DISTRICT COURT, CITY AND COUNTY OF DENVER STATE OF COLORADO City and County Building 1437 Bannock Street Denver, CO 80202 PLAINTIFF: **COLORADO LIVESTOCK ASSOCIATION**, a Colorado nonprofit corporation, v. DEFENDANTS: **STATE OF COLORADO; JARED POLIS**, in his official capacity as Governor of Colorado; **JOSEPH M. BARELA**, in his official capacity as Executive Director of the Colorado Department of Labor and Employment; and **SCOTT MOSS**, in his official capacity as Director of the Division of Labor Standards and Statistics, Colorado Department of Labor and Employment	DATE FILED: September 14, 2023 10:49 PM FILING ID: B8CC7CC4504EF CASE NUMBER: 2023CV495 Δ COURT USE ONLY Δ
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MOTION TO INTERVENE AS DEFENDANTS AND SUPPORTING MEMORANDUM OF LAW

Colorado Legal Services ("CLS") and agricultural worker Jane Doe[1] ("Proposed Intervenors") move to intervene as Defendants as of right, or, in the alternative, for permissive intervention, under Colo. R. Civ. P. 24(a)–(b), to defend the constitutionality and enforceability of Colo. Rev. Stat. § 8-13.5-202(1)(b), which CLS and Doe depend on for the protections it provides agricultural workers to access legal assistance and health and social service providers. CLS Decl. ¶ 21 (Ex. A); Jane Doe Decl. ¶¶ 10, 12 (Ex. B).[2] Plaintiff Colorado Livestock Association's (the "Livestock Association") request that the Court declare section 8-13.5-202(1)(b) unconstitutional and bar its enforcement threatens vital safeguards for vulnerable agricultural workers.[3] Without Proposed Intervenors' inclusion, their rights are at risk. If permitted to participate, CLS and Doe will seek to dismiss the complaint on several grounds, including the

[1] A motion to proceed under pseudonym for Jane Doe is forthcoming.
[2] As required by Colo. R. Civ. P. 24(c), Proposed Intervenors have also filed a proposed Answer.
[3] CLS's role in serving agricultural workers is so significant that the Consul General of Peru has supported this motion to ensure CLS can continue to work with Peruvian nationals who comprise many of Colorado's sheepherders and range workers. Luis F. Solari Decl. ¶¶ 4, 8, 10 (Ex. C).

Livestock Association's lack of standing and the invalidity of its claims for declaratory and injunctive relief. CLS and Doe already intervened in a first failed legal challenge to section 8-13.5-202(1)(b). Proposed Intervenors should be granted party status here, too, to secure the protections provided to them and other Colorado service providers and agricultural workers.

I. CERTIFICATE OF CONFERRAL

Pursuant to Colo. Rule of Civil Procedure 121 section 1-15(8), undersigned counsel certifies that Proposed Intervenors have conferred with Plaintiff and Defendants regarding the relief requested herein. Plaintiff opposes the relief requested and Defendants take no position on the relief requested.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Agricultural Worker Isolation and Exploitation

More than 41,000 agricultural workers labor in Colorado's fields, orchards, greenhouses, dairies, ranches and animal farms. Project Protect Food Systems Workers, *Why Colorado Must Protect Agricultural Workers* 2 (Mar. 2021).[4] Agricultural workers are among the most vulnerable laborers in the United States. CLS Decl. ¶ 4. They work with dangerous chemicals and equipment, often for long hours at low pay, and are excluded from a variety of statutory protections because of race-based decisions designed to win support of Southern Democrats during the New Deal.[5]

Frequent migration and social, linguistic, and physical isolation exacerbate this vulnerability. *Id.* ¶¶ 5, 8. A large number of Colorado's migrant agricultural workers are wholly isolated because they live in employer-owned or -operated labor camps, usually located in rural areas, close to fields and other agricultural operations, and far from towns and community

[4] *Available at* https://drive.google.com/file/d/1ijP_e-DMruSuNw2F4DSgq7Ujz8vp5qRn/view (last accessed Sept. 13, 2023).

