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FILED

JUN 17 2022

SAN LUIS OBISPO SUPERIOR COURT
BY *C. Simms*
C. Simms, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN LUIS OBISPO**

**SLO COUNTY CITIZENS FOR GOOD
GOVERNMENT, INC.; PATRICIA
GOMEZ; DON MARUSKA; AND
ALLENE VILLA,**

Petitioners,

v.

**COUNTY OF SAN LUIS OBISPO;
BOARD OF SUPERVISORS OF SAN
LUIS OBISPO COUNTY; AND DOES 1
- 15,**

Respondents.

**CLERK-RECORDER OF SAN LUIS
OBISPO COUNTY; AND DOES 16-25,**

Real Parties in Interest.

Case No.: 22CVP-0007

**ORDER GRANTING MOTION TO
INTERVENE BY LEAGUE OF
WOMEN VOTERS OF
SAN LUIS OBISPO COUNTY, INC.**

Petitioners initiated this mandamus proceeding to challenge a decision by the San Luis Obispo County Board of Supervisors (the Board) to adopt a new supervisorial district boundary map (the Adopted Map). Petitioners allege the Adopted Map violates the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions Act

1 (the Fair Maps Act). (Elec. Code, § 21500, et seq.)

2 Currently before the Court is a motion to intervene filed by the League of
3 Women Voters of San Luis Obispo County, Inc. (the League). Petitioners support the
4 motion; the Real Party in Interest takes no position on the motion. The Board and the
5 County of San Luis Obispo (collectively, the County), oppose the motion.

6 For the reasons set forth below, the Court grants the League’s request to
7 intervene under Code of Civil Procedure section 387, subdivision (d)(2).

8 **DISCUSSION**

9 The League seeks leave to intervene under Code of Civil Procedure section 387,
10 subdivision (d)(1)(B), or alternatively, under Code of Civil Procedure section 387,
11 subdivision (d)(2).¹ The former concerns intervention as a matter of right. The latter
12 addresses permissive intervention. “The purpose of allowing intervention is to promote
13 fairness by involving all parties potentially affected by a judgment. [Citations.]”
14 (*Simpson Redwood Co. v. State of California* (1987) 196 Cal.App.3d 1192, 1199
15 (*Simpson*).

16 “ ‘[C]ourts have recognized California Code of Civil Procedure section 387
17 should be liberally construed in favor of intervention.’ Nonetheless, ‘[a] trial court has
18 broad discretion in determining whether to permit intervention.’ [Citations.]” (*City of*
19 *Malibu v. Cal. Coastal Commission* (2005) 128 Cal.App.4th 897, 902.)

20 **A. Mandatory Intervention**

21 A nonparty has the right to intervene in litigation between others when the
22 nonparty seeking intervention “(1) claims an interest relating to the property or
23 transaction that is the subject of the action, (2) is so situated that the action’s disposition
24 may impair the [nonparty’s] ability to protect that interest, and (3) is not adequately
25 represented with regard to that interest by existing parties.” (4 Witkin, Cal. Procedure
26 (6th ed. 2022) Pleading § 217, citing § 387(d)(1)(B).)

27
28 ¹ Further statutory references are to the Code of Civil Procedure unless stated
otherwise.

1 The County argues that the League fails to satisfy these elements. The County's
2 primary argument concerns the third element.

3 **1. The League's Interests Are Adequately Represented by Petitioners**

4 The League defines its interest as "protecting and promoting fair representation
5 for all voters" and "challenging the [Adopted] Map specifically." (Motion, p. 9, ll. 21-
6 22, p. 10, l. 18.)

7 "The third element, adequacy of representation, 'is satisfied if the applicant
8 shows that representation of his interest *may* be inadequate' – a 'minimal' burden.
9 [Citation.]" (*Kalbers v. U.S. Dept. of Justice* (2021) 22 F.4th 816, 828 (*Kalbers*)
10 [addressing Rule 24 of the Federal Rules of Civil Procedure].)² In *Kalbers*, Volkswagen
11 (VW) sought to intervene in litigation filed by a professor under the Freedom of
12 Information Act against the federal government seeking documents turned over by VW
13 during a criminal investigation. The Ninth Circuit Court of Appeals determined that
14 VW was "uniquely well-positioned to explain the commercial significance of the
15 documents at issue []. Lacking this information, the existing parties *may* not represent
16 VW's interests adequately." (*Ibid.*)

