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8
9 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

10 NEVADA GREEN PARTY; DR. JILL
11 STEIN; AND JULIA HAMMETT,

12 Plaintiffs,

13 v.

14 BARBARA C. CEGAVSKE, in her
official capacity as Secretary of State of
15 Nevada,

16 Defendant.

Case No. 2:16-cv-01951-JAD-CWH

**[EMERGENCY TREATMENT
REQUESTED]**

**MOTION TO INTERVENE AS
DEFENDANTS BY BARBARA
HARTZELL, DENISE GERDES AND
REBECCA GRISMANAUSKAS¹**

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27 ¹ Under the circumstances of this expedited matter, Defendant-Intervenors style this as an emergency
28 motion, and request the Court resolve it at the outset of any hearing on Plaintiffs' pending application
and motion.

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1 **I. INTRODUCTION**

2 Barbara Hartzell, Denise Gerdes, and Rebecca Grismanauskas (“Intervenors”) seek to
 3 participate as intervening defendants in the above-captioned lawsuit challenging the constitutionality of
 4 Nevada’s deadline for minor political parties to submit their ballot petitions. Intervenors are entitled to
 5 intervene in this case as a matter of right under the Federal Rule of Civil Procedure (“Rule”) 24(a)(2).
 6 In the alternative, Intervenors request permissive intervention pursuant to Rule 24(b). In accordance
 7 with Rule 24(c), a Response to Plaintiffs’ Application for Temporary Restraining Order and Order to
 8 Show Cause Regarding Primary Injunction (“Application”) is filed with this motion.

9 **II. BACKGROUND**

10 Intervenors, registered voters residing in Nevada, seek to intervene in this action to protect their
 11 rights to challenge a minor party nomination petition under Nevada law and to protect their interests in
 12 the integrity of the state’s ballot nomination process. After failing to obtain and timely submit the
 13 requisite number of signatures to appear on the general election ballot, the Nevada Green Party (“Green
 14 Party”) and Jill Stein (“Stein”) are attempting to circumvent the requirements in Nevada’s nomination
 15 petition statutes through legal action.

16 Under NRS 293.1715(l)(c), minor political parties must file ballot petitions with the Secretary
 17 of State “[n]ot later than the third Friday in June preceding the general election[.]” Further, the
 18 petitions must be submitted to the county clerks for each county for verification of the signatures
 19 included therein, “not later than 10 working days before the last day to file the petition.” NRS
 20 293.172(1)(c). This year, that day fell on June 3, 2016. The Green Party, however, failed to submit
 21 5,431 valid signatures by June 3.

22 Nevertheless, after receiving notice on June 22, 2016 that it did not have enough valid
 23 signatures for the petition, the Green Party continued to collect additional signatures. On August 1,
 24 2016, the Nevada Green Party attempted to submit over 1,000 signatures in support of its petition to the
 25 office of the Secretary of State. The office refused to accept additional signatures because the June 3,
 26 2016, deadline had passed, and late filings are not permitted.

27 A person dissatisfied with the Secretary of State’s determination that a minor party candidate
 28 has submitted sufficient valid signatures to qualify for the ballot must file a court challenge no later

1 than the fourth Friday in June. NRS 293.174. Objections are not permitted after that date. The statute,
 2 in full, provides:

3 If the qualification of a minor political party to place the names of candidates on the
 4 ballot pursuant to NRS 293.1715 is challenged, all affidavits and documents in support
 5 of the challenge must be filed not later than 5 p.m. on the fourth Friday in June. Any
 6 judicial proceeding resulting from the challenge must be set for hearing not more than 5
 7 days after the fourth Friday in June. A challenge pursuant to this section must be filed
 8 with the First Judicial District Court if the petition was filed with the Secretary of State.
 9 The district court in which the challenge is filed shall give priority to such proceedings
 10 over all other matters pending with the court, except for criminal proceedings.

11 *Id.*

12 This deadline has now passed and Intervenors cannot challenge any late-filed nomination
 13 petition that may be accepted by the Secretary of State as a result of this litigation.