[5] *See generally* Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 TEX. L. REV. 1335, 1351–71 (1987) (discussing this history).

resources. *Id.* ¶ 5. Workers herding sheep and cattle on the range are particularly vulnerable and isolated because they travel with the herds they are tending and live in employer-provided trailers, often miles from the nearest town or city. *Id.* ¶¶ 14, 18. Indeed, agricultural workers are often at the mercy of their employer for transportation to stores, medical facilities, and other necessary services, which reduces their ability to access food, healthcare, legal services, and other community resources on their own. *Id.* ¶ 5. Even workers who live in independent housing face significant barriers to accessing vital services because of their long hours and employers' refusal to provide time off. Doe Decl. ¶ 9.

B. Employers' Interference with Efforts to Provide Key Services to Agricultural Workers

Meeting with agricultural workers face-to-face is essential to CLS's work, as it has proven necessary to aid the workers in understanding their rights. CLS Decl. ¶ 10. Privacy, however, is also essential, and thus CLS *only* meets with agricultural workers when they are not engaged in work, usually after the workday and at their residence. *Id.* ¶ 11.

Unfortunately, agricultural employers frequently interfere with the agricultural workers' access to visitors like CLS and other service providers, even when they are attempting to reach workers after work hours and at the labor camps. *Id.* ¶¶ 16–18; *see also* Project Protect, *supra*, at 5–6. CLS has faced barriers (literal and otherwise) and intimidation in its efforts to reach agricultural workers throughout Colorado. Farm and ranch owners have erected physical barriers to entry, told service providers to leave the property, and pressured providers to breach their duty of confidentiality by informing the property owners of their presence and identifying the individuals seeking their assistance. CLS Decl. ¶ 16. Service providers have also experienced harassment and threats of arrest and even violence by the farm and ranch owners or operators. *Id.* ¶¶ 16–18. Interference with workers' access to critical service providers has prevented many agricultural

workers from receiving needed medical treatment. Project Protect, *supra*., at 5.[6]

C. Colorado Senate Bill 21-087

In recognition of the urgent need to protect the workers' right to access vital services, the legislature enacted and Governor Jared Polis signed into law Senate Bill 21-087, which took effect on June 25, 2021. *See* 2021 Colo. Legis. Serv. 2172 (West). The law increased protections for agricultural workers in Colorado, including a higher minimum wage for sheepherders and range workers, the right to unionize, and the right to the same rest and meal breaks as other Colorado workers.

Most relevant here, the law also ensured agricultural workers' access to "key service provider[s]," defined as a "health-care provider; a community health care worker, including a promotora[7]; an education provider; an attorney; a legal advocate; a government official, including a consular representative; a member of the clergy; and any other service provider to which a farmworker may need access." Colo. Rev. Stat. § 8-13.5-201(7). Specifically, the law prohibits an employer from "interfer[ing]" with agricultural workers' "reasonable access to key service providers at any location during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks," and any time the worker is receiving healthcare services. *Id.* § 8-13.5-202(1)(b).[8]

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[6] And at the height of the COVID-19 pandemic, the toll of agricultural workers' isolation and vulnerability was made plain by racial disparities in rates of infection among them. *See* Rosa Tuirán & Nick Roberts, *Farmworkers Are Among Those at Highest Risk for COVID-19, Studies Show*, FRONTLINE (July 21, 2020), https://www.pbs.org/wgbh/frontline/article/covid-19-farmworkers-among-highest-risk-studies-show (last accessed Sept. 13, 2023).

[7] Promotores de salud, or promotoras, are community health workers who work in collaboration with agencies and others to provide vital support and services to people in Colorado's agricultural and rural areas. Promotoras live in the geographic region in which they work and have strong connections to agricultural workers there. *See* Project Protect Food Systems Workers, *Project Protect Promotora Network*, https://www.projectprotectfoodsystems.org/promotora-network (last accessed Sept. 13, 2023).

[8] The law further prevents agricultural employers from "interfer[ing]" with workers' "reasonable

The law also affords employers protections. Workers' access to service providers must be "reasonable" and cannot occur during work time except in cases in which the worker needs to see a doctor. *Id.* § 8-13.5-202(1)(b). Employers can further require any key service provider visiting the worksite to follow the same biosecurity, food safety, and injury prevention protocols applicable to any other third parties who may visit the worksite. *Id.* § 8-13.5-202(d).