17 The League argues that redistricting has been a central focus for the League
18 nationally, and that its local affiliates have spearheaded efforts across the country to
19 overturn discriminatory maps. It argues that due to its purpose and experience, it is
20 uniquely suited to litigate the issues in this case. Moreover, the League notes that it was
21 a co-sponsor of the Fair Maps Act. The League's involvement in other legislative and
22 judicial proceedings does not equate to the type of "unique" knowledge at issue in
23 *Kalbers*, or demonstrate that its interests will not be adequately represented by
24 Petitioners.³

25
26 ² " 'Section 387 was modeled after and is 'virtually identical' to rule 24 of the Federal
27 Rules of Civil Procedure.' ... Thus, '[i]n accessing [the] requirements' for mandatory
28 intervention, 'we may take guidance from federal law.' [Citations.]" (*Crestwood
Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 573.)

³ *Kobach v. U.S. Election Assistance Commission* (D. Kan. 2013) 2013 WL 6511874
(*Kobach*), an unpublished case cited by the League in its reply, also is

1 Moreover, the League acknowledges that it is seeking the same type of relief as
2 Petitioners. (Motion, p. 3, ll. 15-16, p. 15, ll. 6-7.) A comparison of the prayers in
3 Petitioners’ petition for writ of mandate,⁴ and in the League’s proposed petition in
4 intervention (Motion, Ex. A) confirms that the two seek the same relief (i.e., a finding
5 that the County violated the Fair Maps Act; an order directing the County to vacate and
6 set aside the ordinance approving the Adopted Map; an order enjoining use of the
7 Adopted Map; and a request that the Court exercise its jurisdiction under Elections Code
8 section 21509 to adopt a compliant map).

9 When the proposed intervenor and an existing party “are pursuing the same
10 general objective ... we presume that the [existing party’s] representation is adequate.
11 [Citation.]” (*Technology Training Associates, Inc. v. Buccaneers Limited Partnership*
12 (2017) 874 F.3d 692, 697; see also *City of Malibu v. Cal. Coastal Commission* (2005)
13 128 Cal.App.4th 897, 906 [denying intervention where the existing party and the
14 proposed intervenor had identical interests and there was no showing that the party had
15 not pursued other available legal theories].) Although “the presumption is weak,” it
16 does require the proposed intervenor to come forward with “some evidence” that its
17 interests are not adequately represented. (*Technology Training Associates, supra*, at p.
18 697; see also *People v. Brophy* (1942) 49 Cal.App.2d 15, 34 [the burden is on the
19 proposed intervenor to show intervention is proper].)

20
21
22 distinguishable. While the court in *Kobach* recognized the proposed intervenors’
23 experience, expertise, and special interest in the administration of election laws, it
24 also found that the existing government defendants might not adequately represent
25 the specific private interests of the applicants. (*Id.* at *4.) The Court notes that
26 neither party objects to the Court’s consideration of this decision. (See *Landmark*
27 *Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251,
fn. 6 [“the California Rules of Court do not prohibit citation to unpublished federal
cases, which may properly be cited as persuasive, although not binding, authority.
[Citations.]”].)

28 ⁴ The Court takes judicial notice of Petitioners’ petition for writ of mandate. (Evid.
Code, § 452, subd. (d).)

1 The League does not satisfy its burden to demonstrate that Petitioners, who have
2 the same objectives as the League, will not adequately represent the League's interests.
3 Therefore, the League's motion for mandatory intervention is denied.

4 **B. Permissive Intervention**

5 Permissive intervention is appropriate if: "(1) the proper procedures have been
6 followed; (2) the nonparty has a direct and immediate interest in the action; (3) the
7 intervention will not enlarge the issues in the litigation; and (4) the reasons for the
8 intervention outweigh any opposition by the parties presently in the action." (*Reliance*
9 *Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.)

10 Although the County initially argued that the League failed to timely file and
11 serve its motion, it since has waived that argument. (Sur-Reply, p. 2, l. 1-2.)

