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9 *Attorneys for Proposed Tribal Intervenors – White Mountain Apache Tribe and San
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11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF YAVAPAI

13 ARIZONA FREE ENTERPRISE CLUB, an
14 Arizona nonprofit corporation, and MARY
15 KAY RUWETTE, individually,

16 Plaintiffs,

17 v.

18 ADRIAN FONTES, in his official capacity
19 as the Secretary of State of Arizona,

20 Defendant.

No. S-1300-CV-202300872

MOTION TO INTERVENE

21 The White Mountain Apache Tribe of the Fort Apache Indian Reservation,
22 Arizona and the San Carlos Apache Tribe of the San Carlos Apache Indian Reservation,
23 Arizona (jointly “Proposed Tribal Intervenors”) hereby move to intervene in this action.¹
24 Enrolled Tribal members of the two Tribes have relied upon on-reservation ballot drop
25 boxes to vote. The removal of drop boxes across Arizona as sought by Plaintiffs would
26 negatively and severely impact Proposed Tribal Intervenors by furthering their
27 disenfranchisement from the right to vote.

28 ¹ Defendant Secretary of State Fontes and Intervenor-Defendants Voto Latino and
the Arizona Alliance for Retired Americans have indicated they do not oppose this
motion. Plaintiffs have indicated they do oppose this motion.

1 In Arizona, Native Americans have long struggled to vote. In 1928, the Supreme
2 Court of Arizona held that Native Americans, despite being United States citizens, were
3 excluded from registering to vote because they were incompetent, a racist decision that
4 held for twenty years. *Porter v. Hall*, 34 Ariz. 308, 324–25 (1928), *overruled in part*
5 *by Harrison v. Laveen*, 67 Ariz. 337 (1948). Even after Native Americans were permitted
6 to register, Arizona state laws, such as literacy tests, were designed and implemented to
7 disenfranchise Native voters. Glenn A. Phelps, *Representation Without Taxation:
8 Citizenship and Suffrage in Indian Country* 9 Am. Indian Q. 135, 136 (1985). As late as
9 1973, nearly ten years after the passage of the Voting Rights Act of 1965, Apache
10 County—which contains part of the Fort Apache Indian Reservation—refused to seat a
11 county commissioner because he was Native. *Shirley v. Superior Court In & For County
12 of Apache*, 109 Ariz. 510 (1973).

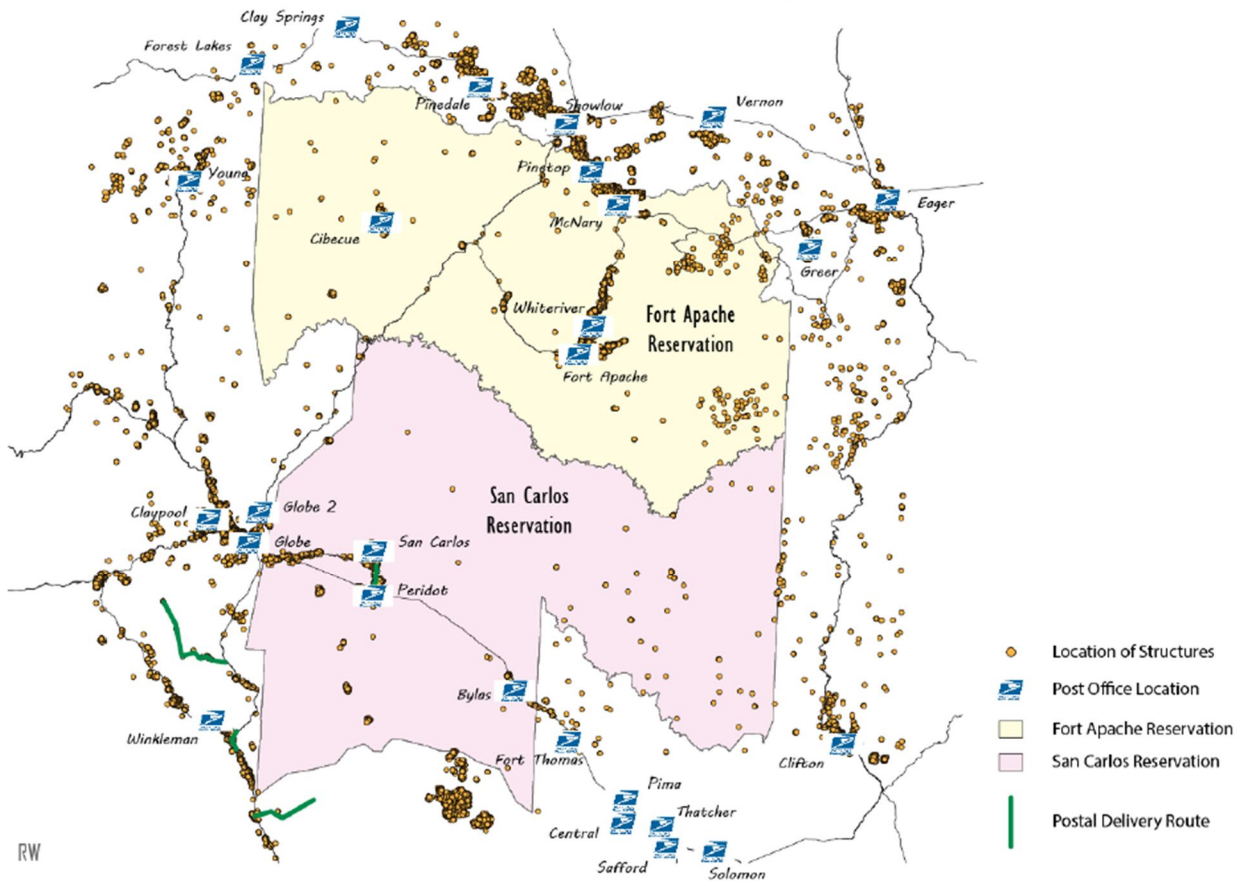
13 Today, many Native Americans in Arizona, including tribal members in Proposed
14 Tribal Intervenors’ communities, still find it unreasonably difficult to vote. Across
15 Arizona, tribal members living on reservations report being forced to travel unreasonable
16 distances to access registration and voting services. Dr. James Thomas Tucker, et al.,
17 *Obstacles at Every Turn: Barriers to Political Participation Faced by Native American
18 Voters*, Native American Rights Fund (2020), 29, [https://vote.narf.org/wp-](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf)
19 [content/uploads/2020/06/obstacles_at_every_turn.pdf](https://vote.narf.org/wp-content/uploads/2020/06/obstacles_at_every_turn.pdf). For example, members of the
20 Kaibab Paiute Band of Indians reported having to travel five and a half hours to reach
21 their county seat where regular voter services are located. *Id.* 29. In 2018, Navajo voters
22 reported having to travel 400 miles to reach an in-person polling place. Stephanie
23 Woodard, *American Apartheid: The Native American Struggle for Self-Determination
24 and Inclusion* (New York: IG, 2018), 45.

