

1 **ARNOLD & PORTER KAYE SCHOLER LLP**
TRENTON H. NORRIS (SBN 164781)
2 Trent.Norris@arnoldporter.com
GILBERT R. SEROTA (SBN 75305)
3 Gilbert.Serota@arnoldporter.com
BEN HALBIG (SBN 321523)
4 Ben.Halbig@arnoldporter.com
Three Embarcadero Center, 10th Floor
5 San Francisco, CA 94111-4024
Telephone: 415.471.3100
6 Facsimile: 415.471.3400

7 Attorneys for Proposed Defendant-Intervenors
CALIFORNIA LEAGUE OF CONSERVATION VOTERS
8 and CALIFORNIA LEAGUE OF CONSERVATION
VOTERS EDUCATION FUND

9 **Additional Attorneys for Proposed Defendant-Intervenors*
10 *listed on next page*

11
12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14
15 REPUBLICAN NATIONAL COMMITTEE,
16 *et al.*,

17 Plaintiffs,

18 v.

19 GAVIN NEWSOM, *et al.*,

20 Defendants.

Case No. 2:20-cv-01055-MCE-CDK

**REPLY BRIEF IN SUPPORT OF
CALIFORNIA LEAGUE OF
CONSERVATION VOTERS AND
CALIFORNIA LEAGUE OF
CONSERVATION VOTERS
EDUCATION FUND'S MOTION TO
INTERVENE AS DEFENDANTS**

1 **BRENNAN CENTER FOR JUSTICE**
2 **at NYU SCHOOL OF LAW**

3 MYRNA PÉREZ*
4 ELIZA SWEREN-BECKER*
5 myrna.perez@nyu.edu
6 eliza.sweren-becker@nyu.edu
7 120 Broadway, Suite 1750
8 New York, NY 10271
9 Telephone: 646.292.8310
10 Facsimile: 212.463.7308

11 **ARNOLD & PORTER KAYE SCHOLER LLP**

12 JOHN A. FREEDMAN*
13 John.Freedman@arnoldporter.com
14 601 Massachusetts Ave, NW
15 Washington, DC 20001
16 Telephone: 202.942.5000
17 Facsimile: 202.942.5999

18 **Application for admission pro hac vice forthcoming*

1 In their opening brief, Proposed Defendant-Intervenors California League of Conservation
 2 Voters and California League of Conservation Voters Education Fund (collectively “CLCV”) set
 3 forth the reasons why they meet the standards for both intervention as of right under Rule 24(a)(2)
 4 and permissive intervention under Rule 24(b) of the Federal Rule of Civil Procedure. Intervention
 5 is necessary to enable CLCV to protect three interests threatened by Plaintiffs’ position in this
 6 lawsuit: (1) ensuring Californians’ ability to solve the climate crisis through the electoral process,
 7 including by promoting and protecting vote-by-mail, (2) protecting easy access to mail ballots, for
 8 which CLCV actively advocated and expended resources, and (3) preserving California’s ability to
 9 modify election laws through the referendum or initiative process or a commission – powers
 10 threatened by Plaintiffs’ flawed interpretation of the term “legislature” under the Election Clause
 11 and Electors Clause. Plaintiffs devote less than a page to their opposition to CLCV’s right to
 12 intervene and fail to explain how CLCV’s interests are adequately protected by the existing parties.
 13 Plaintiffs’ position lacks merit, and the Court should grant CLCV’s Motion.

14 **I. Plaintiffs Fail To Show That CLCV Is Not Entitled To Intervene By Right Under Rule**
 15 **24(a)(2).**

