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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

**MEMORANDUM OF POINTS AND  
AUTHORITIES OF PROPOSED  
DEFENDANT-INTERVENORS  
CALIFORNIA LEAGUE OF  
CONSERVATION VOTERS AND  
CALIFORNIA LEAGUE OF  
CONSERVATION VOTERS  
EDUCATION FUND IN SUPPORT OF  
RULE 24 MOTION TO INTERVENE**

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**INTRODUCTION**

1  
2 California League of Conservation Voters (the “League”) and the California League of  
3 Conservation Voters Education Fund (the “Fund,” collectively with the League “CLCV” or  
4 “Applicants”), by and through the undersigned counsel, respectfully submit this memorandum in  
5 support of its motion to intervene as a defendant in this action. Applicants seek to intervene as of  
6 right under Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, permissively  
7 under Rule 24(b)(1)(B).

8 This case is about whether California can proactively provide its voters with a safe way to  
9 exercise their fundamental right to vote during a pandemic. That question is a matter of great public  
10 importance to all California voters, Democrats, Republicans and independents, and the named  
11 defendants cannot fully and adequately protect all the voters and the organizations that represent  
12 them. Plaintiffs, including the Republican National Committee, have sued Defendants Governor  
13 Newsom and Secretary State Padilla to invalidate Executive Order N-64-20 (the “Executive  
14 Order”), which would mail absentee ballots to all registered voters in the State because of the  
15 COVID-19 pandemic. Plaintiffs seek sweeping relief that is predicated on delegitimizing voting by  
16 mail on the false premise that voting by mail “facilitates fraud and other illegitimate voting  
17 practices.” Notably, Plaintiffs offer no reasonable alternative on how the election should be  
18 conducted in light of the ongoing public health emergency, or why millions of registered California  
19 voters should risk their health or face any further burden to exercise the right to vote.

20 As a nonprofit, community-based organization, CLCV is not aligned with either political  
21 party and is dedicated to enabling all Californians to combat climate change by participating in the  
22 democratic process. In furtherance of its core mission, CLCV fights to protect and expand the  
23 ability of all eligible persons to have their voices heard by casting their ballot on election day.  
24 CLCV accomplishes this through a variety of means, including by advocating for policies that  
25 expand the franchise and make it easier for Californians to vote. That is why CLCV has long been  
26 actively involved in efforts to expand vote-by-mail in California. CLCV advocated for the passage  
27 of the California Voter’s Choice Act of 2016, which created a system under which counties  
28 throughout the state could offer mail-in ballots to all registered voters. In the midst of the current

1 COVID-19 pandemic, CLCV has been actively working to ensure access to vote-by-mail in  
2 California, including by specifically advocating for policies at issue in this lawsuit. As a result,  
3 Plaintiffs' lawsuit is a direct threat to CLCV's interests.

4 First, Plaintiffs' attempt to reduce access of certain California voters to mail ballots runs  
5 contrary to CLCV's mission and efforts to protect and expand Californians' ability to cast their  
6 ballots, and to do so in a safe manner. Second, Plaintiffs' claims would directly undermine CLCV's  
7 successful efforts to advocate for easy mail ballot access to all registered voters in California.  
8 Third, Plaintiffs urge an unduly narrow interpretation of "legislature" in the Elections Clause and  
9 Electors Clause that could severely infringe on the power of voters under the California  
10 Constitution to change laws by ballot initiative or referendum, or the ability to delegate certain  
11 functions under state law (such as state and congressional redistricting) to a Commission.  
12 Plaintiffs' radical interpretation of "legislature" directly contradicts how the Supreme Court has  
13 construed the term. *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576  
14 U.S. 13, 135 S. Ct. 2652, (2015) (rejecting Plaintiffs' theory because "the Elections Clause [is] in  
15 line with the fundamental premise that all political power flows from the people"). California has a  
16 long tradition of allowing the people of California to pass, by popular referendum, laws that impact  
17 the Time, Place, and Manner of federal elections -- including Proposition 14 that provided for  
18 nonpartisan primaries, and Proposition 20 that authorized the California Citizens Redistricting  
19 Commission to establish congressional districts. CLCV has a longstanding interest in defending  
20 direct democracy, actively engages in California's initiative and referenda process, and believes that  
21 voters should have a direct voice and pathway to enact democracy reform. CLCV also has an  
22 abiding interest in defending the authority of Redistricting Commission. For example, recognizing  
23 that fair districting helps to prevent the erosion of safeguards and regulatory oversight for the air,  
24 land, and water that California's environmental community has battled for decades to achieves,  
25 CLCV actively participates and engages in the Redistricting Commission's redistricting processes.  
26 CLCV staff, volunteers, and members have participated in Commission meetings in the majority of  
27 districts within California, including by testifying on behalf of environmental communities of  
28 interest. In addition, in 2019, many CLCV members applied to become commissioners to further



1 ensure the protection of the voice of these communities in California’s electoral map. As a result of  
2 these efforts, CLCV has a strong interest in protecting the authority of the Commission to set the  
3 boundaries of California’s legislative districts.

