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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Paul A Isaacson, et al.,  
10 Plaintiffs,

11 v.

12 Mark Brnovich, et al.,  
13 Defendants.  
14

No. CV-21-01417-PHX-DLR

**ORDER**

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16 Before the Court is Sharing Down Syndrome Arizona's Motion to Intervene as  
17 Defendant. (Doc. 62.) Plaintiffs oppose the motion (Doc. 72); Defendants do not (Doc.  
18 71). As explained below, the Court denies the motion.

19 **I. Intervention as of Right**

20 Under Federal Rule of Civil Procedure 24(a), the Court must allow a proposed  
21 intervenor to intervene if four requirements are met:

22 (1) the applicant must timely move to intervene; (2) the  
23 applicant must have a significantly protectable interest relating  
24 to the property or transaction that is the subject of the action;  
25 (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.

26 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). When determining whether a  
27 proposed intervenor's interests are adequately represented by existing parties, the Court  
28 considers:

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

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

12 Defendants and Sharing Down Syndrome share the same ultimate objective—the  
13 preservation of the Reason Regulations and the Interpretation Policy. A presumption of  
14 adequate representation therefore arises, and Sharing Down Syndrome must offer a  
15 compelling reason why its interests are not adequately represented by Defendants. Sharing  
16 Down Syndrome raises three arguments.

17 First, Sharing Down Syndrome argues that its interests are narrower than  
18 Defendants’ and therefore might not be adequately represented. (Doc. 62 at 18.) By  
19 narrower, the Court understands Sharing Down Syndrome to mean that its interests relate  
20 specifically to individuals with Down Syndrome and their families, whereas Defendants  
21 interests relate to all individuals born with genetic abnormalities, as well as to more general  
22 concerns about defending enactments of the Arizona legislature. But Defendants have  
23 chosen to emphasize concerns about Down-Syndrome-selective abortions and, in doing so,  
24 have made substantially the same arguments as those alluded to in Sharing Down  
25 Syndrome’s motion to intervene. (*Compare* Doc. 46 at 3-7, 23-24, *with* Doc. 62 at 5-6, 14-  
26 16.) Although Defendants have broader interests in preserving the Reason Regulations and  
27 the Interpretation Policy, Defendants nonetheless will adequately represent Sharing Down  
28 Syndrome’s narrower interest, which is subsumed within Defendants’ broader interests and  
has been specially highlighted by Defendants in the course of their defense.

1           Second, Sharing Down Syndrome argues that it “can provide evidence of the  
2 significant impact [the Reason Regulations] and related provisions can and likely will have  
3 on individuals with Down syndrome and their families,” that “[t]his information is critical  
4 to allow the Court to fully assess the benefits of the [Reason Regulations],” and that  
5 Defendants do “not have access to this information in the way that Sharing Down  
6 Syndrome does.” (Doc. 62 at 18-19.) But if Sharing Down Syndrome’s concern is that  
7 Defendants do not presently have access to relevant information Sharing Down Syndrome  
8 possesses, then its concern can be remedied without intervention; Sharing Down Syndrome  
9 can simply give Defendants access to the information it believes is relevant. If this  
10 information is as critical as Sharing Down Syndrome suggests, there is no reason to believe  
11 Defendants would ignore it, especially when Defendants throughout this case have  
12 highlighted their particular concerns about Down-Syndrome-selective abortions and  
13 emphasized the impact they believe the challenged laws will have on people with Down  
14 Syndrome.

15           Lastly, Sharing Down Syndrome suggests that Defendants might not adequately  
16 represent its interests because it is possible that Defendants could change or adjust their  
17 policy or position during the course of the litigation. (Doc. 62 at 17-18.) This concern is  
18 too speculative to rebut the presumption of adequate representation. Defendants thus far  
19 have zealously defended the challenged provisions, including by opposing Plaintiffs’  
20 motion for a preliminary injunction, appealing this Court’s preliminary injunction order,  
21 seeking a stay of that order from both this Court and the Ninth Circuit, and moving to  
22 dismiss some of Plaintiffs’ claims. There is no reason to believe Defendants suddenly will  
23 change course.

24           For these reasons, Sharing Down Syndrome is not entitled to intervene as of right  
25 because its interests are adequately represented by Defendants.

## 26           **II. Permissive Intervention**

27           If a proposed intervenor does not meet the requirements for intervention as of right,  
28 the Court nonetheless may permit intervention if the proposed intervenor “has a claim or

1 defense that shares with the main action a common question of law or fact,” and  
2 intervention will not “unduly delay or prejudice the adjudication of the original parties’  
3 rights.” Fed. R. Civ. P. 24(b). If these initial elements are met, the Court may, but is not  
4 required to, grant intervention. The Court’s “discretion in this regard is broad,” and may  
5 be guided by factors such as:

6 the nature and extent of the intervenors’ interest, their standing  
7 to raise relevant legal issues, the legal position they seek to  
8 advance, and its probable relation to the merits of the case, . . .  
9 whether changes have occurred in the litigation so that  
10 intervention that was once denied should be reexamined,  
11 whether the intervenors’ interests are adequately represented  
12 by other parties, whether intervention will prolong or unduly  
13 delay the litigation, and whether parties seeking intervention  
14 will significantly contribute to full development of the  
15 underlying factual issues in the suit and to the just and  
16 equitable adjudication of the legal questions presented.

12 *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

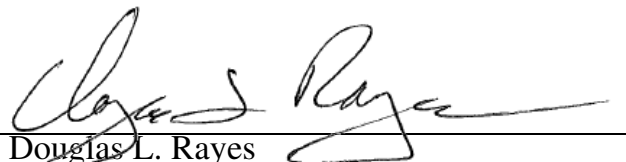
13 Sharing Down Syndrome satisfies the threshold elements for permissive  
14 intervention: it has a defense that shares with the main action a common question of law  
15 or fact, and its intervention in this matter will not unduly delay or prejudice the adjudication  
16 of the original parties’ rights. But, after considering the discretionary *Spangler* factors, the  
17 Court finds permissive intervention is unwarranted.

18 For reasons already discussed, Sharing Down Syndrome’s interests are adequately  
19 represented by Defendants, and it is unlikely that Sharing Down Syndrome would advance  
20 legal arguments in support of the challenged laws that Defendants would neglect to make.  
21 Although Sharing Down Syndrome strongly supports the challenged laws and believes it  
22 has information relevant to the benefits those laws are said to confer, nothing prevents  
23 Sharing Down Syndrome from volunteering that information to Defendants. And because  
24 Sharing Down Syndrome and Defendants share the same ultimate objective and are  
25 advancing substantially similar Down-Syndrome-centric arguments, there is no reason to  
26 believe Defendants would ignore critical evidence. Intervention therefore is unlikely to  
27 significantly contribute to the full factual development of the underlying issues and,  
28 instead, likely will result in unnecessary duplication of efforts. Accordingly,

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**IT IS ORDERED** that Sharing Down Syndrome’s motion to intervene (Doc. 62) is **DENIED**.

Dated this 19th day of November, 2021.

  
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Douglas L. Rayes  
United States District Judge