

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ZACHARY R. CHERTOK, et al.,

Plaintiffs,

v.

CITY OF MEDFORD, et al.

Defendants.

C.A. No.: 1:26-cv-10589-GAO

**PROPOSED  
INTERVENORS’  
OPPOSITION TO  
PLAINTIFFS’ MOTION  
TO STRIKE**

Proposed Intervenors respectfully submit this Opposition to Plaintiffs’ Motion to Strike their Opposition to Plaintiffs’ Motion for Preliminary Injunction. Plaintiffs seek the extraordinary remedy of striking Proposed Intervenors’ filings solely because the Court has not yet ruled on their pending Motion to Intervene, despite the expedited nature of the preliminary injunction proceedings and Proposed Intervenors’ direct interest in defending the challenged Ordinance. Under the circumstances presented here, striking Proposed Intervenors’ filings would elevate form over substance, serve no practical purpose, and improperly impair Proposed Intervenors’ ability to protect their interests pending resolution of intervention.

**INTRODUCTION**

Plaintiffs commenced this action on February 2, 2026, challenging the validity of the City of Medford’s Values-Aligned Local Investments Ordinance (the “Ordinance”). On April 16, 2026, Plaintiffs filed a Motion for Preliminary Injunction seeking to enjoin enforcement of the Ordinance

pending resolution of this litigation. Twelve days later, on April 28, 2026—as expeditiously as can reasonably be expected--Proposed Intervenor moved pursuant to Federal Rule of Civil Procedure 24. In light of Plaintiffs’ request for immediate injunctive relief and the expedited briefing schedule, Proposed Intervenor thereafter filed an Opposition to Plaintiffs’ Motion for Preliminary Injunction in order to preserve and protect their interests pending resolution of intervention issue.

Plaintiffs’ Motion elevates form over substance and ignores the practical realities of Rule 24 litigation involving requests for emergency relief. Courts possess broad discretion to consider filings submitted by proposed intervenors while motions to intervene remain pending. That is particularly the case where, as here, the litigation remains in the early stages, no prejudice results, and the proposed intervenors seek to address imminent injunctive relief that threatens to impair their interests before intervention can be resolved. Striking Proposed Intervenor’s filings would neither streamline these proceedings nor conserve judicial resources; it would merely exclude relevant arguments bearing directly on the validity and enforceability of the Ordinance at issue.

Moreover, Proposed Intervenor’s participation is especially warranted because the existing Defendants expressly disclaimed any intent to enforce the Ordinance during the pendency of this litigation and did not meaningfully oppose Plaintiffs’ request for preliminary injunctive relief. Under those circumstances, Proposed Intervenor reasonably sought to ensure that the Ordinance received a full and adequate defense while their Motion to Intervene remained pending before the Court.

On May 1, 2026, Plaintiffs filed the instant Motion to Strike, arguing that because the Court had not yet ruled on Proposed Intervenor’s Motion to Intervene, Proposed Intervenor lacked standing to file motions or oppositions in this matter. Proposed Intervenor thereafter sought leave

to file a reply memorandum in further support of intervention addressing arguments raised in Plaintiffs' opposition papers. The Court has not yet ruled on either motion.

For these reasons, and for those set forth below, Plaintiffs' Motion to Strike should be denied.

### **LEGAL STANDARD**

Courts possess broad discretion in resolving motions to strike, although such motions are generally disfavored. Striking material from the record is considered a "drastic remedy" and is rarely granted absent a showing of prejudice to the moving party. *Morell v. United States*, 185 F.R.D. 116, 117 (D.P.R. 1999); *see also Zurich Am. Ins. Co. v. Watts Regulator Co.*, 796 F. Supp. 2d 240, 245–46 (D. Mass. 2011); *Alvarado-Morales v. Digital Equip. Corp.*, 843 F.2d 613, 618 (1st Cir. 1988).

