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6 **THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR CARSON CITY**
8

9 HELLEN QUAN LOPEZ, individually and on
10 behalf of her minor child, C.Q.; MICHELLE
11 GORELOW, individually and on behalf of her
12 minor children, A.G. and H.G.; ELECTRA
13 SKRYZDLEWSKI, individually and on behalf
14 of her minor child, L.M.; JENNIFER CARR,
15 individually and on behalf of her minor
16 children, W.C., A.C., and E.C.; LINDA
17 JOHNSON, individually and on behalf of her
18 minor child, K.J.; SARAH and BRIAN
19 SOLOMON, individually and on behalf of
20 their minor children, D.S. and K.S.,

Plaintiffs,

vs.

21 DAN SCHWARTZ, IN HIS OFFICIAL
22 CAPACITY AS TREASURER OF THE
23 STATE OF NEVADA,

Defendant.

Case No. 15 0C 00207 1B

Dept. No.: II

**DECISION AND ORDER, COMPRISING
FINDINGS OF FACT AND
CONCLUSIONS OF LAW¹**

24 Before the Court is Lara Allen, Aurora Espinoza, Aimee Hairr, Elizabeth Robbins, and
25 Jeffery and Trina Smith's (collectively, the "Proposed Intervenors") motion to intervene as party
26 defendants in the above-captioned case, filed on or about September 16, 2015.

27 Plaintiffs in their action had filed the original Complaint in this matter on September 9,

28

¹ If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a finding of fact, it shall be deemed so.

1 2015, challenging Nevada’s recently passed voucher law, Senate Bill 302 (“S.B. 302”), which they
2 allege diverts funds from public schools to pay for private school tuition and other expenses.
3 Plaintiff parents, whose children attend Nevada’s public schools, allege violation by S.B. 302 of
4 several provisions of Article XI of the Nevada Constitution (“the Education Article”). Plaintiffs
5 have sued Nevada State Treasurer Dan Schwartz, who administers the program, in his official
6 capacity, seeking a declaration that S.B. 302 is unconstitutional and an injunction to prevent its
7 implementation. Defendant Schwartz is represented by the Nevada Attorney General.

8 Proposed Intervenors seek intervention in this matter either as of right pursuant to N.R.C.P.
9 24(a) or, alternatively, by permissive leave of the Court pursuant to N.R.C.P. 24(b). The Court
10 addresses those requests in turn.

11 **Intervention as of Right Pursuant to N.R.C.P. 24(a)**

12 N.R.C.P. 24(a) states that:

13 Upon timely application anyone shall be permitted to intervene in an action: (1)
14 when a statute confers an unconditional right to intervene; or (2) when the
15 applicant claims an interest relating to the property or transaction which is the
16 subject of the action and the applicant is so situated that the disposition of the
action may as a practical matter impair or impede the applicant’s ability to protect
parties.

17 Here, although each other element is arguably met by the Proposed Intervenors (timeliness,
18 interests they wish to see protected), they do not demonstrate that their interest in upholding the
19 constitutionality of S.B. 302 will not be adequately represented by Defendant State Treasurer and
20 his counsel, the Attorney General. Where, as here, the Defendant is a state official represented by
21 the state’s attorney general, any putative intervenors must make a “very compelling showing” to
22 overcome the presumption that the government will adequately represent their interests. *Arakaki v.*
23 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), as amended (May 13, 2003) (“In the absence of a
24 ‘very compelling showing to the contrary,’ it will be presumed that a state adequately represents its
25 citizens....”); *see also Gonzalez v. Arizona*, 485 F.3d 1041, 1052 (9th Cir. 2007) (quoting *Prete v.*
26 *Bradbury*, 438 F.3d 949, 956 (9th Cir. 2006)).

27 Proposed Intervenors argue that their interests diverge from that of Defendant Schwartz,
28 and that they may advance arguments that will differ from those he will advance during the course

1 of these proceedings. These arguments, however, are insufficient to merit granting of intervention
2 as of right. First, the legal interest of both Proposed Intervenors and Defendant appear identical: a
3 finding that S.B. 302 does not violate the Nevada Constitution. Their motivations, as parents of
4 Nevada school-age children, may vary, but the interest is the same. Where both defendants and the
5 proposed intervenors have the same legal interests, adequacy of representation is presumed.
6 *Arakaki*, 324 F.3d at 1086.

