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13 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
14 **IN AND FOR THE COUNTY OF WASHOE**

15 CITIZEN OUTREACH FOUNDATION,
16 CHARLES MUTH, individually,

17 Petitioners,

18 vs.

19 CARI-ANN BURGESS, in her official capacity as
the Washoe County Interim Registrar of Voters,

20 Respondent.
21

Case No.: CV24-02182

Department: 3

22 **MOTION TO INTERVENE BY AMERICAN CIVIL LIBERTIES UNION**
23 **OF NEVADA AND MEMORANDUM OF POINTS AND AUTHORITIES**

24 Proposed Intervenor American Civil Liberties Union of Nevada (“ACLUNV”) moves,
25 under Nevada Rule of Civil Procedure 24(a)(2), to intervene as of right as a Respondent in this
26 matter on behalf of itself and its affected members in Washoe County; or in the alternative, moves
27 for permissive intervention pursuant to Rule 24(b). Pursuant to Rule 24(c), Proposed Intervenor’s

1 Answer is attached hereto as Exhibit 1. This Motion is based on the Memorandum of Points and
2 Authorities below, the Declaration of Athar Haseebullah filed concurrently herewith (attached
3 hereto as Exhibit 2), and any oral argument this Court may request.

4 DATED this 28th day of September, 2024.

5 /s/ Sadmira Ramic
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18 **application for admission pro hac*
19 *vice forthcoming*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 With only a few weeks to spare before the November 5, 2024, presidential election,
3 Petitioners demand that this Court require approximately 11,000 registered Washoe County voters
4 prove their eligibility to vote based solely on their names appearing in the USPS National Change
5 of Address (“NCOA”) database. Petitioners’ requested relief would violate state and federal law.
6 Under federal law, county clerks may not conduct list maintenance using NCOA data within 90
7 days of an election, and that “quiet period” began weeks ago, on August 7, 2024.¹ Under state law,
8 petitioners may challenge the residency of an individual Nevada voter only if the petitioners have
9 “personal knowledge” that the challenged voter has in fact abandoned their residence in a
10 jurisdiction and lost their eligibility to vote there.² Petitioners all but concede they lack this
11 personal knowledge, acknowledging that they filed these challenges based solely on systematic
12 NCOA matching. In fact, they do not offer any single instance in among the thousands of voters
13 they have challenged where they have actual, personal knowledge that the voter challenged has
14 abandoned their residency. Indeed, one voter the petitioners challenged in another Nevada county
15 has already explained to that county’s clerk that he requested mail forwarding because he is
16 “married to an Active-Duty Air Force member” who was called to serve overseas. And service
17 abroad in our nation’s armed forces is one of many permissible reasons why a lawfully registered
18 Nevada voter might need to forward their mail on an indefinite basis, which is exactly why Nevada
19 and federal law bar the use of NCOA data alone to alter a voter’s registration status this close to
20 an election.³

21 _____
22 ¹ See NRS § 293.503; 52 U.S.C. § 20507(c)(2)(B).

23 ² See NRS 293.535(1).

24 ³ Petitioners acknowledge that NCOA data is not a reliable source to determine voter eligibility.
25 See Chuck Muth, *RNC vs. Pigpen Project: A Clash of Approaches in Cleaning Up the Voter Files*,
26 Project Pigpen, <https://pigpenproject.com/blog/rnc-vs-pigpen-project-a-clash-of-approaches-in-cleaning-up-the-voter-files/> (last visited Sept. 26, 2024) (“just because someone has moved out of
27 state does NOT mean they’re ineligible to vote in Nevada. The voter may be on a temporary out-
of-state work assignment, attending an out-of-state college, or serving out-of-state in the military.
That’s why you can’t simply use the National Change of Address (NCOA) list from the post
office.”)

1 If Petitioners obtain their requested relief, tens of thousands of Washoe County voters,
2 including ACLUNV members living in Washoe County and targeted by Petitioners’ challenges,
3 could be placed on “inactive” status and immediately deprived of their right to vote by mail and
4 receive election-related information in the mail. Based on how other counties have responded to
5 Petitioners’ challenges, these voters also face the risk of having their registrations cancelled
6 outright before November, leaving them fully disenfranchised for the upcoming presidential
7 election. And although Nevada offers same-day voter registration, such registration must be done
8 in person, and voters who register during the voting period may only submit a provisional ballot
9 and must provide proof of residency. Moreover, Petitioners’ flawed legal theory, if embraced by
10 this Court, would invite potentially hundreds of thousands of mass challenges based on freelance
11 database analysis by self-appointed citizen vigilantes, a practice that both the United States
12 Department of Justice and the Nevada Secretary of State have determined to be unlawful this close
13 to the election and heightens the risks of voter suppression and voter disenfranchisement across
14 the State, including to ACLUNV members.

