to be affected than whites, and Latinos and Asian

[3] A corrected version of Ben Monterroso's declaration is being filed concurrently herewith. It makes non-substantive corrections to facts in paragraphs 2 and 4 of his original declaration to reflect Mi Familia Vota Education Fund's closing of one office in Colorado and the opening of two new offices in Arizona; the founding date of MFVEF, which mistakenly identified the founding date of the organization's 501(c)(4); and a clarification that Mr. Monterroso was a co-founder of the organization before becoming its Executive Director.

[4] Plaintiffs note that postcard mailings are authorized by the NVRA (Opp. at 4, n.1) but are missing the point Movants make, which is that failure to respond to a postcard mailing is not conclusive evidence that a person has moved or otherwise become ineligible to vote, and is particularly problematic for communities that, for example, do not have regular access to their mail, such as students, or for people who speak English as a second language.

1 Americans were six times more likely to be affected than white voters. *Id*. at 10.
2 When Texas undertook a program in 2012 to identify voters for possible removal,
3 people living in heavily Latino or African American districts were more likely to be
4 affected. *Id*. at 10. Thus, there is nothing speculative about the threat an aggressive
5 removal program poses for the communities Movants directly serve.

6 Plaintiffs stretch their speculation argument to attempt to distinguish *Bellitto*
7 *v. Snipes*, No. 0:16-cv-61474, 2016 WL 5118568 (S.D. Fla. Sep. 21, 2016) — a
8 case nearly identical to the instant action, in which the court both granted
9 intervention and relied on evidence introduced by intervenors in rejecting list
10 maintenance claims on the merits. Plaintiffs contend that the grant of intervention
11 in *Bellitto* turned on the fact that the *Bellitto* plaintiffs had identified a particular
12 removal program not required by the NVRA as a desired remedy in the case,
13 whereas Plaintiffs here have merely alleged generally that Defendants' practices
14 violate the NVRA.

15 In truth, however, the operative allegations in Count I of both the complaint
16 in *Bellitto* and Count I of the complaint here are indistinguishable. Both merely
17 allege that the defendants are violating their list maintenance obligations under the
18 NVRA. *Compare* ECF No. 1, Compl. at Count 1 *with* Ex. E, *Bellitto First Am.*
19 *Compl.*, Count 1. Contrary to Plaintiffs' suggestion, there is nothing in the *Bellitto*
20 order granting intervention that refers to any more specific claim than that, or to any
21 specific removal program. Rather, Plaintiffs improperly rely on the *Bellitto* court's
22 subsequent decision *on the merits* as if it were supplying reasoning for the decision
23 *on intervention.* In its merits order, the *Bellitto* Court discussed plaintiffs'
24 arguments about use of jury rolls and other sources as a category of *evidence at*
25 *trial*, and the court ultimately rejected the plaintiffs' argument that failure to use
26 this information was probative of a violation of Section 8. But the court did not
27 rely on this aspect of plaintiffs' claims in granting intervention, and indeed there
28 was no mention of information from jury rolls or other specific sources in the

movants' briefing on intervention. Ex. F, *Bellitto* Motion to Intervene. Rather, the *Bellitto* court found that the intervenors' interests could be impaired by the litigation without any more specific allegations about the relief sought than the Plaintiffs have made here.

Moreover, Plaintiffs' argument that the vagueness of their allegations defeats intervention as of right is particularly troubling. Plaintiffs should not be permitted to sideline those groups most threatened by their litigation by making vague rather than specific allegations. Plaintiffs argue that they merely seek a court declaration that Defendants are violating the NVRA and an order for Defendants to comply with the law, with no details about how the state is violating the NVRA or what actions the state and Los Angeles County must take to comply. If the Plaintiffs were to achieve the vague result they claim to be seeking, Defendants would be left guessing as to exactly what they must do to comply with such an order. This, in and of itself, would implicate Movants' interests by creating uncertainty about what actions, if any, might be taken with respect to the voter rolls and what Movants may need to do to respond. Conversely, if Plaintiffs expect this Court to issue a more detailed order, then Movants have a strong interest in participating in the case to ensure that any such order adequately protects their interests.

