

Appeal No. 18-56102

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JUDICIAL WATCH, INC., *et al.*,

Plaintiffs-Appellees,

v.

DEAN C. LOGAN, *et al.*,

Defendants,

v.

MI FAMILIA VOTA EDUCATION FUND, *et al.*,

Movants-Appellants.

On appeal from the United States District Court
for the Central District of California
No. 2:17-cv-08948-R-SK
The Honorable Manuel L. Real

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 OF
MOVANTS-APPELLANTS MI FAMILIA VOTA EDUCATION FUND,
ROCK THE VOTE, AND LEAGUE OF WOMEN VOTERS OF LOS
ANGELES TO EXPEDITE PROCEEDINGS**

CIRCUIT RULE 27-3 CERTIFICATE

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(2) Facts Showing the Existence and Nature of the Emergency

This appeal concerns the District Court's July 12, 2018 Order denying
Movants-Appellants' motion to intervene as Defendants in Plaintiffs-Appellees'

lawsuit against Los Angeles County and the state of California for alleged failure to conduct proper list maintenance and removal of registered voters from the voter rolls. (Dist. Ct. Dkt. No. 76.) Movants-Appellants filed a notice of appeal of the District Court's Order on August 10, 2018. (Dist. Ct. Dkt. No. 79.) Three weeks later, on August 31, 2018, Plaintiffs-Appellees and Defendants filed a Joint Notice of Settlement (Dist. Ct. Dkt. No. 93) and requested 120 days to finalize the settlement. On September 5, 2018, the District Court issued an Order of Dismissal without prejudice to the right to reopen the action within 120 days if a settlement is not finalized. (Dist. Ct. Dkt. No. 94.)

Movants-Appellants certify that good cause exists to expedite this appeal in order to prevent irreparable harm to their members and the voters they register and engage throughout California. Movants-Appellants have no knowledge of the terms of the settlement being negotiated or the status of the ongoing negotiations. Their members and the voters they engage throughout the state risk irreparable harm and disenfranchisement if their interests are not fully represented before a settlement in the action is finalized. Movants-Appellants therefore respectfully request this Court grant their emergency motion and order expedited briefing, argument, and review of their appeal as proposed herein.

(3) When and How Counsel Notified

On September 7, 2018, counsel for Movants-Appellants notified the clerk of this Court of their intent to file and the timing of this motion, and explained the proposed briefing schedule.

On September 6, 2018, and again on September 7, 2018, counsel for Movants-Appellants contacted counsel for Plaintiffs-Appellees to request their consent to the proposed expedited briefing and argument schedule. On September 10, 2018, counsel for Movants-Appellants spoke by phone with counsel for Plaintiffs-Appellees, who stated their intent to oppose the motion to expedite. Counsel for Plaintiffs-Appellees did not object to filing their response to this motion on the date requested (September 14, 2018).

On September 7, 2018, counsel for Movants-Appellants emailed counsel for the state Defendant to notify them of their intent to file this motion and the proposed briefing schedule. Counsel for Movants-Appellants and counsel for the state Defendant spoke by phone about the reasons for the motion on September 9, 2018. On September 9, 2018, counsel for Movants-Appellants likewise emailed counsel for the county Defendant to notify them of their intent to file this motion and the proposed briefing schedule.

Dated: September 10, 2018

By: /s/ Anna Do

Anna Do

Attorney for Movants-Appellants

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INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

Pursuant to Federal Rule of Appellate Procedure 2 and Ninth Circuit Rules 27-3(a) and 27-12, Movants-Appellants Mi Familia Vota Education Fund, Rock the Vote, and League of Women Voters of Los Angeles respectfully request that the Court expedite briefing, argument, and review of the District Court's order denying their timely motion to intervene. This important lawsuit threatens to irreparably harm the voting rights of millions of California voters, primarily low-income and minority California residents whose unique interests are represented by Movants-Appellants. The underlying action seeks to force aggressive removal of registered voters from the voting rolls in Los Angeles County and potentially across California, and involves interpretation and application of critical provisions of the National Voter Registration Act (NVRA), 52 U.S.C. §§ 20507, et seq.

