

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD J. TRUMP FOR
PRESIDENT, INC.; *et al.*,

Plaintiffs,

v.

KATHY BOOCKVAR; *et al.*,

Defendants.

Civil Action

No.: 2:20-CV-966

Judge J. Nicholas Ranjan

**MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE BY
NON-PARTIES NAACP—PENNSYLVANIA STATE CONFERENCE, COMMON
CAUSE PENNSYLVANIA, LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA,
PATRICIA M. DEMARCO, DANIELLE GRAHAM ROBINSON, AND KATHLEEN
WISE**

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Exhibit B	Declaration of Terrie E. Griffin
Exhibit C	Declaration of Suzanne Almeida
Exhibit D	Declaration of President Kenneth L. Huston
Exhibit E	Declaration of Danielle Graham Robinson
Exhibit F	Declaration of Kathleen Wise
Exhibit G	Declaration of Patricia M. DeMarco

The NAACP—Pennsylvania State Conference, Common Cause Pennsylvania, the League of Women Voters of Pennsylvania, Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise (together, “Applicants”) submit this memorandum in support of their Motion to Intervene as Defendants pursuant to Rule 24(a) of the Federal Rules of Civil Procedure or, in the alternative, pursuant to Rule 24(b).

I. INTRODUCTION

Applicants are nonpartisan organizations dedicated to promoting American democracy and the participation of Pennsylvania voters in democracy, as well as individual voters whose ability to vote is threatened by the relief that Plaintiffs seek. Applicants seek leave to intervene to defend their and their members’ right to vote safely in the November 3, 2020 general election and potentially address other issues raised by Plaintiffs’ action, such as poll watching. Given the unprecedented threat COVID-19 poses to in-person voting—a threat Plaintiffs completely fail to acknowledge—Plaintiffs’ requested relief would make voting impossible or unreasonably dangerous for many eligible voters.

Ensuring that all eligible voters in Pennsylvania have the chance to vote in the midst of the COVID-19 pandemic is fundamental to our democracy. In-person voting creates significant health risks, potentially exposing voters and poll workers to infection while they stand in line indoors, where disease transmission is highest. Poll workers are especially vulnerable because they tend to be older; in 2018, most poll workers were over 60.¹ COVID-19 has had a disproportionate impact on minorities and persons with underlying medical conditions.

Applicants represent these voters—seniors, racial minorities, and medically vulnerable

¹ Michael Barthel & Galen Stocking, *Older People Account for Large Shares of Poll Workers and Voters in U.S. General Elections*, PEW RESEARCH (Apr. 6, 2020), <https://www.pewresearch.org/fact-tank/2020/04/06/older-people-account-for-large-shares-of-poll-workers-and-voters-in-u-s-general-elections>.

individuals—and are particularly well-suited to advancing and protecting their interests to vote in the general election.

Plaintiffs seek to limit Pennsylvanians’ constitutionally protected right to vote by preventing the use of ballot drop-box locations, which, when adequate and secure, are critical for safe voting in a pandemic and are consistent with Pennsylvania Law.² A limit on drop-box locations places unlawful and unwarranted restrictions on the time, place, and manner of voting in the November 3 elections. Due to the COVID-19 pandemic, Plaintiffs’ requested suppression would primarily impact seniors, people of color, and medically vulnerable individuals, who are already disproportionately affected by the disease. Applicants dispute Plaintiffs’ claim that ensuring the health and safety of Pennsylvania voters violates any of Plaintiffs’ rights.

Applicants are individuals and organizations that serve individuals whose fundamental right to vote would be impaired by a grant of Plaintiffs’ requested relief. Applicants are entitled to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2) because they have and represent the interests of organizational members who are eligible registered voters in the defendant counties, each of whom has a cognizable interest in voting while maintaining their own safety, the safety of their families, and their communities as a whole. Applicants also retain an abiding interest in promoting active participation in democracy through voting and have devoted substantial resources towards this goal including, without limitation, education of voters about registration and the location of drop-boxes. The relief Plaintiffs seek would harm Applicants’ efforts to protect their members’ ability to exercise their right to vote safely and their organizational goals of promoting full electoral participation. Accordingly, Applicants are

² Plaintiffs also assert claims relating to markings on ballot envelopes and poll worker eligibility. *See* Compl. ¶¶ 117-141, Relief ¶¶ C, F, G.

critical participants in these actions and are well-situated to defend the right of all Pennsylvania voters to cast their ballots safely during this global pandemic.

