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12 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND**
13 **FOR THE COUNTY OF CLARK**

14 FRED KRAUS, JOEY PAULOS, PUBLIC
15 INTEREST LEGAL FOUNDATION,

17 *Petitioners,*

19 v.

21 LORENA S. PORTILLO, in her official
22 capacity as Clark County Registrar of
23 Voters,

24 *Respondent.*

Case No.: A-24-896151-W

Dept. No.: 16

**RESPONSE IN OPPOSITION TO RISE
ACTION FUND, INSTITUTE FOR
PROGRESSIVE NEVADA, AND NEVADA
ALLIANCE FOR RETIRED AMERICANS
MOTION TO INTERVENE AS
RESPONDENTS**

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1 Mr. Kraus, Mr. Paulos, and Public Interest Legal Foundation (“Petitioners”) respond to
2 the Motion to Intervene filed by Rise Action Fund (“Rise”); Institute for a Progressive Nevada
3 (“IPN”); and Nevada Alliance for Retired Americans (“Alliance”) (Mot. Intervene as Resp’t) and
4 request denial of the motion.

5 INTRODUCTION

6
7 Movants seek to disrupt this litigation based on a flawed understanding and huge
8 mischaracterization of what the Petitioners seek for a remedy. Movants’ arguments suggest they
9 have either failed to carefully read the petition or they are intentionally misleading the Court. To
10 be clear, the Petitioners seek “a writ of mandamus compelling Respondent to investigate known
11 commercial addresses listed as residences on the voter roll.” Petition 75:19-20. That is the only
12 relief requested – an investigation of ninety (90) commercial addresses.

13
14 All three Proposed Intervenors incorrectly claim the Petitioners seek removal of voters
15 from the registration rolls and based their Motion on this incorrect assumption. Rise claims its
16 interest in intervention relates to “attempts of Petitioners and others to abruptly remove voters
17 from the rolls in the months ahead of a major general election.” Mot. Intervene as Resp’t 9:17-18.
18 IPN claims “Petitioners are seeking to enable any third party across the state to seek a rushed
19 purge of voters in advance of an election, threatening to remove ineligible voters from the rolls or
20 have them moved to inactive status.” Mot. Intervene as Resp’t. 10:16-18. Finally, the Alliance
21 claims “[i]f Petitioners succeed, those who move and travel will be at an increased risk of
22 wrongful deregistration.” Mot. Intervene as Resp’t 11:14-15. Petitioners have neither pleaded for,
23 nor even impliedly requested any voter to be removed from the rolls.

24
25 The motion to intervene should be denied for at least four reasons. **First**, Movants do not
26 claim any of their members are registered at any of the ninety (90) commercial addresses
27 identified nor can they name a single constituent of Clark County who would be affected by an
28

1 investigation into known commercial addresses listed as residences on the voter roll.

2 **Second**, Movants have no “significantly protectable interest” in the subject matter of this
3 case. Movants claim they have an interest in preventing voter roll “purges.” *See* Mot. Intervene as
4 Resp’t 11:19-20; Mot. Intervene as Resp’t. 10:15-18. A voter roll purge is not in the crosshairs of
5 this lawsuit. Simply put, the Movants do not represent a single voter who would be impacted by
6 this litigation requesting an investigation into known commercial addresses listed on the voter
7 roll.
8

9 **Third**, Movants have not demonstrated that the Respondent will not adequately protect
10 their interests. As Respondent has not yet answered, there is no indication that she will not
11 vigorously defend this case and follow the law.
12

13 **Fourth**, Movants do not have a separate claim or defense. Their fears are imaginary. They
14 are fighting against a case which does not exist and against relief which is not pleaded.
15 Intervention, and the resulting tilting at windmills, will cause burden, undue delay, unnecessary
16 expense, and duplicative efforts. Allowing Movants to intervene is not in the interest of justice or
17 efficiency.¹
18

19 **ARGUMENT**

20 **I. The Court Should Deny Intervention as of Right.**

21 Nevada Rules of Civil Procedure 24 sets out the requirement for intervention.

- 22 (a) Intervention of Right. On timely motion, the court must permit anyone to
23 intervene who:
24 (1) is given an unconditional right to intervene by a federal statute; or
25 (2) claims an interest relating to the property or transaction that is the subject
26 of the action, and is so situated that disposing of the action may as a
27 practical matter impair or impede the movant’s ability to protect its
28 interest, unless existing parties adequately represent that interest.

