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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUDICIAL WATCH, INC. *et al*.,

Plaintiffs,

v.

DEAN C. LOGAN, *et al*.,

Defendants,

and

CALIFORNIA COMMON CAUSE,

Defendant-Intervenor.

Case No. 2:17-cv-08948-R-SK

MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANT-INTERVENOR CALIFORNIA COMMON CAUSE IN SUPPORT OF RULE 24 MOTION TO INTERVENE

Hon. Manuel L. Real
Hearing Date: June 18, 2018
Time: 10:00 a.m.
Courtroom: 880

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Application for admission pro hac vice forthcoming

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INTRODUCTION

California Common Cause ("CCC" or "Applicant"), by and through the undersigned counsel, respectfully submits this memorandum in support of its motion to intervene as a defendant in this action. Applicant seeks to intervene as of right under Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, permissively under Rule 24(b)(1)(B).

This case is a matter of great public important and defendants cannot put themselves in the shoes of voters or the organizations that represent them. Plaintiff Judicial Watch has sued government Defendants Dean Logan and Alex Padilla over their policies and practices for managing the upkeep and accuracy of their voter registration rolls. Plaintiffs ultimately seek the removal of an untold number of names from the voter registration rolls, which will have enormous implications for the democratic process. As a nonprofit, community-based organization, Applicant is a leading state voting organization, with a mission and purpose of involving more citizens in the political process through a variety of means, including assisting voters on election day, registering voters, and advocating for policies that encourage participation and self-governance. As set forth below, Applicant meets the standards for both intervention as of right and permissive intervention.

Applicant is well known for its efforts to advance voter registration procedures to facilitate greater voter participation in our election process, as well as its efforts to manage and organize Election Protection voter hotlines and poll monitoring and voter registration efforts in Los Angeles County and throughout California. In particular, Applicant has sued the Defendant Secretary of State Padilla to promote compliance with the National Voter Registration Act ("NVRA"), and subsequently worked with the Department of Motor Vehicles to ensure compliance with the NVRA. Applicant was also a leading proponent of the 2016 Voter's Choice Act, Ca. Senate Bill 450 (which expanded vote-by-mail opportunities and allowed counties to offer Election

Day registration and other voting services at vote centers), the 2015 California Motor Voter Act, Ca. Assembly Bill 1461 (which created a seamless online portal for persons going to the Department of Motor Vehicles to obtain or renew their driver's license to automatically register to vote if eligible), and the Conditional Voter Registration Bill, Ca. Assembly Bill 1436 (which allowed voters to register or update a registration after the voter registration deadline at designated locations), and the 2011 Online Voter Registration Act, Ca. Senate Bill 397 (which created a new online system to receive voter registration forms and pull signatures from Department of Motor Vehicle files). During recent elections, Applicant has expended considerable resources to operate voter assistance hotlines and poll monitoring to assist tens of thousands of voters experiencing challenges on Election Day. Specifically, on Election Day, staff, members and volunteers expended a considerable number of hours assisting voters who are eligible, registered, and may even have voted before, but cannot be found in the rosters at the polling site. Applicant has also spent considerable resources in the last years educating Californians of changes in election procedures, register high school and college and university students to vote.

Applicant would be directly and adversely impacted by the aggressive and legally baseless relief sought by Plaintiffs. Plaintiffs seek a broad declaration that unspecified provisions of California's registration laws are preempted by federal law. *See* ECF No. 1 at 26 (Prayer for Relief c, e). Plaintiffs further seek an order compelling California and Los Angeles to conduct a purge of their voter rolls, *Id*. at d, that is contrary to the requirements of federal law and would result in deregistration of properly registered voters, including individuals Applicant has previously expended resources to register. Moreover, the widespread, indiscriminate purges called for by Plaintiffs would significantly increase the number of voters experiencing challenges on Election Day, burdening Applicant's voter assistance efforts. Applicant therefore has a substantial interest in minimizing the number of

purged eligible voters who show up to vote on Election Day, protecting the reforms it has previously achieved, and preserving the registration status of persons it has registered, its members and other eligible voters.

