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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

ARIZONA FREE ENTERPRISE CLUB, et al., Plaintiffs, v. ADRIAN FONTES, Defendant.	No. S-1300-CV-202300202 **MI FAMILIA VOTA'S REPLY IN SUPPORT OF ITS MOTION TO INTERVENE** (Assigned to the Honorable John D. Napper)

INTRODUCTION

Pressing a contrived and unduly narrow reading of "registration record" as used in A.R.S. § 16-550(A), Plaintiffs ask this Court to invalidate critical tools county recorders use to verify early vote signatures. Doing so would make it harder for county recorders to verify signatures and will impose additional burdens on voters to have their ballots counted. Mi Familia Vota (MFV) devotes substantial resources to registering voters and encouraging them to vote. If Plaintiffs' restrictive reading of the statute were to become law, MFV would have to devote yet more of its limited resources to ensuring the voters it has registered are not disenfranchised if their signature is not matched and they lack a meaningful opportunity to cure. MFV seeks to intervene to preserve the status quo and ensure its voters have their ballots counted without undue hurdles.

Plaintiffs' consolidated response in opposition to MFV's motion to intervene asks MFV to allege and prove things beyond what Rule 24 and Arizona courts require for intervention. MFV has an interest in this case that may be directly affected by its resolution. Further, contrary to Plaintiffs' argument, the Secretary of State does not adequately represent MFV's interests because the case and its potential resolution affect MFV and the Secretary differently. Accordingly, the Court should grant MFV's motion to intervene either as of right or permissively.

ARGUMENT

Arizona courts liberally construe Arizona Rule of Civil Procedure 24 to "assist parties seeking to obtain justice in protecting their rights." *Planned Parenthood Ariz., Inc., v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 279 ¶ 53 (App. 2011) (quoting *Dowling v. Stapley*, 221 Ariz. 251, 269–70 ¶ 57 (App. 2009)). This Court must allow MFV to intervene if it finds that MFV 1) "claims an interest relating to the subject of the action," 2) is so situated that disposing of the action in [MFV's] absence may as a practical matter impair or impede [MFV's] ability to protect that interest," and 3) the Secretary does not adequately protect MFV's interest. Ariz. R. Civ. P. 24(a)(2).

But this Court also may allow MFV to intervene if MFV identifies "a claim or

defense that shares with the main action a common question of law or fact," Ariz. R. Civ. P. 24(b)(1), in the context of the *Bechtel* factors. *See Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (listing relevant factors to consider as: 1) "the nature and extent of the intervenors' interest;" 2) "their standing to raise relevant legal issues;" 3) "the legal position they seek to advance, and its probable relation to the merits of the case;" 4) "whether the intervenors' interests are adequately represented by other parties;" 5) "whether intervention will prolong or unduly delay the litigation;" and 6) "whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented").

I. MFV has an identifiable interest that this litigation may directly affect, and the Secretary cannot adequately protect that interest. MFV need not show more.

A. MFV has a direct interest in the litigation.

Plaintiffs attempt to saddle MFV with a heightened standard to intervene. Indeed, Plaintiffs seemingly want MFV to point to specific instances of early ballots being identified under a broader definition of "registration record" than Plaintiffs advance or MFV's past voter-education efforts regarding "registration records" and signature verification. MFV need not do so.

MFV has a direct interest in the litigation. *See Dowling*, 221 Ariz. at 270 ¶ 58. If the Court interprets A.R.S. § 16-550(A) as Plaintiffs request, MFV will need to expend money and time that it would not have otherwise to educate Latino voters about how to check the status of their signature verification and how to cure the signature the county recorder could not verify. And because Plaintiffs' arguments would necessarily result in more signatures being rejected, it is plausible, indeed likely, that counties may lack the resources to contact each voter with an opportunity to cure, requiring organizations like MFV to fill in the gap. This is a sufficiently direct interest for intervention.

Plaintiffs doubt "MFV apprises the public of the distinction between registration forms and (for example) historical early ballot affidavits for signature verification purposes,

or that either organization's members are or will be cognizant of those differentiations when signing an early ballot affidavit." Response at 6. But this point weighs in MFV's favor—MFV seeks to intervene precisely to prevent needing to expend additional resources educating voters on the signature cure procedure, which it will need to do if county recorders are forced to reject signatures at an increased rate and lack the resources to timely contact each affected voter.

