

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Republican National Committee, et al.

Case No.: 2:24-cv-00518-CDS-MDC

5 Plaintiffs

**Order Adopting in Part Report and
Recommendation and Granting Motion to
Intervene**

6 v.

7 Francisco Aguilar, et al.,

[ECF Nos. 7, 68]

8 Defendants

9
10 Before the court is the report and recommendation (R&R) of United States Magistrate
11 Judge Maximiliano D. Couvillier, III entered on May 24, 2024. ECF No. 68. In the R&R, Judge
12 Couvillier recommends that Proposed Intervenor Defendants Rise Action Fund, Institute for a
13 Progressive Nevada, and Nevada Alliance for Retired Americans' motion to intervene (ECF No.
14 7) be granted both as a matter of right and permissively. *Id.* Plaintiffs Scott Johnston, Nevada
15 Republican Party, and Republican National Committee filed objections to the R&R (ECF No.
16 85), to which Proposed Intervenor Defendants responded (ECF No. 90). For the following reasons, I affirm
17 the R&R in part, finding that Proposed Intervenor Defendants may intervene pursuant to Rule 24(b), and
18 vacate as moot the finding under Rule 24(a).

19 **I. Legal standard**

20 Magistrate judges may “hear and determine any pretrial matter pending before the
21 court,” with some exceptions, and “[a] judge of the court may reconsider any pretrial
22 matter . . . where it has been shown that the magistrate judge’s order is clearly erroneous or
23 contrary to law.” 28 U.S.C. § 636(b)(1)(A). The district court reviews de novo those portions of
24 the magistrate judge’s report and recommendation that have been properly objected to. *See Fed.*
25 *R. Civ. P. 72(b)(3).*

26

1 **II. Analysis**

2 **A. Permissive intervention**

3 Judge Couvillier recommends that Proposed Intervenors be permitted to permissively
4 intervene under Rule 24(b). I agree. A person or entity can intervene, even if they do not meet
5 the requirements of intervention as of right under Rule 24(a), if they have “a claim or defense
6 that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).
7 The Ninth Circuit has held that permissive intervention is appropriate if the movant shows (1)
8 independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s claim or
9 defense, and the main action, have a question of law or a question of fact in common. *Freedom*
10 *from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). A district court has “broad
11 discretion” in determining whether to allow permissive intervention. *County of Orange v. Air*
12 *California*, 799 F.2d 535, 539 (9th Cir. 1986).

13 ***1. Jurisdiction***

14 Judge Couvillier found that the independent jurisdictional requirement is not required
15 under the circumstances here. R&R, ECF No. 68 at 7–8. Plaintiffs did not object to this finding,
16 and I agree with Judge Couvillier.

17 The requirement that intervenors provide an independent ground for jurisdiction is
18 rooted in the “concern that intervention might be used to enlarge inappropriately the
19 jurisdiction of the district courts.” *Freedom from Religion Found.*, 644 F.3d at 843. “Where the
20 proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern
21 drops away.” *Id.* at 844. This case is brought under federal-question jurisdiction, specifically a
22 violation of the National Voting Rights Act (NVRA), 52 U.S.C. § 20507. The Proposed
23 Intervenors do not raise new claims, ECF No. 7-1 (proposed answer), and thus, the independent
24 jurisdictional requirement is not required here.

1 **2. Timeliness**

2 Judge Couvillier found that permitting intervention would not affect any undue delay or
3 prejudice here because Proposed Intervenors are not adding claims and this case is in the early
4 stage. R&R, ECF No. 68 at 8. Plaintiffs object to the R&R’s finding because “adding parties
5 causes delay and complication even if they are not adding claims.” ECF No. 85 at 16–17. After de
6 novo review, I adopt Judge Couvillier’s finding. Proposed Intervenors filed their motion to
7 intervene about as early in the litigation as possible—just three days after the complaint was
8 filed. ECF No. 7. While plaintiffs cite to the possibility of delays and complications, they provide
9 no concrete concerns regarding the Proposed Intervenors’ participation in this case. In fact, the
10 court finds the delay complaint particularly unpersuasive in light of plaintiffs’ repeated delays
11 between continuing the hearing (ECF No. 81); stipulating to extend the discovery plan and
12 scheduling order (ECF No. 79); taking several weeks to correctly file pro hac vice applications
13 (ECF Nos. 19, 33, 49, 56, 69–71); and their assertion during oral argument on defendant
14 Francisco Aguilar’s motion to dismiss that they “haven’t pressed the court for [relief or remedy
15 before the November election]” and are “not trying to speed up the case for the sake of obtaining
16 discovery before the November election.”¹ Nor does the court see any particular risk of prejudice
17 to the original parties in permitting the Proposed Intervenors to join this action, particularly
18 given they bring no new claims.² Thus, I find the timeliness factor soundly met.

