THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

AMERICA FIRST POLICY INSTITUTE, *et al.*, *Plaintiffs,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*, *Defendants*.	Civil Action No.: 2:24-cv-00152-Z

PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE OF LEAGUE OF WOMEN VOTERS, BLACK VOTERS MATTER, AND NAEVA

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Plaintiffs brought this action against various government Defendants, challenging the legal basis for an executive order ("EO") that federal agencies are implementing. *See* Exec. Order No. 14019, *Promoting Access to Voting*, 86 Fed. Reg. 13,623 (Mar. 7, 2021). Three proposed Intervenor-Defendants—League of Women Voters ("LWV"), Black Voters Matter ("BVM"), and Naeva (collectively, "the Nonparties")—now seek to intervene under Federal Rules 24(a)(2) and 24(b). The motion to intervene ("Motion"), Doc. 26, should be denied because the Nonparties are not entitled to intervene of right and permissive intervention would be inappropriate.

ARGUMENT

I. The Nonparties Are Not Entitled to Intervene as of Right.

A nonparty has a right to intervene if it has "an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). "A would-be intervenor bears the burden to prove an entitlement to intervene; failure to prove a required element is fatal." *Rotstain v. Mendez*, 986 F.3d 931, 937 (5th Cir. 2021) (citation omitted).

A. The Nonparties have no interest that would be impaired absent intervention.

The Motion should be denied, first, because the Nonparties have no substantial "interest" in "the subject of th[is] action" that could be "impair[ed]" in the absence of their intervention. Fed. R. Civ. P. 24(a)(2). The Fifth Circuit "read[s] the term 'interest' narrowly. That interest should be 'direct, substantial, [and] legally protectable.'" *Valley Ranch Dev. Co., Ltd. v. FDIC*, 960 F.2d 550, 556 (5th Cir. 1992) (quoting *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984) (en banc) (*NOPSI*)). And "[t]he impairment" of that interest "must be 'practical' … and not merely 'theoretical.'" *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014) (citation omitted).

Tax exemptions. The Nonparties claim they are entitled to intervene because the Amended Complaint supposedly makes "false accusations that [LWV] and BVM engaged in partisan activity risk causing severe reputational harm and potentially threaten their tax-exempt status." Mem. of Law in Support of Mot. to Intervene 1 ("Mem.") (Doc. 27) (citing Am. Compl. ¶¶ 84–85 & n.6, 112–123, 124 & n.7, 259 (Doc. 11)). This claim is absurd.

The Amended Complaint makes no such allegation. Rather, the Complaint quotes an article reporting that the executive branch held a "listening session" on July 12, 2021, with "left-leaning" organizations, listing six examples (but *not* LWV or BVM). Am. Compl. ¶ 85. Several pages later, the Complaint states that "other participants in this 'listening session' included" representatives from 20 other groups, among which were LWV and BVM. *Id.* ¶ 112. But none of the ensuing paragraphs cited by the Nonparties even mentions LWV or BVM, much less accuse either of the kind of partisan bias that would suffice for revocation of their federal-tax-exempt status. *See id.* ¶¶ 113–124 & n.7, 259.

Even if one strained to read the Amended Complaint as implying that LWV or BVM are "left-leaning," that would not come close to an allegation that either group favors particular candidates or political parties in a way inconsistent with its tax-exempt status. As the Nonparties are surely aware, "Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office," so long as those "organizations … avoid any issue advocacy that functions as political campaign intervention." Rev. Rul. 2007-41, 2007-1 C.B. 1421 (citing 26 U.S.C. § 501(c)). A characterization of LWV and BVM as "left-leaning,"[1] even if the IRS were to agree, would not violate this rule (and would

[1] The organizations' own descriptions of their activities support this characterization. BVM's website states that "[w]e advocate for policies to expand voting rights/access, including expanded early voting, resisting voter ID, re-entry restoration of rights and strengthening the Voting Rights

certainly not threaten the tax status of Naeva, which is *not* mentioned in the Complaint).

Further confirming that nothing in the Amended Complaint threatens the Nonparties' tax exemptions is that fact that LWV and BVM are comprised of two branches, one of each of which is a 501(c)(4) organization. One branch of LWV, the League of Women Voters of the United States ("LWVUS"), "is a 501(c)(4) social welfare organization." Mem. 5. Likewise, Black Voters Matter Fund, also a 501(c)(4) organization, is a branch of BVM. *See Donate*, Black Voters Matter, https://blackvotersmatterfund.org/donate/ (last visited Sept. 26, 2024). And as the Nonparties admit, "501(c)(4) organizations are permitted to engage in some partisan activities …." Mem. 13 & n.4 (citing 26 C.F.R. § 1.501(c)(4)-1(a)). "[W]hereas a section 501(c)(3) organization is altogether prohibited from engaging in political campaign activity, a section 501(c)(4) organization might, for example, choose to direct up to half of its expenditures during a year for activities that clearly are political campaign intervention for purposes of section 501(c) while dedicating the remainder of its time or expenditures to activities that qualify as exempt social welfare activities." Staff of Jt. Comm. on Taxation, 117th Cong., JCX-7-22, Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations (Comm. Print 2022), 2022 WL 1451762, at *9; *see also FEC v. Beaumont*, 539 U.S. 146, 150 n.1 (2003). The upshot of these rules is that, even if the Complaint

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Act. We also advocate for policies that intersect with race, gender, economic and other aspects of equity." *See Our Purpose,* Black Voters Matter, https://blackvotersmatterfund.org/our-purpose/# (last visited Sept. 26, 2024). The Nonparties themselves echo this description: "BVM is dedicated to expanding Black voter engagement and increasing *progressive* power through movement-building and engagement." Mem. 7 (emphasis added). LWV's site likewise states that, "[t]oday, the League has expanded our vision of a more inclusive democracy where all Americans, regardless of gender, sex, race, ability, or party can see themselves represented in our government. To build this vision, we bring an anti-racist, social justice lens to the issues[.]" *See About Us,* League of Women Voters, https://www.lwv.org/about-us (last visited Sept. 26, 2024). It is more than fair to characterize these beliefs as "left-leaning."

had accused LWV or BVM of partisanship, and even if such an allegation were false, the allegation would not call either group's tax exemption into doubt.