15 This case directly affects Proposed Intervenor first and foremost because Petitioners have
16 challenged several of ACLUNV’s own members in Washoe County based on purported NCOA
17 matches, and ACLUNV now seeks to intervene on behalf of its members and on itself as an
18 affected organization. Proposed Intervenor is the Nevada state affiliate of the American Civil
19 Liberties Union, the nation’s largest civil rights and civil liberties association. ACLUNV has more
20 than 5,000 members across Nevada and more than 1,400 members in Washoe County. *See* Ex. 2,
21 Declaration of Athar Haseebullah (“Haseebullah Decl.”) ¶ 4. In comparing the challenges
22 submitted by Petitioners to the Washoe County Clerk disclosed through a public records request
23 and ACLUNV’s current membership list, ACLUNV has verified that Petitioners have challenged
24 at least seven, and possibly many more, active ACLUNV members in Washoe County. *Id.* ¶ 17.
25 Furthermore, ACLUNV’s mission for decades has been to protect and expand the voting rights of
26 all Nevadans through voter education, advocacy, and litigation. *Id.* ¶¶ 5-7, 9-11. Petitioners’
27 requested relief would not only threaten ACLUNV members’ fundamental right to vote but would

1 also impede ACLUNV’s efforts to increase voter registration and participation among its
2 members. *Id.* ¶¶ 15-16, 18-19. It would also force it to divert organizational resources from its
3 voter registration and education efforts to identify, contact, and assist voters affected by the
4 challenges in time for them to fully participate in the upcoming election. *Id.* ACLUNV satisfies
5 each requirement for intervention as a matter of right under Rule 24(a)(2), and the Court should
6 grant its motion to intervene. Alternatively, the Court should exercise its discretion to grant
7 intervention on a permissive basis under Rule 24(b)(1).

8 ARGUMENT

9 I. MOVANT IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

10 Proposed Intervenor is entitled to intervene as a matter of right under Nevada Rule of Civil
11 Procedure 24(a). A motion to intervene under Rule 24(a) must be granted if the proposed
12 intervenor claims “(1) that it has a sufficient interest in the litigation’s subject matter, (2) that it
13 could suffer an impairment of its ability to protect that interest if it does not intervene, (3) that its
14 interest is not adequately represented by existing parties, and (4) that its application is timely.”
15 *Am. Home Assur. Co. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Washoe*, 122 Nev. 1229, 1238, 147
16 P.3d 1120 (2006).

17 Because Rule 24 is “equivalent” to Rule 24 of the Federal Rules of Civil Procedure, *see*
18 *Lawler v. Ginochio*, 94 Nev. 623, 626, 584 P.2d 667 (1978), federal law provides “strong
19 persuasive authority” here. *See Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d
20 872 (2002) (quotation omitted). Federal courts “construe Rule 24 liberally in favor of potential
21 intervenors, focusing on practical considerations rather than technical distinctions.” *Paher v.*
22 *Cegavske*, No. 3:20-CV-00243-MMD, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (quoting
23 *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001)). Federal courts in the
24 Ninth Circuit regularly grant motions to intervene under Rule 24(a) when organizations seek to
25 defend against a challenge that threatens the right to vote. *See, e.g., id.* at *2–3 (granting motion
26 to intervene brought by groups seeking to protect the right to vote in case involving challenge to
27

1 Nevada’s vote-by-mail plan); *Issa v. Newsom*, 2:20-cv-01055-MCE-CKD, 2020 WL 3074351, at
2 *2–4 (E.D. Cal. June 10, 2020) (same in California).

3 Proposed Intervenor satisfies all of the requirements of Rule 24(a). It has significantly
4 protectable interests in ensuring that its members and eligible voters in Washoe County can
5 exercise their right to vote freely and without undue interference, and to guard against an
6 unnecessary drain on their own scarce resources to address Petitioners’ many thousands of
7 improper challenges. Those interests will be gravely impaired if Petitioners prevail because
8 Petitioners seek to ultimately remove tens of thousands of registered voters from Washoe County’s
9 voter rolls and immediately imperil their right to vote weeks out from a presidential election.
10 Respondent will not adequately protect Proposed Intervenor’s interests because Respondent’s
11 interests in this matter are distinct and likely to be divergent to ACLUNV’s fundamental interest
12 in removing barriers to voting for its members—including and especially the members Petitioners
13 have already challenged.

14
15 Accordingly, ACLUNV is entitled to intervene as a matter of right.