4 As set forth below, Applicants meet the standards for both intervention as of right and  
5 permissive intervention.

6 Applicants therefore request their motion to intervene be granted as of right under Rule  
7 24(a) or alternatively, by permission under Rule 24(b).

### 8 DESCRIPTION OF APPLICANTS FOR INTERVENTION

9 The CLCV Education Fund is a 501(c)(3) nonprofit, nonpartisan, educational organization  
10 founded in 1996. Decl. of Mary Creasman in Support of Mot. to Intervene (hereinafter “Creasman  
11 Decl.”) ¶ 4. The Fund works through programs focused on voter engagement and mobilization,  
12 issue advocacy, legislative education, and research and opinion polling to providing the public,  
13 policymakers, and environmental advocates with the resources they need to make California’s air,  
14 water and natural resources cleaner and greener through the democratic process. *Id.* The League is  
15 a 501(c)(4) nonprofit, nonpartisan, grassroots advocacy organization dedicated to empowering  
16 Californians to impact climate change by participating in the democratic process. *Id.* ¶ 3.<sup>1</sup>

17 With offices and staff in Oakland, Los Angeles, and Sacramento, and staff in Fresno, CLCV  
18 serves its more than 150,000 members throughout California, including many registered and  
19 eligible voters. Creasman Decl. ¶¶ 5-6. One of the core ways CLCV achieves its mission is by  
20 working to ensure that all eligible persons in California -- whether they have registered as a  
21 Democrat, Republican or independent -- have an equal opportunity to register to vote, vote for the  
22 candidate of their choice, and ensure their vote is counted. *Id.* ¶ 7. To that end, CLCV staff and  
23 volunteers assist Californians statewide in registering to vote, and in mobilizing voters to cast their  
24 ballots. *Id.* CLCV has advocated for numerous policies and legislation that ease the process for  
25 Californians to register to vote and cast their ballots. *Id.* ¶ 8. In 2018 and 2019, CLCV successfully  
26 fought for the passage of bills allowing for same-day voter registration and expansion of voting  
27 access for college students, as well as for a bill providing prepaid postage for all mail-in ballots. *Id.*

28 \_\_\_\_\_  
<sup>1</sup> Hereinafter, “CLCV” shall refer collectively to the 501(c)(3) and (c)(4) entities.

1 At present, CLCV is advocating for constitutional amendments that would restore voting rights to  
2 every person on parole in California and lower the voting age to 17. *Id.* ¶ 9.

3 A central aspect of CLCV’s voting rights advocacy has been its efforts to expand and ease  
4 the ability of registered Californians to cast their ballots by mail. Creasman Decl. ¶¶ 10-11. In  
5 2016, CLCV successfully lobbied for the passage of the Voter’s Choice Act, which enabled all  
6 California counties to adopt vote by mail programs where all registered voters automatically mailed  
7 ballots. *Id.* ¶ 12. In response to the COVID-19 pandemic this year, CLCV helped organize a  
8 coalition of grassroots and advocacy organizations dedicated to ensuring that the state takes steps to  
9 ensure Californians’ ability to vote safely in the November 2020 general election, and directly  
10 called upon Defendants to take the action challenged here: to proactively send ballots to every  
11 registered voter in the state. *Id.* ¶¶ 13-17. CLCV committed its resources to and actively lobbied  
12 for Governor Newsom and Secretary Padilla’s adoption of the Executive Order to ensure that all  
13 Californians registered to vote will be able to vote by mail in November without risking their health  
14 or safety. *Id.* CLCV’s advocacy efforts in support of the Executive Order included advocating for  
15 (1) affirmatively sending vote-by-mail ballots to all registered voters; (2) expanding the number of  
16 polling locations to reduce lines and wait times on election day and to ensure there is adequate  
17 support for voters who need assistance; (3) expanding the use of ballot drop boxes, and (4) funding  
18 these initiatives. *Id.* ¶ 14 In furtherance of these efforts, CLCV was part of a coalition that created  
19 a petition to state lawmakers calling for the expansion of vote-by-mail and other efforts to promote  
20 voter safety in the 2020 general elections, and participated in over two dozen meetings with  
21 Governor Newsom and Secretary Padilla’s staff members, state legislators, and other key  
22 stakeholders. *Id.* ¶¶ 15-16. CLCV also helped organize a coalition of organizations that is now  
23 engaging in advocacy efforts to support the passage of Assembly Bill 860, which would codify the  
24 Order into a state statute. *Id.* ¶ 17.