In any event, LWV and BVM's speculative fears about their tax-exempt status do not entitle them to intervene. This case is similar to one in which the Fifth Circuit rejected a prospective intervenor's argument that its "interest in the litigation [wa]s sufficient to meet the requirements of Rule 24(a)"; there, the underlying litigation implicated the validity of a contract, and the nonparty "argue[d] that if … the trial court f[ound] that the entire Agreement [wa]s unenforceable, the transaction embodied by the Agreement would have to be 'unwound" …, which might have unspecified tax implications for the [prospective intervenor] …." *Chambers Med. Found. v. Petrie*, 221 F. App'x 349, 350–51 (5th Cir. 2007). The Fifth Circuit disagreed, reasoning that the nonparty "d[id] not describe in detail how and to what degree the prospective results from the instant litigation would actually affect [its] tax liability or its ability to collect contribution. Accordingly, [the nonparty] … d[id] not meet its burden of showing a 'direct, substantial and legally protectable' interest." *Id.* at 351 (quoting *Ross v. Marshall*, 426 F.3d 745, 757 (5th Cir. 2005)); *accord United States v. Lloyd*, 49 F.R.D. 200, 202 (N.D. Tex. 1970) ("[T]here can be no intervention … under Rule 24(a)(2) …. [T]he Intervenor has an interest in the outcome of these investigations, i.e., whether there has been a deficiency in his tax return … under the Internal Revenue Code. However, this type of interest will not furnish a basis for intervention …."). Other appellate cases likewise reject the notion that a nonparty is entitled to intervene on the basis that the underlying claims implicate sub-issues that may implicate the prospective intervenor's tax liability. *See People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 179 (7th Cir. 1995) ("[T]his … resolves the issue of practical impairment. [The movant's] interests are not significantly impaired by the denial of his motion to intervene. He can pursue his interests in his tax cases.");

NCAA v. Governor of N.J., 520 F. App'x 61, 63 (3d Cir. 2013); *Est. of Dixon*, 666 F.2d 386, 389 (9th Cir. 1982).

Here, the Nonparties identify only one case that they say supports their "tax" theory of intervention, *see* Mot. 16, but upon scrutiny their argument does not hold up. The decision in question held that the sole member of a corporate defendant could intervene in an action by a third party against that defendant for breach of contract; crucially, however, the plaintiffs there "*concede*[*d*] that [the intervenor] … ha[d] an interest in the transactions which [we]re the subject of the litigation." *Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc.*, 54 F.3d 156, 162 (3d Cir. 1995) (emphasis added). Furthermore, the court explained that the "an adjudication of [the defendant's] obligations to [the plaintiffs] could preclude [the intervenor] from maintaining a state court action … to ensure that [the defendant] acts pursuant to its corporate powers and purposes. Thus, [the intervenor's] legal interests," including its interest "in the preservation of [the defendant's] tax exemption," "could be impaired by disposition of the … case." *Id.* The instant case differs from *Alpha* in several key ways. For one, Plaintiffs here do *not* "concede" that the Nonparties have an interest at stake in this litigation sufficient to support intervention. Moreover, in *Alpha*, the party whose tax exemption the intervenor sought to preserve was itself the defendant; here, by contrast, none of the organizations that fear—baselessly—that their tax exemptions are threatened are parties to the case. Nor are the Nonparties the sole owners of any of the entities named as Defendants, as was true of the intervenor in *Alpha*. Hence, even if the out-of-circuit decision in *Alpha* were controlling authority, it would not support the Nonparties' claimed right to intervene. Finally, in contrast to *Alpha*, *see* 54 F.3d at 162, there is no risk that a decision in this litigation could preclude the Nonparties from contesting a revocation of their tax exemptions in future proceedings, since they are not parties to this action and thus neither claim preclusion nor

issue preclusion may be asserted against them. *See Standifird v. Comm'r*, T.C.M. (RIA) 2024-030 (T.C. 2024).

Furthermore, even if this Court were to accept the Nonparties' misreading of the Amended Complaint, and even if that misreading accused the Nonparties of conduct that could form the basis for revocation of LWV or BVM's tax exemption, this Court's pronouncement would not itself revoke any exemption; only action by the IRS could do so—and even then, LWV and BVM would be completely free to contest any adverse action by the IRS, *see* 20 Barbara J. Van Arsdale et al., *Federal Procedure, Lawyers Edition* §§ 48:216, 48:219 (Aug. 2024 update); 26 C.F.R. § 601.201(n)(6), since, again, neither organization is a party to this litigation and therefore could not be bound by its outcome. *See United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 845 (5th Cir. 1975) (citing as factor counseling against intervention that prospective intervenor would not be "bound by res judicata or estoppel" in the action in which intervention was sought).

The Nonparties' "tax-exemption" argument for intervention thus is based upon layers of far-fetched hypotheticals. That is woefully insufficient. "The interest required to intervene as of right is a 'direct' interest. By definition, an interest is not direct when it is contingent on the outcome of a subsequent lawsuit." *Ross v. Marshall*, 456 F.3d 442, 443 (5th Cir. 2006) (citing Fed. R. Civ. P. 24(a) and quoting *NOPSI*, 732 F.2d at 463). "The possibility that [a prospective intervenor] might have to respond to a questionable argument in a subsequent action … is not a sufficiently practical impairment of [a nonparty's] interest … to warrant intervention under Rule 24(a)(2) to allow it to inject the argument in this case." *United States v. Tex. E. Transmission Corp.*, 923 F.2d 410, 415 (5th Cir. 1991). Accordingly, this Court has held that a would-be intervenor's interest "the property or transaction which is the subject matter of [an] action [wa]s so slight that it [wa]s insubstantial. [That nonparty] could, under certain circumstances, have an

indemnification obligation if [the defendant] were to be held liable for a claim made against it …. [The nonparty's] interest is, at best, a contingent one. For … Rule 24(a)(2) … to be satisfied, the interest must be direct, not contingent." *Bank One v. Elms*, 764 F. Supp. 85, 89 (N.D. Tex. 1991) (citations omitted). (The Court then added that, "[f]or all these same reasons, [that nonparty] is not so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect any interest it has." *Id.*) In another case, the Fifth Circuit denied intervention because the prospective intervenor's "agreement with [the plaintiff] [wa]s factually distinct from [the defendant's] agreement with [the plaintiff]. It would be pure speculation to say that a judicial pronouncement as to the [defendant's] case would necessarily affect [the would-be intervenor's] agreement with [the plaintiff]. Because the cases are factually different, the resulting application of existing law may necessitate a different result." *Taylor Commc'ns Grp., Inc. v. Sw. Bell Tel. Co.*, 172 F.3d 385, 388 (5th Cir. 1999). So too here.