25 Around 80% of Arizonans vote early or by mail. *Democratic National Committee
26 v. Reagan*, 329 F. Supp. 3d 839 (2018). But for many Native Americans in Arizona,
27 voting by mail is a burdensome and arduous process. Across Native American
28 reservations in Arizona, including on the Fort Apache Indian Reservation and the San

1 Carlos Apache Indian Reservation, the vast majority of Native Americans do not receive
2 mail delivery to their homes. Consequently, mail, including ballots, are not delivered to
3 or picked up from their front door. By contrast, white Arizonans have 350% more access
4 to residential mail delivery than Native Americans. *Democratic National Committee v.*
5 *Hobbs*, 948 F.3d 89 at 17–18 and 23–24 (9th Cir. 2020). Without residential mail delivery,
6 Native Americans are forced to travel to a post office to send or receive mail.

7 As demonstrated by the figure below, on the Fort Apache Indian Reservation and
8 the San Carlose Apache Indian Reservation, some Native voters must travel substantial
9 distances to reach on-reservation post offices. The below image marks the location of
10 structures on the reservations and the location of post offices on and off-reservation.
11 Notably, markedly fewer post offices are located on reservation and the post offices on
12 reservation are commonly located on the fringe of the reservation closest to the off-
13 reservation populations.

14 Structure Locations and Post Offices in and around the Fort Apache and San Carlos Reservations



1 The burdens imposed by having to travel to vote are compounded by the extreme
2 poverty faced by Native Americans. In 2022, Native Americans in Arizona faced a
3 poverty rate of 29.9%, over two times higher than their white counterparts who have a
4 poverty rate of 11%. U.S. Census Bureau. 2023. *2018-2022 American Community Survey*
5 *5-year Table S1701*. Retrieved from
6 <https://data.census.gov/table/ACSST5Y2022.S1701?q=poverty%20arizona>. On the Fort
7 Apache Indian Reservation, which is 92.6% Native American, the poverty rate is a
8 devastating 40.40%. U.S. Census Bureau. 2023. *2018-2022 American Community Survey*
9 *5-year*. Available from My Tribal Area
10 <https://www.census.gov/tribal/index.html?st=04&aianihh=1140>. On the San Carlos
11 Indian Reservation which is 87.26% Native American, the poverty rate is even higher at
12 44.40%. U.S. Census Bureau. 2023. *2018-2022 American Community Survey 5-year*.
13 Available from My Tribal Area
14 <https://www.census.gov/tribal/index.html?st=04&aianihh=3355>. As a result, Native
15 Americans in Proposed Tribal Intervenor communities may not be able to afford an
16 expensive tank of gas to vote if they even have a vehicle at all.

17 Native Americans in Arizona also experience lower health status when compared
18 with other Arizonans. For example, in Arizona, the median age at death from all causes
19 is 76 for all Arizonans and 62 for Native Americans. [https://pub.azdhs.gov/health-](https://pub.azdhs.gov/health-stats/report/hspam/2020/part_3.pdf)
20 [stats/report/hspam/2020/part_3.pdf](https://pub.azdhs.gov/health-stats/report/hspam/2020/part_3.pdf). An individual's ability to travel to vote is directly
21 affected by their health and ambulatory ability.

22 Additionally, post offices servicing rural communities are often open only limited
23 hours. For example, the Fort Apache post office, one of the four post offices on the
24 Reservation, is only fully open 10AM-2:00PM, 2:30PM-4:30PM M-F and is closed on
25 Saturdays and Sundays. All four post offices on the Reservation are closed on the
26 weekends. This limited window can make accessing mail services extremely difficult,
27 especially for those working typical 9-5 hours.

28

1 Moreover, the post offices servicing rural Native Americans provide poorer, more
2 inconsistent service than the post offices servicing non-Native towns. For example, the
3 mail at some post offices on the Fort Apache Reservation is not picked up daily. As
4 another example, in Apache County, only 37.5% of letters sent on-reservation were
5 verified as delivered. Off-reservation 93% of mail was verifiably delivered. Schroedel J,
6 Rogers M, Dietrich J (2023). *Structural Racism, the USPS, and Voting by Mail On- and*
7 *Off-Reservation in Arizona*. *Studies in American Political Development*, 37(2), 111-126.
8 doi:10.1017/S0898588X2200027X. What is more, it takes longer for the mail originating
9 from post offices located on-reservation to arrive relative to mail originating from nearby
10 off-reservation post offices in the same county. Specifically, off-reservation *rural*
11 communities saw verified letters arrive, on average, 56 hours after being mailed. In
12 contrast, for the letters that even made it from on-reservation communities, it took an
13 average of 96 hours, nearly four days. *Id.*

14 Because Native Americans must travel to register, vote, and even vote by mail,
15 drop boxes provide a critical means of lessening the burden on Native voters by
16 decreasing the distances that some Native voters must travel to drop a ballot. Decreases
17 in distance translate to a decrease in expense, which is critically important for
18 impoverished Native Americans. Moreover, given the racial disparity between access to
19 residential mail delivery between Native American and white voters, as well as the
20 markedly worse mail services Native Americans receive, removing ballot drop boxes
21 would disproportionately impact Native American voters in Arizona.