¹ Movants are free to file *amici curiae* briefs to offer their concerns without causing the delay, complication, and prejudice to the parties.

1 Nev. R. Civ. P. 24(a).

2 In applying Nev. R. Civ. P. 24, the Nevada Supreme Court articulates that intervention as of
3 right requires the establishment of four elements:

4 (1) [T]hat it has a sufficient interest in the litigation’s subject matter; (2) that it could
5 suffer an impairment of its ability to protect that interest if it does not intervene; (3) that
6 its interest is not adequately represented by existing parties; and (4) that its application is
7 timely. Determining whether an applicant has met these four requirements is within the
district court’s discretion.

8 *Am. Home Assurance. v. Eighth Jud. Dist. Ct. ex rel. County of Clark*, 147 P.3d 1120, 1126
9 (Nev. 2006). If Movants fail to establish any one of these factors, the Court may stop its analysis,
10 and their motion must be denied. *See Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950
11 (9th Cir. 2009) (holding that “[f]ailure to satisfy any one of the requirements is fatal to the
12 application, and [the court] need not reach the remaining elements if one of the elements is not
13 satisfied”).

14
15 **A. Movants Have No “Significantly Protectable Interest” in the Subject Matter
16 of this Litigation.**

17 To intervene as of right, the Movants “must claim ‘an interest relating to the property or
18 transaction which is the subject of the action and [that] the applicant is so situated that the
19 disposition of the action may as a practical matter impair or impede the applicant’s ability to
20 protect that interest, unless the applicant’s interest is adequately represented by existing parties.’”

21 *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (citing Fed. R. Civ. P.
22 24(a)(2)). To demonstrate a sufficient interest in the litigation’s subject matter, the Movant must
23 show “‘a significantly protectable interest.’” *Am. Home Assurance Co.*, 147 P.3d at 1127
24 (citations omitted.). A “significant protectable interest” is defined by the courts “as one that is
25 protected under the law and bears a relationship to the plaintiff’s claim.” *Id.* (citing *S. Cal. Edison*
26 *Co. v. Lynch*, 307 F.3d 794 (9th Cir. 2002).) Further the court in *S. Cal. Edison Co.* held that an
27 interest is related to the case if “the resolution of the plaintiff’s claims actually will affect” the
28

1 intervenors. *S. Cal. Edison Co.*, 307 F.3d at 803 (citations omitted). The court in *Am. Home*
2 *Assurance Co.* stated, “[a] general, indirect, contingent, or insubstantial interest is insufficient,
3 however. Instead, an applicant must show a ‘significantly protectable interest.’” *Am. Home*
4 *Assurance Co.*, 147 P.3d at 1127.

5
6 Petitioners have identified ninety (90) commercial addresses at which it appears no one
7 lives. A representative of the Petitioners visited each address. Each commercial address is
8 specifically identified and a photograph of it is in the Petition. *See* Petition ¶ 21. The Movants
9 have not alleged that a single member of any of their three organizations is registered at any of
10 those ninety (90) addresses. The Court’s analysis should end here. The Movants have no
11 justiciable interest in this case.

12
13 Movants claim two significant interests in the lawsuit. Mot. Intervene as Resp’t 14:3 -
14 15:13. First, they claim their interests rest in “ensuring that their members and constituents are
15 able to register to vote, remain registered to vote and in active status, and successfully participate
16 in future elections.” Mot. Intervene as Resp’t 14:4-5. Second, that if Clark County is required to
17 follow Nevada law then “... each Proposed Intervenor would have to direct time and resources to
18 educating voters about the need to verify their registration to ensure it has not been inactivated.”
19 Mot. Intervene as Resp’t 15:10-11. There is no evidence in the record that either of these interests
20 are at risk with the pending litigation before this court.