In this case, it is hard to imagine how a decision as to the validity of EO 14019, even if that decision *purported* to find that LWV or BVM was partisan in a way incompatible with their tax exemptions, would "direct[ly]" implicate either group's interest in preserving its exemption. *Ross*, 456 F.3d at 443. Revocation of an exemption would only occur in the unlikely event that the IRS is prompted by this litigation to take that action—and even then, LWV or BVM could contest the agency's decision in a tax proceeding. *See Cap. Gymnastics Booster Club, Inc. v. Comm'r*, 106 T.C.M. (CCH) 154 (T.C. 2013); 26 U.S.C. § 7428(b)(2). "Intervention generally is not appropriate where the applicant can protect its interests and/or recover on its claim through some other means." *Deus v. Allstate Ins. Co.*, 15 F.3d 506, 526 (5th Cir. 1994) (citation omitted). "By definition, an interest is not direct when it is contingent on the outcome of a subsequent lawsuit." *Ross*, 456 F.3d at 443. "It would be pure speculation to say that a judicial pronouncement as to" Plaintiffs'

challenge to the EO "would necessarily affect" LWV or BVM's tax exemptions; "[b]ecause the cases are factually different, the resulting application of existing law may necessitate a different result." *Taylor Commc'ns*, 172 F.3d at 388. "The possibility that" LWV or BVM "might have to respond to a questionable argument in a subsequent action" regarding its exemption "is not a sufficiently practical impairment" of the Nonparties' "interest … to warrant intervention under Rule 24(a)(2) to allow it to inject the argument in this case." *Tex. E. Transmission*, 923 F.2d at 415.

A final point with respect to the tax-exemption issue: The Nonparties state that "[w]ithout any evidence, the Plaintiffs, in their Amended Complaint, falsely allege that the League and BVM engaged in activity that could violate the standards set forth in the Internal Review Code"—and then add a footnote quoting Federal Rule of Civil Procedure 11(b)(3). Mem. 14 & n.5. The Nonparties wisely have not moved for sanctions, but even if they had, sanctions would have been clearly unwarranted. Rule 11 simply requires that, "to the best of the [pleader's] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," "the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery …." Fed. R. Civ. P. 11(b)(3). "A sanction under Rule 11 is 'an extraordinary remedy, one to be exercised with extreme caution.'" *SortiumUSA, LLC v. Hunger*, No. 3:11-CV-1656-M, 2014 WL 1080765, at *3 (N.D. Tex. Mar. 18, 2014) (quoting *Laughlin v. Perot*, No. 3:95-CV-2577-R, 1997 WL 135676, at *8 (N.D. Tex. Mar. 12, 1997)). "[M]otions for sanctions are not the appropriate vehicle for the Court to find that a facially valid claim is without factual or legal support." *Scott v. Wollney*, No. 3:20-CV-2825-M-BH, 2021 WL 4851848, at *6 (N.D. Tex. Sept. 16, 2021) (quoting *Mark's Airboats, Inc. v. Thibodaux*, No. CIV.A. 6:13-0274, 2015 WL 1467097, at *4 (W.D. La. Mar. 27, 2015)),

report and recommendation adopted, No. 3:20-CV-2825-M-BH, 2021 WL 4845778 (N.D. Tex. Oct. 18, 2021). The Nonparties' objection that the Complaint made allegations "[w]ithout any evidence" is misdirected, since allegations in a complaint "require[] no evidentiary support," *Klocke v. Watson*, 936 F.3d 240, 246 (5th Cir. 2019); *accord In re Beef Indus. Antitrust Litig.*, 600 F.2d 1148, 1169 (5th Cir. 1979), and in any event, Plaintiffs *did* cite sources to support the allegations to which the Nonparties object, *see* Am. Compl. ¶¶ 84–85 & n.6, 112–123, 124 & n.7, 259. Regardless, Rule 11 "is not a guarantee of the correctness of the legal theories argued" or "of all alleged facts, especially if the matter is not easily discovered by extrinsic evidence." *Health Net, Inc. v. Wooley*, 534 F.3d 487, 497 (5th Cir. 2008) (citations omitted). "[E]ach of the 'false' allegations cited by" the Nonparties at least "ha[s] some reasonable evidentiary basis sufficient to withstand attack under Rule 11(b)(3)." *Trinity Gas Corp. v. City Bank & Tr. Co. of Natchitoches*, 54 F. App'x 591 (5th Cir. 2002); *accord Smith v. Our Lady of Lake Hosp., Inc.*, 960 F.2d 439, 446 (5th Cir. 1992) ("Information contradicting [plaintiff]'s claims of wrongdoing, … although certainly relevant …, did not establish that the claims had no basis in fact. Rather, such information suggested that the defendants' culpability was an issue of fact, … leaving [plaintiff]'s attorneys entitled to pursue the claim. Additionally, nothing in the record indicates that the lawyers had any information that should have caused them to believe that the … claim was invalid."). At the very least, "it was not unreasonable to think that discovery would shed additional light" on the facts alleged; "[s]anctions on the basis of Rule 11(b)(3) are therefore unwarranted." *Shippitsa Ltd. v. Slack*, No. 3:18-CV-1036-D, 2019 WL 277613, at *9 (N.D. Tex. Jan. 22, 2019).

