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22 **FIRST JUDICIAL DISTRICT COURT**
23 **IN AND FOR CARSON CITY, STATE OF NEVADA**

24 REPUBLICAN NATIONAL COMMITTEE;
25 NEVADA REPUBLICAN PARTY; DONALD
26 J. TRUMP FOR PRESIDENT 2024, INC.;
27 SCOTT JOHNSON,
28 Plaintiffs,

v.

FRANCISCO AGUILAR, in his official capacity
as Nevada Secretary of State; State of
NEVADA; CARI-ANN BURGESS, in her
official capacity as the Washoe County Registrar
of Voters; JAN GALASSINI, in her official
capacity as the Washoe County Clerk; LORENA
PORTILLO, in her official capacity as the Clark
County Registrar of Voters; LYNN MARIE
GOYA, in her official capacity as the Clark
County Clerk,

Defendants.

Case No.: 24 OC 00101 B
Dept. No.: 1

**MOTION TO INTERVENE AS
DEFENDANTS**

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1 Pursuant to Nevada Rule of Civil Procedure 24, Proposed Intervenor-Defendants Vet
2 Voice Foundation and the Nevada Alliance for Retired Americans move to intervene as defendants
3 in the above-titled action. Their Proposed Answer is attached hereto as Exhibit I.

4 This Motion is based on the Memorandum of Points and Authorities below, the
5 declarations and exhibits attached hereto, all papers and pleadings on file, and any oral argument
6 this Court sees fit to allow at the hearing on this matter.

7 DATED this 7th day of June 2024.

8
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26 *Pro hac vice application forthcoming

1 provision so that it allows ballots to be counted only if there is a visible postmark but no legible
2 date, and not if there is no visible postmark at all. Voters, of course, have no way to control whether
3 the postal service postmarks their ballot. And while Plaintiffs focus their discussion on
4 unpostmarked ballots received after election day, nothing about their statutory argument is so
5 narrow. The no-postmark-date provision is the *only* provision that allows unpostmarked ballots
6 returned by mail to be counted. If Plaintiffs get the relief they seek in this case, *every mail voter*
7 would therefore be at risk of disenfranchisement if the postal service fails to postmark their ballot,
8 no matter when it is delivered.

9 Proposed Intervenor readily meet the requirements for intervention as a matter of right.
10 *First*, their motion is timely, filed days after this suit was commenced and before any substantive
11 proceedings have occurred. *Second*, Proposed Intervenor have an interest in the subject of the
12 action, and their ability to protect that interest will be impaired if Plaintiffs obtain the relief they
13 seek. If Plaintiffs are successful, the voters most likely to be disenfranchised are active and former
14 members of the Armed Services and their families, as well as older and disabled voters, all of
15 whom rely heavily on mail ballots to exercise their right to vote. Proposed Intervenor are non-
16 partisan, non-profit organizations that serve those communities, whose members are "especially
17 likely to be affected by" additional barriers to mail voting. *Burgess* Order at 3. Proposed
18 Intervenor also have a "clear and direct" interest in avoiding the need to divert their limited
19 resources toward educating their members and constituents about changes to the mail-voting
20 process and assisting them with casting mailed ballots. *Id.* at 4. *Third*, no existing party adequately
21 protects Proposed Intervenor's particularized interests in this case, because none is tasked
22 specifically with representing at-risk voters.

