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6
7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 PROTECT EDUCATION
ACCOUNTABILITY NOW COMMITTEE;
10 an Arizona political action committee;
SAVE OUR SCHOOLS ARIZONA, an
11 Arizona nonprofit corporation; and LINDA
MAY LYON, a qualified elector,

12 Plaintiffs,

13 vs.

14 STATE OF ARIZONA, a body politic; and
15 ADRIAN FONTES, in his official capacity
as Arizona Secretary of State,

16 Defendants.
17

Case No. CV2026-026062

**PROPOSED INTERVENOR-
DEFENDANTS KUPPER AND
FIGUEROA'S MOTION TO
INTERVENE**

(Assigned to
The Honorable Joseph Kreamer)

18
19 Proposed Intervenors Nickolas Kupper and Robert Figueroa (collectively,
20 "Proposed Intervenors"), by and through undersigned counsel, and pursuant to Rule 24 of
21 the Arizona Rules of Civil Procedure ("ARCP"), hereby move to intervene in this action
22 as a matter of right, or, in the alternative, by permission.

23 Proposed Intervenors seek to intervene as Defendants to defend the
24 constitutionality of House Concurrent Resolution 2048 ("HCR 2048"), the "Military
25 Families College Savings and Scholarship Protection Act," which is a legislative referral
26 passed to protect the educational stability of military families. Proposed Intervenors have
27 a direct, immediate, and compelling interest in the outcome of this litigation because
28 Plaintiffs seek to strike HCR 2048 from the November 2026 ballot, which would deprive

1 Proposed Intervenors of critical, non-severable constitutional protections for their
2 children’s Empowerment Scholarship Accounts (“ESAs”).

3 In support of this Motion, Proposed Intervenors submit the following
4 Memorandum of Points and Authorities.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **INTRODUCTION**

7 This expedited election action challenges HCR 2048, a proposed constitutional
8 amendment referred by the Arizona Legislature under Article XXI to protect military
9 families’ scholarship funds from future state confiscation. Proposed Intervenors Kupper
10 and Figueroa are retired service members who were serving on active duty as members of
11 the armed forces of the United States when their children’s eligibility was initially
12 determined for the ESA program. Their children are currently enrolled in, and rely upon,
13 Arizona’s ESA program to access customized, stable educational environments.

14 In their Verified Complaint, Plaintiffs ask this Court to declare HCR 2048
15 unconstitutional under the Separate-Amendment rule (Ariz. Const. art. XXI, § 1) and the
16 Title Requirement (Ariz. Const. art. IV, pt. 2, § 13), and to preliminarily and permanently
17 enjoin the Secretary of State from placing the measure on the November 2026 general
18 election ballot. By seeking to keep HCR 2048 off the ballot, Plaintiffs directly threaten to
19 block Proposed Intervenors’ ability to secure long-term constitutional protections for their
20 children’s educational funding. Because Proposed Intervenors’ essential interests are
21 directly implicated, they are entitled to intervene to defend HCR 2048 as a matter of right,
22 or alternatively, by permission of this Court.

23 **FACTUAL BACKGROUND**

24 Arizona’s ESA program was established to provide flexible educational
25 alternatives to students with unique needs, including children of active-duty military
26 parents. It was expanded in 2022 to provide educational choice for all families. Proposed
27 Intervenors Kupper and Figueroa are parents of children who meet the statutory eligibility
28 criteria and currently rely on ESA scholarship funds to maintain stable, specialized

1 learning programs that meet their needs. Proposed Intervenor fully intend to continue
2 utilizing these accounts to fund their children’s primary, secondary, and eligible
3 postsecondary educations.

4 To insulate these families from future political rollbacks, the Arizona Legislature
5 passed HCR 2048 during its Second Regular Session. The measure adds a new Section 12
6 to Article XI of the Arizona Constitution, creating a substantive prohibition against the
7 state “confiscating” monies from any military child’s scholarship account (Subsection A).
8 Crucially, the measure also includes an enforcement mechanism (Subsection B), which
9 provides that if any future legislative act or voter-approved initiative violates Subsection
10 A, the entire conflicting bill or measure is void, explicitly barring courts from severing the
11 offending elements.