21
22 Instead of articulating an interest based on relief Petitioners seek, Movants try to articulate
23 a justiciable interest by claiming Petitioners seek doomsday relief not sought. Instead of
24 draconian relief, the Petitioners seek a writ of mandamus “compelling Respondent Portillo to
25 investigate known commercial addresses listed as residences on the voter roll.” Petition 75:19-20.
26 That’s it — “please look into the ninety commercial addresses.”

27
28 Rise, however, claims their interest in litigation relates to, specifically, “attempts of the

1 Petitioner and others to abruptly remove voters from the rolls in the months ahead of a major
2 general election.” Mot. Intervene as Resp’t 9:17-18.

3 IPN claims “Petitioners are seeking to enable any third party across the state to seek a
4 rushed purge of voters in advance of an election, threatening to remove ineligible voters from the
5 rolls or have them moved to inactive status.” Mot. Intervene as Resp’t. 10:16-18.

7 Finally, The Alliance claims “if Petitioners succeed, those who move and travel will be at
8 an increased risk of wrongful deregistration.” Mot. Intervene as Resp’t 11:14-15.

9 None of this feared relief is being sought by Petitioners. The question is whether Movants
10 have a *significant protectable interest* in *this* matter. They do not.²

11 The interests articulated by the Movants do not demonstrate any protectable interest in this
12 mandamus action. Movants “concerns” and “fears” are generalized, speculative, and do not rise to
13 the level of a legally protectable interest in the outcome of this case because the basis of their
14 fears does not exist. The Nevada Supreme Court held, “[a] general, indirect, contingent, or
15 insubstantial interest is insufficient, however. Instead an applicant must show a ‘significantly
16 protectable interest.’” *Am. Home Assurance Co.*, 147 P.3d at 1127. Not only are the Movants’
17 injuries imaginary and speculative, the contingency for the injury (*i.e.*, that the Petitioners are
18 seeking the removal of any voters from the rolls) is non-existent. Movants are well aware the only
19 relief sought by the Petitioners is an investigation of commercial addresses and appropriate
20
21

22 ² Movants notes two examples of cases where intervention was allowed. Mot. Intervene as Resp’t 14:19-15:6.
23 Importantly, neither case is “analogous” to the present case. *Id.* Both cases involved different parties and different
24 claims than this case. Further, Movants fail to note the instances where intervention has been denied, including a
25 recent case involving a motion to intervene by the Michigan Alliance for Retired Americans and Rise Inc. *Pub.*
26 *Interest Legal Found. v. Benson*, No. 1:21-cv-929, 2022 U.S. Dist. LEXIS 246223 (W.D. Mich. Aug. 25, 2022).
27 There, the movants argued “the following two significant protectable interests in this litigation: (1) ‘should [PILF]
28 succeed, it would increase the risk that Proposed Intervenor’s members or constituents may be improperly purged
from Michigan’s voter rolls due to error-prone or highly questionable database matching efforts’; and (2) ‘should the
Court grant PILF’s requested relief, Proposed Intervenor’s will be required to divert resources to minimize the risk
that their members and constituents will be disenfranchised while the relief is implemented, and to assist any
wrongfully purged voters to re-register” *Id.* at *30. “On the facts at bar, the Court is not convinced that the interests
the Proposed Intervenor’s claim, which turn on some amount of increased risk of future disenfranchisement, constitute
a substantial legal interest.” *Id.* at *32.

1 corrections as required by law. *See* Mot. Intervene as Resp’t 7:13-16.

