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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Scot Mussi, Gina Swoboda, in her capacity as
Chair of the Republican Party of Arizona, and
Steven Gaynor,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as Arizona
Secretary of State,

Defendant.

No. CV-24-01310-PHX-DWL

**PROPOSED INTERVENORS
ARIZONA ALLIANCE FOR
RETIRED AMERICANS AND
VOTO LATINO'S
OPPOSITION TO
PLAINTIFFS' MOTION TO
STRIKE PROPOSED
INTERVENORS' MOTION TO
DISMISS**

INTRODUCTION

Plaintiffs’ Motion to Strike Proposed Intervenor’s Motion to Dismiss (ECF No. 19) should be denied. Parties seeking to intervene as defendants pursuant to Federal Rule of Civil Procedure 24(a) regularly submit proposed motions to dismiss before being granted intervention, and courts regularly consider these motions both on the merits once intervention is granted and to assess the appropriateness of intervention under Rule 24. As Proposed Intervenor explained in their Motion to Intervene, ECF No. 15 (“MTI”), they filed their proposed Motion to Dismiss in accordance with the existing Defendant’s deadline and in the spirit of ensuring the case proceeds efficiently. Because Plaintiffs offer no persuasive reason to strike Proposed Intervenor’s Motion to Dismiss and Proposed Intervenor do not object to Plaintiffs’ request that the Court hold Proposed Intervenor’s Motion to Dismiss in abeyance until it has ruled upon the pending Motion to Intervene, the Motion to Strike should be denied.

RELEVANT BACKGROUND

Plaintiffs filed suit against the Arizona Secretary of State on June 3, 2024, alleging that the Secretary is violating his obligation to conduct “reasonable” voter roll maintenance under Section 8 of the National Voter Registration Act. *See* Compl. ¶¶ 101–07, ECF No. 1 (citing 52 U.S.C. §20507(a)(4)). As relief, Plaintiffs ask this Court to order an overhaul of Arizona’s list-maintenance procedures in the runup to the 2024 general election. *See id.* at 19 (Prayer for Relief).

On June 10, 2024, Proposed Intervenor moved to intervene as defendants under Federal Rule of Civil Procedure 24 to protect their significant interests—their members’ and constituents’ fundamental right to vote, as well as mission-critical resources—that are implicated by Plaintiffs’ claims. *See generally* MTI. Proposed Intervenor’s motion stated that they would abide by all existing deadlines and any scheduling orders of the Court. *Id.* at 9.

Proposed Intervenor filed a Proposed Answer to comply with Rule 24(c)’s requirement that a motion to intervene “be accompanied by a pleading that sets out [the

1 intervenor's] claim or defense," but also noticed their intent "to move for dismissal . . . by
 2 no later than Defendant's [June 25, 2024] deadline." MTI 8 n.4. They requested that the
 3 motion be treated as filed before their Answer should they be granted intervention. *Id.*

4 On June 25, 2024, both the Proposed Intervenors and the Secretary filed their
 5 Motions to Dismiss. ECF Nos. 19, 20.

6 ARGUMENT

7 Plaintiffs' Motion to Strike Proposed Intervenors' Motion to Dismiss should be
 8 denied because it fails to articulate any persuasive basis upon which to strike. Local Civil
 9 Rule 7.2(m)(1), in relevant part, provides that "a motion to strike may be filed only . . . if it
 10 seeks to strike any part of a filing or submission on the ground that it is prohibited (or not
 11 authorized) by a statute, rule, or court order," and the "proponent of [the] motion to strike
 12 bears the burden of persuasion," *Guzman v. Veraz Servs. LLC*, No. 22-CV-00507, 2022 WL
 13 3027997, at *2 (D. Ariz. Aug. 1, 2022). The "determination to strike is in the discretion of
 14 the trial court." *Id.* (citation omitted).

15 Because Plaintiffs do not argue that Proposed Intervenors' Motion to Dismiss was
 16 "prohibited," and they offer no relevant support for their argument that it was "not
 17 authorized," the Court should deny their Motion to Strike. *See, e.g., Karlsson v. Ronn Motor*
 18 *Grp. Inc.*, No. CV-19-04510, 2020 WL 2615972, at *2 (D. Ariz. May 22, 2020) (denying
 19 plaintiffs' motion to strike a motion to dismiss filed by a defendant in default because
 20 plaintiffs failed to show the motion was not "authorized"); *Rolle v. Robel*, No. 23-CV-
 21 00336, 2024 WL 342457, at *1-*2 (D. Ariz. Jan. 30, 2024) (denying motion to strike
 22 because moving party failed to support argument that filing was "deficient" under local
 23 rules).