23 Proposed Intervenor are accordingly entitled to intervene in this case as a matter of right
24 under Nevada Rule of Civil Procedure 24(a)(2). In the alternative, the Court should grant Proposed
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1 Intervenor's permissive intervention pursuant to Rule 24(b).¹

2 **BACKGROUND**

3 **I. Nevada's mail ballot voting laws.**

4 Voting by mail is extremely popular in Nevada. In the most recent full federal election
5 cycle, over half of Nevada voters cast mail ballots in both the primary and general elections.² In
6 the recent February 6 primary election, nearly eighty percent of Nevada voters cast mail ballots.³

7 To return a mail ballot by mail, it must be "[m]ailed to the county clerk, and: (1)
8 [p]ostmarked on or before the day of the election; and (2) [r]eceived by the clerk not later than 5
9 p.m. on the fourth day following the election." NRS 293.269921(1)(b). Nevada law also accounts,
10 however, for the possibility that "the date of the postmark cannot be determined." NRS
11 293.269921(2). In such cases, "[i]f a mail ballot is received by mail not later than 5 p.m. on the
12 third day following the election, . . . the mail ballot shall be deemed to have been postmarked on
13 or before the day of the election." *Id.*

14 The no-postmark-date provision is the focus of this case. Plaintiffs object to public
15 testimony by Deputy Secretary of State Mark Wlaschin more than a month ago on April 23, 2024,
16 in which he explained that the no-postmark-date provision applies to ballots received by mail that
17 lack any visible postmark, as well as those with a visible postmark but no legible date. Compl. ¶
18 2. Plaintiffs seek a permanent injunction prohibiting election officials from counting ballots
19 received after election day with no visible postmark at all. *Id.* at ¶¶ 62–78. But NRS 293.269921
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21
22 ¹ If Proposed Intervenor's motion is granted, Proposed Intervenor's intend to file a motion to
23 dismiss the Petition under Rule 12(b). Because Rule 24(c) requires putative intervenors to attach
24 a proposed pleading to their motion, however, Proposed Intervenor's attach a proposed answer
25 hereto as Exhibit 1.

26 ² See *Voter Turnout*, Nev. Sec'y of State, <https://silverstateelection.nv.gov/vote-turnout/> (last
27 accessed June 7, 2024) (showing 56.7% of primary voters cast mail ballots and 51.21% of general
28 election voters in 2022).

³ See *supra* n.2.

1 does not distinguish between ballots received after election day and ballots received before election
2 day: it applies equally to all ballots received by mail. So if Plaintiffs were right that mailed but
3 unpostmarked ballots may not be counted under the no-postmark-date provision, it would follow
4 that they may not be counted *at all*, no matter when they are received. That is not Nevada law.

5 **II. Proposed Intervenors**

6 Proposed Intervenor-Defendants Vet Voice and the Nevada Alliance for Retired
7 Americans are non-profit, non-partisan organizations dedicated to supporting the voting rights of
8 their members and constituents. Both groups have significant organizational and associational
9 interests at stake in this litigation and they represent members and constituents who will be acutely
10 harmed by Plaintiffs' efforts to artificially narrow the no-postmark-date provision in this case.
11 Both Vet Voice and the Nevada Alliance were recently granted intervention in the related federal-
12 court challenge, *Burgess*. See *Burgess Order*. And Vet Voice and the Alliance's sister organization
13 in Mississippi were also granted intervention in a similar challenge to Mississippi's mail ballot
14 receipt deadline that was also brought by the RNC and its state affiliate. See *Republican Nat'l*
15 *Comm. v. Wetzel*, No. 1:24-cv-25-LG-RJM, 2024 WL 988383, at *1 (S.D. Miss. Mar. 7, 2024)
16 (noting Vet Voice and the Mississippi Alliance for Retired Americans were granted intervention
17 on March 4, 2024).

18 **Vet Voice.** Vet Voice is a national non-profit, non-partisan organization dedicated to
19 empowering veterans across the country to become civic leaders and policy advocates. See
20 Declaration of Janessa Goldbeck ¶¶ 3, 5 ("Goldbeck Decl.") (attached hereto as Exhibit 3). It has
21 over 1.5 million subscribers who receive Vet Voice communications, including thousands here in
22 Nevada. *Id.* ¶ 4. Beyond those who affirmatively subscribe to its communications, Vet Voice's
23 constituency broadly includes active servicemembers, including those deployed away from home,
24 as well as military veterans, many of whom are older or have physical disabilities (oftentimes
25 attributable to their time in service) that make voting in person difficult. *Id.* ¶¶ 8-9. Increasing
26 voter turnout among military and veteran voters, as well as their families, is critical to Vet Voice's
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1 mission. *Id.* ¶ 5. Vet Voice strongly believes that turning out the “veteran vote” benefits all
2 Americans by engaging in the civic process people who have served their country, and aims to
3 promote turnout among all veterans, regardless of their political beliefs. *Id.* ¶¶ 5–6, 13.