25 **ARGUMENT**

26 **I. The Court Should Grant Intervention as of Right under Rule 24(a)(2)**

27 The Ninth Circuit has established a four-part test for when a court must allow intervention as  
28 of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure:

1 (1) the application for intervention must be timely; (2) the applicant must have a  
2 ‘significantly protectable’ interest relating to the property or transaction that is the  
3 subject of the action; (3) the applicant must be so situated that the disposition of the  
4 action may, as a practical matter, impair or impede the applicant’s ability to protect  
5 that interest; and (4) the applicant’s interest must not be adequately represented by  
6 the existing parties in the lawsuit.

7 *United States v. Sprint Commc’ns, Inc.*, 855 F.3d 985, 991 (9th Cir. 2017) (quoting *Southwest Ctr.*  
8 *for Biological Diversity v. Berg*, 268 F.3d 810, 817, 823 (9th Cir. 2001)); *see also* Mem. and Order  
9 Granting DCCC Mot. to Intervene, (Dkt. No. 38), at 3 (June 10, 2020) (hereinafter “DCCC Order”).  
10 Rule 24(a) must be construed “liberally in favor of potential intervenors,” and, in addition to this  
11 “broad construction,” eschews “technical distinctions” in favor of “practical considerations” in  
12 reviewing intervention applications. *Southwest*, 268 F.3d at 818 (citations omitted); DCCC Order at  
13 3. In addition, courts must “take all well-pleaded, nonconclusory allegations in the motion to  
14 intervene, the proposed complaint or answer in intervention, and declarations supporting the motion  
15 as true absent sham, frivolity or other objections.” *Id.* at 820.

16 CLCV satisfies each part of the Ninth Circuit’s four-part test for as of right intervention,  
17 particularly when considered (as the Ninth Circuit requires) with a liberal construction in favor of  
18 intervention. Consequently, this Court should permit Applicants’ intervention as of right.

19 **A. CLCV’s Motion is Timely**

20 The Ninth Circuit directs courts to focus on three primary factors in assessing timeliness:  
21 “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other  
22 parties; and (3) the reason for and length of the delay.” *Smith v. Los Angeles Unified Sch. Dist.*, 830  
23 F.3d 843, 854 (9th Cir. 2016). Moreover, “[t]imeliness is determined by the totality of the  
24 circumstances facing would-be intervenors.” *Id.*

25 This case is in its infancy, and the application here is timely under the “totality of the  
26 circumstances.” Plaintiffs filed the complaint on May 24, 2020. ECF No. 1. Defendants have not  
27 yet filed a responsive pleading, the Parties have not yet held a Rule 26(f) conference. Though  
28 Plaintiffs filed a motion for a preliminary injunction on June 5, 2020, (ECF No. 24), CLCV is  
prepared to abide by the Court’s deadline to respond by June 25, 2020. Apart from that motion, the  
Court has not yet set any schedule for this case. There has been no delay in filing this application

1 and intervention will not prejudice any party. *See, e.g., Northwest Forest Res. Council v. Glickman*,  
2 82 F.3d 825, 837 (9th Cir. 1996).

3 CLCV is prepared to meet any further schedule the Court sets. To that end, CLCV has  
4 retained outside counsel with significant expertise in election law, with the ability to litigate this  
5 matter both in California and in Washington, D.C. (where plaintiffs Republican National Committee  
6 and National Republican Congressional Committee are located). In short, CLCV's participation in  
7 this case will not delay proceedings.

8 CLCV is seeking to intervene before any substantive hearings or rulings, before any  
9 discovery has taken place, and well before the pre-trial conference and trial dates set by the Court.  
10 Only one substantive motion has been filed, and CLCV is prepared to respond to that Motion on the  
11 Court's schedule. Because there have been no substantive motions adjudicated, intervention would  
12 not interfere with any pending issues before the Court or upset the resolution of issues already  
13 decided. Moreover, because CLCV does not request any extension of existing deadlines, granting  
14 intervention will not result in a delay in hearing and resolving dispositive motions or adjudicating  
15 this case after a trial. Accordingly, intervention will not impose undue burdens on the parties or the  
16 Court.

