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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

A.W. CLARK, Plaintiff, **v.** **SHIRLEY N. WEBER**, as California Secretary of State**,** Defendant.	Case No. 2:21-cv-06558-MWF-KS ***EX PARTE* APPLICATION FOR MOTION TO INTERVENE BY CARLA ENDOW, LISA LONG, AND MARLLUS GANDRUD** Judge: Hon. Michael W. Fitzgerald

DHILLON LAW GROUP INC.

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that Intervenors Carla Endow, Lisa Long, and Marllus Gandrud, by and through counsel, apply to this Court, pursuant to Fed. R. Civ. P. 24, for an order permitting them to intervene as defendants in the above-entitled action on the grounds that they meet the requirements for intervention as a matter of right; or, in the alternative, for permissive intervention.

Applicants are filing this ex parte application to intervene because this Court has granted the parties in this action an expedited briefing schedule (ECF 19). If Applicants filed a noticed motion through the Court's normal process, Applicants would not have the opportunity to present to this Court the irreparable harm to their constitutional rights resulting from a grant of Plaintiff's request prior to this Court's consideration of Plaintiff's motion.

Good cause exists to issue the requested Order to preserve Intervenors' rights under the U.S. Constitution and the California Constitution, and to avoid irreparable harm to those rights. This Application is supported by the Memorandum of Points and Authorities in Support of this Application; the Request for Judicial Notice; the Declaration of Mark Meuser; the Declaration of Carla Endow; the Declaration of Lisa Long; the Declaration of Marllus Gandrud; the [Proposed] Order Granting Application to Intervene; the [Proposed] Opposition to Motion for Declaratory Relief and Preliminary Injunction ("Opposition"); all pleadings and papers filed in this action; and upon such matters the Court may entertain at the time of the hearing on this Application.

Date: August 25, 2021 DHILLON LAW GROUP INC.

By: /s Harmeet K. Dhillon
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Applicants respectfully request that this Court grant their Application to Intervene in this case. The Plaintiff seeks declaratory relief and the issuance of a preliminary injunction to cancel the Sept. 14, 2021, California recall election ("Recall Election") that is already underway, or to add Governor Newsom's name to the ballot as a candidate to replace himself—*after* ballots have been distributed and votes have been cast. Defendant has publically stated that there are "some serious problems" with California's recall laws and that she believes that replacement candidates should not win the recall election with a plurality vote even though that is in California's Constitution. (RJN, Exh. 5).

In Plaintiff's distorted theory of democracy, the Court should overturn a 110-year-old provision of the California Constitution to stop an election out of fear that the majority of California voters may decide that they want to recall their Governor. Applicants are three registered California voters who have already voted in the Recall Election, and two of the applicants are associated with the effort to enable the Recall Election to be on the ballot. Applicants intend to oppose the Plaintiff's motion in order to defend the current recall election rules in the California Constitution, as well as to ensure the Recall Election of Gavin Newsom is completed, their votes are counted, and their political association and advocacy in support of the Recall Election are not nullified.

This Court should grant the Applicants' intervention for two independent reasons:

First, Applicants satisfy the criteria for intervention as of right under Rule 24(a)(2). This Application is timely because Plaintiff's Complaint was filed less than two weeks ago, there has been little activity in the case, and Applicants' intervention will not prejudice any party. Applicants have a strong interest in protecting the votes they have cast and their efforts to initiate the Recall Election. If successful, Plaintiff

would discard the votes that Applicants have cast and destroy the value of the work they have done in support of the Recall Election in reliance on the current recall rules.

As to the final criterion, there is no other party in this matter who can adequately represent Applicants' interests. There are no California voters or supporters of the Recall Election in this matter, and the sole Defendant does not share the Applicants' personal interest in ensuring the validity of the votes they cast and the value of the work they have done to support the Recall Election. The Defendant, Secretary Shirley N. Weber, was appointed to her position just seven months ago by the Governor—the official who is the target of the Recall Election. She is a top official in his administration, and, just last month, Defendant questioned why an official should be replaced by a candidate who only wins a plurality of votes—*which is precisely Plaintiff's theory*. Defendant has further stated her belief that recall elections did not make sense because of the cost to the state. Applicants should not be forced to trust and hope that Defendant will adequately represent the Applicants' interests when she may be beholden to the person who is most threatened by the Recall Election, she has both publicly expressed agreement with the Plaintiff's theory and a desire for the economic benefit that the state would realize if Plaintiff's Motion is successful, and she and her office would benefit if the Plaintiff prevails.

