

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Republican National Committee, *et al.*,
4 Plaintiff(s),

5 vs.

6 Francisco Aguilar, *et al.*,
7 Defendant(s).

2:24-cv-00518-CDS-MDC

Report and Recommendation

8 Pending before the Court is the proposed intervenor's *Motion to Intervene as Defendants*
9 ("Motion to Intervene") (ECF No. 7). The Court recommends GRANTING the Motion to Intervene.

10 **DISCUSSION**

11 **I. BACKGROUND**

12 The plaintiffs bring their case under the National Voter Registration Act of 1993, 52 U.S.C. §
13 20507 ("NVRA"). ECF No. 1 at 2. In sum, the plaintiffs allege that "defendants are failing to make a
14 reasonable effort to conduct appropriate list maintenance as required by NVRA." *Id.* at ¶6. A primary
15 relief sought by plaintiffs is the removal of certain ineligible individuals from the official list of eligible
16 voters. *Id.* at ¶83. Defendants are sued in their official capacity.

17 The Proposed Intervenors ("Proposed Intervenors") **Rise, Institute for a Progressive Nevada,**
18 **and The Alliance for Retired Americans** filed a Motion to Intervene (ECF No. 7), seeking to intervene
19 as a matter of right or, as an alternative, under permissive intervention. The Proposed Intervenors are
20 non-profit organizations with voting related purposes, whose members embrace registered voters
21 included in the list maintenance required by the NVRA. *See* ECF No. 7 at 4-7.

22 **II. LEGAL STANDARD**

23 A person or entity seeking to intervene as of right must "claim an interest relating to the property
24 or transaction that is the subject of the action and is so situated that disposing of the action may as a
25 practical matter impair or impede the movant's ability to protect its interest, unless existing parties

1 adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The Ninth Circuit applies a four-part test
2 when analyzing a motion to intervene under Rule 24(a)(2):

3 (1) the motion must be timely; (2) the applicant must claim a “significantly protectable”
4 interest relating to the property or transaction which is the subject of the action; (3) the
5 applicant must be so situated that the disposition of the action may as a practical matter
6 impair or impede its ability to protect that interest; and (4) the applicant’s interest must
7 be inadequately represented by the parties to the action.

8 *Callahan v. Brookdale Senior Living Communities, Inc.*, 42 F.4th 1013, 1020 (9th Cir. 2022) (internal
9 citations omitted).

10 Even if an intervenor does not satisfy the four-part test for intervention as of right, they may still
11 intervene under Rule 24(b). A court may allow anyone who “has a claim or defense that shares with the
12 main action a common question of law or fact” to intervene. Fed. R. Civ. P. 24(b)(1)(B). The Ninth
13 Circuit has held that permissive intervention will be granted if the movant shows (1) independent
14 grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main
15 action, have a question of law or a question of fact in common. *See SEC v. Beasley*, 2024 U.S. App.
16 LEXIS 6239, at *5 (9th Cir. 2024) (citing *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 995
17 (9th Cir. 2009)) (internal citations omitted); *see also Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir.
18 1998).

19 In evaluating motions to intervene, courts must “take all well-pleaded, nonconclusory allegations
20 in the motion to intervene, the proposed complaint or answer in intervention, and declarations
21 supporting the motion as true.” *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir.
22 2001). Regardless of whether the applicant seeks to intervene as a matter of right or permissively, such
23 requests receive liberal construction in favor of intervention. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083
24 (9th Cir. 2003).

1 III. ANALYSIS

2 A. Intervention As Of Right

3 The Proposed Intervenors assert that they are entitled to intervene as of right under Rule
4 24(a)(2). They argue that: (1) the motion is timely; (2) they have substantial threatened interests; and (3)
5 defendants do not adequately represent them. ECF No. 7. The plaintiffs argue that the Proposed
6 Intervenors do not have a right to intervene because they: (1) do not have a legally protectable interest in
7 this action; (2) do not make a “very compelling showing” that the defendants’ representation will be
8 inadequate; (3) failed to show the Court has independent basis for jurisdiction; and (4) will delay the
9 action. ECF No. 18.

