

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

HONORABLE JENNIFER RYAN-TOUHILL

CLERK OF THE COURT
A. Meza
Deputy

ARIZONA FREE ENTERPRISE CLUB, et al.

DANIEL W TILLEMANN

v.

ADRIAN FONTES, et al.

KARA MARIE KARLSON

NATHAN T ARROWSMITH
DAVID ANDREW GAONA
ROY HERRERA
AMERICA FIRST POLICY INSTITUTE
NO ADDRESS ON RECORD
PHILIP TOWNSEND
NO ADDRESS ON RECORD
TIMOTHY A LASOTA
ALEXIS E DANNEMAN
JOHN S BULLOCK
DOCKET CV TX
JUDGE RYAN-TOUHILL

MINUTE ENTRY

Before the Court is Plaintiffs' May 28, 2024, *Motion for Preliminary Injunction*. The Court shall summarize the relevant procedural history of the case for this Minute Entry and enter orders.

February 9, 2024

On February 9, 2024, Plaintiff Arizona Free Enterprise Club filed suit against Adrian Fontes, Secretary of State. Plaintiff alleges Defendant announced "unlawful rules" in the Elections Procedures Manual (EPM). *Complaint*, p. 2, ¶ 1. Plaintiff alleges these new rules are

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

unconstitutional, contradict statutory authority, and lack the force of law. *Id.* at ¶ 3. Plaintiff made three claims against Defendant and sought declaratory relief.

February 14, 2024

On February 14, 2024, Arizona Alliance for Retired Americans and Voto Latino filed their motion to intervene. Those entities claimed intervention as of right and/or permissive intervention due to their status as “members of historically marginalized populations. . . including Arizona’s Latino community.” *Motion*, p. 3, ¶ 1. Defendant did not object to intervention but Plaintiff did.

February 15, 2024

Plaintiff filed their notice of change of judge.

February 20, 2024

On February 20, 2024, the Democratic National Committee (DNC) and Arizona Democratic Party (ADP) moved to intervene in the case. Those entities claimed intervention as of right/and or permissive intervention because “they have significant, constitutionally protected interests in this action that, if successful, not only would subject their constituents and members to intimidation and harassment, but also would force them to expend significant resources. [Moreover,] the existing parties do not adequately represent Proposed Intervenor’s interests because they diverge from those of the Secretary, who represents all Arizonans[.]” *Motion*, p. 1, ¶ 3.

February 29, 2024

The parties stipulated to additional time in which the Secretary of State may file his responsive pleadings.

March 7, 2024, March 8, 2024

On March 7, 2024, Arizona Alliance for Retired Americans and Voto Latino requested the Court summarily grant their request to intervene because no party filed an opposition to the request. The next day, Plaintiff filed their response, arguing the deadline for a responsive pleading is March 11, 2024, not March 5, 2024. Plaintiff also filed its proposed response to intervention in an abundance of caution.

March 11, 2024

On March 11, 2024, proposed intervenors (Arizona Alliance, et. al) filed their reply to Plaintiff’s response to intervenor’s request pursuant to Rule 7.1(b)(2), arguing Plaintiff relied upon

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

inapplicable rules, improperly asked for an extension of time, and no excusable neglect exists. *See Reply*, generally.

On this same date Plaintiff filed their opposition to allowing the DNC and ADP to intervene.

March 20, 2024

On March 20, 2024, Defendant Fontes filed his motion to dismiss and his response to Plaintiff's request for an order to show cause hearing. Additionally, proposed intervenors (Arizona Alliance, et. al) filed their reply to Plaintiff's opposition to intervention.

March 22, 2024

On March 22, 2024, the League of Women Voters of Arizona, Protect Democracy Project, and Campaign Legal Center filed their *Motion for Leave to File an Amicus Brief*. In their request, the entities stated neither Plaintiff or Defendant opposed the filing of an amicus brief.

March 25, 2024

On March 25, 2024, the DNC and ADP filed their reply in support of their intervention request.

