

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

REPUBLICAN NATIONAL COMMITTEE,
et al.,

Plaintiffs,

v.

CARI-ANN BURGESS, *et al.*,

Defendants.

Case No. 3:24-cv-00198-MMD-CLB

ORDER

I. SUMMARY

Individuals and organizations interested in protecting the ability of Republic voters to cast votes and in electing Republican candidates to public office¹ (collectively, “Plaintiffs”) have brought suit to challenge Nevada’s mail ballot receipt deadline as unconstitutional and in violation of federal law. (ECF No. 1 (“Complaint”).) Pending before the Court is a motion to intervene as defendants filed by the Vet Voice Foundation and the Nevada Alliance for Retired Americans (“NARA”) (collectively, “Petitioners”). (ECF No. 15 (“Motion”).) The Court has reviewed the parties’ responses and replies (ECF Nos. 55, 64) and finds that intervention as of right is not warranted; however, the Court will grant permissive intervention.

II. RELEVANT BACKGROUND

On May 3, 2024, Plaintiffs filed this action challenging the mail ballot receipt deadline in Nevada. (ECF No. 1.) Nevada law generally requires that ballots be

¹Plaintiffs are the Republican National Committee; the Nevada Republican Party; Donald J. Trump for President 2024, Inc.; and Donald Szymanski. They are suing in their official capacities Washoe County Registrar of Voters Cari-Ann Burgess, Washoe County Clerk Jan Galassini, Clark County Registrar of Voters Lorena Portillo, Clark County Clerk Lynn Marie Goya, and Nevada Secretary of State Francisco Aguilar (collectively, “Government Defendants”). The Democratic National Committee is an intervenor-defendant. (ECF No. 56.)

1 postmarked on or before the federal Election Day but allows for ballots to be received by
2 county clerks' offices up to four days after Election Day. (*Id.* at 8-9.) Plaintiffs contend that,
3 in allowing ballots to be received after the federally designated date, the Nevada mail
4 ballot receipt deadline is in violation of the Constitution and federal law. (*Id.* at 14-16.)

5 Vet Voice and NARA filed their Motion on May 10, 2024, seeking to intervene in
6 this action as defendants. (ECF No. 15.) Plaintiffs oppose the Motion (ECF No. 55), and
7 Defendants have not submitted a response.

8 **III. DISCUSSION**

9 Petitioners seek intervention under Federal Rule of Civil Procedure 24(a) as of right
10 or, alternatively, permissive intervention under Rule 24(b).

11 **A. Intervention as of Right**

12 Applicants for intervention as of right under Rule 24(a)(2) must meet four
13 requirements:

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

20 *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).
21 Courts assessing whether intervention as of right is appropriate “interpret these
22 requirements broadly in favor of intervention” and are “guided primarily by practical
23 considerations, not technical distinctions.” *W. Watersheds Project v. Haaland*, 22 F.4th
24 828, 835 (9th Cir. 2022) (quotation marks omitted).

25 Plaintiffs maintain that Petitioners have failed to demonstrate the second, third, and
26
27
28

1 fourth elements of the test.² The Court will address each of the three latter elements in
2 turn.

3 1. Significantly Protectable Interests

4 Petitioners must next establish that they have significantly protectable interests in
5 the subject of this litigation. At minimum, “Rule 24(a)(2) requires that the asserted interest
6 be protectable under some law and that there exist a relationship between the legally
7 protected interest and the claims at issue.” *Cal. Dep’t of Toxic Substances Control v. Jim*
8 *Dobbas, Inc.*, 54 F.4th 1078, 1088 (9th Cir. 2022) (quotation marks omitted). Determining
9 whether Petitioners have a sufficient interest in an action is a “practical, threshold inquiry,”
10 and they need not establish a “specific legal or equitable interest.” *Citizens for Balanced*
11 *Use*, 647 F.3d at 897 (quotation marks omitted).

