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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRELL ISSA,

Plaintiff,

v.

SHIRLEY N. WEBER, in her official capacity as Secretary of State of California,

Defendant.

Case No: 25-cv-598-AGS-JLB

VET VOICE FOUNDATION AND CALIFORNIA ALLIANCE FOR RETIRED AMERICANS' REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

DATE: May 16, 2025
TIME: 2:00 P.M.
COURTROOM: 5C
JUDGE: Hon. Andrew G. Schopler

INTRODUCTION

Vet Voice and CARA are entitled to intervention as of right. They have direct, significant, and protectable interests in (1) the voting rights of their members and constituents who are uniquely reliant on California's post-election ballot-receipt deadline, and (2) protecting their own resources against the drain and diversion that would result if they had to act to protect their members and constituents against disenfranchisement if Plaintiff Issa is granted his requested relief. While Issa concedes the first interest is sufficient for intervention, he claims it is unrelated to this case. But of course this case is about voting rights: California law currently permits voters' timely cast mail ballots to be counted if they are received within seven days after election day, and Issa wants to terminate that right. Issa concedes the second interest would be sufficient for standing, but contends that Rule 24 requires something more. Ninth Circuit law holds otherwise. *See Cal. Dep't of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th 1078, 1085 (9th Cir. 2022).

Much of Issa's remaining arguments dispute whether Defendant Secretary of State adequately represents Proposed Intervenors' interests, but the Secretary is not charged with specifically protecting the interests of Proposed Intervenors' members—and she certainly does not have an interest in preserving Proposed Intervenors' resources. Moreover, the President's recent directive that federal funding for state election administration should be contingent on states eliminating post-election ballot-receipt deadlines exactly like the one at issue in this case imposes unprecedented pressure on officials like the Secretary. Finally, there is no basis to deny Proposed Intervenors' alternative request that they be granted permissive intervention. The Court should grant the motion to intervene.

ARGUMENT

I. Proposed Intervenors satisfy the standard for intervention as of right.

A. Proposed Intervenors identified sufficient interests.

Issa admits that Proposed Intervenors "sufficiently assert an interest protected by law, namely protecting the voting rights of their members." Pl.'s Opp'n to Mots. to

Intervene ("Opp'n") at 5 (May 2, 2025), ECF No. 9. He nonetheless opposes intervention by arguing that those interests do not have a "relationship" to Issa's lawsuit. *Id.* But Issa's suggestion that only the threatened *elimination* of the right to cast a mail ballot at all could suffice to show a protectable interest is wrong. Changing the deadline by which ballots must be received necessarily limits Proposed Intervenors' members and constituents' existing voting rights under California law to cast their mail ballots through election day and have them counted so long as they are received within seven days of the election. Indeed, Proposed Intervenors have been granted intervention in substantially identical lawsuits seeking to eliminate post-election ballot-receipt deadlines. *See* Text Order, *Republican Nat'l Comm. v. Wetzel*, No. 1:24-cv-00025-LGRPM (S.D. Miss. Mar. 4, 2024); Order, *Republican Nat'l Comm. v. Burgess*, No. 3:24-cv-00198-MMD-CLB (D. Nev. June 6, 2024), ECF No. 70.

Issa's arguments on prong one of the intervention-as-of-right standard also fail for several other reasons. First, Issa cites two inapposite cases to argue that there is no "relationship" between Proposed Intervenors' members' voting rights and his demand that the Court truncate California's ballot receipt deadline. Opp'n at 5 (citing *Donnelly v. Glickman*, 159 F.3d 405 (9th Cir. 1998), and *United States v. Alisal Water Corp.*, 370 F.3d 915 (9th Cir. 2004)). In both, the proposed intervenors' asserted interests were based on grievances against the named defendant that were entirely unrelated to the action. *See Donnelly*, 159 F.3d at 407 (male employees sought to intervene in female employees' hostile workplace suit to assert independent claims against employer); *Alisal Water Corp.*, 370 F.3d at 918 (developer sought to intervene in environmental enforcement action to assert its interests in a monetary judgment previously entered against the defendant on unrelated contract claims). Here, Proposed Intervenors' interest in protecting their members' voting rights are squarely implicated by the claims and allegations that make up Issa's complaint. As Proposed Intervenors have explained, any success that Issa achieves in condensing the mail-voting period will directly undermine Proposed Intervenors' interests in maintaining the full mail-voting period that California currently provides. *See*