As Movants have demonstrated, intervention is consistently granted to proposed intervenors based on the same showing of interest in access to registration and voting. *Id.*; *see also Kobach v. U.S. Election Assistance Comm'n*, No. 13-CV-4095-EFM-DJW, 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (granting permissive intervention in case over legality of state-specific proof of citizenship requirement on federal voter registration form to all 13 defendant-intervenor organizations, which had "shown their interests in either increasing participation in the democratic process, or protecting voting rights, or both, particularly amongst minority and underprivileged communities"); *Nw. Austin Utility Dist. No. One v. Mukasey*, 573 F. Supp. 2d 221, 230 (D.D.C. 2008) *rev'd on other grounds sub nom.*

Nw. Austin Utility Dist. No. One v. Holder, 557 U.S. 193 (2009) (noting that intervention had been granted to multiple parties seeking to defend the constitutionality of the federal Voting Rights Act's preclearance requirement).

A court need only conduct a "practical, threshold inquiry" to determine whether an applicant has demonstrated a sufficient interest in the action. *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (quoting *NFRC*, 82 F.3d at 837) (internal quotation marks omitted). Indeed, the interests test "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 398 (9th Cir. 2002) (quoting *County of Fresno v. Andrus,* 622 F.2d 436, 438 (9th Cir.1980) (internal quotation marks and citation omitted). For the reasons stated above and in Movants' motion to intervene, Movants have more than demonstrated an interest in this case that warrants intervention as of right.

2. The resolution of this action threatens to impair the interests of Movants, their members, and communities they represent.

Movants have also fully established that resolution of the action without their participation "may as a practical matter impair or impede their ability to safeguard their protectable interest." *Sw. Ctr.*, 268 F.3d at 823. It is undisputed that Plaintiffs seek a purge of voters from Los Angeles County's voter rolls and an interpretation of federal law that could result in canceling voter registrations across California. An unnecessary and potentially unlawful purge of eligible voters would impair and impede Movants' core mission of ensuring that eligible voters in marginalized communities are registered to vote and participate in elections. If a purge of voter rolls is ordered by the Court or agreed to as part of a settlement, Movants would be forced to divert precious organizational resources to ensuring their members and the voters they register have not been wrongfully canceled and deprived of their right to vote. Monterroso Decl., ¶ 9; Tolentino Decl., ¶ 9; Guevara Decl., ¶ 8. Contrary to

Plaintiffs' assertions, there is nothing speculative about the possibility of such an outcome. Movants have described in detail multiple purge programs that have led to thousands of erroneous removals, and settlement agreements that resulted in list maintenance procedures subsequently challenged as unlawful. *See* Part II.A.1, *supra*.

Likewise, the ultimate decision of what list maintenance procedures are permitted or required by the NVRA could impair Movants' ability to protect the interests of voters who may be at greater risk of wrongful removal. Because of their work registering and engaging voters in marginalized communities, Movants are uniquely situated to offer expertise and legal theories that protect these communities from overly aggressive list maintenance practices. Indeed, courts have consistently held that failure to allow an intervenor the opportunity to advance its own interpretations of the law may impede its ability to protect its interests. *See, e.g.*, *CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1578 (N.D. Ga. 1996) (holding that failure to allow an intervenor an opportunity to present its own legal theories and arguments "will as a practical matter impair its ability to protect the interests of its members"); *Sierra Club v. Martin*, No. Civ. A. 1:96–CV–926FMH, 1996 WL 452257, at *4 (N.D. Ga. June 17, 1996) (holding that a desire to avoid adverse legal interpretations is sufficient to show that a party's "separate and distinct legally protectable interest may be impeded if [they are] precluded from entering a particular action").

The existence of a remedy at law for Movants if their interests are adversely affected by the outcome of this case does not, as Plaintiffs would lead the Court to believe, translate into a "principle that an independent action precludes a finding of potential impairment." Opp. at 8. No such principle exists, and if it did, it would function to eliminate entirely the possibility of intervention as of right in voting rights actions.

