

1 Sarah R. Gonski (Bar No. 032567)
2 **PERKINS COIE LLP**
3 2901 North Central Avenue, Suite 2000
4 Phoenix, Arizona 85012-2788
5 Telephone: (602) 351-8000
6 Facsimile: (602) 648-7000
7 SGonski@perkinscoie.com

8 Marc E. Elias*
9 John Devaney*
10 Christina A. Ford*
11 **PERKINS COIE LLP**
12 700 Thirteenth Street NW, Suite 600
13 Washington, D.C. 20005-3960
14 Telephone: (202) 654-6200
15 Facsimile: (202) 654-6211
16 MElias@perkinscoie
17 JDevaney@perkinscoie.com
18 Christinaford@perkinscoie.com

19 *Seeking Pro Hac Vice Admission

20 *Attorneys for Proposed Intervenor-Plaintiff*

21
22
23
24
25
26
27
28
**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

29 Darlene Yazzie, Caroline Begay, Leslie Begay,
30 Irene Roy, Donna Williams and Alfred McRoye,

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

v.

Katie Hobbs, in her official capacity as the
Arizona Secretary of State,

Defendant.

No. 3:20-cv-08222-GMS

**ARIZONA ADVOCACY
NETWORK'S MOTION TO
INTERVENE AS PLAINTIFF**

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor, Arizona Advocacy Network (“AzAN”), moves to intervene as plaintiff in the above-titled action.

Plaintiffs, Darlene Yazzie, Caroline Begay, Leslie Begay, Irene Roy, Donna Williams, and Alfred McRoye (collectively, “Plaintiffs”), challenge Arizona’s requirement that election officials automatically reject all mail ballots that arrive after 7 p.m. on Election Day, even if they were postmarked on or before Election Day (the “Election Day Receipt Deadline”). Plaintiffs seek an Order declaring that the mail ballots of a limited set of Arizona voters—members of the Navajo Nation living on the Navajo Nation Reservation—shall be counted as long as they are postmarked by Election Day and received within ten days following the election.

Proposed Intervenor AzAN is a non-profit, non-partisan organization that has significant interests to protect in this litigation. Arizona’s Election Day Receipt Deadline directly harms AzAN by burdening and disenfranchising voters, thus frustrating AzAN’s mission of enfranchising and turning out voters in Arizona. Like Plaintiffs, AzAN seeks a declaration that the Election Day Receipt Deadline is unconstitutional, but it seeks relief that applies equally to *all* Arizona voters and is not limited to members of the Navajo Nation living on Navajo tribal lands.

For the reasons set forth below, AzAN is entitled to intervene in this case as a matter of right under Rule 24(a)(2). Intervention is needed not only to ensure the fairness of the Election but also to safeguard the substantial and distinct legal interests of AzAN, which will otherwise be inadequately represented (and potentially harmed) in the litigation. In the alternative, AzAN should be granted permissive intervention pursuant to Rule 24(b). In accordance with Rule 24(c), a proposed Complaint is attached as Exhibit 1. Counsel for AzAN has conferred with the parties to this action, and has been advised that neither Plaintiffs nor Defendants consent.

PROCEDURAL BACKGROUND

1
2 Plaintiffs initiated this action on August 26, 2020, by filing their Complaint for
3 Injunctive and Declaratory Relief. (Doc. 1.) Then, on September 2, 2020, Plaintiffs filed
4 their Emergency Motion for Preliminary Injunctive and Declaratory Relief and
5 Memorandum of Points and Authorities in Support Thereof. (Doc. 9.) Thereafter, on
6 September 3, 2020, Proposed Intervenor-Defendants filed their Motion to Intervene.
7 (Doc. 12.) Subsequently, on September 7, 2020, Plaintiffs filed their Motion for Emergency
8 Hearing on Motion for Preliminary Injunction and Permanent Injunction. (Doc. 21.)

STANDARD OF LAW

9
10 “Rule 24 traditionally receives liberal construction in favor of applicants for
11 intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003);
12 *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 273 (D. Ariz. 2020) (quoting
13 *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011))
14 (“[A] liberal policy in favor of intervention serves both efficient resolution of issues and
15 broadened access to the courts.”).

16 “Courts in the Ninth Circuit employ a four-part test when analyzing intervention of
17 right:”

18 (1) the motion must be timely; (2) the applicant must claim a “significantly
19 protectable” interest relating to the property or transaction which is the subject
20 of the action; (3) the applicant must be so situated that the disposition of the
21 action may as a practical matter impair or impede its ability to protect that
interest; and (4) the applicant’s interest must be inadequately represented by
the parties to the action.

22 *Arizonans for Fair Elections*, 335 F.R.D. at 273 (quoting *Wilderness Soc.*, 630 F.3d at
23 1177). Courts are “required to accept as true the non-conclusory allegations made in support
24 of an intervention motion.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819
25 (9th Cir. 2001) (citation and quotation marks omitted).

