

1 Paul Gattone (Arizona Bar #012482)
2 Billy Peard (*pro hac vice* pending)
3 Law Office of Paul Gattone
4 301 S. Convent
5 Tucson, AZ 85701
6 gattonecivilrightslaw@gmail.com
7 (520) 623-1922

Jacquelyn Oesterblad (Arizona Bar #038514)
Public Justice
1620 L Street, Suite 630
Washington, D.C. 20036
joesterblad@publicjustice.net
(510) 622-8205

6 William Knight (Arizona Bar #030514)
7 National Homelessness Law Center
8 2000 M. Street NW, Suite 750-E
9 Washington, D.C. 20036
10 wknight@homelesslaw.org
11 operations@homelesslaw.org (for docketing)
12 (202) 638-2535

Eben Colby (*pro hac vice* pending)
Daniel Michael (*pro hac vice* pending)
Harry Koulos (*pro hac vice* pending)
One Manhattan West
New York, NY 10001
harry.koulos@probonolaw.com
(212) 735-2607

11 *Counselors for Proposed Intervenors,*
12 *Community Care Tucson & Community On Wheels*

13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF PIMA**

15 ALLISON BRADFORD; MICHAEL
16 CARLSON; and ADRIAN WURR,

17 *Plaintiffs,*

18 v.

19 CITY OF TUCSON, a body politic in the
20 State of Arizona,

21 *Defendant, and*

22 COMMUNITY CARE TUCSON,
23 COMMUNITY ON WHEELS,

24 *Proposed Intervenors.*
25
26

Case No. C2023-4363

MOTION TO INTERVENE

(Honorable Greg Sakall)

Oral Argument Requested

1 **PRELIMINARY STATEMENT**

2 People are not nuisances. Full stop. Yet under the auspices of nuisance claims, this
3 Action seeks to remove a population of involuntarily unsheltered Tucson residents and their
4 property from Tucson’s Navajo Wash Park (“Navajo Wash”). Critically absent from the lawsuit,
5 however, is anyone speaking for the vulnerable unsheltered people at the core of this dispute. To
6 remedy that defect, two organizations dedicated to supporting unhoused persons in Tucson—
7 Community Care Tucson (“CCT”) and Community on Wheels (“COW”)—file this motion to
8 intervene to ensure that their interests, along with the interests of their unhoused constituents
9 who will be most directly impacted by this lawsuit, are heard and protected.

10 Proposed Intervenors are entitled to intervene as a matter of right. First, this motion is
11 timely filed less than three months after Plaintiffs filed their complaint, before discovery has
12 concluded, before the Court has resolved any legal issues, and before the initial settlement
13 conference. Granting this motion would neither prejudice the existing parties nor unduly delay
14 the litigation.¹

15 Second, both Proposed Intervenors and the houseless persons whom they serve have an
16 interest in this lawsuit that may be impaired by its resolution in their absence. Indeed, Plaintiffs’
17 requested relief—an injunction ordering the Defendant (“City” or “Tucson”) to “abate the
18 nuisance” by removing unhoused persons and their property from the Navajo Wash (Compl.
19 ¶ 186)—has grave constitutional implications. Without adequate alternative shelter, houseless
20 persons have a constitutional right to be free from criminalization for unavoidable human
21 activity, like sleeping and sheltering from the elements. *See generally Martin v. City of Boise*,
22 920 F.3d 584, 616–17 (9th Cir. 2019). Houseless persons also have a constitutionally protected
23

24 _____
25 ¹ Proposed Intervenors reached out to the Parties, through counsel, in the interests of judicial
26 economy to discuss the possibility of stipulating, or at least not objecting, to Proposed Intervenors’
motion in advance of this filing. Plaintiffs indicated, through counsel, that they will likely oppose,
and according to Defendant’s counsel, at present the City opposes the motion, as well.

1 property interest in their personal belongings, even those left temporarily unattended in public
2 spaces. *See Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012). Proposed
3 Intervenor seek to ensure these constitutional interests are protected.

4 Finally, neither Plaintiffs nor the City adequately represent the interests of Proposed
5 Intervenor or the vulnerable houseless persons their charities serve. Plaintiffs—business
6 owners and residents near Navajo Wash—have characterized the houseless persons in the area as
7 a nuisance and are, at best, indifferent to their legal interests in this action. And as described
8 further below, the City’s interests are far from aligned with the interests of houseless persons in
9 this case, especially given its past use of “sweeps” to disperse the houseless in apparent
10 disregard of their state and federally protected constitutional rights.