The District Court (Hon. Manuel Real) denied Movants-Appellants' motion to intervene on July 12, 2018, reasoning that Movants-Appellants had no protectable interest in the case because Plaintiffs in the underlying litigation claimed they sought only compliance with the NVRA and nothing more, and because the District Court believed that the state and county Defendants would adequately protect Movants' interests. (Dist Ct. Dkt. No. 76.)

A few weeks later, on August 31, 2018, the Plaintiffs-Appellees and existing Defendants filed a Joint Notice of Settlement, requesting 120 days to finalize the

settlement. (Dist. Ct. Dkt. No. 93.) On September 5, 2018, the District Court issued an Order of Dismissal, without prejudice to Plaintiffs' right to reopen the action within 120 days if a settlement is not finalized. (Dist. Ct. Dkt. No. 94.) The Order further provided that the District Court would retain jurisdiction to enforce the settlement, indicating that the District Court contemplates approving the settlement and retaining an ongoing role in compliance and oversight.

As a result of the denial of their motion to intervene, Movants-Appellants have been completely shut out of an action that will have a significant impact on the ability of their members and the voters they engage to exercise their fundamental right to vote. They have no knowledge of the terms or status of the ongoing confidential settlement negotiations and no ability to shape them or object to them given the denial of their motion to intervene. Movants-Appellants therefore seek to expedite consideration of their appeal to allow the interests of Movants-Appellants to be heard in this important voting rights case. The impending settlement and dismissal of the case presents a serious and urgent risk of irreparable harm to Movants-Appellants, who seek to protect their interests, their members' interests, and the interests of thousands of California voters in the proper interpretation and application of the relevant provisions of the NVRA.¹

¹ At the time the Notice of Appeal was filed, the parties were actively litigating the case and a trial was scheduled for December 2018. The Notice of Settlement and subsequent dismissal of the underlying action prompts the need to accelerate

As Movants-Appellants' brief on the merits will show, the District Court erred in denying their motion to intervene as of right because: 1) Movants-Appellants represent the interests of marginalized and lower propensity voters who are at disproportionate risk of wrongful removal and disenfranchisement that can result from an incorrect interpretation of the NVRA and from poorly constructed and executed list maintenance programs; 2) the resolution of the case in the absence of their participation may leave them without any practical recourse to correct any harm and prevent disenfranchisement before the rapidly approaching elections, including 14 scheduled elections in L.A. County between March and June of 2019; and 3) the state and county Defendants do not adequately represent the unique interests of the marginalized and lower propensity voters that Movants-Appellants represent, both because the existing Defendants must balance broader and often competing interests and funding constraints, and because they have not always been aligned with advocates on interpretations of federal and state law designed to protect and enfranchise marginalized communities. Further, even if this Court's de novo review were to find that Movants-Appellants failed to meet the threshold for intervention as of right, the briefing will show the District Court

consideration of the appeal. While Movants-Appellants understand the value of settlement as a resolution of litigation and have no intrinsic objection to the potential for settlement, they are deeply concerned that the important and unique interests of the communities they represent be included in any resolution.

abused its discretion in denying permissive intervention to Movants-Appellants, whose defenses of the NVRA and arguments as to who is or is not an eligible voter directly relate to Plaintiffs-Appellees' claims.

Importantly, and as the briefing before this Court will further demonstrate, the District Court fundamentally failed to understand the critical interests at stake in the underlying action. The District Court incorrectly assumed that this case involves a simple matter of removing only *ineligible* voters from the rolls, and that everyone agrees on how to identify such ineligible voters. (Dist. Ct. Dkt. No. 76 at 2:21-25). But the Plaintiffs' claim under the NVRA is *not* merely that there are ineligible voters on the rolls. Instead, Plaintiffs' legal claim is that Defendants lack a "general program that makes a reasonable effort to remove the names of ineligible voters," which is the cause of action they rely upon. 52 U.S.C. §20507(a)(4). Plaintiffs thus are demanding unspecified changes to the *procedures* the Defendants should use to identify persons on the voting rolls who have become ineligible. Contrary to the District Court's assumption, election officials do not have perfect information about which persons currently on the voting rolls may have moved out of an election district and become ineligible to vote there (to name just one issue that might affect eligibility). Rather, as explained further below, the different kinds of list maintenance programs that election officials may use to determine who has moved or has otherwise become ineligible carry differing risks