The cases Plaintiffs cite do not stand for such a "principle." In *City of Los*

1 *Angeles*, 288 F.3d 391, upon which Plaintiffs rely heavily, the court did not
2 summarily hold that intervention was unwarranted because the proposed
3 intervenors had another remedy at law. Instead, the Ninth Circuit denied
4 intervention because the United States had brought the action to protect the very
5 interests the proposed community and organizational intervenors sought to protect
6 *and* the proposed intervenors were in full agreement with the resolution of the case
7 – a consent decree. The proposed intervenors there were instead concerned merely
8 about the strategy for *enforcement* of the consent decree. *Id*. at 402-03. Thus, their
9 interests could be equally protected through an action against the police if the
10 consent decree were violated. *Id*. at 402.[5]

11 Other cases Plaintiffs cite in support of this purported rule precluding
12 intervention if another remedy at law exists were decided on the unique facts of
13 those cases. *See Donnelly v. Glickman,* 159 F.3d 405, 410 (intervention as of right
14 denied because plaintiffs had expressly waived the remedies that implicated the
15 proposed intervenors' interest in the case); *Hawaii-Pacific Venture Capital Corp. v.*
16 *Rothbard*, 564 F.2d 1343, 1346 (9th Cir. 1977) (proposed intervenors failed to
17 demonstrate that the disposition of a class action impaired their ability to protect
18 their interests where, to the contrary, their ability to protect their interests "may
19 have been enhanced by the class action suit despite their own neglect in bringing
20 any action for over seven years after the alleged fraud").

21 Instead, the Supreme Court has recognized that intervention as of right is
22 appropriate in voting rights cases despite intervenors having an alternative means of
23 challenging the outcome in such cases. *See, e.g., Georgia v. Ashcroft,* 539 U.S.
24 461, 476 (2003) (upholding District Court's grant of intervention of right in
25 preclearance proceedings under the federal Voting Rights Act, which also provides
26

27 [5] Notably, the district court nonetheless granted permissive intervention to proposed
intervenors on remand. Ex. G, Civil Minutes, *United States v. City of Los Angeles,*
28 *Cal.*, CV 00-11769 GAF (RCx) (C.D. Cal. Oct. 3, 2002).

a separate cause of action for challenging a redistricting plan that survives preclearance).

Moreover, intervention as of right is warranted in the interests of judicial efficiency. As the Ninth Circuit duly noted in *City of Los Angeles*:

> A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a *practical* interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.

288 F.3d at 397-98 (quoting *Forest Conservation Council v. U.S. Forest Serv.,* 66 F.3d 1489, 1496 n.8 (9th Cir.1995) (quoting *Greene v. United States,* 996 F.2d 973, 980 (9th Cir.1993) (Reinhardt, J., dissenting))).

To promote the interests of judicial efficiency and to prevent future litigation that will likely arise if Plaintiffs obtain their desired form of a voter list maintenance program that removes eligible voters, Movants should be allowed to intervene now. As a practical matter, if Movants wait until this case is resolved, they likely would be unable to prevent the disenfranchisement of voters through a subsequent NVRA suit. Given the upcoming 2018 and 2020 elections – and the likelihood of multiple local and special elections in between[6] – it is simply unrealistic to think that Movants would have time to obtain a remedy to an adverse disposition of this case in time to ensure that its members and the communities they represent are not deprived of their right to participate in those elections.

For these reasons, Movants' interests would be impaired if they are denied intervention.

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[6] Since the 2016 presidential election, Los Angeles County has held eleven elections to date throughout the county. Ex H, Los Angeles County Registrar-Recorder/County Clerk, "Past Election Info."

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3. Defendants cannot adequately represent the interests of Movants, their members, and the communities Movants represent.

4 Movants have met their "minimal" burden of demonstrating that Defendants'
5 representation of their interests in this case "may be" inadequate. *Trbovich v.*
6 *United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Movants have
7 narrow, unique interests in ensuring that marginalized voters are not adversely
8 impacted by the resolution of this case, while Defendants have obligations to a
9 broad range of voters and constituencies, a competing interest in efficient and cost-
10 effective election administration, political pressures and budgetary constraints to
11 avoid costly litigation, and a history of disagreement with organizations like
12 Movants over the interpretation and implementation of the NVRA. Memorandum
13 of Points and Authorities in Support of Motion to Intervene (hereafter "Mot."), ECF
14 No. 31-1, at 10-12.