26 Alternatively, a court may grant permissive intervention to a party under Rule 24(b)
27 “where the applicant for intervention shows ‘(1) independent grounds for jurisdiction;
28 (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have

1 a question of law or a question of fact in common.” *Arizonans for Fair Elections*, 335
2 F.R.D. at 276 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir.
3 2002)).

4 ARGUMENT

5 I. Intervention is appropriate under Rule 24(a)(2).

6 AzAN readily satisfies each of the four requirements of Rule 24(a)(2), and thus is
7 entitled to intervene as of right.

8 *First*, this motion is timely. Plaintiffs filed their Complaint on August 26, 2020; this
9 motion follows less than three weeks later, before any significant action in the case and
10 before any answer has been filed. There has been no delay, and there is no possible risk of
11 prejudice to the other parties. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d
12 1297, 1302 (9th Cir. 1997); *see also Arizonans for Fair Elections*, 335 F.R.D. at 273
13 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004))
14 (“Timeliness is a flexible concept; its determination is left to the district court’s
15 discretion.”).

16 *Second* and *third*, AzAN has significant protectable interests in this lawsuit that will
17 be impaired if the relief granted by the Court is limited to the narrow relief requested by
18 Plaintiffs. “[A] prospective intervenor ‘has a sufficient interest for intervention purposes if
19 it will suffer a practical impairment of its interests as a result of the pending litigation.’”
20 *Wilderness Soc.*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450
21 F.3d 436, 441 (9th Cir.2006)). Further, “[i]t is generally enough that the interest is
22 protectable under some law, and that there is a relationship between the legally protected
23 interest and the claims at issue.” *Wilderness Soc.*, 630 F.3d at 1179 (quoting *Sierra Club v.*
24 *EPA*, 995 F.2d 1478, 1484 (9th Cir.1993)). In assessing whether such an interest is
25 sufficiently “impair[ed] or impede[d],” Fed. R. Civ. P. 24(a)(2), courts “look[] to the
26 ‘practical consequences’ of denying intervention.” *Nat. Res. Def. Council v. Costle*, 561
27 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir.
28 1967)).

1 Here, AzAN has a legally protectible interest sufficient to support intervention. It is
2 a non-profit, non-partisan organization devoted to defending and deepening Arizona's
3 commitment to democracy, including by advocating for meaningful voting rights and access
4 to the ballot. Arizona's Election Day Receipt Deadline directly harms AzAN by burdening
5 and disenfranchising voters. This, in turn, frustrates AzAN's mission of enfranchising and
6 turning out voters in Arizona. In the past, AzAN has had to expend and divert additional
7 funds and resources that it would otherwise spend on other mission-critical voter education
8 and engagement efforts to ensure that voters are not disenfranchised by Arizona's Election
9 Day Receipt Deadline. The need for urgent relief is particularly compelling for the
10 upcoming November election given the global COVID-19 pandemic, the resulting expected
11 surge in voting by mail, and the recent widely publicized issues with delivery delays by the
12 United States Postal Service ("USPS").¹

13 Unless the Court grants AzAN the relief it seeks in its Complaint (Exhibit 1 to this
14 motion), AzAN will have to continue to expend and divert additional funds and resources
15 to ensure that voters are not disenfranchised by Arizona's Election Day Receipt Deadline.
16 The effects of the Deadline on voters throughout Arizona and, relatedly, on AzAN's
17 resources are particularly acute because of the extraordinary circumstances caused by the
18 COVID-19 pandemic and USPS's delays in service. While AzAN agrees with Plaintiffs'
19 descriptions of these circumstances and the adverse effects on members of the Navajo
20 Nation living on Navajo tribal lands, Plaintiffs request relief limited to that group of voters.
21 By contrast, AzAN seeks uniform, statewide relief for all Arizonans who will vote by mail
22 in the November Election.

23 Although AzAN broadly supports the relief that Plaintiffs seek, limiting the remedy
24 to only a subset of voters would compromise AzAN's legally protected interests in two
25 concrete ways. First, AzAN would have to expand voter education efforts to ensure that

26
27 ¹ See, e.g., Ellie Kaufman, *Postal service warns nearly every state it may not be*
28 *able to deliver ballots in time based on current election rules*, CNN, available at
<https://www.cnn.com/2020/08/14/politics/usps-warn-states-mail-in-ballot-delivery/index.html> (last accessed September 9, 2020).

1 most Arizona voters are aware that the Election Day Receipt Deadline and not a postmark
2 deadline applies to them. Second, AzAN would have to combat voter confusion because
3 different ballot submission deadlines would apply to different voters, and, as a result, an
4 already confusing voting scheme would become even more difficult for voters to understand
5 and navigate. In short, meaningful relief from the Election Day Receipt Deadline can only
6 come if any remedy applies statewide. To ensure that its own interests in uniform, statewide
7 relief is protected, AzAN should be heard in this litigation.

