Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-001942 03/07/2024

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
P. McKinley
Deputy

WARREN PETERSEN, et al.

JOSEPH KANEFIELD

v.

ADRIAN FONTES

KAREN HARTMAN-TELLEZ



DAVID ANDREW GAONA
KORY A LANGHOFER
THOMAS J. BASILE
TRACY A OLSON
KARA MARIE KARLSON
KYLE ROBERT CUMMINGS
AUSTIN C YOST
LALITHA D MADDURI
MARILYN GABRIELA ROBB
ROY HERRERA
DANIEL A ARELLANO
JILLIAN L ANDREWS
AUSTIN TYLER MARSHALL
ALEXIS E DANNEMAN
MARGO R CASSELMAN
JUDGE BLANEY

**RULING**

The Court has reviewed and considered Proposed Intervenor-Defendants Arizona Alliance for Retired Americans and Voto Latino's *Motion to Intervene*, Plaintiff's *Response to Motion to Intervene*, Proposed Intervenors' *Reply in Support of Proposed Intervenor-Defendants Arizona*

*Alliance for Retired Americans and Voto Latino's Motion to Intervene*, and the limited record and additional filings in this case.

Plaintiff Warren Petersen, President of the Arizona State Senate, and Plaintiff Ben Toma, Speaker of the Arizona House of Representatives, brought the present case challenging the implementation of certain provisions of the 2023 Elections Procedures Manual ("EPM"), promulgated by Defendant Adrian Fontes, the Arizona Secretary of State (the "Secretary"). Plaintiffs seek injunctive and declaratory relief, arguing, *inter alia*, that the Secretary exceeded his authority and/or that the challenged provisions are in conflict with Arizona law. The Secretary is represented by the Arizona Attorney General's Office.

Proposed Intervenor-Defendants Arizona Alliance for Retired Americans and Voto Latino ("Proposed Intervenors) seek to intervene in the lawsuit in opposition to Plaintiffs' requested relief. Arizona Alliance for Retired Americans is a non-profit corporation whose membership includes retirees from public and private sector unions, community organizations, and individual activists. Voto Latino is a national advocacy group for the Latinx community.

Proposed Intervenors move to intervene pursuant to two sections of Rule 24, Ariz.R.Civ.P.: (1) "intervention as of right" pursuant to Rule 24(a)(2); and (2) "permissive intervention" pursuant to Rule 24(b)(1)(B).



Intervention as a Matter of Right

To claim a ***right*** to intervention pursuant to Rule 24(a)(2), Proposed Intervenors must establish all four of the following elements: (1) the motion to intervene must be timely; (2) Proposed Intervenors must assert an interest relating to the property or transaction at issue in the lawsuit; (3) Proposed Intervenors must show that disposition of the lawsuit may impair or impede their ability to protect their interests; and (4) Proposed Intervenors must show that the other parties would not adequately represent their interests. *Woodbridge Structured Funding, LLC v. Arizona Lottery*, 235 Ariz. 25, 28 ¶ 13 (App. 2014).

The Court will focus on the fourth element: that other parties would not adequately represent Proposed Intervenors' interests. As the parties seeking intervention, Proposed Intervenors bear the burden of establishing that existing parties do not or will not adequately represent their interests. *U.S. v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002). Proposed Intervenors have not met that burden.

**THE COURT FINDS** that Proposed Intervenors' interests are adequately represented in this case by the Secretary and the Attorney General's Office. Indeed, the Secretary has already made identical arguments and taken identical positions to those that Proposed Intervenors seek to

advance as potential parties to this case. As just a few examples from Proposed Intervenors' *[Proposed] Motion to Dismiss*, compared with the Secretary's already-filed *Motion to Dismiss*:

- If permitted to intervene, Proposed Intervenors intend to argue that Plaintiffs' lawsuit should be dismissed based upon lack of standing, arguing: "[a]s a threshold matter, Plaintiffs lack standing to even bring these claims. No doctrine allows individual legislators to broadly use the judiciary to order an executive-branch official to interpret law as they see fit[.]" *See* Proposed Intervenors' *[Proposed] Motion to Dismiss* at pp. 1-2. But the Secretary also moved to dismiss Plaintiff's action on the same basis, arguing: "Plaintiffs lack standing to maintain this action on behalf of the Arizona Legislature because disagreement with the Secretary's interpretation of law is not an institutional injury to the legislature. Nor have Plaintiffs shown that the Legislature has authorized them to institute this litigation on its behalf." *See* Defendant's *Motion to Dismiss* at pg. 2.

- Proposed Intervenors also intend to argue that Plaintiffs have failed to state a claim because the Secretary acted within his authority by promulgating the challenged provisions in the EPM, arguing: "The legislature has delegated to the Secretary the legal authority and duty to do exactly what he has done here. *See* Proposed Intervenors' *[Proposed] Motion to Dismiss* at pg. 2. But again, the Secretary has already made that argument in this case, arguing in his *Motion to Dismiss*: "Moreover, each of the challenged EPM provisions is within the Secretary's authority to promulgate and none of them contravenes the laws they help to implement. The Legislature has delegated to the Secretary, the State's chief election officer, the authority to issue the EPM to fill the gaps that it would be impractical to include in statute." *See* Defendant's *Motion to Dismiss* at pg. 2 (internal citations omitted).