19 **3. Common question of law or fact relating to defense³**

20 A common question of law and fact between an intervenor’s claim or defense and the
21 main action arises when the intervenor’s claim or defense “relate[s] to the subject matter of the
22 action . . . before the district court,” *Greene v. United States*, 996 F.2d 973, 978 (9th Cir. 1993), or,

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¹ See Transcript, ECF No. 96 at 36–37.

24 ² Also, Proposed Intervenors have thus far promptly filed all relevant documents and motions and have
25 promised to follow any schedule set by the court. ECF No. 90 at 3.

26 ³ While Judge Couvillier likely considered this factor in rendering his recommendation as the law
discussing this factor is cited, the R&R does not explicitly discuss it; neither do plaintiffs specifically
object that Proposed Intervenors do not have a defense that shares a question or law or fact with the
main action.

1 stated another way, when such claims or defenses “are clearly a critical part of the instant
2 case.” *Citizens Allied for Integrity & Accountability, Inc. v. Miller*, 2022 WL 1442966, at *21 (D. Idaho
3 May 5, 2022). Proposed Intervenor list several defenses in their proposed answer: (1) plaintiffs
4 fail to state a claim on which relief can be granted; (2) this court lacks subject matter
5 jurisdiction; (3) plaintiffs do not have Article III standing; (4) plaintiffs lack a private right of
6 action; and (5) plaintiffs’ claims are equitably barred. ECF No. 7-1 at 10. At least one of these
7 defenses clearly relates to the subject matter of the action: plaintiffs’ Article III standing, which
8 constituted the subject of the argument made and the decision rendered at the June 18, 2024
9 hearing on Aguilar’s motion to dismiss. ECF No. 96. Thus, I find this factor also met.

10 **4. Other factors**

11 As plaintiffs point out, even if a proposed intervenor satisfies those threshold
12 requirements, “the district court retains discretion to deny permissive intervention.” ECF No. 85
13 at 15 (quoting *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002)). In exercising that
14 discretion, the court “must consider whether intervention will unduly delay or prejudice the
15 original parties and should consider whether the applicant’s interests are adequately
16 represented by the existing parties and whether judicial economy⁴ favors intervention.” *Miracle v.*
17 *Hobbs*, 333 F.R.D. 151, 156 (D. Ariz. 2019) (citing *Venegas v. Skaggs*, 867 F.2d 527, 530–31 (9th Cir.
18 1989), Fed. R. Civ. P. 24(b)(3) (requiring courts to consider undue delay or prejudice to original
19 parties)). While plaintiffs object that allowing intervention will delay proceedings and prejudice
20 the parties, ECF No. 85 at 16, as discussed *supra*, I do not find the risk of undue delay or prejudice
21 to be high here.

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24 ⁴ While plaintiffs make no objections concerning the judicial economy of permitting permissive
25 intervention, the court notes that it finds Proposed Intervenor’s proactive protection of its interests in
26 this suit much more judicially economic than the route plaintiffs suggest: “litigat[ing] the potential
improper removal of their members once they have been ‘aggrieved by a violation of [the NVRA].” ECF
No. 85 at 8 (citing 52 U.S.C. §20510).

1 Plaintiffs also object that permissive intervention should be denied (1) because “the State
2 defendants adequately represent the proposed intervenors’ interests” and that this is “an
3 independent reason to deny permissive intervention” and, similarly, (2) because “proposed
4 intervenors have not pointed to any unique arguments or positions they would take up that the
5 State defendants will not.” *Id.* at 15, 17. For the following reasons, I reject these objections.