Second, and alternatively, the Court should grant Applicants' permissive intervention under Rule 24(b). This Application is timely, Applicants' defenses share common questions of law and fact with the existing parties, and intervention will not result in delay or prejudice. The Court's decision in this matter will significantly impact Applicants' interest in preserving the validity of their votes in the Recall Election and the value of the work they have done to support the Recall Election.

Applicants should, therefore, be allowed to intervene either as of right pursuant to Rule 24(a)(2), or with the Court's permission under Rule 24(a)(2).

Counsel for Intervenors contacted the parties to this case via the email that they have on file with the ECF Docket. Counsel notified them of this pending motion and

asked the attorneys whether they objected to this Application. As of the time of filing this Application, Counsel for Defendants has responded that they will oppose this application. Plaintiff's counsel has not responded.

II. INTERESTS OF PROPOSED INTERVENORS

Applicants are three individual registered voters who have already cast ballots in the Recall Election. (Endow Decl., ¶¶ 2, 4; Long Decl., ¶¶ 2, 4; Gandrud Decl., ¶ 1,3.) Two of the Applicants, Carla Endow and Lisa Long, have also exercised their First Amendment rights to freedom of association and speech, and their rights under the California Constitution, to help initiate the Recall Election. (Endow Decl. ¶3, Long Decl., ¶ 3.) Applicants have a strong interest in preserving the rules and procedures governing recall elections, and to ensure the ongoing Recall Election is completed and their votes are counted.

III. ARGUMENT

A. Applicants Are Entitled To Intervention As A Matter Of Right

Under Federal Rule of Civil Procedure 24(a)(2), a party may intervene as a matter of right if four conditions are met: (1) the application is timely; (2) the applicant claims an identifiable, "significantly protectable interest" relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that, without intervention, disposition of the action may impair or impede the applicant's ability to protect that interest; and (4) the existing parties to the action do not adequately represent the applicant's interest. Fed. R. Civ. P. 24(a). *California ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006).

The Ninth Circuit construes this four-part test liberally and broadly in favor of potential intervenors. *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011); *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001); *In re Facebook, Inc. S'holder Derivative Priv. Litig.*, 367 F. Supp. 3d 1108, 1129-1130 (N.D. Cal. 2019). "Courts deciding motions to intervene as of right are guided primarily by practical considerations, not technical distinctions." *Citizens for Balanced Use*, 268 F.3d at 818 (citations and quotations

omitted); *In re Facebook, Inc. S'holder Derivative Priv. Litig.*, 367 F. Supp. 3d at 1130; *see also U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (stating that "equitable considerations" guide determination of motions to intervene as of right) (citation omitted). In deciding a motion to intervene, "[c]ourts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections." *Southwest Center for Biological Diversity*, 268 F.3d at 818.

Each of the applicants satisfies each prong of the four-part test.

1. This Application Is Timely.

Courts examine three factors to determine timeliness: (1) the stage of the proceedings at which an applicant seeks to intervene; (2) the prejudice to the existing parties if intervention is allowed; and (3) the reasons for and length of any delay. *Peruta v. County of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc) (cleaned up); *c.f. California Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (prejudice found where the parties had already reached a settlement agreement because late intervention "would complicate the issues and upset the delicate balance achieved by" the parties' agreement).

Applicants are seeking to intervene in this litigation at its outset, within two weeks of Plaintiff filing the original Complaint. *See* Dkt. 1. There is no prejudice to the moving parties if the Court allows intervention, and there has been no delay. Applicants' motion is therefore timely. *See, e.g., Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (allowing intervention four months after the complaint was filed and two months after the government answered even though plaintiff had already filed a motion for a preliminary injunction).