The wide-ranging voter purges and efforts to preempt California registration laws sought by Plaintiffs are contrary to federal law: the National Voter Registration Act, 52 U.S.C. § 20501, *et seq.*, prevents states from removing registered voters from the rolls based on unreasonable inferences that the voter has become ineligible. The NVRA also encourages states to take measures—such as California has—to promote registration of voters. The NVRA thus strikes a thoughtful balance between requiring states to make "a reasonable effort to remove the names of ineligible voters," 52 U.S.C. § 20507(a)(4), while *barring* states from taking unreasonable steps to remove voters from the rolls, such as removing individuals for non-voting or because of an unsubstantiated belief that the voter has moved. Accordingly, Plaintiffs err in contending that the NVRA requires California or Los Angeles to remove voters from the rolls on those grounds. Taken as a whole, the NVRA confirms that Congress sought to protect voters against having to needlessly re-register because of overzealous and unreasonable purges—the precise relief Plaintiffs seek.

As a strong proponent of registration reform and as a major sponsor of voter assistance and registration efforts throughout the State of California and in Los Angeles, Applicant has a unique interest in defending California's recent voter registration reforms. These interests may not be adequately represented by Defendants, who are governmental officials who could be subject to political and/or financial pressure to resolve this case in a manner adverse to Applicant's interests; indeed, Applicant has previously sued Defendant California Secretary of State concerning California's failure to comply with the NVRA. Nor can the governmental defendants adequately represent the voices and interests of the voters that Applicant works so hard to register, assist, and otherwise engage with the electoral system.

Similarly, Applicant's interests may not be adequately represented by Other Proposed Intervenors[1], who are voter engagement organizations that register voters but have their own unique and varied institutional priorities and key constituent groups. Indeed, Applicant is unique in the state for the scope and sophistication of its Election Day voter protection efforts. Applicant therefore requests their motion to intervene be granted as of right under Rule 24(a) or alternatively, by permission under Rule 24(b).

DESCRIPTION OF APPLICANT FOR INTERVENTION

Common Cause is a 501(c)(4) nonprofit, nonpartisan, grassroots advocacy organization incorporated and headquartered in Washington, D.C. Founded in 1968, Common Cause is dedicated to restoring the core values of American democracy; reinventing an open, honest and accountable government that serves the public interest; and empowering ordinary people to make their voices heard in the political process. CCC is the California branch of the Common Cause 501(c)(4) corporate entity. With offices and staff in Los Angeles, Sacramento, and Oakland, California, CCC serves its more than 175,000 members throughout California, including many registered and eligible voters.

CCC's four major issue areas are voting and elections; money and politics; ethics, transparency and government accountability; and media and democracy. And, through its work across those four areas, CCC aims to ensure open, honest, and accountable government; to promote equal rights, opportunity, and representation for all; and to empower all people to make their voices heard as equals in the political process.

Toward those ends, CCC works with organizations across the country as part of the nonpartisan Election Protection Coalition to promote election preparedness

[1] "Other Proposed Intervenors" are the three organizations (Mi Familia Vota Education Fund, Rock the Vote, and the League of Women Voters of Los Angeles) that recently moved to intervene on April 17, 2018.

issues before Election Day. In California, and in Los Angeles County and other Southern California counties in particular, CCC recruits, trains, and manages the Election Protection hotline volunteers, for voters from throughout California to call with any problems they encounter. Additionally, CCC recruits, trains, and manages poll monitors to observe polling sites serving approximately 490 precincts.

CCC has also been actively engaged in the creation and implementation of many of the voter registration policies that it advocated and helped to pass. For instance, after the passage of the California Motor Voter Law, CCC met regularly with staff from the California Secretary of State, California State Transportation Agency, Department of Motor Vehicles, and other stakeholders to advise on how the law should be implemented. CCC helped organize and provide translators to test the new online driver license forms in different communities of users to identify how the interface, wording, and flow of questions could be improved. CCC also organized translation experts and bilingual speakers to review and provide feedback on the translations of the form in the nine languages required by the Voting Rights Act. These efforts were directed at ensuring that the questions are clear, the interface is user-friendly, and, ultimately, that the information that users provide is accurate in order to ensure that voter registrants coming through the DMV have the most up-to-date and accurate information provided to the Secretary of State.

CCC's voter engagement- and democracy enhancement-related work entails voter registration efforts through campus engagement. For instance, in 2014, CCC focused on registering and pre-registering over 500 young voters in San Diego on high school and college campuses. More recently, CCC has visited over 30 college and university campuses to register and pre-register citizens to vote. CCC frequently sends emails and other "touches" to encourage its members to check their registration status, update their registration records, and turn-out to vote. CCC has also sent targeting mailings to registered voters to encourage turn-out. CCC's voter

registration and engagement campaigns are a critical part of CCC's mission of empowering voters who might face obstacles to participation in American democracy.