16 **A. This Motion is Timely.**

17 Proposed Intervenor’s motion is timely because it was filed just five days after Petitioners
18 filed their writ request, which is when ACLUNV learned that its interests were threatened, and no
19 substantive proceedings have taken place. *See Kalbers v. U.S. Dep’t of Justice*, 22 F.4th 816, 825
20 (9th Cir. 2021) (interval of “just a few weeks” “weigh[ed] in favor of timeliness”); *Issa*, 2020 WL
21 3074351, at *4 (motion was timely where “no substantive proceeding ha[d] occurred”). Given the
22 early stage of this litigation and how quickly Movant has sought to intervene, the existing parties
23 will not be prejudiced by intervention. *See, e.g., Apache Stronghold v. United States*, 21-cv-00050-
24 SPL, 2023 WL 3692937, at *2 (D. Ariz. May 29, 2023) (parties would not be prejudiced by
25 intervention where the case was “still in the very early stages”).
26
27

1 **B. Movant Has a Significantly Protectable Interest in the Subject Matter of this**
2 **Lawsuit that Will be Impaired if Petitioners Prevail.**

3 To demonstrate a “significantly protectable interest” relating to the subject matter of the
4 action, the intervenor must (1) assert “an interest that is protected under some law,” and (2) show
5 that “there is a relationship between its legally protected interest and the plaintiff’s claims.”
6 *Kalbers*, 22 F.4th at 827. This is a “practical, threshold inquiry”; no “specific legal or equitable
7 interest need be established.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir.
8 2001). This interest requirement is also less stringent than Article III’s standing requirement. *See*
9 *Yniguez v. Arizona*, 939 F.2d 727, 731, 735 (9th Cir. 1991).⁴

10 Movant has two significant interests at stake in this case. First, ACLUNV is one of the
11 largest membership organizations in Washoe County, and its many members in the county stand
12 to receive confusing, intimidating, and burdensome communications from Respondent demanding
13 that they prove their residency to remain active, registered voters in Washoe County. If they do not
14 receive the notice or do not have time to respond before voting begins, they would lose their right
15 to vote by mail and receive information about the election, and potentially even be erroneously
16 removed from the rolls. As noted above, Petitioners have challenged several ACLU members
17 registered to vote in Washoe County, heightening Propose Intervenor’s substantial interests in the
18 outcome of this case. Ex. 2, Haseebullah Decl. ¶ 17. But ACLUNV also has an interest in defending
19 all its members’ fundamental right to vote freely and on equal terms with all Nevadans, *id.* ¶¶ 5-6,
20 which is protected by state and federal law, and which is directly threatened by Petitioners’ request
21 for declaratory relief. Second, ACLUNV has an interest in engaging in planned registration and
22 voter mobilization activities without being forced to divert resources to address the harms to its
23 members that would flow from Petitioners’ requested relief. *See id.* ¶¶ 12-15, 19. Both of these
24 interests “are routinely found to constitute significant protectable interests” that weigh in favor of

25 ⁴ Though a party does not necessarily need traditional standing to intervene in a matter as a
26 respondent, ACLUNV would in fact have standing to pursue a separate legal action for any
27 attempts to remove from Washoe County’s voter rolls the seven ACLUNV members that have been
 identified as being challenged. Granting ACLUNV’s motion to intervene as a matter of right, while
 proper under NRC 24(a), would also promote sound judicial economy and administration.

1 intervention as of right. *Issa*, 2020 WL 3074351, at *3; see *Paher*, 2020 WL 2042365, at *4
2 (political groups and voters had protectable interest in promoting the franchise, the election of
3 party candidates, and voting by mail); *Jud. Watch, Inc. v. Illinois State Bd. of Elections*, No. 24-
4 cv-1867-SLE, 2024 WL 3454706, at *4 (N.D. Ill. July 18, 2024) (union had protectable interest in
5 protecting the rights of members and use of its own resources to protect them from removal from
6 the rolls).

7 To satisfy the interest impairment requirement, an intervenor need only show that “it will
8 suffer a practical impairment of its interests as a result of the pending litigation.” *Wilderness Soc.*
9 *v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quotation omitted). “Once an applicant
10 has established a significantly protectable interest in an action, courts regularly find that
11 disposition of the case may, as a practical matter, impair an applicant’s ability to protect that
12 interest.” *Venetian Casino Resort, LLC v. Enwave Las Vegas, LLC*, No. 19-cv-1197-JCM, 2020
13 WL 1539691, at *3 (D. Nev. Jan. 7, 2020) (citing *California ex. rel. Lockyer v. United States*, 450
14 F.3d 436, 442 (9th Cir. 2006)).

15 Movant satisfies the impairment requirement for at least three reasons.

16 First, granting Petitioners’ requested relief could subject ACLUNV’s members—especially
17 its several confirmed challenged members registered to vote in Washoe County, Haseebullah Decl.
18 ¶ 17—to new burdens the exercise of the franchise and potential disenfranchisement.
19 Consequently, an adverse decision from this Court would substantially impair its protectable
20 interests in defending the right of its members to freely exercise their right to vote on equal terms.
21 See *Bellitto v. Snipes*, No. 16-cv-61474, 2016 WL 5118568, at *2 (S.D. Fla. Sept. 20, 2016)
22 (granting union’s motion to intervene in NVRA case because it “asserts that its interest and the
23 interests of its members would be threatened by the court-ordered ‘voter list maintenance’ sought
24 by Plaintiffs”).

