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10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13
14
15 FAIR MAPS NEVADA, et al.,
16 Plaintiffs,

17 v.

18 BARBARA CEGAVSKE, in her official
capacity as Nevada Secretary of State, et al.,
19 Defendants.
20

Case No.: 3:20-cv-00271

MOTION TO INTERVENE

21
22 The REV. LEONARD JACKSON, a Nevada registered voter, and NEVADA RESORT
23 ASSOCIATION PAC, a registered Nevada Political Action Committee, by and through counsel, Matt
24 Griffin, Esq. of Matthew Griffin PLLC and Kevin Benson, Esq. of Benson Law, LLC, respectfully
25 move to intervene as defendants in this action pursuant to Fed.R.Civ.P. 24.

26 **I. INTRODUCTION**

27 Rev. Jackson and the Nevada Resort Association PAC (“NRA PAC”) (together, “Proposed
28 Intervenors”) move to intervene as defendants in this action to protect their interests in preserving the

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1 integrity of Nevada’s initiative petition process. Plaintiffs are requesting this Court to enter
2 extraordinary and broad relief that will substantially alter and undermine Nevada’s laws governing
3 qualification of ballot measures. For example, they request that the Court force election officials to
4 accept electronic signatures on a petition. This would be in direct contravention of Nevada’s statutes
5 governing circulation of petitions, which were specifically designed to prevent fraud in the signature
6 collection process.

7 “There is no First Amendment right to place an initiative on the ballot.” *Angle v. Miller*, 673
8 F.3d 1122, 1133 (9th Cir. 2012). Legislating by ballot initiative is a state-created right. *Id.* “States
9 allowing ballot initiatives have considerable leeway to protect the integrity and reliability of the
10 initiative process, as they have with respect to election processes generally.” *Buckley v. Am.*
11 *Constitutional Law Found., Inc.*, 525 U.S. 182, 191 (1999).

12 Pursuant to Nevada law, it is private parties such as Rev. Jackson and NRA PAC, not election
13 officials, who must bring a civil lawsuit to challenge the legal sufficiency of a petition, including to
14 correct problems with the petition itself or with circulation issues like fraudulent signatures. Both
15 Rev. Jackson and NRA PAC have been and currently are engaged in such litigation in Nevada’s state
16 courts.

17 The relief Plaintiffs request from this Court would effectively gut the safeguards in Nevada
18 law, and will very likely to destroy Proposed Intervenors’ statutory rights challenge invalid or
19 fraudulent signatures, opening the door to exactly the kind of fraud that Nevada’s statutes were
20 crafted to prevent.

21 The Court should therefore grant Rev. Jackson and NRA PAC the ability to intervene as
22 defendants to protect their interest in the integrity of Nevada’s initiative process.

23 II. FACTS

24 Nevada, like all states that permit legislation through initiative, imposes various requirements
25 to ensure that the initiative process is fair and that initiatives that are placed on the ballot have met a
26 certain threshold of voter support. For example, NRS 295.009(1)(a) limits an initiative petition to a
27 single subject. NRS 295.009(1)(b) requires every initiative to contain a description of effect that
28 explains to voters, in an accurate and non-misleading way, what the initiative will do. A third

1 example is NRS 295.012, which requires signatures to be obtained in all of Nevada’s congressional
2 districts, to ensure that a statewide initiative truly has statewide support.

3 However, the Secretary of State and local election officials do not enforce all of these
4 requirements. Compliance with many of Nevada’s initiative petition requirements is achieved
5 through challenges filed by private parties. *See e.g.*, NRS 295.061(1) (authorizing an expedited civil
6 action to challenge a petition’s compliance with the single subject rule and the description of effect
7 requirement); NRS 295.061(2) (authorizing an expedited civil action to challenge the legal
8 sufficiency of a petition after it is certified as sufficient by the Secretary of State).

9 Private parties who have an interest in the subject matter of the petition must bring a lawsuit
10 to ensure compliance. Thus, even if an initiative petition blatantly violates the single subject rule, if
11 no one files a challenge, it will be placed on the ballot. Similarly, even if there is a substantial number
12 of fraudulent signatures, a petition can qualify if no one files a lawsuit that exposes the fraud.
13 However, such suits can be costly. Proposed Intervenors have already expended resources to bring
14 such suits and intend to expend more resources, if necessary, after signatures are submitted for
15 verification.