12 On June 24, 2026, Plaintiffs filed their Verified Complaint to ask the Court to
13 prohibit the Secretary of State from placing HCR 2048 on the ballot for the voters to voice
14 their approval or disapproval. Plaintiffs assert that HCR 2048’s “No-Severance Provision”
15 in Subsection B is logrolling that is topically and qualitatively unrelated to the scholarship
16 protections in Subsection A, and that the measure’s title fails to provide adequate notice of
17 this remedy. Proposed Intervenor Kupper and Figueroa seek to intervene to establish that
18 HCR 2048 is a cohesive, singular policy package and that the text of the resolution
19 complies fully with all Arizona constitutional requirements.

20 **I. Proposed Intervenor are entitled to intervene as of right.**

21 Ariz. R. Civ. P. 24(a)(2) requires a court to grant a timely motion to intervene
22 where the proposed intervenor demonstrate sufficient interest in the action:

23 [T]he superior court must permit intervention when four
24 conditions are satisfied: (1) the motion is timely; (2) the
25 movants claim an interest relating to the subject of the action;
26 (3) the movants show that disposition of the action may, as a
practical matter, impair or impede their ability to protect their
interests; and (4) the movants show that existing parties do not
adequately represent their interests.

27 *Heritage Vill. II Homeowners Ass’n v. Norman*, 246 Ariz. 567, 570 ¶ 10 (App. 2019), *as*
28 *amended* (May 22, 2019). And Arizona courts have repeatedly held that “Rule 24 is

1 remedial and should be construed liberally in order to assist parties seeking to obtain
2 justice in protecting their rights.” *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life*
3 *Obstetricians & Gynecologists*, 227 Ariz. 262, 279, ¶ 53 (App. 2011) (quoting *Dowling v.*
4 *Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009)). Proposed Intervenors satisfy all four
5 requirements for intervention of right.

6 **A. The Motion is timely.**

7 In determining whether a motion to intervene is timely, courts consider: (1) the
8 stage to which the action has progressed; (2) whether the applicant could have sought
9 intervention at an earlier stage; and (3) whether any delay will prejudice the existing
10 parties. *Winner Enterprises, Ltd. v. Superior Court*, 159 Ariz. 106, 109 (App. 1988).

11 Here, Plaintiffs filed their Verified Complaint on June 24, 2026. This Motion to
12 Intervene is submitted on June 30, 2026—less than one week from Plaintiffs’ initiation of
13 the action. No hearings have occurred, no substantive briefs have been filed, and no
14 scheduling orders have been entered. This motion is thus filed at a very early stage, before
15 any hearings or rulings on substantive matters. Accordingly, Proposed Intervenors have
16 acted with alacrity, and the timing of their intervention will cause zero prejudice or delay
17 to the existing parties.

18 **B. Proposed Intervenors have a direct, significant, and protectable**
19 **interest.**

20 The interest entitling a person to intervene must be of “such direct and immediate
21 character that the intervenor will either gain or lose by the direct legal operation and effect
22 of the judgment.” *Hill v. Alfalfa Seed & Lumber Co.*, 38 Ariz. 70, 72 (1931). The
23 judgment to be rendered must have “a direct legal effect upon his or her rights and not
24 merely a possible or contingent effect.” *Dowling*, 221 Ariz. at 270 ¶ 58.