25 Second, ACLUNV would be forced to redirect some of its voter-registration and voter-
26 education resources toward contacting challenged voters and helping them remain on the rolls in
27 the last few crucial weeks before the General Election. If Petitioners prevail, ACLUNV would be

1 forced to divert attention and resources away from its planned programs to identify members and
2 other constituents who have been challenged and advocate for their right to remain active
3 registered voters. Haseebullah Decl. ¶ 19; *see also Jud. Watch*, 2024 WL 3454706, at *4
4 (recognizing impairment of union’s interests where adverse decision might require it to reallocate
5 resources to protect its members’ voter registrations).

6 Third, an adverse decision from this Court would upend the status quo in Nevada and allow
7 Petitioners and others to immediately file even *more* mass, non-individualized, NCOA-based voter
8 challenges in the style of Petitioners’, which would only further threaten ACLUNV’s interest in
9 protecting its members’ and Nevadans’ right to vote and further force it to divert resources away
10 from its planned preelection activities toward emergency responses to voter challenges. *See Paher*,
11 2020 WL 2042365, at *4 (intervenors’ interests protecting voting rights and electing candidates
12 would be impaired by challenge to California’s all-mail election provisions); *see also S.E.C. v.*
13 *Navin*, 166 F.R.D. 435, 440 (N.D. Cal. 1995) (intervenor need only show “potential adverse
14 impact” on the interest).

15 **C. Movant’s Interests Will Not Be Adequately Protected by the Existing Parties.**

16 Movant cannot rely on the existing parties to adequately represent its interests. Courts
17 consider three factors in evaluating adequacy of representation: “(1) whether the interest of a
18 present party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2)
19 whether the present party is capable and willing to make such arguments; and (3) whether a
20 proposed intervenor would offer any necessary elements to the proceeding that other parties would
21 neglect.” *Citizens for Balanced Use v. Mo. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011)
22 (cleaned up). Courts will not assume that representation is adequate unless the proposed
23 intervenor’s “interest or ultimate objective in the litigation is the same” as an existing party’s. *See*
24 *Hairr v. First Jud. Dist. Ct.*, 132 Nev. 180, 185, 368 P.3d 1198, 1201 (2016).

25 Federal courts have repeatedly allowed voting rights organizations to intervene as of right
26 because their interests are different from those of the government entities charged with enforcing
27 election laws. For example, the Eleventh Circuit reversed an order denying intervention by voters

1 as defendants in a Voting Rights Act case, holding that they overcame a presumption of adequate
2 representation by the government defendant because their “interests [were] in achieving the
3 greatest possible participation in the political process” while the county “was required to balance
4 a range of interests likely to diverge from those of the intervenors.” *Meek v. Metro. Dade Cnty.,*
5 *Fla.*, 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds, Dillard v. Chilton Cty.*
6 *Comm’n*, 495 F.3d 1324 (11th Cir. 2007); *see also Washoe v. Putnam Cnty.*, 168 F.3d 458, 461-62
7 (11th Cir. 1999) (noting elected officials and election administrators have an interest in
8 “remain[ing] popular and effective leaders.”) (alteration in original). Indeed, the Ninth Circuit has
9 explained that “the government’s representation of the public interest may not be identical to the
10 individual parochial interest of a particular group just because both entities occupy the same
11 posture in the litigation.” *Citizens for Balanced Use*, 647 F.3d at 899 (quotation omitted).

12 This is the case here. Respondent Burgess is tasked with maintaining Washoe County’s
13 voter rolls and must balance voters’ interests in remaining registered against her duty to verify their
14 eligibility. She does not share Movant’s distinct and particular interests in protecting its members,
15 including its challenged members registered to vote in Washoe County, *see* Ex. 2, Haseebullah
16 Decl. ¶ 17, from additional burdens on voting or the risks of erroneous disenfranchisement.
17 Respondent is also obligated to consider her county’s resources and the risks and benefits of
18 litigation. And she has no obligation to consider the impact of sustaining mass challenges on
19 Proposed Intervenor’s limited resources and commitment to expanding voting rights. In a very
20 similar recent list-maintenance case, a federal court granted a union’s motion to intervene as a
21 defendant alongside the government because it “assert[ed] an interest in preserving *their* resources
22 and protecting the voting rights of *their* members,” whereas the government had “no obligation to
23 protect these specific resources or voting interests.” *Jud. Watch, Inc. v. Illinois State Bd. of*
24 *Elections*, No. 24-cv-1867, 2024 WL 3454706, at *3 (N.D. Ill. July 18, 2024) (*citing Bost v. Ill.*
25 *State Bd. of Elections*, 75 F.4th 682, 687 (7th Cir. 2023)) (emphasis in original). Courts routinely
26 reach the same conclusion in voting rights cases. *See Issa*, 2020 WL 3074351, at *3 (contrasting
27 the government’s general interest in enforcing the law with Movant’ interest in “ensuring their

1 party members and the voters they represent have the opportunity to vote ... and allocating their
2 limited resources to inform voters about the election procedures”); *Bellitto v. Snipes*, No. 16-
3 61474, 2016 WL 5118568, at *4 (S.D. Fla. Sept. 20, 2016) (granting motion to intervene as of right
4 by voter intervenors because the defendant election administrator’s “interests and interpretation of
5 the NVRA may not be aligned and its reasons for seeking dismissal” are different from the
6 intervenors’ reasons).