22 Crucially, drop boxes also dependably deliver a ballot to election officials so the
23 ballot may be counted. As demonstrated above, Native Americans have good reason to
24 be distrustful that the post office will deliver their ballot at all. Moreover, because mail
25 times from Native communities are slower and unpredictable, ballot drop boxes allow
26 Native voters to reliably return their ballot on time. This is especially crucial in Arizona
27 where ballots must be received by 7:00PM on Election Day, not merely be postmarked.

28

1 Plaintiffs seek to remove this necessary means of voting from all Arizonans,
2 including Native Americans. Their effort is misguided and, worse, would negatively
3 impact the ability of Proposed Tribal Intervenors’ members from exercising their
4 constitutional right to vote. As such, Proposed Tribal Intervenors seek to intervene in this
5 action as defendants to protect access to the democratic process for their members.
6 Proposed Tribal Intervenors may do so as a matter of right, but even if they could not,
7 they more than satisfy the considerations for permissive intervention.²

8 ARGUMENT

9 I. Proposed Tribal Intervenors are entitled to intervene as of right.

10 This Court “must permit” Proposed Tribal Intervenors to intervene as of right
11 pursuant to Ariz. R. Civ. P. 24(a)(2). Under that rule, intervention is required when:
12

13 (1) the motion [to intervene] is timely; (2) the movants claim an interest
14 relating to the subject of the action; (3) the movants show that disposition
15 of the action may, as a practical matter, impair or impede their ability to
16 protect their interests; and (4) the movants show that existing parties do not
adequately represent their interests.

17 *Heritage Village II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 570 (App. 2019), *as*
18 *amended* (May 22, 2019) *citing Woodbridge Structured Funding, LLC v. Ariz. Lottery*,
19 235 Ariz. 25, 28 ¶ 13, (App. 2014)). Rule 24 “is remedial and should be liberally
20 construed with the view of assisting parties in obtaining justice and protecting their
21 rights.” *Id.* at 573, ¶ 22 (quoting *Bechtel v. Rose, ex rel. Dep’t of Econ. Sec.*, 150 Ariz. 68,
22 72 (1986)). Proposed Tribal Intervenors easily satisfy the “minimal burden” required to
23 establish intervention as of right. *Id.*

24
25
26 ² Because Ariz. R. Civ. P. 24(c)(B) requires that any motion to intervene be
27 accompanied by a proposed pleading, Proposed Tribal Intervenors’ proposed answer is
28 attached to this motion as Exhibit A. However, Proposed Tribal Intervenors note that, if
allowed to intervene, they intend to participate in dispositive motion practice.

1 **A. Proposed Tribal Intervenors’ motion is timely.**

2 “Intervention as a matter of right requires a timely motion.” *Id.* at 571 ¶ 13. “The
3 requirement of timeliness is a flexible one” that turns on “the stage at which the action
4 has progressed before intervention is sought” and whether the timing of intervention “will
5 prejudice the existing parties to the case.” *Winner Enters., Ltd. v. Superior Court in & for*
6 *Cnty. of Yavapai*, 159 Ariz. 106, 109 (App. 1988) (citation omitted).

7 Here, both considerations weigh in favor of intervention. This case was first filed
8 in October. Thereafter, Proposed Tribal Intervenors worked diligently to coordinate
9 counsel, analyze their interests in the case, go through their internal tribal processes to
10 pass tribal resolutions committing their respective tribes to this litigation, and prepare this
11 motion. There has been no delay on the part of Proposed Tribal Intervenors. Although the
12 Court has already issued an order denying a motion for a preliminary injunction and the
13 parties are otherwise engaging in motion practice, the fact that the timeline of this case
14 has been “extremely compressed” does not mean that Proposed Tribal Intervenors are
15 untimely in their efforts. *Id.* Indeed, intervention has been allowed even after a
16 preliminary injunction has been entered. *Winner*, 159 Ariz. at 109 (holding that lower
17 court erred when it denied intervention when motion was filed “[t]wenty-one days” after
18 entry of a preliminary injunction). Moreover, intervention as of right is both timely and
19 appropriate even if intervention would only have the effect of allowing Proposed Tribal
20 Intervenors to participate in any potential appeal. *See Western Watersheds Project v.*
21 *Haaland*, 22 F.4th 828, 836 (9th Cir. 2022) (noting the “general rule is that a post-
22 judgment motion to intervene for purposes of appeal is timely if filed within the time
23 allowed for the filing of an appeal”) (cleaned up).³

24 Likewise, there would be no prejudice to either party if Proposed Tribal
25 Intervenors enter this case. Again, this case is in its earliest stages. No case management

27 ³ “Federal Rule of Civil Procedure 24 is substantively indistinguishable from
28 Arizona Rule 24, and [Arizona courts] may look for guidance to federal courts’
interpretations of their rules.” *Heritage Village II*, 246 Ariz. at 572 ¶ 19.

1 order has been entered. Any delay in proceedings will be minimal and amounts, at most,
2 to Plaintiffs facing “additional briefing . . . including possible additional arguments” or a
3 “piling on effect.” *Id.* at 839. These are “poor reason[s] to deny intervention.” *Id.*

4 In short, Proposed Tribal Intervenors’ motion is timely. The first element of
5 intervention as of right is satisfied.

6 **B. Proposed Tribal Intervenors have an interest in the subject of this**
7 **action.**

8 The second consideration for intervention as of right is that proposed interveners
9 have “an interest relating to the subject of the action.” *Heritage Village II*, 246 Ariz. at
10 570 ¶ 10. This is a “minimal burden.” *Kane Cnty. v. United States*, 928 F.3d 877, 891
11 (10th Cir. 2019). Proposed Tribal Intervenors easily satisfy that minimal burden—they
12 are “sovereign nations with substantial populations” seeking to “vindicate[e] the voting
13 rights of their members.” *Rosebud Sioux Tribe v. Barnett*, 603 F. Supp. 3d 783, 789
14 (D.S.D. 2022). “It is their prerogative to do so.” *Id.*

15 Proposed Tribal Intervenor White Mountain Apache Tribe is a federally
16 recognized Tribe with approximately 17,324 enrolled members, about 12,838 of whom
17 are living on the Fort Apache Indian Reservation. The Nation, acting as *parens patriae* to
18 protect these members’ general welfare and their right to vote, as well as to safeguard its
19 own role in the federal system, has an interest in ensuring that its members maintain
20 access to a means of returning their ballots that many of their tribal members’ rely upon
21 to exercise their fundamental right to vote.

