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13 **Admitted Pro Hac Vice*

14 **UNITED STATES DISTRICT COURT**
 15 **DISTRICT OF ARIZONA**

| | | | |
|----|----------------------------------------------|---|---------------------------|
| 16 | Scot Mussi, Gina Swoboda, in her capacity |) | No. CV-24-01310-PHX-DWL |
| 17 | as Chair of the Republican Party of Arizona, |) | |
| 18 | and Steven Gaynor, |) | PROPOSED |
| 19 | Plaintiffs, |) | INTERVENORS |
| 20 | v. |) | ARIZONA ALLIANCE |
| 21 | Adrian Fontes, in his official capacity as |) | FOR RETIRED |
| 22 | Arizona Secretary of State, |) | AMERICANS AND VOTO |
| 23 | Defendant. |) | LATINO'S REPLY IN |
| 24 | |) | SUPPORT OF MOTION |
| 25 | |) | TO INTERVENE |
| 26 | |) | (Oral Argument Requested) |

INTRODUCTION

1
2 Proposed Intervenors, the Arizona Alliance for Retired Americans (“the Alliance”) and Voto Latino, satisfy the requirements for intervention as of right under Rule 24(a).
3 Each Proposed Intervenor has a significant stake in this case. They are committed to
4 enfranchising their members, constituents, and Arizonans generally and undertake
5 significant efforts to ensure their members are registered and can cast ballots. Plaintiffs do
6 not meaningfully dispute these activities and interests, yet they insist that while they have
7 a right to purge other voters from the rolls, those voters and Proposed Intervenors who
8 represent them cannot intervene to prevent unlawful removals.
9

10 Plaintiffs’ arguments against intervention rest on the falsehood that their lawsuit
11 will remove only ineligible voters, so Proposed Intervenors’ eligible members and
12 constituents are at no risk of being purged. That ignores reality and history. Voter purges,
13 and particularly rushed purges like the one Plaintiffs seek, often remove eligible voters
14 from the rolls, even if inadvertently. That is, in part, why Congress passed the National
15 Voter Registration Act (“NVRA”) to restrict the circumstances under which states may
16 remove voters. If Plaintiffs succeed in their effort to prompt new removal procedures based
17 on threadbare allegations that the NVRA has been violated, eligible voters are very likely
18 to be removed, imperiling Proposed Intervenors’ members and constituents, as well as their
19 missions, requiring them to abandon other mission-critical activities in an election year to
20 refocus their efforts and resources on staunching the effect of Plaintiffs’ demanded purge.

21 The other requirements for intervention are also met. Proposed Intervenors moved
22 to intervene days after Plaintiffs filed suit and moved to dismiss on the same timeline as
23 the named Defendant. And the Secretary does not adequately represent Proposed
24 Intervenors’ interests because he must balance the NVRA’s competing goals of expanding
25 access to voting while maintaining accurate voter rolls, but Proposed Intervenors’ sole
26 focus is on protecting their members’ and constituents’ voting rights. Proposed Intervenors
27 therefore do not have “interests . . . identical to those of an existing party,” so their burden
28

1 to show inadequate representation is “minimal.” *Berger v. N.C. State Conf. of the NAACP*,
 2 597 U.S. 179, 196 (2022).

3 The Court should thus grant Proposed Intervenors’ motion.

4 ARGUMENT

5 I. Proposed Intervenors are entitled to intervene as a matter of right.

6 A. Proposed Intervenors have significantly protectable interests that 7 may be impaired absent intervention.

8 Proposed Intervenors have significantly protectable interests—risk of their
 9 members and constituents being erroneously removed from voting rolls and diversion of
 10 limited resources from other critical organizational priorities toward ensuring their voters
 11 are registered and able to vote—that the disposition of this case “may as a practical matter
 12 impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a); Mot. to
 13 Intervene at 7, 9–10, ECF No. 15 (“MTI”).