Reputation. Even more spurious is the Nonparties' argument that LWV and BVM are entitled to intervene because both "have a substantial interest in protecting against reputational harms …." Mem. 12. Putting aside the fact that this fear of "reputational harm[]" stems from a

misreading of the Amended Complaint, the Nonparties are still not entitled to intervene because their arguments for intervention are nothing more that "those of a typical third party which claims no interest beyond contesting allegations about its own improper conduct." *Two Shields v. Wilkinson*, 790 F.3d 791, 796 (8th Cir. 2015). "The mere fact that one's reputation is injured … in a proceeding seeking relief against others is an insufficient interest to allow one to intervene as of right …." 25 James Buchwalter et al., *Federal Procedure, Lawyers Edition* § 59:309 (Aug. 2024 update). The Fifth Circuit, for instance, has denied intervention where a prospective intervenor "claim[ed] it need[ed] to intervene to defend its reputation. Nothing in the caselaw … recognizes such an abstractly defined interest." *Veasey v. Perry*, 577 F. App'x 261, 263 (5th Cir. 2014); *see also Morgan Keegan & Co. v. Garrett*, 848 F. Supp. 2d 691, 693 (S.D. Tex. 2012) ("[The prospective intervenor] has no basis to intervene …. He insists that the court's findings hurt his reputation, giving him grounds to intervene as a party.… In the course of a case, … decisions may reflect poorly on … people who were part of the factual basis for the suit.…"). Another appellate decision held that city police unions were not entitled to intervene in litigation against the city over the constitutionality of its policing policies: "the unions' interest in their members' 'reputations' [wa]s too indirect and insubstantial to be 'legally protectable'"—notwithstanding the unions' argument that the underlying claims in the case "brand[ed] them lawbreakers and unconstitutional actors" and "adversely affect[ed] the careers and lives' of their members." *Floyd v. City of New York*, 770 F.3d 1051, 1060, 1061 (2d Cir. 2014) (cleaned up). "Any indirect reputational effect on individual police officers [wa]s too remote from the subject matter of the proceeding to be legally protectable." *Id.* at 1061 (cleaned up). Other "[c]ases interpreting related Rule 24(a) have reached similar results": for example, intervention was denied where a "would-be intervenor 'assert[ed] that his interest … [wa]s provided by plaintiffs'

allegation of his fraud and collusion,' but the 'mere fact' that proof of actions 'amounted to fraud cannot serve as a basis for mandatory intervention without a showing that a legal detriment flows from this finding[.]'" *Pujol v. Shearson/Am. Exp., Inc.*, 877 F.2d 132, 137 (1st Cir. 1989) (Breyer, J.) (quoting *Edmondson v. Nebraska*, 383 F.2d 123, 127 (8th Cir. 1967)).

Here, LWV and BVM's concerns about their reputations do not entitle them to intervene. Even if those their tax-exempt status was threatened by anything in the Amended Complaint (which, to reiterate, it is not), that would not transform LWV and BVM's concerns about their reputations into concerns sufficient to warrant intervention of right simply because the allegedly damaging allegations might, in some contexts, have legal implications for the organizations, as many of the cases just discussed make clear. *See Floyd*, 770 F.3d at 1060; *Pujol*, 877 F.2d at 137; *Edmondson*, 383 F.2d at 127. "Any indirect reputational effect" of this lawsuit over EO 14019 on LWV or BVM's tax exemption "is too remote from the subject matter of the proceeding to be legally protectable." *Floyd*, 770 F.3d at 1061 (cleaned up).

Naeva. Finally, even if LWV or BVM were entitled to intervene of right, Naeva, the other Nonparty, would not be so entitled. Naeva is not mentioned in the Amended Complaint; the only justification it puts forth for intervention is that "under the EO steps have been taken and will be taken to increase access to voter registration opportunities for Native Americans. … Naeva's mission to increase non-partisan voter registration of Native Americans is helped by these efforts, and that mission would be impaired if these efforts were stopped." Mem. 20.

Naeva's vague, speculative concern falls far short of the mark. "[I]ntervention as a matter of right cannot rest on an interest that is remote or collateral to the main action." *Swann v. City of Dallas*, 172 F.R.D. 211, 213 (N.D. Tex. 1997). "[A]n intervenor fails to show a sufficient interest when he seeks to intervene solely for ideological, economic, or precedential reasons; that would-

be intervenor merely *prefers* one outcome to the other." *Texas v. United States*, 805 F.3d 653, 657 (5th Cir. 2015). The Fifth Circuit has explained that "[t]rade associations, labor unions, consumers, and many others may be affected by (and hence colloquially 'interested' in) the rules of law established by … courts. To allow them to intervene as of right would turn the court into a forum for competing interest groups, submerging the ability of the original parties to settle their own dispute (or to have the court resolve it expeditiously)." *Taylor Commc'ns*, 172 F.3d at 389 (quoting *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 532–33 (7th Cir. 1988)). Similarly, "an economic interest that might be adversely affected by the outcome of the case alone is insufficient." *Texas v. U.S. Dep't of Energy*, 754 F.2d 550, 552 (5th Cir. 1985) (cleaned up). The caselaw on intervention of right, "[b]y requiring that the applicant's interest be not only 'direct' and 'substantial,' but also 'legally protectable,'" makes it "plain that something more than an economic interest is necessary. What is required is that the interest be one which the *substantive* law recognizes as belonging to or being owned by the applicant." *NOPSI*, 732 F.2d at 463–64 (quoting *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978)).

Naeva points to no provision of "substantive law" that entitles it to have the governmental Defendants take the aforementioned "steps" meant to help Native American voters register. Nor is it clear that Defendants would not find another basis to take similar "steps" if the EO were held invalid. Regardless, the kind of indirect, speculative interest claimed by Naeva does not support intervention. *See Rigco, Inc. v. Rauscher Pierce Refsnes, Inc.*, 110 F.R.D. 180, 184 (N.D. Tex. 1986) ("If this court were to recognize [prospective intervenors'] asserted 'interest' as one that gives rise to intervention as of right …, it would be tantamount to extending the right to any person with a potential claim if the outcome of a lawsuit might increase or decrease the collectibility of his claim. Th[at] possibility … does not constitute a direct, substantial, legally protectable interest