- Finally, Proposed Intervenors intend to argue that Plaintiffs must bring their challenges to the EPM through legislation, not through the courts, arguing: "[i]f Plaintiffs disagree with the Secretary's interpretation of the law, then they may use their positions to propose legislation to address it, subject to the ordinary legislative process." *See* Proposed Intervenors' *[Proposed] Motion to Dismiss* at pg. 2. But the Secretary has already made that identical argument in his *Motion to Dismiss*, arguing, with strikingly similar language: "[i]f [the Legislature] would like to be part of the process of creating the EPM, the Legislature's recourse is through the legislative process, not through this Court." *See* Defendant's *Motion to Dismiss* at pg. 2.

The similarities between Proposed Intervenors' arguments and those of the Secretary are not confined to the parties' respective motions to dismiss. Proposed Intervenors also seek to advance the same arguments in their *[Proposed] Response to Plaintiffs' Motion for Preliminary Injunction* that the Secretary has already made in his currently filed *Response in Opposition to Motion for Preliminary Injunction*. Both motions argue: (1) that Plaintiffs lack standing to support their lawsuit; (2) that the Secretary had the authority to take the actions that Plaintiffs are now challenging; (3) that the EPM's guidance does not conflict with Arizona law; and (4) that neither the equities nor public policy support the relief that Plaintiffs seek. The Secretary's currently filed *Response* offers two additional arguments: (5) that Plaintiffs' interpretation of certain statutes will negatively impact voter rights; and (6) that Plaintiffs have failed to demonstrate irreparable harm to support injunctive relief.

Thus, Proposed Intervenors have failed to identify any substantive arguments or positions that they intend to advance that the Secretary, represented by the Attorney General's Office, is not already making in this case. There may be some nuanced difference between how the arguments are presented, but those differences are not material. And Proposed Intervenors can adequately alert the Court through an amicus brief to any minor differences between the Secretary's arguments and the arguments Proposed Intervenors had intended to make. *Fann v. Kemp*, 2021 WL 12180260 (2021) (unpublished) (denying motion to intervene but permitting filing of amicus brief).



**THE COURT FURTHER FINDS** that the issues presented in Plaintiff's *Verified Complaint* and *Motion for Preliminary Injunction* are primarily – if not entirely – issues of law, for which witness testimony is likely unnecessary.

**THE COURT FURTHER FINDS** that although the Court questions whether Proposed Intervenors have established the second and third elements of the *Woodbridge* test for intervention as a matter of right, the Court need not address those additional elements. A party seeking to intervene must establish all four elements. *Woodbridge*, 235 Ariz. at 28 ¶ 13. Having failed to establish that other parties would not adequately represent their interests, Proposed Intervenors cannot establish a ***right*** to intervene pursuant to Rule 24(a)(2).

Permissive Intervention

Although Proposed Intervenors have not established a right to intervene, the Court may still grant permissive intervention if Proposed Intervenors have "a claim or defense that shares with the main action a common question of law or fact." Rule 24(b)(1)(B). To determine whether permissive intervention is appropriate in this case, the Court may look to certain factors identified by our supreme court in *Bechtel v. Rose*, 150 Ariz. 68 (1986). These factors include: (1) the nature and extent of Proposed Intervenors' interests and their standing to raise relevant legal issues; (2)

the legal positions that Proposed Intervenors seek to advance, and the probable relation to the merits of the case; (3) whether, as discussed above, Proposed Intervenors' interests are adequately represented by other parties; (4) whether intervention will prolong or unduly delay the litigation; and (5) whether Proposed Intervenors will significantly contribute to full development of the underlying factual issues and to the just and equitable adjudication of the legal questions presented. *Id*. at 72.

**THE COURT FINDS** after reviewing the above considerations that factors two, three, four, and five are most relevant and persuasive in the present case. The Court has already addressed factors two, three, and five, above, finding that the Secretary can, and in fact already is, adequately representing Proposed Intervenors' interest. Indeed, the Secretary has already advanced the same legal positions in this case that Proposed Intervenors intend to advance. There are also few, if any, genuine issues of material fact in this case. Factors two, three, and five therefore weigh against permissive intervention.

**THE COURT FURTHER FINDS** Factor four also weighs against permissive intervention. In addition to their *Motion to Intervene*, Proposed Intervenors filed a 17-page *[Proposed] Motion to Dismiss* that contains nearly identical arguments to the Secretary's already-filed, 17-page *Motion to Dismiss*. Proposed Intervenors also filed a 16-page *[Proposed] Response to Plaintiffs' Motion for Preliminary Injunction* that asserts the same arguments as the Secretary's already-filed *Response in Opposition to Motion for Preliminary Injunction*. The Court can already see that intervention, if permitted, will prolong and unduly delay the litigation, as well as unnecessarily burden the resources of the existing parties and the Court, with no discernable benefit to a just determination of the issues in this case. *See* Rule 1, Ariz.R.Civ.P. (requiring the Court to administer and employ the Rules of Civil Procedure in a manner to secure the just, speedy, and inexpensive determination of every case). Factor four therefore weighs against permissive intervention.



**THE COURT THEREFORE FINDS** that Proposed Intervenors have failed to establish their entitlement to intervention pursuant to Rule 24(a)(2) or that the Court should exercise its discretion and permit intervention pursuant to Rule 24(b)(1)(B).

Good cause shown and in the Court's discretion:

**IT IS THEREFORE ORDERED** denying Proposed Intervenor-Defendants Arizona Alliance for Retired Americans and Voto Latino's *Motion to Intervene*.

**IT IS FURTHER ORDERED** Proposed Intervenors may file an amicus brief of no more than 17 pages and without attachments by **March 25, 2024**.