11 As an alternative to intervention of right, permissive intervention is also appropriate
12 because this motion is timely, the claims involve common issues of fact and law, and
13 intervention will not prejudice the existing parties or delay this litigation.

14
15 **I. PROPOSED INTERVENORS’ INTERESTS IN THIS ACTION**

16 **a. Community Care Tucson**

17 CCT is an unincorporated service and advocacy organization dedicated to assisting and
18 protecting the unhoused population in Tucson. *See Casey Aff.*, ¶ 3. CCT was founded during
19 the COVID-19 pandemic by a small group of Tucson residents who dedicated their time to assist
20 their community by handing out food and necessary supplies, often otherwise unavailable, to
21 those in need. *See id.*, ¶ 4.

22 CCT operates a weekly distribution in Armory Park on Wednesdays. *See id.*, ¶ 7. CCT
23 purchases and disseminates necessary goods for unhoused people’s daily survival, including
24 safety and hygiene supplies, medical supplies, first aid, clothing, blankets, handwarmers, food,
25
26

1 snacks, and hydration.² *See id.*, ¶¶ 7–8. CCT solicits feedback from unhoused people and
2 responds to their requests to best suit their needs. *See id.*, ¶ 30.

3 CCT also operates a weekly mobile distribution on Sundays, alongside COW, in
4 downtown Tucson where many unhoused people spend time. *See id.*, ¶ 12. Through this mobile
5 distribution, CCT can assist unhoused people throughout Tucson who may not always be in
6 Armory Park on Wednesdays, many of whom live transient, nomadic lifestyles, moving from
7 park to park by necessity to meet their basic survival needs. *See id.*, ¶ 13.

8 CCT has developed a trusting relationship with many unhoused people in Tucson,
9 including those who stay in Armory Park, Santa Rita Park, Navajo Wash Park, and other parks
10 and washes throughout Tucson. *See id.*, ¶ 24. CCT interacts with many of the same people
11 every week. *See id.*, ¶ 24.

12 CCT’s activities are continually frustrated by Tucson’s ongoing sweeps of its parks and
13 the encampments where unhoused people reside. *See id.*, ¶ 25. City officials who conduct these
14 sweeps threaten unhoused people with arrest and disperse those who may have nowhere else to
15 go. *See id.*, ¶ 16. These sweeps contribute to the dispersed and transient nature of Tucson’s
16 unhoused population, who are forced to move because of them. Indeed, an unhoused person
17 who previously resided in Navajo Wash Park recently told CCT that he was threatened with
18 arrest and pushed out. *See id.*, ¶ 19.

19 CCT has spent significant resources and time responding to these sweeps. The sweeps
20 require CCT to track down residents to provide them with services and life-sustaining
21 necessities which they otherwise would not have to do. *See id.*, ¶ 27. They require CCT to
22 spend money replacing property which Tucson destroys in these sweeps. *See id.*, ¶ 28. And
23

24
25 ² These are the same types of basic needs that the vast majority of unhoused people state they
26 need, but are often inaccessible to them. *See Exhibit A*, at 12 (“laundry facilities, shower and
bathrooms, clothing, food, and meals were inaccessible at least once in the past 90 days by 24–
26% of [the unhoused in Tucson]”).

1 they require CCT to reestablish connections with unhoused people who are frequently uprooted
2 by the City’s sweeps. *See id.*, ¶ 27. Should Plaintiffs’ requested relief be granted, CCT will be
3 forced to do the same.

4 **b. Community on Wheels**

5 COW is an unincorporated mutual aid organization dedicated to building and maintaining
6 relationships with unhoused residents in Tucson. *See DeVasto Aff.*, at ¶ 3. COW was founded
7 in 2020 to meet the needs of unhoused people in Tucson. *See id.* at ¶ 4. COW provides direct
8 services that are otherwise unavailable and has developed a trusting relationship with those it
9 engages with. *See id.* at ¶ 3

10 COW operates a weekly distribution in Santa Rita Park on Saturdays that regularly
11 reaches fifty to seventy unhoused people. *See id.* at ¶ 7. This distribution provides essential
12 items including hygiene products, food, and water. *See id.* at ¶ 7. COW also operates a mobile
13 distribution group on Sundays in downtown Tucson, alongside CCT, where many unhoused
14 people spend their time. *See id.* at ¶ 9. COW partners with other organizations and local
15 businesses to provide services to the unhoused, including those who have done, and plan to do,
16 direct outreach in Navajo Wash Park. *See id.* at ¶ 14. COW also organizes monthly Naloxone
17 trainings (and have reversed multiple overdoses this year alone), assists unhoused people with
18 “housing assessments,” and engages in direct advocacy on behalf of the unhoused population of
19 Tucson. *See id.* at ¶ 17.