16 Proposed Intervenor Nevada Resort Association PAC represents gaming and resort properties
17 in Nevada. Declaration of Virginia Valentine, attached hereto as “Exhibit 1.” Gaming is, of course, a
18 large part of Nevada’s economy. Consequently, initiative petitions that would impact the industry are
19 frequently proposed. *Id.* Part of NRA PAC’s core functions is to monitor efforts to qualify ballot
20 measures to ensure that they comply with Nevada’s requirements. *Id.* As part of its normal
21 operations, NRA PAC spends resources to monitor initiatives, and to challenge those that do not
22 comply with Nevada law, when believes it is in the best interest of the association to do so. *Id.* An
23 initiative petition that would increase the gaming taxes on certain properties is currently being
24 circulated. *Id.* NRA PAC is currently challenging that initiative on the basis that it does not comply
25 with the description of effect requirement in NRS 295.009(1)(b), and that case is currently pending at
26 the Nevada Supreme Court. *Id.*; *see also* Nevada Supreme Court Case No. 81086.

27 Proposed Intervenor Rev. Jackson is a registered Nevada voter. Declaration of Rev. Jackson,
28 attached hereto as “Exhibit 2.” He has an interest in ensuring that only initiatives that comply with

1 Nevada law are placed on the ballot. *Id.* He brought an action in state court against Plaintiff Fair
2 Maps Nevada PAC, asserting that the description of effect in Fair Maps’ petition is inaccurate and
3 materially misleading to voters, in violation of NRS 295.009(1)(b). *Id.* That case is now on appeal
4 and is currently pending before the Nevada Supreme Court. *Id.*; see also Case No. 80563. He will be
5 harmed if the deadline to gather signatures on that petition is extended because that would impair his
6 ability to challenge the sufficiency of the signatures on the petition. *Id.* The genuineness of the
7 signatures will be placed into serious question if the Court allows Plaintiffs to collect electronic
8 signatures. Rev. Jackson will be harmed if a petition that does not comply with Nevada law is
9 nevertheless allowed to be placed on the ballot because he would have to expend resources in a
10 campaign that, had the law been followed, would never have occurred. *Id.*

11 **III. LEGAL STANDARD FOR INTERVENTION**

12 FRCP 24(a) permits a non-party to intervene as a matter of right upon a showing of four
13 factors: “(1) it has a 'significant protectable interest' relating to the property or transaction that is the
14 subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the
15 applicant’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may
16 not adequately represent the applicant’s interest.” *United States v. Sprint Communs., Inc.*, 855 F.3d
17 985, 991 (9th Cir. 2017).

18 Under FRCP 24(b), the court “may permit anyone to intervene who . . . (B) has a claim or
19 defense that shares with the main action a common question of law or fact.” *Blum v. Merrill Lynch*
20 *Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) (quoting Fed. R. Civ. P. 24(b)(1)).
21 Generally, permissive intervention under Rule 24(b) should be allowed where: (1) there is an
22 independent ground for jurisdiction; (2) the motion is timely; and (3) “a common question of law and
23 fact between the movant's claim or defense and the main action.” *Id.*

24 “Rule 24 traditionally receives liberal construction in favor of applicants for intervention.”
25 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

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1 IV. ARGUMENT

2 A. Proposed Intervenors are entitled to intervention as a matter of right.

3 Rev. Jackson and NRA PAC are entitled to intervene as a matter of right because they satisfy
4 all four of the criteria required in this Circuit.

5 1. This Motion is timely.

6 This Motion is timely because it has been filed only 7 days after the Complaint was filed in
7 this case, and before the May 15, 2020 deadline the Court set for oppositions to the Plaintiffs’ Motion
8 for Preliminary Injunction. *See* Order, ECF #6.

9 2. Proposed Intervenors have a significant protectable interest in the subject of this action.

10 A person has a “significant protectable interest” in an action if: “(1) [the applicant] asserts an
11 interest that is protected under some law, and (2) there is a ‘relationship’ between [the applicant’s]
12 legally protected interest and the plaintiff’s claims.” *Sprint*, 855 F.3d at 991. The question of whether
13 there is a “relationship” between the applicant’s interest and the plaintiff’s claims is intended to be a
14 practical inquiry. *United States v. City of L.A.*, 288 F.3d 391, 398 (9th Cir. 2002). “The ‘interest’ test
15 is not a clear-cut or bright-line rule, because ‘no specific legal or equitable interest need be
16 established.’” *Id.* While not bright-line requirement, the relationship requirement is met if the
17 plaintiff’s claims will actually affect the applicant. *Id.*

18 Proposed Intervenors have legally protected interests in the integrity of Nevada’s initiative
19 petition process. These include, but are not limited to, the requirements that signatures be submitted
20 for verification in a timely manner, and the enforcement of the laws that are designed to prevent fraud
21 in signature gathering.