12 **1. The League Has a Direct and Immediate Interest in the Action**

13 To support permissive intervention, it is well settled that the
14 proposed intervenor's interest in the litigation must be direct rather than
15 consequential, and it must be an interest that is capable of determination
16 in the action. [Citations.] The requirement of a direct and immediate
17 interest means that the interest must be of such a direct and immediate
18 nature that the moving party " 'will either gain or lose by the direct legal
19 operation and effect of the judgment.' [Citations.]" "A person has a
20 direct interest justifying intervention in litigation where the judgment in
21 the action *of itself* adds to or detracts from his legal rights without
22 reference to rights and duties not involved in the litigation. [Citation.]"
23 Conversely, "[a]n interest is consequential and thus insufficient for
24 intervention when the action in which intervention is sought does not
25 directly affect it although the results of the action may indirectly benefit
26 or harm its owner. [Citation.]"

27 (*City and County of San Francisco v. State of California* (2005) 128 Cal.App.4th
28 1030, 1037 (*City and County of San Francisco*)).

1 The League states that it is a nonpartisan, nonprofit organization, whose mission
2 includes protecting the rights of voters. (Motion, Ex. A [Proposed Petition, ¶¶ 13, 15].)
3 It has 290 members, who are registered voters residing in the County’s five supervisorial
4 districts, some of whom will have their right to vote deferred as a result of the Adopted
5 Map. (*Id.* at ¶ 17].)

6 A proposed intervenor must have “more than a general political interest in
7 upholding a statute.” (*People ex rel. Rominger v. County of Trinity* (1983) 147
8 Cal.App.3d 655, 662 (*Rominger*).) “[O]ne of the purposes of intervention is ‘to protect
9 the interests of those *who may be affected by the judgment*’ [Citation.]” (*Ibid.*)
10 Thus, the proposed intervenor must have “a specific interest that would be directly
11 affected in a substantial way by the outcome of the litigation.” (*Ibid.*)

12 In *Rominger*, the Court found an environmental group’s general interest in the
13 enforcement of environmental laws alone would not support intervention. The group,
14 however, also showed that its members would be harmed by the spraying of certain
15 chemicals, and its members were among the persons the ordinances at issue were
16 designed to benefit and protect. (*Rominger, supra*, 147 Cal.App.3d at p. 662; compare
17 *City and County of San Francisco, supra*, 128 Cal.App.4th at pp. 1038-1039 [proposed
18 intervenor’s purpose to defend proposition was insufficient to permit intervention and
19 none of its members’ marriages would be affected by the judgment].)

20 Like *Rominger*, while the League’s general interest in upholding voting rights
21 may not be a sufficient interest to permit intervention, its assertion that some of its
22 members’ rights to vote may be deferred or otherwise affected, is a sufficiently specific
23 interest that is directly affected by the outcome of the litigation.

24 In its opposition, the County argued that the League’s reliance on its proposed
25 petition, which was verified on information and belief, was not competent evidence of
26 its interest. The Court issued a tentative ruling exercising its discretion to authorize the
27 League to file an affidavit addressing this evidentiary shortcoming. On June 10, 2022,
28 the League filed the declaration of its president, Cindy Marie Absey, essentially

1 affirming the allegations set forth in the proposed petition concerning the League’s
2 members, and the effect of the Adopted Map on their right to vote. The County objected
3 to the declaration at the hearing, but declined the opportunity for a continuance to
4 respond in writing.

5 The Court overrules the County’s objection. (See, e.g., *Jay v. Mahaffey* (2013)
6 218 Cal.App.4th 1522, 1537-1538 [“The general rule of motion practice ... is that new
7 evidence is not permitted with reply papers ‘[T]he inclusion of additional evidentiary
8 matter with the reply should only be allowed in the exceptional case ...’ and if permitted,
9 the other party should be given the opportunity to respond. [Citation.]”]; *Weiss v.*
10 *Chevron, U.S.A., Inc.* (1988) 204 Cal.App.3d 1094, 1098 [same].) The Court concludes
11 the League has submitted sufficient evidence of its interest in the litigation.

12 **2. The League’s Intervention Will Not Enlarge the Issues in the**
13 **Litigation**

14 “‘[I]ntervention will not be allowed when it would retard the principal suit, or
15 require a reopening of the case for further evidence, or delay the trial of the action, or
16 change the position of the original parties.’ [Citation.]” (*Simpson, supra*, 196
17 Cal.App.3d at p. 1202.) None of these factors are present here.