ARGUMENT

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

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

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

United States v. Sprint Commc'ns, Inc., 855 F.3d 985, 991 (9th Cir. 2017) (quoting *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817, 823 (9th Cir. 2001)). Rule 24(a) must be construed "liberally in favor of potential intervenors," and, in addition to this "broad construction," eschews "technical distinctions" in favor of "practical considerations" in reviewing intervention applications. *Southwest*, 268 F.3d at 818 (citations omitted). In addition, courts must "take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections." *Id.* at 820.

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

a. Applicant's Motion is Timely

The Ninth Circuit directs courts to focus on three primary factors in assessing timeliness: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016). Moreover, "[t]imeliness is determined by the totality of the circumstances facing would-be intervenors." *Id.* The "crucial date" in the timeliness inquiry is "when proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties." *Id.* (quoting *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999)). Yet the "mere lapse of time alone is not determinative." *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir. 1984) (citation omitted).

This case is in its infancy, and the application here is timely under the "totality of the circumstances." Plaintiffs filed the complaint on December 13, 2017 and filed proof of service on Defendants on January 17, 2018. ECF Nos. 1, 22–23. Defendants answered on January 23, 2018. ECF Nos. 24–25.

Under the Court's March 21, 2018 scheduling order, the final pre-trial conference is scheduled for November 5 and the bench trial is scheduled for December 4, 2018. ECF No. 28. Applicant is prepared to meet this schedule (or any adjustment the Court sees fit to impose). To that end, Applicant has retained outside counsel with significant expertise in the NVRA and with the ability to litigate this matter both in California and in Washington, D.C. (where the lead plaintiff Judicial Watch is located). In short, Applicant's participation in this case will not delay proceedings.[2]

Applicant is seeking to intervene before substantial discovery has taken place, before any substantive hearings or rulings, and well before the pre-trial conference

[2] Other Proposed Intervenors moved to intervene on April 17, 2018, and their motion to intervene is scheduled to be heard on June 4. ECF No. 31. Applicant is filing its responsive pleading with this motion and will be in a position to have its motion heard at the same time as the Other Proposed Intervenors.

and trial dates set by the Court. Because there have been no substantive motions filed, much less adjudicated, intervention would not interfere with any pending issues before the Court or upset the resolution of issues already adjudicated. Moreover, because Applicant does not request any extension of existing deadlines, granting intervention will not result in a delay in hearing and resolving dispositive motions or adjudicating this case after a trial. Accordingly, intervention will not impose undue burdens on the parties or the Court.

On May 4, counsel conferred with counsel for Plaintiffs, who advised they opposed regarding this request to intervene. On May 7, Defendant Logan advised that he takes no position on this motion and Defendant Padilla advised that he will not oppose this application.

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

A key factor behind Applicant's decision to seek intervention is the belief that the Defendants and Other Proposed Intervenors are not in a position to fully or adequately represent Applicant's interests. This determination was made well before any substantial discovery has taken place or any substantive rulings have been made by the Court. Given that posture, Applicant's intervention cannot and will not prejudice Plaintiffs or any other litigants.

As for delay, Applicant has acted expeditiously—shortly after entry of the scheduling order and before there has been any substantive motions practice. And although securing and coordinating counsel, preparing the application papers, and

conferencing with the parties can be time-consuming, the process was undertaken with a great sense of urgency. Indeed, outside counsel was retained on May 4, shortly before this filing, and promptly contacted counsel for the other parties to seek their consent to this motion. And, as discussed in the accompanying *ex parte* request, Applicant is prepared to accelerate the hearing of this motion to June 4 when the Court is scheduled to hear other motions on this case.

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

b. Applicant Has a Significantly Protectable Interest in the Underlying Litigation

An applicant's right to intervene is conditioned on having a "significantly protectable interest relating to the property or transaction that is the subject of the action." *Sprint*, 855 F.3d at 991. As the Ninth Circuit has explained, such an interest exists where "(1) [the applicant] asserts an interest that is protected under some law, and (2) there is a 'relationship' between [the applicant's] legally protected interest and the plaintiff's claims." *Id.* (alteration in original) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). An intervenor is not required to show it has "a legal or equitable interest in jeopardy." *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th Cir. 1981). Moreover, determining whether an applicant has a sufficient interest is a

"practical, threshold inquiry, and no specific legal or equitable interest need be established." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (citation and internal quotation marks omitted).