2. Applicants Have Significantly Protectable Interests in the Litigation.

Rule 24(a) requires that an applicant for intervention possess an interest relating to the "property or transaction" that is the subject of the litigation. The Ninth Circuit has "rejected the notion that Rule 24(a)(2) requires a specific legal or equitable interest." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006); *County of Fresno*, 622 F.2d at 438; *see also Blake v. Pallan*, 554 F.2d 947, 952 (9th Cir. 1977). Rather, the "interest test" serves primarily as a "practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *County of Fresno*, 622 F.2d at 438 (*quoting Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). "The 'interest test' is basically a threshold one, rather than the determinative criterion for intervention, because the criteria of practical harm to the applicant and the adequacy of representation by others are better suited to the task of limiting extension of the right to intervene." *County of Fresno*, 622 F.2d at 438. Generally, a proposed intervenor meets this test if "the interest [asserted] is protectable under some law, and [] there is a relationship between the legally protected interest and the claims at issue." *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc). More specifically, the Ninth Circuit has held that:

> when, as here, the injunctive relief sought by plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests, that party satisfies the 'interest' test of Fed. R. Civ. P. 24(a)(2); he has a significantly protectable interest that relates to the property or transaction that is the subject of the action.

Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1494 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc., supra*, 630 F.3d 1173.

"The interest test is not a bright-line rule . . . [a]n applicant seeking to intervene need not show that 'the interest he asserts is one that is protected by statute under which litigation is brought.' It is enough that the interest is protectable under any statute." *U.S. v. Alisal Water Corp*, 370 F.3d 915, 919 (9th Cir. 2004), *citing Sierra*

Club v. EPA, 995 F.2d 1478, 1484 (9th Cir. 1993). "[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006); 7C Wright, Miller & Kane, Fed. Prac. & Proc. Civ. § 1908.1 (3d ed. 2010) ("in cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention.").

Article II of the California Constitution, which allows California's voters to recall state officials, was approved by California's voters in 1911 and, "[s]ince 1913, there have been 179 recall attempts of state elected officials in California," including 55 attempts to recall the Governor. Applicants' Request for Judicial Notice ("RJN"), Exh. 2. The California Constitution establishes procedures whereby California's citizens can work to initiate a recall election comprising two questions: (1) whether to replace the target official with someone else, which must be approved by a majority of voters and (2), who should replace the official if he or she is recalled. Cal. Const. Art. II, Sec. 15.

It is entirely consistent with democracy, the Equal Protection and Due Process clauses of the U.S. Constitution, and the one-person, one-vote principle, for a majority of voters to choose to replace a Governor with someone else, and then replace the Governor for the remainder of their term with whichever candidate has the most votes. When the majority of California voters decide they would rather have *anyone* other than the incumbent official in office, it would be undemocratic in the only meaningful sense of the word to disregard their will by compelling them to consider the recalled official in the election to replace him. Indeed, it would be somewhat absurd, and a clear violation of democratic principles, to compel voters to consider the one person a majority have already agreed they do not want to govern them.

Applicants Endow and Long exercised their rights under the California Constitutional provisions summarized above to associate with others and advocate

for holding the Recall Election. Endow Decl., ¶ 3; Long Decl., ¶ 3. Their political activity in this regard is also protected under the U.S. Constitution's First Amendment and regulated by the California Elections and Government Codes. All applicants are registered California voters who have also cast ballots in the Recall Election. Endow Decl., ¶¶ 2,4; Long Decl., ¶¶ 2, 4; Gandrud Decl., ¶ 3.

Applicants thus have an interest in having the votes they have already cast in the Recall Election counted, and not having the work they have performed in support of the Recall Election in reliance on California's Constitution and recall-related statutes rendered meaningless. Indeed, it is difficult to imagine a more direct relationship between applicants' interest (bringing about the Recall Election and casting votes in support of recalling the Governor) and Plaintiff's requested declaration that California's recall process is unconstitutional and requested injunction cancelling the Recall Election.

In cases involving challenges to laws, the Courts have easily found a sufficient interest in those who support the challenged law or an outcome that law enabled. *See California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (overruling district court's denial of intervention to groups who had a different view than the State of California regarding the federal law regulating plaintiffs' challenged conduct); *Washington State Building & Trades v. Spellman*, 684 F.2d 627 (9th Cir. 1982) (*cert. denied* 461 U.S. 913, 103 S.Ct. 1891 (1983)) (allowing movant to intervene as a matter of right in an action challenging the legality of a measure movant supported when plaintiff sought to invalidate the law passed by initiative); *Idaho v. Freeman*, 625 F.2d 886 (9th Cir. 1980) (allowing movant to intervene when the suit challenged procedures for ratification of a constitutional amendment, a cause which the movant championed); *County of Fresno v. Andrus*, 622 F.2d 436, 437 (9th Cir.1980) (allowing movant small farmers to intervene in suit involving a statute that required large farm owners to dispose of certain excess land at below-market rates).