12 Petitioners first raise associational interests on behalf of their thousands of
13 members and constituents who vote by mail in Nevada and whose votes consequently
14 might not be counted if the four-day grace period is taken away. (ECF No. 15 at 13-16.)
15 The communities that Petitioners serve—retirees, veterans, and servicemembers—
16 “heavily” rely on mail ballots to vote due to old age, disability, and being stationed
17 overseas. (*Id.* at 8, 10, 14-15.) As a result, they are especially likely to be affected by a
18 shortened mail ballot receipt period, and it is probable, rather than speculative, that some
19 of their votes will not be counted if Plaintiffs prevail. *Cf. Pub. Int. Legal Found. v. Benson*,
20 No. 1:21-CV-929, 2022 WL 21295936, at *11 (W.D. Mich. Aug. 25, 2022) (interest in
21 challenging a law removing names from voter registry was too “speculative” where
22 proposed intervenors had no members on the list of names being removed). Petitioners’
23 interest in ensuring that their members’ and constituents’ votes are counted is sufficient to
24 satisfy the second element. *See Bost v. Ill. State Bd. of Elections*, 75 F.4th 682, 687 (7th
25

26 ² Plaintiffs essentially conceded that the Motion is timely. Indeed, Petitioners moved
27 for intervention within seven days of the filing of the Complaint and before the parties filed
28 any motions or the Court entered a scheduling order. (ECF Nos. 1, 15.) The Motion thus
has the “traditional features of a timely motion.” *Citizens for Balanced Use v. Mont.*
Wilderness Ass’n, 647 F.3d 893, 897 (9th Cir. 2011); *see also Paher v. Cegavske*, No.
3:20-cv-00243-MMD-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020).

1 Cir. 2023); *Mi Familia Vota v. Fontes*, ___ F. Supp. 3d ___, No. CV-22-00509-PHX-SRB,
2 2024 WL 862406, at *31 (D. Ariz. Feb. 29, 2024) (organizations had representational
3 standing where members faced “realistic danger” of losing the right to vote).³

4 Petitioners further argue that, if Nevada’s mail ballot receipt deadline is invalidated,
5 they will need to allocate resources toward educating their Nevadan members and
6 constituents on the new deadline and assisting them with casting mailed ballots. (ECF No.
7 15 at 16-18.) This economic interest is sufficiently “concrete and related to the underlying
8 subject matter of the action” to support intervention. *United States v. Alisal Water Corp.*,
9 370 F.3d 915, 919 (9th Cir. 2004). Voter turnout among members and constituents is
10 central to the missions of both Vet Voice and NARA, and the organizations dedicate
11 “significant resources” to encouraging their communities to vote. (ECF No. 15 at 7-10.)
12 Both are already preparing mail ballot assistance plans for the 2024 election in Nevada.
13 (*Id.* at 16.) The link between an earlier mail ballot receipt deadline and Petitioners’ financial
14 interests is thus clear and direct. *Cf. Alisal Water*, 370 F.3d at 920 (interest in how an
15 award of penalties would affect a potential intervenor as a creditor was “several degrees
16 removed” from the issues being litigated); *E. Bay Sanctuary Covenant v. Biden*, ___ F.4th
17 ___, No. 23-16032, 2024 WL 2309476, at *4 (9th Cir. May 22, 2024) (impacts of immigration
18 law on state expenditures and population-based political representation were “incidental
19 effects” not at issue in the suit and could not support states’ intervention). In line with what
20 other courts have “routinely” found, the Court holds that Petitioners, as organizations that
21 seek to increase voter turnout among their constituents, have significant protectable
22 interests in diverting their limited resources toward educating members about additional
23 barriers to casting a ballot in Nevada. *Issa v. Newsom*, No. 2:20-CV-01044-MCE-CKD,
24 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020); *see also E. Bay Sanctuary Covenant*
25 *v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) (organization had direct standing where the
26 conduct at issue “frustrated its mission and caused it to divert resources in response to
27

28 ³“Article III standing requirements are more stringent than those for intervention
under rule 24(a).” *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991).

1 that frustration of purpose”).⁴

2 Contrary to Plaintiffs’ assertions, neither of these interests in Nevada’s mail ballot
3 receipt deadline is “undifferentiated” or “generalized.” (ECF No. 55 at 3 (quoting *Alisal*
4 *Water*, 370 F.3d at 920).) This is not an instance where an organization generally asserts
5 interests in the integrity of the election process common to all members of the public. *Cf.*
6 *Am. Ass’n of People With Disabilities v. Herrera*, 257 F.R.D. 236, 258 (D.N.M. 2008);
7 *Liebert*, 345 F.R.D. at 173. Nor would allowing Petitioners to intervene “create an open
8 invitation” for virtually any organization with members in Nevada to intervene in lawsuits
9 where voting may become more difficult. *Alisal Water*, 370 F.3d at 920. Again, if Plaintiffs
10 prevail, both organizations will reallocate their resources toward efforts to educate Nevada
11 voters about the new deadline, and both serve communities which would be substantially
12 more impacted than the average population if Plaintiffs prevail. (ECF No. 15 at 8-18.)
13 Petitioners thus possess particularized interests in the Nevada mail ballot receipt deadline.