of getting it wrong and *removing persons who are still eligible to vote*.²

Indeed, Plaintiffs are engaged in a nationwide effort to impose overly aggressive purge programs on state and local jurisdictions, and intervenors with interests exactly like those of Movants-Appellants have been granted intervention and played a crucial role in such cases. (*See, e.g., Bellitto v. Snipes*, No. 16-cv-61474, slip op. at 3 (S.D. Fla. March 30, 2018) (noting, in order denying plaintiffs' challenge to Broward County Florida's list maintenance practices, that court had granted intervention to defendant-intervenor union whose members would be affected by the stricter purge requirements sought by plaintiffs).)

Accordingly, as Movants-Appellants' motion below demonstrated, and their briefs before this Court will show, it is in the public interest as well as the interests of Movants-Appellants for their important and unique interests and perspectives to be represented in this case. Thus, there is good cause to expedite this appeal.

A decision on this emergency motion to expedite the briefing schedule is requested in less than 21 days. (*See* Ninth Circuit Rule 27-3(a).) Movants-Appellants request that the Court require Plaintiffs-Appellees to file a response to this emergency motion to expedite by September 14, 2018, with any reply by Movants-Appellants to be filed by September 17, 2018. For the merits briefing schedule, Movants-Appellants intend to file their opening brief on September 17,

² *See infra* at pp. 15-16.

2018. They request that the Court direct Plaintiffs-Appellees to file their opposition briefs by October 9, 2018; and that Movants-Appellants file their reply brief by October 15, 2018. Scheduling of argument before this Court is requested at the first opportunity after October 15, 2018, that would be available for the Court.

FACTUAL AND PROCEDURAL BACKGROUND

Movants-Appellants are nonpartisan voter engagement organizations that register thousands of voters in Los Angeles County and across California every year. They focus their voter registration and membership recruitment efforts on communities that face the biggest barriers to voter registration, including young, lower income, Latino, and African American voters. Movants have unique experience with the challenges these voters face – from problems with mail delivery to language barriers that prevent them from understanding a notice regarding the status of their voter registration. Movants therefore have a direct and personal interest in ensuring their members and the voters they engage remain registered to vote and are not adversely impacted by a misinterpretation of the NVRA or a flawed voter removal program that does not take into account the registration-related challenges marginalized communities face. (*See* Dist. Ct. Dkt. Nos. 31-4 (Decl. of Ben Monterroso), 31-5 (Decl. of Jennifer Tolentino), 31-6 (Decl. of Marilu Guevara).)

On December 13, 2017, Plaintiffs-Appellees filed a complaint in the District

Court seeking, among other things, an order declaring Defendants to be in violation of the NVRA and requiring the removal of “ineligible” voters from Los Angeles County’s voter rolls. (Dist. Ct. Dkt. No. 1.) Specifically, Plaintiffs-Appellees are targeting *more than 3.5 million voters* in Los Angeles County whose eligibility to vote they claim to be in question. (Dist. Ct. Dkt. No. 1 at ¶ 40.) On April 17, 2018, prior to any significant discovery in the case and well before the October discovery cutoff date, Movants-Appellants filed a timely motion under Rule 24 of the Federal Rules of Civil Procedure to intervene as of right as Defendants, or alternatively, for permissive intervention. (Dist. Ct. Dkt. No. 31.)³ Plaintiffs-Appellees opposed the motion to intervene, but conceded the timeliness of the motion. (Dist. Ct. Dkt. Nos. 68 and 58-12.) Defendant Logan took no position on Movants-Appellants’ motion. (Dist. Ct. Dkt. No. 48.) Defendant Secretary of State Alex Padilla, did not oppose the motion and asserted he did “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

³ On May 14, 2018, California Common Cause filed a separate motion to intervene as a defendant (Dist. Ct. Dkt. No. 43), and that motion was denied in the same Order denying Movants-Appellants’ motion. Its appeal of the Order is presently docketed before this Court (Case No. 18-56105). California Common Cause consents to this motion.

relief sought by Plaintiffs if it were to be granted.” (Dist. Ct. Dkt. No. 42 at 2:14-17.)