Vet Voice Intervenors' Br. in Supp. of Mot. to Intervene ("VV MTI") at 13–17, ECF No. 7-1. It will also threaten to disenfranchise Vet Voice's and the Alliance's members and constituents, who already face unique obstacles to voting, such as returning ballots from distant and inaccessible deployment locations with unreliable mail service, and dealing with lack of transportation, limited mobility, or physical disability. Goldbeck Decl. ¶ 20, ECF No. 7-2; England Decl. ¶ 11, ECF No. 7-3.

Second, Issa faults Proposed Intervenors for insufficiently corroborating their concern that an election-day ballot receipt deadline would disenfranchise their members. *See* Opp'n at 6. This argument is doubly confused. Because California does not have an election-day ballot receipt deadline, there cannot be evidence of it disenfranchising Proposed Intervenors' California members and constituents—that will only occur if Issa prevails on his claims in this action. Moreover, because "the propriety of intervention must be determined before discovery," courts are required to "take all well-pleaded, nonconclusory allegations in the motion to intervene . . . and declarations supporting the motion *as true* absent sham, frivolity or other objections." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001) (emphasis added).[1] Proposed Intervenors submitted declarations that detail why contracting California's ballot receipt deadline by seven days would injure their veteran and retired members. *See generally* Goldbeck Decl.; England Decl. Issa's only rebuttal is to speculate that maybe all will be fine. He has not identified any "sham, frivolity or other objections" that would render Proposed Intervenors' factual claims untrue. *Berg*, 268 F.3d at 820.

Third, Issa implies that Proposed Intervenors are required to show that his requested relief would be unconstitutional. *See* Opp'n at 7. This is incorrect. Proposed Intervenors' argument is that the Constitution empowers states to accept timely cast mail ballots that are received after election day, and thus California permissibly secures to Proposed Intervenors a state-law right to cast a ballot on election day that will be counted

[1] The decision Issa relies on, *Donald J. Trump for President, Inc. v. Bullock*, 491 F. Supp. 3d 814, 836 (D. Mont. 2020), was entered after trial.

even if the postal service does not deliver that ballot until several days later. That is, the legal source of Proposed Intervenors' interest is Cal. Elec. Code § 3020—the legitimate codification of the right to have a mail ballot counted that is received within a week of election day.

Fourth, Issa asserts—without citation—that Rule 24 requires an injury more severe than what Article III requires for standing. *See* Opp'n at 8. In fact, courts have recognized the opposite: proposed parties with standing necessarily satisfy Rule 24's interest requirement. *E.g.*, *Crossroads Grassroots Pol'y Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 320 (D.C. Cir. 2015). Where, as here, Proposed Intervenors seek to participate as defendants, a showing that the plaintiff's requested relief threatens an injury sufficient for standing surpasses the Ninth Circuit's standard for intervention. *See Jim Dobbas, Inc.*, 54 F.4th at 1085. Issa concedes that Proposed Intervenors have shown exactly that. *See* Opp'n at 8.