Applicant has a strong interest in this litigation, sufficient to meet the requirements of Rule 24(a). As a core mission, Applicant has worked tirelessly to assist people to register as voters, assist registered voters or voting-eligible people to being able to cast a ballot, and to strengthen public participation in our democracy by ensuring that all eligible persons have equal opportunity to register to vote, vote for the candidate of their choice, and ensure their vote is counted. To that end, Applicant has worked on key legislative reforms of California's voter registration procedures to facilitate the registration process—including promoting automatic voter registration and Election Day registration. *See* Ex. 2 (Declaration of Kathay Feng) ¶¶ 7-8. Applicant's mission of achieving pro-voter reforms such as automatic voter registration could be severely impaired if Plaintiffs prevail. In particular, Plaintiffs seek both a sweeping declaration invalidating California's registration laws and expansive purges that will have an adverse impact on marginalized communities on which Applicant focuses much of its voter engagement work. Finally, Applicant expends resources and effort to assist voters including its members, to register and cast ballots, and otherwise promote ways to broaden California's electorate. *See* Ex. 2 ¶ 6, 9. For that reason, the expansive purges of the voter rolls that Plaintiffs seek would adversely affect Applicant by, among other things, forcing it to expend resources combating the effects of improper removals of voters from the rolls in a variety of ways, for example, of providing voter assistance leading up to and on Election Day, spending more time on efforts to re-register voters improperly purged. and in influencing any policy changes that come about in response to Plaintiffs' litigation efforts. Such a diversion of time, money, and effort would not come

without cost: Applicant would undoubtedly face tough decisions about how to cut back on other programs and priorities. *See* Ex. 2 ¶¶ 13-14.

Applicant also has a strong interest in resisting the flawed interpretation of the NVRA that Plaintiffs pursue. As noted above, this interpretation that would require extensive purges of voter rolls and thereby thwart the NVRA's purpose of "increas[ing] the number of eligible citizens who register to vote." 52 U.S.C. § 20501(b)(1). Applicant's interest in broadening the electorate would likewise be jeopardized.

Intervention in voting rights cases is favored, and the courts have routinely allowed it. *See Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) *superseded by statute* 135 S. Ct. 1257 (2105); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *N.Y. State v. United States*, 65 F.R.D. 10, 12 (D.D.C. 1974); *Commonwealth of Va. v. United States*, 386 F. Supp. 1319, 1321 (D.D.C. 1974); *City of Petersburg, Va. v. United States*, 354 F. Supp. 1021, 1024 (D.D.C. 1972); *Bellitto v. Snipes*, No. 0:16-cv-61474, 2016 WL 5118568 (S.D. Fla. Sep. 21, 2016); *Kobach v U.S. Election Assistance Comm'n*, No. 5:13-cv-04095, 2013 WL 6511874 (D. Kan. Dec. 12, 2013); *Veasey v. Abbott*, No. 2:13-cv-00193 (S.D. Tex. Sep. 19, 2013, Doc. 29); *Texas v. United States*, 798 F.3d 1108, 1111 (D.C. Cir. 2015); *LaRoque v. Holder*, No. 1:10-cv-00561 (D.D.C. Aug. 25, 2010, Doc. 24); *Shelby Cnty., Ala. v. Holder*, No. 1:10-cv-00651 (D.D.C. Aug. 25, 2010, Doc. 29); *Nw. Austin Mun. Util. Dist. v. Gonzales*, No. 1:06-cv-01384 (D.D.C. Nov. 09, 2006, Doc. 33).

Courts and Congress have often recognized that the right to vote—that is central to Applicant's work and the bedrock of American democracy—is "a fundamental right." 52 U.S.C. § 20501(a)(1). And the Supreme Court has long recognized that voting-related restrictions implicate "interwoven strands of liberty"

that "rank among our most precious freedoms": "the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (citations and internal quotation marks omitted). Such an interest, and Applicants' role in furthering it, is more than sufficient to merit intervention.

c. The Disposition of this Action Could Impair Applicant's Interests

In addition to demonstrating an interest in the underlying litigation, intervention should be granted where the applicant shows that it is "so situated that the disposing of the action may as a practical matter impair or impede [its] ability to protect its interest." Fed. R. Civ. P. 24(a)(2). An intervenor is not required to show with "absolute certainty that a party's interests will be impaired." *Citizens for Balanced Use*, 647 F.3d at 900. Instead, the Ninth Circuit "follow[s] the guidance of Rule 24 advisory committee notes that state that '[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.'" *Southwest*, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee's notes to 1966 amendment). Applicant's interests here could very well be impaired by an adverse disposition.

