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19 *\*Pro Hac Vice Application Forthcoming*

20 **UNITED STATES DISTRICT COURT**  
21 **DISTRICT OF ARIZONA**

22 American Encore, an Arizona non-profit  
23 corporation; Karen Glennon, an Arizona  
24 individual; America First Policy Institute, a  
25 nonprofit corporation,

26 Plaintiffs,

27 v.

28 Adrian Fontes, in his official capacity as Arizona  
Secretary of State; Kris Mayes, in her official  
capacity as Arizona Attorney General; Katie  
Hobbs, in her official capacity as Governor of  
Arizona,

Defendants.

No. 2:24-cv-01673-MTL

**MOTION TO INTERVENE AS  
DEFENDANTS BY ALFRED  
LOMAHQUAHU, STEPHANI  
STEPHENSON, AND  
ARIZONA ALLIANCE FOR  
RETIRED AMERICANS**

Oral Argument Requested

1 Pursuant to Federal Rule of Civil Procedure 24, Hopi Tribe Registrar Alfred  
2 Lomahquahu, Cochise County voter Stephani Stephenson, and the Arizona Alliance for  
3 Retired Americans (the “Alliance,” with Lomahquahu and Stephenson, the “Proposed  
4 Intervenors”) move to intervene as defendants. For the reasons that follow, the Court should  
5 grant the motion as of right under Rule 24(a) or, alternatively, permissively under 24(b).

### 6 INTRODUCTION

7 This lawsuit is the most recent of several ill-conceived attempts to use the judiciary  
8 to undermine critical aspects of Arizona’s election procedures. In the 2022 election, armed  
9 vigilantes harassed and intimidated voters at Arizona drop boxes, threatening their right to  
10 vote. Then, as vote counting began, some officials ignored their duty to timely certify  
11 election results. In response, and consistent with their authority under Arizona law, the  
12 Secretary of State, Attorney General, and Governor clarified in the 2023 Elections  
13 Procedures Manual (“EPM”) how election officials may protect voters, and the legal  
14 consequences for undermining the elections process. Plaintiffs claim to seek to protect  
15 voters’ interests, but their action threatens local election officials, including Proposed  
16 Intervenor Hopi Tribe Registrar Lomahquahu, the voters in his community, voters in  
17 jurisdictions that previously threatened to hold ballot counting hostage—like Proposed  
18 Intervenor Stephenson—and vulnerable voters like the Alliance’s members.

19 Proposed Intervenors seek to intervene to defend these and related interests—  
20 including their interest in successful prior litigation, which Plaintiffs’ requested relief would  
21 undermine. In Count I, Plaintiffs challenge an EPM provision that underscores County  
22 Boards of Supervisors’ mandatory statutory duty to canvass election results in time for the  
23 Secretary to meet his deadline to certify the statewide results. Plaintiffs seek judicial  
24 permission for County Boards (who are not before this Court) to indefinitely delay that  
25 canvass based on their own subjective feelings about an election. This would undermine  
26 relief Proposed Intervenors obtained in 2022 litigation when Cochise County refused to  
27 canvass in accordance with state law. Plaintiffs seek to reintroduce the exact uncertainty  
28 that threatened to hijack Arizona’s elections and the will of the voters, which led Proposed

1 Intervenor to bring that litigation. And, in Count II, Plaintiffs seek to enjoin guidance on  
2 unlawful voter intimidation that responds to harassment and intimidation that voters  
3 encountered at drop boxes in 2022, activity that led the Alliance to sue to protect their  
4 members' rights. The EPM now provides clarity on election officials' ability to prevent this  
5 conduct in the future. Plaintiffs seek to undermine these protections, putting Proposed  
6 Intervenor at increased risk of harassment and intimidation when attempting to vote.

7 The motion to intervene is timely; this matter has only just begun. And the  
8 Defendants do not adequately represent Proposed Intervenor's interests. Proposed  
9 Intervenor thus satisfy the requirements for intervention as of right. Alternatively,  
10 permissive intervention should be granted. Having been involved in nearly all of the  
11 litigation related to this matter, Proposed Intervenor are uniquely situated to aid the Court.  
12 They also represent constituencies of Arizonans who are threatened by this action—and  
13 whose interests deserve representation in these proceedings.

## 14 **BACKGROUND**

### 15 **I. Threats to voters and the democratic process imperiled recent elections.**

16 In 2020, protesters motivated by false conspiracy theories surrounded ballot  
17 processing centers, causing concerns about the safety of election officials. Election officials  
18 have contended with death threats and have had to increase security in response.<sup>1</sup> During  
19 early voting in 2022, armed and masked vigilantes gathered to "monitor" voters at  
20 Arizona's drop boxes. Some shouted at people depositing their ballots and publicized  
21 information about voters who they baselessly claimed were voting illegally. Multiple  
22 lawsuits were filed, including by the Alliance, to protect voters from this intimidation. *See*  
23 *Ariz. All. for Retired Ams. v. Clean Elections USA*, No. 2:22-cv-01823-MTL (D. Ariz.). The  
24 Alliance's case was consolidated with an action brought by the League of Women Voters,  
25 and this Court ultimately entered a stipulated temporary restraining order in the League's  
26

27 \_\_\_\_\_  
28 <sup>1</sup> *See, e.g.*, Ali Swenson, *Arizona expects to be back at the center of election attacks*, AP  
News (Mar. 23, 2024), available at <https://apnews.com/article/arizona-maricopa-misinformation-threats-2024-election-842b18122b99300abda8be984fdbd972>

1 case to protect voters at drop boxes. Stipulated TRO, *Ariz. All. for Retired Ams.*, No. 2:22-  
2 cv-01823-MTL (D. Ariz. Nov. 1, 2022), ECF No. 51.