Alternatively, Applicants should be permitted to intervene under Rule 24(b). Because Applicants seek leave to directly challenge Plaintiffs' attempt to restrict mail-in voting and voting at drop-boxes, their claims and defenses necessarily share common questions of law and fact with the main action. This suit is just beginning. Applicants' motion would neither delay nor prejudice the orderly adjudication of Plaintiffs' claims. This motion should be granted to allow Applicants to participate in protecting their right to vote, or that of their members.

II. FACTS

A. Plaintiffs Seek to Undo Pennsylvania's Efforts to Protect Voters

In 2019, the Pennsylvania General Assembly passed Act 77 to expand access to voting. The Governor's office called this bipartisan bill "the most significant improvement to Pennsylvania's elections in more than 80 years."³ The no-excuse vote-by-mail option is a key facet to expand access to voting.

Plaintiffs oppose the ease of voting ensured by the Pennsylvania legislature and seek to prevent the use of drop-box locations other than county election board offices. Citing a long-debunked theory, Plaintiffs falsely assert that mail-in voting is "particularly susceptible to fraud. Compl. ¶ 67; *see also id.* ¶¶ 66-70, 72-76. In reality, mail vote fraud is virtually nonexistent. Millions of Americans (including Plaintiffs⁴) vote by mail—one in four voters did so in the last

³ *Governor Wolf Signs Historic Election Reform Bill Including New Mail-In Voting*, GOVERNOR TOM WOLF (Oct. 31, 2019), <https://www.governor.pa.gov/newsroom/governor-wolf-signs-election-reform-bill-including-new-mail-in-voting>.

⁴ Pennsylvania voter records indicate that Plaintiffs Glenn Thompson and John Joyce voted by mail in the June 2020 primary. *PA Full Voter Export*, PA. DEP'T OF STATE, <https://www.pavoterservices.pa.gov/pages/purchasepafullvoterexport.aspx> (last accessed July 11, 2020). Applicants can make the data available to the court upon request.

two federal elections.⁵ Yet an exhaustive nationwide investigation identified that less than 1/10,000 of 1%, *i.e.*, 0.0001%, of the billions of votes cast from 2000 to 2012 were fraudulent.⁶

In the absence of meaningful access to vote by mail and drop-boxes, poll workers and voters risk illness, and Pennsylvania’s most medically vulnerable voters—who are disproportionately older, or Black, or immune-compromised individuals—will be disenfranchised.⁷ In this context, providing an adequate number of drop-boxes increases ballot access. Plaintiffs’ legal theory contradicts the fundamental right to vote analysis by incorrectly assuming that increased drop-box use somehow creates a burden on voting.

B. The COVID-19 Pandemic Will Remain a Threat to the Safety of Pennsylvania Voters in November 2020

The COVID-19 pandemic is an ongoing public-health emergency; Plaintiffs do not acknowledge this, let alone its impact on voting. As of July 15, over 97,000 Pennsylvanians had reported cases of COVID-19 and over 6,950 have died of the disease.⁸ The number of weekly cases in Pennsylvania continues to rise, reaching 9,000 in the first two weeks of July.⁹ Seniors

⁵*See, e.g.*, Wendy R. Weiser & Harold Ekeh, *The False Narrative of Vote by Mail Fraud*, BRENNAN CTR. FOR JUSTICE (Apr. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/false-narrative-vote-mail-fraud>; *see also* *EAVS Deep Dive: Early, Absentee and Mail Voting*, U.S. ELECTION ASSISTANCE COMM’N (Oct. 17, 2017), <https://www.eac.gov/documents/2017/10/17/eavs-deep-dive-early-absentee-and-mail-voting-data-statutory-overview>.

⁶ Corbin Carson, *Election Fraud in America*, NEWS21 (Aug. 12, 2012), <https://votingrights.news21.com/interactive/election-fraud-database>.

⁷ Sam Levine, *Trump Says Republicans Would ‘Never’ Be Elected Again If It Was Easier to Vote*, THE GUARDIAN (Mar. 30, 2020), <https://www.theguardian.com/us-news/2020/mar/30/trump-republican-party-voting-reform-coronavirus> (quoting Trump as saying on Fox and Friends, “They had ... levels of voting, that if you ever agreed to it you’d never have a Republican elected in this country again.”).