Lacking support in case law, Issa resorts to semantics. He says his claims would not "restrict" Proposed Intervenors' voting-related interests because some mail-voting opportunities would remain if his requested relief were granted. *Id.* at 5–6. But just like the parties who were granted intervention in *Issa v. Newsom*, Proposed Intervenors seek to maintain the pro-voter rules that Issa is suing to enjoin. *See* No. 20-CV-01044, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020). Not only would the remedy Issa seeks mean that mail voters will have less time to consider the candidates and issues before they must cast their ballots, it would also create great uncertainty about the functional deadline for voters to submit their ballots in the mail. *See* VV MTI at 8–9, 10–11. Many will conclude they need to vote and mail their ballots well before election day—because even small mail delays could mean their disenfranchisement. Proposed Intervenors have strong interests in preventing these outcomes.[2]

[2] The fact that the postal service, rather than Issa, controls delivery times is irrelevant. *Contra* Opp'n at 6–7. Vet Voice's and the Alliance's members and constituents are

B. Proposed Intervenors' interests will be impaired by this case.

Because Proposed Intervenors have significant protectable interests in preserving the voting rights of their members and constituents and their limited organizational resources, it follows that those interests may be impaired by the disposition of this case, which could require the Secretary to discard ballots received after election day. *See Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)) ("Having found that appellants have a significant protectable interest, we have little difficulty concluding that the disposition of this case may, as a practical matter, affect it."); *Berg*, 268 F.3d at 822 ("[I]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." (quotation omitted)).

Issa's only response is to suggest that, rather than intervene here, Proposed Intervenors should bring independent actions against California under statutes that provide for suits by military or overseas voters or that authorize suits for racial discrimination or violations of other federal law. *See* Opp'n at 10 (citing Cal. Elec. Code § 3123(a), 52 U.S.C. § 10301(a), and 42 U.S.C. § 1983). But it is Issa's lawsuit, not California's laws, that threaten harm to Proposed Intervenors. Because Proposed Intervenors seek to *prevent the plaintiff* from impairing their interests by achieving a ruling that would gain the force of law, intervention is the appropriate procedure.

In support of his misguided recommendation, Issa relies on cases that involve requests to intervene as *plaintiffs*, where courts recognized the proposed intervenors could adjudicate their claims against defendants in separate litigation. *See id.* (citing *Donnelly*, 159 F.3d at 409–12, *Haw.-Pac. Venture Cap. Corp. v. Rothbard*, 564 F.2d 1343 (9th Cir.

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particularly vulnerable to disenfranchisement because they rely heavily on mail ballots, and California's ballot receipt deadline ensures their timely cast ballots are counted. Any success that Issa achieves in this action would remove the seven-day buffer for receipt of ballots, thus supplying the but-for cause of disenfranchisement for voters whose mail ballots are submitted on or before election day but delivered the following week.

1977), and *United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002)). Here, Proposed Intervenors have no reason to sue Defendant; they simply seek to prevent Issa from injuring their interests though his lawsuit. *See Smith v. Pangilinan*, 651 F.2d 1320, 1325 (9th Cir. 1981) (preventing an injurious decision from gaining the force of "*stare decisis* may supply the requisite practical impairment warranting intervention of right").

Finally, Issa's argument is also inconsistent with the Ninth Circuit's "liberal policy in favor of intervention," which "serves both efficient resolution of issues and broadened access to the courts." *City of Los Angele*s, 288 F.3d at 398. "By allowing parties with a practical interest in the outcome of a particular case to intervene, [courts] often *prevent* or simplify future litigation involving related issues." *Id.* (emphasis added).

C. Proposed Intervenors' interests are not adequately represented.

Issa's distorted view of the adequacy of representation standard—whereby anyone seeking to intervene must introduce compelling "evidence in the record" that a government defendant will fail to defend a lawsuit, Opp'n at 17—is foreign to both Rule 24 and the Ninth Circuit's application of it. Practically, such a standard would be nearly impossible to meet at early stages of litigation where, as here, a defendant has not yet filed a responsive pleading. Indeed, Issa's distortion of the adequacy of representation standard would seemingly require Proposed Interveners to hold their motion until after merits briefing by the named parties—directly conflicting with Rule 24's mandate for timely filing. And substantively, Issa's interpretation flips Rule 24 "on its head by defining adequacy in terms of what existing parties are going to argue rather than in terms of the interests of the applicants." *United States v. State of Oregon*, 839 F.2d 635, 638 (9th Cir. 1988). Under any standard, Vet Voice and CARA have substantively distinct interests that will not be adequately represented by the Defendant Secretary of State.