17 Nor would intervention prejudice the existing parties.<sup>2</sup> Prejudice cannot be established by a  
18 current litigant complaining "that including another party in the case [such as CLCV here] might  
19 make resolution more 'difficult[ ].'" *Smith*, 830 F.3d at 857. Rather, the Ninth Circuit has  
20 explained that the only potential prejudice "that is relevant under this factor is that which flows  
21 from a prospective intervenor's failure to intervene after he knew, or reasonably should have  
22 known, that his interests were not being adequately represented." *Id.*

23 The Defendants, the existing Intervenors, and other proposed Intervenors are not in a  
24 position to fully or adequately represent CLCV's interests. This determination was made well  
25 before any substantial discovery has taken place or any substantive rulings have been made by the  
26  
27

28 <sup>2</sup> On June 11, counsel conferred with counsel for Plaintiffs, who advised they opposed this request. On June 10, counsel for Defendants Newsom and Padilla advised that Defendants take no position on this motion.

1 Court. Given that posture, CLCV’s intervention cannot and will not prejudice Plaintiffs or any  
2 other litigants.

3 Given the totality of the circumstances, including the fact that CLCV is seeking to intervene  
4 “at a very early stage, before any hearings or rulings on substantive matters,” granting intervention  
5 here would be consistent with Ninth Circuit precedent and keeping with the liberal spirit of Rule 24  
6 intervention. *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995); *see also id.*  
7 (finding intervention appropriate where motion was filed four months after action commenced and  
8 *after* motion for preliminary injunction was filed); *Washington State Democratic Party v. Reed*, No.  
9 3:00-cv-5419 (W.D. Wash. Feb. 16, 2001), (Doc. 143) (permitting intervention by defendant-  
10 intervenor Washington State Grange where motion was filed more than six months after complaint  
11 was filed).

12 **B. CLCV Has a Significantly Protectable Interest in the Underlying Litigation**

13 An applicant’s right to intervene is conditioned on having a “significantly protectable  
14 interest relating to the property or transaction that is the subject of the action.” *Sprint*, 855 F.3d at  
15 991. As the Ninth Circuit has recognized and the Court already explained in this lawsuit, such an  
16 interest exists where “(1) [the intervenor] asserts an interest that is protected under some law, and  
17 (2) there is a ‘relationship’ between [the intervenor’s] legally protected interest and the plaintiff’s  
18 claims.” DCCC Order (ECF 38) at 4 (citing *U.S. v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir.  
19 2002)). An intervenor is not required to show it has “a legal or equitable interest in jeopardy.”  
20 *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th Cir. 1981). Moreover, determining whether an  
21 applicant has a sufficient interest is a “practical, threshold inquiry, and no specific legal or equitable  
22 interest need be established.” *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d  
23 893, 897 (9th Cir. 2011) (citation and quotation marks omitted).

24 CLCV has three strong interests in this litigation, sufficient to meet the requirements of Rule  
25 24(a). First, as a part of its core mission in promoting Californians’ ability to impact climate change  
26 through the electoral process, CLCV has an interest in ensuring that all eligible persons have equal  
27 opportunity to register to vote, vote for the candidate of their choice, and ensure that their vote has  
28 been counted. CLCV has long been a proponent of mail voting because it encourages participation

1 in elections by decreasing the burden of casting a ballot, particularly for vulnerable Californians  
2 who may not have the means or physical ability to travel to a polling station. Creasman Decl. ¶ 11.  
3 For example, CLCV advocated for the passage of the 2016 Voter’s Choice Act, which enabled all  
4 counties throughout the state to offer vote-by-mail ballots to all registered voters. *Id.* ¶ 12.  
5 COVID-19 has only increased CLCV’s interest in ensuring that all registered voters receive mail  
6 ballots. *Id.* ¶ 13.

7 CLCV also has a direct interest in ensuring that all registered voters have easy access to mail  
8 ballots. This is because CLCV specifically advocated for the action challenged here, and helped  
9 organize the coalition of grassroots and advocacy organizations that successfully lobbied Governor  
10 Newsom to adopt this policy and is currently advocating for the legislature’s passage of Assembly  
11 Bill 860, which would codify the Order into a state statute. Creasman Decl. ¶¶ 13-17. As part of its  
12 advocacy efforts in support of Executive Order N-64-20, CLCV’s CEO Mary Creasman sent a letter  
13 to Governor Newsom and Secretary Padilla on April 16, 2020 asking that the state affirmatively  
14 mail ballots to all registered voters and expand opportunities for in-person voting. *Id.* ¶ 14. In  
15 addition, CLCV staff and volunteers participated in over two dozen meetings with state legislators,  
16 Secretary Padilla and Governor Newsom’s offices, and other key stakeholders about the necessity  
17 of expanding mail-in ballot access to ensure voter safety in the 2020 general election. *Id.* ¶ 16.