under Rule 24(a)(2)." (citations omitted)). Naeva's claimed stake in this litigation is "a mere generalized interest in the implementation" of executive-branch policy; Naeva is not "the intended beneficiar[y] of the challenged federal policy." *Cf. Texas v. United States*, 805 F.3d at 660. "An interest is insufficiently direct when it requires vindication in a separate legal action or the intervenor is too removed from the dispute." *DeOtte v. Nevada*, 20 F.4th 1055, 1068 (5th Cir. 2021) (citation omitted); *see also Texas v. U.S. Dep't of Energy*, 754 F.2d at 552 ("The Fund [in which putative intervenors claimed an interest] is only implicated if [their] speculation is accurate that there might be significant delays in the [defendant] DOE's location of depositories, and thus supposedly more demands on the Fund, should [plaintiff] prevail in its suit. This asserted 'interest' is only indirectly related to site location [that is the subject of the suit]."). This limiting principle applies equally to indirect interests that are not purely "economic," such as a desire to "provide assistance." *See Breckenridge v. Williams*, No. 1:08-CV-002-BI, 2008 WL 4488991, at *10 (N.D. Tex. Oct. 6, 2008) ("Sossaman argues that he should be permitted to intervene so that he can provide Plaintiff with legal assistance. Sossaman notes that inmates are permitted under TDCJ policy to provide assistance to each other.… Sossaman has no constitutional right to provide legal assistance to other inmates. His desire to provide Plaintiff with legal assistance does not provide the basis for intervention ….").

Naeva's claimed interest in this suit is simply that it hopes to further its organizational aims by taking advantage of "steps" that federal agencies may take to implement EO 14019's policy of voter registration. But Naeva is neither a regulated party nor an intended beneficiary of the EO on which this lawsuit is based. Similarly situated would-be intervenors have repeatedly been denied intervention of right, as is clear from the cases cited in the margin.[2] "[W]here a suit is brought

[2] *See League of United Latin Am. Citizens v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989)

against a government agency to prohibit … implementation of a regulation, a person may intervene as of right only if the person would suffer a direct, substantial effect as a result such as where the legal right of the applicant to operate his or her business is the subject matter of the suit. Thus, a mere 'lobbying interest' in [the] challenged" government policy "is insufficient, especially when such interest is adequately represented by [government] officials." 25 James Buchwalter et al., *Federal Procedure, Lawyers Edition* § 59:307 (Aug. 2024 update) (citations omitted). Such is the case here.

B. The Nonparties' claimed interest is already represented by the existing Defendants.

Even if the Nonparties had a direct, substantial interest that might be impaired by the outcome of this suit (which they do not), they are still not entitled to intervention of right because they cannot show that "existing parties"—namely, the government Defendants—do not "adequately represent [the Nonparties'] interest." Fed. R. Civ. P. 24(a)(2).

The requirement that a would-be intervenor show inadequate representation "ha[s] some

("Midland also argues that it has an interest in the case because the outcome may affect other suits challenging county elections. We believe, however, that this threat of litigation is too tenuous to support intervention under Rule 24(a)(2). Moreover, we do not believe that Midland's concerns about increased costs, voter confusion, venue problems, or the possible abolition of specialty courts amount to a 'legally cognizable interest' justifying intervention."); *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978) ("In the context of public school desegregation, there are innumerable instances in which children, parents, and teachers may be deprived of various 'rights' (e.g., the 'right' to attend a neighborhood school) without having had the opportunity to participate directly in the judicial proceedings which divest them of those 'rights.' When these adversely affected groups have sought to intervene, we have frequently declined to permit it." (citations omitted)); *Mothersill D.I.S.C. Corp. v. Petroleos Mexicanos, S.A.*, 831 F.2d 59, 62 (5th Cir. 1987) (per curiam); *Armstrong v. Capshaw, Goss & Bowers, LLP*, 404 F.3d 933, 937 (5th Cir. 2005); *see also South Carolina v. North Carolina*, 558 U.S. 256, 274 (2010) (denying City of Charlotte's motion to intervene because "Charlotte … occupies a class of affected North Carolina users of water, and the magnitude of Charlotte's authorized transfer does not distinguish it in kind from other members of the class.… Its interest is solely as a user of North Carolina's share of the Catawba River's water.").

teeth." *Texas v. United States*, 805 F.3d at 661 (quoting *Veasey*, 577 F. App'x at 263). Fifth Circuit "'jurisprudence has created two presumptions of adequate representation' that intervenors must overcome …. One presumption arises when 'the would-be intervenor has the same ultimate objective as a party to the lawsuit.' Another presumption arises 'when the putative representative is a governmental body or officer charged by law with representing the interests of the [intervenor].'" *Id.* (quoting *Edwards v. City of Houston*, 78 F.3d 983, 1005 (5th Cir. 1996) (en banc)). "If the 'same ultimate objective' presumption applies, 'the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption.'" *Id.* at 661–62 (quoting *Edwards*, 78 F.3d at 1005). "[W]here the party whose representation is said to be inadequate is a governmental agency, a much stronger showing of inadequacy is required. In a suit involving a matter of sovereign interest, the [government] is presumed to represent the interests of all of its citizens." *Hopwood v. Texas*, 21 F.3d 603, 605 (5th Cir. 1994) (citations omitted). That "presumption … may be overcome by the intervenor only upon a showing of adversity of interest, the representative's collusion with the opposing party, or nonfeasance by the representative." *Texas v. U.S. Dep't of Energy*, 754 F.2d at 553. Intervenors must "connect the [government's] allegedly divergent interests with … concrete effects on the litigation …. 'The general notion that the [government] represents 'broader' interests at some abstract level is not enough.'" *Texas v. United States*, 805 F.3d at 662–63 (quoting *Daggett v. Comm'n on Govt'l Ethics & Election Pracs.*, 172 F.3d 104, 112 (1st Cir. 1999)). Would-be intervenors "carr[y] their burden" only by "specify[ing] the particular ways in which their interests diverge from the Government's." *Id.* at 663.