20 Unhoused people have expressed frustration that they cannot access COW’s weekly
21 distributions and other services because they are displaced by Tucson’s sweeps, which scatter
22 the unhoused population across the multiple parks and washes in Tucson. *See id.* at ¶ 20.
23 Indeed, unhoused people consistently report to COW that they are run off by cops, threatened
24 with paper arrest, or hauled off to jail. *See id.* at ¶ 19; *see also* Exhibit B (affidavits of unhoused
25 people served by COW and CCT who have been cited, arrested, and threatened with arrest).
26

1 **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND**

2 **a. Tucson’s Problematic Response to Homelessness**

3 Proposed Intervenor offer their services in large part because Tucson has historically
4 failed to provide adequate resources to the unhoused. Rather than assist one of its most
5 vulnerable groups of residents, Tucson has a history of using criminal law enforcement to target
6 the unhoused. Tucson has relied heavily on “sweeps,” or targeted action to remove and disperse
7 unhoused people in a certain area. Sweeps often occur with minimal notice and use an element
8 of surprise. *See* Casey Aff., ¶ 22. Sweeps occur at all times of the day, from morning to the
9 middle of the night. *See id.*, ¶ 18. Reports of people being dragged out of their tents without
10 shoes is not uncommon. *See id.*, ¶ 18. Neither are reports of police entering someone’s tent
11 without cause, running identity checks, and arresting anyone who may have outstanding
12 warrants. *See id.*, ¶ 20. Sweeps also destroy personal property that the unhoused people are
13 forced to leave behind. *See id.*, ¶¶ 21–23. While Tucson asserts that it posts notices before
14 sweeps, organizations that work with unhoused people on the ground dispute this. *See id.*, ¶ 22.

15 Further, Tucson has evidently allowed private interests to dictate these sweeps. For
16 example, Tucson conducts heavy sweeps in the downtown region during the Tucson Gem Show,
17 *see id.*, ¶ 20. Tucson swept Estevan Park because, in its own words, a neighboring railroad “said
18 they needed their property cleared,”³ and Tucson now responds to an “encampment reporting
19 tool,” which deputizes private citizens to report and remove unhoused people in their sight.⁴

20 **b. Tucson’s Unhoused Population**

21 The unhoused population in Tucson is a highly vulnerable and specialized segment of the
22 population. According to a recent study of Tucson’s unhoused population, 92% of houseless
23 adults in Tucson were houseless “because they didn’t have a regular, adequate, and safe place to
24

25

³ *See* Exhibit C, at 2.

26 ⁴ *See* Exhibit D.

1 stay at night.”⁵ Thirty-five percent “reported getting enough to eat only some, a little, or none of
2 the time”⁶ due to “lack of money [] and lack of transportation.”⁷ Many more had fears of “being
3 arrested for trespassing” and “harassment from law enforcement.”⁸ Tucson’s unhoused
4 population is also highly distributed. *See* Casey Aff., ¶¶ 24, 27, & 29; DeVasto Aff., ¶ 12. The
5 population is transient and relocates often (sometimes because of forced sweeps). Casey Aff., ¶¶
6 27, 30–31.

7 Contrary to Plaintiffs’ allegation that “the vast majority of unsheltered individuals prefer”
8 to be unsheltered (Compl. ¶ 104), well-documented external factors typically contribute to
9 homelessness. The primary reason for being unhoused is financial hardship (including eviction
10 or unaffordable rents).⁹ Other reasons include leaving a housing situation with nowhere else to
11 stay (including being released from jail or prison), being kicked out of one’s home or rejected by
12 one’s family, addiction, relationship or family issues, physical or mental health, and abuse.¹⁰
13 And numerous hurdles to stable or permanent housing continue to place a barrier between
14 unhoused people and a bed, rather than the public streets or parks.¹¹ Those impacted by
15 homelessness overwhelmingly support long-term support and assistance, followed by
16 connection to services after being placed in housing.¹²

19 ⁵ *See* Exhibit A, at 9. This surveyed group included individuals located at “public parks and
20 encampments” in Tucson, the exact group of people this lawsuit targets and Proposed
Intervenors serve and represent. *Id.* at 17.

21 ⁶ *See* Exhibit A, at 12.