4 Military voters and veterans often face challenges in exercising their right to vote. For
5 example, active-duty servicemembers and their families are oftentimes deployed away from home,
6 making it physically impossible for them to appear in person at their local polling sites on election
7 day. *Id.* ¶ 8. Such servicemembers are highly reliant on mail voting to exercise the franchise. *Id.*
8 Vet Voice’s CEO, Janessa Goldbeck, has firsthand knowledge of these challenges. During her
9 seven years in the U.S. Marine Corps, she personally had to rely on mail voting to cast her ballot
10 on several occasions, including in 2012 when she was not able to leave officer training school at
11 Marine Corps Base Quantico. *Id.* ¶¶ 7, 11. Veteran voters also often face obstacles voting in person,
12 either due to age or disability. *Id.* ¶ 9.

13 Roughly three-quarters of America’s 1.4 million active servicemembers are eligible to vote
14 by mail. *Id.* ¶ 8. Despite this right, active servicemembers vote at significantly lower rates than the
15 national population. *Id.* ¶ 10. These voters depend heavily on mail ballot voting, *id.*, which they
16 are permitted to use under Nevada law, see NRS 293.269911(1). As the Department of Justice has
17 repeatedly noted, mail voting laws with extended receipt deadlines are particularly important to
18 guard against the systemic disenfranchisement of military voters and their families due to obstacles
19 such as long mail transit times. See U.S. Amicus Curiae Br. at 23–28, *East v. Ill. State Bd. of*
20 *Elections*, No. 23-2644 (7th Cir. Dec. 6, 2023), ECF No. 21 (discussing challenges faced by
21 military and overseas voters and the importance of extended ballot receipt deadlines to such
22 voters); Statement of Interest of U.S. at 1, 10–15, *Splonskowskij v. White*, No. 1:23-cv-00123-
23 DMT-CRH (D.N.D. Sept. 11, 2023), ECF No. 19 (explaining extended ballot receipt deadlines
24 “can be vital in ensuring that military and overseas voters are able to exercise their right to vote”);
25 Statement of Interest of U.S. at 1, 15–21, *Republican Nat’l Comm. v. Wetzel*, No. 1:24-cv-00025-
26 LG-RPM (S.D. Miss. Apr. 11, 2024), ECF No. 84 (same); Goldbeck Decl. ¶¶ 10–12.

1 Vet Voice dedicates significant resources, including money, personnel time, and volunteer
2 effort, to improving military and veteran voter turnout rates. Goldbeck Decl. ¶ 14. It has developed
3 a first-of-its kind military voter file containing approximately 14 million records of veterans and
4 military family members, including records for over 120,000 voters in Nevada. *Id.* ¶ 6. Vet Voice
5 uses this voter file to directly reach out to military voters, often by facilitating veteran-to-veteran
6 communications—including in Nevada. *Id.* ¶ 15. In the 2020 general election, Vet Voice sent over
7 2.5 million texts to 1.5 million military voters and saw a substantial increase in turnout among
8 contacted voters versus non-contacted voters. *Id.* Vet Voice is actively building this voter file to
9 prepare for voter education and mobilization efforts in the 2024 general election, including in
10 Nevada. *Id.* ¶ 16. On top of this, Vet Voice also engages in more traditional forms of voter
11 engagement, including direct mailers, phone banking, rural radio advertising, and digital
12 advertising. *Id.* ¶ 19. Given the importance of mail voting to Vet Voice's constituencies, these
13 contacts often focus on educating military voters about how to vote by mail, including by providing
14 information about eligibility requirements, application deadlines, and deadlines for submitting
15 ballots. *Id.* ¶ 21.