24 Plaintiffs claim that allowing a party to file a proposed dispositive motion would
 25 effectively "nullif[y] the intervention requirements of Rule 24," but such proposed motions
 26 are routinely filed and considered on the merits if intervention is granted. *E.g., Americans*
 27 *for Prosperity v. Meyer*, No. 23-CV-00470, 2024 WL 1195467, at *1, *4 (D. Ariz. Mar. 20,
 28 2024) (considering political action committee's motion to intervene together with its

1 proposed motion to dismiss, which was filed and briefed on the same schedule as the named
 2 defendants, and granting both motions); *Ctr. for Biological Diversity v. Wheeler*, No. 18-
 3 CV-00050, 2018 WL 11447079, at *2, *5 (D. Ariz. Oct. 29, 2018) (granting intervenor’s
 4 motion to dismiss, which was originally filed as a proposed motion alongside motion to
 5 intervene). Moreover, courts often consider motions to dismiss submitted by proposed
 6 intervenor-defendants as part of their assessment of the propriety of intervention. *See, e.g.,*
 7 *Alturas Indian Rancheria v. Cal. Gambling Control Comm’n*, No. CIV. S-11-2070, 2011
 8 WL 5118974, at *3 (E.D. Cal. Oct. 27, 2011) (granting intervention and considering
 9 arguments in proposed motion to dismiss to assess relationship between intervenor’s
 10 asserted interests and the claims at issue in the case); *Maverick Gaming LLC v. United*
 11 *States*, No. 3:22-CV-05325, 2022 WL 3586995, at *3 (W.D. Wash. Aug. 22, 2022)
 12 (similar); *San Diego Cnty. Lodging Ass’n v. City of San Diego*, No. 20-CV-2151, 2021 WL
 13 1733383, at *2 (S.D. Cal. May 3, 2021) (similar). Plaintiffs’ argument that Proposed
 14 Intervenors’ Motion to Dismiss should be stricken thus contradicts common practice under
 15 Rule 24.

16 Plaintiffs also argue that under Federal Rule of Civil Procedure 17(a), Proposed
 17 Intervenors are not real parties in interest and thus cannot “prosecute” the “action” by filing
 18 a motion to dismiss. Mot. to Strike 2. But Rule 17(a) applies only to plaintiffs, not
 19 defendants—and because Proposed Intervenors are not plaintiffs “seeking to prosecute an
 20 action in this court or in any other,” their “status as real parties in interest . . . is not at issue.”
 21 *Charov v. Bank of Am.*, No. CV-10-00512, 2010 WL 2629419, at *2 (D. Ariz. June 30,
 22 2010); *see also Simpson v. Alaska State Comm’n for Hum. Rts.*, 608 F.2d 1171, 1173 n.2
 23 (9th Cir. 1979) (“The real party in interest concept is correctly applied only to those persons
 24 prosecuting an action, not to a defendant.”).

25 Proposed Intervenors do not object to Plaintiffs’ request to hold Proposed
 26 Intervenors’ Motion to Dismiss in abeyance pending the Court’s ruling on their Motion to
 27 Intervene. Proposed Intervenors filed their Motion to Dismiss according to the deadline
 28 applicable to the Secretary precisely to avoid any possible delay Plaintiffs proclaim (without

any support) intervention would cause. *See, e.g.*, Opp. to Mot. to Intervene 12, ECF No. 18. If Plaintiffs prefer that Proposed Intervenor's Motion to Dismiss be briefed on a later schedule than the Secretary's, Proposed Intervenor does not oppose that preference. Should the Court grant Proposed Intervenor's Motion to Intervene, Proposed Intervenor requests that their Motion to Dismiss be heard and decided alongside the Secretary's Motion to Dismiss.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion to Strike.

RESPECTFULLY SUBMITTED this 11th day of July, 2024.

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By: /s/ D. Andrew Gaona

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