22 ⁷ *See* Exhibit A, at 12.

23 ⁸ *See* Exhibit A, at 34.

24 ⁹ *See* Exhibit A, at 10.

25 ¹⁰ *See* Exhibit A, at 10.

26 ¹¹ *See* Exhibit A, at 11.

¹² *See* Exhibit A, at 14. To the extent that Plaintiffs contend that the unavoidable consequences
of being human constitute a nuisance, Proposed Intervenors establish that a variety of material
support is necessary to alleviate these conditions. *See* Casey Aff., ¶¶ 31–42; DeVasto Aff., ¶¶
25-30.

1 To be sure, Tucson has a combination of emergency shelters and alternative housing
2 arrangements. Under the alternative housing arrangements, Tucson provides a “housing
3 assessment” that seeks to place individuals in the best suited environment. But this program has
4 been a failure. Unhoused people have waited, on average, 12 months after completing the
5 assessment for a response.¹³ Further, 58% of those surveyed were still waiting to hear back
6 from Tucson,¹⁴ 13% were offered services but could not access them,¹⁵ and only 13% reported
7 that they received the services they were seeking.¹⁶

8 c. Proposed Intervenor’s Proposed Pleading

9 Attached to this motion is Proposed Intervenor’s Proposed Answer and Alternative
10 Crossclaim under Rule 24(c) of Arizona Rules of Civil Procedure (the “Proposed Answer”).
11 The Proposed Answer asserts ten defenses and reserves the right to amend to state additional
12 defenses as may become known during discovery. The Proposed Answer also asserts a
13 conditional “Alternative Crossclaim,” which asserts that any remedy, including equitable relief,
14 must not violate, or be substantially likely to violate, the federal and state constitutional rights of
15 both unhoused people in Navajo Wash and Tucson and Proposed Intervenor, as well as any
16 supplemental relief required.

17

18 III. CCT AND COW ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT

19 Rule 24(a)(2) of the *Arizona Rules of Civil Procedure* requires this court to permit
20 intervention in certain circumstances:

21 On timely motion, the court *must* permit anyone to intervene who . . .
22 *claims an interest relating to the subject of the action*, and is so
23 situated that *disposing of the action in the person’s absence may as*

24 ¹³ See Exhibit A, at 11.

25 ¹⁴ See Exhibit A, at 11.

26 ¹⁵ See Exhibit A, at 11.

¹⁶ See Exhibit A, at 11.

1 ***a practical matter impair or impede the person's ability to protect***
2 ***that interest***, unless existing parties adequately represent that interest.

3 Ariz. R. Civ. P. 24(a)(2) (emphasis added). The Court must permit intervention under this Rule
4 whenever:

5 (1) the motion is timely; (2) the movants claim an interest relating to
6 the subject of the action; (3) the movants show that disposition of the
7 action may, as a practical matter, impair or impede their ability to
8 protect their interests; and (4) the movants show that existing parties
9 do not adequately represent their interests.

10 *Heritage Vill. II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 570 ¶ 10 (App. 2019). "Rule 24
11 is remedial and should be construed liberally in order to assist parties seeking to obtain justice in
12 protecting their rights." *Dowling v. Stapley*, 221 Ariz. 251, 270 ¶ 58 (App. 2009) (citing
13 *Mitchell v. City of Nogales*, 83 Ariz. 328, 333 (1958)).

14 Proposed Intervenors satisfy all of Rule 24's factors for intervention as a matter of right.

15 **a. This motion is timely.**

16 Whether a motion to intervene is timely depends on: (1) "the stage at which the action
17 has progressed before intervention is sought," (2) "whether the applicant was in a position to
18 seek intervention at an earlier stage of the proceedings," *Heritage Vill. II Homeowners Ass'n*,
19 246 Ariz. at 571 ¶ 13 (citation omitted), and (3) "whether the delay in moving for intervention
20 will prejudice the existing parties to the case." *Winner Enters., Ltd. v. Superior Ct.*, 159 Ariz.
21 106, 109 ¶ 17 (App. 1988) (quoting 7C Wright, Miller & Kane, *Federal Practice, and*
22 *Procedure* § 1916 at 435 (1986)). The third factor is "[t]he most important." *Id.* (alteration in
23 original). Parties may be prejudiced if intervention would "unduly delay[]" the litigation, place
24 other interested parties "in limbo," undo or delay already-entered-into settlements, or require
25 additional and extensive new discovery or motion practice. See *Dowling*, 221 Ariz. at 273 ¶ 71;
26 *In re Appeal in Maricopa Cnty. Juv. Action No. JS-7135*, 155 Ariz. 472, 476 (App. 1987); see
also *State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384 (2000)
(*en banc*).