⁸ *Coronavirus (COVID-19)*, PA. DEP’T HEALTH (July 15, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Coronavirus.aspx>; *COVID-19 Data for Pennsylvania*, PENN. DEP’T HEALTH (July 15, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

⁹ *COVID-19 Data for Pennsylvania*, PA. DEP’T HEALTH (July 15, 2020), <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>.

and people of any age who have certain underlying conditions such as high blood pressure, diabetes, chronic lung disease, or severe obesity are especially likely to have prolonged serious illness or to die from the virus. Declaration of Dr. Ranit Mishori, Exhibit A, ¶¶ 10–12. People of color have faced especially high rates of infection, complications, and death resulting from this coronavirus.¹⁰ *Id.* ¶ 15. Black Americans are disproportionately likely to contract and die from the virus—although they represent 12% of the population, they account for 22% of the State’s COVID-19 deaths. *Id.* ¶ 21. Nationwide, Black Americans are dying at a rate almost two and a half times higher than white Americans;¹¹ poorer communities and persons over 60 have also been hard-hit. *See id.* (about 89% of deaths occurred in the over 60 age group).

Doctors and public health experts have identified several interrelated socio-economic factors for the devastating impact of the coronavirus on communities of color including reduced access to quality health care, higher prevalence of underlying chronic medical conditions, and housing challenges, as well as being more likely to be employed as essential workers, facing increased exposure to the disease. *Id.* ¶¶ 15–22. These factors subject people of color and low-income people to greater exposure to the coronavirus, greater severity of disease, and substandard or inaccessible medical care. *Id.* These factors amplify the already increased risk of infection at poll sites. *Id.* ¶¶ 46–47.

¹⁰ *COVID-19 in Racial and Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION (updated June 25, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (citing higher rates of hospitalization and death from COVID-19 among ethnic minorities).

¹¹ *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RESEARCH LAB (July 8, 2020), <https://www.apmresearchlab.org/covid/deaths-by-race>; *See* Wyatt Koma et al., *Low-Income and Communities of Color at Higher Risk of Serious Illness If Infected with Coronavirus*, KAISER FAMILY FOUND. (May 7, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/low-income-and-communities-of-color-at-higher-risk-of-serious-illness-if-infected-with-coronavirus>.

A vaccine will not be available before the November election. *Id.* ¶ 23. For this reason, public-health experts and government officials have stressed that physical distancing is necessary to prevent the spread of the virus. *Id.* ¶¶ 24–28. To keep voters safe, Pennsylvania facilitated the easy and safe return of ballots, consistent with state law, as other states have done.¹² Advanced planning of the vote by mail process and associated options is necessary because experts “expect that coronavirus will continue to affect, sicken and kill large numbers of Americans moving forward and into the fall.” *Id.* ¶ 33.

In-person voting has contributed to transmission of COVID-19. Florida and Chicago both reported positive tests and deaths for poll workers who worked at poll sites.¹³ Following the Wisconsin primary, the state’s Department of Health conducted contact-tracing and concluded that 71 persons who voted in-person tested positive for COVID-19 leading to 700 more cases in the weeks following. *Id.* ¶¶ 30, 49. There is a statistically significant association between in-person voting and the spread of COVID-19. *Id.*

The risks of in-person voting are clear to doctors and public health experts. Doctors, public health experts, and voting rights organizations have all advocated for the distribution of mail-in ballots to voters.¹⁴ *See Id.* ¶¶ 50–51. Thousands of voters can cycle through unventilated

¹² *See COVID-19 and Elections*, NAT’L CONF. OF STATE LEGIS. (July 2, 2020), <https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx>.

¹³ *See, e.g.*, David Smiley & Bianca Padró Ocasio, *Florida Held Its Primary Despite Coronavirus. Two Broward Poll Workers Tested Positive*, MIAMI HERALD (Mar. 26, 2020, updated Mar. 27, 2020 9:11 AM), <https://www.miamiherald.com/news/politics-government/article241539451.html> (Florida); Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, 5 CHI. (Apr. 13, 2020), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072> (Chicago).

¹⁴ Letter to Members of the United States Senate and House of Representatives, Public Health Experts (May 5, 2020), <https://cdn.americanprogress.org/content/uploads/2020/05/>

polling places on Election Day, exposing poll workers, who themselves are likely to be older, to increased chances of exposure. *Id.* ¶¶ 34–38. Voting machines and materials exchanged among voters and poll workers are potential sites of surface transmission. *Id.* ¶¶ 36–40. Precautionary environmental decontamination measures are less effective than avoiding prolonged contact with strangers, an inevitability at polling places. *Id.* ¶¶ 41–46. Even if all voters and poll workers followed best practices, the risk of exposure is amplified when people congregate indoors. *Id.* ¶ 39, 44–45. Asymptomatic individuals could spread the disease and those with mild symptoms could decide to vote despite the risk of transmission. *Id.* ¶ 45.

C. Applicants Are Individual Voters and Organizations that Promote the Interests of Voters and Voters with Particularized Interests

Applicants are Pennsylvania voters and organizations that serve, represent, and have members who are Pennsylvania voters.