As noted above, Applicant's mission includes registering eligible voters, including members of marginalized communities and those who do not regularly vote, encouraging civic engagement through the ballot box, and assisting voters on Election Day who encounter problems at the polls—including not being on the voter registration rolls. Those efforts would necessarily be hampered if Plaintiffs are granted the relief they seek, which would require aggressive purging of Los Angeles County's and California's voter rolls. ECF No. 1 Prayer for Relief (d). Given upcoming statewide and federal elections in both 2018 and 2020, the relief Plaintiffs seek threatens serious harm to Applicant's interest in encouraging voting, because it

could force many registered voters to have to re-register in order to vote. It also would requiring Applicant to spend more time assisting registered voters who discovered on Election Day they were purged. Applicant would also be compelled to divert significant resources to voter engagement and related efforts to remedy the massive registration cancellations envisioned by Plaintiffs. Substantial educational outreach might be needed to alert eligible voters, including Applicant's members, to the potential for their removal from the rolls and what they might need to do to protect their right to vote. The prospect of such an adverse impact on Applicant's interest is far from remote.

Furthermore, Applicant has expended considerable effort promoting pro-voter reform of California's registration laws, including the establishment of automatic voter registration and Election Day registration. In their Complaint, Plaintiffs seek a sweeping declaration that California's laws governing voter registration are preempted by federal law. ECF No. 1 Prayer for Relief (c & e). Applicant has a substantial interest in protecting the hard-fought reforms it has previously achieved.

d. The Existing Parties Do Not Adequately Represent the Interests of Applicant

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 applicant 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)). 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." *Id.* (quoting *Arakaki v. Cayetano*, 324 F.3d at 1086). 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). Applicant here easily meets this "minimal" burden of showing that the existing defendants *may not* adequately represent its interests. *See Citizens for Balanced Use*, 647 F.3d at 398.

In this case, while there may be some overlap between the interest of the existing Defendants (both governmental officials) and that of Applicant, it is likely that each will have its own discrete areas of interest, making it far from "undoubted" that the governmental defendants would, or are "capable and willing" to, make all of Applicants' proposed arguments. *Id*. As governmental officials with substantial public responsibilities and limited resources tied to the public treasury, the existing defendants might seek an unsatisfactory resolution of the case to avoid the distraction and expense of litigation. Both public officials may need to take into account their respective offices' narrow institutional interests and staff capabilities and are subject to political pressures that do not align perfectly given their different constituencies. And, even on that score, the governmental defendants have quite different constituencies: Los Angeles County is but one county within the purview of Defendant Padilla as the California Secretary of State. Because of those different constituencies, neither governmental defendant could be expected to focus perfectly on the interests of a group like Applicant, its members, and the types of voters that Applicant seeks to engage. Moreover, political forces could affect Defendant Padilla's defense of the case in ways that are very much in conflict with Applicant's interests, particularly in maximizing eligible voter engagement and participation. To be sure, governmental officials should be responsive to their constituents, but

Applicant will give primacy to the interests of voters in a way that governmental officials simply cannot replicate.

Moreover, there is some history of disagreement between Applicant and Defendant Padilla concerning the proper interpretation of the NVRA—the key statute at issue in this litigation. In 2017, Applicant sued Defendant Padilla concerning California's failure to comply with Section 5 of the NVRA; that lawsuit resulted in a settlement under which Defendant Padilla and other defendants agreed to take certain steps to bolster California's compliance with the NVRA. *See* N.D. Cal. No. 3:17-cv-2665. There can be no assurance that the respective interpretations of the NVRA held by the Secretary of State and the applicant will not diverge again.

Nor can there be any assurance that the governmental Defendants will satisfactorily represent voters' voices—voices that must be heard in a case where access to the rolls has been threatened. Those eligible and registered voters are central to so much of Applicant's mission. Given Applicant's extensive history in promoting reform of California's registration laws, as well as its grassroots voter engagement, including voter assistance and registration efforts, Applicant is well suited to lend its expertise to this action. Although the existing Defendants' offices *oversee and manage* voter registration lists, they do not have the kind of direct voter experience that Applicant can offer and are likely to neglect the interests that flow from that experience. Applicant also has experience litigating matters where the NVRA's meaning has been implicated. Consequently, Applicant is well positioned to represent voters and their interests free of the other pressures and conflicting interests that the governmental Defendants necessarily face.