The Nonparties fail to rebut these combined presumptions that Defendants adequately represent any interests the Nonparties may have in this litigation for purposes of Rule 24(a). First,

the Nonparties concede that "Defendants and Proposed Intervenor-Defendants may both generally seek to defend the legality of the Executive Order and its implementation …." Mem. 22. "[I]n this lawsuit, both" Defendants and the Nonparties thus "have the same objectives—to uphold the … standards and practices" set forth in the EO, "and to resist any changes in those standards and practices sought by the [P]laintiffs." *Bush v. Viterna*, 740 F.2d 350, 356 (5th Cir. 1984). Since "the 'same ultimate objective' presumption applies, 'the applicant for intervention must show adversity of interest, collusion, or nonfeasance on the part of the existing party to overcome the presumption.'" *Texas v. United States*, 805 F.3d at 661–62 (quoting *Edwards*, 78 F.3d at 1005). The Nonparties "have failed to articulate how their interests are distinct from those of" Defendants. *Guenther v. BP Ret. Accum. Plan*, 50 F.4th 536, 547 (5th Cir. 2022).

The Nonparties contend that "Defendants have neither an interest in nor an obligation to contest factual allegations that pose legal and reputational threats to Proposed Intervenor-Defendants' nonprofit statuses. This alone demonstrates the inadequacy of representation by existing parties." Mem. 22. Not so. For one, this litigation poses no "legal … threats to Proposed Intervenor-Defendants' nonprofit statuses," for reasons explained earlier. And "reputational threats" are neither implicated by the Amended Complaint nor even an "interest" that warrants intervention. Indeed, the Nonparties' proposed responsive pleading says nothing at all about BVM or LWV's reputations or tax exemptions; instead, it merely contests Plaintiffs' claims regarding the EO's invalidity on the merits and on jurisdictional grounds, just as Defendants will presumably do. *See generally* Doc. 27-1 (Proposed Intervenor-Defs.' Proposed Mot. to Dismiss). In any event, the Nonparties' unfounded concerns about their reputations and tax exemptions stem from a specific allegation they believe is implicit in the Amended Complaint: that LWV and BVM are ideologically "left-leaning." But one of Plaintiffs' claims for relief is that the EO unlawfully

directs agencies to take actions for partisan purposes, *see* Am. Compl. ¶ 366, which is "arbitrary" and "capricious" action prohibited by law. *See* 5 U.S.C. § 706(2)(A); *Level the Playing Field v. FEC*, 961 F.3d 462, 464 (D.C. Cir. 2020); *Earth Island Inst. v. Hogarth*, 494 F.3d 757, 768 (9th Cir. 2007). Defendants, in defending against this claim, can be expected to resist Plaintiffs' allegations that outside groups involved in formulating the EO are ideological or partisan. To the extent the Nonparties wish to intervene to litigate their own ideological leanings in *greater* detail than is necessary to decide Plaintiffs' § 706(2)(A) claim, that would be a waste of time.

Meanwhile, the Nonparties' fears of Defendants' inadequacy are implausible and vague. The Nonparties claim "there are reasons to believe [their] interests are less broad than those of the governmental defendants, which *may* lead to divergent results. As government officials, defendants must represent the broad public interest, and will face institutional constraints that may lead them to prioritize defending agencies against allegations of impropriety. [LWV], BVM, and Naeva have more flexibility to advocate for their narrower interest in promoting expansive voter registration opportunities and defending the results of their advocacy efforts." Mem. 22 (quotation marks and citations omitted). First, the Nonparties' vague claim that their interests may be narrower than Defendants' interests fails spectacularly. To reiterate, "[t]he general notion that the [government] represents 'broader' interests at some abstract level is not enough." *Texas v. United States*, 805 F.3d at 663 (quoting *Daggett*, 172 F.3d at 112). Prospective intervenors "carr[y] their burden" only by "specify[ing] the particular ways in which their interests diverge from the Government's." *Id.* The Nonparties have fallen far short of "specify[ing] the particular ways in which their interests diverge from the Government's." Nor have the Nonparties "demonstrated that the [government] will not strongly defend its [challenged] program," or that "the proposed intervenors … have a separate defense of" EO 14019 "that the [government] has failed to assert."

Hopwood, 21 F.3d at 606.

Second, there is likewise no merit to the Nonparties' contention that they must intervene because Defendants "face institutional constraints that may lead them to prioritize defending agencies against allegations of impropriety," whereas the Nonparties "have 'more flexibility' to advocate for their narrower interest in promoting expansive voter registration opportunities and defending the results of their advocacy efforts." Mem. 22 (quoting *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996)). This implausible claim is clearly controverted by the name of the EO itself—"Promoting Access to Voting." EO 14019. The notion that the Nonparties' stated "interest in promoting expansive voter registration opportunities" differs from Defendants' aim of upholding an EO that is *literally* titled "Promoting Access to Voting" defies common sense.

This Court should also reject the Nonparties' baseless assertion that "[D]efendants [do not] share Proposed Intervenor-Defendants' specific concerns related to the impact of enjoining each agency action implementing the EO on their voter registration and voter education work." Mem. 22. Again, voter registration and education are the stated purposes of the EO, so it is quite implausible that Defendants would not litigate with these considerations in mind. Even if there were certain differences in precisely *how* Defendants and the Nonparties would approach defending the EO (putting aside the Nonparties' failure to specifically identify any such differences), that would not render Defendants' representation of the relevant interests inadequate. "Differences of opinion regarding an existing party's litigation strategy or tactics used in pursuit thereof, without more, do not rise to an adversity of interest. 'A proposed intervenor's desire to present an additional argument or a variation on an argument does not establish inadequate representation.'" *Guenther*, 50 F.4th at 543 (citation omitted) (quoting *SEC v. LBRY, Inc.*, 26 F.4th 96, 99–100 (1st Cir. 2022)). "A difference of opinion concerning litigation strategy or individual

aspects of a remedy" also "does not overcome the presumption of adequate representation." *Id.* (quoting *Jenkins v. Missouri*, 78 F.3d 1270, 1275 (8th Cir. 1996)). Even "the mere possibility that a party *may* at some future time enter into a settlement cannot alone show inadequate representation." *Bush*, 740 F.2d at 358.

In sum, regardless of whether the Nonparties have a substantial interest at stake in this litigation, any such interest is more than adequately represented by the existing parties—namely, the governmental Defendants. It should be noted, moreover, that the analysis of the adequacy-of-representation issue is unaffected by whether or not the existing party who is already representing the applicant for intervention's interests supports the applicant's intervention. *See Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280–81 (5th Cir. 1996).