14 Petitioners have significantly protectable interests in the subject of this litigation.

15 **2. Impairment of Interests**

16 The nature of Petitioners’ interests makes the potential impairment of them clear.
17 There is little question that changing Nevada’s mail ballot receipt deadline would
18 substantially affect Petitioners and their members in a “practical sense” if, as a direct result
19 of the change, they have to reallocate their limited resources, or their members are unable
20 to vote. *Citizens for Balanced Use*, 647 F.3d at 898 (citing FED. R. CIV. PROC. 24 advisory
21 committee’s note to 1966 amendment); *see also La Union del Pueblo Entero*, 29 F.4th at
22

23 ⁴See e.g., *Bost*, 75 F.4th at 687; *La Union del Pueblo Entero v. Abbott*, 29 F.4th
24 299, 305-06 (5th Cir. 2022) (finding interest under lower burden “for a public interest group
25 raising a public interest question”); *Republican Nat’l Comm. v. Wetzel*, No. 1:24-CV-25-
26 LG-RPM, 2024 WL 988383, at *3 (S.D. Miss. Mar. 7, 2024) (also under Fifth Circuit
27 standard); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014)
28 (“[O]rganizations can establish standing to challenge election laws by showing that they
will have to divert personnel and time to educating potential voters on compliance with the
laws and assisting voters who might be left off the registration rolls on Election Day.”); *cf.*
Liebert v. Wisc. Elections Comm’n, 345 F.R.D. 169, 173 (W.D. Wisc. 2023) (potential
intervenor-defendants had no significant interest in educating constituents where plaintiffs
sought to eliminate, rather than add, restrictions on voting).

1 307. Petitioners have met their burden for the third element of Rule 24(a).

2 3. Inadequacy of Representation by Existing Parties

3 Petitioners must finally establish that existing parties will not adequately represent
4 their interests. The “minimal” burden of showing inadequate representation is generally
5 satisfied if an applicant can demonstrate that representation of its interests “may be”
6 inadequate. See *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*,
7 324 F.3d 1078, 1086 (9th Cir. 2003), as amended (May 13, 2003)). However, courts
8 employ a rebuttable presumption of adequate representation where the proposed
9 intervenor shares the same “ultimate objective” as a current party or “when the
10 government is acting on behalf of a constituency that it represents.” *Id.* If both conditions
11 are present—that is, a proposed intervenor shares interests with a governmental party
12 acting on behalf of the public—then a proposed intervenor must make a “very compelling
13 showing” of inadequate representation to rebut this presumption. *Oakland Bulk &*
14 *Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th Cir. 2020); accord
15 *Arakaki*, 324 F.3d at 1086.

16 Petitioners and the Government Defendants appear to possess the same “ultimate
17 objective” of upholding the Nevada mail ballot receipt deadline. *W. Watersheds Project*,
18 22 F.4th at 841. A shared interest in upholding a law typically suffices to establish a shared
19 objective. See, e.g., *id.*; *Oakland Bulk*, 960 F.3d at 620. There are instances where “the
20 government’s representation of the public interest may not be ‘identical to the individual
21 parochial interest’ of a particular group” even when “‘both entities occupy the same posture
22 in the litigation.’” *Citizens for Balanced Use*, 647 F.3d at 899 (quoting *WildEarth Guardians*
23 *v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)). That is not the case here, as
24 nothing in the record leads the Court to doubt that the Government Defendants intend to
25 uphold the mail ballot receipt deadline. See *Freedom from Religion Found., Inc. v.*
26 *Geithner*, 644 F.3d 836, 841 (9th Cir. 2011); cf. *Citizens for Balanced Use*, 647 F.3d at
27 899 (intervenors and the government did not have “identical” objectives where the
28 government was defending a law “reluctantly”).

1 A “very compelling showing” of inadequate representation is therefore required to
2 rebut the presumption of adequate representation. *Oakland Bulk*, 960 F.3d at 620 (9th Cir.
3 2020). Petitioners argue that their interest in this suit—protecting their constituents’ voting
4 rights—is narrower than that of the Government Defendants, who must defend Nevada
5 voting laws without regard for their effects. (ECF No. 15 at 19.) “But this alone is
6 insufficient.” *Oakland Bulk*, 960 F.3d at 620. To make a compelling showing of inadequate
7 representation, Petitioners must offer “*persuasive evidence*” that the Government
8 Defendants’ broader interests will likely cause them “to stake out an undesirable legal
9 position,” *id.* (emphasis added), such as by failing to advance potentially meritorious
10 arguments, *see California ex rel. Lockyer v. United States*, 450 F.3d 436, 444 (9th Cir.
11 2006); *W. Watersheds Project*, 22 F.4th at 841. Petitioners have instead provided nothing
12 more than generalized “speculation” as to the purported inadequacy of representation.
13 *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1307 (9th Cir. 1997). In the
14 absence of a very compelling showing to the contrary, the presumption of adequate
15 representation remains intact.⁵