1 More generally, the “requirement of timeliness is a flexible one” and “[t]he court should
2 look to the practical situation and the effect allowing intervention would have on the economical
3 disposition of judicial business.” *Winner Enters., Ltd.*, 159 Ariz. at 109. And “because an
4 intervenor of right may be seriously harmed if not permitted to intervene, the court should be
5 reluctant to dismiss a request for intervention as untimely.” *Id.*

6 Here, Proposed Intervenors have acted swiftly to protect their interests and the interests
7 of their vulnerable unhoused constituents. This motion has been filed less-than three months
8 after Plaintiffs filed their complaint and less than two months after Defendant filed its initial
9 responsive pleading. Very little discovery has taken place,¹⁷ the Court has not yet resolved any
10 legal issues, the initial settlement conference has not yet occurred, and the consolidated trial and
11 preliminary injunction hearing remains months away.

12 Nor would the existing parties be prejudiced by intervention. Proposed Intervenors do
13 not seek to amend the current litigation schedule or otherwise delay the proceedings. Nor do
14 Proposed Intervenors assert additional relief. Rather, Proposed Intervenors seek to ensure only
15 that any relief granted in this case does not impair their interests or the interests of the houseless
16 persons whom they represent and serve. *See* Proposed Answer at 25 (“ALTERNATIVE
17 CROSSCLAIM” and “CROSSCLAIM RELIEF”).

18
19 **b. Proposed Intervenors have interests related to this action that may be
impaired by its resolution in their absence.**

20 Under the second and third factors, which are closely related, the Court should assess
21 whether the movants claim an interest related to the action that “may[,] as a practical matter,” be
22 “impair[ed] or impede[ed]” by the action’s resolution. Ariz. R. Civ. P. 24(a)(2); *see also*
23 *Heritage Vill. II Homeowners Ass’n*, 246 Ariz. at 572-73 ¶¶ 21-22. The burden of satisfying this
24

25 _____
26 ¹⁷ Under the current discovery schedule, only initial disclosures and discovery requests have been
exchanged.

1 requirement is “minimal.” *Id.* at 572 ¶ 21. Under the plain text of the Rule, a potential
2 “practical” impairment of a related interest is sufficient. *Ariz. R. Civ. P. 24(a)(2)*; *accord Utah*
3 *Ass’n of Cnty. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (“[T]he Rule refers to
4 impairment ‘as a practical matter.’ Thus, the court is not limited to consequences of a strictly
5 legal nature.” (citation omitted)).¹⁸ A potential impact on a person’s state or federal
6 constitutional rights is also sufficient. *Mountain States Tel. & Tel. Co. v. Ariz. Corp. Comm’n*,
7 160 Ariz. 350, 353 (1989). In addition, organizations may intervene to protect the interests of
8 the persons whom they serve or represent. *See, e.g., United States v. Carpenter*, 526 F.3d 1237,
9 1240 (9th Cir. 2008) (explaining that a prior opinion made clear that organization was “entitled
10 to intervene because they had the requisite interest in seeing that the wilderness area be
11 preserved for the use and enjoyment of their members”); *County of Fresno v. Andrus*, 622 F.2d
12 436, 438 (9th Cir. 1980) (organization was entitled to intervene because “the individual
13 members of [the organization] are precisely those . . . who will be injured” by an adverse
14 outcome).¹⁹

15 Here, Proposed Intervenors readily satisfy their minimal burden under this requirement.
16 Plaintiffs seek an injunction ordering the City to remove houseless persons and their property
17 from Navajo Wash (*see* Compl. ¶¶ 178–86), a population that Proposed Intervenors serve and
18 represent, and an order that would undoubtedly extend beyond Navajo Wash due to the

20 ¹⁸ In analyzing Rule 24, which is identical under federal law, Arizona courts “look for guidance
21 to federal courts’ interpretation[] of their rules.” *Heritage Vill. II Homeowners Ass’n v.*
Norman, 246 Ariz. 567, 572 ¶ 19 (App. 2019).