D. The *Talbott's* Lawsuit

Nearly a year after Governor Polis signed Senate Bill 21-087, several Colorado farming and ranching companies filed an action in federal court against these same Defendants, challenging the constitutionality of the law's "Access Provisions," including section 8-13.5-202(b). *See* Compl., *Talbott's Mountain Gold LLLP v. Barela*, No. 22-cv-01537-NYW-GPG (D. Colo. filed June 21, 2022) (Dkt. No. 1) (hereinafter "*Talbott's*").

Like the Livestock Association, the *Talbott's* plaintiffs contended that the challenged provisions constituted a *per se* taking under the Fifth Amendment of the employers' right to exclude unwanted persons from the employers' property, as recognized by the U.S. Supreme Court in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021). *See, e.g.*, Compl. ¶¶ 14–17, *Talbott's* (Dkt. No. 1). And like the Plaintiff here, the companies sought not compensation for this alleged taking, but a declaratory judgment and injunctive relief. *Id.* ¶¶ 13, 135–45, 150.

CLS and Doe were granted intervenor status, and moved to dismiss the complaint, arguing that the law's guarantee of workers' rights to access vital services in their employer-provided housing and during their breaks did not invade the companies' right to exclude visitors from their land and thus did not constitute a taking under *Cedar Point Nursery*. *See* Intervenor-Defs.' Mot. to Dismiss & Opp'n to Mot. for Prelim Inj. at 18–24, *Talbott's* (Dkt. No. 51). CLS and Doe further

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access to visitors at the" workers' "employer-provided housing" when the workers are present at the housing, *id.* § 8-13.5-202(1)(a), among other provisions.

contended that the companies had to show that just compensation could not be obtained before a court could consider equitable relief, a showing they could not make because Colorado law unquestionably authorizes just compensation. *Id.* at 24–25. CLS and Doe stressed that even if the law did effect a taking, the companies were not entitled to equitable relief because the Fifth Amendment provides a right to *compensation*, not a roving license to invalidate laws. *See* Intervenor-Defs.' Reply in Supp. Mot. to Dismiss, *Talbott's* (Dkt. No. 56). The companies soon after moved to dismiss their remaining claims without prejudice. The clerk closed the case on February 24, 2023.

E. The Livestock Association Asserts the Same Failed Claims

Four months later, on June 23, 2023, Plaintiff filed the present action, asserting nearly identical arguments to those the farming and ranching companies had just abandoned. On behalf of unspecified "agricultural employers and property owners engaged in the livestock industry," the Livestock Association challenges section 8-13.5-202(1)(b) as "a *per se* taking, without compensation," of the employers' and owners' right "to exclude uninvited persons from real property owned or controlled by" them. Compl. ¶¶ 2, 10. The Livestock Association contends that this "uncompensated taking" violates the respective takings clauses of the Fifth Amendment to the U.S. Constitution and article II, section 15, of the Colorado Constitution, under *Cedar Point Nursery*. *Id.* ¶¶ 10–11, 23. The Livestock Association seeks declaratory and permanent injunctive relief against the alleged "unconstitutional uncompensated takings." *Id.* ¶ 11; *see also id.* ¶¶ 37, 43, 47, 51, 55, 61.

While the Livestock Association asserts that an "existing legal controversy . . . can be effectively resolved by a declaratory judgment," *id.* ¶ 26, and that Colorado has neither offered nor paid compensation, *id.* ¶¶ 36, 42, its complaint lacks any facts from which the Court could

determine whether any particular member is entitled to or has sought compensation, and, if so, in what amount. The Livestock Association does not allege that anyone has ever used section 8-13.5-202(1)(b) to gain access to any of its members' properties, nor that a worker on any of those properties has ever attempted to use the law to meet with a service provider.[9] Nor does the Livestock Association provide any facts that could enable the Court to ascertain the value, to any of the members, of the right to exclude alleged to be taken—i.e., what the Livestock Association claims Colorado has wrongly failed to pay.

On August 4, 2023, the Defendants filed an unopposed motion to transfer venue to Denver District Court. *See* Mot. to Transfer. As Defendants stated, "Rather than seek to establish rights with respect to specific property," the Plaintiff "seeks to invalidate a statewide law and to enjoin public officials from enforcing that law anywhere in the state." *Id.* at 6. The Court granted the motion that day.