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In sum, the California Constitution provides Applicants with a means to advocate for the removal of Governor Newsom from office through the Recall Election, to vote to recall and replace Governor Newsom with anyone else, and to vote their preference for a replacement. Applicants have exercised these rights, and Applicants have a recognized strong interest in defending the constitutional provisions that enabled their activity and votes from Plaintiff's effort to cancel the Recall Election and void Applicants' votes.

3. Applicants' Interests Will Be Impaired If Intervention Is Denied.

Rule 24(a) requires that an applicant for intervention as a matter of right be "so situated that the disposition of the action *may* as a practical matter impair or impede the applicant's ability to protect that interest." Fed. R. Civ. P. 24(a) (emphasis added). Because "Rule 24 refers to impairment 'as a practical matter' . . . the court is not limited to consequences of a strictly legal nature." *Forest Conservation Council*, *supra*, 66 F.3d at 1498, *abrogated on other grounds*, *Wilderness Soc.*, 630 F.3d 1173 (citing Fed. R. Civ. P. 24 advisory committee's note stating that "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene")); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) ("We follow the guidance of Rule 24 advisory committee notes that state that if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.") (cleaned up); *State of Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980) (finding group supporting constitutional amendment would be impaired by litigation that would make it harder to ratify that amendment); *County of Fresno. v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (finding intervenors' interests impaired by being unable to participate in activity that litigation could delay).

Here, Applicants' interests not only "may," but *will necessarily be* impaired as "a practical matter" if Plaintiff's requested relief is granted. Both the Plaintiff's requested permanent injunction canceling the Recall Election, and Plaintiff's request

to add the Governor to the ballot, would impair Applicants' interest. The former will nullify the Applicants' work to initiate the Recall Election and the votes they have already cast, and the latter will nullify the will of California voters who cast their vote to replace the Governor with anyone else. *See* Endow Decl., ¶¶ 3,4; Long Decl., ¶¶ 3,4; Gandrud Decl., ¶ 3.

Judicial elimination of the California Constitution's recall election provisions that regulate Applicants' actions in support of the Recall Election and the votes they have cast qualifies as an injury-in-fact, and certainly as a sufficient risk of impairment to support intervention.

4. Secretary Weber Does Not and Will Not Adequately Represent Applicants' Interests.

The fourth condition justifying intervention as a matter of right considers whether "*existing parties* adequately represent" the applicant's interest. Fed. R. Civ. P. 24(a) (emphasis added). "The applicant-intervenor's burden in showing inadequate representation is minimal: it is sufficient to show that representation *may* be inadequate." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995), *abrogated by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011); *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 636 n. 10, 30 L.Ed.2d 686 (1972) (holding union members could intervene as a matter of right despite Secretary of Labor effectively functioning as the union members' lawyer for purposes of enforcing union rights and even though Secretary had an obligation to protect the "vital public interest in assuring free and democratic union elections that transcends the narrower interest of the complaining union member."); *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1068 (9th Cir. 2018) (reversing district court's denial of union's motion to intervene as a matter of right in case challenging labor laws; union's interests were narrower than state's interests).

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Given Defendant's publicly stated support for Plaintiff's legal positions (RJN, Exh. 5) there are no "existing parties" who will provide a full-throated defense of the California Constitution's provisions regarding recall elections, work to protect the rights of voters whose already-cast votes will be invalidated if the Plaintiff is successful, and whose work in support of the recall in reliance on their constitutional rights would be nullified by this Court's adoption of Plaintiff's arguments. As reflected in Applicants' Opposition, Applicants intend to mount a substantive and multi-pronged defense of the California Constitution and the Recall Election, including a detailed discussion of the constitutionality of the California Constitution's recall provisions, and involving jurisprudence from across the United States.

The Court's analysis of Plaintiff's claims will benefit from Applicants' unique perspective as voters driven to work to recall a state official and vote in the Recall Election in reliance on the California Constitution—work that would be rendered meaningless and votes that would be disregarded after votes were cast but before they were counted. *See* Endow Decl., ¶¶ 3,4; Long Decl, ¶¶ 3,4; Gandrud Decl., ¶3. This provides a powerful incentive for Applicants to thoroughly and zealously defend the recall rules to an extent and in ways that Secretary Weber does not have.