Consistent with the Ninth Circuit's long-standing practice of interpreting requirements of intervention "broadly in favor of intervention," Proposed Intervenors face a "minimal" burden of showing only that existing parties' representation of their interests "may be" inadequate. *W. Watersheds Project v. Haaland*, 22 F.4th 828,

835, 840 (9th Cir. 2022). In applying this standard, "courts consider three factors: (1) whether the interest of a present party is such that it *will undoubtedly* make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Id.* at 840–41 (quotation omitted) (emphasis added). Intervention as of right "does not require an absolute certainty that . . . the existing parties will not adequately represent its interests." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 900 (9th Cir. 2011).

Even if the Secretary of State and Proposed Intervenors both share the ultimate objective of upholding California's current ballot receipt deadline, a *compelling showing* is required to rebut the presumption of adequate representation only if their underlying interests are "essentially identical." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 952 (9th Cir. 2009). As the Ninth Circuit recognized, the Supreme Court's recent opinion in *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179 (2022), "calls into question" whether adequate representation can be presumed merely because proposed and existing parties share "ultimate objective." *Callahan v. Brookdale Senior Living Cmtys., Inc.*, 42 F.4th 1013, 1021 n.5 (9th Cir. 2022); *see Berger*, 597 U.S. at 197 ("Where the absentee's interest is similar to, but not identical with, that of one of the parties, that normally is not enough to trigger a presumption of adequate representation." (quotation omitted)). It would be strange for the presumption of adequate representation to be "inappropriate" between entities as similar as two branches of the same government, as in *Berger*, but appropriate for entities as different as a state-wide official and private mission-oriented organizations.

While *Berger* declined to prohibit a presumption of adequacy where the proposed party's interests are *identical* to those of an existing party, *see* 597 U.S. at 197, there is no such perfect overlap here. The Secretary of State—who must balance the competing interests of election administration, budget management, coordination with federal agencies, and the electorate writ large—does not represent the "parochial" interests of Vet Voice and CARA, whose members are uniquely at risk of mail delays and

disenfranchisement under an election day ballot receipt deadline. *Citizens for Balanced Use*, 647 F.3d at 899 ("[T]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)). And even when the interests of private organizations and election officials do not "diverge significantly," courts routinely recognize that there is enough divergence to establish inadequate representation. *Paher v. Cegavske*, No. 320CV00243MMDWGC, 2020 WL 2042365, at *3 (D. Nev. Apr. 28, 2020); *see also Issa*, 2020 WL 3074351, at *3.[3]

Notably, the President is now threatening to withhold critical federal funding if California continues to count mail ballots received after election day. *See* Section 7(a), Executive Order No. 14,248, "Preserving and Protecting the Integrity of American Elections," issued March 25, 2025, 90 Fed. Reg. 14005 (Mar. 25, 2025). With states like California subject to this extreme pressure, it can hardly be said that the Secretary and Proposed Intervenors share "essentially identical" interests. Because Proposed Intervenors do not maintain identical interests in balancing the defense of state laws with the state's eligibility for federal grants, they need only satisfy the "minimal" showing that their interests "may be" inadequately represented. *W. Watersheds Project*, 22 F.4th at 840.