2 Granting intervention based on general and indefinite interests poses real risks to parties
3 and judicial resources. Movants do not claim a relationship with any individual who is registered
4 to vote at the identified ninety (90) locations in question. Nor can Movants show that a single
5 member of their organizations faces any threat of unlawful or lawful removal. Movant Rise
6 claims, “the lawsuit threatens the ability of Rise’s constituency – students and younger people –
7 to vote in the 2024 general election.” Declaration of Christian Solomon at 3:2-3. Rise offers no
8 support that any of the 90 locations in question will be used by one of their potential student voter
9 registrations in the fall or that any university housing is even at issue. Movant’s interests are no
10 different from the general public’s interest in ensuring that election laws are followed, which is
11 insufficient to support intervention, and is an interest adequately protected by the Petitioners and
12 Respondent. *See United States v. Alabama*, No. 2:06-cv-392-WKW, 2006 U.S. Dist. LEXIS
13 55305, at *13-15 (M.D. Ala. Aug. 8, 2006) (holding “the alleged interest could be claimed by any
14 voter, the interest is only of a general – not direct and substantial – concern”).

17 **B. Movants’ Stated Interest Will Not Be Impaired by the Disposition of this**
18 **Action.**

19 Movants must show that impairment of its ability to protect its legal interest is possible if
20 intervention is denied. *See Am. Home Assurance.*, 147 P.3d at 1126. Movants claim “[s]uch relief
21 would severely harm Proposed Intervenors by threatening their members’ and constituents’
22 voting rights and requiring Proposed Intervenors to expend substantial resources to educate voters
23 and protect them from baseless attacks on their eligibility.” Mot. Intervene as Resp’t 3:21-4:2.
24 Yet, Movants do not explain how an investigation “actually will affect” anything they do. *See S.*
25 *Cal. Edison*, 307 F.3d at 803. An “economic interest” must be “non-speculative,” “concrete,” and
26 “related to the underlying subject matter of the action.” *Alisal Water*, 370 F.3d at 919-20 (internal
27 citations omitted).
28

1 Rise claims “[the relief sought] will significantly disrupt Rise’s pre-election planning and
2 also come at the expense of work on its other mission-critical goals.” Mot. Intervene as Resp’t
3 9:21-23. Further, Movants claim “Rise expects that it will have to focus its volunteer phone
4 banking efforts on educating students and informing them how to confirm their registration
5 status.” Mot. Intervene as Resp’t 9:23-24. Movants, however, already claim this is part of the
6 work they do prior to the lawsuit. *See* Mot. Intervene as Resp’t 9:4-6. Rise “is planning extensive
7 efforts to register students on campus and to ensure students *stay* registered” and “Rise plans to
8 make organizing and educating its student constituents about the 2024 general election a major
9 priority.” Mot. Intervene as Resp’t 9:2-4. This alleged “economic interest” cannot possibly “relate
10 to the underlying subject matter of the action” if the organization had already planned to expend
11 resources for these precise goals regardless of this lawsuit.
12

13
14 IPN alleges “it would have to retool its voter guide to educate the public about the purge
15 and add material informing voters how to confirm their registration” if Petitioners are successful.
16 Mot. Intervene as Resp’t 10:19-20. Aside from the fact there is no “purge” forthcoming by this
17 mandamus, this type of interest IPN alleges will be impaired without intervention is one that the
18 organization is already doing prior to this litigation. IPN admits “[i]ts core mission is to ensure
19 that every Nevadan knows how to vote and how to do so confidently and successfully.” Mot.
20 Intervene as Resp’t 10:2-3.³ Further, IPN boasts it has done this type of work for fifteen years.
21 *See* Mot. Intervene as Resp’t 10:4-6. Movants cannot claim an impairment based on the efforts
22 the organization already undertakes as part of its core mission and everyday tasks.⁴ Further, IPN
23 fails to explain how the relief sought, simply an investigation into the voter roll maintenance
24
25

26 ³ Surely IPN currently instructs its members not to register at commercial addresses in accordance with Nevada law.
27 NRS 293.486(1).

28 ⁴ IPN claims it “would have to refocus its limited advertising to spread awareness about the need for voters to check
their registration” yet, claims “its core mission is to ensure that every Nevadan knows how to vote and how to do so
confidently and successfully.” Mot. Intervene as Resp’t 10:21-22; Mot. Intervene as Resp’t 10:2-3.

1 status or the identity of the ninety (90) locations in question, has any relation to its mission.