10 i. The Motion To Intervene Is Timely

11 The Court finds that the Proposed Intervenors have satisfied the first factor of the four-part test
12 by timely filing their Motion to Intervene (ECF No. 7). In determining whether a motion to intervene is
13 timely, the Ninth Circuit considers three factors: “(1) the stage of the proceeding at which an applicant
14 seeks to intervene; (2) the prejudice to other parties; and (3) reason for and length of delay.” *League of*
15 *United Latin American Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997) (citing *County of*
16 *Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986)). Here, the Proposed Intervenors filed their
17 motion on March 21, 2024, only a few days after the plaintiffs filed their Complaint on March 18, 2024.
18 See ECF Nos. 1, 7. The Court need not consider prejudice nor reason for and length of delay. There is
19 no prejudice to filing a motion to intervene mere three days after the Complaint was filed. Nor was there
20 a delay in filing three days after the Complaint was filed.
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22 ii. The Proposed Intervenors Have Significant Protectable Interests

23 The plaintiffs and the Proposed Intervenors disagree as to whether the Proposed Intervenors have
24 a significantly protectable interest. The Proposed Intervenors argue that they “each have at least two
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1 significantly protectable interests that [p]laintiff’s lawsuit threatens to impair.” ECF No. 7 at 12:12-15.

2 The Proposed Intervenors assert that:

3 (1) [They] have a substantial interest in ensuring that their members and
4 constituents are able to register to vote, remain registered to vote, and
5 successfully participate in the upcoming general election.

6 (2) The purge sought by [p]laintiffs would require each Proposed
7 Intervenor to divert time and resources away from other essential election-
8 year activities, harming their missions in the process.

9 ECF No. 7 at 12-14.

10 In their Opposition (ECF No. 18), the plaintiffs argue that the Proposed Intervenor’s interests
11 “are either irrelevant to the claims in this case or are far too speculative to support intervention.” ECF
12 No. 18 at 4:4-5. The plaintiffs further argue that the Proposed intervenors do not have a legally protected
13 interest in keeping ineligible voters on the rolls. *Id.* at 5:1-2. They assert that “[a]ffording complete relief
14 to the plaintiffs in this case would not actually affect the Proposed Intervenors interest in ensuring those
15 eligible voters remain registered.” *Id.* at 5:6-8 (internal citations and quotations omitted). The plaintiffs
16 further assert that Proposed Intervenors can litigate their own case once their right has been “aggrieved
17 by a violation of the NVRA.” *Id.* at 5:11-13. They argue that the Proposed Intervenors interests is
18 “contingent on several events that have not yet occurred” and is therefore too “speculative.” *Id.* at 5. The
19 plaintiffs also argue that the Proposed Intervenor’s economic interests are not a significantly protectable
20 interest.

21 The Proposed Intervenors respond to the plaintiff’s arguments by stating that: (1) that the Rules
22 do not require a showing that their interests will be impaired with “absolute certainty” (ECF No. 20 at
23 4:13-17); (2) plaintiff’s argument that the Proposed Intervenors file their own lawsuit is incompatible
24 with the function of Rule 24 which seeks to prevent the risk of inconsistent judgments (ECF No. 20 at
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1 5:8-11); and (3) their economic interests are a protectable interest because they will have to divert
2 resources to prevent a frustration of their purpose (ECF No. 20 at 6:4-6).