22 The relief Plaintiffs seek—the removal of a method of returning an early ballot—
23 would impact the ability of these members to vote. Intervenor White Mountain Apache
24 Tribe has two drop boxes located at the Tribal Executive Offices and Cibecue Center.
25 Removal of these on-reservation drop boxes creates further distance to polling places and
26 creates one more obstacle in front of the right to vote

27 The same is true of Proposed Tribal Intervenor San Carlos Apache Tribe, a
28 federally recognized Tribe, organized pursuant to the provisions of Section 16 of the

1 Indian Reorganization Act of June 18, 1934 (48 Stat. 984). Acting as *parens patriae*, the
2 San Carlos Apache Tribe seeks to protect their members' general welfare and their right
3 to vote, as well as to safeguard the Tribe's own role in the federal system. The San Carlos
4 Apache Tribe has an interest in ensuring that its members maintain a crucial means of
5 voting in their community.

6 The Tribe's Reservation consists of 1.8 million acres, which include the districts
7 of Seven Mile, Peridot, Bylas, and Gilson Wash. These districts fall within Pinal County,
8 Gila County and Graham County. The Tribe has approximately 17,300 enrolled members.
9 Of these members, approximately 13,000 live on the San Carlos Apache Indian
10 Reservation. The Tribe has used three drop ballot boxes to provide their members the
11 option to vote.

12 On June 7, 2022, the San Carlos Council, the Tribe's governing body, entered into
13 an Inter-Governmental Agreement ("IGA") with the Gila County Board of Supervisors
14 and the Gila County Recorder to deliver drop boxes in the Seven Mile District. Presently,
15 the drop box is located in the Tribe's Main Administrative Building in San Carlos,
16 Arizona, located in the Seven Mile District. Additionally, since 2018, the Graham County
17 Recorder has delivered two drop boxes to the Peridot and Bylas Districts. Specifically,
18 the drop box is located in the Peridot District Administration Building and at the Robert
19 Olivar, Sr., Learning Center in Bylas, Arizona.

20 Drop boxes have successfully provided an alternative avenue to the Tribe's
21 members to vote, especially if they lack transportation to vote in person or are concerned
22 if their ballot will be timely counted through mail. Accordingly, the removal of the three
23 ballot boxes from the San Carlos, Bylas, and Peridot Districts would severely impede the
24 Tribes members' ability to vote.

25 Proposed Tribal Intervenors' interest in exercising their prerogative to vindicate
26 their members' access to the democratic process easily satisfies Rule 24's minimal
27 burden. They have a right to vindicate that interest in this case.

28

1 **C. Disposition of this case will, as a practical matter, affect Proposed**
2 **Tribal Intervenors’ interest in the action.**

3 Intervention as of right is required where, “as a practical matter, [the action may]
4 impair or impede their ability to protect their interests.” *Heritage Village II*, 246 Ariz. at
5 570 ¶ 10. This is only a “minimal burden,” and a party need only show “that disposition
6 of the action may impair or impede their ability to protect their interest. *Id.* at 573 ¶ 22.
7 Put another way, all a party must show is that “the intervener will either gain or lose by
8 the direct legal operation and effect of the judgment.” *Hill v. Alfalfa Seed & Lumber Co.*,
9 38 Ariz. 70, 72 (1931).

10 Again, Proposed Tribal Intervenors easily satisfy this standard. If Plaintiffs are
11 successful, Proposed Tribal Intervenors’ enrolled members will lose access to a method
12 of returning ballots that they have relied on in previous election cycles. Given the myriad
13 other structural issues that make it difficult to vote from a reservation, including lack of
14 fully functioning roads, vehicles, broadband internet and resources (such as the ability to
15 afford a computer or smart phone and pay a monthly service fee), lack of residential mail
16 delivery, and substandard post office service, the likely result is a decrease in Native
17 American voter turnout. Such a decrease negatively impacts Proposed Tribal Intervenors
18 both by depriving their members of the chance to participate in the democratic process
19 and, because of that deprivation, impacting Proposed Tribal Intervenors’ role as sovereign
20 through a decrease in political power. These impacts would flow directly from a judgment
21 in favor of Plaintiffs in this case, and thus Proposed Tribal Intervenors satisfy the third
22 condition of intervention as of right.

23 **D. Proposed Tribal Intervenors have a unique perspective that may not**
24 **be adequately represented by the current Defendants.**

25 The final consideration for intervention as of right is whether existing parties
26 “adequately represent [the] interests” of prospective intervenors. *Heritage Village II*, 246
27 Ariz. at 570 ¶ 10. Under Rule 24’s liberal approach, this is a “minimal burden” that is
28 satisfied “if the applicant shows that representation of his interest *may* be inadequate.”

1 *Kalbers v. U.S. Dep't. of Justice*, 22 F.4th 816, 828 (9th Cir. 2021) (quoting *Legal Aid*
2 *Soc'y of Alameda Cnty. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980). “[T]he possibility of
3 divergence of interest need not be great in order to satisfy” this burden. *Nat. Res. Def.*
4 *Council, Inc. v. Nuclear Regul. Comm’n.*, 578 F.2d 1341, 1346 (10th Cir. 1978). Indeed,
5 when, as here, the existing defendant is a governmental entity, intervention is favored
6 because “the public interest the government is obligated to represent may differ from the
7 would-be intervenor’s particular interest,” as the government is obligated to “represent
8 the broader public interest.” *Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1255 (10th
9 Cir. 2001) (cited with approval in *Heritage Village II*, 246 Ariz. at 572 ¶ 21).

