

1 **I. BACKGROUND**

2 Plaintiff The People’s Legislature (“People’s Legislature”) is a political advocacy
3 group. Plaintiff Citizen Outreach, Inc. (“Outreach”) is a non-profit grassroots political
4 organization. In their Second Amended Complaint (“SAC”), Plaintiffs assert an as-
5 applied constitutional challenge to a series of statutes relating to the citizen initiative
6 process passed by the Nevada Legislature in 2005 and 2007. (Dkt. no. 41.) Plaintiffs
7 allege that taken together, NRS §§ 295.009, 295.015, and 295.061 violate the First and
8 Fourteen Amendments to the United States Constitution because they effectively “nullify
9 all attempts at placing an initiative on the ballot.” (*Id.* ¶ 1.)

10 NRS § 295.009 codifies the “single-subject rule,” which requires that any citizen
11 initiative or referendum encompass only one subject.³ NRS § 295.061 (also referred to
12 as the “pre-election challenge procedure”) is a private attorney general provision relating
13 to NRS § 295.009. It allows Nevada citizens to challenge proposed initiatives and
14 referenda under the single-subject rule by bringing suit in the First Judicial District in
15 Carson City, Nevada. NRS § 295.015 provides that if, after a challenge under NRS §§
16 295.009 and 295.061, a court determines that a proposed initiative or referendum must
17 be amended, any signatures that were previously collected to place the challenged
18 initiative or referendum on the ballot are no longer valid. Plaintiffs argue that the statutes,
19 when applied together, violate the First and Fourteenth Amendments because they
20 make it too costly and arduous for Nevadans to successfully place an initiative on the
21 ballot. Plaintiffs further allege that these Nevada statutes chill Plaintiffs’ speech and
22 constitute prior restraint on Plaintiffs’ political speech. (Dkt. no. 41 at ¶ ¶ 13-14.)

23 Plaintiffs initially filed suit in the Eighth Judicial District in Clark County, Nevada,
24 seeking declaratory and injunctive relief against Defendant Ross Miller, the Nevada
25 Secretary of State. (Dkt. no. 1-1.) Defendant timely removed to this Court. (Dkt. no. 1.)

27 ³Plaintiffs admit that the single-subject restriction was previously upheld against a
28 First and Fourteenth Amendment challenge. (Dkt. no. 41 at ¶ 3.) However, Plaintiffs
argue that they are challenging the “cumulative effect” of the three statues at issue in
this case. (*Id.*)

1 On April 3, 2012, the Court granted Plaintiffs' Motion to Remand in part, severing and
2 remanding Plaintiffs' claims based on the Nevada Constitution but retaining jurisdiction
3 over claims arising out of the United States Constitution. (Dkt. no. 36.) On May 22,
4 2012, Plaintiffs, with leave of the Court, filed a SAC. (Dkt. no. 41.)

5 Movants NMA, RAN, NDA, LVCC, NTA, and Wynn (collectively referred to as
6 "NMA et al.") are all organizations or businesses claiming that they have utilized NRS §§
7 295.009 and 295.061 in past election years to defeat certain ballot initiatives which they
8 have opposed. Further, in its Motion movant NMA stated that it plans on challenging a
9 mining-tax initiative filed on January 31, 2012, under NRS §§ 295.009 and 295.061.
10 Movants move to intervene as a matter of right under Rule 24(a)(2) or, alternatively, by
11 permission of the Court under Rule 24(b)(1)(B).

12 Movant NRA claims a similar interest to Movants NMA et al. NRA and its Political
13 Action Committee advocate on behalf of the gaming industry in Nevada. NRA claims
14 that it has a significant interest in the disposition of this case because NRA "has
15 publically supported and opposed various initiative petitions, and has been directly
16 affected by multiple petitions filed this year." (Dkt. no. 48 at 5.) Additionally, NRA
17 argues that if Plaintiffs are "successful in their claims, the [NRA] would lose its right to
18 challenge the legal sufficiency of initiative petitions." (*Id.* at 6.)

19 Movant Nevada Legislature claims that NRS § 218F.720 grants it an
20 unconditional right to intervene in this case. NRS § 218F.720 grants the Nevada
21 Legislature an unconditional right to intervene when a party in any action or proceeding
22 alleges that the Legislature has violated the Nevada Constitution or alleges that any
23 state law is invalid, unenforceable, or unconstitutional. (Dkt. no. 1-16 at 3.)

24 As an initial matter, the Court notes Plaintiff People's Legislature filed a similar
25 lawsuit in 2009, which this Court (the Honorable Roger Hunt) dismissed. *Pest Committee*
26 *v. Miller*, 648 F. Supp. 2d 1202 (D. Nev. 2009). Movants LVCC, NMA, and NTA similarly
27 moved to intervene in that action, and the Court denied their Motion. *Id.* at 1211-1214.