On July 12, 2018, the District Court issued an Order denying Movants-Appellants’ motion to intervene. (Dist. Ct. Dkt. No. 76.) In its Order, the District Court recognized that Movants-Appellants have a legally protected interest in ensuring that eligible voters remain on the voter rolls. (*Id.* at 2:21-22.) The District Court erroneously concluded, however, that this interest bore no relationship to the claims in this case because Plaintiffs-Appellees are seeking the removal of *ineligible* voters from the voter rolls. The Court reasoned that a program designed to remove ineligible voters would not implicate the rights of *eligible* voters. (*Id.* at 2:21-25.) The Court’s ruling completely ignored the point that Movants-Appellants clearly articulated below and that they will make again in their briefs to this Court: various methods of identifying registered voters on the rolls who have allegedly become ineligible for some reason often result in the wrongful removal of *eligible* voters from the voter rolls, disparately impacting the marginalized communities that Movants-Appellants represent. (*See* Reply Memorandum in Support of Motion to Intervene, Dist. Ct. Dkt. No. 58 at 3-6.) The District Court’s conclusion circumvented the precise question the parties are now attempting to resolve without the unique and important perspective of Movants-Appellants: *what are the appropriate procedures for determining who is and is not an eligible voter under*

the NVRA?

The District Court further reasoned that Movants-Appellants could later bring a separate cause of action to challenge any outcome that harms the rights of those voters they represent. (Dist. Ct. Dkt. No. 76 at 3:4-5.) The District Court's decision did not address the fact that the availability of a private right of action cannot, after the fact, remedy the harm inflicted on voters who discover on Election Day that their registrations have been wrongfully cancelled and are thus deprived of the right to vote in an election. (*See* Memorandum of Points and Authorities in Support of Motion to Intervene, Dist. Ct. Dkt. No. 31-1 at 9-10; Reply Memorandum in Support of Motion to Intervene, Dist. Ct. Dkt. No. 58 at 10-11.) Nor did it grapple with the obvious judicial inefficiency in requiring such piecemeal litigation. (*See* Memorandum of Points and Authorities in Support of Motion to Intervene, Dist. Ct. Dkt. No. 31-1 at 13.)

Further, the District Court presumed that the government Defendants would adequately represent Movants-Appellants' interests (Dist. Ct. Dkt. No. 76 at 2:23-24.). To the contrary, Movants-Appellants made a compelling showing that the government Defendants have conflicting interests, budgetary considerations, and potentially divergent interpretations of the NVRA that impair their ability to represent the unique and much narrower interests of Movants-Appellants. (*See* Memorandum of Points and Authorities in Support of Motion to Intervene, Dist.

Ct. Dkt. No. 31-1 at 10-12; Reply Memorandum in Support of Motion to Intervene, Dist. Ct. Dkt. No. 58 at 14.)

Finally, the District Court declined Movants-Appellants' request for permissive intervention, holding that their interest in protecting eligible voters did not involve a common question of law or fact with Plaintiffs-Appellees' claims regarding ineligible voters, and that their involvement could slow down the case (Dist. Ct. Dkt. No. 76 at 3:8-15), even though the motion was conceded to be timely and Movants-Appellees expressed their willingness to participate according to the schedules already agreed to by the existing parties to the action. (*See* Reply Memorandum in Support of Motion to Intervene, Dist. Ct. Dkt. No. 58 at 16-17.)

Movants-Appellants filed a notice of appeal of the District Court's Order on August 10, 2018. (Dist. Ct. Dkt. No. 79.) On August 24, 2018, Movants-Appellants filed a designation of the record on appeal informing the District Court that there were no transcribed proceedings below, and thus no transcripts would be ordered. (Dist. Ct. Dkt. No. 90.) On August 31, 2018, Plaintiffs-Appellees and Defendants filed a Joint Notice of Settlement (Dist. Ct. Dkt. No. 93) and requested 120 days to finalize the settlement. On September 5, 2018, the District Court issued an Order of Dismissal without prejudice to the right to reopen the action within 120 days if a settlement is not finalized (Dist. Ct. Dkt. No. 94). Movants-Appellants have no knowledge of the terms of the settlement or the status of the ongoing negotiations.