22 ¹⁹ Although Proposed Intervenors lack formal members, formal membership is not required to
23 show that an organization’s interests are intertwined with those of its constituents. *Cf. Hunt v.*
Washington State Apple Advert. Comm’n, 432 U.S. 333, 342, 344 (1977) (even though the
24 organization had “no members at all,” it “possess[ed] all of the indicia of membership in an
25 organization” and could assert the interests of its constituents); *Am. Unites for Kids v.*
Rousseau, 985 F.3d 1075, 1096 (9th Cir. 2023) (*Hunt* is satisfied “so long as ‘the organization
26 is sufficiently identified with and subject to the influence of those it seeks to represent who
have a personal stake in the outcome of the controversy’” (citations omitted)); *Home Builders*
Ass’n v. Kard, 219 Ariz. 374, 377 (App. 2008) (applying *Hunt*).

1 dispersed and transient nature of Tucson’s unhoused people. In addition to having a direct
2 practical impact on these persons by forcing them to move and potentially lose their property, a
3 judgment in Plaintiffs’ favor may violate their constitutional rights. Absent adequate alternative
4 shelter, houseless persons have a constitutional right to be free from criminalization for
5 unavoidable human activity. *See Martin*, 920 F.3d at 616–17. Houseless persons also have a
6 constitutionally protected property interest in their personal belongings, even those left
7 temporarily unattended in public spaces. *See Lavan v. City of Los Angeles*, 693 F.3d at 1031.
8 Proposed Intervenor seek to ensure that these constitutional interests are protected. Federal
9 courts have permitted homeless outreach organizations to intervene under analogous
10 circumstances. *See, e.g., Hastings Coll. of the L. v. City & County of San Francisco*, No. 20-cv-
11 03033-JST, slip op. at 5, 7 (N.D. Cal. June 30, 2020) ECF No. 69 (Exhibit E) (granting
12 intervention in nuisance suit to local organizations who provided services to unhoused persons
13 because the organizations were “‘threatened by’ any decision or settlement that fail[ed] to take
14 account of the rights and interests of [the] unsheltered . . . residents” (citation omitted)).

15 Indeed, constitutional interests are construed broadly and are particularly likely to
16 warrant intervention, especially when, as here, the lawsuit raises a question of public interest.
17 *See Diamond v. Charles*, 476 U.S. 54, 68 (1986) (“[C]ertain public concerns may constitute an
18 adequate ‘interest’ within the meaning of Federal Rule of Civil Procedure 24(a)(2)”);
19 *Brumfield v. Dodd*, 749 F.3d 339, 344 (5th Cir. 2014) (“The interest requirement may be judged
20 by a more lenient standard if the case involves a public interest question or is brought by a
21 public interest group.” (citation omitted)); *Kane County v. United States*, 928 F.3d 877, 890
22 (10th Cir. 2019) (“[T]he requirements for intervention may be relaxed in cases raising
23 significant public interests.” (citation omitted)). How to adequately address the homelessness
24 crisis in Tucson presents a question of public interest and Proposed Intervenor are public
25 interest groups working to tackle the issue.

1 A judgment in Plaintiffs’ favor may also impair Proposed Intervenors’ interests in other
2 ways. For example, Proposed Intervenors may be forced to expend significant time and
3 resources to avoid further harm to the unhoused residents of Tucson, including tracking down
4 former Navajo Wash residents, helping them reestablish contacts with service providers and
5 obtain new shelter, and locating their seized property and/or replacing their destroyed property.
6 Absent intervention, Proposed Intervenors will be unable to be heard with respect to any
7 potential settlement negotiations that could impact their work and the lives of their constituents.
8 *See Heritage Vill. II Homeowners Ass’n*, 246 Ariz. at 573 ¶ 23 (reversing denial of intervention
9 where, “without intervention, Movants are denied the ability to weigh in on the merits of any
10 settlement”). Further, as Defendant acknowledged, Plaintiffs wish to “get a court judgment and
11 a court precedent that others can use around Tucson.” Opp. To Plaintiffs’ Application for
12 Preliminary Injunction, at 7–8 (quoting Plaintiff’s counsel Ilan Wurman). Put another way, a
13 judgment for Plaintiffs will be wielded as a sword to frustrate Proposed Intervenors’ activities,
14 and criminally punish involuntarily unhoused Tucson residents for engaging in unavoidable
15 human behaviors, like sleeping and sheltering from the elements, when they have no access to
16 adequate, alternative sheltering options.