Federal Rule of Civil Procedure 24 is applied using a practical and flexible framework that affords district courts substantial discretion in evaluating intervention and related participation issues. *See Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999) (explaining that intervention analysis involves "judgment calls and fact assessments" and endorsing a "holistic" approach to Rule 24(a)(2)); *see also Cotter v. Mass. Ass'n of Minority Law Enf't Officers*, 219 F.3d 31, 37 (1st Cir. 2000). Courts evaluating motions to intervene therefore consider the procedural posture of the case, the potential impairment of the proposed intervenors' interests, and the adequacy of existing representation. *See Fed. R. Civ. P.* 24(a)(2).

Particularly where preliminary injunctive relief is sought on an expedited basis, Rule 24 requires courts to assess whether disposition of the proceedings may, "as a practical matter,"

impair or impede the proposed intervenors' ability to protect their interests before those interests can be adequately represented. Fed. R. Civ. P. 24(a)(2). The First Circuit has emphasized that intervention analysis turns on "matters of degree and a particular fact pattern," including whether there exists "enough likelihood of conflict or divergence" between the proposed intervenors and the existing parties such that the intervenors' interests may not be adequately represented. *Cotter*, 219 F.3d at 35–37. Courts retain broad discretion in evaluating intervention where significant legal interests risk practical impairment, particularly when intervention is sought promptly after it becomes clear that existing parties will no longer adequately protect the asserted interests at stake. *See Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 292 (2022) (holding intervention timely where the attorney general moved to intervene "as soon as it became clear" that the Commonwealth's interests "would no longer be protected" by the existing parties). Considerations of fairness and judicial administration likewise favor permitting participation where doing so ensures full adversarial presentation of issues implicated by requests for immediate injunctive relief. *See* Proposed Intervenors' Mot. to Intervene, ECF No. 9; Proposed Intervenors' Mem. in Supp., ECF No. 10; Proposed Intervenors' Reply in Supp. of Mot. to Intervene, ECF No. 30.

## **ARGUMENT**

### **I. The Court Has Discretion to Consider Filings Submitted by Proposed Intervenors Pending Resolution of a Motion to Intervene**

Plaintiffs' Motion to Strike rests on the erroneous premise that proposed intervenors are categorically barred from submitting filings before a court formally resolves intervention. Neither Rule 24 nor the authorities Plaintiffs cite impose such a rigid prohibition. To the contrary, Rule 24 is construed practically and flexibly, particularly where expedited proceedings threaten to impair

asserted interests before intervention can be adjudicated. *See Daggett*, 172 F.3d at 111–14. Courts therefore retain broad discretion to manage proceedings and consider submissions by proposed intervenors where doing so assists the Court in resolving issues already before it and avoids practical impairment of the interests asserted in support of intervention. *See Fed. R. Civ. P. 24(a)(2)*; *Cameron*, 595 U.S. at 279–81.

That practical approach carries particular force here. Proposed Intervenors moved promptly after Plaintiffs sought preliminary injunctive relief directed at a duly enacted municipal ordinance in which Proposed Intervenors possess a direct and legally protectable interest. Plaintiffs’ Motion for Preliminary Injunction sought immediate relief that, if granted, would impair those interests before the Court ruled on intervention. Under those circumstances, Proposed Intervenors reasonably submitted an opposition to preserve their interests pending resolution of the Rule 24 motion.

Plaintiffs’ reliance on *Mutual Produce, Inc. v. Penn Central Transportation Co.*, 119 F.R.D. 619 (D. Mass. 1988), does not compel a different result. *Mutual Produce* did not involve expedited preliminary injunction proceedings or efforts by proposed intervenors to participate in ongoing merits briefing while a motion to intervene remained pending. Rather, the case addressed the materially distinct circumstance of Rule 41(a)(1)(ii) stipulated dismissals that automatically terminated the underlying actions before intervention could be resolved. *See id.* at 620–21. The court emphasized that the stipulations became effective immediately upon filing and that, absent a stay, “there [was] no action in which to intervene.” *Id.* at 621.