3 Then, the Cochise County Board of Supervisors voted to delay its canvass of the  
4 County's election results until it could investigate baseless claims that voting machines  
5 were improperly certified.<sup>2</sup> The Alliance and Cochise County voter Stephenson filed two  
6 lawsuits in state court to compel the Board to canvass and certify the results in accordance  
7 with statutory procedures and the EPM. *See Ariz. All. for Retired Ams. v. Crosby*, No.  
8 CV2022-00518 (Cochise Cnty. Super. Ct.); *Ariz. All. for Retired Ams. v. Crosby*, No.  
9 CV2022-00552 (Cochise Cnty. Super. Ct.). They explained that the absolute latest date a  
10 county could complete its canvass was December 8, 2022—the Secretary's deadline to  
11 canvass the results of elections for state office, amendments, and measures—and if a county  
12 did not certify by that deadline, its votes would not be included in the statewide canvass.  
13 Then-Secretary of State Katie Hobbs filed a similar lawsuit explaining the consequences of  
14 the Cochise Board's failure to canvass its results: "the Secretary will have no choice but to  
15 complete the statewide canvass by December 8 without Cochise County's votes included."  
16 Compl. ¶ 4, *Hobbs v. Crosby*, No. CV2022-00553 (Cochise Cnty. Super. Ct. Nov. 28, 2022).  
17 It took a court order for the Cochise Board to certify its election results.

## 18 **II. The 2023 EPM responds by underscoring relevant Arizona law.**

19 Arizona law requires the Secretary to "prescribe rules to achieve and maintain the  
20 maximum degree of correctness, impartiality, uniformity and efficiency on the procedures  
21 for early voting and voting" in the EPM. A.R.S. § 16-452(A)–(B). Like past EPMs, the  
22 2023 EPM contains guidance to ensure that elections are administered consistently and  
23 fairly across the state, addressing topics ranging from voter registration to certification to  
24 voter intimidation.<sup>3</sup> *See* A.R.S. §§ 16-100 to -184, 16-400 to -711, 16-1001 to -1022. The

25 \_\_\_\_\_  
26 <sup>2</sup> CochiseCountyAZ, *20221118 Special Meeting General Election Canvass* at 2:20:41–2  
:21:28, YouTube (Nov. 21, 2022), <https://www.youtube.com/watch?v=RvAxd054xoM>.

27 <sup>3</sup> *See State of Ariz. 2023 Elections Procedures Manual*, Ariz. Sec'y of State (Dec. 30, 2023),  
28 [https://apps.azsos.gov/election/files/epm/2023/EPM\\_20231231\\_Final\\_Edits\\_to\\_Cal\\_1\\_11\\_2024.pdf](https://apps.azsos.gov/election/files/epm/2023/EPM_20231231_Final_Edits_to_Cal_1_11_2024.pdf). Consistent with Arizona law, the 2023 EPM was drafted in "consultation with

1 provisions that Plaintiffs challenge here were plainly added to prevent conduct that  
 2 threatened Arizona’s elections in 2022 and forced the Alliance and Stephenson to sue to  
 3 protect their rights. First, the EPM elaborates its voter intimidation guidance by providing  
 4 examples of conduct that may be prohibited by Arizona law so that officials can readily  
 5 identify and deter it. *See* EPM ch. 9, § III(D). Second, it emphasizes the Secretary’s  
 6 mandatory duty to canvass the election results by the statutory deadline and underscores  
 7 that the Secretary has no discretion to extend that deadline. *See* EPM, ch. 13, § II(B)(2).

8 **III. This lawsuit is the most recent attack on these or similar election procedures.**

9 No less than seven lawsuits have been filed recently in Arizona state courts  
 10 challenging election procedures, with six filed in the last five months alone. Some contain  
 11 nearly identical challenges to the ones that Plaintiffs bring here. They are:

- 12 • Consolidated challenges to EPM signature matching procedures, *Ariz. Free Enter. Club v. Fontes*, No. S1300CV202300202 (Yavapai Cnty. Super. Ct), and drop box authorizations. *Ariz. Free Enter. Club v. Fontes*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct.). The Alliance intervened as a defendant and the court granted defendants summary judgment. *See* Order, *Ariz. Free Enter. Club*, No. S1300CV202300872 (Yavapai Cnty. Super. Ct. Apr. 25, 2024). In doing so, the court recognized the Secretary’s legal authority to define provisions of Arizona election law under Arizona law. *Id.*<sup>4</sup>
- 13 • Mohave County Supervisor Ron Gould sued the Attorney General seeking permission to conduct a full hand count. *Gould v. Mayes*, No. CV2024-000815 (Maricopa Cnty. Super. Ct.). The Alliance intervened as a defendant, and they and the Attorney General moved to dismiss. Briefing is ongoing.
- 14 • Two state legislators challenged one of the same provisions that Plaintiffs challenge here—Chapter 13, Section 2, Subsection B(2) of the EPM—which concerns the scope of the Secretary’s duty to canvass election returns. *Petersen v. Fontes*, No. CV2024-001942 (Maricopa Cnty. Super. Ct.). The Secretary moved to dismiss, and the motion was consolidated with a final merits hearing; judgment is pending.<sup>5</sup>

15 each county board of supervisors” and was “approved by the Governor and the Attorney  
 16 General.” A.R.S. § 16-452(A)–(B).