17 **c. The existing Parties do not adequately represent Proposed Intervenors’**
18 **interests.**

19 “Intervention by right requires that the intervenor’s interests are not already represented
20 by an existing party.” *Brown v. Hope*, No. 1 CA-CV 20-0059, 2021 WL 503249, at *2 ¶ 11
21 (Ariz. App. Feb. 11, 2021). Put another way, an intervenor must “bring something to the
22 litigation that would otherwise be ignored or overlooked if the matter were left to the existing
23 parties.” *Ariz. Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, No. CV
24 2019-000604, 2019 WL 5028594, at *3 (Ariz. Super. Ct. Feb. 22, 2019). The burden to prove
25 inadequacy of representation “should be treated as minimal.” *Trbovich v. United Mine Workers*
26 *of Am.*, 404 U.S. 528, 538 n.10 (1972); *see also* 7C Charles Alan Wright et al., *Federal Practice*

1 *and Procedure* § 1909 (3d ed. 2019) (an applicant ordinarily should be permitted to intervene as
2 a right “unless it is clear that the party will provide adequate representation for the absentee.”).

3 The interests of the existing parties here are vastly different than those of Proposed
4 Intervenors and the unhoused persons whom they represent and serve. Plaintiffs have
5 characterized the unhoused persons in Navajo Wash as a nuisance and evidently seek to remove
6 them from an area where they may reside without their consent or input through any available
7 means. Plaintiffs’ complaint demonstrates their indifference to the interests of this population, if
8 not their outright hostility to those interests.

9 Nor does Tucson adequately represent those interests. The Court of Appeals has
10 recognized that because the government “must represent the interests of all people” in its
11 jurisdiction, it “might not give [proposed intervenors’] interests ‘the kind of primacy’” they
12 deserve. *Planned Parenthood Ariz., Inc. v. Am. Ass’n of Pro-Life Obstetricians &*
13 *Gynecologists*, 227 Ariz. 262, 279 (App. 2011) (citation omitted); *accord Kane County*, 928 F.3d
14 at 892 (“[T]he public interest the government is obligated to represent may differ from [a]
15 would-be intervenor’s particular interest.” (citation omitted)). This is particularly true where,
16 like here, the government entity has a history of failing to prioritize proposed intervenors’
17 interests. *See Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d
18 837, 844-45 (10th Cir. 1996) (burden met by showing “that the [current party] failed in fulfilling
19 his duty to represent the applicant’s interest” (citation omitted)). For example, Tucson may have
20 an interest in resolving the litigation early and thus may agree to an unsatisfactory settlement.²⁰
21 It may change its position in the litigation on a whim to appease resident homeowners for
22
23

24 ²⁰ *See Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 133 (2d Cir. 2001) (finding defendant may
25 have an interest in defending its hiring practices but also may have “an equally strong or
26 stronger interest in bringing [the] litigation to an end by settlements involving the displacement
of employees who are not parties to the action”).

1 political reasons.²¹ And as revealed by Tucson’s recent filing on November 29, 2023, it may not
2 advance certain substantive arguments due to its status as a municipality charged with upholding
3 its own laws.²² For example, Tucson praises its efforts to “clean[] up” encampments by
4 “evict[ing] individuals from Navajo Wash as needed.” Opp. To Plaintiff’s App. for Preliminary
5 Injunction, at 4, 11. It suggests it acted appropriately in early August 2023 by forcibly clearing
6 nine to ten tents from Navajo Wash even though the tents’ owners “help[ed] clean up” their
7 trash when approached by City officials. *Id.* at 3. And it relegates the constitutional interests of
8 unhoused people in Tucson to a single footnote while suggesting an incorrect standard. *See id.*
9 at 7 n.4.²³ Simply put, several “aspects of [Proposed Intervenor’s] own interests . . . will be
10 inadequately represented by the [government].” *Planned Parenthood Ariz., Inc.*, 227 Ariz. at
11 280, ¶ 60.

12 More generally, Proposed Intervenor “offer[] a perspective which differs materially from
13 that of the present parties to this litigation.” *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525,
14 528 (9th Cir. 1983) (reversing denial of intervention). Unlike the present parties here, Proposed
15 Intervenor provide direct services to the unhoused population in Tucson. These organizations
16 have years of experience working to secure life-sustaining support for unhoused people in
17 Tucson. Thus, unlike either Plaintiffs or Tucson, Proposed Intervenor have personal knowledge
18 about the subjects at issue in this proceeding, including the day-to-day workings of areas in
19 Tucson where unhoused people reside. This knowledge will properly situate any discussion of

21 ²¹ *See WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 997 (10th Cir. 2009) (recognizing
22 that the coal mine need not rely on the government to protect its interests because government
23 has multiple objectives and could shift policy to embrace environmental objectives).