14 On August 16, 2016, Plaintiffs filed their Application, in which they asked the Court to order
 15 the Secretary of State to extend the deadline for accepting ballot petitions of minor political parties and
 16 therefore allow the Green Party's candidate, Stein, to submit additional signatures to attempt to qualify
 17 for the general election ballot. Specifically, Plaintiffs seek an order compelling the Secretary of State
 18 to accept the Green Party's submission of signatures in support of its petition almost two months past
 19 the deadline set forth in NRS 293.1715. Plaintiffs advance two primary arguments. Plaintiffs first
 20 contend that the Secretary of State has discretion to put presidential candidates of minor political
 21 parties on the ballot regardless of whether they comply with the signature requirements set out in NRS
 22 293.172 and 293.1715. In the alternative, Plaintiffs allege that the current deadline for nomination
 23 petitions is unconstitutionally burdensome under the First and Fourteenth Amendments of the United
 24 States Constitution. Defendant's response must be filed with this Court on August 25, 2016 and a
 25 hearing is scheduled for August 31, 2016.

26 **III. AUTHORITY AND ARGUMENT**

27 The outcome of this litigation will have a direct, and potentially damaging, effect on
 28 Intervenors' rights to challenge a minor party's ballot nomination petition under Nevada State law.
 Given Intervenors' significant interest in this statutory right, which is not adequately represented by the
 Secretary of State, and the fact that this litigation is in its infancy, Intervenors' motion to intervene
 should be granted. As outlined below, Intervenors meet the requirements for intervention as a matter
 of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Court should exercise its

1 discretion to allow Intervenor to intervene under Rule 24(b), which allows for permissive intervention.

2 **A. Intervenor Are Entitled To Intervene As a Matter Of Right.**

3 Under Rule 24(a) a party may intervene if (1) the applicant's motion is timely; (2) the applicant
4 has asserted an interest relating to the property or transaction which is the subject of the action; (3) the
5 applicant is so situated that without intervention the disposition may, as a practical matter, impair or
6 impede its ability to protect that interest; and (4) the applicant's interest is not adequately represented
7 by the existing parties. *United States ex rel. McGough v. Covington Technologies Co.*, 967 F.2d 1391,
8 1394 (9th Cir. 1992). “This four-part test is construed liberally in favor of applicants for intervention
9 and guided by practical considerations rather than technical distinctions.” *Cemex, Inc. v. Cty. of L.A.*,
10 92 Fed App’x 457, 459 (9th Cir. 2004). “Rule 24 traditionally has received a liberal construction in
11 favor of applications for intervention.” *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d at 527 (citing
12 *Wash. State Building and Construction Trades Council, AFL-CIO v. Spellman*, 684 F.2d at 630).

13 **1. The Motion to Intervene is Timely**

14 In determining whether a motion to intervene is timely, a court evaluates three factors: (1) the
15 stage of the proceedings at which an applicant seeks intervention; (2) the prejudice to other parties; and
16 (3) the reason for and length of delay. *Cty. of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir.
17 1986), *cert. denied*, 480 U.S. 946 (1987). “Timeliness is a flexible concept; its determination is left to
18 the district court's discretion.” *U.S. v. Silverwood Estates Development Limited Partnership*, 370 F.3d
19 915, 921 (9th Cir. 2004). “Timeliness is determined from all circumstances.” *Id.*

20 All three factors weigh heavily in favor of Intervenor’s motion to intervene. First, Intervenor
21 seek to enter the lawsuit at the very beginning of the proceedings, even before the deadline for
22 Defendant to file a response in opposition to Plaintiffs’ Application and before the oral argument on
23 that motion. Second, Plaintiffs will not be prejudiced by intervention because they will have a fair and
24 full opportunity to review and reply to Intervenor’s arguments. Third, Intervenor have not in any way
25 delayed the present request: Intervenor seek to join the lawsuit *before* Defendants have taken any
26 action. Courts routinely find a motion to intervene to be timely under these circumstances. *See, e.g.*,
27 *Carcano v. McCrory*, No. 1:16CV236, 2016 WL 3167180, at *2 (M.D.N.C. June 6, 2016) (“Here, there
28 is no dispute the motion is timely. The proposed intervenors filed their motion on May 25, 2016, before

any of the original Defendants made any filings in the case and just nine days after Plaintiffs filed their motion for preliminary injunction.”); *United States v. Virginia*, 282 F.R.D. 403 (E.D. Va. 2012) (motion to intervene was timely in action by the United States against state where motion was filed less than two months after complaint was filed and before initial pleading stage had finished).