On August 23, 2023, the Defendants filed a joint answer to the Livestock Association's complaint. Defendants denied the allegations to which a response might be required and "specifically den[ied] that the key service provider access provision is a taking *per se*, and . . . that Plaintiff is entitled to the" declaratory and injunctive relief it seeks. *See* Answer at 3–4. Defendants also asserted several defenses. *Id.* at 5–6.

III. INTERESTS OF PROPOSED INTERVENORS[10]

A. CLS

[9] Plaintiff does not even state that any of its members *has* workers. *See id*. ¶¶ 1–2.

[10] Although whether intervenors must independently establish standing "remains an open question," Colorado courts have held that they "may piggyback on the standing of . . . a party aligned on the same side as the intervenor," when, as here, they "request the same relief as" that party. *City of Thornton v. Bd. of Cnty. Comm'rs*, No. 2019 CV 30339, 2019 WL 3228258, at *3 (Colo. Dist. Ct. July 16, 2019). Nevertheless, CLS and Doe have demonstrated their standing because the Livestock Association's suit threatens legal rights on which proposed Intervenors depend, and the relief they seek—judgment in favor of the Defendants—would lift that threat.

The Migrant Farm Worker Division of CLS provides comprehensive legal services to agricultural workers throughout Colorado to serve needs that have historically gone unmet, including wage theft, workplace safety, civil rights, and certain immigration issues. CLS Decl. ¶ 3. It also provides agricultural workers with referrals for healthcare and other social services, such as assistance with obtaining social security cards and drivers licenses. *Id.* ¶ 10. Each year CLS serves agricultural workers who work in Colorado's fields, orchards, dairies, ranches, and farms, and on the range. *Id.* ¶ 9.

The ability to meet with agricultural workers in person is essential to CLS's mission. *Id*. ¶ 10. Because CLS engages in privileged communications and speaks with workers about private legal matters, it will not do so during work hours, and often speaks with workers in the privacy of their homes. *Id.* ¶ 11. CLS relies on the ability to meet with agricultural workers at any location at which they can reach the workers outside their working hours. *Id.* ¶¶ 10–11, 21–23.

Section 8-13.5-202(1)(b) is essential for CLS to reach agricultural workers where they are. No other statute gives agricultural workers an enforceable right to obtain vital services at their workplaces, or gives service providers like CLS recourse when employers deny them access to their clients and potential clients. *Id.* ¶¶ 19, 21.

Prior to the passage of Senate Bill 21-087, CLS regularly encountered physical obstacles, improper demands, and legal and physical threats when trying to lawfully reach agricultural workers who sought its assistance. *Id.* ¶¶ 16–18, 25. Following the law's enactment, CLS hoped that these obstacles to access would become things of the past. *Id.* ¶ 26. But CLS anticipates that, if section 8-13.5-202(1)(b) were declared unconstitutional and enjoined, the access CLS needs to serve agricultural workers would be stymied and employers would be emboldened to block *all* access, necessitating the expenditure of CLS's limited resources to counteract such misconduct.

Id. ¶¶ 24–27. Indeed, CLS has already encountered and tried to ameliorate harassment it believes was attributable to agribusinesses' first legal challenge to the law. *Id.* ¶¶ 23–24; *see, e.g.*, *id.* ¶ 25 (during CLS visit to labor camp, "employer complained about the 'so-called Farmworker Bill of Rights' and reached into his pocket and pulled out a handgun as he told [CLS staff] how unsafe it is to come onto other people's property").

B. Jane Doe

Ms. Doe has been an agricultural worker in Colorado for approximately twenty-two years, employed by several different farms and contractors. Doe Decl. ¶¶ 2–3 (Ex. C). Due to the intensive nature of her labor and the long hours she has had to work, throughout her career she has not had access to necessary services, including legal advice, doctors' appointments, and the opportunity to meet with her child's teachers. *Id.* ¶¶ 6, 8–9. For example, Ms. Doe wished to have the opportunity to see a healthcare provider during her lunch breaks, or to visit with someone who could come during lunch or breaks to help her make phone calls, sign documents, or make appointments. *Id.* But before the Agricultural Worker Bill of Rights was enacted Ms. Doe could not access these resources at her workplace. *Id.*

Since the bill's passage, however, Ms. Doe has had increased access to lawyers, and health care workers, and her child's teachers. *Id.* ¶¶ 10–11. Without the law, she believes her employers would once again impede her ability to obtain these services. *Id.* ¶ 12.