ARGUMENT

Under 28 U.S.C. § 1657(a), expedited review of an appeal to this Court is required when “good cause therefor is shown.” As the statute makes clear, “‘good cause’ is shown if a right under the Constitution of the United States or a Federal Statute . . . would be maintained in a factual context that indicates that a request for expedited consideration has merit.” (*Id.*) In addition, under Rule 27-12, “Motions to expedite briefing and hearing may be filed and will be granted upon a showing of good cause.” For purposes of Rule 27-12, “good cause” includes, but is not limited to, “situations in which . . . in the absence of expedited treatment, irreparable harm may occur or the appeal may become moot.” *Id.*

This case squarely implicates the fundamental right to vote, a right protected under the Constitution and federal statutes. *See Yick Wo v. Hopkins*, 118 U.S. 356, 370-371 (1886); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *see also* Voting Rights Act of 1965, 52 U.S.C. §10301; National Voter Registration Act, 52 U.S.C. §§ 20507, et seq. Importantly, expedited review is necessary under the factual context presented by this appeal, and the underlying action, to maintain the fundamental right to vote of many thousands of voters in the communities with which the Movants-Appellants engage in Los Angeles County and across California.

If Plaintiffs-Appellees succeed, in the underlying action, in convincing

defendants to adopt new procedures to cancel registrations, untold numbers of eligible Los Angeles County voters face the threat of wrongful cancellation. Los Angeles County alone has no fewer than 14 municipal elections scheduled for March 5, 2019, and may have to schedule special elections depending on the results of the midterm elections in November 2018. This means Los Angeles County voters face the prospect of cancellation before those elections – and of showing up to the polls only to learn they have been stripped of the right to cast a ballot.

In addition, the outcome in the underlying action is of national significance and implicates the fundamental voting rights of voters across the country. Plaintiffs-Appellees’ Judicial Watch alleged in their complaint below that they have analyzed voter file data for 2,958 counties nationwide and that in 444 of those counties, aggressive purging of voters should be imposed. (Dist. Ct. Dkt. No. 1 at ¶¶ 22-24.) Judicial Watch and organizations similarly situated have commenced action against numerous jurisdictions across the country. Thus, non-parties and the public at large also have an exceedingly strong interest in prompt review to ensure that the right of parties to intervene on behalf of marginalized voters in similar cases is recognized and protected before upcoming elections.

Given the fundamental, constitutionally protected right at stake in the underlying action, and the fact that the right will be impaired in the absence of a

swift resolution of the questions presented in this appeal, good cause exists and mandates that this Court expedite its review and resolution of the appeal. 28 U.S.C. § 1657(a).

Good cause likewise exists to expedite this appeal pursuant to this Court's own rules and guidance. Rule 27-12 identifies the possibility of irreparable harm as a ground to grant a motion to expedite. Because voting is a fundamental constitutional right, the deprivation of that fundamental right unquestionably constitutes irreparable harm. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *see Charfauros v. Board of Elections*, 249 F.3d 941, 950-951 (9th Cir. 2001) ("our courts vehemently protect every citizen's right to vote, carefully and meticulously scrutinizing any alleged infringement"); *see also Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1189 (11th Cir. 2008) (the right to vote is "precious ... [and] fundamental—its fundamental nature stemming from the equal dignity owed to each voter, which is at the heart of our democracy") (internal quotations, citations omitted). It is therefore well-established that "[a] restriction on the fundamental right to vote ... constitutes irreparable injury." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see League of Women Voters of N.*

Carolina v. North Carolina, 769 F.3d 224, 247-48 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”).

Movants-Appellants filed their motion to intervene to protect the right to vote in communities that face the biggest barriers to voter registration, including young, lower income, Latino, and African American voters. As Movants-Appellants will demonstrate in their brief on the merits, the disposition of the underlying litigation without the participation of Movants-Appellants threatens irreparable harm to Movants-Appellants and the communities they represent.