17 <sup>4</sup> Plaintiffs have appealed.

18 <sup>5</sup> In this case and *Arizona Free Enterprise Club v. Fontes*, No. CV2024-002760 (Maricopa  
 19 Cnty. Super. Ct.), the court denied the Alliance’s motion to intervene but allowed it to seek  
 20 participation as amicus. *See, e.g.,* Ruling, *Petersen*, No. CV2024-001942 (Maricopa Cnty.  
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- 1
- 2 • America First Policy Institute (a plaintiff here), with others sued in state court
- 3 making the same claim that Plaintiffs make here against the 2023 EPM’s guidance
- 4 on voter intimidation. *See* First Am. Compl., *Ariz. Free Enter. Club*, No. CV2024-
- 5 002760 (Maricopa Cnty. Super. Ct. April 16, 2024). The Secretary and Attorney
- 6 General moved to dismiss; the motions are pending.
- 7
- 8 • The RNC challenged the 2023 EPM in its entirety. *RNC v. Fontes*, No. CV2024-
- 9 050553 (Maricopa Cnty. Super. Ct.). The Alliance intervened, and the Secretary
- 10 along with other Intervenor-Defendants moved to dismiss. On May 10, 2024, the
- 11 court granted the motions to dismiss. *See* Minute Order, *RNC*, CV2024-050553
- 12 (Maricopa Cnty. Super. Ct. May 10, 2024).
- 13
- 14 • A challenge to a dozen election administration practices, including counties’ use of
- 15 drop boxes, ballot chain of custody and reconciliation procedures, and early ballot
- 16 signature verification processes. *See Strong Cmty. Found. of Ariz., Inc. v. Yavapai*
- 17 *County*, No. S1300CV202400175 (Yavapai Cnty. Super. Ct.). The Alliance
- 18 intervened as a defendant and moved to dismiss; the motion is pending.

#### 13 **IV. Plaintiffs’ present lawsuit**

14 This challenge largely borrows claims from the above state court efforts. In Count I,

15 Plaintiffs—private parties, not government actors—ask for relief that would embolden

16 counties to ignore their mandatory deadline to canvass election results. *Cf. Petersen*, No.

17 CV2024-001942 (challenging same EPM provision). In Count II, Plaintiffs seek to erase

18 the EPM provisions providing important guidelines to help election officials protect

19 Arizona voters from voter intimidation—conduct prohibited by Arizona law. *Cf. Ariz. Free*

20 *Enter. Club*, No. CV2024-002760 (bringing same claim under state law).

#### 21 **V. Proposed Intervenor-Defendants**

22 Alfred Lomahquahu is a Hopi tribe member and the Registrar for the Hopi Tribal

23 Elections Office. Ex. B, Decl. of Alfred Lomahquahu ¶¶ 2–3 (“Lomahquahu Decl.”).

24 Lomahquahu has extensive experience administering elections and works alongside county

25 and state election officials to enfranchise tribe members, who face unique challenges when

26 voting and are particularly vulnerable to threats like voter intimidation. *Id.* ¶¶ 6–11. As an

27 \_\_\_\_\_

28 Super. Ct. Mar. 7, 2024); Minute Entry, *Ariz. Free Enter. Club*, No. CV2024-002760  
(Maricopa Cnty. Super. Ct. June 7, 2024).

1 election administrator and in his work to enfranchise members of this historically  
2 underserved community, he also has a strong interest in preserving the EPM’s guidance,  
3 which helps him and his colleagues who administer non-tribal elections fulfill their duty to  
4 administer safe and secure elections. *Id.* ¶ 12. Changes to election rules typically occur only  
5 after a tribal consultation with tribal election officials like Lomahquahu. *Id.* ¶ 4. Thus,  
6 Lomahquahu is deeply concerned that Plaintiffs’ requested relief could cause harm to him,  
7 as a member of the Hopi tribe, other members of his community, and local officials  
8 throughout Arizona. *Id.* ¶ 13.

9         Stephani Stephenson is a registered voter in Cochise County. *See* Ex. C, Decl. of  
10 Stephani Stephenson ¶ 2 (“Stephenson Decl.”). Stephenson has a significant interest in  
11 preserving her right to vote and ensuring election officials perform their mandatory duties  
12 in compliance with the state’s election laws. *Id.* ¶ 7. Like the Alliance, Ms. Stephenson was  
13 a plaintiff in litigation involving the Cochise County Board of Supervisors’ attempt to  
14 conduct an unlawful hand count audit of ballots, which would have delayed election results,  
15 and its refusal to canvass its 2022 election results by the statutory deadline. *Id.* ¶¶ 4–5.