16 Nevada is a particularly critical state for Vet Voice. *Id.* ¶ 17. According to the U.S. Census
17 Bureau, as of 2022, 8.3 percent of Nevada's population served in the military, placing it seventh
18 in the country in terms of veteran share of the population. *Id.*⁴ Vet Voice has already identified and
19 plans to target approximately 10,000 individual veteran and military-affiliated voters in Nevada to
20 mobilize them to vote in the 2024 elections using direct mail and text messages. *Id.* ¶ 18. And Vet
21 Voice already has staff on the ground in Nevada. *Id.*

22 If successful, Plaintiffs' challenge will make it harder for Vet Voice's supporters and
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26 ⁴ See also Ivana Saric & Alice Feng, *Mapped: The U.S. states with the highest and lowest shares*
27 *of veterans*, Axios (Nov. 10, 2023), <https://www.axios.com/2023/11/10/map-where-veterans-live-us>
(interactive map).

1 constituents—including active-duty servicemembers and veterans—to successfully cast a mail
2 ballot in Nevada. *Id.* ¶ 23. Voters, of course, lack control over the mail. In particular, active-duty
3 servicemembers deployed overseas, in combat zones, or on ships and submarines often have to
4 contend with highly unreliable and irregular mail service. *Id.* ¶¶ 12, 23. There is nothing they can
5 do to ensure that their ballots are properly postmarked and, even when they do not delay in
6 returning their ballots, they also lack control over the date they are ultimately delivered. In addition
7 to threatening Vet Voice's supporters and constituents, Plaintiffs' challenge also frustrates Vet
8 Voice's effort to effectively plan voter engagement and mobilization efforts in Nevada—a
9 mission-critical state for the organization—ahead of the 2024 election. *Id.* ¶¶ 16–22. Vet Voice
10 must understand the relevant legal landscape before preparing its voter education efforts. *Id.* ¶ 21.
11 It seeks to intervene in this case to protect the voting rights of its supporters and constituencies,
12 settle the legal landscape for its voter education efforts ahead of the 2024 election, and protect its
13 own significant expenditure of resources in promoting mail ballot voting. *Id.* ¶¶ 21–24.

14 **The Alliance.** The Alliance for Retired Americans is a non-partisan 501(c)(4) membership
15 organization with over 4.4 million members nationwide. Declaration of Thomas Bird ¶ 3 (“Bird
16 Decl.”) (attached hereto as Exhibit 4). Its mission is to ensure the social and economic justice and
17 full civil rights that retirees have earned after a lifetime of work, with a particular emphasis on
18 safeguarding the right to vote. *Id.* ¶ 4. The Alliance's Nevada chapter, the Nevada Alliance for
19 Retired Americans, has approximately 20,000 members comprising retirees from numerous public
20 and private sector unions, members of community organizations, and individual activists. *Id.* ¶ 3.
21 It works with 20 affiliated chapters—comprised of other union and community groups—across
22 Nevada. *Id.* ¶ 5. A major focus of the Alliance's work is attending these chapter meetings to speak
23 with members about key policy goals, such as preserving Social Security and Medicare. *Id.*

24 Ensuring access to the ballot is also a critical piece of the Alliance's mission, and
25 accordingly it dedicates significant effort to voter registration and voter education efforts. *Id.* ¶¶ 4,
26 6, 8–9. The Alliance, its members, and volunteers undertake numerous activities to register and
27

