IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

LEAGUE OF WOMEN VOTERS OF ARKANSAS, SAVE AR DEMOCRACY, BONNIE HEATHER MILLER, and DANIELLE QUESNELL — Plaintiffs

and

PROTECT AR RIGHTS and FOR AR KIDS — Proposed Intervenor-Plaintiffs

v. Case No. 5:25-cv-05087-TLB

COLE JESTER, Arkansas Secretary of State, in his official capacity — Defendant

and

TIM GRIFFIN, Arkansas Attorney General, in his official capacity — Proposed Defendant

REPLY IN SUPPORT OF MOTION TO INTERVENE

The Court should allow Proposed Intervenor-Plaintiffs (the "ballot question committees" or "BQCs") to intervene. The BQCs meet the Rule 24 intervention standards and intervention will advance the efficient resolution of all parties' claims. Indeed, in opposing the intervention motion, neither Plaintiffs nor Defendant acknowledge an obvious point: if intervention is denied, the BQCs will file a new lawsuit, which likely will be consolidated with this one because, as no one disputes, the Complaint in this action and the Complaint in Intervention involve common questions of law and fact. *See* Fed. R. Civ. P. 42(a). This reality is reason enough for the Court to grant permissive intervention so as to efficiently manage

the action and avoid unnecessary administrative hurdles. The BQCs also satisfy the standard for mandatory intervention because, as Plaintiffs' opposition only highlights, Plaintiffs do not adequately represent the BQCs' interests. The Court can and should grant the motion under either Fed R. Civ. P. 24(a) or 24(b).

A. The BQCs have standing.

Just like Plaintiffs, the BQCs are sponsors of proposed ballot initiatives who are injured by laws that restrict their ability to advocate for their measures, and this injury would be redressed by an order enjoining the relevant state actors from enforcing the laws. *See* ECF No. 6 at 5–8. Plaintiffs focus exclusively on the BQCs' standing to challenge Act 602, but they do not dispute the BQCs' standing to challenge other laws, and they offer no authority for the proposition that the absence of standing to raise one claim should result in denial of intervention to raise other claims.

Plaintiffs are wrong about the BQCs' standing to challenge Act 602, as well. Exactly as the BQCs anticipated, on June 2, 2025, the Attorney General denied Protect AR Rights' proposed ballot title on the grounds that "the ballot title does not comply with Act 602 of 2025." Ex. 1 at 5. This rejection injures Protect AR Rights by denying it the ability to collect signatures, and this injury would be remedied by an order enjoining the Attorney General from enforcing the law.

Similarly, Defendant's argument that the BQCs lack standing to challenge Act 273 of 2025 misses the mark. As alleged in the Complaint in Intervention, Act 273 is a content-based regulation of speech, ECF No. 5-1 ¶¶208–212, which threatens to

discount all signatures collected by a canvasser even for a technical violation, deterring canvasser participation and harming the BQCs' ability to reach voters. A plaintiff may bring a pre-enforcement challenge to a law that, like Act 273, unjustifiably burdens their First Amendment rights. *Fayetteville Pub. Libr. v. Crawford Cnty., Arkansas*, 684 F. Supp. 3d 879, 895 (W.D. Ark. 2023).

In any event, discrete standing arguments about particular laws do not undercut the BQCs' standing to challenge other laws through intervention. The BQCs have standing for purposes of intervention so long as they have standing to challenge even a single law at issue.