Secretary of State Weber is the sole named Defendant in this action. Weber's Opposition to the Plaintiff's Motion for Declaratory Relief and Preliminary Injunction (the "Motion") fails to adequately protect Applicants' interests, which are markedly different from the Secretary of State's interests. Dkt. 23. The Opposition fails to adequately address or defend the interests of voters who have already voted in the ongoing recall and the interests of those who worked to bring about the recall. According to the most recent estimates, approximately half the registered voters are in favor of the recall, meaning the Plaintiff is seeking to disenfranchise nearly half of California's voters. Therefore, those voters must have a voice in this case apart from the Recall Election target's hand-picked appointee to be Secretary of State.

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In contrast to the Applicants, Secretary Weber has significantly less incentive to litigate this matter to the fullest extent, is subject to conflicting interests, and has in fact publicly pre-judged Plaintiff's claims by expressing support for Plaintiff's theory. First, Governor Newsom appointed the Defendant to her office just seven months ago, creating an apparent but clear and personal conflict of interest if she is the only person defending the process that may lead to the Governor's imminent expulsion from office. When a vacancy arose in the Secretary of State's office Governor Newsom appointed Defendant Secretary Weber, who was an assemblywoman from San Diego, to fill the vacancy in the office of Secretary of State. RJN, Exh. 6. Governor Newsom is the lone target of the Recall Election that Plaintiff is seeking to stop. As the recipient of his appointment to one of the most powerful positions in the state, the Applicants cannot be assured that she will aggressively defend a process that may result in her political patron being ejected from office.

Second, Secretary Weber's sympathy for the Plaintiff's claims in this case is not a matter of mere conjecture, but a documented fact and yet another ground that shows her divided loyalties undermine her ability to adequately represent Applicants' interests. (RJN, Exh. 5). Plaintiff's theory is that California's recall process violates the Equal Protection and Due Process clauses of the Constitution's Fourteenth Amendment because Governor Newsom could be replaced by a candidate who received fewer votes (on the recall ballot's second question) than Newsom did (on the recall ballot's first question). Dkt. 10, Motion at 3. Just last month, Secretary Weber was interviewed about California's recall process, where she espoused the same theory now asserted in Plaintiff's Motion. (RJN, Exh. 5).

In an interview with Capital Public Radio, Secretary Weber said there are "some serious problems" with California's recall laws and, among other things, she specifically questioned "the possibility that a replacement candidate could win elected office with less than a majority of the vote. . . .We have to ask ourselves about the

whole issue that a person could become governor without [winning] 50% plus one[.]" RJN, Exh. 5.

Third, the government of California, of which Secretary Weber is a top official, has appropriated a quarter of a billion dollars to conduct the Recall Election, and Secretary Weber opined that the current recall rules do not make sense due to this cost. *See Id.* If the Plaintiff's Motion is successful, California's state government will be able to mitigate this cost of this election and, because Plaintiff's success may discourage recall elections, the government may be able to avoid the costs of future recall elections.

Finally, the Secretary of State is a state official subject to recall and, therefore, the Secretary of State's Office and Secretary Weber, herself, would benefit if the Plaintiff's Motion is successful in making it harder to oust an official for whom a majority of voters voted to replace with someone else. For all of the above reasons, Secretary Weber will not adequately represent the personal interests of the Applicants, three persons who have an unqualified and vested interest in upholding the Recall Election under its current rules, so their work was not in vain, and the votes they already cast, are duly counted.

Even where prospective intervenors raise "virtually identical" arguments in opposition to a motion for a preliminary injunction, a court *must* grant intervention if the intervenors could pursue the arguments differently, or make different choices about an appeal. *County of Fresno, supra*, 622 F.2d at 438-39 (granting intervention even though intervenors "arguments in opposition to the motion for a preliminary injunction were virtually identical to the [government's] arguments" because the government "did not pursue these arguments, as [intervenors] would have, by taking an appeal"; "unwillingness" indicates government doesn't fully represent intervenors). And even where the Court assumes competent representation by government lawyers, a court must grant intervention where the official named as a party has a personal conflict, as clearly demonstrated here. *Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th

Cir. 1983) (reversing trial court's denial of motion to intervene as of right because of defendant Secretary of Interior's prior support for Plaintiff's suit, regardless of competent representation by Department of Justice).