3 The Court finds that the Proposed Intervenors have sufficient protectable interests. “Whether an
4 applicant for intervention as of right demonstrates sufficient interest in an action is a practical, threshold
5 inquiry, and [n]o specific legal or equitable interest need be established.” *Citizens for Balanced use v.*
6 *Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (citing *Nw. Forest Res. Council v.*
7 *Glickman*, 82 F.3d 825, 836 (9th Cir.1996)) (internal citations and quotations omitted). “To demonstrate
8 a significant protectable interest, an applicant must establish that the interest is protectable under some
9 law **and** that there is a relationship between the legally protected interest and the claims at issue.” *Id.*
10 (emphasis added). The applicant must satisfy each element. *Arakaki* 324 F.3d at 1084 (citing *Donnelly*,
11 159 F.3d at 410). “An applicant generally satisfies the ‘relationship’ requirement only if the resolution
12 of the plaintiff’s claims actually will affect the applicant.” *Id.* Here, the Proposed Intervenors have
13 pointed out that the “NVRA itself reflects Proposed Intervenors’ interests.” ECF No. 7 at 13. “The law
14 creates a cause of action to challenge improper removal of registered voters.” *Id.* (citing 52 U.S.C. §
15 20510(b)). The Proposed Intervenors have established protectable interests and a relationship between
16 such interest and plaintiffs’ claims. The Proposed Intervenors state that they seek to prevent “improper
17 removal of their members from Nevada’s voter rolls.” *Id.* The plaintiffs seek to remove ineligible voters
18 from Nevada’s voter lists. ECF No. 18 at 4. However, the Proposed Intervenors have pointed out that
19 while plaintiffs’ efforts may remove ineligible voters, it “could also remove eligible voters,” which may
20 include members of the Proposed Intervenors. ECF No. 7 at 14. Further the Proposed Intervenors
21 allege that they would be forced to divert their resources in order to combat the potential consequences
22 of plaintiffs’ claims. The Court takes as true their concerns and, per the Ninth Circuits liberal
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1 construction of permitting intervention, the Court finds that there is a significant protectable interest.
2 *Berg*, 268 F.3d at 820; *Arakaki*, 324 F.3d at 1083.

3 **iii. Defendants Do Not Adequately Represent Proposed Intervenors**

4 The Proposed Intervenors and plaintiffs disagree as to whether the named defendants adequately
5 represent the Proposed Intervenors interests. The Proposed Intervenors argue that since the government
6 has “twin objectives” in “easing barriers to registration and voting, while at the same time protecting the
7 electoral integrity and the maintenance of accurate voter rolls,” it cannot adequately represent the
8 interests of partisan or private actors. ECF No. 7 at 16-17. Plaintiffs argue that the Proposed Intervenors
9 and the State share the same “ultimate objective: dismissal of the suit,” therefore, the defendants
10 adequately represent the Proposed Intervenors interests.

11 “There is an assumption of adequacy when [a] government is acting on behalf of a constituency
12 that it represents.” *GP Management Corporation v. City of Los Angeles*, 339 F.R.D. 621, 624 (C.D. Cal.
13 2021) (citing *Arakaki*, 324 F.3d at 1086). “At the same time, however, ‘[t]he burden on proposed
14 intervenors in showing inadequate representation is minimal, and would be satisfied if they could
15 demonstrate that representation of their interests ‘may be’ inadequate.” *Id.* “Courts, including the Ninth
16 Circuit, ‘have permitted intervention on the government’s side in recognition that the intervenors’
17 interests are narrower than that of the government and therefore may not be adequately represented.”
18 *Id.* (citing *Arakaki*, 324 F.3d at 1087 (collecting cases). The Proposed Intervenors have alleged that the
19 government’s “twin interests” *may* interfere with the Proposed Intervenors’ mission and interests. ECF
20 No. 7 at 17. The Proposed Intervenors have properly pointed out that the burden is a minimal one, and
21 since they have demonstrated their interests *may* be affected, the Court finds that the Proposed
22 Intervenors have shown that the named defendants cannot adequately represent them.
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1 **B. Proposed Intervenors May Intervene Per Rule 24(b)**