B. The BQCs satisfy the Rule 24 standards.

Turning to the intervention standards, Plaintiffs' and Defendant's arguments have the same thrust: the BQCs cannot intervene unless they can challenge provisions that are *not* at issue in Plaintiffs' suit.[1] That argument is wrong. Even if the BQCs had proposed a mirror complaint—which they do not—intervention would be appropriate if they meet the Rule 24 requirements. The only question at this

[1] Specifically, in addition to discrete standing arguments, Plaintiffs and Defendant both suggest that the *Pullman* abstention doctrine prevents the Court from adjudicating the BQCs' challenge to Ark. Code Ann. § 7-9-126(e), which requires them to collect signatures from fifty of the state's seventy-five counties. This argument is misplaced. "Abstention is, of course, the exception and not the rule," and is particularly disfavored "in cases involving facial challenges based on the First Amendment." *City of Houston, Tex. v. Hill*, 482 U.S. 451, 467 (1987); *see also Sisney v. Kaemingk*, 15 F.4th 1181, 1189 n.2 (8th Cir. 2021) (declining to abstain under *Pullman* in First Amendment challenge). Moreover, the parties urge abstention even though no final decision is likely to issue in the pending state court litigation until the BQCs' campaigns are over—meaning that their First Amendment rights would go *entirely unvindicated*. *See infra* at 6–7. The unavailability of adequate state remedies renders *Pullman* abstention inappropriate. In any case, the Court should not deny intervention on this basis. Plaintiffs and Defendant may raise any abstention issue they wish to pursue after intervention is granted.

point is whether the BQCs meet the intervention standards. For the reasons described in the initial motion and below, they do.

1. The BQCs meet Rule 24(b)'s permissive intervention standard.

To start with permissive intervention, no one disputes that the BQCs moved to intervene in a timely manner, before any meaningful activity has taken place in the case. Nor does anyone dispute that the BQCs' claims share common questions of law and fact with the main action. Defendant does not even assert that intervention would unduly delay the case or cause prejudice—the primary consideration in permissive intervention. *See Franconia Mins. (US) LLC v. United States*, 319 F.R.D. 261, 268 (D. Minn. 2017). Defendant simply asserts that allowing the BQCs to intervene "would lead every BQC for the 2026 general election cycle to intervene in the case." ECF No. 14 at 9. That is not so. The Court maintains full discretion to deny permissive intervention to a party whose later entry into the case would slow things down. *See, e.g.*, *United Food & Com. Workers Union, Loc. No. 663 v. United States Dep't of Agric.*, 36 F.4th 777, 781 (8th Cir. 2022) (affirming denial of motion to intervene "[g]iven the extremely late time when Appellants sought to intervene"). The theoretical possibility that other (unidentified) parties might seek to intervene at some point in the future is no reason to deny intervention to the BQCs who have sought to intervene and meet Rule 24 standards.

Plaintiffs make greater effort to argue that they would be prejudiced by intervention, *see* ECF No. 13 at 6–7, but their points are not convincing. In particular, Plaintiffs posit that intervention will cause delay or inject collateral

issues into the litigation, but offer no backup for that assertion. Both Plaintiffs' and the BQCs' claims are focused on the ballot-initiative process, discovery will significantly overlap, and nothing has happened in Plaintiffs' case other than filing the Complaint.

It is further unclear how the BQCs' "addition of another defendant" "would needlessly expand briefing of legal issues and discovery of facts in this matter." *Id.* at 6. The additional defendant is the Attorney General, named in his official capacity, who will presumably be represented by the same members of the Attorney General's Office who represent the current Defendant, the Secretary of State.

Plaintiffs also complain that because they have submitted a ballot measure that satisfies Act 602, the BQCs have only an as-applied challenge to the law. This point is incorrect. Counts Two and Three of the BQCs' Complaint in Intervention assert facial challenges to Act 602 that do not depend on how burdensome the law is. But the assertion is also irrelevant. An as-applied challenge to Section 602 does not prejudice Plaintiffs and adds no more complication to the case than a facial challenge would.