18 These two interests alone are more than sufficient to show CLCV’s interest under Rule  
19 24(a). *See Ca. Dump Truck Owners Ass’n v. Nichols*, 275 F.R.D. 303, 306-07 (E.D. Cal. 2011). In  
20 *Nichols*, this Court permitted an environmental non-profit to intervene based on its general policy  
21 interest in reducing diesel emissions and its specific interest in upholding a regulation for which it  
22 had actively advocated. *Id.* at 306. Likewise, CLCV seeks to intervene in this action to uphold a  
23 policy for which it has actively advocated. Creasman Decl. ¶¶ 13-17. CLCV and its membership  
24 “benefit from the challenged” Executive Order because it promotes and protects Californians’  
25 practical ability to cast their vote and participate in the electoral process. *See Nichols* 275 F.R.D. at  
26 307. And CLCV has a significant protectable interest in defending an action by the State it  
27 supported. *See id.* (citing *Idaho Farm Bureau*, 58 F.3d at 1397).

1 In addition, CLCV also has a strong interest in resisting the flawed interpretation of  
 2 “legislature” under the Elections Clause and Electors Clause that Plaintiffs pursue. As noted above,  
 3 if implemented, it could prevent California’s voters from modifying election laws through the  
 4 referendum or initiative process, directly contrary to the Supreme Court’s holding that the  
 5 “fundamental premise” of the Elections Clause is “that all political power flows from the people.”  
 6 *Arizona State Legislature*, 576 U.S. 13, 135 S. Ct. at 2677. CLCV regularly participates in  
 7 California’s ballot initiative and referendum process and has an interest in making sure that  
 8 Californians maintain their ability to enact democracy reforms directly through that process.  
 9 Creasman Decl. ¶ 20. In addition, CLCV is an active participant in and engages with California’s  
 10 Citizens Redistricting Commission, the state entity with the responsibility for drawing California’s  
 11 congressional districts. *Id.* ¶ 21. CLCV staff, volunteers, and members have testified before district  
 12 commissions on behalf of environmental communities of interest to ensure that those communities’  
 13 voices are protected on California’s legislative districting map. *Id.* ¶ 22. In addition, in 2019, many  
 14 CLCV members applied to become commissioners to further ensure the protection of the voice of  
 15 these communities in California’s electoral map. *Id.* As a result of these efforts, CLCV has a  
 16 strong interest in protecting the authority of the Commission to set the boundaries of California’s  
 17 legislative districts. *Id.* ¶ 23. The interpretation that Plaintiffs advance could undermine the  
 18 Commission’s authority to draw congressional districts, contrary to CLCV’s longstanding interest  
 19 in fair representation and district boundaries that include environmental “communities-of-  
 20 interest”—like watersheds, wetlands, foothills, desert, coastal, and rural communities, and  
 21 communities disparately affected by pollution and climate impacts—within a single district.  
 22 Creasman Decl. ¶ 22.

23 Intervention in voting rights cases is favored, and the courts have routinely allowed it. *See*  
 24 *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) *superseded by statute* 135 S. Ct. 1257 (2015); *City of*  
 25 *Lockhart v. United States*, 460 U.S. 125, 129 (1983); *Higginson v. Becerra*, 733 Fed. Appx. 402,  
 26 404 (9th Cir. 2018); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982); *City of Port Arthur, Texas v.*  
 27 *United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *N.Y. State v. United States*, 65 F.R.D. 10,  
 28 12 (D.D.C. 1974); *Commonwealth of Va. v. United States*, 386 F. Supp. 1319, 1321 (D.D.C. 1974);