6 Plaintiffs object that “[b]ecause he had concluded that the State did not adequately
7 represent proposed intervenors, the magistrate judge did not consider this factor [in making his
8 permissive intervention recommendation].” *Id.* at 15. I construe plaintiffs’ argument to be an
9 objection to Judge Couvillier’s underlying finding of inadequate representation given it is highly
10 unlikely he would deny intervention on the basis that representation was adequate when he
11 explicitly considered and found the representation to be inadequate in the intervention-as-of-
12 right analysis. R&R, ECF No. 68 at 6. However, in any event, adequacy of representation is not
13 fatal to permissive intervention. *See, e.g., Brumback v. Ferguson*, 343 F.R.D. 335, 346 (E.D. Wash.
14 2022) (granting permissive intervention because “[e]ven though [the intervenors] have not made
15 a compelling showing that the Attorney General inadequately represents their interests, the
16 Court anticipates that the presence of [the intervenors] in this suit will contribute to the just
17 and equitable resolution of the issues before it.”). I make no finding on adequacy of
18 representation because I find that the Proposed Intervenors will contribute to the just and
19 equitable resolution of the issues before me, as explained in more detail *infra*.

20 Plaintiffs also object that “the proposed intervenors have not pointed to any unique
21 arguments or positions they would take up that the State defendants will not.” ECF No. 85 at 17.
22 However, plaintiffs “fail[] to recognize the balancing of divided and competing interests that the
23 Court will be called on to consider when weighing whether the defendants ought to be
24 compelled to modify their list maintenance process.” *Public Interest Legal Found., Inc. v. Winfrey*, 463
25 F. Supp. 3d 795, 801 (E.D. Mich. 2020). Indeed, plaintiffs seek to compel the State
26 to remove from the rolls voters whom they claim are ineligible while defendants are required to

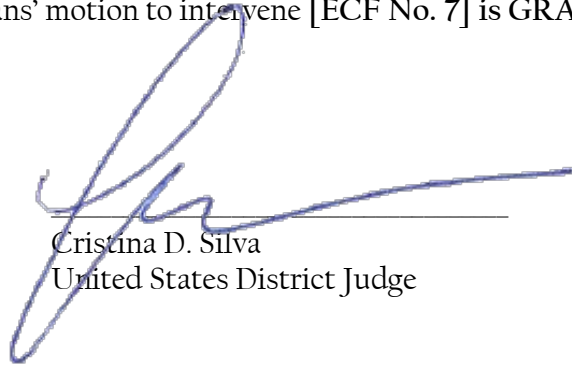
1 balance the twin objectives of the NVRA in litigating this suit—easing barriers to registration
2 and voting, while at the same time protecting electoral integrity. However, the expressed
3 mission of the Proposed Intervenor is to ensure that voters are retained on or restored to the
4 rolls. In other words, Proposed Intervenor provide the counterbalance to plaintiffs’ singular
5 purpose that defendants’ split mission does not allow. Particularly given “[t]he point of the
6 [NVRA] was to *increase*, not decrease, the electoral participation of our citizenry[,]” *id.* at 800,
7 the court finds that Proposed Intervenor’s participation in this suit will contribute to the just
8 and equitable resolution of the issues before me. For all those reasons, the court in its discretion
9 permits Proposed Intervenor to join this action pursuant to Rule 24(b).

10 **III. Conclusion**

11 IT IS THEREFORE ORDERED that Section III(B) of the magistrate judge’s report and
12 recommendation [ECF No. 68] is **AFFIRMED and ADOPTED** and Section III(A) is
13 **VACATED as moot.**

14 IT IS FURTHER ORDERED that Rise Action Fund, Institute for a Progressive Nevada,
15 and Nevada Alliance for Retired Americans’ motion to intervene [ECF No. 7] is **GRANTED**
16 under Rule 24(b).

17 Dated: July 12, 2024

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20 Cristina D. Silva
21 United States District Judge
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