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1 **II. LEGAL STANDARD**

2 As noted, Movants seek intervention as a matter of right under Rule 24(a)(2), or,
3 alternatively, by permission of the Court under Rule 24(b)(1)(B). The Court will first
4 discuss the standards governing intervention of right and permissive intervention before
5 addressing the individual motions.

6 **A. Intervention of Right**

7 Rule 24(a)(2) permits anyone to intervene who “claims an interest relating to the
8 property or transaction that is the subject of the action, and is so situated that disposing
9 of the action may as a practical matter impair or impede the movant’s ability to protect its
10 interest, unless existing parties adequately represent that interest.” When evaluating
11 motions to intervene as a matter of right, courts construe Rule 24 liberally in favor of
12 potential intervenors, focusing on practical considerations rather than technical
13 distinctions. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001).

14 A party seeking to intervene by right must meet four requirements:

- 15 (1) the applicant must timely move to intervene; (2) the applicant must
16 have a significantly protectable interest relating to the property or
17 transaction that is the subject of the action; (3) the applicant must be
18 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.

19 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). An applicant for intervention
20 bears the burden of showing that all four requirements are met. *United States v. Alisal*
21 *Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004). Movants fail to satisfy their burden with
22 respect to the fourth requirement.

23 **B. Permissive Intervention**

24 Rule 24(b)(1)(B) permits a court to allow anyone to intervene who submits a
25 timely motion and “has a claim or defense that shares with the main action a common
26 question of law or fact.” A movant “who seeks permissive intervention must prove that it
27 meets three threshold requirements: (1) it shares a common question of law or fact with
28 the main action; (2) its motion is timely; and (3) the court has an independent basis for

1 jurisdiction over the applicant's claims." *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th
2 Cir. 1998). But a district court has discretion to deny permissive intervention even if the
3 applicant satisfies the threshold requirements. *Id.* In exercising its discretion, a court
4 should consider whether intervention will unduly delay or prejudice the original parties,
5 whether the applicant's interests are adequately represented by the existing parties, and
6 whether judicial economy favors intervention. *Venegas v. Skaggs*, 867 F.2d 527, 530-31
7 (9th Cir. 1989). The Court exercises its discretion to deny permissive intervention.

8 **III. NMA ET AL.'S MOTION TO INTERVENE**

9 **A. Intervention of Right**

10 **1. Factor 1: Timeliness**

11 Factor 1 favors NMA et al. "Timeliness is 'the threshold requirement' for
12 intervention as of right." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297,
13 1302 (9th Cir.1997) (quoting *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir.1990)).
14 Courts consider three factors to determine whether a motion to intervene is timely: (1)
15 the stage of the proceedings when the motion is filed, (2) the prejudice to other parties,
16 and (3) the length and reason for any delay. *Id.*

17 Both the Motion and the Joinder Motion were filed shortly after Plaintiffs filed their
18 First Amended Complaint ("FAC"). The FAC was filed on January 31, 2012. (Dkt. no. 1-
19 5.) NMA and RAN filed their Motion to Intervene on February 13, 2012. (Dkt. no. 1-10.)
20 NDA, LVCC, NTA, and Wynn filed their Joinder Motion on February 27, 2012. (Dkt. no.
21 9.) Because the Motions were filed during an early stage in the proceedings, before any
22 dispositive motions were decided, it would not unduly prejudice Plaintiffs or Defendant to
23 allow NMA et al. to intervene. Accordingly, the Court holds that both the Motion and the
24 Joinder Motion were timely.

25 **2. Factors 2 and 3: Significant Protectable Interest and** 26 **Impairment of That Interest**

27 Factors 2 and 3 also favor Movants NMA et al. "An applicant has a 'significant
28 protectable interest' in an action if (1) it asserts an interest that is protected under some

1 law, and (2) there is a 'relationship' between its legally protected interest and the
2 plaintiff's claims." *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir.
3 2006) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). "The 'interest'
4 test is not a bright-line rule." *Alisal*, 370 F.3d 915, 919 (2004) (citations omitted). "[A]
5 party has a sufficient interest for intervention purposes if it will suffer a practical
6 impairment of its interests as a result of the pending litigation." *Lockyer*, 450 F.3d at
7 441. "An applicant generally satisfies the relationship' requirement only if the resolution
8 of plaintiff's claims actually will affect the applicant." *Arakaki*, 324 F.3d.