As Movants-Appellants’ briefs to this Court will also demonstrate, the District Court erroneously denied their motion for intervention as of right and abused its discretion by failing to grant permissive intervention to voter engagement groups with an interest in the proper interpretation of the NVRA and the impact an ill-conceived or untested voter removal program could have on marginalized voters. Indeed, the central theme of the District Court’s order – that only ineligible voters will be removed – is the very question at the heart of the case: what procedures should be used to determine whether someone has become an ineligible voter. These questions are now being resolved behind closed doors.

It bears emphasizing that Plaintiffs-Appellees’ cause of action does *not* merely require that they establish there are ineligible voters on the rolls, but rather requires them to prove that Defendants lack a “general program that makes a

reasonable effort to remove the names of ineligible voters.” 52 U.S.C.

§20507(a)(4). Plaintiffs thus are demanding unspecified changes to the *procedures* the Defendants should use to identify persons on the voting rolls who have become ineligible. The District Court’s decision wrongly assumes election officials have perfect information about which persons are actually ineligible. To the contrary, states have adopted a variety of different programs to remove the names of ineligible voters, some of which pose greater risks than others of erroneously removing *eligible* voters 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. Liz Kennedy et al., *Keeping Voters off the Rolls*, Center for American Progress (2017) at ¶ 32, <https://www.americanprogress.org/issues/democracy/reports/2017/07/18/435914/keeping-voters-off-rolls>. In 2012, Texas relied on faulty data that repeatedly matched active Texas voters with deceased voters across the county. *Id.* at ¶ 27 (citations omitted).

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. Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of*

Double Voting in U.S. Presidential Elections, Working Paper (October 24, 2017), <https://scholar.harvard.edu/files/morse/files/1p1v.pdf>. Plaintiff Judicial Watch has insisted on including the Cross-Check program in at least one settlement it has been party to. (See Settlement Agreement, *Judicial Watch, Inc. v. Husted*, 2:12-cv-00792, S.D. Ohio, January 10, 2014, ¶ 2(b), <http://www.judicialwatch.org/wp-content/uploads/2014/01/01-14-Ohio-Voter-Rolls-Settlement.pdf>.)

Thus, Movants-Appellants have an important stake in the purge procedures at issue in this case. The District Court’s suggestion that Movants-Appellants should simply wait to see if any eligible voters are removed from the rolls because of the resolution of this action, and then bring a collateral challenge under the NVRA (Dist. Ct. Dkt. No. 76 at 3:4-5) is oblivious to the actual harm that eligible voters will suffer under this scenario. It is also at odds with the interests of judicial economy, a core purpose of Rule 24’s provision for intervention. (See *Fresno Cty. v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (“We agree with the D.C. Circuit that ‘the ‘interest’ 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.”) (citing *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).)

In terms of practicality, waiting to file a collateral attack on a judgment or settlement is unrealistic, given that the Defendants would be able to commence new voter purges as soon as the November 2018 elections are concluded.

Accordingly, effective relief would require Movants-Appellants to seek injunctive relief prior to the next California elections in March 2019, with all of the burdens and obstacles such relief imposes on the parties as well as the courts.⁴ If such relief proves impractical to obtain, eligible voters will face the likelihood of showing up to vote only to learn they were removed from the rolls. A much better solution is for these voters' interests to be represented in the underlying case now, before it is finally resolved in a way that could cause them real harm.

Finally, although a motion to expedite briefing does not require this Court to decide whether the Movants-Appellants will prevail in their appeal, it is worth noting that the District Court did not sufficiently address the strong arguments that Movants-Appellants advanced to establish that the government Defendants are not adequate representatives of their interests. Contrary to the District Court's reasoning, Movants-Appellants did not simply assert that they would "approach litigation differently" from Defendants. (Dist. Ct. Dkt. No. 76 at 2:23-24.) Rather, Movants-Appellants laid out in their briefs below – and will do so again in their merits briefing before this Court – very clear reasons why the county and state Defendants face inherent limitations on their ability to represent and protect the interests of marginalized voters, and the ways in which those limitations have led

⁴ Los Angeles County has 14 elections scheduled between March 5 and June 4, 2019. (See County of Los Angeles 2019 Scheduled Elections at https://lavote.net/docs/rcc/Election-Info/scheduled_elections_2019.pdf?v=3.)