2. The Intervenors Possess a Significantly Protectable Interest in the Substance of This Litigation

Intervenors also satisfy the second factor for intervention as a matter of right because Intervenors have a strong interest in ensuring that the ballot petition process is fair and that they may exercise their statutory right to challenge a minor party’s petition submission. “The interest test is not a clear-cut or bright-line rule, because no specific legal or equitable interest need be established.” *City of Los Angeles*, 288 F.3d at 398. Rather, the Ninth Circuit has determined that the “interest test” is “basically a threshold one,” and “is primarily a practical guide to disposing of lawsuits by involving as many concerned persons as is compatible with efficiency and due process.” *MGM Grand Hotel, Inc., v. Smith-Hemion Productions, Inc.*, 158 F.R.D. 677, 679 (D. Nev. 1994) (citing *Cty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)). In general, “[a]n applicant has a ‘significant protectable interest’ in an action if (1) it asserts an interest that is protected under some law, and (2) there is a ‘relationship’ between its legally protected interest and the plaintiff’s claims.” *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)).

If the Court allows Plaintiffs to submit signatures at some point after the August 30 hearing—two months after the June 2 petition deadline—Intervenors will be foreclosed from challenging the legal sufficiency of these signatures. NRS 293.174 provides that such a challenge “must be filed not later than 5 p.m. on the fourth Friday in June” with the First Judicial District Court. *Id.* (emphasis added). That date has already passed, foreclosing Intervenors from challenging Plaintiffs’ petition should the Secretary of State be ordered to accept additional signatures and thereafter determine that Stein qualifies for the ballot. Moreover, Intervenors’ ability to oppose the petition is particularly important where the Secretary of State determined that a number of the signatures from the Green Party’s first submission were invalid. Intervenors’ interests would be impacted directly should Stein be

1 allowed to bypass Nevada law and possibly qualify for the ballot on the strength of invalid signatures
2 without Intervenor being afforded their statutory right to challenge.

3 Considering that Intervenor have a significant protectable interest implicated by this lawsuit,
4 “the disposition of this case may, as a practical matter, *affect it*.” *California ex rel. Lockyer*, 450 F.3d
5 436, 442 (9th Cir. 2006) (emphasis added) (citing *Ctr. for Biological Diversity v. Berg*, 268 F.3d 810,
6 822 (9th Cir.2001)) (“We follow the guidance of Rule 24 advisory committee notes that state that ‘[i]f
7 an absentee would be substantially affected in a practical sense by the determination made in an action,
8 he should, as a general rule, be entitled to intervene.’” (alteration in original) (quoting Fed .R. Civ. P.
9 24 advisory committee note to 1966 amendment)).

10 **3. Denial of This Motion Would Impair Intervenor’s Ability to Protect Their** 11 **Interests.**

12 The third factor for intervention as of right requires that intervenors be “so situated that
13 disposing of the action may as a practical matter impede [their] ability to protect [their] interest.” Fed.
14 R. Civ. P. 24(a)(2). Courts considering this factor “look[] to the ‘practical consequences’ of denying
15 intervention,” recognizing that even if the party seeking to intervene may vindicate its interests in some
16 later litigation, that is not a sufficient basis to deny intervention under Rule 24(a)(2). *Natural Res. Def.*
17 *Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (*Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir.
18 1967)).

19 This Court has held that where the party’s statutory right is at stake in a lawsuit between other
20 parties, such party’s ability to protect its interests is impaired absent intervention. *See People’s*
21 *Legislature v. Miller*, 2:12-CV-00272-MMD, 2012 WL 3536767, at *4 (D. Nev. Aug. 15, 2012) (“[I]f
22 Plaintiffs succeed and these statutes are declared unconstitutional, NMA et al. will lose the rights
23 afforded to them by the statutes.”). Likewise, here, Intervenor may lose their right to challenge ballot
24 petitions submitted by the Green Party or another minor political party, a right afforded to them under
25 NRS 293.174.

26 **4. Intervenor’s Interests Are Not Adequately Represented by the Current** 27 **Defendant**

28 The Secretary of State does not serve Intervenor’s interest in this lawsuit. To meet the final

1 requirement of intervention as of right, Intervenor need only show that the representation of their
 2 interests by the current parties “may be” inadequate, and the burden of making this showing is
 3 “minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Further, any
 4 doubt regarding the adequacy of representation should be resolved in favor of the would-be intervenor.
 5 *See* 6 JAMES WM. MOORE ET AL., MOORE’S FED. PRAC. § 24.03[4][a][i] (3d ed. 2011).