16         The Alliance is a nonpartisan 501(c)(4) membership organization with nearly 51,000  
17 members in Arizona in nearly every county in the state. *See* Ex. D, Decl. of Dora Vasquez  
18 ¶ 4 (“Vasquez Decl.”). Its mission is to ensure social and economic justice and protect the  
19 civil rights of retirees after a lifetime of work, and to advance that mission the Alliance is  
20 dedicated to ensuring its members have access to and can meaningfully participate in  
21 Arizona’s elections. *Id.* ¶ 5. The Alliance accordingly invests resources in conducting voter  
22 education programs, including by distributing materials that educate voters on registering  
23 to vote, obtaining ballots, and navigating election procedures. *Id.* ¶ 6. It also provides direct  
24 assistance to members who have questions about how to vote or concerns about ensuring  
25 that their vote is counted. *Id.* The Alliance has been involved in litigation involving many  
26 of the same or similar issues that are now before the Court, including litigation over county  
27 certification delays, voter intimidation at drop boxes, and the legality of some of the same  
28 or related EPM provisions that Plaintiffs challenge here.

**LEGAL STANDARD**

Rule 24(a) is “broadly construed” because “a liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.” *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 261, 265 (D. Ariz. 2020) (quoting *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011)). To determine if an applicant has a right to intervene under this Rule, courts apply a “four-part test”: (1) the motion must be timely; (2) the intervenor must have a “significantly protectable” interest relating to the subject of the action; (3) they must be so situated that the disposition of the action may as a practical matter impair or impede their ability to protect that interest; and (4) their interest must be inadequately represented by the parties to the action. *United States v. Aerojet Gen. Corp.*, 606 F.3d 1142, 1148 (9th Cir. 2010) (citation omitted). Rule 24(b) permits the Court to allow anyone to intervene where they show: “(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or defense, and the main action, have a question of law or a question of fact in common.” *Arizonans for Fair Elections*, 335 F.R.D. at 268 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002)).<sup>6</sup>

**ARGUMENT**

The Court should grant the motion to intervene as of right because Proposed Intervenors have timely sought leave to participate, the disposition of this case could impair their ability to protect significant interests, and no existing party adequately represents their interests. In the alternative, the Court should grant permissive intervention.

**A. The motion is timely and intervention will not prejudice the parties.**

The motion to intervene comes just over a week after Plaintiffs initiated suit and before any substantive activity has occurred. On timeliness, courts in this Circuit consider: “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice

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<sup>6</sup> Rule 24(c) requires a motion to intervene to “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c). In compliance, Proposed Intervenors attach a proposed Answer. Ex. A. Proposed Intervenors, however, believe that the Complaint should be dismissed and intend to move for dismissal under Rule 12(b) by no later than Defendants’ deadline to respond to the Complaint. Proposed Intervenors request that the Court treat that motion as filed before their proposed Answer.



1 to other parties; and (3) the reason for and length of the delay.” *League of United Latin Am.*  
2 *Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). All three considerations support  
3 finding timeliness here. Proposed Intervenors moved just 10 days after the Complaint was  
4 filed—at the “outset of the litigation”—when timeliness is plain. *See, e.g., Arizonans for*  
5 *Fair Elections*, 335 F.R.D. at 265–66 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481  
6 (9th Cir. 1993)). Given the early stage and because Proposed Intervenors agree to abide by  
7 all deadlines adopted by the Court, there is “no possible prejudice” to the other parties. *Id.*

8 **B. Proposed Intervenors satisfy Rule 24(a)’s interest requirements.**

9 Proposed Intervenors have significant protectable interests that stand to be impaired  
10 by Plaintiffs’ suit, satisfying the second and third elements of Rule 24(a). The interest  
11 standard is liberal and “does not require a specific legal or equitable interest”—“it is  
12 generally enough that the interest is protectable under some law, and that there is a  
13 relationship between the legally protected interest and the claims at issue.” *Wilderness*  
14 *Soc’y*, 630 F.3d at 1179 (quoting *Sierra Club*, 995 F.2d at 1484). Applicants need not show  
15 that impairment is a “certainty,” only that “disposition of the action ‘may’ practically  
16 impair” their “ability to protect their interest in the subject matter of the litigation.” *Citizens*  
17 *for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 900 (9th Cir. 2011) (quoting  
18 Fed. R. Civ. P. 24(a)(2)). Once an applicant shows some protectable interest, courts  
19 generally “have little difficulty concluding that the disposition of [a] case may, as a practical  
20 matter, affect” that interest. *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir.  
21 2006).

22 Proposed Intervenors clear this bar with at least four interests. *First*, they have an  
23 interest in protecting against Plaintiffs’ efforts to undermine the outcomes of prior litigation  
24 in which they were involved. *Cf. Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d  
25 1080, 1081 (8th Cir. 1999) (finding interest requirement “easily satisfie[d]” where “[t]he  
26 disposition of the lawsuit . . . may require resolution of legal and factual issues bearing on  
27 the validity of [legal] agreements” in which proposed intervenor had interests). This  
28 includes the Cochise County suits discussed above, as well as the consequences of litigation

1 responding to voter intimidation, which resulted in a non-final order that protected voters  
2 and informed the EPM's voter intimidation guidance.