2 The Court next turns to whether the Proposed Intervenors can intervene under a permissive
3 intervention standard under Rule 24(b). As previously noted, a person or entity can still intervene, even
4 if they do not meet the requirements of Rule 24(a), if they have “a claim or defense that shares with the
5 main action a common question of law or fact” to intervene. Fed. R. Civ. P. 24(b)(1)(B). The Ninth
6 Circuit has held that permissive intervention will be granted if the movant shows (1) independent
7 grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main
8 action, have a question of law or a question of fact in common. *Beasley*, 2024 U.S. App. LEXIS 6239, at
9 *5 (internal citations omitted); *see also Donnelly*, 159 F.3d at 412.

10 The Court first notes that, for the reasons stated above, the motion is timely. The Court also notes
11 that the Proposed Intervenors have alleged that the NVRA is the subject of the action and basis for
12 intervention. The Court now turns to the remaining requirement, independent grounds for jurisdiction,
13 and whether allowing intervention would cause undue delay or prejudice to the original parties.

14 **i. Independent Grounds for Jurisdiction Is Not Necessary**

15 Plaintiffs point out that the Proposed Intervenors do not show that this Court has an independent
16 basis for jurisdiction. ECF No. 18 at 11:1-2. The Proposed Intervenors respond to plaintiff's contention
17 by stating that the jurisdictional requirement “is unnecessary where, as here, in a federal question case,
18 the proposed intervenor raises no new claims.” ECF No. 20 at 10:17-19 (internal citations omitted). The
19 Proposed Intervenors are correct that they are not required to show an independent ground for
20 jurisdiction. The Ninth Circuit has expressly held that “where the proposed intervenor in a federal-
21 question case brings no new claims, the jurisdictional concern drops away.” *Freedom from Religion*
22 *Foundation, Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) (“We therefore clarify that the
23 independent jurisdictional grounds requirement does not apply to proposed intervenors in federal-
24 question jurisdiction cases when the proposed intervenor is not raising new claims.”) (internal citations
25 omitted). The underlying case is brought before the Court under federal-question jurisdiction,

1 specifically a violation of the NVRA, 52 U.S.C. § 20507. The Proposed Intervenors do not raise new
2 claims. ECF No. 7-1 (proposed answer). Thus, the independent jurisdictional requirement is not required
3 under the circumstances here.

4 **ii. There Is No Prejudice Or Undue Delay**

5 Even if the Proposed Intervenors have met the requirements for permissive intervention, the
6 Court also looks to whether there will be prejudice or delay. The Proposed Intervenors and plaintiffs
7 argue as to whether intervention would cause undue delay or prejudice to the original parties. Plaintiffs
8 argue that adding three more defendants will “increase the costs of litigation, make scheduling more
9 cumbersome, and inevitably slow down proceedings.” ECF No. 18 at 12 (internal citations omitted). The
10 Proposed Intervenors argue that there is no basis for the alleged delay or prejudice because they moved
11 to intervene “just three days after the complaint was filed” and that “they will adhere to any schedule set
12 by the Court or agreed to by the existing parties.” ECF No. 20 at 11:6-9. First, the Court notes that there
13 is no prejudice considering that Proposed Intervenors timely filed their Motion to Intervene (ECF No. 7)
14 just a few days after the Complaint was filed. Furthermore, the Proposed Intervenors do not seek to add
15 their own claims, therefore, neither the current defendants nor the plaintiffs will be forced to defend
16 against additional claims. This litigation is early in stage, and thus, the Court finds that there will be no
17 undue delay.

18 **IV. CONCLUSION**

19 The Proposed Intervenors have met the conditions for intervention under intervention as of right
20 and permissive intervention.

21 ACCORDINGLY,

22 **IT IS RECOMMENDED** that the Motion to Intervene (ECF No. 7) be GRANTED.

23 DATED: May 24, 2024.

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Hon. Maximiliano D. Couvillier III
United States Magistrate Judge