2 The Alliance claims “Alliance members are disproportionately vulnerable when voting
3 rolls are purged.” Mot. Intervene as Resp’t 11:10. This allegation suggests the Alliance does not
4 fully understand the relief sought by the Petitioners. This is evident by Movants’ claim “if
5 Petitioners succeed, those who move and travel will be at an increased risk of wrongful
6 deregistration.” Mot. Intervene as Resp’t 11:14-15. Finally, Alliance has not identified a single
7 member of their organization who resides at one of the 90 commercial addresses. Yet, the
8 Alliance claims “Alliance leadership and volunteers would also need to assist any members who
9 were deregistered.” Mot. Intervene as Resp’t 11:26-27. This claimed injury is speculative at best
10 and does not correlate with the relief sought by Petitioners.
11

12 Accordingly, none of the Proposed Intervenors have identified a protectable interest in this
13 litigation concurrent with the relief sought by Petitioners. The Ninth Circuit has held “[w]here no
14 protectable interest is present, there can be no impairment of the ability to protect it.” *Am. Ass’n*
15 *of People with Disabilities v. Herrera*, 257 F.R.D. 236, 252 (D.N.M. 2008); *see also Sierra Club*
16 *v. EPA*, 995 F.2d 1478, 1486 (9th Cir. 1993). None of the Movants have explained how the relief
17 sought, an investigation into the commercial addresses in question, impairs a protectable interest.
18

19 **C. Movants Have Not Overcome the Presumption of Adequate Representation.**

20 As of filing this response, Respondent has not yet answered. It is absurd for the Movants
21 to suggest that Respondent is not going to adequately represent all voters’ interest, including the
22 voters represented by the Movants. The Nev. R. Civ. P. 24(a) denies intervention where an
23 intervenor’s rights are already adequately represented. Intervention is not appropriate when a
24 petitioner’s “‘interest is adequately represented’ by real party interest Dan Schwartz, Nevada
25 treasurer, in his official capacity.” *Hairr v. First Jud. Dist. Ct.*, 368 P.3d 1198, 1199 (Nev. 2016).
26 There, the State of Nevada (through the official, Dan Schwartz, in his official capacity as Nevada
27
28

1 treasurer) in defending S.B. 302’s constitutionality, was “presumed to be adequately representing
2 the interests of citizens who support the bill, including petitioners.” *Id.* The petitioners “failed to
3 overcome the presumption when they could not show any conflict of interest with the State’s
4 position or cite an argument they would make that the State would not.” *Id.*

5
6 Here, Movants claim they will make arguments that Clark County would not make. That
7 assertion cannot, at this stage, be true as Respondent has not yet made any argument, much less
8 responded to the Petition. The court in *Hairr* further held “[t]he most important factor in
9 determining the adequacy of representation is how the interest compares with the interest of
10 existing parties . . . [and] when an applicant for intervention and an existing party have the same
11 ultimate objective, a presumption of adequacy of representation arises.” *Id.* at 1201 (citing
12 *Arakaki v. Cayeto*, 324 F.3d 1078, 1086 (9th Cir. 2003)). In their motion, Movants conveniently
13 cite the first half of a sentence in *Hairr*, “[t]he burden on proposed intervenors in showing
14 inadequate representation is minimal, and would be satisfied if they could demonstrate that
15 representation of their interest ‘may be’ inadequate[,]” Mot. Intervene as Resp’t 16:19-21, but fail
16 to finish the sentence, “[the Ninth Circuit] also recognized that there is an ‘assumption of
17 adequacy when the government is acting on behalf of a constituency it represents,’ and ‘[i]n the
18 absence of a “very compelling showing to the contrary,” it will be presumed that the state
19 adequately represents its citizens when the applicant shares the same interests.” *Hairr*, 368 P.3d at
20 1201 (citing *Arakaki*, 324 F.3d at 1086; quoting 7C Charles Alan Wright et al., Federal Practice
21 and Procedure § 1909 (3d ed. 2007).)