10 That is especially true here, where the interest of Proposed Tribal Intervenors—
11 access to the democratic process for Tribal members—has been an area of historic
12 concern and struggle. Arizona has a “long history of imposing burdens on minority
13 voting.” *Feldman v. Arizona Sec’y. of State Off.*, 843 F.3d 366, 405 (9th Cir. 2016). This
14 includes a “long history of disenfranchisement as a matter of law and of practice” for
15 Native American voters. Patty Ferguson-Bohnee, *The History of Indian Voting Rights in*
16 *Arizona: Overcoming Decades of Voter Suppression*, 47 Ariz. St. L. J. 1099, 1099 (2015).
17 This history persists. *Id.* at 1123. Indeed, because “[p]olling locations and voter
18 registration sites on reservations are often located at substantially greater distances from
19 voters,” Native American voters face greater costs to exercise their vote. *Id.* at 1136.
20 Increasing access to early voting procedures is a way of addressing these inequities. *Id.*
21 at 1142-43. Removing ballot drop boxes is contradictory to that goal. This is a problem
22 unique to Arizona’s Native American community and a unique perspective, separate from
23 the larger public interest, that satisfies Rule 24.

24 Proposed Tribal Intervenors are the only parties seeking involvement in this case
25 that have the unique historical perspective and interest in protecting voting options for
26 Native Americans. Because their interest diverges from the general public in that regard,
27 and because they otherwise satisfy Rule 24(a)(2), Proposed Tribal Intervenors are entitled
28 to intervene in this action as of right.

1 **II. Even if Proposed Tribal Interveners could not intervene as of right, they may**
2 **permissively intervene.**

3 Proposed Tribal Interveners satisfy all four conditions for intervention as of right,
4 and so this Court must allow them to intervene under Rule 24(a)(2). Even if Proposed
5 Interveners could not intervene as of right, they may intervene pursuant to Rule 24(b),
6 which allows “anyone to intervene who . . . has a claim or defense that shares with the
7 main action a question of law or fact.” Because “Rule 24 is remedial and should be
8 liberally construed,” permissive intervention is so permissive that the proposed intervenor
9 “does not even have to be a person who would have been a proper party at the beginning
10 of the suit.” *Bechtel*, 150 Ariz. at 72 (quoting *Usery v. Brandel*, 87 F.R.D. 670, 677 (W.D.
11 Mich. 1980)). Instead, an intervenor need only show that they have a claim or defense in
12 common question of law or fact with the main action. *Id.* Courts take an “expansive view
13 of commonality.” *Zenith Elecs. Corp. v. Ballinger*, 220 Ariz. 257, 264 ¶¶ 23-24 (Ct. App.
14 2009).

15 Here, the position of Proposed Tribal Interveners shares a common question of
16 law with the main action. Proposed Tribal Interveners seek to safeguard a method of
17 voting utilized by many of their members. Removing that option is the entire premise of
18 the action, so Proposed Tribal Interveners’ arguments that ballot drop boxes are
19 permissible share a common question of law with the main action. *Zenith*, 220 Ariz. at
20 264 ¶ 25.

21 Beyond satisfying the requirements of Rule 24, several other factors weigh in favor
22 of permissive intervention. *See Bechtel*, 150 Ariz. at 72 (listing factors that a court “may”
23 consider after determining Rule 24 is satisfied). *First*, as described above, Proposed Tribal
24 Interveners have an interest in protecting the voting rights and ability to participate in the
25 democratic process of their members. *Rosebud Sioux Tribe*, 603 F. Supp. 3d at 789
26 (noting that, as “sovereign nations with substantial populations” seeking to “vindicate the
27 voting rights of their members” Native American Tribes had a “prerogative to do so.”).
28 This interest goes to the heart of the merits of this case.

1 DATED this 8th day of December, 2023.

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Exhibit A



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18 ADRIAN FONTES, in his official capacity
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20 Defendant.

No. S-1300-CV-202300872

**[PROPOSED] ANSWER IN
INTERVENTION TO VERIFIED
SPECIAL ACTION COMPLAINT**

(Assigned to the Hon. John Napper)

21 Proposed Tribal Intervenor-Defendants the White Mountain Apache Tribe and the
22 San Carlos Apache Tribe answer Plaintiffs’ Verified Special Action Complaint (“Verified
23 Complaint”) as follows:

24 1. Paragraph 1 contains a legal contention to which no response is required. To the
25 extent a response is required, the allegations are denied.

26 2. Paragraph 2 contains a legal contention to which no response is required. To the
27 extent a response is required, Proposed Tribal Intervenors admit that Arizona must mail
28 a ballot to every voter on an active early voting list, but otherwise deny the allegations in
Paragraph 2 of the Verified Complaint.

1 3. Paragraph 3 of the Verified Complaint states a legal conclusion to which no
2 response is required. To the extent a response is required, the allegations are denied.

3 4. Paragraph 4 of the Verified Complaint states a legal conclusion to which no
4 response is required. To the extent a response is required, the allegations are denied.

5 5. Paragraph 5 of the Verified Complaint states a legal conclusion to which no
6 response is required. To the extent a response is required, Proposed Tribal Intervenors
7 admit that the cited statutory provision states that completed early ballots shall be
8 “delivered or mailed to the county recorder or other officer in charge of elections of the
9 political subdivision in which the elector is registered or deposited by the voter or the
10 voter’s agent at any polling place in the county.” Proposed Tribal Intervenors also admit
11 that printed instructions to early voters are to include the following statement: “In order
12 to be valid and counted, the ballot and affidavit must be delivered to the office of the
13 county recorder or other officer in charge of elections or may be deposited at any polling
14 place in the county no later than 7:00 p.m. on election day.” Proposed Tribal Intervenors
15 deny that Arizona law allows for drop boxes only at polling places and deny that Arizona
16 law requires that drop boxes be necessarily monitored.