22 Under Nevada law, each of the county clerks verify a random sampling of the signatures on a
23 statewide petition. The clerks review whether the signer is as registered voter, whether the signature
24 matches the voter’s registration file, whether the signer is a resident of the county, among other
25 things. *See* NRS 293.12757 – 293.12795 (setting forth the process for verification of signatures and
26 determination of sufficiency by the Secretary of State).

27 The clerks also review the circulator’s affidavit to ensure that contains the necessary
28 information. For example, NRS 295.0575(1) requires an affidavit that “the circulator **personally**

1 circulated the document.” (Emphasis added.) It also requires the circulator to attest that “all the
2 signatures were affixed **in the circulator’s presence.**” NRS 295.0575(5). These requirements exist to
3 combat fraud in the signature gathering process. *See* Minutes of the Assembly Committee on
4 Elections, Procedures, Ethics, and Constitutional Amendments Hearing on A.B. 604, p. 23 (Nev.,
5 April 5, 2007) (testimony regarding “massive fraud” and recounting a “signature party” at which over
6 100 people forged signatures on petitions); *Las Vegas Convention & Visitors Auth. v. Miller*, 124
7 Nev. 669, 694, 191 P.3d 1138, 1154 (2008) (recognizing that the requirements for the circulator’s
8 affidavit are intended to combat fraud in the signature collection process).

9 Based on their review of a random sample of signatures, the clerks use extrapolation to
10 determine the total number of valid signatures in their respective counties, then forward those
11 numbers to the Secretary of State. The Secretary of State then determines whether the petition has
12 sufficient signatures statewide to qualify for the ballot.

13 NRS 293.12793 provides for an administrative appeal process for the *proponent* of a petition,
14 if the Secretary of State finds that the number of signatures is *insufficient*. There is no similar process
15 to appeal a determination that the number is sufficient. If the Secretary of State determines that the
16 petition is sufficient, the only way to challenge that determination is for a private party to bring a civil
17 action under NRS 295.061(2). Thus, if there was fraud in the circulation process, or if there were
18 errors in the clerks’ verification process, the only way to correct those problems is for a private party
19 such as the Proposed Intervenors to bring a lawsuit to expose the issues, and for a court to determine
20 the remedy.

21 If the Plaintiffs are permitted to electronically gather signatures, this would directly contravene
22 clear requirements of Nevada law. It would open the door to exactly the kind of “massive fraud” that
23 the statutes were intended to prevent. Additionally, the Court would have to require an entirely new
24 and untested method of verifying electronic signatures. This will inject additional uncertainty and
25 error into the signature verification process itself. This threatens Proposed Intervenors’ interest in the
26 integrity of the election process. It could allow Plaintiffs to qualify a petition through improper or
27 unreliable means, requiring Proposed Intervenors to mount a campaign against the initiative which
28 they would not be required to do if the law had been followed.

1 Proposed Intervenors also have a substantial interest in this action because extending the
2 deadline to gather signatures would impede or preclude their statutory right to challenge the
3 sufficiency of the petition. NRS 295.056 requires that, for constitutional amendments, the deadline to
4 submit signatures for verification is the 15th day following the primary election, and for statutory
5 amendments, the deadline is the 15th day following the general election. These deadlines allow each
6 county the time necessary to go through the process of verifying the signatures. Furthermore, under
7 federal law, ballots must be prepared and distributed to overseas and military voters at least 45 days
8 before the election. 52 U.S.C. §§ 20302; *see also* NRS 293.309(2)(b). If a court challenge is pending
9 that would cause any delay in that process, Nevada declares such challenges to be moot. NRS
10 293.309(3).

11 Consequently, if the deadline is extended to gather signatures, it is very likely that the
12 Secretary of State will prepare, print, and distribute the ballots before the courts are able to resolve
13 any challenge to the sufficiency of the petition, rendering the challenge moot. Accordingly, as a
14 practical matter, Proposed Intervenors are likely to lose their right to challenge the sufficiency of the
15 petition because there simply would not be enough time. This could allow an initiative to be placed
16 on the ballot despite obvious fraud or errors in the signatures.

17 The risk of this occurring is especially high if the Court were to also allow electronic
18 signatures or other novel, untested methods of signature gathering, because that would make it much
19 more likely that a petition would contain a substantial number of fraudulent or invalid signatures. IT
20 would also make it much more likely that the clerks were make mistakes in whatever new
21 verification process is required. Yet there would be no time for vetting or challenging those
22 signatures.