14 Registering Arizonans to vote—and ensuring they remain registered and are able to
 15 cast ballots—is at the core of Proposed Intervenors’ missions. MTI Ex. C, Decl. of Ameer
 16 Patel ¶ 3, ECF No. 15-3 (“Patel Decl.”); MTI Ex. B, Decl. of Dora Vasquez ¶¶ 3–5, ECF
 17 No. 15-2 (“Vasquez Decl.”). Proposed Intervenors engage in substantial efforts to educate
 18 voters about the registration process, register members and others, and would need to
 19 undertake significant remedial work to protect their members and communities if Plaintiffs
 20 prevail in their demand for a voter purge on the cusp of a major election. Plaintiffs’ suit
 21 threatens to injure Proposed Intervenors’ missions; disrupt election-year organizing plans;
 22 and drain precious financial and personnel resources. Patel Decl. ¶¶ 6–13; Vasquez Decl.
 23 ¶¶ 7–12. Plaintiffs dispute none of this, admitting their lawsuit concerns “fundamental
 24 voting rights.” Pls.’ Resp. in Opp’n to Mot. to Intervene at 6, ECF No. 18 (“Opp.”).

25 Unable to dispute Proposed Intervenors’ clear stake in this lawsuit, Plaintiffs
 26 mischaracterize Proposed Intervenors’ interest in protecting their members’ and
 27 constituents’ fundamental voting rights as a “generalized” “interest in upholding the
 28

1 constitutionality” of a challenged law. *See* Opp. at 5 (citing *Miracle v. Hobbs*, 333 F.R.D.
2 151 (D. Ariz. 2019)). But Proposed Intervenors seek to protect the specific rights of their
3 members and constituents, which courts consistently recognize as a sufficient interest to
4 warrant intervention. *See* MTI at 10–11 (collecting cases). Whether there may be other
5 organizations in Arizona that may also represent voters at risk of unlawful purges does not
6 diminish Proposed Intervenors’ interest in preventing the disenfranchisement of their
7 members and constituents. *See, e.g., Bellitto v. Snipes*, No. 16-CV-61474, 2016 WL
8 5118568, at *2 (S.D. Fla. Sept. 21, 2016) (granting intervention as of right where
9 organization sought to protect “interests of its members” that were “threatened by the court-
10 ordered ‘voter list maintenance’ sought by Plaintiff”). Indeed, Plaintiffs offer no response
11 to the many cases which have recognized the right to vote as a sufficient interest for
12 intervention as of right. MTI at 10–11.

13 Plaintiffs claim they seek to “keep only eligible voters on the voting rolls,” implying
14 that only *ineligible* voters will be removed should they succeed. Opp. at 7. This argument
15 puts the cart before the horse and wrongly assumes at the intervention stage that Plaintiffs
16 are correct that voters are on the rolls who should not be. This is akin to arguing a
17 patentholder has no right to intervene in a challenge to their patent’s validity because they
18 have no right to an invalid patent, or that a third-party beneficiary has no right to intervene
19 to defend a contract’s enforceability because they have no rights under an unenforceable
20 contract. Plaintiffs will *always* claim they seek only lawful relief; the purpose of
21 intervention is to allow Proposed Intervenors to defend their own interests and present their
22 own arguments, so that the Court can consider all arguments and perspectives to adjudicate
23 the merits.

24 Despite seeking “additional” and “effective” programs to remove voters, Opp. at 7,
25 Plaintiffs next insist it is only “speculation,” *id.* at 2, that Proposed Intervenors’ members
26 and constituents will be swept up in any purge. But Proposed Intervenors need not show
27 that it is “an absolute certainty that [their] interests will be impaired.” *Citizens for Balanced*
28