17 6. Proposed Tribal Intervenors lack sufficient knowledge or information to form a
18 belief as to the truth or falsity of the allegations in Paragraph 6 of the Verified Complaint
19 and therefore deny them.

20 7. Paragraph 7 of the Verified Complaint states a legal conclusion to which no
21 response is required. To the extent a response is required, the allegations are denied.

22 8. Admitted.

23 9. Paragraph 9 of the Verified Complaint states a legal conclusion to which no
24 response is required. To the extent a response is required, the allegations are denied.

25 10. Paragraph 10 of the Verified Complaint states a legal conclusion to which no
26 response is required. To the extent a response is required, the allegations are denied.

27 11. Paragraph 11 of the Verified Complaint states a legal conclusion to which no
28 response is required. To the extent a response is required, the allegations are denied.

1 12. Paragraph 12 of the Verified Complaint states a legal conclusion to which no
2 response is required. To the extent a response is required, the allegations are denied.

3 **JURISDICTION**

4 13. Proposed Tribal Intervenors admit that the Court has jurisdiction under Article
5 6, § 14 of the Arizona Constitution, but denies that jurisdiction is conferred by A.R.S.
6 § 12-1831 or -2021, or Rule 4 of the Arizona Rules of Procedure for Special Actions.

7 14. Proposed Tribal Intervenors lack sufficient knowledge or information to form
8 a belief as to the truth or falsity of the allegations in Paragraph 14 of the Verified
9 Complaint and therefore deny them.

10 **PARTIES**

11 15. Proposed Tribal Intervenors lack sufficient knowledge or information to form
12 a belief as to the truth or falsity of the allegations in Paragraph 15 of the Verified
13 Complaint and therefore deny them.

14 16. Proposed Tribal Intervenors lack sufficient knowledge or information to form
15 a belief as to the truth or falsity of the allegations in Paragraph 16 of the Verified
16 Complaint and therefore deny them.

17 17. Proposed Tribal Intervenors admit Adrian Fontes is the Secretary of State of
18 Arizona and is named in his official capacity. Proposed Tribal Intervenors admit Adrian
19 Fontes is the head state official responsible for overseeing elections in and on behalf of
20 the State of Arizona. Paragraph 17 of the Verified Complaint otherwise states a legal
21 conclusion to which no response is required.

22 **GENERAL ALLEGATIONS**

23 18. Proposed Tribal Intervenors admit that many of their enrolled members
24 participate in Arizona elections vote via the State’s early voting system. The remainder
25 of Paragraph 18 of the Verified Complaint states a legal conclusion to which no response
26 is required. To the extent a response is required, Proposed Tribal Intervenors admit that
27 the quoted language appears in the cited case but otherwise deny the allegations.

28

1 19. Paragraph 19 contains a legal conclusion to which no response is required. To
2 the extent a response is required, Proposed Tribal Intervenors lack sufficient knowledge
3 or information to form a belief as to the truth or falsity of the allegations in Paragraph 19
4 of the Verified Complaint and therefore deny them.

5 20. Paragraph 20 of the Verified Complaint states a legal conclusion to which no
6 response is required. To the extent a response is required, the allegations are admitted.

7 21. Paragraph 21 of the Verified Complaint states a legal conclusion to which no
8 response is required. To the extent a response is required, the allegations are denied.

9 22. Paragraph 22 of the Verified Complaint states a legal conclusion to which no
10 response is required. To the extent a response is required, the allegations are denied.

11 23. Proposed Tribal Intervenors lack sufficient knowledge or information to form
12 a belief as to the truth or falsity of the allegations in Paragraph 23 of the Verified
13 Complaint and therefore deny them.

14 24. Proposed Tribal Intervenors admit that the Commission on Federal Election
15 Reform, led by President Jimmy Carter and former Secretary of State James Baker, was
16 formed in 2004 and issued a report in 2005 titled “Building Confidence in U.S. Elections.”
17 Proposed Tribal Intervenors otherwise lack sufficient knowledge or information to form
18 a belief as to the truth or falsity of the allegations in Paragraph 24 of the Verified
19 Complaint and therefore deny them.

20 25. Proposed Tribal Intervenors lack sufficient knowledge or information to form
21 a belief as to the truth or falsity of the allegations in Paragraph 25 of the Verified
22 Complaint and therefore deny them.

23 26. Proposed Tribal Intervenors admit that A.R.S. § 16-548(A) authorizes “the
24 voter or the voter’s agent” to deposit a ballot at a polling place. Paragraph 26 of the
25 Verified Complaint otherwise states a legal conclusion to which no response is required.
26 To the extent a response is required, the allegations are denied.

27 27. Paragraph 27 of the Verified Complaint states a legal conclusion to which no
28 response is required. To the extent a response is required, the allegations are denied.

1 28. Proposed Tribal Intervenors lack sufficient knowledge or information to form
2 a belief about the Legislature’s reasons for enacting A.R.S. § 16-547(A). Paragraph 28 of
3 the Verified Complaint otherwise states a legal conclusion to which no response is
4 required. To the extent a response is required, the allegations are denied.

5 29. Paragraph 29 of the Verified Complaint states a legal conclusion to which no
6 response is required. Proposed Tribal Intervenors admit that the quoted language appears
7 without emphasis in the cited statutes but otherwise deny the allegations.

8 30. Proposed Tribal Intervenors admit that the Secretary has issued rules for drop
9 boxes through the EPM, and that the EPM instructs County Recorders or other elections
10 officers to “develop and implement secure ballot retrieval and chain of custody
11 procedures.” Proposed Tribal Intervenors deny the remaining allegations.

12 31. Paragraph 31 of the Verified Complaint states a legal conclusion to which no
13 response is required. To the extent a response is required, Proposed Tribal Intervenors
14 admit that language appears in the cited case and that a violation of the EPM is punishable
15 as a class two misdemeanor.