7 Proposed Intervenor will make two critical arguments: (1) no voter challenges based on
8 systematic database analysis are permissible at any time under Nevada law, and (2) no systematic
9 list maintenance activities are permissible within 90 days of the election under federal law,
10 specifically the National Voter Registration Act of 1993 (“NVRA”). Proposed Intervenor will
11 pursue both of those arguments on any appeal. Respondent has not filed a response and thus
12 Proposed Intervenor has no assurance that Respondent will make either, let alone both, of those
13 arguments. Respondent may press a much narrower reading of the NVRA, or she could decide that
14 the most efficient course is to settle or to decline an appeal after an unfavorable ruling, thereby
15 prejudicing Proposed Intervenor and its members. These reasons are sufficient to find that
16 ACLUNV’s interests may not be adequately protected by the existing parties. *See Paher*, 2020 WL
17 2042365, at *5 (“Proposed Intervenor . . . have demonstrated entitlement to intervene as a matter
18 of right” where they “may present arguments about the need to safeguard [the] right to vote that
19 are distinct from Defendants’ arguments”); *cf. Berger v. N. Carolina State Conf. of the NAACP*,
20 597 U.S. 179, 198 (2022) (legislators were not adequately represented where they uniquely would
21 “focus on defending the [challenged] law vigorously on the merits without an eye to crosscutting
22 administrative concerns”).

23 **II. ALTERNATIVELY, MOVANT SATISFIES THE REQUIREMENTS FOR**
PERMISSIVE INTERVENTION.

24 In the alternative, ACLUNV also satisfies the requirements for permissive intervention
25 under Rule 24(b). “NRC 24(b) provides that ‘[u]pon timely application anyone may be permitted
26 to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when
27

1 an applicant’s claim or defense and the main action have a question of law or fact in common.”
2 *Hairr*, 132 Nev. at 187. In exercising its discretion, a court must also “consider whether the
3 intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”
4 Nev. R. Civ. P. 24(b)(3). Federal courts consider several factors, including, “the nature and extent
5 of the intervenors’ interest,” the “legal position [the intervenors] seek to advance,” and “whether
6 parties seeking intervention will significantly contribute to full development of the underlying
7 factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”
8 *Sullivan v. Ferguson*, 22-cv-05403-DGE, 2022 WL 10428165, at *4 (W.D. Wash. Oct. 18, 2022)
9 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). All of
10 these considerations favor granting permissive intervention here.

11 First, Proposed Intervenor’s defenses “relate to the subject matter of the action before the
12 district court,” and “are clearly a critical part of the instant case.” *Republican Nat’l Comm. v.*
13 *Aguilar*, 24-cv-00518-CDS, 2024 WL 3409860, at *2 (D. Nev. July 12, 2024) (cleaned up).
14 ACLUNV will argue that Respondent may not accept *any* written challenges at *any* time that are
15 not based on “personal knowledge” of the facts establishing a voter’s changed residency, and may
16 not conduct *any* systematic list maintenance activities like those Petitioners seek during the 90-
17 day quiet period imposed by federal law. This includes sending out requests for voters to verify
18 their registrations and moving voters to inactive status.

19 Second, there will be no prejudice to any existing party if Movant is permitted to intervene,
20 nor will there be any delay because this case has just been filed and is still in the early stages.
21 Proposed Intervenor can coordinate with Respondent to streamline the briefing to mitigate as much
22 as possible any additional burdens on the parties and the Court.

23 Finally, Proposed Intervenor will represent the unique and particular interests of the very
24 voters who stand to be disenfranchised and/or inhibited from exercising their right to vote on equal
25 terms as a result of Petitioners’ challenges—a perspective that the government Respondent cannot
26 share. *See* Haseebullah Decl. ¶¶ 4-6, 9-10, 17. As such, Movant “will significantly contribute to
27

1 full development of the underlying factual issues in the suit and to the just and equitable
2 adjudication of the legal questions presented.” *Sullivan*, 2022 WL 10428165, at *4.

3 A federal court in this District recently allowed voting rights organizations to intervene in
4 a similar case in which third-party organizations sought to compel list maintenance, on grounds
5 that the intervening organizations brought different objectives and arguments to the dispute than
6 the government. The court explained:

7 [P]laintiffs seek to compel the State to remove from the rolls voters
8 whom they claim are ineligible while defendants are required to
9 balance the twin objectives of the NVRA in litigating this suit—
10 easing barriers to registration and voting, while at the same time
11 protecting electoral integrity. However, the expressed mission of the
Proposed Intervenor is to ensure that voters are retained on or
restored to the rolls. In other words, Proposed Intervenor provide the
counterbalance to plaintiffs’ singular purpose that defendants’ split
mission does not allow.