23 These adverse effects on Proposed Intervenors' statutory rights under Nevada law are more
24 than sufficient to meet the "significant protectable interest" requirement for intervention as of right.
25 In *City of L.A.*, the Ninth Circuit found that a police officer's union met this requirement because the
26 complaint sought injunctive relief against its members and alleged facts that its members committed
27 unconstitutional acts in the line of duty. 288 F.3d at 398-99. The court held that this was sufficient
28 even though the proposed injunctive relief applied only to the city defendants, not the union itself. *Id.*

1 Similarly here, even though the Plaintiffs are seeking relief against the Secretary of State and the
2 county election officials, Proposed Intervenors stand to lose their own rights under Nevada law if the
3 relief is granted.

4 3. Disposition of the matter without intervention will impair Proposed Intervenor's ability to
5 protect their interests.

6 "If an absentee would be substantially affected in a practical sense by the determination made
7 in an action, he should, as a general rule, be entitled to intervene." *Citizens for Balanced Use v. Mont.*
8 *Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (internal quotations omitted).

9 As discussed to above, Proposed Intervenors' ability to protect their interests will be impaired
10 if they are not permitted to intervene. They have a right to not be subjected to laws made through a
11 fraudulent or invalid initiative petition, and they also have a right to bring challenges to petitions that
12 fail to comply with Nevada law. Indeed, both Proposed Intervenors are currently parties to pending
13 lawsuits challenging the validity of initiative petitions. These suits are authorized by NRS 295.061
14 and are the only method of ensuring compliance with many of Nevada's requirements for initiative
15 petitions.

16 4. The existing Defendants do not adequately represent the Proposed Intervenors' interests.

17 "The burden of showing inadequacy of representation is 'minimal' and satisfied if the
18 applicant can demonstrate that representation of its interests 'may be' inadequate." *Citizens for*
19 *Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011). The court examines
20 three factors: "(1) whether the interest of a present party is such that it will undoubtedly make all of a
21 proposed intervenor's arguments; (2) whether the present party is capable and willing to make such
22 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the
23 proceeding that other parties would neglect." *Id.* The most important factor is the similarity (or lack
24 thereof) between the interest of the proposed intervenor and that of the existing parties. *Id.*

25 Proposed Intervenors' interests are not adequately represented by the existing parties. As
26 discussed above, many of Nevada's requirements for initiative petitions are not enforced by the
27 Secretary of State, the county elections officials, or any other governmental entity. Instead,
28 monitoring and challenges to the legal sufficiency of petitions is largely left up to private parties.

1 To illustrate, the county election officials verify signatures by comparing the signature on the
2 petition to the signature in the voter registration file. NRS 293.1277(5). If a large number of
3 signatures are turned in to that county, a statistical sampling method is used to extrapolate the number
4 of valid signatures based on a random sample. NRS 293.1279. Thus, even though the counties
5 “verify” the signatures, often not every signature is examined. It is possible that a large number of
6 invalid signatures slip through the cracks.

7 There can also be errors in the verification process itself, which leads to incorrect sufficiency
8 determinations. For example, a county might count as valid a particular signature that is randomly
9 drawn, even though there is a defect in the document itself, rendering all the signatures on that
10 document invalid. *See Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 689-90, 191
11 P.3d 1138, 1151 (2008) (holding that it is appropriate to strike all the signatures on a document that
12 contains a defective circulator affidavit).

13 Additionally, many problems are not apparent to the officials verifying signatures, and would
14 never be corrected if not for a party like Rev. Jackson or NRA PAC investigating and challenging
15 them. For example, in *Taxpayers for the Prot. of Nev. Jobs v. Arena Initiative Comm.*, a private party
16 opposing the petition filed a challenge asserting, among other things, that many of the signatures
17 were invalid because the circulators did not personally circulate the petition, as required by NRS
18 295.0575. Even though the county officials had deemed the signatures on those documents valid, the
19 district court invalidated them in light of the evidence the plaintiff produced that in fact the
20 documents were not personally circulated. Nev. Sup. Ct. Nos. 57157, 58350, 2012 Nev. Unpub.
21 LEXIS 1101, at *3 (Aug. 1, 2012). The circulators had lied on their affidavits, but the clerks had no
22 way of knowing about that fraud, and therefore it was not caught during the signature verification
23 process.