7 Second, Proposed Intervenors' claim that they may make different arguments from those
8 advanced by Defendant is too speculative to serve as grounds for intervention as of right. In
9 general, "mere [] differences in [litigation] strategy... are not enough to justify intervention as a
10 matter of right." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 954 (9th Cir. 2009)
11 (alterations in original) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 402–03 (9th
12 Cir. 2002)). Here, in any event, such differences are proposed only as potentialities, rather than as
13 concrete divergences in approach to the case. The assertion that Proposed Intervenors might present
14 better or different arguments than the Attorney General, without specifying any explanation of
15 what those arguments might be or why the Attorney General will not make them, does not satisfy
16 Rule 24(a)'s demands.

17 Proposed Intervenors argued they cannot make a specific showing of how their defense
18 might differ from the Attorney General's defense because the Attorney General has not filed his
19 answer. (Def's Reply at 2.) First, this argument shifts attention from the fact that Proposed
20 Intervenors have made no showing of how their defense would be different from the Attorney
21 General's, specific or general. Second, the Proposed Intervenors chose to file their motion to
22 intervene before the Attorney General filed his answer, knowing full well the Proposed Intervenors
23 would need to make a showing that their interest is not adequately represented. And third, Proposed
24 Intervenors did not supplement this motion to show their interests are not adequately represented,
25 after the Attorney General filed his answer.

26 Because Proposed Intervenors do not meet the requirements of N.R.C.P. 24(a) by showing
27 that their interest is not adequately represented by existing parties, their motion for intervention as
28 of right is denied.

1 **Permissive Intervention Pursuant to N.R.C.P. 24(b)**

2 In the alternative, Proposed Intervenors ask the Court to grant them permissive intervention
3 under Rule 24(b), which states:

4 Upon timely application anyone may be permitted to intervene in an action: (1)
5 when a statute confers a conditional right to intervene; or (2) when an applicant's
6 claim or defense and the main action have a question of law or fact in common. In
exercising its discretion the court shall consider whether the intervention will
unduly delay or prejudice the adjudication of the rights of the original parties.

7
8 Where the basic criteria for permissive intervention are met, the Court has broad discretion
9 as to whether or not permissive intervention should be allowed. Because the Court has already
10 determined that Proposed Intervenors have not shown that their interests are not adequately
11 represented, in considering whether to grant permissive intervention the Court is concerned with
12 the potential for delay and increased costs that additional parties may cause, with no measurable
13 additional benefit to the Court's ability to determine the legal and factual issue in the case.

14 The Court is also concerned about the Proposed Intervenors' disregard for the rules. NRCPC
15 24 (c) requires a person wanting to intervene to file a motion which "shall be accompanied by a
16 pleading setting forth the . . . defense for which intervention is sought." Proposed Intervenors'
17 motion to intervene was not accompanied by a pleading setting forth the defenses they sought.
18 Instead they filed an answer at the same time they filed their motion to intervene. Because the
19 motion to intervene had not been granted Proposed Intervenors were not a party and had no legal
20 basis to file an opposition. Because they were not a party Proposed Intervenors also had no legal
21 basis to file their motion to Associate Counsel, their Amended Notice to Set, their Response in
22 Opposition to Plaintiff's motion for Preliminary Injunction and Response in Support of
23 Defendant's Motion to Dismiss, their Notice of Substitution of Counsel for Intervenor Defendants,
24 or their Notice of Association of Counsel. Proposed Intervenors have proceeded as parties in spite
25 of the fact that they are not.

26 Under these circumstances, the Court declines to exercise its discretion to grant permissive
27 intervention to Proposed Intervenors, and denies that motion as well.

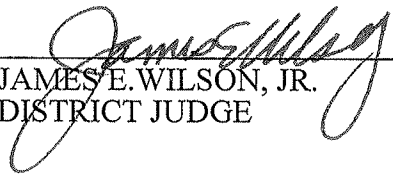
28 Proposed Intervenors, however, are invited by the Court to apply to submit briefs on

1 determinative issues in the action as *amici curiae*, consistent with the Rules.

2 **IT IS HEREBY ORDERED**, therefore, and for good cause appearing, that Proposed
3 Intervenors' motion to intervene as Defendants as of right pursuant to N.R.C.P. 24(a) is **DENIED**;

4 **IT IS FURTHER ORDERED** that Proposed Intervenors' motion for permissive
5 intervention pursuant to N.R.C.P. 24(b) is **DENIED**.

6 **IT IS SO ORDERED** this 30 day of December, 2015.

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9 JAMES E. WILSON, JR.
10 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I certify that on December 30, 2015 I placed a copy of the foregoing order in the United States Mail postage prepaid, addressed as follows:

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