15 Plaintiffs' argument that the presumption of adequacy of representation by
16 the government Defendants applies here is also wrong. For the presumption to
17 apply, it must be shown that either the proposed intervenor and an existing party
18 have "identical interests" or that a party is charged by law with representing the
19 proposed intervenor's interest. *Arakaki v. Cayetano,* 324 F.3d 1078, 1086 (9th Cir.
20 2003), citing 7C Fed. Prac. & Proc. Civ. § 1909 (3d ed.). Neither circumstance is
21 presented here.

22 To support their argument that the presumption applies here, Plaintiffs point
23 to statements made by Defendant Padilla on Twitter that reflect his general views
24 about the right to vote and his intent to defend that right. These statements,
25 however, do not indicate how Defendant Padilla will interpret the NVRA's list
26 maintenance provisions. Moreover, 280-character social media postings cannot
27 negate the facts establishing that Movants' interests are not identical to those of the
28 Defendants — including, in Defendant Padilla's case, specific challenges to his

interpretation of the NVRA, his interpretation and application of state statutes guaranteeing a right to language assistance,[7] and his recent decision to appeal a ruling deeming unconstitutional a state law depriving voters of the right to cure a signature mismatch on a vote-by-mail ballot.[8]

The only other fact Plaintiffs cite in support of their argument that Movants are "on the same side" as Defendant Padilla is his support of Movant Rock the Vote's Corporate Civic Responsibility Program. Of course, an elected official's collaboration with community and grassroots voter registration organizations is not uncommon. Defendant Padilla's support of Movant Rock the Vote's effort to register young voters in corporate America, however, hardly translates to an interest *identical* to Movant Rock the Vote's interest in this case, which concerns the impact of an unfavorable resolution on young people of color, young people who are non-students, and low-income voters. Tolentino Decl., ¶ 5.

Importantly, when determining whether the presumption of adequacy of government representation applies, courts often look to whether the interests asserted by proposed intervenors are "more narrow, parochial interests" than those the government is charged with protecting. *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995) (presumption of government's adequacy of representation did not apply where government was charged with representing a broader public interest government, not just the concerns of one particular constituency), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Service,* 630 F.3d 1173 (9th Cir. 2011); *see also Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1000-01 (8th Cir. 1993) (statewide defendant could not adequately represent the interests of landowners and counties

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[7] *See* Ex. I, American Civil Liberties Union of Northern California, *Civil Rights Groups Sue Secretary of State for Depriving CA Voters of Language Assistance* (April 23, 2018).

[8] *See* Ex. J, Mark Joseph Stern, *California Is Disenfranchising Thousands of Voters Based on Their Handwriting*, Slate (May 14, 2018).

whose interests were narrower than those the state was charged with representing); *Tucson Women's Ctr. v. Arizona Med. Bd.,* No. CV-09-1909-PHX-DGC, 2009 WL 4438933, at *5 (D. Ariz. Nov. 24, 2009) (although statewide government entity and proposed intervenors shared same goal of defending constitutionality of the law in question, they could not be deemed to share the same ultimate objective where the government showed a willingness to suggest a more limiting construction of the statute); *cf. Lulac v. Wilson*, 131 F. 3d 1297, 1305 (9th Cir. 1997) (intervention denied where proposed intervenor conceded its ultimate objective was identical to state defendants').

As Movants argued in their memorandum of points and authorities, their interests are narrower than those of the Defendants. Movants are focused on the interests of marginalized voters and their vulnerability to aggressive purge practices. Defendants must balance the interests of a wide range of voters and constituencies, including the political pressures of running cost-effective elections. Defendant Padilla further faces the daunting task of creating and implementing uniform policies that meet the needs of counties of various sizes, budgets, and demographics. It therefore cannot be said with any level of certainty that Defendants will be able to adequately represent the unique interests of the communities Movants are dedicated to protect. Therefore, Plaintiffs' attempt to trigger a presumption of adequacy of government representation fails because Movants have clearly demonstrated that their interests, although potentially overlapping in some areas, are nonetheless distinct from Defendants'.