The League of Women Voters of Pennsylvania is a nonpartisan statewide non-profit formed in August 1920, shortly after the Nineteenth Amendment granted women suffrage in November 1918. The League and its 2,273 members are dedicated to helping the people of Pennsylvania, especially their most vulnerable, safely exercise their right to vote, as protected by the law, and especially in light of the devastating impact of COVID-19. Declaration of Terrie E. Griffin, Exhibit B, ¶¶ 5–10. Its mission is to empower voters and defend democracy. The League promotes political responsibility through informed and active participation in government and acts on selected public issues. It impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to

05061221/21DemocracyTeam_finalmailvotingandcovid19.pdf (signed by over 800 public health experts).

full participation in the electoral process. *Id.* The League has pursued legal action against Pennsylvania officials to achieve these goals.¹⁵

Common Cause Pennsylvania is a non-profit political advocacy organization and a chapter of the national Common Cause organization. With approximately 36,000 members and supporters in Pennsylvania, Common Cause Pennsylvania works to encourage civic engagement and public participation in democracy, to ensure that public officials and public institutions are accountable to and reflective of all people, and to implement structural changes through the American democratic process. Declaration of Suzanne Almeida, Exhibit C, ¶¶ 10–12. Common Cause Pennsylvania is nonpartisan and uses grassroots mobilization, community education, coalition building, legislative advocacy, and litigation to build a democracy that includes everyone. Common Cause Pennsylvania is working to make sure that voters in communities that vote at the lowest rates and use vote-by-mail at the lowest rates—which are also the communities that have been hit hardest by COVID-19—can exercise their right to vote without putting their health at risk. *Id.* ¶ 19.

The NAACP is a non-profit advocacy group for civil rights for Black Americans. Every election cycle, the NAACP engages in efforts to get out the vote. Declaration of President Kenneth L. Huston, Exhibit D, ¶¶ 6–10. The NAACP is working to ensure that Black voters in Pennsylvania are educated on different methods of voting during the COVID-19 pandemic. NAACP also provides educational guides on local candidates to increase voter engagement. The NAACP focuses on strategies, including litigation, to eliminate Black voter suppression both

¹⁵ See, e.g., *League of Women Voters of Pa. v. Commonwealth*, 175 A.3d 282, 284 (Pa. 2018) (invalidating 2011 congressional map); Compl., *Common Cause of Pa. v. Commonwealth*, C.A. No. 05-cv-2056, 2005 WL 3136666 (M.D. Pa. Oct. 6, 2005), ECF No. 1 (along with Common Cause and individual plaintiffs, challenging Pennsylvania statute conferring pay raise to legislators, judges, and other elected officials).

nationally and in Pennsylvania. *See, e.g., Applewhite v. Commonwealth*, 2014 WL 184988 (Pa. Commw. Ct. Jan. 17, 2014) (Pennsylvania voter ID laws).

Applicants seek to intervene in this action to protect their organizational and members' interest in access to mail-in and absentee ballots, including drop-box locations. If Plaintiffs succeed in preventing the use of drop-box locations for absentee and mail-in ballots, Applicants will be required to redirect scarce resources to reeducate confused voters about the location of polls, the transportation options to county board of elections offices, the requirements for voting by mail, and safe practices for voting in person. *See, e.g., Ex. C, ¶¶ 17–18; Ex. D ¶¶ 11–14.* In the midst of a pandemic, the organizational Applicants are already spending substantial resources educating voters on drop-box locations and responding to inquiries on how to use drop-boxes and vote effectively and safely. *Ex. B, ¶¶ 11–12; Ex. C, ¶¶ 15–16; Ex. D, ¶¶ 11–12.* For the organizational Applicants, expending additional resources to, *inter alia*, educate its members and other voters, arrange transportation, and to ensure that county election offices are prepared to receive an influx of mail and absentee ballots, will necessarily divert funds from other efforts important to their missions and the rights of their members. *Ex. C, ¶¶ 17–18; Ex. D, ¶¶ 11–15.*

Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise are Pennsylvania voters who were detrimentally affected by the lack of drop-boxes in their county during the primaries. They seek to intervene to maximize access to mail-in and absentee ballots via adequate local drop-box locations in the November election. During the primaries, they requested mail-in ballots early; some ballots were never mailed out or arrived in too close proximity to the deadline to return them. *See Declaration of Danielle Graham Robinson, Exhibit E, ¶¶ 7–10; Declaration of Kathleen Wise, Exhibit F, ¶¶ 6–7.* Diligent voters, like Ms. DeMarco, were forced to cast provisional ballots in person because they did not know if their county board of elections received their mail-in ballots. *See Declaration of Patricia M. DeMarco, Exhibit G,*