1 *Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 900 (9th Cir. 2011). As Proposed Intervenors
 2 explained, MTI at 3–4, Congress enacted the NVRA to guard against rushed and aggressive
 3 purges of the voter rolls, which often capture eligible voters, even if unintentionally, *see*
 4 *also Am. C.R. Union v. Phila. City Comm'rs*, 872 F.3d 175, 179 (3d Cir. 2017) (explaining
 5 NVRA “protects registered voters from improper removal from the rolls”); *Bellitto v.*
 6 *Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019) (“Undoubtedly, a maximum effort at purging
 7 voter lists could minimize the number of ineligible voters, but those same efforts might
 8 also remove eligible voters.”); *PILF v. Winfrey*, 463 F. Supp. 3d 795, 801 (E.D. Mich.
 9 2020) (similar); *Opp.* at 12 (admitting Plaintiffs seek relief before elections just four
 10 months away). These harms are not “hypothetical,” *Opp.* at 6; just earlier this year, a clerk
 11 in Michigan errantly purged over 1,000 voters from the rolls at conservative organizations’
 12 demand, including qualified voters.¹ And it is well-established that “voter purges have
 13 often had the effect of clearing eligible voters from state registration lists and in a manner
 14 that tends to discriminate by race and nationality.” Lydia Hardy, *Voter Suppression Post-*
 15 *Shelby: Impacts and Issues of Voter Purge and Voter ID Laws*, 71 Mercer L. Rev. 857, 866
 16 (2020).² This threat is more than sufficient for intervention as of right, which requires only
 17 that “disposition of the action ‘may’ practically impair” Proposed Intervenors’ “ability to
 18

19 ¹ See Alexandra Berzon & Nick Corasaniti, *Trump’s Allies Ramp Up Campaign Targeting*
 20 *Voter Rolls*, N.Y. Times (March 3, 2024),
 21 <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html>; see also Peg
 22 McNichol, *Voter rolls targeted in run-up to November election, highlighted by recent*
efforts in Waterford, The Oakland Press (March 18, 2024),
[https://www.theoaklandpress.com/2024/03/18/voter-rolls-targeted-in-run-up-to-](https://www.theoaklandpress.com/2024/03/18/voter-rolls-targeted-in-run-up-to-november-election/)
[november-election/](https://www.theoaklandpress.com/2024/03/18/voter-rolls-targeted-in-run-up-to-november-election/).

23 ² See also Gilda Daniels, *Democracy’s Destiny*, 109 Cal. L. Rev. 1067, 1088 (2021)
 24 (“[V]oter purges can also cause the removal or invalidation of eligible and legal voters
 25 from voter registration lists.”); Sarah M.L. Bender, *Algorithmic Elections*, 121 Mich. L.
 26 Rev. 489, 503 (2022) (describing instances of voter purges removing eligible voters); Naila
 27 S. Awan, *When Names Disappear: State Roll-Maintenance Practices*, 49 U. Mem. L. Rev.
 1107, 1108 (2019) (similar); Daniel P. Tokaji, *Voter Registration and Election Reform*, 17
 Wm. & Mary Bill Rts. J. 453, 478 (2008) (“An overly aggressive program of removing
 voters believed to be ineligible threatens to result in erroneous deletion of some who are
 eligible.”).

1 protect” their members from being purged. *Citizens for Balanced Use*, 647 F.3d at 900.

2 Plaintiffs falsely claim that Proposed Intervenors are “partisan groups” that would
 3 “drag this case into a prolonged, partisan battle,” Opp. at 6, and mischaracterize them as
 4 lobbyists, intervening in this matter for “pure issue-advocacy,” *id.* at 8. But each Proposed
 5 Intervenor is a non-partisan, non-profit organization dedicated to enfranchising Arizonans,
 6 regardless of political party, that seeks to intervene to protect their members’ ability to
 7 vote. MTI at 5–7; Patel Decl. ¶ 3; Vasquez Decl. ¶ 2. And rather than delay this case,
 8 Proposed Intervenors will allow the Court to more expediently “decide whether [Arizona’s]
 9 program of list maintenance is ‘reasonable’ within the meaning of” “each side of the
 10 balancing test” of the NVRA’s twin objectives. *Winfrey*, 463 F. Supp. 3d at 801.³

11 Proposed Intervenors separately possess significantly protectable interests in
 12 preventing the diversion of their limited resources to counter the effect of a possible voter
 13 purge, which would impair their ability to conduct the critical election-year activities they
 14 would otherwise undertake. MTI at 12–13; Patel Decl. ¶¶ 6–13; Vasquez Decl. ¶¶ 6–12.
 15 Ignoring these interests, Plaintiffs turn Ninth Circuit caselaw on its head, claiming Article
 16 III standing is “a bar even lower than the impaired interest requirement of Rule 24(a).”
 17 Opp. at 8.⁴ But the Ninth Circuit has explained the opposite: “Article III standing
 18 requirements are more stringent than those for intervention under rule 24(a).” *Yniguez v.*
 19 *Arizona*, 939 F.2d 727, 735 (9th Cir. 1991). And because diversion of Proposed
 20 Intervenors’ resources away from other mission-related work satisfies the “more stringent”
 21 hurdle imposed by “Article III standing requirements,” it readily suffices for the more
 22 lenient Rule 24(a) standard. *Id.*; see also *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d