1 educate voters about how to vote, including door knocking, phone banking, Zoom meetings,
2 postcard parties, and appearing at community events like health fairs and labor union conventions.
3 *Id.* ¶ 9. The Alliance often partners with other non-partisan organizations to host these voter
4 education events across Nevada. *Id.* The Alliance also hosts retirement forums and conventions,
5 during which it provides speakers and presentations about registering to vote and voting, including
6 on the mechanics of voting by mail. *Id.* In addition to appearing at community events, many of the
7 Alliance's members and volunteers also speak with family, friends, neighbors, and others about
8 voting. *Id.* ¶ 10. The Alliance frequently answers questions related to voting, and strives to be a
9 central information source for voters so that if the Alliance isn't aware of the answer to a particular
10 question, the Alliance will help track it down and report back. *Id.* The Alliance's members are a
11 very engaged group and are likely to have a lot of questions that require time and resources to
12 address. *Id.* The Alliance also helps educate its members by sharing articles and posting
13 information and resources on social media posts. *Id.*

14 The Alliance's members are highly reliant on mail ballot voting. *Id.* ¶ 6. Thomas Bird, the
15 President of the Alliance, estimates that a majority of the group's membership votes by mail. *Id.*
16 These members choose to vote by mail for many reasons: they may lack transportation to make it
17 to the polls, not be comfortable standing in long lines at polling places, have a disability or injury
18 that makes in-person voting difficult, prefer for health reasons not to wait a long time in-person to
19 vote, want to avoid potential voter intimidation or harassment at the polls, or simply prefer to spend
20 more time with their ballot while completing it from the comfort of their kitchen table. *Id.* Many
21 of the Alliance's members are also concerned with increasing mail delays, which can impact
22 everything from their timely receipt of prescription medication by mail to their ability to
23 successfully vote a mail ballot. *Id.* ¶ 7.

24 If Plaintiffs' suit is successful, the Alliance's members will face increased risk of having
25 their mail ballots rejected if, through no fault of their own, the ballots are not postmarked. *Id.* ¶ 6.
26 As a result, the Alliance would have to divert its limited resources to help its members sign up for
27

1 various mail tracking systems, ranging from the U.S. Postal Service's informed delivery service
2 to the state of Nevada's ballot tracking service (Ballotrax), so they can keep track of the timing of
3 their mail ballot. *Id.* ¶ 8. Many of the Alliance's members are not comfortable with technology and
4 have concerns with fraud, and they will require individualized assistance in signing up for these
5 services. *Id.* The Alliance will also have to fundamentally reshape their voter education activities
6 to emphasize the risk of mail ballots not being counted, at the expense of other mission-critical
7 issues. *Id.* ¶ 9.

8 The Alliance seeks to intervene in this case to protect its members' right to cast mail ballots
9 under Nevada law, as well as their right to vote generally. *Id.* ¶ 6. It also seeks to protect its ongoing
10 voter education efforts. *Id.* ¶¶ 4, 8, 10.

11 STANDARD OF LAW

12 Nevada Rule of Civil Procedure 24 governs intervention in Nevada state court actions.
13 Because Rule 24 and Federal Rule of Civil Procedure 24 are "equivalent," *Lowler v. Ginochio*, 94
14 Nev. 623, 626, 584 P.2d 667, 668 (1978) (per curiam), "[f]ederal cases interpreting [Rule 24] 'are
15 strong persuasive authority.'" *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
16 872, 876 (2002) (per curiam) (quoting *Las Vegas Novelty, Inc. v. Fernandez*, 106 Nev. 113, 119,
17 787 P.2d 772, 776 (1990)).

18 To intervene as of right under Rule 24(a)(2),

19 an applicant must meet four requirements: (1) that it has a sufficient interest in
20 the litigation's subject matter, (2) that it could suffer an impairment of its ability
21 to protect that interest if it does not intervene, (3) that its interest is not
22 adequately represented by existing parties, and (4) that the application is timely.