The Ninth Circuit also infrequently applies a rebuttable presumption of adequate representation if a party and the proposed intervenor share the same "ultimate objective." *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 951-952 (9th Cir. 2009). This doctrine is in tension with the cases cited above holding that only a minimal showing of potentially inadequate representation is required. Its application in the instant matter would be troubling. However, the facts in this case summarized above easily satisfy the "compelling showing" needed to rebut any such presumption and distinguish this matter from prior cases. Three factors are relevant to establishing a compelling showing: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Perry*, 587 F.3d at 952 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). The Court cannot conclude that Secretary Weber will "undoubtedly make all of" Applicants' arguments, or be confident that she is willing to make such arguments, based on her stated sympathy and agreement with the Plaintiff's theory and conflicting interests. With their singular focus on defending their votes and the work they have personally done in support of the recall, Applicants will offer elements to the proceeding that Secretary Weber would neglect.

Having demonstrated all four of the required factors set forth under Rule 24(a), and rebutting the presumption of adequacy in the "ultimate objective" line of cases if it even applies, Applicants are entitled to intervene as a matter of right.

B. Alternatively, Applicants Should Be Granted Permissive Intervention.

Should the Court determine that Applicants are not entitled to intervene as of right, it should nevertheless grant Applicants permission to intervene under Rule 24(b), which provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." F.R.C.P. 24(b)(1)(B). "'[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.'" *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996), as amended on denial of reh'g (May 30, 1996) (modification in original)).

1. Applicants Meet Jurisdictional Concerns.

In federal question cases, the district court's jurisdiction is grounded in the federal question(s) raised by the plaintiff, and therefore an independent jurisdictional basis is not required. *See* 28 U.S.C. § 1331; *Blake v. Pallan*, 554 F.2d 947, 956–57 (9th Cir. 1977); 7C Wright, Fed. Prac. & Proc. § 1917 (3d ed. 2010) ("In federal question cases there should be no problem of jurisdiction with regard to an intervening defendant nor is there any problem when one seeking to intervene as a plaintiff relies on the same federal statute as does the original plaintiff."). This Court is exercising federal question jurisdiction over Plaintiff's claims, and Applicants' proposed defenses pertain to the same federal questions raised by Plaintiff. As such, no independent jurisdictional showing is necessary.

2. This Application Is Timely.

As discussed above, Applicants have timely filed this Application and have not caused any delay to these proceedings, let alone delay that would prejudice the existing parties. Applicant files this Application one day after the Secretary of State filed an Opposition to the Plaintiff's Motion. *See* Dkt. 23. Accordingly, Applicants' motion is timely.

3. A Common Question of Law and Fact Exists Between Applicants' Defense and the Main Action.

Whether there is a common question of law or fact, is an issue liberally construed by the courts. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 n. 10 (9th Cir. 2002) (abrogated on other grounds by *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1178 (9th Cir. 2011)). Unless there are no questions of law or fact common to the main action and a proposed intervenor's claim or defense, the court has discretion to permit the intervention. *Id*. This Court should exercise that discretion to permit Applicants' intervention because it will not change Plaintiff's claims; Applicants have strong and unique interests not shared by the Defendant which will be significantly affected if the Plaintiff succeeds; Applicants intend to assert legal defenses that will not be raised by the Defendant Weber and, if necessary, may later assert a single counterclaim for declaratory judgment concerning the same question posed by the Plaintiff (namely, the constitutionality of the California recall rules); intervention will not delay or prolong the litigation; Applicants are not adequately represented by Secretary Weber; and Applicants will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented. *See Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (listing factors for court's discretion when considering permissive intervention).

C. Applicants Submit A Separate Pleading under Rule 24(c).

Though Rule 24(c) refers to a "pleading that sets out the claim or defense for which intervention is sought," it does not specify what type of pleading is permitted or required. Should Applicants be permitted to intervene, Applicants request that they be allowed to file the attached Opposition to Plaintiff's Motion for Declaratory Relief and Preliminary Injunction. Applicants have indisputably complied with the requirements of Rule 24(c).

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IV. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Court issue an order allowing them to intervene as defendants in this action, and to file an Opposition to the Plaintiff's Motion.

Respectfully submitted,

Date: August 25, 2021

DHILLON LAW GROUP INC.

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