23 _____
 24 ³ Plaintiffs misrepresent a slew of cases as “well-established precedent” that courts deny
 25 intervention to partisan actors, Opp. at 6, but none of Plaintiffs’ cited cases stand for such
 26 a proposition or denied intervention because of a proposed intervenor’s partisanship.

27 ⁴ The cases that Plaintiffs cite in support of this point do not even mention intervention,
 28 much less support the reversal of standing and intervention standards. See Opp. at 8 (citing
Sierra Club v. Morton, 405 U.S. 727, 739 (1972) & *Ariz. Sch. Bds. Ass’n Inc. v. State of*
Arizona, 252 Ariz. 219, 224 (2022)).

1 640, 663 (9th Cir. 2021) (en banc) (holding that “an organization has direct standing . . .
2 where it establishes that the defendant’s behavior has frustrated its mission and caused it
3 to divert resources in response to that frustration of purpose”); *see* MTI at 13.

4 Plaintiffs next attempt to recast Proposed Intervenors’ interest in preserving their
5 limited resources for mission-critical activities as a “pure economic expectancy,” which
6 they argue “is not a legally protected interest for purposes of intervention.” Opp. at 4 (citing
7 *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA*, 143 F.
8 App’x 751, 753 (9th Cir. 2005)). Proposed Intervenors’ interest is not simply monetary.
9 Unlike the proposed intervenors in *Ranchers*, who were denied intervention to defend a
10 USDA rule from which they stood to profit, 143 F. App’x at 753–54, Proposed Intervenors
11 seek to prevent harm to their missions that would ensue if they are forced to divert resources
12 to ensure their members and constituents are not purged from the rolls. *See* Patel Decl.
13 ¶¶ 6–13; Vasquez Decl. ¶¶ 6–12. And contrary to Plaintiffs’ assertion that these harms are
14 “conclusory,” Opp. at 8, Proposed Intervenors have expressly explained how they will
15 divert resources and how doing so undercuts their missions, MTI at 12–13. For instance,
16 the Alliance will need to develop new materials and use tools like phone banking to educate
17 its members about the risk of erroneous removal, which will require reallocating resources
18 from other activities, like hosting town halls on issues central to the Alliance’s mission.
19 Vasquez Decl. ¶¶ 5, 8–10. Voto Latino will need to redirect resources from phone banking,
20 door-knocking, and campaigning on issues of importance to their constituents toward
21 informing them of the threat of voter purges and ensuring they are registered. Patel Decl.
22 ¶¶ 11–12. And because Plaintiffs have identified no “sham [or] frivolity” in Proposed
23 Intervenors allegations in support of intervention, the Court must take these allegations as
24 true. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).⁵

25 _____
26 ⁵ Even under Article III’s higher standard that Plaintiffs wrongly claim applies, Opp. at 7–
27 8, Proposed Intervenors have demonstrated that their missions to educate and mobilize
28 their members on priority issues will be compromised absent their diversion of resources
to combat the harms of Plaintiffs’ requested relief. Patel Decl. ¶¶ 6–13; Vasquez Decl.
¶¶ 5–12.