March 25-29, 2024

In late March, Plaintiff's attorney withdrew, Plaintiff obtained new counsel, Plaintiff informed the Court it intended to amend its complaint, and Plaintiff suggested the Court vacate the OSC hearing the next day as the identified areas of dispute would likely change. Later, the parties stipulated to amendment, and agreed Defendant could either keep the pending motion to dismiss or withdraw the pleading and file a new motion no later than May 5, 2024.¹

The Court, receiving notice that (1) attorneys changed, (2) an amended complaint would be filed, and (3) Defendant may or may not file a new motion to dismiss, vacated the OSC and allowed the parties additional time in which to restructure their disputes.

April 15, 2024

On April 15, 2024, Plaintiff filed an amended complaint, adding Philip Townsend and America First Policy Institute as parties (plaintiffs). Mr. Townsend is a registered voter in Yuma County, Arizona, and America First Policy Institute is a non-profit organization. *Amended Complaint*, pp. 9-10, ¶¶ 38-39. The 30-page amended complaint asserts violations of both the

¹ The parties later agreed to a different deadline.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

Arizona Constitution and various state statutes. Additionally, Plaintiffs added Kris Mayes, Arizona Attorney General, as a defendant.

April 30, 2024

On April 30, 2024, the parties stipulated to allowing the State additional time in which to file a response to the amended complaint. The Court granted the request for additional time.

May 28, 2024

On May 28, 2024, Plaintiffs filed their *Motion for Preliminary Injunction*, asking for an order that prohibits implementation of the “speech restriction” and “out-of-state mail-ballot authorization” provisions of the EPM.

May 30, 2024

On May 30, 2024, Plaintiffs voluntarily dismissed three claims in the amended complaint: (1) investigation of citizenship status, (2) signature verification, and (3) duty to canvas. *Notice* [], p. 2.

May 31, 2024

On May 31, 2024, Defendant Fontes filed his motion to dismiss the amended complaint and joined in Defendant Mayes’ motion to dismiss, filed this same date.

Motions to Intervene

THE COURT FINDS it has two pending motions for intervention in this case, referenced in the summary, above. Both entities seek intervention based upon Rule 24(a)(2), intervention as of right. To claim a right to intervene, an interested person (entity) must meet four elements: (1) timeliness; (2) an interest relating to the property or transaction at issue; (3) disposition of the suit may impact the proposed intervenor’s ability to protect their interests; and (4) the other parties would not adequately represent the interests of the proposed intervenor. *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014).

Both the Arizona Alliance for Retired Americans and Voto Latino (AZ Alliance) and the Democratic National Committee (DNC) and Arizona Democratic Party (ADP) timely filed their motions to intervene. That is not at issue. Moreover, both proposed groups (intervenors) adequately claim an interest relating to the subject matter. *See* 24(a), Ariz. R. Civ. P. Therefore, both motions demonstrate that they satisfy elements (1) and (2). The Court is not persuaded, however, that either entity has a right to intervene, as the Court does not find proposed intervenors have met their burden of meeting elements (3) and (4).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

The Court disagrees that the movants have shown the resultant actions may impair or impede their ability to protect their interests and that other parties do not represent these same interests. *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, 28, ¶ 13 (App. 2014). “For the purposes of intervention of right, an applicant must show it has such an interest in the case that the judgment would have a *direct* legal effect upon its rights. . . [a] mere possible or contingent equitable effect is insufficient.” *Id.* at p. 29, ¶ 15 (citations omitted). Here, AZ Alliance only presents speculative facts that the decision rendered in the case may impact minority communities and elderly voters. *Motion*, p. 8, ¶ 1. AZ Alliance has failed to provide concrete argument or facts demonstrating how the existing election manual would serve their interests. A generalized interest, without more, is insufficient to meet element (3). Relatedly, the DNC/ADP argue that a contrary judgment would impede “organizational and associational interests.” *Motion*, p. 7, ¶ 5. Retraining employees or possibly disenfranchising unidentified voters, without more, is insufficient to meet the burden of element (3).