16 Petitioners’ failure to demonstrate sufficiently that Defendants will inadequately
17 represent their interests is “fatal” to their application for intervention as of right. *Geithner*,
18 644 F.3d at 841. The Motion is denied as to intervention under Rule 24(a).

19 **B. Permissive Intervention**

20 Though intervention as of right is not warranted here, Petitioners have
21 demonstrated that they meet the requirements of permissive intervention. “Resolution of
22

23 ⁵The Supreme Court’s recent decision in *Berger v. North Carolina State Conference*
24 *of NAACP* does not alter this conclusion. *See* 597 U.S. 179 (2022). There, the Supreme
25 Court found that a similar presumption of adequate representation cannot apply where
26 other duly authorized representatives of a state seek intervention. *Id.* at 200. The Court
27 discussed presumptions of adequate representation in other scenarios—like the one at
28 issue here—in reaching that decision but ultimately did not rule on their merits. *See id.* at
197 (“[W]e need not decide whether a presumption of adequate representation might
sometimes be appropriate when a private litigant seeks to defend a law alongside the
government.”). *Berger* therefore does not disturb the extensive Ninth Circuit authority
endorsing this presumption. *See Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012).

1 a motion for permissive intervention is committed to the discretion of the court before which
2 intervention is sought.” *Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267,
3 278-79 (2022). Under Rule 24(b), the Court may allow anyone to intervene who submits
4 a timely motion and “has a claim or defense that shares with the main action a common
5 question of law or fact.” FED. R. CIV. PROC. 24(b).⁶ The Court, in assessing applications
6 for permissive intervention, must also “consider whether the intervention will unduly delay
7 or prejudice the adjudication of the original parties’ rights.” *Id.* at (b)(3).

8 Both threshold requirements have been met. There is no question that the Motion
9 is timely, and it appears that Petitioners will assert “similar defenses in support of” the
10 Nevada mail ballot receipt deadline, such that they will share common questions of law
11 and fact with the main action. (ECF No. 15-3.) *Paher*, 2020 WL 2042365, at *3.

12 Intervention will not result in undue delay or prejudice to the existing parties,
13 contrary to Plaintiffs’ contention. Though this case is essentially on an expedited timeline
14 due to the impending November 2024 election, the Court is confident in its ability to
15 address any disputes going to preliminary relief or dispositive motions to allow sufficient
16 time for the parties to appeal its rulings, even with two additional defendants. Petitioners’
17 Motion was filed within a week of the Complaint and before any other motions had been
18 filed in this action. They have committed themselves “to be bound by any case schedule”
19 and have emphasized their own interests in the “expeditious resolution of this case.” (ECF
20 No. 64 at 10.) Moreover, Plaintiffs raise only questions of law, rather than questions of fact
21 whose resolution would require additional, time-consuming discovery if additional
22 defendants were added. *Cf. Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 955-56
23 (9th Cir. 2009). These circumstances indicate that including Petitioners as parties to this
24 action will not result in undue delay. As Plaintiffs’ arguments as to prejudice are founded
25 on undue delay and no undue delay is expected, the Court finds that the parties will not
26

27 ⁶Potential intervenors generally must also show that “the court has an independent
28 basis for jurisdiction.” *Donnelly v Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). This finding
is unnecessary where, as here, the proposed intervenors raise no new claims. (ECF No.
15-3 (proposed answer).) See *Geithner*, 644 F.3d at 844.

1 be prejudiced by Petitioners' intervention. (ECF No. 55 at 11.)

2 Petitioners have satisfied the requirements for permissive intervention under Rule
3 24(b). The Court accordingly grants permissive intervention.

4 **IV. CONCLUSION**

5 The Court notes that the parties made several arguments and cited several cases
6 not discussed above. The Court has reviewed these arguments and cases and determines
7 that they do not warrant discussion as they do not affect the outcome of the motion before
8 the Court.

9 It is therefore ordered that Vet Voice and NARA's motion to intervene (ECF No. 15)
10 is granted.

11 DATED THIS 6th day of June 2024.

12
13 
14 _____
15 MIRANDA M. DU
16 CHIEF UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28