16 Plaintiffs’ sole argument contesting CLCV’s intervention as of right — that CLCV is
 17 “already fully represented by the Democratic Party” (Opp. 1) — must be rejected in light of
 18 CLCV’s non-partisan mission and its unique and significant interests at issue in this lawsuit.
 19 CLCV’s “burden of showing inadequacy of representation is minimal” and satisfied by
 20 demonstrating “that representation of its interests *may be* inadequate.” *Citizens for Balanced Use v.*
 21 *Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (emphasis added and citation and
 22 quotation marks omitted). Any question “as to whether the existing parties will adequately
 23 represent [CLCV’s] interests should be resolved in favor of intervention.” *Cal. Dump Truck*
 24 *Owners Ass’n v. Nichols*, 275 F.R.D. 303, 307 (E.D. Cal. 2011). As an initial matter, Plaintiffs
 25 completely ignore that CLCV expended considerable resources advocating for the adoption of the
 26 Executive Order at issue in this litigation and has an interest in ensuring that the policy withstands
 27 Plaintiffs’ challenge. Br. at 8 (citing *Nichols*, 275 F.R.D. at 307).

28 Contrary to Plaintiffs’ barebones assertion, CLCV’s interests in this litigation are *not*

1 adequately protected by the existing parties, nor by the Democratic Party Intervenor-Defendants.
2 Unlike the Democratic Party intervenors, whose goal is to advance their candidates' electoral
3 prospects, CLCV is a *non-partisan* organization, with members who align with other parties or no
4 party, and which advocates on behalf of local voting interests, including environmental
5 communities of interest. Br. at 14. Plaintiffs cite no cases—not one—where a court has concluded
6 that a partisan political party is adequate to represent a non-partisan organization. Non-affiliated
7 voters are an important part of the electorate, constituting over a quarter of registered voters in the
8 State of California,¹ and non-partisan organizations such as CLCV have important interests in this
9 litigation.

10 Plaintiffs also argue that this case does not threaten CLCV's "interest in protecting
11 California's referendum and initiative process." Opp. 1. But this is directly contrary to the
12 allegations in the Complaint, which adopt a far narrower interpretation of the term "legislature" in
13 the Elections Clause and Electors Clause—one that directly endangers California's rich history of
14 voting by referendum. *See, e.g.*, Compl. ¶¶ 98-99. If successful, Plaintiffs' novel view of the term
15 "legislature" could erode the ability of Californians to effectuate election reforms through popular
16 referenda or through the Citizens Redistricting Commission, which itself was authorized to regulate
17 redistricting through the initiative process. Br. 11-12. Plaintiffs cannot ignore the indirect and
18 practical effects of the arguments they advance in this litigation. *See* DCCC Order at 4 (citing
19 *Cascade Nat'l Gas Corp. v. El Paso Nat'l Gas Co.*, 386 U.S. 129, 135-36 (1967) ("The requisite
20 interest need not even be direct as long as it *may* be impaired by the outcome of the litigation.")
21 (emphasis added)).

22 Because Plaintiffs advance no other arguments against intervention by right, the Court
23 should grant CLCV's Motion and allow it to intervene as a defendant pursuant to Rule 24(a)(2).

24 **II. All Of Plaintiffs' Arguments Against Permissive Intervention Are Unpersuasive And**
25 **Should Be Rejected.**

26 In their half-page response to CLCV's Motion, Plaintiffs incorporate by reference their
27 opposition to the California Common Cause group of proposed intervenors as a basis to deny
28

¹ <https://elections.cdn.sos.ca.gov/rot/15day-presprim-2020/historical-reg-stats.pdf>

1 permissive intervention to CLCV. Opp. 1 (citing Plfs.’ Opp. to California Common Cause et al.’s
2 Mot. to Intervene as Defs. (Dkt. 53) (hereinafter “CCC Opp.”)). None of the arguments set forth in
3 Plaintiffs’ opposition to California Common Cause’s motion provide a basis for the Court to deny
4 permissive intervention as to CLCV.

5 **First**, CLCV does not claim “the identical interest” of the Democratic Party intervenors (*see*
6 *id.* at 1), but rather has significant and unique interests that are not adequately protected by the
7 existing parties, including partisan political parties, to this litigation (*see supra* § I; Br. at 7-14).