Even if AZ Alliance and DNC/ADP have met their burden in showing that the outcome of the case may impact its interests, proposed intervenors have not proven that the other parties will inadequately represent the entities’ interests. The Court finds that both the Secretary of State and the Office of the Attorney General are more than capable of representing the interests claimed by these proposed intervenors. Factually, both Defendants have articulated positions that coincide with those of proposed intervenors, demonstrating that the existing parties share the same interests as AZ Alliance and DNC/ADP. Those positions include, e.g., failure to state a claim upon which relief can be granted, lack of standing, and laches, among others.

The rule for intervention of right does not allow intervention “where ‘existing parties adequately represent’ the interest of the proposed intervenor.” *Heritage Village II Homeowners Association v. Norman*, 246 Ariz. 567, 571, ¶ 15 (App. 2019)(Citation omitted). Proposed intervenors fail to identify any issues, arguments, or stances that Defendants have not or will not make in this case. Consequently, because AZ Alliance and DNC/ADP have not met all four *Woodbridge* elements, they have not met their burden of showing intervention as of right.

Turning to the entities’ request for permissive intervention, the Court finds it may nevertheless grant permissive intervention if the moving entity shows existence of “a claim or defense that shares with the main action a common question of law or fact.” 24(b)(1)(B), Ariz. R. Civ. P. Permissive intervention is within this Court’s discretion; if the Court finds that proposed intervenors demonstrate an interest in the proceeding pursuant to Rule 24(b)(1)(B), this Court may then consider other factors. *Bechtel v. Rose In and For Maricopa County*, 150 Ariz. 68, 72 (1986). Those factors include “the nature and extent of the intervenors’ interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probably relation to the merits

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

of the case.” *Id.* The Court may also consider “whether the intervenors’ interests are adequately represented by other parties[.]” *Id.*

The Court has already found that both the Secretary of State and Office of the Attorney General adequately represent the positions put forth by both AZ Alliance and DNC/ADP. This finding is not limited to intervention as of right—the same arguments and holdings are applicable to permissive intervention. Moreover, the legal positions expressed by the proposed intervenors, while related to the merits of the case, are already espoused by the Defendants. Adding additional parties to the case will prolong litigation without adding different or novel arguments to those presented by the current parties. No significant contribution will occur by adding these entities and any potential benefit is already met by both Defendants. If AZ Alliance and DNC/ADP believe they have contributing arguments to present to the Court, nothing prevents those entities from seeking leave to file amicus briefs. Therefore,

IT IS ORDERED denying Arizona Alliance for Retired Americans’ and Voto Latino’s February 14, 2024, motion to intervene.

IT IS FURTHER ORDERED denying the Democratic National Committee’s and Arizona Democratic Party’s February 20, 2024, motion to intervene.

Other Orders

Upon motion by League of Women Voters of Arizona, Protect Democracy Project, and Campaign Legal Center and no objection filed,

IT IS ORDERED granting the entities’ request to file their *Amicus Brief*.

THE COURT FINDS Defendants have filed new motions to dismiss. The response time has not expired and, therefore, these requests are not ripe.

IT IS ORDERED the parties shall follow prescribed response and reply times for their briefings unless the parties present the Court with a stipulation to modify.

THE COURT FINDS Plaintiffs have filed their May 28, 2024, *Motion for Preliminary Injunction* after withdrawing their first request in late March 2024.

THE COURT FURTHER FINDS it is in the interests of justice to consolidate an evidentiary hearing on Plaintiffs’ request for a preliminary injunction with oral argument on the newly-file motions to dismiss. Therefore,

IT IS ORDERED directing this Division’s staff to communicate with counsel for Plaintiffs and Defendants to find an agreed-upon date and time for both an evidentiary hearing and oral

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-002760

06/07/2024

argument. (The Court respectfully declines to accommodate availability of those attorneys appearing of counsel/awaiting *pro hac vice* approval.) Counsel are ordered to respond to Division staff timely so that the Court may set the hearings.

IT IS FURTHER ORDERED each side will have half the time allotted at the future hearing; multiple attorneys shall decide amongst themselves how to divide the time further. The Court will issue additional orders after the Court has a firm date and time for the evidentiary hearing and oral argument.

RETRIEVED FROM DEMOCRACYDOCKET.COM