Nothing comparable is present here. This action remains actively pending, Plaintiffs’ request for preliminary injunctive relief remains unresolved, and Proposed Intervenors sought participation specifically to avoid practical impairment of their interests while intervention remains

under consideration. Unlike the proposed intervenors in *Mutual Produce*, Proposed Intervenors here do not seek to disrupt a completed dismissal or retroactively obtain party status after termination of the action. Rather, they seek only to ensure that the challenged Ordinance receives meaningful adversarial presentation before the Court adjudicates Plaintiffs' request for immediate injunctive relief.

Nor does *Mutual Produce* establish the categorical rule Plaintiffs propose. Although the court observed that filing a motion to intervene does not itself confer party status, it did not hold that courts must strike all submissions filed by proposed intervenors pending resolution of intervention. To the contrary, the decision turned on the unique operation of Rule 41(a)(1)(ii) and the absence of any live controversy remaining before the court.

Likewise, *Ewers v. Heron*, No. 04-10024-RWZ, 2006 WL 279046 (D. Mass. Feb. 3, 2006), undermines rather than supports Plaintiffs' position. There, the court declined to strike submissions filed by "would-be intervenors" even after their motion to intervene had already been denied and that denial affirmed on appeal. *Id.* at \*3. Specifically, the court denied as premature a motion to strike a proposed form of final judgment submitted by the proposed intervenors while disputes concerning the appropriate form of judgment and distribution of funds remained pending before the court. *Id.* Far from supporting Plaintiffs' position, *Ewers* confirms that district courts retain discretion to consider submissions by proposed intervenors where their asserted interests remain implicated in ongoing proceedings.

Moreover, Plaintiffs cannot demonstrate prejudice from Proposed Intervenors' participation. This litigation remains at an early stage. No discovery has occurred, no merits rulings have issued, and Proposed Intervenors' filings neither delayed proceedings nor expanded the scope of the case. Proposed Intervenors' filings were submitted in the context of a brisk and expedited preliminary

injunction schedule under which Plaintiffs sought immediate relief before the Court could reasonably resolve the pending Motion to Intervene. Plaintiffs have already substantively responded to Proposed Intervenors' participation through both their Opposition to Intervention and the instant Motion to Strike. Under these circumstances, striking the filings would elevate procedural formalism over the practical and equitable considerations that govern Rule 24 participation.

At a minimum, even if the Court declines to treat Proposed Intervenors' submissions as formal party filings pending resolution of intervention, the Court may properly construe those submissions as amici materials rather than strike them from the record entirely.

## **II. Proposed Intervenors Have a Direct Interest in the Preliminary Injunction Proceedings and Sought Participation Promptly**

Proposed Intervenors possess a direct and legally protectable interest in the subject matter of this litigation and acted promptly to protect that interest once it became concretely threatened by Plaintiffs' request for preliminary injunctive relief. Plaintiffs seek to enjoin enforcement of the Values-Aligned Local Investments Ordinance, a duly enacted municipal law governing the City's investment practices and public fiscal decision-making. Proposed Intervenors, as Medford residents and taxpayers who supported and advocated for the Ordinance's enactment, possess a substantial interest in defending the continued validity and enforceability of that law. Moreover, Massachusetts' long-established "Ten Taxpayer Law" expressly authorizes municipal taxpayers to seek relief to "restrain the unlawful exercise or abuse" of municipal authority to "raise or expend money...in any manner other than that..in which such [city] has the legal and constitutional right and power to raise or expend money." Mass. Gen. Laws Ch. 40 § 53. The statute further provides that a court "may, before the final determination of the cause, restraint the unlawful

exercise or abuse of such corporate power.” *Id.* Given Defendants’ stated decision not to enforce the Ordinance during the pendency of this litigation, Proposed Intervenor possess an additional and concrete interest in ensuring that the City’s investment and fiscal practices remain consistent with duly enacted municipal law.