1 **B. The existing parties do not adequately represent Proposed**
2 **Intervenors.**

3 Proposed Intervenors easily satisfy the “minimal” burden to show that neither
4 Plaintiffs nor the Secretary adequately represents Proposed Intervenors’ interests. *Trbovich*
5 *v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Plaintiffs demand the very
6 purges that Proposed Intervenors seek to prevent. And Plaintiffs do not dispute that the
7 Secretary must pursue the NVRA’s twin, competing objectives: easing barriers to voting
8 and maintaining accurate voter rolls. *See generally* Opp. As several courts have recognized,
9 the Secretary’s obligation to balance those competing objectives is enough to show that
10 state officials may not adequately represent the interests of civic organizations like the
11 Proposed Intervenors. *See, e.g., Bellitto*, 2016 WL 5118568, at *2; *Winfrey*, 463 F. Supp.
12 3d at 801; *cf. Kobach v. U.S. Election Assistance Comm’n*, No. 13-CV-4095-EFM-DJW,
13 2013 WL 6511874, at *4 (D. Kan. Dec. 12, 2013) (explaining in NVRA litigation “that the
14 existing government Defendants have a duty to represent the public interest, which may
15 diverge from the private interest of Applicants”). In short, Proposed Intervenors are the
16 only ones dedicated *solely* to maximizing registration and access to the ballot.

17 Plaintiffs “simply ignore[] the second—equally weighty—express legislative
18 purpose of the [National Voter Registration] Act.” *Winfrey*, 463 F. Supp. 3d at 801
19 (granting intervention in NVRA case). The Secretary’s second interest impacts the
20 adequacy of representation because the NVRA’s two separate goals naturally “create some
21 tension” with one another, requiring election officials “to balance these competing
22 interests.” *Id.* (quoting *Bellitto*, 935 F.3d at 1198). Thus, “while [Proposed Intervenors’]
23 principal interest is in ensuring that all eligible voters are allowed to vote,” the Secretary
24 must balance that interest with “ensuring that no ineligible voters are allowed to vote.”
25 *Kasper v. Hayes*, 651 F. Supp. 1311, 1313 (N.D. Ill.), *aff’d*, 810 F.2d 1167 (7th Cir. 1987).

26 With nothing to say about the Secretary’s dual interests, Plaintiffs try to raise
27 Proposed Intervenors’ burden, insisting that the Court presume adequacy of representation
28 because Proposed Intervenors and the Secretary both oppose Plaintiffs’ requested relief at

1 this stage of the litigation. Opp. at 2, 9. But the Ninth Circuit has recognized that the
2 Supreme Court, in *Berger*, “call[ed] into question whether the application of such a
3 [‘ultimate objective’] presumption is appropriate.” *Callahan v. Brookdale Senior Living*
4 *Cmtys., Inc.*, 42 F.4th 1013, 1021 n.5 (9th Cir. 2022) (declining to apply ultimate-objective
5 presumption and “offer[ing] no opinion as to whether it remains good law in light of
6 *Berger*”). *Berger* itself explained that it is not appropriate to “presume[] . . . adequate
7 representation” absent “identical” interests between the parties, stressing that public
8 officials must “bear in mind broader public-policy implications” than private groups. 597
9 U.S. at 196 (citing *Trbovich*, 404 U.S. at 538–39). Accordingly, even where two “state
10 agents may pursue ‘related’ state interests, . . . they cannot be fairly presumed to bear
11 ‘identical’ ones.” *Id.* at 197 (quoting *Trbovich*, 404 U.S. at 538). That is the exact situation
12 here: The NVRA *mandates* that the Secretary balance the statute’s “twin objectives,” while
13 Proposed Intervenor focus on just one of those objectives—maximizing registration and
14 access to the ballot. MTI at 15. This Court should adhere to *Berger* and find that the
15 Secretary, who must “bear in mind broader public-policy implications” mandated by
16 Congress, 597 U.S. at 196, may not adequately represent Proposed Intervenor. See 7C
17 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1909 (3d ed.
18 2024) (explaining that in such circumstances “intervention ordinarily should be allowed”).

19 Even setting *Berger* aside, Plaintiffs admit that the “ultimate objective” test applies
20 only where “the applicant’s interest is *identical* to that of one of the present parties.” Opp.
21 at 8–9 (emphasis added). But interests are not “identical,” as Plaintiffs suggest, *id.* at 8–11,
22 anytime an existing party and a proposed intervenor happen to “occupy the same posture
23 in the litigation.” *Citizens for Balanced Use*, 647 F.3d at 899 (quotation omitted); *cf.*
24 *Berger*, 597 U.S. at 197 (explaining that where proposed intervenor’s “‘interest is similar
25 to, but not identical with, that of one of the parties,’ that normally is not enough to trigger
26 a presumption of adequate representation.” (quoting Wright & Miller, *supra*, § 1909)). As
27 the Seventh Circuit recently explained, it is not enough that named parties and a proposed
28