24 ²² *See N.Y. Pub. Int. Rsch. Grp. v. Regents of the Univ. of the State of N.Y.*, 516 F.2d 350, 352 (2d
25 Cir. 1975) (noting that potential intervenors “should have an opportunity to make their own
26 arguments to protect their own interests” and finding it likely that movants would “make a
more vigorous presentation” of certain arguments than government defendants).

²³ Tucson suggests only that a “zero tolerance” policy under which *every* unhoused person would
be cited or arrested from public camping throughout the City would violate unhoused persons’
constitutional rights. This is incorrect. Criminalizing unhoused people for unavoidable human
activity absent adequate shelter violates their rights.

1 any public nuisance and any appropriate remedy in the context of the lived experience of the
2 unhoused. For example, Plaintiffs complain of “[h]uman waste,” but omit any discussion of the
3 lack of available bathrooms for an unhoused person to use. Pl. Compl. at ¶ 35. Proposed
4 Intervenors will thus bring real-life experience of the unhoused to the litigation and will make a
5 more vigorous presentation of these issues than the existing parties would.²⁴
6

7 **IV. EVEN IF PROPOSED INTERVENORS COULD NOT INTERVENE AS A**
8 **MATTER OF RIGHT, THIS COURT SHOULD EXERCISE ITS DISCRETION**
9 **FOR PERMISSIVE INTERVENTION**

10 Alternatively, Proposed Intervenors should be permitted to intervene under
11 Rule 24(b)(1)(B) of the *Arizona Rules of Civil Procedure*. Under that Rule, “[o]n timely motion,
12 the court may permit anyone to intervene who . . . has a claim or defense that shares with the
13 main action a common question of law or fact.” Ariz. R. Civ. P. 24(b)(1), (b)(1)(B). When
14 evaluating permissive intervention, the court may also consider:

15 [(i)] the nature and extent of the intervenors’ interest, [(ii)] their
16 standing to raise relevant legal issues, [(iii)] the legal position they
17 seek to advance, and its probable relation to the merits of the case[,] .
18 . . [(iv)] whether the intervenors’ interests are adequately represented
19 by other parties, [(v)] whether intervention will prolong or unduly
20 delay the litigation, and [(vi)] whether parties seeking intervention
21 will significantly contribute to full development of the underlying
22 factual issues in the suit and to the just and equitable adjudication of
23 the legal questions presented.

19 *Bechtel v. Rose*, 150 Ariz. 68, 72 (1986) (*en banc*) (citation omitted). Significantly, under the
20 “liberal standard” governing permissive intervention, “the intervenor-by-permission does not
21 even have to be a person who would have been a proper party at the beginning of the suit.” *Id.*
22 (citation omitted)
23

25 ²⁴ Indeed, Plaintiffs’ striking ignorance of the realities of homelessness is clear from the
26 allegations in the complaint, such as the allegation that the “vast majority of unsheltered
individuals prefer” to be unsheltered. (Compl. ¶ 104.)

1 Here, Proposed Intervenors seek to defend against the action and assert several defenses,
2 including that any potential relief be constitutionally adequate. See Proposed Answer at 25–26.
3 Thus, there are common questions of law and fact: whether Plaintiffs are entitled to any relief,
4 and if so, what the nature of that relief is and how it may be constitutionally structured.

5 The remaining factors overlap significantly with the standard for intervention as a matter
6 of right. Accordingly, the remaining factors for permissive intervention favor granting Proposed
7 Intervenors’ motion for the same reasons described above.

8 **V. CONCLUSION**

9 For the foregoing reasons, Proposed Intervenors request that this Court grant intervention
10 as a matter of right under Rule 24(a)(2) or, in the alternative, permissive intervention under
11 Rule 24(b)(1)(B), and enter an order permitting Proposed Intervenors to file and serve their
12 Proposed Answer in Intervention (Exhibit H) on all other Parties to this action.

13 DATED: December 13, 2023

14
15 Respectfully submitted,

16 By: /s/Paul Gattone
17 Paul Gattone
18 Billy Peard
19 Law Office of Paul Gattone
20 301 S. Convent Ave
21 Tucson, AZ 85701

22 William H. Knight
23 National Homelessness Law Center
24 2000 M. Street NW, Suite 750-E
25 Washington, D.C. 20036

26 Jacquelyn Oesterblad
Public Justice
1620 L Street, Suite 630

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Washington, D.C. 20036

Eben Colby
Daniel Michael
Harry Koulos
One Manhattan West
395 Ninth Avenue
New York, NY 10001
(*Pro Hac Vice* Pending)

