

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

_____	x	
)	
AMERICAN ASSOCIATION OF PEOPLE)	
WITH DISABILITIES, FEDERATION OF)	
WOMEN'S CLUBS OVERSEAS, INC., NEW)	
MEXICO PUBLIC INTEREST RESEARCH)	
GROUP EDUCATION FUND, and)	
SOUTHWEST ORGANIZING PROJECT,)	
)	
Plaintiffs,)	No. CV 08-702 JOB/WDS
)	
v.)	
)	
MARY HERRERA, in her capacity as Secretary)	
of State,)	
)	
Defendant.)	
_____	x	

**MEMORANDUM IN OPPOSITION TO MOTIONS TO INTERVENE OF
SHANNON ROBINSON AND NAZARENA ("NINA") MARTINEZ, ET AL.**

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Counsel for Plaintiffs

Dated: August 20, 2008

INTRODUCTION

Plaintiffs submit this memorandum of law in opposition to the motions of Shannon Robinson and Nazarena (“Nina”) Martinez, et al. for intervention pursuant to Rule 24 of the Federal Rules of Civil Procedure.

The proposed intervenors filed their motions to intervene on the eve of Plaintiffs’ preliminary injunction hearing, weeks after becoming aware of Plaintiffs’ action. They fail to articulate any interest that is not fully represented in Defendant’s vigorous opposition. Accordingly, Plaintiffs oppose the motions to intervene on the grounds that (1) they are untimely and will result in irreparable harm to Plaintiffs’ constitutional rights, and (2) the proposed intervenors lack a protectable interest not adequately represented by the Defendant.

ARGUMENT

I. INTERVENTION IS UNTIMELY AND WILL GREATLY PREJUDICE PLAINTIFFS

Filed the day before the hearing on Plaintiffs’ application for a preliminary injunction, the motions to intervene must be denied as both untimely and prejudicial. See Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dep’t of Interior, 100 F.3d 837, 840 (10th Cir. 1996) (to intervene as of right an applicant must demonstrate that the application is timely); Forest Guardians v. U.S. Dep’t of Interior, No. CIV-02-1003, 2004 WL 3426413, at *10 (D.N.M. Jan. 12, 2004) (permissive intervention permitted if the application is timely and it will not unduly delay or prejudice the adjudication of the original parties’ rights). Timeliness is assessed in light of all the circumstances, “including the length of time since the applicant knew of his interest in

the case, prejudice to the existing parties, prejudice to the applicant, and the existence of unusual circumstances.” Utah Ass’n of Counties v. Clinton, 255 F.3d 1246, 1250 (10th Cir. 2001).

Plaintiffs filed their complaint on July 24, 2008, nearly four weeks ago, and the proposed intervenors knew of their interests in this case at that time. The case was widely reported in the local media, and on the same day that the complaint was filed, Patrick Rogers, on behalf of the New Mexico Republican Party (the “NMRP”), indicated that the NMRP was considering intervening. (See Declaration of John W. Boyd, dated August 20, 2008, filed herewith.) Nevertheless, the proposed intervenors waited until the eve of the preliminary injunction hearing to submit their motions. In the intervening period, Defendant filed her Answer, Plaintiffs filed their Application for a Preliminary Injunction and Defendant filed her Opposition to Plaintiffs’ request.

To the extent that it delays the adjudication of Plaintiffs’ rights, the proposed intervenors’ delay will significantly prejudice Plaintiffs. Plaintiffs have ceased or substantially curtailed their voter-registration activity during this presidential election year as a result of the burdens and chilling effect of New Mexico’s voter-registration law. They will continue to suffer irreparable harm until the Court grants injunctive relief. Any delay only exacerbates that irreparable harm, particularly as the book-closing deadline for the upcoming election approaches. Accordingly, as the proposed intervenors will only serve to delay these proceedings, their motions should be denied.

II. THE PROPOSED INTERVENORS LACK LEGALLY PROTECTABLE INTERESTS THAT ARE NOT ADEQUATELY REPRESENTED

Intervention also is unnecessary and improper because the proposed intervenors have failed to identify interests that are not adequately represented by Defendant. The sufficiency of a proposed intervenor's interest is a highly fact-specific determination based on the specific circumstances of the case. See San Juan County, Utah v. United States, 503 F.3d 1163, 1199 (10th Cir. 2007) (en banc); Utahns for Better Transp. v. U.S. Dep't of Transp., 295 F.3d 1111, 1115 (10th Cir. 2002). Yet none of the proposed intervenors specify the "particularized interest rather than ... general grievance" that is required for intervention. Chiles v. Thornburgh, 865 F. 2d 1197, 1212 (11th Cir. 1989). Moreover, to the extent that the proposed intervenors voiced an interest in addressing issues or interests that they claim to have that fall outside of the First Amendment and statutory issues raised in this lawsuit, their intervention would be improper. Deus v. Allstate Ins. Co., 15 F.3d 506, 525 (5th Cir. 1994) ("The intervention rule is ... not intended to allow the creation of whole new lawsuits by the intervenors.").

Applicants Justine Fox-Young and Shannon Robinson are current state legislators. Courts have held that "when a court declares an act of the state legislature to be unconstitutional, individual legislators ... have no standing to intervene." Tarsney v. O'Keefe, 225 F.3d 919, 939 (8th Cir 2000); citing Planned Parenthood of Mid-Missouri and Eastern Kansas, Inc. v. Ehlmann, 137 F.3d 573 (8th Cir. 1998) (state legislators lack Article III standing to intervene and litigate constitutionality of state statute).¹ Moreover,

¹ While many circuits require that intervenors establish Article III standing, the Tenth Circuit has not gone so far. See San Juan County, Utah v. United States, 503 F.3d 1163, 1172 (10th Cir. 2007) (en

to the extent that they have any general interest in preventing fraud or maintaining confidence in the election process, these exact interests have been asserted and well represented by Defendant. (See, e.g. Def.'s Mem. Opp'n 24). Like Defendant, the state legislators' objective is for the challenged law to be upheld, and "[r]epresentation is adequate when the objective of the applicant for intervention is identical to that of one of the parties." Coalition of Arizona/New Mexico Counties for Stable Economic Growth, 100 F.3d at 845 (internal quotations omitted).

Applicant Rhoda Coakley, the Chavez County Clerk, similarly fails to articulate any specific interest in this litigation that distinguishes her from Defendant in any meaningful way. Indeed, her interests are presumably identical to those of the County Clerk of Bernalillo County and the Chief Deputy Clerk of Santa Fe County, both of whom have submitted declarations in support of Defendant's position.

Finally, the only distinctive interests articulated by the NMRP and its Secretary, Nina Martinez, is their interest in the voter-registration drives conducted by the NMRP. However, these proposed intervenors also fail to demonstrate how this interest is not adequately represented by Defendant. Courts have been hesitant to permit the intervention of political parties and their representatives on the basis of indirect and speculative partisan concerns. See U.S. v. State of Alabama, 2006 WL 2290726, at * 3-4 (M.D. Ala. Aug. 8, 2008) (intervention of voters and partisan political operators denied where interests based on conjecture of future wrongdoing). In this case, there can be no

banc). However, the fact that other circuits have held that state legislators lack standing also demonstrates that they lack the interests in the action needed to grant intervention as of right.

doubt that Defendant has defended and continues to vigorously defend the challenged law and any NMRP interest in combating voter-registration fraud.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny the motions to intervene filed by Shannon Robinson and Nazarena (“Nina”) Martinez, et al.

Dated: Albuquerque, New Mexico
August 20, 2008

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on the 20th day of August 2008, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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