Plaintiffs incorrectly characterize Proposed Intervenor’s interests as merely ideological or generalized. Proposed Intervenor do not seek participation based on abstract policy preferences alone. Rather, Plaintiffs seek immediate judicial relief invalidating the precise Ordinance Proposed Intervenor supported through the municipal legislative process. Disposition of Plaintiffs’ Motion for Preliminary Injunction therefore threatens direct and practical impairment of Proposed Intervenor’s interests. Proposed Intervenor’s interests are also distinct from those of the City itself. The City has declined to enforce the Ordinance during the pendency of this litigation and did not meaningfully oppose Plaintiffs’ request for preliminary injunctive relief, indicating that it lacks the intent to protect the interests Proposed Intervenor seek to defend in this action. *T-Mobile Ne. LLC v. Town of Barnstable*, 969 F.3d 33, 38–40 (1st Cir. 2020) (finding existing representation adequate where governmental defendants vigorously defended the challenged law). Intervention is therefore necessary to ensure those interests are actually represented before the Court. Because Plaintiffs sought immediate preliminary injunctive relief before the Court resolved intervention, disposition of the preliminary injunction proceedings threatened, “as a practical matter,” to impair or impede Proposed Intervenor’s ability to protect their interests in the Ordinance. Fed. R. Civ. P. 24(a)(2).

Nor did Proposed Intervenor delay in seeking participation. Plaintiffs filed their Motion for Preliminary Injunction on April 16, 2026. Proposed Intervenor moved to intervene twelve days later, on April 28, 2026, and filed their Opposition to the Motion for Preliminary Injunction shortly



thereafter in light of the expedited briefing schedule and the imminent relief sought by Plaintiffs. As explained above, this case remains at an early procedural stage and Plaintiffs suffer no prejudice. *See R&G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 9 (1st Cir. 2009) (explaining that Rule 24’s timeliness requirement is intended to prevent “disruptive, late-stage intervention” that could have been avoided through reasonable diligence—not prompt participation at the outset of litigation in response to imminent injunctive relief).

Plaintiffs’ suggestion that Proposed Intervenors’ participation was untimely merely because the Ordinance has been publicly debated or previously litigated misconstrues the Rule 24 timeliness inquiry. The relevant question is not when Proposed Intervenors first became aware of the Ordinance or the broader public controversy surrounding it, but when it became clear that their interests would no longer be adequately protected by the existing parties in this litigation. *See Cameron*, 595 U.S. at 279–81. As the Supreme Court explained in *Cameron*, timeliness must be assessed in relation to the point at which intervention becomes necessary to protect the proposed intervenors’ interests—not merely from the outset of the underlying dispute. *Id.* at 280 (“The attorney general’s need to seek intervention did not arise until the secretary ceased defending the state law, and the timeliness of his motion should be assessed in relation to that point in time.”). The First Circuit has likewise recognized that timeliness under Rule 24 is measured from the point at which the proposed intervenor knew or reasonably should have known that its interests were imperiled in the litigation. *See Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 785 (1st Cir. 1988); *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1231 (1st Cir. 1992).

Here, Proposed Intervenors sought participation promptly after it became apparent--by virtue of Defendants’ explicit admissions-- that Defendants would not meaningfully defend or enforce the Ordinance during the pendency of this litigation. Under those circumstances, Proposed

Intervenors reasonably sought participation to ensure that the Ordinance received a full and adequate defense before preliminary injunctive relief could issue. Proposed Intervenors likewise lack any alternative procedural mechanism through which to protect their interests in the Ordinance while Plaintiffs' request for preliminary injunctive relief remains pending.