8 **Second**, Plaintiffs’ contention that intervention should be denied because “this case presents
9 purely legal issues” (CCC Opp. at 1-2) is non-sensical. The core allegation in the Complaint is that
10 California’s vote-by-mail system “invites fraud, coercion, theft, and otherwise illegitimate voting”
11 and “fraudulent and invalid votes dilute the votes of honest citizens.” Compl. ¶ 3. Indeed, Plaintiffs
12 allege “fraud” in numerous paragraphs throughout the Complaint. *See, e.g., id.* ¶¶ 3, 22-24, 28, 64,
13 67, 78, 130. Whether or not fraud exists is a fundamentally factual inquiry, and one for which
14 Plaintiffs have a heightened obligation to “state with particularity the circumstances constituting
15 fraud.” Fed. R. Civ. Proc. 9(b).

16 Moreover, as the California Common Cause group noted in their reply, Plaintiffs’
17 preliminary injunction motion necessarily implicates factual issues concerning California’s election
18 system. Calif. Common Cause Reply in Support of Mot. to Intervene as Defs. (Dkt. 57). CLCV
19 would bring unique expertise and perspective to this factual inquiry, including its experience in
20 advocating on behalf of local voting interests that would otherwise be unrepresented in this lawsuit.
21 Br. at 14. In any event, Plaintiffs cannot contend that CLCV “merely” seeks to underline issues of
22 law already raised by the primary parties” *See* CCC Opp. at 3. CLCV is the **only** party that has
23 asserted an interest in protecting California’s referendum and initiative process and the authority of
24 California’s Redistricting Commission against the novel and overly narrow definition of
25 “legislature” advanced by Plaintiffs. Br. at 14-15.

26 **Third**, there is no basis for Plaintiffs to contend that CLCV’s intervention “could only cause
27 prejudice and undue delay.” CCC Opp. at 2. CLCV filed its motion to intervene 19 days after this
28 case was filed, this case is at its infancy, no substantive issues have been adjudicated nor has any

1 discovery been taken, and CLCV is prepared to meet any schedule the Court sets and coordinate
2 with the other Defendants and Defendant-Intervenors on briefing and discovery matters. Br. at 5-7.

3 Simply put, Plaintiffs have set forth no reason why CLCV should be denied the opportunity
4 to intervene permissively should the Court determine that it is not entitled to intervention by right.

5 **CONCLUSION**

6 For these reasons, along with those stated in its motion, CLCV respectfully requests that the
7 Court grant its motion to intervene as of right under Rule 24(a)(2), or, in the alternative, permit
8 them to intervene under Rule 24(b).

9
10 Dated: June 19, 2020

11 Respectfully submitted,

12 ARNOLD & PORTER KAYE SCHOLER LLP

BRENNAN CENTER FOR JUSTICE
at NYU SCHOOL OF LAW

13 By: /s/ Trenton H. Norris

MYRNA PÉREZ*

TRENTON H. NORRIS

ELIZA SWEREN-BECKER*

Trent.Norris@arnoldporter.com

myrna.perez@nyu.edu

GILBERT R. SEROTA

eliza.sweren-becker@nyu.edu

Gilbert.Serota@arnoldporter.com

120 Broadway, Suite 1750

BEN HALBIG

New York, NY 10271

Ben.Halbig@arnoldporter.com

Telephone: 646.292.8310

Three Embarcadero Center, 10th Floor

Facsimile: 212.463.7308

San Francisco, CA 94111-4024

Telephone: 415.471.3100

Facsimile: 415.471.3400

19 JOHN A. FREEDMAN*

John.Freedman@arnoldporter.com

601 Massachusetts Ave, NW

Washington, DC 20001

Telephone: 202.942.5000

Facsimile: 202.942.5999

22 Attorneys for Proposed Defendant-Intervenors

23 CALIFORNIA LEAGUE OF CONSERVATION VOTERS and

24 CALIFORNIA LEAGUE OF CONSERVATION VOTERS EDUCATION FUND

25 *Application for admission pro hac vice forthcoming

CERTIFICATE OF SERVICE

I, Trenton H. Norris, hereby certify that all counsel of record who are deemed to have consented to electronic service are being served a copy of the foregoing document(s) via the Court's CM/ECF system on June 19, 2020.

/s/ Trenton H. Norris
TRENTON H. NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28