3 *Second*, Plaintiffs' requested relief threatens Lomahquahu's and Stephenson's right  
4 to vote and that of the Alliance's members. *See Reynolds v. Sims*, 377 U.S. 533, 555 n.29  
5 (1964) ("The right to vote includes the right to have the ballot counted." (quotation marks  
6 omitted)). This was the very threat of harm upon which Stephenson and the Alliance  
7 brought their successful Cochise County lawsuits in 2022. *See Order, Ariz. All. for Retired*  
8 *Ams.*, No. CV-2022-00518 (Ariz. Sup. Ct. Nov. 7, 2022); *Ariz. All. for Retired Ams. v.*  
9 *Crosby*, 537 P.3d 818, 820 (Ariz. Ct. App. 2023); *Order, Ariz. All. for Retired Ams.*, No.  
10 CV-2022-00552 (Ariz. Sup. Ct. Dec. 1, 2022). Although Plaintiffs cast their lawsuit as an  
11 effort to *protect* voters from disenfranchisement, the relief they seek would have the  
12 opposite effect, inviting and encouraging county officials to promote their own political  
13 agendas by unilaterally delaying statewide certification, disenfranchising voters not just in  
14 their county but *across the state*.

15 Count I rests on the flawed premise that counties have "discretion" to "decide  
16 whether to canvas[s] and certify the election results in the timeframe imposed by statute  
17 and the EPM." Compl. ¶ 20; *see also* ¶¶ 84–85 (assuming a board could "sit[] on their hands  
18 and refus[e] to come to work for a few days during the canvas[s] process," ¶¶ 96–97  
19 (comparing counties' duty to canvass election results to governor's discretion to restore  
20 voting rights of persons with felony convictions). The challenged provision is meant to  
21 protect against counties effectively disenfranchising their voters, because the Secretary has  
22 a mandatory duty under Arizona law to canvass the general election results by November  
23 25, 2024. *See* A.R.S. § 16-642(A)(1)(b).<sup>7</sup> The EPM simply underscores the legal reality,

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24  
25 <sup>7</sup> This deadline is critical to ensure that Arizona voters' votes in the presidential election are  
26 given effect. Federal law requires that each state issue a certificate of ascertainment of  
27 appointment of presidential electors "[n]ot later than the date that is 6 days before the time  
28 fixed for the meeting of the electors," 3 U.S.C. § 5(a)(1). This year, that deadline is  
December 11. The Secretary cannot issue certificates of ascertainment until the statewide  
canvass is complete. A.R.S. § 16-212(B). Requiring the Secretary to delay the statewide

1 making clear that if counties break the law by failing to canvass by November 25, the  
2 Secretary lacks the power to delay the statewide canvass to accommodate their  
3 intransigence. As Proposed Intervenors know from firsthand experience, clarifying the  
4 mandatory nature of this deadline and the consequences of missing it is imperative to ensure  
5 against repeated efforts to illegally delay election certification at the expense of voters.

6 Similarly, if Plaintiffs are successful on Count II, it will encourage voter  
7 intimidation, threatening Lomahquahu's, Stephenson's, and the Alliance's members'  
8 ability to freely cast ballots. Courts have consistently held that an interest in protecting  
9 voting rights satisfies even the "more stringent" requirement of Article III, which "compels  
10 the conclusion that they have an adequate interest" for purposes of Rule 24. *See Yniguez v.*  
11 *Arizona*, 939 F.2d 727, 735 (9th Cir. 1991); *see also Mi Familia Vota v. Fontes*, No. CV-  
12 22-00509, 2024 WL 862406, at \*29–32 (D. Ariz. Feb. 29, 2024) (finding organizations had  
13 standing to protect members' voting rights). This is the same interest the Alliance asserted  
14 in *Arizona Alliance for Retired Ams. v. Clean Elections USA*, No. CV-22-01823-PHX-  
15 MTL, 2022 WL 17088041 (D. Ariz. Nov. 1, 2022). Similarly, here, Plaintiffs' efforts to  
16 mute or strip protections against voter intimidation pose significant dangers to the  
17 Alliance's members. Vasquez Decl. ¶ 7. A significant portion of the voter intimidation that  
18 occurred during the 2022 election took place at drop boxes, yet drop boxes are often the  
19 best option for Alliance members to vote—sometimes they are the only option. *Id.* ¶¶ 8, 9.  
20 Preventing harassment and intimidation of their members and constituents is of paramount  
21 importance to the Alliance. *See id.* ¶ 11. Similarly, many in Lomahquahu's Hopi community  
22 struggle to vote in person because of transportation issues or because they live outside of  
23 the reservation. Lomahquahu Decl. ¶ 10. Drop boxes are uniquely important to these voters,  
24 but they are also often the targets of intimidation and harassment. *Id.* The voter intimidation  
25 \_\_\_\_\_  
26 canvass until all counties certify their election results would seriously threaten his ability to  
27 meet this federal deadline. Similarly, because the Secretary cannot declare the winners of  
28 statewide, legislative, judicial, or ballot measure elections until the canvass is done, *see*  
A.R.S. § 16-650, Plaintiffs' requested relief would put Proposed Intervenors' votes in these  
races in limbo until counties come around to certifying their own election results.