IV. ARGUMENT

A. Proposed Intervenors Have the Right to Intervene Under Rule 24(a).

Non-parties are entitled to intervene in a pending action when the application is timely, and "(1) the applicant claims an interest in the subject matter of the litigation; (2) the disposition of the case may impede or impair the applicant's ability to protect that interest; and (3) the interest is not adequately represented by existing parties." *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 26 (Colo. 2001)

(citing Colo. R. Civ. P. 24(a)).

That this suit may have a practical—and harmful—effect on Proposed Intervenors' interests is clear. The Livestock Association seeks to invalidate a key legal protection on which service providers like CLS rely to connect agricultural workers like Ms. Doe with much-needed medical care, legal assistance, and immigration services, free from threats and intimidation by their employers. Proposed Intervenors have moved swiftly to protect that interest, having seen that it may not be adequately represented by the Defendants.

1. Proposed Intervenors' motion is timely.

Determining whether a motion to intervene is timely "rests within the sound discretion of the trial court, which must weigh the lapse of time in light of all the circumstances of the case, including whether the applicant was in a position to seek intervention at an earlier stage." *L. Offs. of Andrew L. Quiat, P.C. v. Ellithorpe*, 917 P.2d 300, 303 (Colo. App. 1995).

Proposed Intervenors' motion comes less than three months from the initial filing, and just a few weeks since they saw how Defendants would respond to the Livestock Association's claims. Proposed Intervenors were not in a position to seek intervention sooner, because prior to learning how the government would respond, they were not sure the government's defense would be inadequate to protect their interests. Proposed Intervenors seek to enter the case before it has advanced beyond preliminary filings and before any trial date has been set. Their motion is timely. *Lattany v. Garcia*, 140 P.3d 348, 350–51 (Colo. App. 2006) (finding intervention timely even after trial date had been vacated and parties were about to settle, when interest was limited to attorney's fees and applicant acted swiftly once learning of dispositive order).

2. Proposed Intervenors have substantial interests in the action.

CLS and Doe have a substantial interest in ensuring agricultural workers' continued right to meet with key service providers like CLS, free from interference by their employers—the very

right the Livestock Association seeks to invalidate. Whether a proposed intervenor has such an interest is "a fact-specific determination," *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011), and Colorado courts take a "flexible" and "liberal" approach to determining its existence, stressing that the question should not be viewed formalistically, *Feigin*, 19 P.3d at 29. Although "the need for an 'interest' in the controversy" cannot "be read out . . . the requirement should be viewed as a prerequisite rather than relied upon as a determinative criterion for intervention." *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1979) (citation omitted). An applicant's demonstration of "practical harm" to itself and inadequacy of representation by others are superior criteria to provide whatever "barrier[]" may be "needed to limit extension of the right to intervene." *Id.*

Cherokee Metro is illustrative. There, the Supreme Court of Colorado held that Meridian, a municipal water district, demonstrated a substantial "interest relating to the property or transaction that [wa]s the subject of" a declaratory judgment action by another water district—"namely," Meridian's "interest in ensuring that its claimed" rights would not be "precluded by the water court's interpretation of [a] [s]tipulation between" two other districts. 266 P.3d at 405. The court so held because "[r]esolution of the declaratory judgment action could . . . jeopardize" Meridian's ability to use the water resources at issue and "result in findings or conclusions regarding" its claimed rights. *Id.* Moreover, the plaintiff had already secured a preliminary injunction that had "effectively halted Meridian's ability to move forward with its" efforts to exercise its rights. *Id.* The court had little trouble affirming that Meridian established a substantial interest under Rule 24(a)(2). *Id.*

Here, too, the Livestock Association's action for declaratory and injunctive relief to invalidate section 8-13.5-202(1)(b) "jeopardize[s]" CLS and Doe's hard-won rights. *Id.* CLS

provided critical information and testimony in connection with Senate Bill 21-087, and has an interest in preserving the protections the law affords CLS and its prospective clients. *See, e.g., City of Thornton*, 2019 WL 3228258, at *7 (nonprofit organization established interest in case challenging denial of pipeline permit when "outcome of the litigation could result in a loss of" organization's members' "access" to river and organization's advocacy "goal . . . would ultimately be harmed" by requested relief).