Even if Plaintiffs had demonstrated that Movants' interests were *identical* to Defendants', as the law requires, and the presumption of adequacy of representation were applied here, Movants have rebutted that presumption by demonstrating in their original motion and herein that their interests and Defendants' interests are not identical. *See Sw. Ctr.*, 268 F.3d at 823 ("But even if the presumption applies, it is rebutted here because Applicants and Defendants do not have sufficiently

congruent interests."). As the Ninth Circuit explained, "it is not Applicants' burden at this stage in the litigation to anticipate specific differences in trial strategy. It is sufficient for Applicants to show that *because of the difference in interests* it is likely that Defendants will not advance the same arguments as Applicants." *Id.* at 824 (emphasis added).

Indeed, in *Tucson Women's Ctr.*, 2009 WL 4438933, at *5, the court specifically noted that the intervenor could uniquely advance illuminative arguments, evidence, and perspectives that Defendants could not provide. Here, Defendant Padilla also recognizes the focus on the interests of marginalized voters that Movants bring to this case. In his response to Movants' motion, Defendant Padilla stated that he "does not dispute Potential Intervenors' assertion that they would provide an important perspective on the issues in the case by focusing intensively on the interests of young, minority, and other voters who may be disproportionately harmed by the relief sought by Plaintiffs if it were to be granted." Padilla Response at 2. That "difference in interests," is more than adequate to demonstrate that Movants' interests are not adequately protected by the existing parties. *Sw. Ctr.*, 268 F.3d at 824.

For all of these reasons, this Court should grant Movants' motion to intervene as of right.

B. The Court Should Grant Permissive Intervention.

Plaintiffs' opposition to Movants' request for permissive intervention is equally unavailing. The prerequisites for permissive intervention are clearly satisfied, and nothing in Plaintiffs' opposition establishes any undue delay or unfair prejudice that calls for denial of permissive intervention.

1. The prerequisites for permissive intervention are satisfied.

The requirements for permissive intervention are relatively minimal. Under Rule 24(b) the Court has broad discretion to grant permissive intervention to anyone who has "a claim or defense that shares with the main action a common

question of law or fact" and makes a "timely" application. Fed. R. Civ. P. 24(b); *Donnelly*, 159 F.3d at 412. Plaintiffs do not dispute that Movant's application is timely. Moreover, Movants clearly raise questions of law and fact in common with those in the existing action between the current parties. Indeed, Movants' proposed answer does not insert new legal issues into the case, and thus necessarily involves common questions of law.

Plaintiffs incorrectly conclude that Movants are incapable of having a claim or defense with common facts in this action because Movants themselves do not "conduct list maintenance" and because Movants assert defenses that only the existing defendants can raise. Opp. at 15. To the contrary, would-be intervenors may assert a defense that the government's conduct is not in violation of applicable laws. This was exactly the case in *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 (9th Cir. 2002). There, the Kootenai Tribe of Idaho and others filed suit challenging a U.S. Forest Service rule, known commonly as the "Roadless Rule," alleging that it violated the National Environmental Policy Act and the Administrative Procedure Act. Environmental groups intervened to defend the government's alleged violations. The Ninth Circuit Court of Appeals held that the "intervenors satisfied the literal requirements of Rule 24(b), and it was within the District Court's discretion to decide whether to permit them to participate." *Id.* In finding that the district court did not err in granting permissive intervention, the Ninth Circuit noted that the intervenors "assert 'defenses' of the government rulemaking that squarely respond to the challenges made by plaintiffs in the main action." *Id.* at 1110–11. Similarly, Movants seek to defend California's implementation of its voter registration and maintenance policies.