II. Permissive Intervention Is Unwarranted.

Additionally, the Nonparties' request for permissive intervention is improper. Rule 24 provides that "the court may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact.… In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1), (b)(3). "Determining whether an individual should be permitted to intervene is a two-stage process. First, the district court must decide whether 'the applicant's claim or defense and the main action have a question of law or fact in common.' If this threshold requirement is met, then the … court must exercise its discretion in deciding whether intervention should be allowed." *Stallworth v. Monsanto Co.*, 558 F.2d 257, 269 (5th Cir. 1977) (citations omitted).

"Permissive intervention is wholly discretionary with the district court even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *Bush*, 740 F.2d at 359 (citation omitted). "The abuse of discretion standard of [appellate] review

for such a denial is 'exceedingly deferential' to the district court, and '[the Fifth] circuit has never reversed a denial of permissive intervention.'" *Ingebretsen*, 88 F.3d at 281 (quoting *Doe v. Duncanville Indep. Sch. Dist.*, 994 F.2d 160, 168 n.10 (5th Cir. 1993)). "[R]evers[al] [of] a district court's decision denying permissive intervention is 'so unusual as to be almost unique.'" *Rotstain*, 986 F.3d at 942 (quoting *NOPSI*, 732 F.2d at 471). The Nonparties in this case cannot make either the threshold showing of commonality or strong showings with regard to the discretionary factors that govern intervention under Rule 24(b).

A. The Nonparties' claims do not share a "common question of law or fact."

Intervention under Rule 24(b)(2) "requires a threshold determination that 'the applicant's claim or defense and the main action have a question of law or fact in common.' The determination is not discretionary; it is a question of law." *Howse v. S/V Canada Goose I*, 641 F.2d 317, 322 (5th Cir. Unit B Apr. 1981) (citations omitted). Although the Nonparties in this case baldly assert that their putative "defense shares common questions of law and fact to the main action," Mem. 2, the argument section of their Motion does not identify any such questions, *see id.* at 23–24. The reason for the omission is most likely that there are actually no common questions of law or fact.

The Nonparties claim "they bring unique factual knowledge related to the misleading allegations in the Amended Complaint[.]" *Id.* at 24. Their argument here, while hard to follow, is apparently that the supposedly "misleading allegations in the Amended Complaint"—by which the Nonparties must mean the ones that they mistakenly believe threaten their tax exemptions—are "a common question of law or fact." This is incorrect for several reasons, including that the Complaint makes no allegations that threaten either LWV or BVM's tax exemptions, as was explained earlier. Thus, the question of whether either group is properly entitled to tax-exempt status is in no way implicated in Plaintiffs' underlying action against Defendants over the validity of EO 14019. *See Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 823,

825 (5th Cir. 2003) (would-be intervenors who "ha[d] an economic interest in the [arbitral] award" on which the underlying action was based that was "not direct and substantial … failed to show a common question of law or fact"); *Texas v. U.S. Dep't of Energy*, 754 F.2d at 553 (similar).

The Nonparties' unfounded fears about their tax liability and reputations do not qualify as a common question of law or fact. "Where an applicant for permissive intervention is presenting claims not clearly aligned with any of the original parties to a lawsuit, courts have very often denied intervention for lack of a common question of law or fact. … Permissive intervention is denied to one who seeks to intervene simply to litigate anticipatory claims or defenses unrelated to issues arising within the original proceeding." 25 James Buchwalter et al., *Federal Procedure, Lawyers Edition* § 59:354 (Aug. 2024 update). This Court's decision in *Flame Control International, Inc. v. Pyrocool Techs., Inc.*, is helpful in illustrating these concepts:

> Despite the putative Intervenors' attempts to construe their Complaint in Intervention as one related to the instant case, the Court finds this not to be the case. That the contract between Plaintiff and Defendants is dependent upon a contract between Defendants and the putative Intervenors does not make the two contract disputes related …. Indeed, the putative Intervenors' interests in their … agreements will not be affected by the outcome of the main litigation and [they] may file a separate suit in which … their contract with Defendants may be more fairly addressed.… Permissive intervention … is inappropriate because the two disputes are so unrelated that any common questions of law or fact, should any exist, would be drowned in a sea of unrelated questions of law or fact.

No. 3:05-CV-0503-H, 2005 WL 8158393, at *2 (N.D. Tex. June 7, 2005).[3] Likewise, here, "[t]hat the [dispute] between Plaintiff[s] and Defendants is dependent upon" certain allegations in the

[3] *See also Bay Mills Indian Cmty. v. Snyder*, 720 F. App'x 754, 758 (6th Cir. 2018) (rejecting proposed intervenor's argument that, "since [plaintiff] is arguing that the … land is 'Indian land,' the district court's decision will inevitably impact what 'Indian land' means under IGRA"; explaining that "any effect on the interpretation of IGRA would be a mere side effect" and "[a]llowing this to fulfill the 'common question' requirement would mean that any Indian tribe would be able to intervene whenever IGRA is implicated in any way" and so "[s]uch an interpretation would be much too broad").

Amended Complaint that the Nonparties mistakenly believe threaten their tax exemptions "does not make the two … disputes related for purposes of adjudication …. Indeed, the putative Intervenors' interests in their" exemptions "will not be affected by the outcome of the main litigation and the putative Intervenors may" litigate their exemptions in "a separate suit …. Permissive intervention in the instant case is inappropriate because the two disputes are so unrelated that any common questions of law or fact, should any exist, would be drowned in a sea of unrelated questions of law or fact." *Id*. "[A]ny effect" of this litigation on the Nonparties' tax exemptions or reputations, at *most*, "would be a mere side effect. Allowing this to fulfill the 'common question' requirement … would be much too broad." *Bay Mills Indian Cmty. v. Snyder*, 720 F. App'x 754, 758 (6th Cir. 2018).