1 intervenor “seek the same outcome in the case” for such a presumption to apply; otherwise
2 “intervention as of right will almost always fail.” *Bost v. Ill. State Bd. of Elections*, 75 F.4th
3 682, 688–89 (7th Cir. 2023) (explaining presumption should only apply when parties share
4 “identical” interests and concluding officials and intervenor did not “share the same goal”
5 despite similar position). And Plaintiffs bizarrely argue that both they and the Secretary
6 seek the same outcome as Proposed Intervenors, underscoring that neither existing party
7 has interests “identical” to Proposed Intervenors. *Compare* Opp. at 7 (“Plaintiffs and
8 Proposed Intervenors share the same goal”) *with id.* at 11 (“Proposed Intervenors and the
9 Secretary share the same ultimate objectives.”).

10 Even before *Berger*, the Ninth Circuit held that parties do not share the same
11 “ultimate objective” where one seeks the “broadest possible” reading of a statute—like
12 Proposed Intervenors’ reading of the NVRA’s protections against removal—while an
13 existing party adopts “narrower [views] [that] suffice to comply with its statutory
14 mandate,” as the Secretary must under the NVRA. *Citizens for Balanced Use*, 647 F.3d at
15 899. Such differing views “represent[] more than a mere difference in litigation strategy . . .
16 but rather demonstrate[] fundamentally differing points of view . . . on the litigation as a
17 whole.” *Id.* While the Secretary must “balance the[] competing interests” of the NVRA,
18 *Bellitto*, 935 F.3d at 1198, Proposed Intervenors seek only to promote their organizations’
19 “parochial interest[s],” *Citizens for Balanced Use*, 647 F.3d at 899. Proposed Intervenors
20 therefore satisfy the “ultimate objective” test, even if it applies and survives *Berger*.

21 None of the limited authorities Plaintiffs cite, Opp. at 9–10, alter the conclusion that
22 Proposed Intervenors have met Rule 24(a)’s “minimal” “burden” that the Secretary “may”
23 not adequately represent Proposed Intervenors’ interests, *Trbovich*, 404 U.S. at 538 n.10.
24 While an Arizona state court denied intervention to parties seeking to defend election
25 procedures alongside the Secretary in *Arizona Free Enterprise Club v. Fontes*, CV 2024-
26 002760 (Maricopa Cnty. Super. Ct. June 7, 2024), that case did not involve the NVRA or
27 any other law that required the Secretary to balance competing—and at times conflicting—
28

1 interests. As recent history demonstrates, state officials in NVRA litigation have opted to
2 settle rather than defend NVRA litigation. MTI at 15. And true enough, *Fund for Animals,*
3 *Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003), involved a foreign intervenor, but that
4 is irrelevant to the general fact that courts, including the Supreme Court, “have ‘often
5 concluded that governmental entities do not adequately represent the interests of aspiring
6 intervenors.’” MTI at 14 (quoting *Fund for Animals*, 322 F.3d at 736); *see, e.g., Trbovich*,
7 404 U.S. at 539; *Kane County v. United States*, 94 F.4th 1017, 1033–34 (10th Cir. 2024)
8 (finding United States did not adequately represent nonprofit’s interests); *Nat’l Res. Def.*
9 *Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (allowing private companies to
10 intervene in support of Environmental Protection Agency because of differing interests).
11 Plaintiffs do not and cannot dispute that courts regularly grant private parties intervention
12 on the side of the government in NVRA purge cases, nor the countless cases wherein courts
13 have found government actors do not adequately represent the parochial and distinct
14 interests of non-governmental intervenors. MTI at 13–16; Opp. 9–10.⁶

15 Plaintiffs also fault Proposed Intervenors for not “identify[ing] any novel argument
16 that would not otherwise be raised by” the Secretary. Opp. at 10–11. But it is not Proposed
17 Intervenors’ “burden at this stage in the litigation to anticipate” such “specific differences.”
18 *Berg*, 268 F.3d at 823–24; *see also Wineries of Old Mission Peninsula Ass’n v. Township*
19 *of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022) (“[I]n assessing whether a proposed
20 intervenor has fulfilled [the inadequacy of representation] requirement, courts must
21 remember that certainty about future events is not required.”). It is sufficient to show a
22 “difference in interests,” *Berg*, 268 F.3d at 824, of which there can be no doubt—under
23 any standard—given the Secretary’s statutory duty to balance the NVRA’s twin objectives.