23 *Am. Home Assurance Co. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark*, 122 Nev. 1229, 1238, 147
24 P.3d 1120, 1126 (2006). "In evaluating whether Rule 24(a)(2)'s requirements are met," courts
25 "construe the Rule broadly in favor of proposed intervenors . . . because a liberal policy in favor
26 of intervention serves both efficient resolution of issues and broadened access courts." *Wilderness*
27 *Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (cleaned up).

1 Under Rule 24(b), a movant may permissively intervene if the movant “has a claim or
2 defense that shares with the main action a common question of law or fact.” NRCP 24(b)(1)(B).
3 “In exercising its discretion, the court must consider whether the intervention will unduly delay or
4 prejudice the adjudication of the original parties’ rights.” NRCP 24(b)(3).

5 ARGUMENT

6 I. Proposed Intervenor satisfy all of Rule 24(a)’s requirements for intervention as a 7 matter of right.

8 Proposed Intervenor satisfy each of the four requirements of NRCP 24(a) and thus should
9 be allowed to intervene as a matter of right.

10 A. The motion is timely.

11 First, the motion is timely. Plaintiffs filed their petition on May 31, 2024; this motion
12 follows less than two weeks later and before any substantive activity has occurred in the case.
13 There has therefore been no delay, and no possible risk of prejudice to the other parties. *See In re*
14 *Guardianship of A.M.*, No. 59116, 2013 WL 2278878, at *3 (Nev. May 24, 2013); *Lawler*, 94 Nev.
15 at 626, 584 P.2d at 669; *see also, e.g., Nevada v. United States*, No. 3:18-cv-569-MMD-CBC,
16 2019 WL 718825, at *2 (D. Nev. Jan. 14, 2019) (granting motion to intervene filed several weeks
17 after action commenced); *W. Enl. LLC v. U.S. Dep’t of Interior*, No. 3:15-cv-00491-MMD-VPC,
18 2016 WL 355122, at *2 (D. Nev. Jan. 28, 2016) (granting motion to intervene filed nearly two
19 months after action commenced).

20 B. Proposed Intervenor have significant protectable interests that may be 21 impaired by this lawsuit.

22 Proposed Intervenor also satisfy the next two requirements for intervention as a matter of
23 right because they (1) have significantly protectable interests in this lawsuit (2) that may be
24 impaired by Plaintiffs’ claims. “A ‘significantly protectable interest’ . . . [is] one that is protected
25 under the law and bears a relationship to the plaintiff’s claims.” *Am. Home Assurance Co.*, 122
26 Nev. at 1239, 147 P.3d at 1127 (quoting *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir.
27

1 2002)). In the federal context, courts have made clear that if a would-be intervenor “would be
2 substantially affected in a practical sense by the determination made in an action, he should, as a
3 general rule, be entitled to intervene,” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822
4 (9th Cir. 2001) (quoting Fed. R. Civ. P. 24 advisory committee note to 1966 amendment)). This
5 interest requirement is less stringent than Article III’s standing requirement. *See Yriguez v.*
6 *Arizona*, 939 F.2d 727, 735 (9th Cir. 1991).¹¹

7 As the federal court found in *Burgess*, the related case that Plaintiffs filed in federal court,
8 Vet Voice and the Alliance easily satisfy these requirements. *Burgess* Order at 3–5. If Plaintiffs
9 succeed in artificially narrowing the no-postmark date provision to exclude entirely unpostmarked
10 ballots, Vet Voice’s and the Alliance’s members, supporters, and constituents will be subject to
11 disenfranchisement if, through no fault of their own, the postal service fails to postmark their
12 ballots. Both Vet Voice and the Alliance serve communities that rely heavily on mail ballots to
13 vote. Vet Voice, for example, spends significant resources to promote voting among active service
14 members and military family members, many of whom are often stationed away from their
15 permanent homes and depend on mail ballots to participate in elections. Goldbeck Decl. ¶¶ 14, 20.
16 And many veterans in Nevada rely on mail voting as well. *Id.* ¶ 9. Vet Voice’s military voter file
17 includes over 120,000 Nevada servicemembers, veterans, and military family members, *id.* ¶ 6,
18 and Vet Voice has over 14,000 Nevada subscribers whom the group seeks to mobilize in
19 furtherance of its mission, *id.* ¶ 4. Vet Voice’s mission is to ensure that all of these voters have full
20 access to the ballot box and that military voters are heard at the polls. *Id.* ¶¶ 5–6.