¶¶ 7–10. Ensuring adequate local drop-box access in November eliminates the uncertainty Ms. DeMarco faced—whether her vote counted in the June primary. Ex. G, ¶ 10. Even if Plaintiffs are unsuccessful, some counties may continue to opt for centralized drop box locations, as Allegheny did last June. But, as the June primary demonstrated, not all voters are able to travel safely to centralized locations to cast ballots or face increased costs to do so. *See* Ex. E, ¶¶ 11–12; Ex. F, ¶¶ 8–11. Applicants’ interests are broader than those of the named defendants, who may seek a narrower implementation of election laws that burden the right to vote. Pennsylvania voters should not be faced with uncertainty of whether their mail-in ballots were received and counted, particularly during an already disruptive pandemic. Secure drop boxes provide a remedy.

III. APPLICANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT

In the Third Circuit, a party is entitled to intervene upon establishing: “(1) a timely application for leave to intervene, (2) a sufficient interest in the underlying litigation, (3) a threat that the interest will be impaired or affected by the disposition of the underlying action, and (4) that the existing parties to the action do not adequately represent [its] interests.” *Islamic Soc’y of Basking Ridge v. Twp. of Bernards*, 681 F. App’x 110, 111–12 (3d Cir. 2017) (internal citation omitted). Courts construe these factors consistent with the policy preference, “as a matter of judicial economy, favor[ing] intervention over subsequent collateral attacks.” *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 970 (3d Cir. 1998).

Applicants satisfy each of these considerations. The Court should permit their intervention as a matter of right. *See Constand v. Castor*, 2016 WL 5681454, at *3 (E.D. Pa. Oct. 3, 2016) (“Where Rule 24(a) contains mandatory language—the court ‘must permit’ intervention, so long as certain conditions are satisfied”).

A. The Motion to Intervene Is Timely

Intervention is timely based on consideration of: “(1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay.” *Wallach v. Eaton Corp.*, 837 F.3d 356, 371 (3d Cir. 2016) (internal citation omitted). Ultimately, “[t]he timeliness of a motion to intervene is determined from all the circumstances” and in the court’s “sound discretion.” *Choike v. Slippery Rock Univ. of Pa. of State Sys. of Higher Educ.*, 297 F. App’x 138, 140 (3d Cir. 2008) (internal citation omitted).

The Motion is timely. Plaintiffs initiated this litigation on June 30, 2020. Some Defendants have not entered appearances and only one has answered. No hearing before this Court has been scheduled. Requests to intervene at such preliminary stages are timely for purposes of Rule 24. *See, e.g., Cmty. Vocational Schs. of Pittsburgh, Inc. v. Mildon Bus Lines, Inc.*, 2017 WL 1376298, at *5 (W.D. Pa. Apr. 17, 2017) (motion to intervene timely where “discovery not yet closed [and] no schedule for summary judgment motions or trial [was] set”).

Applicants’ prompt intervention does not delay the timely advancement of the action, or otherwise harm the parties. Where “few legally significant events have occurred,” courts have generally “not found prejudice.” *Id.*

B. Applicants Have Substantial Interests in the Underlying Litigation

Applicants have a “significantly protectable” interest in the litigation.¹⁶ *Donaldson v. United States*, 400 U.S. 517, 531 (1971). Under Rule 24(a)(2), a protectable interest is one that is “legal [and] distinguished from interests of a general and indefinite character.” *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987). It is “recognize[d] as belonging to or being owned

¹⁶ Applicants have Article III standing to participate in the litigation as defendants, whether on behalf of their members or in their own right, to pursue relief that is different from that sought by the parties. *See Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 342–43 (1977).

by the [proposed intervenor].” *United States v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1185 (3d Cir. 1994). Applicants have “a sufficient interest to intervene when the action will have a significant *stare decisis* effect on the applicant’s rights.” *Alexander v. Rendell*, 246 F.R.D. 220, 230 (W.D. Pa. 2007) (internal citation omitted).

Here, Applicants have a substantial, legally cognizable interest in protecting their own and their members’ rights to vote safely in the midst of a pandemic, and to protect their access to mail-in and absentee ballots, and readily accessible secure drop-boxes. “The right of qualified electors to vote ... is recognized as a fundamental right, ... extend[ing] to all phases of the voting process, [and applying] equally to the initial allocation of the franchise as well as the manner of its exercise.” *Pierce v. Allegheny Cty. Bd. of Elections*, 324 F. Supp. 2d 684, 694–95 (W.D. Pa. 2003) (internal quotation marks and citation omitted).