8 **Fourth**, AzAN's interests are not represented by any existing party to this case.
9 Courts consider "three factors in determining the adequacy of representation": (1) whether
10 the interest of a present party is such that it will undoubtedly make all of a proposed
11 intervenor's arguments; (2) whether the present party is capable and willing to make such
12 arguments; and (3) whether a proposed intervenor would offer any necessary elements to
13 the proceeding that other parties would neglect. *Arakaki*, 324 F.3d at 1086. "The 'most
14 important factor' in assessing the adequacy of representation is 'how the interest compares
15 with the interests of existing parties.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*,
16 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). This fourth
17 intervention element "requires a 'minimal' showing and is satisfied if existing parties'
18 representation of its interest 'may be' inadequate." *Arizonans for Fair Elections*, 335 F.R.D.
19 at 275 (quoting *Citizens*, 647 F.3d at 898).

20 Here, all three factors are met. First, while Plaintiffs and AzAN share similar injuries
21 from the Election Day Receipt Deadline, they differ in terms of remedy. Although AzAN
22 agrees with Plaintiffs that Navajo voters living on tribal lands are uniquely harmed by the
23 Receipt Deadline and experience disproportionate injury, AzAN's mission extends to all
24 voters across Arizona, who Plaintiffs do not plan to represent. As a result, Plaintiffs do not
25 have sufficiently congruent interests "such that [they] will undoubtedly make all of"
26 AzAN's arguments, which includes the argument that *all* Arizona voters are entitled to
27 relief here. *Arakaki*, 324 F.3d at 1086. This divergence of interests and objectives satisfies
28 the fourth requirement of Rule 24(a)(2). *See, e.g., Allied Concrete & Supply Co. v. Baker*,

1 904 F.3d 1053, 1068 (9th Cir. 2018); *Californians for Safe & Competitive Dump Truck*
2 *Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998).

3 **II. Alternatively, AzAN satisfies Rule 24(b)'s requirements for permissive**
4 **intervention.**

5 Even if this Court were to find AzAN ineligible for intervention as of right, AzAN
6 satisfies the requirements for permissive intervention under Rule 24(b). “Permissive
7 intervention lies within the sound discretion of the Court.” *Gila River Indian Cmty. v.*
8 *United States*, No. CV10-1993 PHX-DGC, 2010 WL 4811831, at *1 (D. Ariz. Nov. 19,
9 2010). A court may grant permissive intervention to a party under Rule 24(b) “where the
10 applicant for intervention shows ‘(1) independent grounds for jurisdiction; (2) the motion
11 is timely; and (3) the applicant’s claim or defense, and the main action, have a question of
12 law or a question of fact in common.’” *Arizonans for Fair Elections*, 335 F.R.D. at 276
13 (quoting *City of Los Angeles*, 288 F.3d at 403). Additionally, “[i]n exercising its discretion to
14 grant or deny permissive intervention, a court must consider whether the intervention will
15 ‘unduly delay or prejudice the adjudication of the’” original parties’ rights. *Venegas v.*
16 *Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting Fed. R. Civ. P. 24(b)(3)).

17 Here, AzAN meets all three requirements for permissive intervention. First, there is
18 an independent ground for jurisdiction over AzAN’s claims. *See* Ex. 1 (asserting claims
19 under the First and Fourteenth Amendments and asserting jurisdiction under 42 U.S.C. §
20 1983; 28 U.S.C. §1331; and 28 U.S.C. § 2201 and 2202). Second, for the reasons discussed
21 *supra*, AzAN’s motion is timely, filed less than three weeks after Plaintiffs’ Complaint was
22 filed and before Defendant has filed an answer. Third, AzAN’s claims and Plaintiffs’ claims
23 share common questions of law and fact. *See* Ex. 1 (incorporating by reference large
24 portions of Plaintiffs’ factual allegations).

25 Lastly, intervention will result in neither prejudice nor undue delay. AzAN has an
26 undeniable interest in a swift resolution of this action so that it can ensure that its get-out-
27 the-vote and voter education efforts for the 2020 election are successful. AzAN is confident
28

1 that its intervention in this case, and its filings that will follow, will result in expeditious
2 resolution of this litigation.

3 **CONCLUSION**

4 For the reasons stated above, AzAN respectfully requests that the Court grant its
5 motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it
6 to intervene under Rule 24(b).

7
8 Dated: September 11, 2020

/s Sarah R. Gonski

9 Sarah R. Gonski (Bar No. 032567)

PERKINS COIE LLP

2901 North Central Avenue, Suite 2000

Phoenix, Arizona 85012-2788

Telephone: (602) 351-8000

Facsimile: (602) 648-7000

SGonski@perkinscoie.com

12
13 Marc E. Elias*

John Devaney*

Christina A. Ford*

PERKINS COIE LLP

700 Thirteenth Street NW, Suite 600

Washington, D.C. 20005-3960

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

MElias@perkinscoie

JDevaney@perkinscoie.com

Christinaford@perkinscoie.com

18
19 *Attorneys for AzAN*

20 ** Seeking Pro Hac Vice Admission*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I electronically transmitted the attached document to the Clerk’s Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Daniel R. Graziano