1 *City of Petersburg, Va. v. United States*, 354 F. Supp. 1021, 1024 (D.D.C. 1972); *League of Women*  
 2 *Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2090678, at \*5  
 3 (W.D. Va. Apr. 30, 2020); *Yang v. Kellner*, No. 20 CIV. 3325 (AT), 2020 WL 2115412, at \*2  
 4 (S.D.N.Y. May 3, 2020); *Pub. Interest Legal Found., Inc. v. Winfrey*, No. 19-13638, 2020 WL  
 5 2781826, at \*2 (E.D. Mich. May 28, 2020); *Bellitto v. Snipes*, No. 0:16-cv-61474, 2016 WL  
 6 5118568 (S.D. Fla. Sep. 21, 2016); *Texas v. United States*, 798 F.3d 1108, 1111 (D.C. Cir. 2015);  
 7 *Kobach v U.S. Election Assistance Comm’n*, No. 5:13-cv-04095, 2013 WL 6511874 (D. Kan. Dec.  
 8 12, 2013); *Veasey v. Abbott*, No. 2:13-cv-00193 (S.D. Tex. Sep. 19, 2013), (Doc. 29); *LaRoque v.*  
 9 *Holder*, No. 1:10-cv-00561 (D.D.C. Aug. 25, 2010), (Doc. 24); *Shelby Cnty., Ala. v. Holder*, No.  
 10 1:10-cv-00651 (D.D.C. Aug. 25, 2010), (Doc. 29); *Nw. Austin Mun. Util. Dist. v. Gonzales*, No.  
 11 1:06-cv-01384 (D.D.C. Nov. 09, 2006), (Doc. 33). Courts and Congress have often recognized that  
 12 the right to vote—that is central to Applicants’ work and the bedrock of American democracy—is  
 13 “a fundamental right.” 52 U.S.C. § 20501(a)(1). And the Supreme Court has long recognized that  
 14 voting-related restrictions implicate “interwoven strands of liberty” that “rank among our most  
 15 precious freedoms”: “the right of individuals to associate for the advancement of political beliefs,  
 16 and the right of qualified voters, regardless of their political persuasion, to cast their votes  
 17 effectively.” *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (citations and quotation marks  
 18 omitted). Such an interest, and Applicants’ role in furthering it, is more than sufficient to merit  
 19 intervention.

### 20 **C. The Disposition of this Action Could Impair Applicants’ Interests**

21 In addition to demonstrating an interest in the underlying litigation, intervention should be  
 22 granted where the applicant shows that it is “so situated that the disposing of the action may as a  
 23 practical matter impair or impede [its] ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). An  
 24 intervenor is not required to show with “absolute certainty that a party’s interests will be impaired.”  
 25 *Citizens for Balanced Use*, 647 F.3d at 900. Instead, the Ninth Circuit “follow[s] the guidance of  
 26 Rule 24 advisory committee notes that state that ‘[i]f an absentee would be substantially affected in  
 27 a practical sense by the determination made in an action, he should, as a general rule, be entitled to  
 28 intervene.’” *Southwest*, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee’s notes to



1 1966 amendment). “The requisite interest need not even be direct as long as it *may* be impaired by  
2 the outcome of the litigation.” DCCC Order (ECF 38) at 4 (citing *Cascade Nat’l Gas Corp. v. El*  
3 *Paso Nat’l Gas Co.*, 386 U.S. 129, 135-36 (1967)). CLCV’s interests here could very well be  
4 impaired by a disposition in favor of Plaintiffs for several reasons.

5 CLCV’s interest in ensuring an open and accessible electoral process in California and  
6 upholding a policy for which it actively advocated would be severely impaired if Plaintiffs prevail.  
7 In particular, Plaintiffs seek a sweeping declaration that would not only burden Californian voters’  
8 access to mail ballots, but also impair their ability to vote safely in light of the current public health  
9 crisis facing the nation. If Plaintiffs are successful in invalidating the Executive Order and  
10 impeding vote-by-mail, CLCV would be forced to divert resources to develop and execute new  
11 plans educate voters as to the availability of vote-by-mail, assist voters to apply to vote-by-mail, and  
12 to reconfigure its get-out-the-vote program to place additional emphasis on in person election day  
13 voting, all while California scrambles to develop adequate protections for voters. Creasman Decl.  
14 ¶ 19. In addition, CLCV would have to redouble its efforts to advocate for alternative measures to  
15 protect voter safety at the polls, such as its April 16 recommendation to Governor Newsom that the  
16 state expand the number of voting locations statewide so as to reduce lines and wait times on  
17 election day. *Id.* ¶¶ 14, 19. Moreover, if Plaintiffs are granted the relief they seek, CLCV would  
18 have to expend additional resources educating voters on how to reduce the risk of exposure to  
19 COVID-19 at polling places. *Id.* ¶ 19.

20 Furthermore, Plaintiffs seek a sweeping declaration regarding the meaning of “legislature”  
21 under the Elections Clause and the Electors Clause that, if successful, could (i) preclude future  
22 efforts to reform election laws through popular referendum or through other lawmaking bodies, and  
23 (ii) bring prior election reforms enacted through referendum or commission into question, including  
24 California’s Citizens Redistricting Commission. CLCV and its membership are active participants  
25 and heavily invested in both California’s referendum and ballot initiative process and in the  
26 Redistricting Commission’s work to ensure that state districting maps fairly and adequately  
27 represent communities-of-interest within the state. Creasman Decl. ¶¶ 20-23. Both of these  
28 interests are threatened by Plaintiffs’ position in this lawsuit.