Organizations that engage in voter registration activities have a cognizable interest in protecting their members’ rights to access the ballot box and ensuring that eligible voters are not improperly prevented or otherwise hindered from voting. *See, e.g., Common Cause Ind. v. Lawson*, 937 F.3d 944, 950 (7th Cir. 2019) (“[A] voting law can injure an organization enough to give it standing by compelling [it] to devote resources to combatting the effects of that law that are harmful to the organization’s mission.”).

Each election cycle, the organizational Applicants expend considerable resources towards ensuring that eligible voters in Pennsylvania can exercise their right to vote. The League, Common Cause, and the NAACP are committed to eliminating barriers to voting and increasing civic engagement, especially in communities who have been traditionally disenfranchised. Voter access is a mission-critical element of those goals. Applicants’ interest in ensuring that eligible voters have access to the ballot box is concrete, protectable, and substantial. If Plaintiffs are successful, Applicants expect to divert and spend significant additional resources—including

volunteers, time, and expenditures—to re-educate voters about drop-box locations and the requirements for mail-in or absentee ballots, arrange transportation for voters, and work with election officials to implement the change. Ex. B, ¶¶ 12–13; Ex. C, ¶¶ 17–18; Ex. D, ¶¶ 11–15. Applicants’ interest is cognizable. *See, e.g., Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1164–65 (11th Cir. 2008) (finding the NAACP had standing because “[t]he organizations reasonably anticipate that they will have to divert personnel and time to educating volunteers and voters on compliance with [voting law] and to resolving the problem of voters left off the registration rolls on election day”).

Patricia M. DeMarco, Danielle Graham Robinson, and Kathleen Wise have a substantial and legally cognizable interest in ensuring adequate and secure local drop-boxes are provided so that their vote is counted. *See, e.g., Baker v. Carr*, 369 U.S. 186, 206 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue.”). They are Pennsylvania voters who faced burdens voting in the primary election with respect to the use of mail-in ballots. This resulted in increased costs, Ex. E, ¶ 12, uncertainty of whether their vote counted, Ex. G, ¶¶ 10–12, and the inability to cast a vote at all, Ex. F, ¶¶ 11, 12. Uncertainty over whether ones’ vote will be counted diminishes the effectiveness of the franchise for all similarly situated individuals. *See Baker*, 369 U.S. at 207–08. Without adequate drop box locations, Applicants Robinson, DeMarco, and Wise are disadvantaged in exercising their right to vote and their interest is cognizable.

C. Disposition of this Case Is Likely to Impair Applicants’ Interests

Applicants’ interests in ensuring access to the ballot box so that eligible voters are not prevented from voting are in jeopardy in this lawsuit. *Cf. Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1122 (3d Cir. 1992).

Plaintiffs request an order that could limit the accessibility of mail-in and absentee voting, and readily available secure drop-boxes, in the midst of a pandemic. The health of many individuals and communities, including the elderly and communities of color, are at risk if they contract COVID-19. For many, voting by mail or with absentee ballots is the only means of voting safely. Preventing the use of drop-box locations significantly undermines access to voting.

Plaintiffs' requested relief would result in diminished access to voting for these vulnerable groups. Such an order would upend important Pennsylvania policy, the contours of which have not been addressed by its state courts. It would negatively impact Applicants' interests in maintaining their efforts to vote, to get out the vote, and threatens their organizational missions. And, given the uncertainty stemming from the June primary, Plaintiffs' requested order would suppress the vote throughout Pennsylvania by making it harder for voters to cast their mail-in votes with confidence they will be received and counted. Plaintiffs' order would compel the individual Applicants to put themselves in harm's way and the organizational Applicants to devote substantial resources to address its effects through public re-education and arranging transportation for impacted voters to drop off their mail-in or absentee ballots at their county election board office. No matter how vigorously Applicants' efforts were applied, many eligible voters would remain unable to have their votes counted.

These concerns are amplified in relation to underrepresented minority communities, which the organizational Applicants are committed to serve. "Historically ... throughout the country, voter registration and election practices have interfered with the ability of minority, low-income, and other traditionally disenfranchised communities to participate in democracy." *Ind. State Conf. of NAACP v. Lawson*, 326 F. Supp. 3d 646, 650 (S.D. Ind. 2018), *aff'd*, 937 F.3d 944 (7th Cir. 2019). Applicants have worked to remedy those practices, in part, by ensuring that

their registration and education efforts reach vulnerable or underserved minority communities. Applicants' have significant interests in ensuring that Plaintiffs' proposed injunction on drop-box locations does not harm those communities.