16 32. Paragraph 32 of the Verified Complaint states a legal conclusion to which no
17 response is required. To the extent a response is required, Proposed Tribal Intervenors
18 admit that the quoted language appears in the cited cases.

19 33. Proposed Tribal Intervenors admit that the most recent EPM approved by the
20 Secretary of State, the Governor, and the Attorney General was published in December
21 2019 and remains in effect, that the 2021 EPM did not take effect, and that the Governor
22 and Attorney General have not yet approved the 2023 EPM. Paragraph 33 of the Verified
23 Complaint otherwise states a legal conclusion to which no response is required. To the
24 extent a response is required, the allegation is denied.

25 34. Paragraph 34 of the Verified Complaint otherwise states a legal conclusion to
26 which no response is required. To the extent a response is required, the allegation is
27 denied.

28

1 35. Paragraph 35 of the Verified Complaint otherwise states a legal conclusion to
2 which no response is required. To the extent a response is required, the allegation is
3 denied.

4 36. Proposed Tribal Intervenors admit that the EPM regulates unstaffed drop boxes
5 and allows them to be placed outdoors. Proposed Tribal Intervenors deny the remaining
6 allegations in Paragraph 36.

7 37. Proposed Tribal Intervenors lack sufficient knowledge or information to form
8 a belief as to the truth or falsity of the allegations in Paragraph 37 of the Verified
9 Complaint and therefore deny them.

10 38. Paragraph 38 of the Verified Complaint states a legal conclusion to which no
11 response is required. To the extent a response is required, the allegations are denied.

12 39. Paragraph 39 of the Verified Complaint states a legal conclusion to which no
13 response is required. To the extent a response is required, the allegations are denied.

14 40. Proposed Tribal Intervenors lack sufficient knowledge or information to form
15 a belief as to the truth or falsity of the allegation in Paragraph 40 of the Verified Complaint
16 about USPS mail collection boxes and therefore deny it. Proposed Tribal Intervenors
17 admit that the EPM requires all drop boxes to be “secured by a lock and/or sealable with
18 a tamper-evident seal.”

19 41. Proposed Tribal Intervenors lack sufficient knowledge or information to form
20 a belief as to the truth or falsity of the allegations in Paragraph 41 of the Verified
21 Complaint and therefore deny them.

22 42. Paragraph 42 of the Verified Complaint states a legal conclusion to which no
23 response is required. To the extent a response is required, the allegations are denied.

24 43. Proposed Tribal Intervenors lack sufficient knowledge or information to form
25 a belief as to the truth or falsity of the allegations in Paragraph 43 of the Verified
26 Complaint and therefore deny them.

27
28

1 44. Proposed Tribal Intervenors lack sufficient knowledge or information to form
2 a belief as to the truth or falsity of the allegations in Paragraph 44 of the Verified
3 Complaint and therefore deny them.

4 45. Proposed Tribal Intervenors admit that during the 2022 election, an Arizona
5 court entered a restraining order against armed observers who intimidated Arizonans
6 seeking to vote via drop box. Proposed Tribal Intervenors deny the remaining allegations
7 in Paragraph 45.

8 46. Proposed Tribal Intervenors lack sufficient knowledge or information to form
9 a belief as to the truth or falsity of the allegations in Paragraph 46 of the Verified
10 Complaint and therefore deny them.

11 47. Proposed Tribal Intervenors lack sufficient knowledge or information to form
12 a belief as to the truth or falsity of the allegations in Paragraph 47 of the Verified
13 Complaint and therefore deny them.

14 48. Proposed Tribal Intervenors lack sufficient knowledge or information to form
15 a belief as to the truth or falsity of the allegations in Paragraph 48 of the Verified
16 Complaint and therefore deny them.

17 49. Paragraph 49 of the Verified Complaint states a legal conclusion to which no
18 response is required. To the extent a response is required, the allegations are denied. As
19 to the specific locations mentioned, Proposed Tribal Intervenors otherwise lack sufficient
20 knowledge or information to form a belief as to the truth or falsity of the allegations in
21 Paragraph 49 of the Verified Complaint and therefore deny them.

22 50. Paragraph 50 of the Verified Complaint states a legal conclusion to which no
23 response is required. To the extent a response is required, the allegations are denied.

24 51. Paragraph 51 of the Verified Complaint states a legal conclusion to which no
25 response is required. To the extent Paragraph 51 alleges that the EPM lacks the authority
26 to regulate drop boxes, that allegation is denied. With regard to specific drop box
27 locations, Proposed Tribal Intervenors lack sufficient knowledge or information to form
28

1 a belief as to the truth or falsity of the allegations in Paragraph 51 of the Verified
2 Complaint and therefore deny them.

3 52. Paragraph 52 of the Verified Complaint states a legal conclusion to which no
4 response is required. Proposed Tribal Intervenors otherwise lack sufficient knowledge or
5 information to form a belief as to the truth or falsity of the allegations in Paragraph 52 of
6 the Verified Complaint and therefore deny them.

7 53. Denied.

8 54. Denied.

9 55. Admitted.

10 56. Denied.

11 57. Denied.

12 58. Proposed Tribal Intervenors lack sufficient knowledge or information to form
13 a belief as to the truth or falsity of the allegations in Paragraph 58 of the Verified
14 Complaint and therefore deny them.

15 59. Proposed Tribal Intervenors deny that Arizona's unstaffed drop boxes lack a
16 statutory basis. Proposed Tribal Intervenors otherwise lack sufficient knowledge or
17 information to form a belief as to the truth or falsity of the allegations in Paragraph 59 of
18 the Verified Complaint and therefore deny them.

19 60. Paragraph 60 of the Verified Complaint states a legal conclusion to which no
20 response is required. To the extent a response is required, Proposed Tribal Intervenors
21 admit that the Wisconsin Supreme Court held that Wisconsin drop boxes were illegal
22 under Wisconsin state law.