Even applying a presumption of adequacy, Proposed Intervenors have established that their interests are not adequately represented by the Secretary of State. *First*, the divergence of interests between the Secretary of State and Proposed Intervenors is not speculative; it is confirmed by, for instance, CARA's prior oppositional posture litigating against the Secretary of State on behalf of its members harmed by California's examination

[3] Issa attempts to sidestep these cases with the dubious claim that they are illegitimate because they were issued "during the 2020 election cycle on expedited and truncated proceedings." Opp'n at 12. But cases like *Paher* and *Newsom* were decided several months before the 2020 general election, and their election-related context is precisely what makes those cases persuasive in applying Rule 24 to this election-related case.

of signatures on mail ballots. *See Cal. All. for Retired Ams. v. Weber*, No. 24STCP02062 (Cal. Super. filed June 26, 2024). Given the Secretary's history of balancing voters' interests—including the interests of CARA and its members—against competing governmental, political, and administrative interests, it cannot be expected that the Secretary "will undoubtedly make all of a proposed intervenor's arguments." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003). Indeed, where governmental entities do not hold maximal solicitude for individual constitutional rights, that is sufficient to make the "compelling showing" necessary to "warrant intervention as of right." *Citizens for Balanced Use*, 647 F.3d at 899–900. *Second*, the Secretary is now subject to the President's threats of unknown retaliatory actions against the state from the Attorney General of the United States and the elimination of federal funding for elections. *See* Exec. Order No. 14,248, § 7(a). *Third*, only Proposed Intervenors will be able to address the "necessary element" of this case as it concerns overseas voters. Active and former military members and their families are often stationed around the country or overseas during elections, resulting in limited access to or consideration from state officials. Goldbeck Decl. ¶ 8. These voters both uniquely depend upon mail voting and are uniquely vulnerable to disenfranchisement from mail delays. *Id.* ¶¶ 10–12. And while these voters are central to Vet Voice's mission, they are not a primary consideration for statewide officials like the Secretary.

II. There is no basis to deny Proposed Intervenors permissive intervention.

Issa does not dispute that Proposed Intervenors satisfy two of the three threshold requirements for permissive intervention: the motion is timely, and the Court has an independent basis for jurisdiction. *See* Opp'n at 4 n.2, 19–20. In disputing the third requirement—whether Proposed Intervenors assert a defense that shares with the main action a common question of law or fact—Issa argues that Proposed Intervenors' interests "are not at issue in this litigation." *Id.* at 18. That is plainly wrong, *see supra* Section I.A, and, in any event, it misses the point. As demonstrated by their Proposed Answer, Proposed Intervenors' *defenses* share with the complaint common questions of law about the validity

of California's ballot receipt deadline. *See* ECF No. 7-4. That is all Rule 24(b) requires.

Issa's next objection to permissive intervention rehashes his argument that Proposed Intervenors' interests are adequately represented by the Secretary. Opp'n at 18–19. But permissive intervention, unlike intervention as of right, does not require Proposed Intervenors to prove inadequacy of representation. *Compare* Fed. R. Civ. P. 24(a), *with id.* § 24(b). Issa's contrary approach conflicts with the Rule's text and would render permissive intervention superfluous.

Nor would Proposed Intervenors' participation in the case cause prejudice or delay. Proposed Intervenors agreed to be bound by any case schedule. *See* VV MTI at 12; *Thomas v. Andino*, 335 F.R.D. 364, 371 (D.S.C. 2020) (crediting a similar commitment in granting permissive intervention). And Issa's concern about having to respond to briefing by intervening parties is not a reason to deny intervention; as a plaintiff, he "can hardly be said to be prejudiced by having to prove a lawsuit [he] chose to initiate." *Markel Am. Ins. Co. v. Clearview Horizon, Inc.*, No. CV 21-73-M-DLC, 2021 WL 5330405, at *3 (D. Mont. Nov. 16, 2021) (quotation omitted).

Finally, Issa notes that in a prior case he brought, there were "seven political and voter-related organizations moving to intervene." Opp'n at 20. That is irrelevant; Issa does not identify any prejudice or delay in that case, and in any event, this Court can limit the intervention of future proposed intervenors that assert interests adequately represented by Vet Voice and CARA.

CONCLUSION

Vet Voice and CARA respectfully request that the Court grant their motion to intervene as a matter of right or, in the alternative, permissively.

Dated: May 9, 2025

Respectfully submitted,

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