to strikingly divergent views of the interpretation and implementation of the NVRA, state statutes that protect language minorities, and the due process implications of the handling of signature mismatches on mail ballots.⁵

For example, the League of Women Voters of California and other voter engagement groups that seek to protect communities of color and persons with low incomes last year sued the state Defendant and the California Secretary of Transportation over their misinterpretation and inadequate implementation of other provisions of the NVRA. *League of Women Voters of California v. Kelly*, No. 17-cv-02665-LB, 2017 WL 4354909 (N.D. Cal. Sept. 29, 2017) (order denying defendants' motion to dismiss plaintiffs' lawsuit challenging state's failure to comply with NVRA's requirement to incorporate voter registration into California Department of Motor Vehicles license renewal forms). Still other voting rights organizations sued the state Defendant over his interpretation and inconsistent application of state statutes that require language assistance be provided to voters who speak English as a second language.⁶ And the state Defendant was sued last

⁵ It is also worth noting that this Court reviews *de novo* a district court's denial of a motion for intervention as of right. *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 896 (9th Cir. 2011). The denial of a motion for permissive intervention is reviewed for abuse of discretion. *LULAC v. Wilson*, 131 F.3d 1297, 1307 (9th Cir. 1997).

⁶ San Francisco Superior Court Case No. CPF-17-515931. The defendant's motion to dismiss was granted in that case. The plaintiffs' Notice of Appeal is attached as Exhibit A to the Declaration of Anna Do ("Do Declaration").

year for failing to ensure that voters whose signatures are deemed a mismatch on their mail ballot are given an opportunity to cure the mismatch.⁷ After losing that case in the Superior Court, the state Defendant appealed the ruling that held he was enforcing an unconstitutional state law.⁸

As Movants-Appellants' briefs will show and as this Court has consistently held, "intervention of right does not require an absolute certainty that a party's interests will be impaired. . . ." *Citizens for Balanced Use*, 647 F.3d at 900. Instead, intervention should be granted where, as here, disposition of the action without the proposed intervenors "may as a practical matter impair or impede their ability to safeguard their protectable interest." *Southwest Ctr. v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (emphasis added); *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 862 (9th Cir. 2016); *see also* Fed. R. Civ. P. 24, Advisory Comm. Note to 1966 Amend. ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.").

Thus, there is good cause for this Court to expedite its review of the question of whether Movants-Appellants' interests in the underlying action necessitate

⁷ San Francisco Superior Court Case No. CPF-18-516155.

⁸ *See* Defendant's Notice of Appeal, attached as Exhibit B to the Do Declaration; *see also* J. Mark Joseph Stern, *California Is Disenfranchising Thousands of Voters Based on Their Handwriting*, Slate (May 14, 2018) (Dist. Ct. Dkt. No. 58-11).

intervention. As a possible settlement is finalized over the next 120 days, the opportunity for Movants-Appellants' interests to be represented and accounted for will close. Given the upcoming elections – including 14 scheduled elections in Los Angeles County in early 2019, not to mention the special elections that will likely follow the upcoming mid-term elections – the exclusion of Movants-Appellants from the proceedings threatens the voting rights of marginalized communities who are most vulnerable to the fallout of an ill-conceived and executed voter removal program. For these reasons, the questions presented by this appeal warrant expedited review.

PRAYER FOR RELIEF

For all of the foregoing reasons, Movants-Appellants intend to file their opening brief on September 17, 2018, and request the below relief:

October 9, 2018 – Appellees' Answering Brief due (provided Appellants' Opening Brief is filed on or before September 17, 2018)

October 15, 2018 – Appellants' optional Reply Brief due (provided Appellants' Opening Brief is filed on or before September 17, 2018)

Movants-Appellants further request that the Court order oral argument during the first available argument date after Appellants' Reply Brief is filed.

Dated: September 10, 2018

DEMOS

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Dated: September 10, 2018

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CERTIFICATE OF WORD COUNT

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned hereby certifies that the foregoing Motion, excluding the cover page, tables, and certificates, is 5,061 words in length (inclusive of footnotes) as determined by the word count function of the word processing program. In addition, pursuant to Circuit Rule 27-1, the Motion does not exceed the 20-page limit.

Dated: September 10, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: September 10, 2018

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