1 guidance thus protects Hopi voters by enabling election officials to curtail voter  
2 intimidation and administer safe elections. *Id.* ¶ 11.

3 *Third*, the challenged EPM provisions are particularly important to Lomahquahu as  
4 an election administrator. *Id.* ¶ 12. The 2023 EPM provides him and his colleagues who  
5 administer non-tribal elections with clarity on the types of behaviors that constitute  
6 unlawful voter intimidation so that they can identify, report, and deter it. *Id.* Robust  
7 guidance like that currently in the EPM helps him and his non-tribal colleagues fulfill their  
8 duties to administer safe and secure elections, *id.*, and helps Lomahquahu to better support  
9 non-tribal elections by making it easier to recruit volunteers and poll watchers, *id.* ¶ 11.  
10 Additionally, Lomahquahu has a professional interest in maintaining clear canvassing  
11 deadlines. *Id.* ¶ 14. From his experience working alongside non-tribal election officials,  
12 Lomahquahu knows that clear deadlines incentivize counties to timely canvass their  
13 election returns. *Id.* Without such an incentive, there is a risk that constituents' votes will  
14 be held in limbo if one county does not timely canvass their returns. *Id.* ¶ 15.

15 *Fourth*, enjoining the EPM's voter intimidation guidance would require the Alliance  
16 to divert resources away from its voter registration and mobilization efforts to ensure that  
17 its members are protected from voter intimidation and even disenfranchisement—causing  
18 a consequent drain on its resources that will harm its mission. Vasquez Decl. ¶¶ 11–12. This  
19 further constitutes a protectable interest sufficient for intervention as of right. *See, e.g., E.*  
20 *Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021). If Plaintiffs are  
21 successful, the Alliance would have to respond to protect its members, e.g., by developing  
22 a “buddy system” and its own safety protocol to ensure they felt safe in returning their  
23 ballots. Vasquez Decl. ¶ 13. The Alliance would also need to take new and additional steps  
24 to educate its members about the changes in the EPM via the media, in-person town halls,  
25 social media, email, traditional mail, and through phone banking. *Id.* The Alliance has very  
26 limited resources and this would come at a significant cost to the critical voter registration  
27 and get-out-the-vote activities that the Alliance planned for this presidential election year.  
28 *Id.* ¶ 14. Any diversion of resources away from these activities will, in turn, frustrate the

1 Alliance’s ability to ensure social and economic justice for retirees after a lifetime of work.  
2 *Id.* ¶ 15.

3 **C. The parties do not adequately represent Proposed Intervenors’ interests.**

4 Proposed Intervenors also satisfy Rule 24(a)’s inadequacy requirement. “[T]he  
5 burden of making this showing is minimal” and is “satisfied if the applicant shows that  
6 representation of its interests *may* be inadequate.” *Sagebrush Rebellion Inc. v. Watt*, 713  
7 F.2d 525, 528 (9th Cir. 1983). Courts are “liberal in finding” this requirement met because  
8 “there is good reason in most cases to suppose that the applicant is the best judge of the  
9 representation of the applicant’s own interests.” 7C Charles Alan Wright & Arthur R.  
10 Miller, *Federal Practice & Procedure* § 1909 (3d ed. 2024). The Ninth Circuit “considers  
11 three factors in determining adequacy of representation: (1) whether the interest of a present  
12 party is such that it will *undoubtedly* make all of a proposed intervenor’s arguments; (2)  
13 whether the present party is *capable and willing* to make such arguments; and (3) whether  
14 a proposed intervenor *would offer any necessary elements to the proceeding that other*  
15 *parties would neglect.*” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)  
16 (emphases added). In addition, the Ninth Circuit and the Supreme Court have recently made  
17 clear that a presumption of adequacy applies, if at all, only where the parties’ interests are  
18 “identical.” *Callahan v. Brookdale Senior Living Comms.*, 42 F.4th 1013, 1021 n.5 (9th Cir.  
19 2022) (acknowledging that *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179 (2022)  
20 “calls into question whether the application of such a presumption is appropriate.”).<sup>8</sup>

21 **1. Proposed Intervenors’ interests are not “identical” to those of existing  
22 parties.**

23 Because Proposed Intervenors and the existing parties do not share “identical”  
24 interests, it is not “undoubtedly” true that the parties will “make all of [] proposed  
25 intervenor[s’] arguments,” *Arakaki*, 324 F.3d at 1086, and no presumption of adequate

26 <sup>8</sup> Although *Berger* involved legislative intervenors and did “not decide whether a  
27 presumption of adequate representation might sometimes be appropriate when a private  
28 litigant seeks to defend a law alongside the government,” *Berger*, 597 U.S. at 197, it made  
clear that, at a *minimum*, a presumption of adequacy cannot apply unless the intervenors’  
interests are “identical” to those of government defendants. *Id.*