9 The Court concludes that Movants NMA et al. have a "significant protectable
10 interest" in this litigation that will be impaired by its disposition. First, they have an
11 interest that is protected under law: pursuant to the requirements of NRS 295.061, they
12 currently have the right to challenge initiative petitions in court for violations of NRS §
13 295.009's single-subject requirement. Second, if Plaintiffs succeed and these statutes
14 are declared unconstitutional, NMA et al. will lose the rights afforded to them by the
15 statutes. Therefore, the Court holds that Movants NMA et al. have an interest protected
16 by Nevada law that will be impaired if Plaintiffs succeed on their claims.

17 **3. Factor 4: Adequate Representation of Movant's Interest**

18 Courts consider three factors when assessing whether a present party will
19 adequately represent the interests of an applicant for intervention:

20 (1) whether the interest of a present party is such that it will undoubtedly
21 make all of a proposed intervenor's arguments; (2) whether the present
22 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.

23 *Arakaki*, 324 F.3d at 1086. In addition, "[w]hen an applicant for intervention and an
24 existing party have the same ultimate objective, a presumption of adequacy of
25 representation arises." *Id.* When the government acts on behalf of its citizens, a court
26 should presume the government adequately represents its citizens' interests. *Id.*

27 In this case, NMA et al. have failed to demonstrate that their interests are
28 inadequately represented by the present party. As an initial matter, the Court concludes

1 the Secretary is entitled to a presumption that he adequately represents NMA et al.'s
2 interests for two reasons. First, the Secretary and NMA et al. share the same ultimate
3 objective: to uphold NRS §§ 295.009, 295.061, and 295.015 against constitutional
4 attack. Second, the Secretary, as the Defendant in this case, is acting as a
5 representative of the citizens of Nevada. As such, NMA et al. "must make a compelling
6 showing that the Secretary inadequately represents their interests." See *PEST*
7 *Committee*, 648 F. Supp. 2d at 1213. NMA et al. fail to establish such a compelling
8 showing.

9 NMA et al. do not contest that the Nevada Secretary of State enters this lawsuit
10 as a representative of all Nevada citizens and seeks to defend the challenged statutes
11 as a representative of those citizens. (Dkt. no. 25 at 5.) NMA et al. and the Secretary
12 share a common goal: defending the constitutionality of NRS §§ 295.009, 295.061, and
13 295.015. Despite this, NMA et al. argue that their interests and the Secretary's interests
14 "are quite likely to diverge" – though Movants do not describe *how* their common
15 interests could diverge. NMA et al. point to *In re Sierra Club*, 945 F.2d 776, 780 (4th Cir.
16 1991) to support their contention that a potential intervenor "does not need to consider
17 the interests of all [state] citizens," while the Secretary of State does. (Dkt. no. 1-10 at
18 8.) Movants argue that for this reason, their interests in this case diverge with the
19 Secretary's. However, in *Sierra Club*, the Fourth Circuit found it likely that the interests
20 and arguments of movant Sierra Club and defendant South Carolina would diverge on
21 certain specific issues in the litigation. *Sierra Club*, 945 F.2d at 780. The court noted
22 that while both the South Carolina government and the Sierra Club argued that the
23 environmental regulation at issue did not violate the Commerce Clause, the parties'
24 interests could likely diverge on other key issues in the case, including "the appropriate
25 disposition of sections of [the regulation at issue] that may not violate the Commerce
26 Clause, the balance of hardships accruing to the parties if part of [the regulation] is
27 enjoined by preliminary injunction, and the public interest factor to be weighed in a
28 preliminary injunction analysis." *Id.* Here, NMA et al. only predict general unnamed

1 future disagreements and divergent goals. This potential threat, without more, is
2 speculative and unpersuasive. The Secretary is an adequate representative of Movants'
3 interests in this case.⁴

4 **B. Permissive Intervention**

5 Movants NMA et al. seek to intervene to defend the constitutionality of NRS §§
6 295.009, 295.061, and 295.015. Because this is the precise claim at issue in Plaintiffs'
7 Complaint, NMA et al. satisfy the first and third threshold requirements of Fed. R. Civ. P.
8 24(b)(1)(B). Further, the Court has already found that their Motion is timely. NMA et al.
9 have therefore satisfied their threshold burden and intervention is within the Court's
10 discretion. Nevertheless, the Court denies their Motion. As discussed above, the Court
11 finds that NMA et al.'s interests are adequately represented by the Secretary of State.
12 Adding them as parties would unnecessarily encumber the litigation and impede judicial
13 economy. The Court therefore denies permissive intervention.

14 The Court nevertheless recognizes that NMA et al. represent more narrow and
15 specific interests than the Secretary, and their perspective and experience may aid the
16 Court in reaching a resolution in this matter. Accordingly, Movants NMA et al. may
17 proceed as *amicus curiae*.⁵ NMA et al. may jointly file *amicus* briefs on dispositive
18 motions in this matter with leave of the Court.