24
25 ⁶ Contrary to Plaintiffs’ claim that medical professionals were granted intervention in
26 *Planned Parenthood Arizona, Inc. v. American Association of Pro-Life Obstetricians &*
27 *Gynecologists*, 227 Ariz. 262, 279 (Ct. App. 2011), because of “conflicting interests” with
28 the Secretary, Opp. at 10, that case is another among the many cases where courts
concluded that the government does not adequately represent private parties’ parochial
interests when it has an obligation to represent the broader public interest. *See id.* at 279–
80, ¶¶ 58, 60.

1 **II. Proposed Intervenors satisfy Rule 24(b)'s requirements for permissive**
 2 **intervention.**

3 Alternatively, permissive intervention is appropriate under Rule 24(b) because
 4 Proposed Intervenors' motion is timely and shares common questions of law and fact with
 5 Plaintiffs' action. *See* Fed. R. Civ. P. 24(b). Plaintiffs concede the former, *Opp.* at 3, and
 6 do not dispute the latter, *id.* at 11–12. Still, Plaintiffs proclaim without explanation that
 7 intervention will cause “inevitable delays and prejudice.” *Opp.* at 12. But Proposed
 8 Intervenors moved to intervene just days after the complaint was filed and have already
 9 moved to dismiss on the same timeline as the Secretary. While Plaintiffs observe that the
 10 upcoming 2024 elections render the case “time-sensitive,” *id.*, that only stresses the need
 11 for Proposed Intervenors to ensure their members and constituents are not unlawfully
 12 purged in the runup to those critical elections. And Plaintiffs again contend that Proposed
 13 Intervenors' interests are aligned with the Secretary but ignore that “there is good reason
 14 in most cases to suppose that the applicant is the best judge of the representation of the
 15 applicant's own interests.” *Wright & Miller, supra* § 1909. As already explained, Proposed
 16 Intervenors have meaningfully distinct interests from the Secretary. *See supra* Section I.B.⁷

17 **CONCLUSION**

18 For the reasons stated above, Proposed Intervenors request that the Court grant their
 19 motion to intervene as a matter of right under Rule 24(a) or, in the alternative, permit
 20 intervention under Rule 24(b), without limitation on their participation.

21 ⁷ Because Proposed Intervenors have satisfied the requirements to intervene as of right,
 22 they should be afforded full participation in the litigation. The Court should reject
 23 Plaintiffs' request to limit Proposed Intervenors' participation, particularly because
 24 Plaintiffs have failed to articulate any possible prejudice or delay as a result of intervention.
 25 In support of their argument, Plaintiffs cite a case that arose in materially different
 26 circumstances. *Mi Familia Vota v. Hobbs*, No. 2:21-cv-01423-DWL, 2021 WL 5217875
 27 (D. Ariz. Oct. 14, 2021). In *Mi Familia Vota*, the Court limited participation by plaintiff-
 28 intervenors whose interests were aligned with the original plaintiffs. *Id.* at *2. Here,
 Proposed Intervenors occupy a unique role as the only party dedicated to preventing
 removal of additional votes from the rolls, while the Secretary is statutorily obligated to
 balance the NVRA's dual requirements of easing voting barriers *and* maintaining accurate
 rolls. And for that reason, Proposed Intervenors are likely to be helpful to the Court in
 determining what constitutes a “reasonable” effort at list maintenance in view of the
 NVRA's competing objectives. *See Winfrey*, 463 F. Supp. 3d at 801.

1 RESPECTFULLY SUBMITTED this 2nd day of July, 2024.

2 **COPPERSMITH BROCKELMAN PLC**

3 By: /s/ D. Andrew Gaona

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5 Austin C. Yost

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