12 *Aguilar*, 2024 WL 3409860, at *1, *3. The same reasoning applies here. Proposed Intervenor will
13 provide an important “counterbalance” to Petitioners’ arguments that Respondent cannot provide
14 due to her “split mission” of “easing barriers to registration and voting” and “protecting electoral
15 integrity.” *Republican Nat’l Comm.*, 2024 WL 3409860, at *3; *see also Public Interest Legal*
16 *Found., Inc. v. Winfrey*, 463 F. Supp. 3d 799 (E.D. Mich. 2020) (same). If it does not grant
17 intervention as of right, the Court should exercise its discretion to allow permissive intervention
18 under Rule 24(b).

19 **CONCLUSION**

20 For the reasons set forth above, ACLUNV respectfully requests that the Court grant its
21 motion to intervene and deem filed its proposed Answer.

1 **AFFIRMATION**

2 The undersigned affirms that the preceding document does not contain any person's
3 personal information as defined in NRS 239B.030(4).

4 Respectfully submitted on September 28, 2024.

5 */s/ Sadmira Ramic*
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27 *Attorneys for Proposed Intervenor*
ACLU of Nevada

**application for admission pro hac*
vice forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2024, I electronically filed the foregoing **MOTION TO INTERVENE BY AMERICAN CIVIL LIBERTIES UNION OF NEVADA** with the Second Judicial District Court using the E-flex system.

Participants in the case who are registered with this Court’s electronic filing system will receive notice that the document has been filed and is available on the court’s electronic filing system. To my knowledge, all parties in this matter are registered with this Court’s electronic filing system.

/s/ Sadmira Ramic
An employee of the ACLU of Nevada

INDEX OF EXHIBITS

Exhibit No.	Description	Number of Pages
1	Proposed Answer to Petition for Writ of Mandamus By Intervenor- Respondent ACLU of Nevada	6
2	Declaration of Athar Haseebullah	3

DATED this 28th day of September 2024

EXHIBIT 1

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11 *Attorneys for ACLU of Nevada*

12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 CITIZEN OUTREACH FOUNDATION,
CHARLES MUTH, individually,

15 Petitioners,

16 vs.

17 CARI-ANN BURGESS, in her official capacity as
18 the Washoe County Interim Registrar of Voters,

19 Respondent.
20

Case No.: CV24-02182

Department: 3

21 **PROPOSED ANSWER TO PETITION FOR WRIT OF MANDMUS BY INTERVENOR-**
22 **RESPONDENT ACLU OF NEVADA**

23 Intervenor-Respondent the American Civil Liberties Union of Nevada, by and through its
24 counsel, for its Proposed Answer to Petitioners' Petition for Writ of Mandamus, denies each and
25 every allegation of the Petition not specifically admitted herein, and further answers as follows:

26 1. Answering Paragraph 1, Respondent admits upon information and belief that on or
27 about July 29, 2024, Petitioner MUTH submitted voter challenges to Nevada county clerks and

1 registrars, including Washoe County. Respondent lacks sufficient information to admit or deny
2 that Petitioner MUTH's challenges were "processed" by "several county clerks/registrars."
3 Respondent denies that the challenges submitted by Mr. Muth were "properly processed" or could
4 be processed properly consistent with the laws of Nevada and the United States.

5 2. Respondent lacks sufficient information to admit or deny the allegations of
6 Paragraph 2.

7 3. Answering Paragraph 3, Respondent admits upon information and belief that on or
8 about August 27, 2024, the Nevada Secretary of State issued a memorandum to Nevada's county
9 clerks and registrars but denies the characterization that the memorandum was "private."

10 4. Respondent lacks sufficient information to admit or deny the allegations of
11 Paragraph 4.

12 5. Respondent denies the characterization that the memorandum was "secret."
13 Respondent lacks sufficient information to admit or deny the remaining allegations of Paragraph
14 5.

15 6. Answering Paragraph 6, Respondent admits upon information and belief that
16 Petitioners sent an "Open Letter to Nevada Secretary of State" to Secretary Aguilar on or about
17 September 8, 2024 reproduced at Petitioners' Exhibit 2. Respondent does not have sufficient
18 information to admit or deny the allegations contained within the Open Letter.

19 7. Answering Paragraph 7, Respondent admits upon information and belief that
20 Petitioners received the response from the Nevada Attorney General's Office reproduced at
21 Petitioners' Exhibit 3. Respondent does not have sufficient information to admit or deny the
22 remaining allegations of Paragraph 7.

23 8. Answering Paragraph 8, Respondent admits upon information and belief that
24 Petitioners sent the correspondence reproduced at Petitioners' Exhibit 4. Respondent does not have
25 sufficient information to admit or deny that Petitioners sent this correspondence to each district
26 attorney of Nevada.