1 representation applies. Interests are not “identical”—and parties therefore do not share the  
2 same “ultimate goal”—merely because the parties “fall on the same side of the dispute” as  
3 the existing Defendants. *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL  
4 3074351, at \*3 (E.D. Cal. June 10, 2020). “The government’s representation of the public  
5 interest may not be identical to the individual parochial interest of a particular group just  
6 because both entities occupy the same posture in the litigation.” *Citizens for Balanced Use*,  
7 647 F.3d at 899 (quotation marks omitted). Instead, the Court must consider the parties’  
8 interests in the litigation, not merely their desired outcome. *Ctr. for Biological Diversity v.*  
9 *U.S. Bureau of Land Mgmt.*, 266 F.R.D. 369, 374 (D. Ariz. 2010) (granting intervention as  
10 of right to NRA, whose interest “focused on the hunting aspect and protecting its members’  
11 rights and all hunters’ rights to hunt with lead ammunition,” which was “not the objective  
12 of the current Defendants”). Because “the Venn-diagram of interests that Proposed  
13 Intervenors and the [existing parties] assert do[es] not entirely overlap,” their interests are  
14 not “genuinely identical,” and no presumption of adequacy can be applied. Op. & Order at  
15 10, *Judicial Watch, Inc. v. Ill. State Bd. of Elections*, No. 1:24-cv-01867 (N.D. Ill. July 18,  
16 2024), ECF No. 52.

17 Proposed Intervenors’ interests in this case include increasing Native American  
18 voters’ access to the franchise, protecting voters from harassment and intimidation by  
19 ensuring that elections officials have clear guidance to consult as they do so, preventing  
20 disenfranchisement of those same voters, and avoiding the diversion of their mission-  
21 critical resources. Proposed Intervenors also have a direct interest in avoiding a repeat of  
22 the same litigation that the Alliance and Stephenson were compelled to bring both in this  
23 Court and in Cochise County in 2022. None of the existing parties adequately represent  
24 these interests. First, while Plaintiffs purport to represent the interests of voters, the relief  
25 they seek would undermine the very interests they purport to champion. For their part, the  
26 Defendants possess only a general obligation to administer Arizona’s elections. They are  
27 not directly involved with administering elections or turning out voters on the local level.  
28 In contrast, Proposed Intervenors are intimately involved in elections at the local level, and

1 have a different interest in maintaining the EPM provisions at issue as election  
2 administrators, tribal members, and voters, than the State Defendants, whose focus is  
3 necessarily on their administrative interest in completing the statewide canvass with enough  
4 time for recounts. In even much closer cases, courts have “often concluded that  
5 governmental entities do not adequately represent the interests of aspiring intervenors.”  
6 *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). Because the named  
7 Defendants must “bear in mind broader public-policy implications,” *Berger*, 597 U.S. at  
8 196, the burden to demonstrate inadequate representation remains “minimal.” *Id.* (quoting  
9 *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)).

10 **2. The existing parties’ representation of Proposed Intervenors’**  
11 **interests is inadequate under any standard.**

12 Even if a presumption of adequacy could apply, Proposed Intervenors overcome it  
13 because their interests are inadequately aligned with those of the Defendants. *Sw. Ctr. for*  
14 *Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (“[E]ven if the presumption  
15 applies, it is rebutted here because Applicants and Defendants do not have sufficiently  
16 congruent interests.”). They also, therefore, necessarily satisfy the “minimal” burden of  
17 demonstrating inadequacy in the absence of a presumption. *Berger*, 597 U.S. at 196. “[I]t  
18 is not Applicants’ burden at this stage . . . to anticipate specific differences in trial strategy.  
19 It is sufficient for Applicants to show that, because of the difference in interests, it is likely  
20 that Defendants will not advance the same arguments as Applicants.” *Sw. Ctr. for Biological*  
21 *Diversity*, 268 F.3d at 824. Nonetheless, because of their divergent interests, Proposed  
22 Intervenors’ approach is likely to diverge from that of Defendants in several ways.

23 *First*, because Proposed Intervenors “give voice to a different perspective,” *Berger*,  
24 597 U.S. at 198, they are likely to make arguments that no “present party is capable and  
25 willing to make.” *Arakaki*, 324 F.3d at 1086. In particular, Proposed Intervenors offer the  
26 perspective of an election administrator who has experience referring to and implementing  
27 the EPM to administer elections and protect his constituents—Native American voters who  
28 are uniquely vulnerable to disenfranchisement and voter intimidation and who the state has

1 traditionally been unable to adequately reach and enfranchise. Lomahquahu Decl. ¶¶ 6–7.  
2 11. The State Defendants drafted and approved the EPM, but they are not tasked with  
3 implementing it at the local level. Similarly, they are not recipients of it, nor are they  
4 protected by it.

5 These are dramatically different perspectives and as the state court litigation has  
6 shown, the difference is not merely philosophical. For example, in the state court case where  
7 plaintiffs challenge the voter intimidation guidance, the state’s approach has been to contest  
8 the plaintiffs’ standing based on the assertion that the guidance is non-mandatory and does  
9 not regulate speech. *See, e.g.*, Defs.’ Mots. to Dismiss, *Ariz. Free Enter. Club*, No. CV2024-  
10 002760 (Maricopa Cnty. Super. Ct. Mar. 20, 2024). They have not substantially argued that  
11 the guidance should be upheld due to its functional importance to local election  
12 administrators—a perspective Proposed Interveners can offer here. Similarly, Proposed  
13 Interveners seek to offer the perspective of voters whose interests lie in voting free from  
14 harassment and intimidation, while the current Defendants, as state officials, will likely  
15 need to balance the voices of other citizens—even those who would intimidate other voters.  
16 Perhaps for this reason, the state has not argued in the state court case that the voter  
17 intimidation guidance is narrowly tailored to serve a compelling state interest. *Id.* Proposed  
18 Interveners would make that argument here.