True, Arizona courts require a case to have a "direct" effect on an intervenor's interest, which is an effect that is more than theoretical and more than a second-order "contingent effect." *Dowling*, 221 Ariz. at 270 ¶ 58; *see also Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28 ¶ 15 (App. 2014). But because Rule 24 "is remedial and should be liberally construed" a putative intervenor carries only a "minimal burden" to show its interest in the litigation. *Heritage Village II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 573 ¶ 22 (App. 2019) (citations omitted). The through-line from the Court adopting Plaintiffs' arguments to MFV needing to bolster voter education efforts is direct, straightforward, and identifiable, satisfying the requirement that MFV's interest be more than "possible," *Dowling*, 221 Ariz. at 270 ¶ 58, even without a showing of absolute certainty that these negative effects on MFV will surely result. *See Heritage Village II Homeowners Ass'n*, 246 Ariz. at 573 ¶ 22 (describing Rule 24 as imposing a "minimal burden" and noting that the Rule "does not require certainty, and only requires that an interest 'may' be impaired or impeded").

Indeed, MFV is more closely situated to the parties in *Planned Parenthood* who were granted intervention than those who were not. In that case, various health-care professionals and associations asserted liberty-of-conscience rights under a challenged law which governed the performance of abortions. *Planned Parenthood Ariz., Inc.*, 227 Ariz. at 279 ¶ 57. The Court allowed those health-care professionals to intervene but denied intervention to "public interest organization that lobbied for passage of the challenged legislation" and to two legislators who sponsored the challenged legislation. *Id.* at 279–280, ¶¶ 55–60, 63–64. Like those allowed to intervene in *Planned Parenthood*, MFV is seeking to act within

the legal structure at issue and is thereby concretely affected by its application—namely, to ensure that voters it has worked to register can actually exercise the franchise. Unlike the parties denied intervention in *Planned Parenthood*, MFV is not seeking to intervene solely for the sake of its public policy preferences and without any meaningful stake in the matter.

B. The Secretary does not adequately represent MFV's interest.

The Secretary does not adequately represent MFV's interest in this case because the two have different incentives and because granting Plaintiffs' relief would affect them differently. Unlike MFV, the Secretary would not need to devote additional resources to ensure voters have a meaningful opportunity to cure an unmatched signature were Plaintiffs to prevail. Instead, the Secretary's stake is limited to how the office approaches the next Elections Procedures Manual, without special attention to MFV's interests and mission. *See id.* at 279 ¶ 58 (no adequacy of representation where the state could not give putative intervenors' interests "the kind of primacy" that they would). This also presents the Secretary an incentive to compromise that MFV would not share.

And while the Secretary's litigating position may be similar to MFV's, similarity is not enough for adequacy of representation. *See Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2204 (2022) ("Where the absentee's interest is similar to, but not identical with, that of one of the parties, that normally is not enough to trigger a presumption of adequate representation." (quotation marks omitted)). Indeed, the U.S. Supreme Court has recently questioned the doctrine of presuming adequacy of representation, noting instead that the federal version of Rule 24's adequacy-of-representation test "present[s] proposed intervenors with only a minimal challenge." *Id.* at 2203. That minimal burden is met especially when, as here, a private litigant seeks relief "full stop" but the government "also ha[s] to bear in mind broader public-policy implications." *Id.*; s*ee also Planned Parenthood Ariz., Inc.*, 227 Ariz. at 279 ¶ 58 (noting that "[t]he state must represent the interests of all people of Arizona, some of whom" might be adverse to the proposed intervenors). The Secretary and MFV simply represent starkly different interests.

II. The Court should also allow permissive intervention.

MFV also satisfies the test for permissive intervention. Tellingly, Plaintiffs offer nothing as to why MFV participating in this case would "prolong or unduly delay the litigation." *Bechtel*, 150 Ariz. at 72 (the fifth factor). Indeed, they have not pointed to any possible prejudice counseling against MFV's intervention. *See Dowling v. Stapley*, 221 Ariz. 251, 272 ¶ 68 (App. 2009) (courts consider if intervention would "prejudice the adjudication of the rights of the original parties"). No such prejudice exists.

As for the sixth factor, Plaintiffs argue that MFV's position as an advocacy organization within the Latino community and the specific effects this Court's decision may have on Arizona Latino voters "are not only superfluous but affirmatively improper" for this Court to consider. Response at 9. True, the Court will resolve Plaintiffs' case based on the text and structure of Arizona's election statutes and the Elections Procedures Manual, but MFV's identified interests are not improper considerations for whether MFV should be allowed to intervene. *See Heritage Village II Homeowners Ass'n v. Weinberg*, No. 1 CA-CV 20-0637, 2021 WL 5456676, at *5 ¶ 27 (Ariz. App. Oct. 26, 2021) ("The question of whether a party may intervene is separate from whether the intervenor will succeed on the merits of the case.").

CONCLUSION

The Court should allow MFV to intervene, either as of right of permissively.

Dated: April 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2023, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Superior Court, Yavapai County, for filing using the AZTurboCourt System. I further certify that a copy of the foregoing was sent via email this same date to:

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