1 9. Respondent does not have sufficient information to admit or deny the allegations
2 of Paragraph 9.

3 10. Respondent does not have sufficient information to admit or deny the allegations
4 of Paragraph 10.

5 11. Respondent does not have sufficient information to admit or deny the allegations
6 of Paragraph 11.

7 12. Respondent does not have sufficient information to admit or deny the allegations
8 of Paragraph 12.

9 13. Answering Paragraph 13, Respondent does not have sufficient information to admit
10 or deny the allegation that Petitioner MUTH is an elector registered to vote in Nevada. The
11 remaining allegations in Paragraph 13 call for a legal conclusion and no response is required. To
12 the extent a response is required, Respondent denies the remaining allegations of Paragraph 13.

13 14. Respondent does not have sufficient information to admit or deny the allegations
14 of Paragraph 14.

15 15. Answering Paragraph 15, Respondent admits that Respondent is responsible for
16 maintaining Nevada's voter rolls. The remaining allegations of Paragraph 15 call for legal
17 conclusions and no response is required.

18 16. The allegations of Paragraph 16 are admitted.

19 17. Answering Paragraph 17, Respondent takes no position on Petitioners' recitation
20 of Nevada Law, which speaks for itself. To the extent a response is required, Respondent admits
21 the allegations in Paragraph 17.

22 18. The allegations of Paragraph 18 are admitted.

23 19. Answering Paragraph 19, Respondent takes no position on Petitioners' recitation
24 of Nevada Law.

25 20. Answering Paragraph 20, Respondent takes no position on Petitioners' recitation
26 of Nevada Law.

27

1 21. Answering Paragraph 21, Respondent takes no position on Petitioners’ recitation
2 of Nevada Law.

3 22. Answering Paragraph 22, Respondent takes no position on Petitioners’ recitation
4 of Nevada Law.

5 23. Answering Paragraph 23, Respondent takes no position on Petitioners’ recitation
6 of Nevada Law.

7 24. Answering Paragraph 24, Respondent takes no position on Petitioners’ recitation
8 of Nevada Law.

9 25. Answering Paragraph 25, Respondent takes no position on Petitioners’ recitation
10 of Nevada Law.

11 26. Answering Paragraph 26, Respondent takes no position on Petitioners’ recitation
12 of Nevada Law.

13 27. The allegations of Paragraph 27 call for legal conclusions and no response is
14 required.

15 28. Respondent incorporates its prior answers to the allegations of Paragraph 28.

16 29. Answering Paragraph 29, Respondent admits upon information and belief that
17 Petitioner MUTH filed 11,063 challenges in Washoe County.

18 30. Respondent lacks sufficient information to admit or deny the allegations of
19 Paragraph 30.

20 31. Answering Paragraph 31, the document speaks for itself.

21 32. The allegations of Paragraph 32 call for legal conclusions and no response is
22 required.

23 33. The allegations of Paragraph 33 call for legal conclusions and no response is
24 required. To the extent a response is required, the allegations are denied.

25 34. Answering Paragraph 34, Respondent admits that Petitioners seek a writ of
26 mandamus to this effect. To the extent Respondent alleges that this relief constitutes “necessary
27 actions pursuant to NRS 293.530,” the allegation is denied.

1 35. Answering Paragraph 35, Respondent admits that Petitioners seek a declaratory
2 judgment to this effect. To the extent Respondent alleges that this declaratory judgment is
3 warranted, the allegation is denied.

4 36. Respondent incorporates its prior answers to the allegations of Paragraph 36.

5 37. Answering Paragraph 37, Respondent takes no position on Petitioners' recitation
6 of Nevada Law.

7 38. The allegations of Paragraph 38 call for legal conclusions and no response is
8 required.

9 39. The allegations of Paragraph 39 call for legal conclusions and no response is
10 required.

11 40. The allegations of Paragraph 40 call for legal conclusions and no response is
12 required.

13 41. Respondent incorporates its prior answers to the allegations of Paragraph 41.

14 42. Respondent does not have sufficient information to admit or deny the allegations
15 of Paragraph 42.

16 43. The allegations of Paragraph 43 call for legal conclusions and no response is
17 required.

18 44. The allegations of Paragraph 44 call for legal conclusions and no response is
19 required.

20 45. The allegations of Paragraph 45 call for legal conclusions and no response is
21 required.

22 46. The allegations of Paragraph 46 call for legal conclusions and no response is
23 required.

24 47. The allegations of Paragraph 47 call for legal conclusions and no response is
25 required.