22
23
24 Ultimately, the court in *Hairr* stated, “[u]nless the applicant ‘can show that the [existing
25 party] has a different objective, adverse to its interest,’ or can show that the existing party ‘may
26 not adequately represent their shared interest, the [existing party’s] representation is assumed to be
27 adequate.”” *Hairr*, 368 P.3d at 1201 (quoting *Am. Home Assurance Co.*, 147 P.3d at 1129). In
28

1 *Hairr*, like here, the Movants and the State “have the same ultimate objective” and “[movants]
2 did not identify any conflicting interest or point to any arguments that the [Respondent] was
3 refusing to make...” *Hairr*, 368 P.3d at 1202.

4 The Nevada Supreme Court in *Lundberg v. Koontz* also denied a similar motion to
5 intervene of right on the basis that the interests of the potential intervenors were adequately
6 represented by the State, “because the single issue raised was an issue of law on which the
7 applicants and the State sought the same outcome.” *Id.* At 1201 (citing *Lundberg v. Koontz*, 418
8 P.2d 808, 809 (Nev. 1966)). Movants do not state an interest which will not be already adequately
9 represented by Respondent Portillo in her official capacity as Clark County Registrar of Voters.
10 Movants have not attempted to demonstrate adversity of interest, collusion, or nonfeasance, as
11 there is none. Therefore, the presumption remains that Respondent adequately represents any
12 interests of the proposed intervenors.
13
14

15 **II. The Court Should Deny Permissive Intervention.**

16 This Court “may permit” a timely motion to intervene where the proposed intervenor
17 “[h]as a claim or defense that shares with the main action a common question of law or fact.”
18 Nev. R. Civ. P. 24(b)(1)(B). However, the court, in exercising its discretion, “must consider
19 whether the intervention will unduly delay or prejudice the adjudication of the original parties’
20 rights.” Nev. R. Civ. P. 24(b)(3).
21

22 **A. Movants Do Not Have a Separate Claim or Defense.**

23 “[T]he words ‘claim or defense’ manifestly refer to the kinds of claims or defenses that
24 can be raised in courts of law as part of an actual or impending lawsuit.” *Diamond v. Charles*, 476
25 U.S. 54, 76 (1986) (O’Connor, J., concurring). Though permissive intervention does not require a
26 “direct personal or pecuniary interest in the subject of the litigation...it plainly *does* require an
27 interest sufficient to support a legal claim or defense which is ‘founded upon [that] interest.’” *Id.*
28

1 at 77 (citation omitted). Here, for the reasons above, Movants have made no such claim or
2 defense premised on the actual relief sought by Petitioners.

3 **B. Movants Will Duplicate Efforts, Add to the Parties' Burdens, and Cause**
4 **Undue Delay and Expense if Permitted to Intervene.**

5 Adding more parties would unnecessarily prolong litigation, burden the parties, duplicate
6 arguments and add expense without adding any benefit to the present parties or the Court. Under
7 the Nev. R. Civ. P. 24(b)(3) the Court "must consider whether the intervention will unduly delay
8 or prejudice the adjudication of the original parties' rights." Nev. R. Civ. P. 24(b)(3). The
9 Movants have not pointed to any unique arguments that Respondent Portillo will not raise and
10 provide no reason to believe their participation would help the Court resolve the matter at hand.
11 Indeed, based on their Motion to Intervene, Movants intend to raise concerns that are wholly
12 speculative and unrelated to the Petition at hand. For these reasons, permissive intervention is not
13 appropriate.
14

15 **CONCLUSION**

16 For the foregoing reasons, this Court should deny the motion to intervene.

17
18 **AFFIRMATION**

19 (Pursuant to NRS 239B.030)

20 The undersigned does hereby affirm that the preceding document filed in the above
21 referenced matter does not contain the social security number of any person.

22 Dated: July 12, 2024.
23 Respectfully submitted,

THE O'MARA LAW FIRM, P.C.

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** Pro Hac Vice motions forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify on this 12th day of July, 2024, a true and correct copy of **RESPONSE IN OPPOSITION TO MOTION TO INTERVENE AS RESPONDENTS** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

Dated: July 12, 2024

By: /s/ David C. O'Mara
David C. O'Mara, Esq.,
Counsel for Petitioners