Finally, Plaintiffs complain that the substance of Protect AR Rights' proposed ballot measure "directly competes" with the substance of Plaintiffs' proposed ballot measure. *Id.* at 7. But the *substance* of the measures has nothing to do with Plaintiffs' ability to litigate their claims, which concern the ballot-initiative *process*. No party's claim requires the Court to pass judgment on the substance of the proposed ballot measures. If Plaintiffs find themselves prejudiced by Protect AR

Rights' effort to get on the ballot, they would be equally prejudiced if the BQCs were to file their claims in a separate suit. Plaintiffs' apparent desire to keep Protect AR Rights' measure off the ballot is not a legitimate ground upon which to oppose intervention to challenge state laws impeding the initiative process.

2. The BQCs meet the Rule 24(a) standard for intervention as of right.

As for mandatory intervention, Plaintiffs' opposition amplifies rather than diminishes the argument that Plaintiffs will not adequately represent the BQCs' interests in this lawsuit, necessitating the BQCs' intervention.[2] This includes Plaintiffs' attack on the substance of Protect AR Rights' measure, which raises serious doubts that Plaintiffs will vigorously pursue the BQCs' common claims if they determine later in the litigation that they can get their measure on the ballot without challenging some of the laws in question.

Consider also Plaintiffs' efforts to preclude the BQCs from challenging the Fifty-County Requirement, Ark. Code Ann. § 7-9-126(e). As noted in Plaintiffs' opposition, Plaintiff League Women Voters of Arkansas ("LWVAR") challenged this law in state court. *See* ECF No. 12 at 4–5; *The League of Women Voters of Arkansas v. Jester*, No. 60CV-23-1816 (Pulaski Cnty. Cir. Ct.). LWVAR filed in March 2023, did not seek preliminary relief, and has been patiently awaiting a ruling on its motion for

[2] Plaintiffs' assertion that the BQCs "lack a legally sufficient interest to warrant intervention" is puzzling, given that Plaintiffs seek to vindicate the same fundamental interests as the BQCs as to Plaintiffs' own preferred measure. ECF No. 13 at 5. The BQCs have an interest in obtaining signatures and placing their measure on the ballot and advancing the associational interests on which a ballot measure campaign is predicated—all interests that the First Amendment protects. The laws they challenge impede these interests. And if this suit is resolved against Plaintiffs, those interests will be impaired.

judgment on the pleadings. Now, despite the long delay, Plaintiffs suggest that the BQCs should not be able to seek relief in this Court before the Arkansas Supreme Court rules. It is very unlikely that the state trial court will issue its decision and that an appeal will be decided quickly enough to provide the BQCs meaningful relief before the July 2026 deadline for submitting signatures. The BQCs should not be barred from seeking relief in this Court because one Plaintiff has not yet obtained relief in another case—and will not do so in time for it to matter to the BQCs' ongoing campaigns.

Finally, though Plaintiffs and the BQCs assert some overlapping First Amendment claims, Plaintiffs do not adequately assert a number of First Amendment claims exhibiting the challenged laws' unconstitutionality. *See, e.g.*, Complaint in Intervention, ECF No. 5-1 at 38–41. For example, only the BQCs assert that Act 218, the law requiring state-mandated disclosure, violates First Amendment principles against compelled speech.

For these reasons, as well as for the reasons stated in the initial motion and brief, the BQCs have more than met their "minimal burden of showing that their interests are inadequately represented by the existing parties." *Nat'l Parks Conservation Ass'n v. U.S. E.P.A.*, 759 F.3d 969, 976 (8th Cir. 2014) (cleaned up).

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Intervenor-Plaintiffs are entitled to intervene under Rule 24(a) and should be permitted to intervene under Rule 24(b). The alternative is a new suit that will likely be consolidated into this one or, if not, would require separate litigation of two

closely overlapping lawsuits. Either option is inferior to intervention for considerations of efficiency alone. The Court should grant the motion to intervene.

Dated: June 4, 2025

Respectfully submitted,

/s/ John C. Williams
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Counsel for Proposed Intervenor-Plaintiffs Protect AR Rights and For AR Kids

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for Plaintiffs and counsel for Defendant.

/s/ John C. Williams
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