Because of their different interests and areas of expertise, courts have recognized in dozens of cases that governmental parties cannot adequately represent the interests of private intervenors, even if they take the same position on underlying merits. For example, in *Trbovich v. United Mine Workers*, 404 U.S. 528 (1972)),

allowed a union member to intervene in an action brought by the Secretary of Labor to set aside union elections for violation of the Labor-Management Reporting and Disclosure Act of 1959, even though the Secretary was broadly charged with protecting the public interest. The Court reasoned that the Secretary of Labor could not adequately represent the union member because the Secretary had a "duty to serve two distinct interests," 404 U.S. at 538, a duty to protect both the public interest and the rights of union members. *See also Southwest*, 268 F.3d at 823 (inadequacy of representation found where defendant "City's range of considerations in development is broader than the profit-motives animating [intervenor] developers"); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) (affirming district court's grant of intervention where "the employment interests of [intervenor's] members were potentially more narrow and parochial than the interests of the public at large").

In addition, the expedited nature of this litigation could also leave Applicant without sufficient time to remedy any adverse disposition here before critical elections. If the existing parties were to settle or otherwise reach a resolution on the merits that adversely affected the interests of Applicant and its members, Applicant could lack meaningful avenues of relief as a non-party to this case. And although a separate or collateral challenge to any legally dubious list maintenance program under the NVRA's private right of action under 52 U.S.C. § 20510(b) would be available, Applicant could find itself running up against a Court-ordered resolution in this action that would preempt a later challenge. For this reason—and many others—Applicant's interests are threatened by the relief sought by Plaintiffs in this action.

Nor would Other Proposed Intervenors adequately represent Applicant's interests. Although Applicant shares some broad goals with Other Proposed Intervenors, each group has its own unique and nuanced positions about what kinds of list maintenance practices satisfy—or run afoul of—the NVRA. In addition,

Applicant has been centrally involved in seeking and obtaining the major reforms to California's voter registration laws discussed above—and is keen to preserve those hard-fought gains. And Applicant has played a critical role providing voter assistance leading up to and on Election Day by operating voter assistance hotlines and deploying poll monitors to provide assistance to voters experiencing challenges when they try to vote. To be sure, Other Proposed Intervenors are committed to protecting the franchise of voting, but each group (as well as Applicant) has its own institutional priorities and interests to weigh in balancing how to shape those practices against direct efforts to register, mobilize, and educate the groups of voters that each group focuses on.

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

Applicant satisfies not only the standard for intervention as of right, but also the criteria for Rule 24(b)(1)(B) permissive intervention. Under that rule, courts may permit intervention upon "timely motion" where the applicant "has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), and must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3). According to the Ninth Circuit, "a court may grant permissive intervention where the applicant for intervention shows (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." *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002) (citation omitted).

As discussed above, Applicant's motion is timely, and, for the same reasons, Applicant's intervention will not unduly delay or prejudice the adjudication of the original parties' rights. Nor does the applicant present any jurisdictional issues—this Court independently has subject matter jurisdiction over Applicant under federal

question jurisdiction because the dispute involves a question of federal statutory law. Finally, the questions of law and fact presented in this action address the core issues that Applicant seeks to litigate. And Applicant does not propose to add a counterclaim or expand the questions presented by the Complaint—in fact, Applicant will confer with Defendants (and any other intervenors the court sees fit to permit) to seek to avoid redundant filings before the Court. Furthermore, Applicant will lend its unique perspective and expertise to the case, thereby enhancing development of the relevant issues in the case. *See Miller v. Silbermann*, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (finding permissive intervention appropriate where the applicants, because of their "knowledge and concern," would "greatly contribute to the Court's understanding" of the case). Accordingly, if the court finds that Applicant may not intervene as of right, Applicant respectfully requests that the Court allow intervention under Rule 24(b).

CONCLUSION

For the above and foregoing reasons, Applicant respectfully requests that the Court grant its motion to intervene in this action as defendant.

DATED: May 14, 2018

Respectfully submitted,

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ATTESTATION PURSUANT TO LOCAL RULE 504.3.4

This certifies, pursuant to Local Rule 5-4.3.4, that all signatories to this document concur in its content and have authorized this filing.

/s/ John Ulin
John Ulin

CERTIFICATE OF SERVICE

Case Name: **Judicial Watch et al. v. Logan et al.** No. **2:17-cv-8948-R-SK**

I hereby certify that on May 14, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANT-INTERVENOR CALIFORNIA COMMON CAUSE IN SUPPORT OF RULE 24 MOTION TO INTERVENE

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 14, 2018, at San Francisco, California.

John Ulin	*/s/ J. Ulin*
Declarant	Signature