25 Proposed Intervenors Kupper and Figueroa possess a direct and immediate interest
26 in this litigation because they are military parents whose families are the literal intended
27 beneficiaries of HCR 2048. If Plaintiffs prevail in this action, HCR 2048 may be stripped
28 from the ballot entirely, and Proposed Intervenors will lose the opportunity to secure a

1 permanent, non-severable constitutional safeguard for their children’s educational funds.¹
2 Conversely, if HCR 2048 remains on the ballot and is approved by the voters, Proposed
3 Intervenors will gain immediate, robust, and permanent protections. The legal operation
4 and effect of this judgment will directly determine the constitutional security of Proposed
5 Intervenors’ personal family finances and contractual expectations under the ESA
6 program.

7 **C. Disposition of the action will impair Proposed Intervenors’ ability to**
8 **protect their interests.**

9 Under Rule 24(a)(2), granting intervention is required if the disposition of the
10 action may “as a practical matter, impair or impede [the applicant’s] ability to protect their
11 interests.” *Heritage Vill. II Homeowners Ass’n*, 246 Ariz. at 570 ¶ 10.

12 An adverse ruling in this case could completely bar HCR 2048 from the ballot,
13 destroying the only mechanism available to Proposed Intervenors to constitutionalize their
14 funding protections. Without HCR 2048, Proposed Intervenors’ educational accounts will
15 remain highly vulnerable to systemic legislative and political volatility, including the
16 exact regulatory and financial rollbacks slated under Plaintiffs’ competing “Protect
17 Education Act.” Proposed Intervenors have no other legal avenue to protect these critical,
18 structural interests outside of intervening to defend HCR 2048 in this action.

19 **D. The existing parties do not adequately represent proposed Intervenors’**
20 **interests.**

21 It is well-established under Arizona law that existing governmental defendants
22 cannot adequately represent the highly specific, personal interests of private citizens who
23 are the direct, intended beneficiaries of a challenged measure. To satisfy the final prong of
24 the four-part test for intervention of right under Ariz. R. Civ. P. 24(a)(2), a proposed
25 intervenor’s burden “is minimal,” requiring a showing only that the representation of its
26 interests “may be” inadequate. *Planned Parenthood Ariz., Inc.*, 227 Ariz. at 279 ¶ 53.

27 ¹ If Plaintiffs succeed on their sperate amendment challenge, then the entire measure can
28 be struck from the ballot. But if Plaintiffs succeed only on the title requirement challenge,
then only the provisions that offend the title requirement will be prohibited from being
placed on the ballot.

1 Arizona courts strictly apply the liberal, remedial mandate of Rule 24 to “assist parties
2 seeking to obtain justice in protecting their rights.” *Id.* (cleaned up).

3 Under this standard, the existing governmental defendants cannot adequately
4 protect Proposed Intervenors’ rights. First, because a governmental defendant is obligated
5 to represent all citizens, some of whom oppose HCR 2048, it must balance broad public
6 interests and “might not give these applicants’ interest ‘the kind of primacy’ that these
7 applicants would.” *Id.* ¶ 58 (citation omitted).

8 Second, the Secretary defends the measure purely as a neutral election
9 administrator responsible for ballot logistics. Unlike Proposed Intervenors, who rely on
10 the measure’s substantive validity to safeguard their households, the State holds no
11 personal stake in the outcome—a distinction Arizona courts have long held justifies
12 private intervention. *See Ruiz v. Hull*, 191 Ariz. 441 (1998); *Transamerica Title Ins. Co. v.*
13 *City of Tucson*, 157 Ariz. 346 (1988).

14 Finally, the State’s litigation strategy is subject to shifting political tides, policy
15 compromises, or a decision not to appeal an adverse ruling, leaving the families’
16 educational survival entirely unprotected. Indeed, given the Attorney General’s public
17 statements critical of the ESA program, it is questionable whether the State will mount a
18 robust defense.² The facts above thus mandate an order granting Proposed Intervenors’
19 Motion.