Further, Applicants' rights stand to "be affected by a proposed remedy" in this case. *Seneca Res. Corp. v. Twp. of Highland, Elk Cty.*, 863 F.3d 245, 257 (3d Cir. 2017) (internal citation omitted). For example, the present action might result in a court-approved consent decree preventing Pennsylvania counties from collecting mail-in or absentee ballots at locations other than county election board offices. Judicial economy favors intervention by Applicants to protect their interests rather than prompting them to file separate actions. *See Deutsche Bank Nat'l Tr. Co. v. Bendex Props., LLC*, 2016 WL 6648175, at *3 (M.D. Pa. Nov. 10, 2016).

D. The Interests of Existing Defendants Diverge from Those of Applicants

Applicants also meet the "minimal" burden of demonstrating that the existing parties in the litigation do not protect their interests. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *Hoots v. Pennsylvania*, 672 F.2d 1133, 1135 (3d Cir. 1982). It is sufficient to show that "representation of [the] interest *may* be inadequate." *Trbovich*, 404 U.S. at 538 n.10 (emphasis added) (internal quotation marks omitted). "The possibility that the interests of the applicant and the parties may diverge need not be great," *Am. Farm Bureau Fed'n v. Env'tl. Prot. Agency*, 278 F.R.D. 98, 110 (M.D. Pa. 2011) (internal quotation marks omitted), and a proposed intervenor need only show that "although [its] interests are similar to those of a party, they diverge sufficiently that the existing party cannot devote [them] proper attention," *United States v. Territory of V.I.*, 748 F.3d 514, 519–20 (3d Cir. 2014) (internal quotation marks omitted).

Applicants meet this standard because their interests differ from those of the Defendant Pennsylvania counties. Government entities do not necessarily share Applicants' interest in ensuring the availability of local secure drop-boxes for themselves and to expanding voting

access for underrepresented groups. *See, e.g., Livingston v. Berger*, 2020 WL 798015, at *4–5 (D.V.I. Feb. 18, 2020); *Shipyards Assocs., L.P. v. City of Hoboken*, 2014 WL 6685467, at *4 (D.N.J. Nov. 26, 2014). As the Third Circuit has recognized: “[W]hen an agency’s views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it, the burden [of establishing inadequacy of representation] is comparatively light.” *Kleissler*, 157 F.3d at 972.

Here, the counties’ responsibility for the administration of elections does not extend to representation of the interests of the Applicants. The county election boards are responsible for overseeing the election and not for facilitating and supporting the right to vote of the elderly and the medically vulnerable. *Cf.* Ex. F, ¶¶ 1, 6–12; Ex. G, ¶¶ 5, 8–12. Governmental budgetary pressures may also impair citizens’ voting rights.

Adequate and secure drop-boxes are integral to an effective vote by mail process. As the June primary demonstrated, the surge in mail-in and absentee ballots due to coronavirus led to vote suppression. News reports, local courts, and the individual Applicants highlight both county election officials’ and the Post Office’s substantial delays in timely sending ballots to the individual Applicants and ensuring that completed ballots were received by the county elections boards on time. Ex. E, ¶¶ 9, 10; Ex. F, ¶ 7; Ex. G, ¶ 8–9. Delaware County election officials admitted that at least 25,000 mail-in ballots were not mailed out until less than two weeks before the election, leaving voters uncertain their ballot would be counted by the deadline.¹⁷ If such delays continue in the November election, local secure drop-boxes allow the most vulnerable

¹⁷ *See, e.g., Mail-in Ballot Deadline Extended to June 9*, DEL. CTY. PA., <https://www.delcopa.gov/publicrelations/releases/2020/mailinballotdeadlineextended.html> (last accessed July 11, 2020) (extending ballot deadline after conceding that ballots were not timely mailed); Jonathan Lai, *Thousands of Pennsylvania Voters Might Not Get Their Mail Ballots in Time to Actually Vote*, PHILA. INQUIRER (May 26, 2020), <https://www.inquirer.com/politics/election/pa-mail-ballots-deadline-2020-primary-20200526.html>.

voters to vote safely and with confidence that their vote will be collected and counted. Here, Applicants' interests diverge from Defendants' because Defendants' may find a single centralized location sufficient under the election law and easier to administer, as was the case in Allegheny County last June. *But see, e.g.*, Ex. F, ¶ 11. However, Applicants' will demonstrate that adequate and secure drop-box access is necessary to ensure a free and fair election. Pennsylvania voters should not be faced with uncertainty as to whether their vote will be counted; adequate, secure drop-boxes provide a remedy.

For these reasons, Applicants provide a perspective that Defendants lack in balancing the need to ensure that only eligible voters register and vote with the obligation to ensure all eligible citizens are given robust opportunities to vote without undue burden, particularly during a pandemic. *See, e.g., Tex. League of United Latin Am. Citizens v. Whitley*, 2019 WL 7938511 (Feb. 27, 2019); *Ariz. v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013).