20 ⁴To the extent that the NMA et al. argue that their interests are divergent to the
21 Secretary of State because they, and not the Secretary, have actually challenged
22 initiative petitions under NRS 295.009 and 295.061, this argument fails for the same
23 reason it failed in *Pest Committee*, 648 F. Supp. 2d at 1213-14: NMA et al. "correctly
24 note that the Secretary does not normally file legal challenges to initiative petitions
25 pursuant to NRS 295.009 and 295.061. But it is unclear to the Court why this is relevant.
26 The Secretary has been named as a party and involved in the litigation of nearly every
27 petition challenged under the statutes. . . . As such, the Secretary is quite familiar with
28 legal challenges involving initiative petitions [and] is sufficiently familiar with legal
challenges to initiative petitions so as to adequately represent the Proposed Intervenor's
interests."

29 ⁵"The privilege of being heard *amicus* rests solely within the discretion of the court
30 Generally, courts have exercised great liberality in permitting an *amicus curiae* to file
31 a brief in a pending case, and, with further permission of the court, to argue the case and
32 introduce evidence There are no strict prerequisites that must be established prior to
33 qualifying for *amicus* status; an individual seeking to appear as *amicus* must merely
(*fn. cont...*)

1 **IV. NRA'S MOTION TO INTERVENE**

2 As explained above, NRA's stated interest in this case is similar to NMA et al.'s.
3 Like NMA et al., NRA is an organization that has utilized the challenged statutes to its
4 benefit in the past and seeks to continue use of the challenged statutes to oppose
5 certain initiatives and referenda in the future. Therefore, for the same reasons stated in
6 Section III, NRA's Motion to Intervene is denied. Movant NRA may proceed as amicus
7 curiae and may file amicus briefs on dispositive motions in this matter with leave of the
8 Court.

9 **V. NEVADA'S LEGISLAUTRE'S MOTION TO INTERVENE**

10 The Legislature argues that it qualifies for intervention not only pursuant to Fed.
11 R. Civ. P. 24(a)(1), but also under NRS § 218F.720. The Court agrees with the
12 Legislature. The statute states that when a party brings a challenge that raises "as an
13 issue, either in law or in equity, in whole or in part, or facially or as applied, the . . .
14 validity, enforceability or constitutionality of any law, resolution, initiative, referendum or
15 other legislative or constitutional measure":

16 the Legislature has an unconditional right and standing to intervene in the
17 action or proceeding and to present its arguments, claims, objections or
18 defenses, in law or fact, whether or not the Legislature's interests are
19 adequately represented by existing parties and whether or not the State or
any agency, officer or employee of the State is an existing party. If the
Legislature intervenes in the action or proceeding, the Legislature has all
the rights of a party.

20 NRS § 218F.720(2)(b)-(3). NRS § 218F.720 therefore grants the Legislature an
21 unconditional right to intervene in this proceeding.

22 Plaintiffs' arguments to the contrary are without merit. Plaintiffs argue that NRS §
23 218F.720 "does not override and supercede [sic] the common law prerequisite to
24 N.R.C.P. 24." ⁶ (Dkt. no. 18 at 4.) However, Plaintiffs present no case law to support

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27 (...fn. cont.) make a showing that his participation is useful to or otherwise desirable to
the court." *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990).

28 ⁶Plaintiffs made this argument before the Court remanded the state law claims in
this case. The Court therefore interprets this argument as also applying to Fed. R. Civ.
(fn. cont...)

1 this assertion. Further, Fed. R. Civ. P. 24(b)(2)(A) anticipates intervention by a
2 government officer or agency as authorized by statute like the one here.

3 **VI. CONCLUSION**

4 IT IS THEREFORE ORDERED that Movants NMA and RAN's Motion to Intervene
5 (dkt. no. 1-10) and Movants NDA, LVCC, NTA, and Wynn's Joinder to that Motion (dkt.
6 no. 9) are DENIED. The parties may jointly proceed as amicus curiae and may file briefs
7 on dispositive matters in this case with leave of the Court.

8 IT IS FURTHER ORDERED that Movant NRA's Motion to Intervene is DENIED.
9 NRA may proceed as amicus curiae and may file briefs on dispositive matters in this
10 case with leave of the Court.

11 IT IS FURTHER ORDERED that Movant Nevada Legislature's Motion to
12 Intervene (dkt. no. 1-16) is GRANTED.

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14 ENTERED THIS 15th day of August 2012.

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UNITED STATES DISTRICT JUDGE

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(... *fn. cont.*) P. 24. Though the state and federal rules of civil procedure are not identical,
they contain similar language and share the same purpose.