21 The Alliance, too, has many members in Nevada who rely on mail voting due to the greater
22 obstacles they face voting in person, whether due to age or disability. Bird Decl. ¶ 6. They vote by
23 mail because, among other reasons, they lack transportation or are not comfortable standing in
24 long lines at polling places. *Id.* Nevada historically has long wait times on election day, making
25 the option to vote by mail critical to the Alliance’s members, many of whom have more difficulty
26 overcoming such obstacles. *Id.* If Plaintiffs succeed, the Alliance’s members will accordingly face

1 heightened risks of having their mail ballots rejected. *Id.* Ensuring access to the ballot is a critical
2 piece of the Alliance's mission. *Id.* The Alliance would therefore have to use its limited volunteer
3 resources to prepare materials educating its members about how to track ballots, and then distribute
4 these materials to members through social media channels, email, and at chapter meetings. *See Id.*
5 ¶¶ 7–9. This effort will reduce the Alliance's ability to speak to its members about key policy
6 goals, including protecting Social Security and Medicare. *See Id.* ¶ 11.

7 "Once an applicant has established a significantly protectable interest in an action, courts
8 regularly find that disposition of the case may, as a practical matter, impair an applicant's ability
9 to protect that interest." *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 2:19-CV-
10 1197 JCM (DJA), 2020 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California ex rel.*
11 *Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)). A prohibition on counting ballots
12 lacking a postmark would require Proposed Intervenor~~s~~ to divert resources to respond to this
13 unwarranted attack on the rights of their members and constituents. Accordingly, if Plaintiffs' suit
14 succeeds, Proposed Intervenor~~s~~' interests in their members' and constituents' voting rights as well
15 as their interests in their own resources will be impaired. This criterion for intervention of right is
16 accordingly satisfied.

17 **C. Defendants do not adequately represent Proposed Intervenor~~s~~.**

18 Proposed Intervenor~~s~~ also satisfy the third requirement for intervention as of right because
19 they cannot rely on the parties in this case to adequately represent their interests. "[T]he burden on
20 proposed intervenors in showing inadequate representation is minimal, and would be satisfied if
21 they could demonstrate that representation of their interests 'may be' inadequate." *Hair v. First*
22 *Jud. Dist. Ct.*, 132 Nev. 180, 185, 368 P.3d 1198, 1201 (2016) (quoting *Arakaki v. Cayetano*, 324
23 F.3d 1078, 1086 (9th Cir. 2003)). Courts have "often concluded that governmental entities do not
24 adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322
25 F.3d 728, 736 (D.C. Cir. 2003); *see also Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647
26 F.3d 893, 899 (9th Cir. 2011) ("[T]he government's representation of the public interest may not
27

1 be 'identical to the individual parochial interest' of a particular group just because 'both entities
2 occupy the same posture in the litigation.'" (quoting *WildEarth Guardians v. U.S. Forest Serv.*,
3 573 F.3d 992, 996 (10th Cir. 2009)).

4 While Defendants Aguilar, Burgess, Galassini, Portillo, and Goya have an interest in
5 administering the election laws generally, Proposed Intervenors are focused on ensuring that their
6 members and constituents have their individual ballots counted. Moreover, Proposed Intervenors
7 have specific interests and concerns—in particular, the proper allocation of their limited resources
8 to maximize voter turnout and promote civic engagement—that neither Burgess nor any other
9 party in this lawsuit shares. Should Plaintiffs be successful, Proposed Intervenors will have to
10 divert resources to help protect the process against Plaintiffs' disruptive efforts, rendering those
11 resources unavailable for Proposed Intervenors' other mission-critical work.