Both CLS and Doe would suffer "practical harm" if Plaintiff achieved its sought-after relief. *O'Hara Grp. Denver*, 595 P.2d at 687. CLS relies on section 8-13.5-202(1)(b) to carry out its outreach to agricultural workers and is one of the providers that the law protects from employer interference. *See* CLS Decl. ¶¶ 21–22, 26–28. The Livestock Association is asserting, in effect, a constitutional property right for its owners to interfere with workers' ability to obtain basic services. CLS's ability to fulfill its mission by meeting with agricultural workers during their break time is thus under direct threat.

Ms. Doe has an interest in jeopardy, too. She is one of the farm workers who directly and personally benefits from being able to see the key service providers to whom the law grants her access, and relies on the law's protections to secure those services. Doe Decl. ¶¶ 8, 10–12. And she is not alone. The declaration from the Peruvian Consulate confirms agricultural workers' essential need to access key service providers, and that the methods of CLS, protected by section 8-13.5-202(1)(b), are indispensable to this work. Solari Decl. ¶¶ 2–3, 5–9.

3. <u>Proposed Intervenors' interests may be impaired by the outcome.</u>

Proposed Intervenors need only show that the disposition of this action "*may* as a practical matter impair" their ability to protect their interests. *Cherokee Metro.*, 266 P.3d at 406 (quoting Colo. R. Civ. P. 24(a)) (emphasis added). This is not a high bar; Colorado courts have sometimes conflated the existence of an interest with its impairment. *O'Hara Grp. Denver*, 197 Colo. at 541

(so long as “practical harm to the applicant and the [in]adequacy of representation by others” are shown, nature of applicant’s interest “may play a role in determining the sort of intervention which should be allowed,” not whether intervention is permissible). A proposed intervenor shows impairment when, for example, it “cannot opt out of a declaratory judgment prohibiting . . . any . . . person” from claiming rights the proposed intervenor contends it possesses, nor “bring an independent challenge to the . . . court’s interpretation of” a law affecting those rights. *Cherokee Metro.*, 266 P.3d at 406. “The ‘impairment’ prong typically questions whether there is a *clear* alternative venue in which the proposed intervenor may pursue relief.” *Mauro by & through Mauro v. State Farm Mut. Auto. Ins. Co.*, 410 P.3d 495, 499 (Colo. App. 2013) (emphasis in original).

The threat this suit poses to Proposed Intervenors’ interest in section 8-13.5-202(1)(b) is plain. They could not “opt out of” equitable relief prohibiting the exercise of their rights under the law. *Cherokee Metro.*, 266 P.3d at 406. Neither is there any clear alternative forum in which they could seek declaratory relief to affirm the law’s constitutionality. *Mauro*, 410 P.3d at 499. A judgment in the Livestock Association’s favor would impede Proposed Intervenors’ interests to an even greater extent than restoring the status quo ante by making it more difficult to pass similar legislation in the future. *Barnett v. Elite Props. of Am., Inc.*, No. 07CV480, 2007 WL 5019094 (Colo. Dist. Ct. Apr. 27, 2007) (impairment demonstrated when “stare decisis or preclusion will bar intervenor from accessing an alternate forum”).

4. Defendants cannot adequately represent Proposed Intervenors’ interests.

Proposed Intervenors also meet the minimal threshold of showing inadequate representation. When an applicant’s “interest is similar to, but not identical with, that of one of the parties, . . . intervention ordinarily should be allowed unless it is clear that the party will provide adequate representation for the absentee.” *Cherokee Metro.*, 266 P.3d at 407 (quoting 7C Charles

Wright, Alan Miller & Mary Kay Kane, *Federal Practice & Procedure* § 1909 (3d ed. 1997).[11] In such cases, "all reasonable doubts should be resolved in favor of allowing" intervention. *Id.* (internal quotations and citations omitted). Indeed, Colorado courts have previously stated the inquiry as whether the absent party's interest "*may* not be adequately represented." *O'Hara Grp. Denver*, 197 Colo. at 542 (emphasis added).

Although Proposed Intervenors and the Defendants both seek to uphold section 8-13.5-202(1)(b), their interests already diverge in important ways. Proposed Intervenors' interest is solely to protect workers' access to key service providers, while Defendants must balance "differing interests." *City of Thornton*, 2019 WL 3228258, at *9. As representatives of the people of the State of Colorado, Defendants must represent the interests of landowners, farmers, and ranchers in Colorado who may be opposed to the access to workers provided in the law.