19 *Second*, Proposed Interveners offer “necessary elements to the proceeding that other  
20 parties would neglect.” *Arakaki*, 324 F.3d at 1086. For example, Proposed Interveners are  
21 prepared to offer testimony from voters concerning the importance of the challenged  
22 provisions in *protecting* voters. That testimony is important because Plaintiffs challenge the  
23 mandatory canvassing deadline as an undue burden on the right to vote, Compl. ¶¶ 142–  
24 148, which must be analyzed by comparing the burdens the rule imposes on the right to  
25 vote with the state’s interests in enforcing the rule at issue, *see Mecinas v. Hobbs*, 30 F.4th  
26 890, 904 (9th Cir. 2022). But there are currently no voters on the other side of this action to  
27 push back on the premise of Plaintiffs’ claim and offer that type of contrary burden-specific  
28 evidence. The existing Defendants are likely to focus their defense on their robust



1 administrative interests in enforcing the EPM’s mandatory canvassing deadline. Proposed  
2 Intervenors seek to counter the foundation of Plaintiffs’ claim: that the mandatory  
3 canvassing deadline is an anti-voter rule that burdens voters at all. Proposed Intervenors  
4 also offer the perspective and testimony of Lomahquahu—a tribal elections administrator  
5 who can testify about how the EPM guidance enables him and his colleagues to administer  
6 elections and to assist tribal members in safely exercising their right to vote in non-tribal  
7 elections in the counties where they reside. That local perspective on the compelling  
8 interests in preserving the challenged EPM provisions is not represented by the current  
9 parties.

10 **VI. In the alternative, the Court should grant permissive intervention.**

11 The Court also may decline to consider whether Proposed Intervenors satisfy Rule  
12 24(a) and instead grant permissive intervention under 24(b), whose requirements are easily  
13 satisfied here. Proposed Intervenors have submitted a timely motion and have defenses that  
14 share with the main action a common question of law or fact. *See* Fed. R. Civ. P. 24(b);  
15 *Arizonans for Fair Elections*, 335 F.R.D. at 268; *see also* Proposed Answer, Ex. A. In  
16 exercising its discretion in determining whether to grant permissive intervention, courts also  
17 consider whether intervention will “unduly delay or prejudice the adjudication of the  
18 original parties’ rights.” *Ariz. Democratic Party v. Hobbs*, No. CV-20-01143, 2020 WL  
19 6559160, at \*1 (D. Ariz. June 26, 2020) (quoting Fed. R. Civ. P. 24(b)). It will not here.  
20 Proposed Intervenors agree to abide by any schedule the Court enters and will work to  
21 minimize any duplication across briefing with the named Defendants.<sup>9</sup>

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23  
24 <sup>9</sup> The Alliance (and its sister affiliates in other states) has been repeatedly granted  
25 intervention in lawsuits that challenge election procedures. *See, e.g., Ariz. Free Enter. Club*,  
26 No. S1300CV202300202; *Ariz. Free Enter. Club*, No. S1300CV202300872; *RNC*, No.  
27 CV2024-050553; *Strong Cmty. Found. of Ariz., Inc. v. Yavapai Cnty*, No.  
28 S1300CV202400175; *RNC v. Aguilar*, No. 2:24-cv-00518-CDS-MDC (D. Nev.); *RNC v.*  
*Burgess*, No. 3:24-cv-00198-MMD-CLB (D. Nev.); *RNC v. Aguilar*, No. 24-OC-00101-B  
(Nev. Dist. Ct.). And the Alliance’s intervention has never caused any undue delay or  
prejudice to the original parties.

1 This Court should likewise exercise its discretion to grant Proposed Intervenor’s  
2 motion because they will “significantly contribute to full development of the underlying  
3 factual issues in the suit and to the just and equitable adjudication of the legal questions  
4 presented.” *Ariz. All. for Retired Ams. v. Hobbs*, No. CV-22-01374-PHX-GMS, 2022 WL  
5 4448320, at \*2 (D. Ariz. Sept. 23, 2022). While Plaintiffs seek judicial intervention to  
6 prevent the Secretary from fulfilling his statutory duty to canvass the state’s election results  
7 when a county chooses to defy its own mandatory canvassing deadline, and Defendants  
8 must focus on the State’s administrative interest in getting its canvass started and finished  
9 with enough time for recounts, there is no party dedicated solely to the protection of the  
10 rights of the voters who are at risk of being disenfranchised. Proposed Intervenor are  
11 prepared to offer perspective, arguments, and testimony that no other party brings to the  
12 table. And, having successfully litigated claims arising from the very issues that the  
13 challenged EPM provisions were meant to address, they possess unique insight into the  
14 practical consequences of Plaintiffs’ requested relief. Proposed Intervenor are therefore  
15 well situated to contribute to the just and expeditious resolution of this case.

16 **CONCLUSION**

17 For the foregoing reasons, Proposed Intervenor’s motion to intervene as defendants  
18 should be granted.

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RESPECTFULLY SUBMITTED this 18th day of July, 2024.

By: /s/ James E. Barton II

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