### **III. Existing Defendants Do Not Adequately Represent Proposed Intervenors' Interests**

Proposed Intervenors' participation is further warranted because Defendants do not adequately represent Proposed Intervenors' interests in defending and enforcing the Ordinance. Although Defendants and Proposed Intervenors may nominally share an interest in the validity of the Ordinance, the adequacy inquiry turns on whether the proposed intervenors' interests differ "in kind or degree" from those of the existing parties. *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006). The burden of demonstrating inadequate representation under Rule 24(a)(2) is "minimal," and a proposed intervenor need show only that representation of its interests "may be" inadequate. *Daggett*, 172 F.3d at 112, 114. The adequacy-of-representation inquiry is necessarily fact-specific and turns on the particular litigation posture presented. *See Cotter*, 219 F.3d at 37.

That standard is satisfied here. Most significantly, Defendants have expressly represented that they do not intend to enforce the Ordinance during the pendency of this litigation and have not meaningfully opposed Plaintiffs' request for preliminary injunctive relief. *See* Defs.' Resp. to Pls.' Mot. for Prelim. Inj., ECF No. 17. Defendants had not entered an appearance in this matter until after Proposed Intervenors moved to intervene and thereafter sought and obtained an extension of time to respond to the Complaint while Plaintiffs' request for expedited preliminary injunctive relief remained pending. *See* Defs.' Mot. to Enlarge Time to Respond to Compl., ECF No. 19.

Indeed, Proposed Intervenor's participation preceded any substantive defense of the Ordinance by existing Defendants.

Under those circumstances, Proposed Intervenor reasonably concluded that their interests in defending and enforcing the Ordinance—including their statutorily recognized interest under Massachusetts law in ensuring lawful municipal fiscal conduct—would not be adequately protected absent participation in the preliminary injunction proceedings pending resolution of intervention. Proposed Intervenor therefore did not seek to duplicate an already vigorous defense; rather, they sought to ensure that the Ordinance is defended at all.

That concern is not merely theoretical. Federal courts depend upon the existence of genuinely adverse parties to ensure proper adjudication of constitutional questions. Here, Defendants delayed their appearance, expressly disclaimed any intent to enforce the Ordinance during the pendency of this litigation, and did not meaningfully oppose Plaintiffs' request for preliminary injunctive relief. Whether or not those circumstances rise to formal collusion, they underscore the practical need for intervention to ensure an adequately adversarial presentation regarding the validity and enforceability of the Ordinance. The divergence in interests is not merely speculative or tactical. The record reflects well-publicized disagreement within Medford's municipal government concerning both the Ordinance itself and the manner in which this litigation would be defended. Proposed Intervenor seek to ensure a robust defense of the Ordinance's legality and enforceability, while Defendants have taken a substantially more limited posture during the preliminary injunction proceedings.

That divergence is further confirmed by declarations submitted by multiple Medford City Councilors, who state that the City Council lacks authority to direct litigation strategy, has received

limited substantive briefing regarding the City’s legal posture, and believes intervention is necessary to ensure a full and diligent defense of the Ordinance. *See* ECF Nos. 30-2, 31-1, 31-2. These declarations further underscore the practical divergence between Defendants’ litigation posture and Proposed Intervenors’ interests in defending the Ordinance.

Courts have recognized that changes or divergences in governmental litigation positions may bear directly on whether asserted interests are being adequately represented in ongoing litigation. *See All. for Hippocratic Med. v. FDA*, 117 F.4th 336, 340–41 (5th Cir. 2024) (Ho, J., concurring) (observing that the Government had “switched positions” in related litigation and that the Supreme Court’s disposition turned in part on those changed representations).

Courts have further recognized the substantial interests implicated where parties seek to defend the continued enforceability of duly enacted law after existing governmental defendants decline to do so fully. *See Cameron*, 595 U.S. at 277–79 (“A State clearly has a legitimate interest in the continued enforceability of its own statutes,” and “a State’s opportunity to defend its laws in federal court should not be lightly cut off.”). Although *Cameron* arose in the context of state officials defending a state statute, the same practical concerns apply here, where Proposed Intervenors seek to ensure meaningful adversarial presentation regarding the validity and enforceability of a duly enacted municipal ordinance while existing Defendants have declined to meaningfully oppose preliminary injunctive relief.

