

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Leslie Feldman, et al.,

Plaintiffs,

v.

Arizona Secretary of State's Office, et al.,

Defendants.

No. CV-16-01065-PHX-DLR

ORDER

At issue is Debbie Lesko, Tony Rivero, Bill Gates, and Suzanne Klapp's (Proposed Intervenor's) Motion to Intervene. (Doc. 56.) Under Federal Rule of Civil Procedure 24(a), the Court must allow an applicant to intervene if four requirements are met:

(1) the applicant must timely move to intervene; (2) the applicant must have a significantly protectable interest relating to the property or transaction that is the subject of the action; (3) the applicant must be situated such that the disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by existing parties.

Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003). Rule 24 is applied liberally in favor of intervention. *Id.*

The Court is not persuaded that Proposed Intervenor's have a right to intervene in this matter, given the presence of the Arizona Republican Party as Intervenor-Defendant in this lawsuit. (*See* Docs. 39, 44.) When determining whether a proposed intervenor's

interests are adequately represented by existing parties, the Court considers:

- (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments;
- (2) whether the present party is capable and willing to make such arguments; and
- (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Arakaki, 324 F.3d at 1086. “The most important factor . . . is how the interest compares with the interests of existing parties.” *Id.* When the proposed intervenor shares “the same ultimate objective” as an existing party, “a presumption of adequacy of representation arises.” *Id.* Under such circumstances, the proposed intervenor must offer a compelling reason why existing representation is inadequate. *Id.*

Here, Proposed Intervenors are all registered Republican voters and elected officials in Maricopa County, and are represented by the same attorneys as the Arizona Republican Party. The joint representation shows that the interests of Proposed Intervenors are not in conflict with the interests of the Arizona Republican Party, and the motion to intervene shows that Proposed Intervenors and the Arizona Republican Party share the same ultimate objective. Both seek a ruling that the challenged election laws, practices, and procedures are constitutional. Moreover, a comparison of Proposed Intervenors’ motion and the Arizona Republican Party’s previously granted motion to intervene shows that both have nearly identical interests in this matter. (*Compare* Doc. 39 at 3, 5-6, *with* Doc. 56 at 3-4, 6-7.) Although Proposed Intervenors argue that the Arizona Republican Party might not give the interests of individual candidates as much primacy as other interests, “differences in litigation strategy do not normally justify intervention.” *Arakaki*, 324 F.3d at 1086. Proposed Intervenors have not offered compelling reasons to overcome the presumption that the Arizona Republican Party will adequately represent their interests in this matter.

However, even if an applicant does not meet the requirements for intervention as of right, the court nonetheless may permit intervention to anyone who “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ.

1 P. 24(b)(1)(B). Unlike Rule 24(a), subsection (b) “does not require a showing of
2 inadequacy of representation.” *Groves v. Ins. Co. of N. Am.*, 433 F. Supp. 877, 888 (E.D.
3 Pa. 1977). Rather, “[i]n exercising its discretion, the court must consider whether the
4 intervention will unduly delay or prejudice the adjudication of the original parties’
5 rights.” Fed. R. Civ. P. 24(b)(3).

6 The Court finds that permissive intervention is appropriate under the
7 circumstances. Proposed Intervenor Senator Debbie Lesko and Representative Tony
8 Rivero are members of the Arizona Legislature running for re-election. Senator Lesko
9 also acts as Precinct Committeewoman for Arizona’s 21st Legislative District. Bill Gates
10 serves on the Phoenix City Council, is the Precinct Committeeman for Arizona’s 28th
11 Legislative District, and is a candidate for the Maricopa County Board of Supervisors.
12 Suzanne Klapp serves on the Scottsdale City Council and is Precinct Committeewoman
13 for Arizona’s 23rd Legislative District. As local officials and precinct committee
14 members, Proposed Intervenor bring a different perspective to the complex issues raised
15 in this litigation. The Court might benefit from hearing these viewpoints. The Court is
16 mindful of the time constraints presented by the impending primary and general
17 elections. But Proposed Intervenor are represented by the same attorneys as the Arizona
18 Republican Party, which is already participating in this litigation. The joint
19 representation should negate the need for further changes to the existing case
20 management schedule. Moreover, the Court recently extended some of the case
21 management deadlines. Proposed Intervenor should not need further extensions in light
22 of these modifications. Accordingly,

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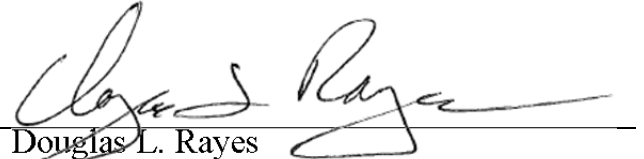
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1 **IT IS ORDERED** that the Motion to Intervene by Councilman Bill Gates,
2 Councilwoman Suzanne Klapp, Senator Debbie Lesko, and Representative Tony Rivero,
3 (Doc. 56), is **GRANTED** pursuant to Fed. R. Civ. P. 24(b).

4 Dated this 27th day of June, 2016.

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9 Douglas L. Rayes
 United States District Judge