**D. The Existing Parties Do Not Adequately Represent the Interests of CLCV**

The Ninth Circuit does not require a proposed intervenor to show with “absolute certainty . . . that existing parties will not adequately represent its interests.” *Citizens for Balanced Use*, 647 F.3d at 900. Rather, “[t]he burden of showing inadequacy of representation is ‘minimal’ and satisfied if the intervenor can demonstrate that representation of its interests ‘may be’ inadequate.” *Id.* at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir.2003)). “The applicant need only show that ‘the representation of [its] interest ‘may be’ inadequate.” DCCC Order at 6 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972)). And all doubt “as to whether the existing parties will adequately represent the intervenor should be resolved in favor of intervention.” *Cal. Dump Truck*, 275 F.R.D. at 307, (citing *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993)).

In assessing whether a proposed intervenor has met its burden, courts consider “(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.” *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d at 1086). *See also Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (intervention should be permitted where the parties “do not have sufficiently congruent interests’). Rule 24 “underscores both the burden on those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention.” *Nuesse v. Camp*, 385 F.2d 694, 702-04 (D.C. Cir. 1967). CLCV here easily meets the “minimal” burden of showing that the existing defendants *may not* adequately represent its interests. *See Citizens for Balanced Use*, 647 F.3d at 898.

In this case, while there may be some overlap between the interest of the existing Defendants (both governmental officials), other existing or proposed Intervenors (political parties and broad voter coalitions), and that of CLCV, it is likely that each has its own discrete areas of interest, making it far from “undoubted” that the other defendants would, or are “capable and willing” to, make all of Applicants’ proposed arguments. *Id.* As governmental officials with

1 substantial public responsibilities and limited resources tied to the public treasury, the existing  
2 defendants’ arguments “turn on their inherent authority as state executives and their responsibility  
3 to properly administer election laws.” DCCC Order at 6. In their capacity as officials, Secretary  
4 Padilla and Governor Newsom are “charged with making decisions for the benefit of the entire  
5 population.” *Snowlands Network v. United States*, No. 2:11-CV-02921-MCE, 2012 WL 4755161,  
6 at \*3 (E.D. Cal. Oct. 4, 2012). Both officials may need to take into account their respective offices’  
7 narrow institutional interests and staff capabilities and are subject to political pressures that do not  
8 align perfectly given their different constituencies. Because of those institutional interests, neither  
9 Governor Newsom or Secretary Padilla could be expected to focus perfectly on the interests of a  
10 group like CLCV or its efforts to expand and protect Californians’ ability to have their voices heard  
11 through the political process, as well as its efforts to seek reform through the initiative or  
12 referendum processes. Moreover, political forces could affect Defendants’ defense of the case in  
13 ways that are very much in conflict with Applicants’ interests, particularly in maximizing eligible  
14 voter engagement and participation. To be sure, governmental officials should be responsive to  
15 their constituents, but CLCV will give primacy to the interests of its members and other voters in a  
16 way that governmental officials simply cannot replicate. Indeed, CLCV has faced opposition from  
17 the state regarding many of its policy recommendations for how to ensure voter participation in the  
18 November 2020 general election, such as its proposal to increase the number of polling places and  
19 ballot drop boxes, and the amount of public input into the state’s process to ensure the safety of  
20 Californians in casting their votes. Creasman Decl. ¶ 18.

21           Because of their different interests and areas of expertise, courts have recognized in dozens  
22 of cases that governmental parties cannot adequately represent the interests of private intervenors,  
23 even if they take the same position on underlying merits. For example, in *Trbovich v. United Mine*  
24 *Workers*, 404 U.S. 528 (1972)), the Court allowed a union member to intervene in an action brought  
25 by the Secretary of Labor to set aside union elections for violation of the Labor-Management  
26 Reporting and Disclosure Act of 1959, even though the Secretary was broadly charged with  
27 protecting the public interest. The Court reasoned that the Secretary of Labor could not adequately  
28 represent the union member because the Secretary had a “duty to serve two distinct interests,” (*id.*,

1 404 U.S. at 538), a duty to protect both the public interest and the rights of union members. *See*  
2 *also Southwest*, 268 F.3d at 823 (inadequacy of representation found where defendant “City’s range  
3 of considerations in development is broader than the profit-motives animating [intervenor]  
4 developers”); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d  
5 1184, 1190 (9th Cir. 1998) (affirming district court’s grant of intervention where “the employment  
6 interests of [intervenor’s] members were potentially more narrow and parochial than the interests of  
7 the public at large”).