12 Accordingly, this is not a case where "there is an 'assumption of adequacy [because] the
13 government is acting on behalf of a constituency it represents,'" since such an assumption only
14 arises "when the applicant shares the same interest." *Hattr*, 132 Nev. at 185, 368 P.3d at 1201
15 (quoting *Arakaki*, 324 F.3d at 1086). Rather, this is an instance where, "[a]lthough [Defendants]
16 and the Proposed Intervenors fall on the same side of the dispute, Defendants' interests . . . differ
17 from those of the Proposed Intervenors." *Issa v. Newson*, No. 2:20-cv-01044-MCE-CKD, 2020
18 WL 3074351, at *3 (E.D. Cal. June 10, 2020). While Defendants' arguments are likely to "turn on
19 their . . . responsibility to properly administer election laws," Proposed Intervenors are concerned
20 with ensuring that their members and constituents "have the opportunity to vote" and "allocating
21 their limited resources to inform voters about the election procedures." *Id.* (granting motion to
22 intervene as a matter of right). Because these interests are not shared by the current parties to the
23 litigation, Proposed Intervenors cannot rely on Defendants or anyone else to provide adequate
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1 representation, and the third requirement for intervention of right is satisfied.⁵

2 **II. Alternatively, Proposed Intervenor's satisfy Rule 24(b)'s requirements for**
3 **permissive intervention.**

4 Alternatively, the Court should grant Proposed Intervenor's permissive intervention, as the
5 federal court did in the related *Burgess* case. See *Burgess* Order at 7–9. Rule 24(b) grants courts
6 broad discretion to permit intervention where an applicant's claim or defense and the main action
7 have a question of law or fact in common and intervention will not unduly delay or prejudice the
8 adjudication of the rights of the original parties. See *Hairr*, 132 Nev. at 187, 368 P.3d at 1202.

9 For the reasons discussed *supra* Argument § I, Proposed Intervenor's motion is timely, and
10 Proposed Intervenor's cannot rely on Defendants to adequately protect their interests. Proposed
11 Intervenor's also have defenses to Plaintiff's claims that share common questions of law and fact—
12 for example, whether Plaintiff's have pleaded facts allowing a court to conclude that they have a
13 clear legal right to a permanent injunction. Intervention will not result in any undue delay or
14 prejudice. Proposed Intervenor's have a strong interest in a swift resolution to this action to ensure
15 that their members' and constituents' voting rights are protected, while simultaneously avoiding
16 any unnecessary delay. And Proposed Intervenor's agree to be bound by any case schedule set by
17 the Court or agreed to by the principal parties.

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24 ⁵ Despite emphasizing Proposed Intervenor's substantial, specifically threatened interests, the
25 federal court in *Burgess* found that that the government defendants adequately represented
26 Proposed Intervenor's interests and therefore granted permissive intervention rather than
27 intervention of right. See *Burgess* Order at 6–9. But as many other courts have recognized,
28 government parties and civic groups do not share the same objectives in election cases, and thus
adequate representation is not present. See, e.g., *Issa*, 2020 WL 3074351, at *3.

1 **CONCLUSION**

2 For the reasons stated above, Proposed Intervenor respectfully request that the Court grant
3 their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them
4 to intervene under Rule 24(b).

5 **AFFIRMATION**

6 Pursuant to NRS 239B.030 and 603A.040, the undersigned does hereby affirm that this
7 document does not contain the personal information of any person.

8 DATED this 7th day of June 2024.

9
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28 *Pro hac vice application forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June 2024, a true and correct copy of MOTION TO INTERVENE AS DEFENDANTS was served by depositing a true copy of the same via U.S.P.S. Mail postage pre-paid Las Vegas, Nevada and by email to all parties with an email-address on record on June 7, 2024.

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