Here, the Nonparties seek to "present[] claims not clearly aligned with any of the original parties to a lawsuit," a scenario in which "courts have very often denied intervention for lack of a common question of law or fact"; "[p]ermissive intervention is denied to one who," like the Nonparties, "seeks to intervene simply to litigate anticipatory claims or defenses"—in this case, regarding tax exemptions—"unrelated to issues arising within the original proceeding." 25 James Buchwalter et al., *Federal Procedure, Lawyers Edition* § 59:354 (Aug. 2024 update).

The Nonparties' second argument for permissive intervention is just as weak as their first: In their view, they "can present important evidence in defending the legality of the [EO] and its implementation by federal agencies, including evidence that disputes Plaintiffs' misstatements of fact and flawed interpretations of federal law." Mem. 24. That course of action is exactly what Defendants are likely to do. There is no reason to allow the Nonparties to interpose themselves in this litigation as full-fledged parties to encumber the proceedings with duplicative arguments.

B. Other relevant factors counsel against permissive intervention.

Even if the Nonparties' proposed arguments "share[d] with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1), permissive intervention would still be improper. "In exercising its discretion" to permit intervention, a district "court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* (b)(3). The "court should consider, among other factors, whether the intervenors are adequately represented by other parties and whether they are likely to contribute significantly to the development of the underlying factual issues. When a proposed intervenor possesses the same ultimate objectives as an existing litigant, the intervenor's interests are presumed to be adequately represented absent a showing of adversity of interest, collusion, or nonfeasance." *League of United Latin Am. Citizens v. Clements*, 884 F.2d 185, 189 (5th Cir. 1989) (citations omitted).

First, permissive intervention should be denied where "[p]roposed Intervenors [would] bring no new issues to th[e] action." *Ingebretsen*, 88 F.3d at 281. Allowing intervention in those circumstances "would bring only delay." *Id.* The Nonparties here have identified no issues that they would raise that Defendants would not. Second, even if this Court were to hold that the Nonparties did in some way share a common question of law or fact with the existing parties' claims or defenses, the connection between any such common question and the underlying claims would be extremely attenuated. This weak connection counsels against permitting intervention. "[A] district court may analyze the relationship between the plaintiff's action and the applicant's claims in deciding whether to exercise its discretion to grant intervention." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citation omitted); *see also Chambers Med. Found.*, 221 F. App'x at 351 ("The [would-be intervenor] argues that permissive intervention was warranted" but "cites no authority suggesting that refusal to allow permissive intervention by a party with an indirect and undefined economic interest in the suit constitutes a clear abuse of discretion.").

"The reasons given above" as to why the Nonparties are not entitled to intervene of right "bear as well on whether [they] should be … in the suit as … permissive intervenor[s]." *Bank One*, 764 F. Supp. at 90. Where a "court has concluded that there is no valid reason why [a proposed intervenor] should enjoy the status of intervenor" of right, it is often the case that the applicant's "presence in the litigation has the potential to cause delay and to prejudice the adjudication of the rights of the other parties to the action." *Id.* To borrow from a prior decision of this Court, the Nonparties' "permissive intervention … would unduly delay this action," particularly given "that the [government Defendants] can adequately defend" the EO "and address the pertinent legal issues before the court.… [H]ere, … it is unlikely that [the Nonparties'] will bring additional issues to the litigation." *Villas at Parkside Partners v. City of Farmers Branch*, 245 F.R.D. 551, 556 (N.D. Tex. 2007). The Nonparties' intervention would "unnecessarily delay the proceedings and multiply the filings and time required by the court to consider this case." *Id.* Indeed, even where a "motion to intervene [i]s timely filed, granting the motion for permissive intervention" might still "unduly delay or prejudice the adjudication of the underlying litigation.… In analyzing the issue of intervention as of right, [the Fifth Circuit] ha[s] discussed the manner by which a broad definition of 'interest' can lead to unmanageable litigation. [The] analysis of 'undue delay' leads … to the same conclusion." *Taylor Commc'ns*, 172 F.3d at 389. Just as with intervention of right, when presented with a motion for permissive intervention, a "court should consider … whether the intervenors are adequately represented by other parties and whether they are likely to contribute significantly to the development of the underlying factual issues. When a proposed intervenor possesses the same ultimate objectives as an existing litigant, the intervenor's interests are presumed to be adequately represented absent a showing of adversity of interest, collusion, or nonfeasance." *Clements*, 884 F.2d at 189 (citations omitted). As discussed earlier,

the Nonparties' intervention would waste time and resources litigating LWV's or BVM's tax exemptions (which is irrelevant to this action) or would defend the legality of the EO (which Defendants are already doing). *See Taylor Commc'ns*, 172 F.3d at 389 ("[W]e cannot see how litigating facts that are wholly unrelated to the underlying litigation can be achieved without causing undue delay to the parties involved in the suit."). Permissive intervention is improper.

Finally, if this Court determines that the Nonparties have something material to contribute to this litigation, Plaintiffs request, in the alternative, that the Nonparties should be granted *amicus* status rather than permitted to intervene as full-fledged parties. "In acting on a request for permissive intervention, it is proper for the court to consider the fact that [a prospective intervenor] has been granted *amicus curiae* status in this case." *Bush*, 740 F.2d at 359 (citation omitted). The Nonparties "could adequately voice whatever concerns … they have by appearing as amici rather than as intervenors." *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994).

CONCLUSION

The motion to intervene should be denied. The Nonparties are not entitled to intervene of right because they have not shown that they have a substantial interest in this litigation that could be impaired without their participation, or that the existing Defendants do not adequately represent their interests. Permissive intervention is also improper; the Nonparties' arguments do not share with the main action a common question of law or fact, and their intervention would needlessly complicate this litigation, as they do not propose making any arguments that Defendants will not. In the alternative, Plaintiffs request that this Court either 1) deny the Motion without prejudice, in case the Court believes that the Nonparties' intervention might later become proper as the case progresses, *see Obregon v. Melton*, No. 3:02-CV-1009D, 2002 WL 1792086, at *3 (N.D. Tex. Aug. 2, 2002); or 2) grant the Nonparties *amicus* status rather than full-fledged intervention.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 27, 2024, I filed the foregoing document with the Clerk of Court for the U.S. District Court for the Northern District of Texas. I further certify that I have served the document on all counsel of record by manner authorized by Federal Rule of Civil Procedure 5(b)(2) (ECF system).

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