Moreover, a proposed intervenor is not required to assert a separate or additional claim or defense. Courts have found that organizations with a "special interest in the administration of election laws" have sufficient commonality to allow for permissive intervention. *See, e.g.*, *Kobach*, 2013 WL 6511874, at *3; *Florida v.*

United States, 820 F. Supp. 2d 85, 86 (D.D.C. 2011). In granting permissive intervention, the District Court in Kansas noted that the organizations' "experience, view, and expertise" as to the voting registration requirements at issue "will help to clarify, rather than clutter the issues in the action, which will in turn assist the Court in reaching its decision." *Kobach*, 2013 WL 6511874, at *3.

2. Intervention would not cause undue delay or unfair prejudice.

Having established the basic requirements for permissive intervention, the Court should exercise its broad discretion and grant permissive intervention because intervention would not unduly delay the main action or unfairly prejudice the existing parties, and because Movants' experience and expertise will assist the Court and increase efficiency, not impede it.

Plaintiffs' concern that intervention will delay proceedings by "expanding a case from two defendants to five," is unwarranted.[9] Opp. at 16. Given the early stage of this ligation, when little discovery has taken place, this intervention will not delay, let alone *unduly* delay, this action or prejudice Plaintiffs' rights. Indeed, if increasing the number of parties is sufficient to establish undue delay, as Plaintiffs allege, there would never be permissive intervention. Yet courts routinely grant permissive interventions, finding no undue delay, even when it substantially increases the number of parties. *See*, *e.g.*, *id.* (granting four separate motions for permissive intervention and finding no undue delay in allowing 13 additional intervenor-defendants); *Manier v. L'Oreal USA, Inc*, No. 2:16-CV-06886-ODW-KS, 2017 WL 59066, at *2 (C.D. Cal. Jan. 4, 2017) (granting permissive intervention and finding no undue delay in increasing the number of plaintiffs from

[9] Indeed, Plaintiffs' claim that intervention at this juncture would cause delay is particularly disingenuous given that Plaintiffs' counsel agreed that it would not raise the argument of timeliness in exchange for Movants' concession to delay the hearing on the motion to intervene by two weeks. *See* Ex. K (e-mail correspondence between Lori Shellenberger and Robert Popper dated April 17, 2018). Moreover, Plaintiffs' concession that this motion is timely for purposes of intervention as of right under Rule 24(a) directly belies their claim that permissive intervention will cause prejudice because of delay.

two to five). Plaintiffs' concern regarding alleged complications of coordinating depositions is also unfounded. Opp. at 16. Movants present no additional scheduling complications and are willing to participate in any proceedings on the schedules set by the existing parties.

Plaintiffs' concern that Movants' denials of certain admitted allegations in the Complaint will "reopen[] issues that the current parties have resolved" is similarly unjustified. Opp. at 17. As to the allegations admitted by Defendants, Movants appropriately noted that they lacked sufficient knowledge to admit or deny. If reopening of resolved factual issues is concern that were to make a difference on the grant or denial of intervention, Movants represent that they will not contest the factual allegations in paragraphs five through eight and paragraphs 35, 69, 74 of the Complaint. ECF No. 1.

Notably, Defendant Padilla has filed a statement of non-opposition to Movants' request for permissive intervention, acknowledging that Movants "would provide an important perspective on the issues in the case by focusing intensively on the interests of young, minority, and other voters who may be disproportionately harmed by the relief sought by Plaintiffs." Padilla Response at 2. Because permissive intervention would not cause undue delay or unfair prejudice, and because Movants' experience and expertise will actually assist the Court and increase efficiency, the Court should exercise its broad discretion in favor of granting permissive intervention should the Court decline to grant intervention as of right.

III. CONCLUSION

For the foregoing reasons and those in Movants' opening memorandum of points and authorities, the Court should grant Mi Familia Vota Education Fund, Rock the Vote, and League of Women Voters of Los Angeles's Motion to Intervene and order their intervention in this action (i) as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, (ii)

permissively pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,

Dated: May 21, 2018

DEMOS

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ATTESTATION PURSUANT TO LOCAL RULE 5-4.3.4

This certifies, pursuant to Local Rule 5-4.3.4, that all signatories to this document concur in its content and have authorized this filing.

/s/ Anna Do
Anna Do