IV. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION

Even if the Court determines that Applicants are not entitled to intervene as a matter of right, the Court should exercise its broad discretion to grant permissive intervention. A court may grant permissive intervention when the motion to intervene is timely and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). The decision whether or not to do so is "highly discretionary." *Brody*, 957 F.2d at 1115. Even where the district court denies intervention as of right, permissive intervention might be proper or warranted, as it would be here. *See Hoots*, 672 F.2d at 1136.

A. Applicants Meet the Requirements for Permissive Intervention

Here, Applicants seek to assert defenses against Plaintiffs' claims that Pennsylvania's mail-in and absentee ballot systems are unconstitutional. Applicants expect to contribute to the

Court's resolution of the following questions of law and fact, all of which are common to the main action including: (1) whether the use of drop-box locations denies or dilutes Plaintiffs' or Plaintiffs' members' right to vote; and (2) whether the burden that the use of drop-box locations places on Plaintiffs' or Plaintiffs' members' right to vote, if any, is outweighed by the counties' justifications, including protection of the public health and all Pennsylvanians' right to vote safely.

Applicants satisfy the common-questions element because the central issues that will be raised by their responsive pleading are the same as those raised by the Complaint. While Applicants expect to present a distinct perspective on the legal and factual issues before the Court, their views will likely complement or amplify Defendants' arguments against Plaintiffs' claims. For example, organizational Applicants, their affiliates in sister-states, and their counsel have litigated numerous voting rights cases and have experience analyzing claims such as those asserted here and the methodology behind them. *See, e.g., Va. Voter's All., Inc. v. Leider*, No. 16-cv-394 (E.D. Va. June 17, 2016), ECF No. 25 (granting League of Women Voters of Virginia's motion to intervene in suit seeking to compel maintenance of voter registration list). Applicants will draw on this national experience and their history representing populations most likely to be impacted by the relief Plaintiff seeks in framing their defense of this litigation. Applicants satisfy the baseline commonality requirement of Rule 24(b)(2). *Hyland v. Harrison*, 2006 WL 288247, at *6 (D. Del. Feb. 7, 2006) (permissive intervention appropriate where applicant's motion "based on the same facts and circumstances as this case, seeks substantially the same relief, and raises similar legal issues").

B. The Court Should Exercise Its Discretion to Grant Permissive Intervention

In this Circuit, permissive intervention is appropriate where, as here, proposed intervenors may meaningfully contribute to the proper development of the factual or legal issues in dispute. *See, e.g., Nat'l Wildlife Fed'n v. Ruckelshaus*, 99 F.R.D. 558, 561 (D.N.J. 1983). Organizational Applicants have deep experience educating, registering, and assisting voters in Pennsylvania counties and constituent communities. They also represent thousands of Pennsylvania voters who, along with individual Applicants would be burdened if Plaintiffs are successful in this litigation. They are well-placed to advocate for the rights of all, and similarly situated, Pennsylvania voters, including their members, the elderly, and the traditionally marginalized communities they serve.

By contrast, the counties' defense is likely to reflect various interests, some of which could diverge from those of the Applicants. For example, if the Plaintiffs are successful, Applicants would expend additional resources to educate voters and, for example, arranging transportation for voters so they can drop off their ballots at an appropriate location. *See* Ex. B, ¶¶ 12–13; Ex. C, ¶¶ 17–18; Ex. D, ¶¶ 11–15. The Third Circuit has recognized that intervention is proper in comparable circumstances. *See Am. Farm Bureau Fed'n*, 278 F.R.D. at 110–11 (public interest groups allowed to intervene in litigation in which EPA was a defendant, “[b]ecause the EPA represents the broad public interest ... not only the interests of the public interest groups” and similar stakeholders). Similarly, the individual Applicants seek maximized ballot access, an interest that Defendants may not pursue.

Granting Applicants' Motion at this early stage of the case would not delay or prejudice the adjudication of the original parties' rights. *See* Fed. R. Civ. P. 24(b). Intervention would not unduly delay or prejudice the adjudication of the original parties, whereas refusing to permit it

would almost certainly deprive Applicants of the chance to defend their cognizable, significant, and protectable interests in the litigation.

V. CONCLUSION

For the reasons stated above and in the supporting declarations of Dr. Mishori, Mses. Almeida, Griffin, DeMarco, Robinson, Wise, and Mr. Huston, the Court should grant the Applicants' Motion to Intervene as of right, or in the alternative, for permissive intervention.

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Respectfully submitted,

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