1 **AFFIRMATIVE DEFENSES**

- 2 1. Petitioners lack standing to obtain relief.
- 3 2. Petitioners fail to state a claim for relief.
- 4 3. Petitioners have not stated a plausible claim for relief under NRS §§ 293.530 and
- 5 293.535.
- 6 4. Nevada law bars the relief Petitioners seek here. *See* NRS §§ 293.503, 293.530,
- 7 293.535.
- 8 5. Federal law bars the relief Petitioners seek here. *See* 52 U.S.C. § 20507.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, ACLUNV respectfully requests that this Court:

- 11
- 12 1. Deny that Petitioners are entitled to any relief;
- 13 2. Dismiss the Petition in its entirety, with prejudice;
- 14 3. Award reasonable costs and attorneys’ fees; and
- 15 4. Grant additional relief as this Court deems just and equitable.
- 16

17 Respectfully submitted on September 28, 2024.

18 /s/ Sadmira Ramic

19 SADMIRA RAMIC

20 Nevada Bar No. 15984

21 CHRISTOPHER M. PETERSON

22 Nevada Bar No. 13932

23 /s/ Jonathan Topaz

24 JONATHAN TOPAZ*

25 New York Bar No. 5671151

26 *Attorneys for Intervenor-Respondent*

27 *ACLU of Nevada*

**application for admission pro hac*

vice forthcoming

EXHIBIT 2

DECLARATION OF ATHAR HASEEBULLAH, ESQ.

I, Athar Haseebullah, Esq., under penalty of perjury declare:

1. I am over the age of 18 and I am competent to testify.
2. I am the Executive Director of American Civil Liberties Union (ACLU) of Nevada and an attorney licensed to practice before Nevada Courts.
3. I have personal knowledge of the facts set forth in this declaration.
4. ACLU of Nevada is a non-partisan, non-profit organization with more than 5,000 members statewide, including over 1,400 members who reside in Washoe County.
5. ACLU of Nevada continually works to defend and advance the civil liberties and civil rights of all Nevadans.
6. This includes members who are registered to vote in Washoe County and who plan to cast ballots in the upcoming November 5, 2024, General Election.
7. ACLU of Nevada has been at the forefront of numerous efforts surrounding voting rights, including bringing forth legal challenges in *ACLU of Nev. v. Cnty. of Nye*, 519 P.3d 36 (Nev. 2022); *Martin v. City of North Las Vegas*, No. A-21-845709-W (Eighth Jud. Dist. Ct. Clark Cnty., Nev. filed Feb. 4, 2022); and *ACLU of Nev. v. Cnty. of Elko*, No. DC-CV-24-55 (Fourth Jud. Dist. Ct. Elko Cnty., Nev. filed May. 6, 2024).
8. The Nevada Supreme Court has found that the ACLU of Nevada has standing to challenge restrictions on voting rights including when conduct of election officials impacts voters' ability to cast their ballots. *See e.g. ACLU of Nev. v. Cnty. of Nye*, 519 P.3d 36 (Nev. 2022).
9. Protecting the fundamental right to vote is a core tenet of ACLU of Nevada's work, and ACLU of Nevada has frequently engaged in systemic work in furtherance of this

- mission. This goal has been part of ACLU of Nevada's strategic priorities for over two years.
10. ACLU of Nevada's voting rights work includes running one of the largest non-partisan election protection programs within Nevada; assisting its members, communities, and organizational partners in registering Nevadans to vote including during voter registration events, including as recently as September of 2024; educating the community about the 2024 General election; and engaging in get-out-the-vote activities to ensure eligible voters participate in the 2024 election.
 11. ACLU of Nevada does not support or oppose political candidates for office but has taken a position on multiple ballot initiatives which Nevada voters will vote upon during the 2024 General Election.
 12. On September 24, 2024, upon learning of the mass voter challenges that were lodged by the Petitioners, ACLU of Nevada requested public records from Washoe County.
 13. The request was made using the Washoe County Public Records Portal at <https://ssclerks.washoecounty.us:8444/web/>.
 14. The response received from the Washoe County Registrar of Voters Office included over 10,000 pages of documents.
 15. ACLU of Nevada had to exert resources, including staff time and costs which were to be devoted to other civil rights matters, to request this information and then sift through thousands of pages of documents to be able to determine if its members were or will be impacted.
 16. The complaint filed in this matter asks the Washoe County Registrar of Voters to remove over 11,000 registered voters before the 2024 General Election.
-

17. There are *at least* seven ACLU of Nevada members listed among the challenges at issue here, and if removed from the voter registration list, they face the risk of not being able to vote in the 2024 General Election. If placed on the inactive list because of these challenges, they will be unable to vote absentee in the 2024 General Election.
18. ACLU of Nevada members will be directly impacted by the requested relief sought by the Petitioners by having their right to vote significantly and unlawfully burdened, and potentially facing outright disenfranchisement, with no possible recourse before the 2024 General Election.
19. If the requested relief of Petitioners is granted, the ACLU of Nevada will also be hindered in its ability to carry out core components of its election year programs referenced above because it would have to divert from its ordinary work to research, contact, and re-register voters, and make efforts to reach out to its members to inform them of possible disenfranchisement, all before the first day of early vote, which is less than a month away.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 28th day of September, 2024.

Athar Haseebullah

Athar Haseebullah, Esq.
Executive Director
American Civil Liberties Union of Nevada