24 Proposed Intervenors also overcome any presumption that the existing government defendants
25 adequately represent their rights. *Cf. City of L.A.*, 288 F.3d at 402. The interests and objectives of
26 Proposed Intervenors and the existing Defendants diverge because Proposed Intervenors are seeking
27 to preserve their right and practical ability to challenge invalid petitions or invalid signatures through
28 a process that is never used by the election officials, and could very well be adverse to the election

1 officials. The interests of Proposed Intervenors and the election officials are different because the
2 election officials are primarily seeking to ensure that ballots are prepared in time for distribution to
3 voters. They do not have any interest in the merits of any ballot measure. Voters in general comprise
4 the constituency that the election officials represent. The election officials are not charged with
5 representing Proposed Intervenors' interests because, as explained above, it is private parties, not the
6 election officials, who must bring a challenge to ensure compliance with numerous requirements for
7 initiatives.

8 Because of these divergent interests, the existing Defendants will not make all of the same
9 arguments that Proposed Intervenors will make. Nor do the existing Defendants have the knowledge
10 and experience of the boots-on-the-ground signature collection process that is necessary to support,
11 factually and legally, Proposed Intervenors' arguments regarding why electronic signature gathering
12 and other relief Plaintiffs request is likely to lead to errors and fraud. Thus Proposed Intervenors can
13 provide necessary input and argument regarding the important role that Nevada law grants to private
14 parties to ensure the integrity of Nevada's initiative process.

15 For these reasons, Proposed Intervenors should be granted intervention as a matter of right,
16 pursuant to FRCP 24(a).

17 **B. Alternatively, Proposed Intervenors should be granted permissive intervention.**

18 Alternatively, if the Court finds that Proposed Intervenors are not entitled to intervene as a
19 matter of right, it should grant Proposed Intervenors permissive intervention.

20 Under FRCP 24(b), the court "may permit anyone to intervene who . . . (B) has a claim or
21 defense that shares with the main action a common question of law or fact." *Blum v. Merrill Lynch*
22 *Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013) (quoting Fed. R. Civ. P. 24(b)(1)).
23 Generally, permissive intervention under Rule 24(b) should be allowed where: (1) there is an
24 independent ground for jurisdiction; (2) the motion is timely; and (3) "a common question of law and
25 fact between the movant's claim or defense and the main action." *Id.* The requirement for an
26 independent ground for jurisdiction does not apply in federal question cases where jurisdiction is
27 predicated on the plaintiff's claims and the defendant is not bringing any additional claims. *Freedom*
28 *from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011).

1 The remaining two prongs of the test are easily met in this case. First, as discussed above, this
2 Motion is timely. Second, there are common questions of law and fact between the Plaintiffs' claims
3 and Proposed Intervenors' defenses. Common questions of law include whether Nevada law allows
4 using electronic signatures to sign an initiative petition and whether strict scrutiny or *Andersen-*
5 *Burdick* balancing applies to Plaintiff's First Amendment claims. Common questions of fact include
6 whether Plaintiffs have made reasonable efforts to circulate their petition, and whether it is
7 technologically feasible to use electronic signatures, among other things.

8 Granting intervention in this case will not unduly delay or prejudice any party. Proposed
9 Intervenors have acted swiftly to intervene. Their proposed Opposition to Plaintiffs' Motion for
10 Preliminary Injunction is attached as an exhibit to this Motion, and therefore is in compliance with
11 the Court's order expediting briefing.

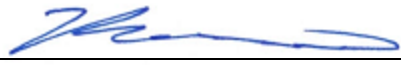
12 Finally, judicial economy favors granting intervention. If Proposed Intervenors are not able to
13 intervene in this case, they would likely be forced to bring a separate action to protect their interests.
14 That action would involve many of the same issues and therefore it would be a waste of judicial
15 resources compared to intervention.

16 **V. CONCLUSION**

17 Rev. Jackson and NRA PAC respectfully request that this Court grant their request to
18 intervene as defendants as a matter of right. Alternatively, they request that this Court grant them
19 permissive intervention.

20 Dated this 13th day of May, 2020.

21 BENSON LAW, LLC

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23 By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of Benson Law, LLC, and that on this date, I caused the foregoing Motion to Intervene to be served to all parties to this action by:

- _____ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- _____ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- _____ Facsimile
- _____ E-Mail, pursuant to consent to electronic service [NRCP 5(b)(2)(D)]
- _____ Federal Express, UPS, or other overnight delivery
- _____ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]
- X E-filing through the federal courts’ CM / ECF filing and service system.

as follows:

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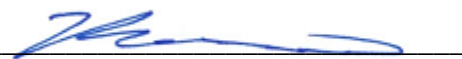
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INDEX OF EXHIBITS

| | |
|-----------|---|
| Exhibit 1 | Declaration of Virginia Valentine |
| Exhibit 2 | Declaration of Rev. Leonard Jackson |
| Exhibit 3 | (Proposed) Intervenors' Opposition to Motion for Preliminary Injunction |

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