8 CLCV is differently situated to the other existing and proposed defendant-intervenors. The  
9 Democratic Congressional Campaign Committee and Democratic Party of California are partisan  
10 political parties “concerned with ensuring their party members and [constituent] voters have... the  
11 opportunity to vote in the upcoming election, [and] advancing their overall electoral prospects.”  
12 DCCC Order (ECF 38) at 6. CLCV is not beholden to any particular political party or group of  
13 constituents in the arguments it may make in this litigation. *See* Creasman Decl. ¶¶ 3, 4, 22. CLCV  
14 is also uniquely situated from the Democratic and Republican litigants in that it advocates on behalf  
15 of local voting interests, including through its advocacy work before California’s Redistricting  
16 Commission on behalf of environmental communities of interest, such as watersheds, wetlands,  
17 foothills, desert, coastal, and rural communities, and communities disparately affected by pollution  
18 and climate impacts. *Id.* ¶ 22. Without intervention by CLCV, these local voices would go  
19 unrepresented in this lawsuit.

20 Finally, even assuming that the Court grants the pending motions to intervene by proposed  
21 Intervenor-Defendants California Common Cause, League of Women Voters of California,  
22 Community Coalition, and LULAC, CLCV’s interests are distinct from these groups. CLCV’s  
23 longstanding support for the ballot initiative and referenda process, and its participation in and  
24 interest in defending the authority of the Citizens Redistricting Commission make CLCV unique  
25 among existing and proposed parties. Notably, for example, neither existing intervenors nor  
26 proposed intervenors appear poised to address Plaintiffs’ attempt to advance a radical interpretation  
27 of the Elections and Electors Clauses. The nature of this litigation could leave CLCV without  
28 sufficient time to remedy any adverse disposition here before critical elections. If the existing

1 parties were to settle or otherwise reach a resolution on the merits that adversely affected the  
2 interests of CLCV and its members, CLCV could lack meaningful avenues of relief as a non-party  
3 to this case. For this reason—and many others—CLCV’s interests are threatened by the relief  
4 sought by Plaintiffs in this action.

5 **II. Alternatively, the Court Should Grant Permissive Intervention under Rule 24(b)(1)(B)**

6 CLCV satisfies not only the standard for intervention as of right, but also the criteria for  
7 Rule 24(b)(1)(B) permissive intervention. Under that rule, courts may permit intervention upon  
8 “timely motion” where the applicant “has a claim or defense that shares with the main action a  
9 common question of law or fact,” (Fed. R. Civ. P. 24(b)(1)(B)), and must consider “whether the  
10 intervention will unduly delay or prejudice the adjudication of the original parties’ rights,” (Fed. R.  
11 Civ. P. 24(b)(3)). According to the Ninth Circuit, “a court may grant permissive intervention where  
12 the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is  
13 timely; and (3) the applicant’s claim or defense, and the main action, have a question of law or a  
14 question of fact in common.” *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir.  
15 2002) (citation omitted); *see also Nichols*, 275 F.R.D. at 309.

16 As discussed above, CLCV’s motion is timely, and, for the same reasons, its intervention  
17 will not unduly delay or prejudice the adjudication of the original parties’ rights. Nor do the  
18 applicants present any jurisdictional issues—this Court independently has subject matter  
19 jurisdiction over CLCV under federal question jurisdiction because the dispute involves a question  
20 of constitutional law. The questions of law and fact presented in this action address the core issues  
21 that CLCV seeks to litigate. CLCV does not propose to add a counterclaim or expand the questions  
22 presented by the Complaint—in fact, CLCV will confer with Defendants, existing intervenors, and  
23 any other intervenors the court sees fit to permit to seek to avoid redundant filings before the Court,  
24 including in opposition to Plaintiffs’ motion for a preliminary injunction. Furthermore, CLCV will  
25 lend its unique perspective and expertise to the case, thereby enhancing development of the relevant  
26 issues in the case. *See Miller v. Silbermann*, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (finding  
27 permissive intervention appropriate where the applicants, because of their “knowledge and  
28 concern,” would “greatly contribute to the Court’s understanding” of the case). Accordingly, if the

1 court finds that CLCV may not intervene as of right, Applicants respectfully request that the Court  
2 allow intervention under Rule 24(b).

3 **CONCLUSION**

4 For the above and foregoing reasons, CLCV respectfully requests that the Court grant its  
5 motion to intervene in this action as defendant. If the Court believes it would assist with the  
6 management of this case, CLCV's counsel have a long history of working cooperatively with  
7 counsel for the other intervenors and have no objection to coordinating discovery efforts and  
8 briefing to reduce duplication of efforts.

9  
10 Dated: June 12, 2020

11 Respectfully submitted,

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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 12, 2020.

/s/ Trenton H. Norris  
TRENTON H. NORRIS

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