#### **IV. Plaintiffs Suffer No Prejudice, and Striking the Filing Would Elevate Form Over Substance**

Plaintiffs cannot demonstrate any meaningful prejudice arising from Proposed Intervenors’ participation. As discussed *supra* Sections I–III, this litigation remains at an early stage, Proposed Intervenors moved promptly in response to Plaintiffs’ request for expedited preliminary relief, and

their submissions addressed issues already before the Court. Under these circumstances, striking the filings would elevate procedural formalism over the practical considerations that govern Rule 24 participation. The intervention issues also remain actively disputed, as Defendants filed an opposition to Proposed Intervenor's motion on May 13, 2026. *See* ECF No. 33. Under these circumstances, striking Proposed Intervenor's filings before the Court resolves the pending Rule 24 issues would be premature and inequitable.

Nor can Plaintiffs plausibly claim surprise. Proposed Intervenor moved to intervene before filing their Opposition to the Motion for Preliminary Injunction, and Plaintiffs have already substantively responded to Proposed Intervenor's participation through both their Opposition to Intervention and the instant Motion to Strike. Plaintiffs therefore had a full opportunity to address Proposed Intervenor's positions and cannot identify any tangible litigation disadvantage resulting from the filings remaining on the docket. Indeed, while objecting to Proposed Intervenor's participation, Plaintiffs simultaneously assented to Defendants' request for additional time to respond to the Complaint, further underscoring the absence of any meaningful prejudice or disruption arising from Proposed Intervenor's filings.

The First Circuit has emphasized that prejudice is a "vital element" of the timeliness inquiry under Rule 24. *Banco Popular*, 964 F.2d at 1232. Generalized objections to additional participation, without a showing of meaningful prejudice, are insufficient to justify exclusion under Rule 24. *See Fiandaca v. Cunningham*, 827 F.2d 825, 834 (1st Cir. 1987). Here, Plaintiffs cannot identify any cognizable prejudice resulting from Proposed Intervenor's participation in the preliminary injunction briefing at this early stage of the litigation.

By contrast, striking Proposed Intervenor's filings would serve no practical purpose. It would neither streamline the proceedings nor conserve judicial resources. Instead, it would elevate

procedural formalism over the equitable and practical considerations that govern Rule 24 participation, particularly in the context of expedited preliminary injunction proceedings where the challenged relief threatens immediate impairment of the interests asserted in support of intervention.

Moreover, because Plaintiffs seek extraordinary injunctive relief directed at a duly enacted municipal ordinance, the Court benefits from receiving full briefing regarding the legal and practical consequences of the requested injunction. Excluding Proposed Intervenors' submissions under these circumstances would unnecessarily restrict the presentation of issues directly relevant to the Court's consideration of Plaintiffs' Motion for Preliminary Injunction.

At minimum, even if the Court declines to treat Proposed Intervenors' submissions as formal party filings pending resolution of intervention, the Court may properly construe those submissions as amici materials rather than strike them from the record entirely.

### **CONCLUSION**

For the foregoing reasons, Proposed Intervenors respectfully request that the Court deny Plaintiffs' Motion to Strike in its entirety. Proposed Intervenors further request that the Court permit consideration of their submissions in connection with Plaintiffs' Motion for Preliminary Injunction pending resolution of the Motion to Intervene. In the alternative, should the Court decline to treat Proposed Intervenors' submissions as formal party filings at this stage, Proposed Intervenors respectfully request that the Court construe those submissions as amici materials rather than strike them from the record.

Dated: May 15, 2026

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1(a)(2), I certify that prior to filing this Opposition, I met and conferred with counsel of record for all parties.

/s/Micah-Shalom Kesselman

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**CERTIFICATE OF SERVICE**

I certify that on May 15, 2026, a copy of the foregoing Opposition was served on all counsel of record through the Court's CM/ECF system.

/s/Micah-Shalom Kesselman

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