6 As a fundamental matter, the Secretary of State cannot adequately protect Intervenor’s interest
 7 in this lawsuit because the Secretary of State would be *adverse* to Intervenor during a ballot petition
 8 challenge. Rather, in such an action, the Secretary of State would be *defending* the validity of the
 9 petition. To the extent this lawsuit implicates the ability of third parties’ ability to mount a viable
 10 challenge to a decision qualifying Stein for the ballot, the Secretary of State may be less than
 11 enthusiastic about ensuring that any disposition of this case preserves the ability for such challenges to
 12 proceed; *i.e.*, to allow parties to sue her office to challenge its further review of Stein’s ballot petition.

13 In light of the discrete interests of the Secretary of State and Intervenor and the potential
 14 adversity between them, Intervenor’s interests are unlikely to be uniquely represented unless this
 15 motion is granted. *See California ex rel. Lockyer v. United States*, 450 F.3d 436, 445 (9th Cir. 2006)
 16 (“We therefore conclude that the proposed intervenors in this case, [] have ‘more narrow, parochial
 17 interests’ than the United States.”); *Yniguez v. State of Ariz.*, 939 F.2d 727, 733 (9th Cir. 1991)
 18 (granting motion where the government may be less than enthusiastic about the enforcement of a
 19 measure adopted by ballot initiative); *Smith v. Bd. of Election Comm’rs for City of Chicago*, 103 F.R.D.
 20 161 (N.D. Ill. 1984) (“Bipartisan” group of qualified voters who were supporters of candidates for
 21 ward committeeman were entitled to intervene in suit involving signature requirements for that office,
 22 as they would have been prejudiced if their motion to intervene were denied, and the motion was not
 23 untimely as the parties were presently briefing plaintiffs’ and plaintiff intervenors’ motions for
 24 summary judgment.).

25 **B. In The Alternative, Intervenor Request That The Court Grant Them Permission**
 26 **To Intervene Under Rule 24(b)**

27 Under Rule 24(b)(2), a court may grant permissive intervention if three conditions are met: (1)
 28 the applicant must demonstrate an independent ground for federal jurisdiction; (2) the motion must be

1 timely; and (3) the applicant's claims must have a question of law and fact in common. *Venegas v.*
2 *Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989). “In exercising its discretion, the court must consider
3 whether allowing intervention will cause prejudice or undue delay.” *Epstein v. Bayer*, No. 398CV-
4 0758-ECR VPC, 2006 WL 3313930, at *2 (D. Nev. Oct. 24, 2006) (citing *Donnelly v. Glickman*, 159
5 F.3d 405, 409 (9th Cir. 1998)). Additionally, “judicial economy is a relevant consideration in deciding
6 a motion for permissive intervention.” *Venegas*, 867 F.2d at 531. First, the Court has jurisdiction
7 because Plaintiffs bring a federal constitutional challenge to statutes that protect Intervenor’s ability to
8 safeguard the integrity of Nevada’s ballot access procedures. Second, as described above, this motion
9 has been timely submitted at the very outset of the case. *See Carcano v. McCrory*, 1:16CV236, 2016
10 WL 3167180, at *3 (M.D.N.C. June 6, 2016) (“[T]he proposed intervenors have already filed their
11 proposed answer and counterclaims, and the deadline for responses to the Plaintiffs' motion for
12 preliminary injunction has not yet passed. Thus, the addition of the proposed intervenors should not
13 significantly delay proceedings in this case.”). Third, the Intervenor’s interest in preserving their rights
14 to mount a potential challenge to a decision qualifying Stein for the ballot is implicated directly by
15 Plaintiffs’ claims in this case and therefore “largely overlap with the legal and factual issues that are
16 already present in the main action.” *Id.*

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1 **IV. CONCLUSION**

2 Intervenor respectfully request that the Court grants their motion to intervene as a matter of
3 right under Rule 24(a)(2) or, in the alternative, permits them to intervene under Rule 24(b). If granted
4 permission to intervene under either provision, Intervenor have attached a Response to Plaintiffs'
5 Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction for
6 filing in accordance with the Federal and Local Rules of Civil Procedure.

7 DATED this 25th day of August, 2016.

8 **WOLF, RIFKIN, SHAPIRO,**
9 **SCHULMAN & RABKIN, LLP**

10 By: /s/ Bradley Schrager

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CERTIFICATE OF SERVICE

On August 25, 2016, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following document:

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I certify under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 25th day of August, 2016.

By: /s/ Dannielle Fresquez

Dannielle Fresquez, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
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