20 **II. In the alternative, the court should grant permissive intervention.**

21 If this Court determines that intervention of right is not strictly mandatory, it
22 should exercise its discretion to permit intervention under Ariz. R. Civ. P. 24(b)(2).
23 Permissive intervention is granted when the court finds that the applicant’s claim or
24 defense shares a common question of law or fact with the main action, and that
25 intervention will not unduly delay or prejudice the original parties’ rights. Ariz. R. Civ. P.
26

27 ² *See. e.g.,* Kevin Stone, *Arizona attorney general warns parents that school voucher*
28 *program is ‘buyer-beware situation,’* KTAR News (Aug. 4, 2023), available at
[https://ktar.com/arizona-news/arizona-attorney-general-warns-parents-that-school-
voucher-program-is-buyer-beware-situation/5524315/](https://ktar.com/arizona-news/arizona-attorney-general-warns-parents-that-school-voucher-program-is-buyer-beware-situation/5524315/).

1 24(b)(2). In ballot measure litigation, this permissive standard is typically easier to satisfy
2 than intervention of right because it requires only a common question rather than the more
3 stringent requirements for mandatory intervention.

4 To evaluate permissive requests, Arizona courts apply the multi-factor framework
5 established in *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986). These factors include the nature
6 and extent of the intervenor’s interest, their standing to raise relevant legal issues, the
7 legal positions they seek to advance and their probable relation to the merits of the case,
8 whether their interests are adequately represented by existing parties, whether intervention
9 will prolong or unduly delay litigation, and whether the proposed intervenors will
10 significantly contribute to the full development of the underlying factual issues and just
11 adjudication of the legal questions. *Id.*; *see also Dowling v. Stapley*, 221 Ariz. 251, 272
12 ¶ 69 (App. 2009) (acknowledging that trial courts are afforded “considerable latitude” in
13 making these discretionary determinations).

14 Proposed Intervenors satisfy all discretionary guidelines. Kupper and Figueroa
15 share the fundamental legal question at the core of the main action: whether HCR 2048’s
16 structural protections comply with the Arizona Constitution and must remain on the
17 ballot. Their direct participation will contribute meaningfully to the litigation without
18 causing undue delay. Most importantly, their specific interest in safeguarding their
19 individual household finances, and their legal arguments regarding the functional
20 cohesiveness of the protections in the no-severance provision, differ significantly from the
21 institutional and administrative defenses the State will present. Allowing Kupper and
22 Figueroa to participate ensures the full development of the merits and a just, equitable
23 adjudication. This provides an independent, sufficient basis to grant Proposed Intervenors’
24 Motion.

25 CONCLUSION

26 Proposed Intervenors Kupper and Figueroa have a direct, substantial, and legally
27 protectable interest in defending HCR 2048 to secure their children’s educational futures.
28 Their motion is timely, their representation by existing governmental parties is

1 inadequate, and their participation will directly assist this Court in fully resolving the
2 constitutional questions presented.

3 This motion is being filed in advance of the current deadline for responding to
4 plaintiffs' complaint, as well as the Court's upcoming scheduling conference on July 1,
5 2026. Proposed Defendants anticipate agreeing to the proposed briefing schedule set at the
6 July 1, 2026 hearing. Proposed Defendants do not intend to raise any counterclaims or
7 otherwise expand the subject matter of this litigation, and it respectfully requests that it be
8 required to meet whatever deadlines are set for the expedited election matter. Proposed
9 Defendants will file a proposed Motion to Dismiss the Claim in lieu of an answer but
10 reserve the right to convert the motion into a motion for judgment on the pleadings or a
11 motion for summary judgment depending on the Court's and the parties' preferences.

12 For all the foregoing reasons, Proposed Intervenors respectfully request that this
13 Court grant their Motion to Intervene as Intervenor-Defendants and order the Clerk to file
14 their attached Intervenor-Defendants Motion to Dismiss.

15
16 **RESPECTFULLY SUBMITTED** this 30th day of June 2026.

17 GOLDWATER INSTITUTE

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1 **CERTIFICATE OF SERVICE**

2 ORIGINAL E-FILED this 30th day of June 2026, with a copy delivered via the ECF system to:

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