23 61. Paragraph 61 of the Verified Complaint states a legal conclusion to which no
24 response is required. To the extent a response is required, Proposed Tribal Intervenors
25 admit that the quoted language appears in the cited case but deny that the cited statute
26 remains law in Wisconsin, as a Wisconsin court has held that the statutory provision
27 quoted in Paragraph 61 of the Verified Complaint is preempted by the Voting Rights Act.
28 *Carey v. Wisconsin Elections Comm'n*, 624 F. Supp. 3d 1020, 1032 (W.D. Wis. 2022).

1 62. Proposed Tribal Intervenors admit the quoted language in Paragraph 64
2 appears in the statute. The remaining allegations in Paragraph 62 of the Verified
3 Complaint state a legal conclusion to which no response is required. To the extent a
4 response is required, the allegations are denied.

5 63. Paragraph 63 of the Verified Complaint states a legal conclusion to which no
6 response is required. To the extent a response is required, Proposed Tribal Intervenors
7 admit that the quoted language appears in the cited case, though with different
8 punctuation and capitalization.

9 64. Paragraph 64 of the Verified Complaint states a legal conclusion to which no
10 response is required. To the extent a response is required, Proposed Tribal Intervenors
11 admit that the quoted language appears in the cited case, but at ¶ 61 of the opinion. To the
12 extent Paragraph 64 alleges that the cited statute remains law in Wisconsin, that allegation
13 is denied.

14 65. Paragraph 65 of the Verified Complaint states a legal conclusion to which no
15 response is required. To the extent a response is required, Proposed Tribal Intervenors
16 admit that the quoted language appears in the cited case but otherwise deny the
17 allegations.

18 66. Paragraph 66 of the Verified Complaint states a legal conclusion to which no
19 response is required. To the extent a response is required, Proposed Tribal Intervenors
20 admit that the quoted language appears in the cited case.

21 67. Denied.

22 **COUNT I**

23 68. Proposed Tribal Intervenors incorporate by reference each of their preceding
24 admissions, denials, and statements as if fully set forth in this paragraph.

25 69. Paragraph 69 of the Verified Complaint states a legal conclusion to which no
26 response is required. To the extent that a response is required, Proposed Tribal Intervenors
27 admit that the quoted language appears in the cited statute.

28

1 70. Paragraph 70 of the Verified Complaint states a legal conclusion to which no
2 response is required. To the extent a response is required, the allegations are denied.

3 71. Paragraph 71 of the Verified Complaint states a legal conclusion to which no
4 response is required. To the extent a response is required, the allegations are denied.

5 72. Paragraph 72 of the Verified Complaint states a legal conclusion to which no
6 response is required. To the extent a response is required, the allegations are denied.

7 Proposed Tribal Intervenors admit that the quoted language appears in the cited case.

8 73. Paragraph 73 of the Verified Complaint states a legal conclusion to which no
9 response is required. To the extent a response is required, the allegations are denied.

10 Proposed Tribal Intervenors admit that the quoted language appears in the cited cases.

11 74. Denied.

12 75. Paragraph 75 of the Verified Complaint states a legal conclusion to which no
13 response is required. To the extent a response is required, the allegations are denied.

14 76. Denied.

15 77. Denied.

16 78. Denied.

17 79. Denied.

18 **COUNT II**

19 80. Proposed Tribal Intervenors incorporate by reference each of their preceding
20 admissions, denials, and statements as if fully set forth in this paragraph.

21 81. Denied.

22 82. Paragraph 82 of the Verified Complaint states a legal conclusion to which no
23 response is required. To the extent a response is required, the allegations are denied.

24 83. Denied.

25 **DEMAND FOR RELIEF**

26 84. Proposed Tribal Intervenors deny that Plaintiffs are entitled to any relief.

27 **GENERAL DENIAL**

28

1 85. Proposed Tribal Intervenors deny every allegation in the Verified Complaint
2 that is not expressly admitted herein.

3 **AFFIRMATIVE DEFENSES**

4 86. Plaintiffs' claims are barred in whole or in part for failure to state a claim upon
5 which relief can be granted.

6 87. Plaintiffs' claims are barred because Plaintiffs lack standing.

7 88. Plaintiffs' claims are barred by laches.

8 89. Proposed Tribal Intervenors reserve the right to assert additional affirmative
9 defenses, including, but not limited to, those set forth in Rule 8(d) of the Arizona Rules
10 of Civil Procedure, as additional facts are discovered.

11 WHEREFORE, having fully answered Plaintiffs' Verified Complaint, Proposed
12 Tribal Intervenors pray for judgment as follows:

13 A. That the Court dismiss Plaintiffs' Verified Complaint;

14 B. That judgment be entered in favor of Proposed Tribal Intervenors and against
15 Plaintiffs on Plaintiffs' Verified Complaint and that Plaintiffs take nothing thereby;

16 C. That Proposed Tribal Intervenors be awarded reasonable attorneys' fees and
17 costs; and

18 D. For such other and further relief as the Court, in its inherent discretion, deems
19 appropriate.

20 RESPECTFULLY SUBMITTED this __ day of December, 2023.

21 OSBORN MALEDON, P.A.

22 By /s/

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ORIGINAL of the foregoing filed, and COPY e-delivered,
via TurboCourt this ___ day of December, 2023, to:

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7
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF YAVAPAI

10 ARIZONA FREE ENTERPRISE CLUB, an
Arizona nonprofit corporation, and MARY
11 KAY RUWETTE, individually,

12 Plaintiffs,

13 v.
14

15 ADRIAN FONTES, in his official capacity
as the Secretary of State of Arizona,

16 Defendant.
17

No. S-1300-CV-202300872

**PROPOSED ORDER GRANTING
MOTION TO INTERVENE**

(Assigned to The Hon. John D.
Napper)

18
19 Having reviewed Proposed Tribal Intervenors – White Mountain Apache Tribe
20 and San Carlos Apache Tribes’ Motion to Intervene, this Court finds there is good cause
21 to GRANT this Motion. Proposed Tribal Intervenors are granted intervention.

22 DATED this ____ day of _____ 2023.

23
24 _____
Honorable John D. Napper
Yavapai County Superior Court Judge
25
26
27
28