Notably, Defendants have failed to move to dismiss the Livestock Association's complaint and have asserted only that Plaintiff "may not have standing." Answer 6. This, despite Plaintiff alleging an indefinite and unlikely future injury to unspecified members whose individual participation would be necessary for the Court to adjudicate any member's right to compensation (were they entitled to it). And while Defendants deny that the Livestock Association is entitled to its sought-after relief, they have not moved to dismiss on that basis—the argument that Proposed Intervenors raised in the *Talbott's* case and that apparently persuaded those plaintiffs to dismiss

[11] Colorado courts "divide the adequacy of representation inquiry into three categories," any one of which satisfies the test. *Cherokee Metro.*, 266 P.3d at 407. "[I]f the absentee's interest is identical to that of one of the present parties, . . . then a compelling showing" of inadequacy is required. *Id.* However, "merely requesting the same relief doesn't mean that the interests of the intervenor and the existing party are identical under Rule 24." *City of Thornton*, 2019 WL 3228258, at *9. "[O]therwise, . . . intervenors who pursue the same relief as a party are *per se* adequately represented by the party to the action," which is "illogic[al]." *Id.* As explained below, Proposed Intervenors' interests are not identical to the Defendants' interests, so while they could make a "compelling showing" of inadequacy, they need not do so.

their case. Proposed Intervenors would assert these and other arguments in seeking the immediate dismissal of the Livestock Association's baseless attack on section 8-13.5-202(1)(b). Defendants' failure to do so demonstrates the inadequacy of their representation of Proposed Intervenors' interests. *City of Thornton*, 2019 WL 3228258, at *9 (inadequacy demonstrated when it was "unclear that the [government] would raise the same arguments" as organizations "given their differing interests" and government's statement that it would "'run its own case.'").

Further, Proposed Intervenors' interest would likely not be adequately protected if the Court held that the law is a taking. In that case, the government would need to consider the costs of compensating landowners as a guardian of the public fisc, while CLS's only interest is in protecting agricultural workers' access to services. *See Dillon Cos. v. City of Boulder*, 515 P.2d 627, 629 (Colo. 1973) (intervenors' interests inadequately protected when government "decided not to appeal" unfavorable decision, leaving intervenors with "no one to protect their interests").

Finally, CLS and Doe bring to the table expertise on the need for the challenged provision and unique on-the-ground perspective on past and present conditions for Colorado's agricultural workers—a perspective not currently represented here. *Int'l Bhd. of Elec. Workers Loc. 68 v. Denver Metro. Major League Baseball Stadium Dist.*, 880 P.2d 160, 163–64 (Colo. App. 1994) (intervenor's "superior knowledge concerning the potential effects of" granting requested relief made its "presence as a party to the litigation . . . necessary"); Wright & Miller § 1909 ("court must consider whether the absentee is likely to have anything to say that will be of value.").

B. Permissive Intervention is Appropriate

Alternatively, the Court should allow intervention under Colo. R. Civ. P. 24(b), which "provides for permissive intervention when an applicant's claim and the original cause of action present common questions of law or fact, so long as the intervention will not unduly delay or prejudice the rights of the original parties." *In re Marriage of Paul*, 978 P.2d at 139. Proposed

Intervenors' and Defendants' defenses share the core legal question of whether section 8-13.5-202(1)(b) is constitutional. *Moreland v. Alpert*, 124 P.3d 896, 904 (Colo. App. 2005). And intervention would not prejudice or delay the existing parties, as this motion comes soon after Defendants' responsive pleading and before any discovery has occurred.

V. CONCLUSION

Proposed Intervenors already played an integral role in protecting the Agricultural Worker Bill of Rights against a first legal attack. Unless and until another group of farm owners tries to invalidate the law, this is the only forum in which CLS and Doe can raise their arguments to defend it. They respectfully request the Court allow them to intervene.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on September 14 2023, the undersigned duly served the Motion to Intervene as Defendants upon all counsel of record who have entered their appearances on behalf of the parties to Case No. 2023CV495 via the Colorado Courts e-Filing System.

/s/ Valerie L. Collins
Valerie L. Collins