18 The County contends the League’s participation would expand the scope of the
19 dispute because the League seeks to place “‘the case in a broader national perspective
20’ ” (Opposition, p. 15, citing Motion, pp. 12, 24.) The Court construes the League’s
21 statement to be nothing more than a reflection of the legal argument it may seek to
22 present. In prior proceedings in this matter, the parties identified several opinions issued
23 in other jurisdictions which, although they are not controlling authority, have a bearing
24 on the issues raised by Petitioners. The Court concludes the participation by the League
25 as an intervenor will not enlarge the scope of the case by raising issues beyond those set
26 forth in the petition for writ of mandate. (See, e.g., *Cox v. Otay Municipal Water Dist.*
27 (1962) 200 Cal.App.2d 672, 681 [denying intervention where the contentions advanced
28 by the proposed intervenor would extend the scope of the remedy sought by the
complaint]; see also *Pappas v. State Coastal Conservancy* (2021) 73 Cal.App.5th 310,

1 317 [no showing that intervention would enlarge the scope of the case by raising issues
2 beyond the operative complaint].)

3 As for the County’s other arguments on this factor, the Court finds them
4 unpersuasive.

5 **3. The Reasons for the League’s Intervention Outweigh Any Opposition by**
6 **the County**

7 “The permissive intervention statute balances the interests of others who
8 will be affected by the judgment against the interests of the original parties in
9 pursuing their litigation unburdened by others. [Citation.]” (*City and County of*
10 *San Francisco, supra*, 128 Cal.App.4th at p. 1036.)

11 The County argues that its interest in “efficiently litigating this case”
12 outweighs the League’s reasons for intervention. In support, the County cites
13 *South Coast Air Quality Management Dist. v. City of Los Angeles* (2021) 71
14 Cal.App.5th 314 (*South Coast*). *South Coast* was a “complex” case filed under
15 the California Environmental Quality Act, which already had “an impressively
16 large cast of characters,” including eight petitioners, four respondents, and four
17 real parties in interest. (*Id.* at p. 320.) The court found the proposed intervenor’s
18 position was duplicative of that of the existing parties. (*Id.* at p. 321.) While the
19 goals of Petitioners and the League may align, this case does not involve the same
20 court management concerns as those presented in *South Coast*.

21 The County further argues that the League’s interest is “indistinguishable” from
22 any other member of the public who opposed the Adopted Map, and granting
23 intervention may encourage others to intervene, further complicating and potentially
24 enlarging the issues in the case. However, any future proposed intervenors would be
25 similarly subjected to an analysis of the elements required for intervention under section
26 387.

27 The Court concludes that the League’s stated interest, to protect the voting rights
28 of its members and the public, outweighs the County’s opposition to intervention.

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C. Conditions on Intervention

Finally, the County requests that the Court impose certain conditions on the League’s intervention. “[A] trial court may place reasonable limits even as to intervention of right.” (*Carlsbad Police Officers Assoc. v. City of Carlsbad* (2020) 49 Cal.App.5th 135, 141, 150-153 (*Carlsbad Police*)). This discretion may include limits on procedural matters, scheduling, and discovery. (*Id.* at p. 153.)

For example, the Court may restrict the intervenor from duplicating discovery requests, and prevent it from seeking attorney fees for work duplicating the efforts by the plaintiff. (*Carlsbad Police, supra*, 49 Cal.App.5th at p. 152.) It would be an abuse of discretion, however, to condition intervention on requiring the intervenor to forgo its right to request statutory attorney fees. (*Id.* at pp. 154-155.)

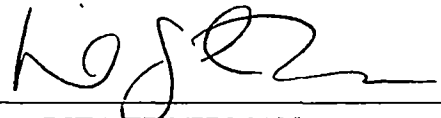
The Court also may limit intervention to discrete phases of the litigation; and it may require the intervenor to seek leave of court to initiate unilateral independent discovery when discovery is already underway. (*Carlsbad Police, supra*, 49 Cal.App.5th at p. 152.)

At this juncture, the Court will not impose any conditions on the League’s intervention. The County will have the opportunity to raise concerns about discovery requests or attorney fees at the appropriate time.

ORDER

The League’s motion to intervene pursuant to Code of Civil Procedure section 387, subdivision (d)(2) is granted. The League shall file a Petition in Intervention within 15 days of the date of this order.

DATED: June 17, 2022



Hon. RITA FEDERMAN
Judge of the Superior Court

**STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
CERTIFICATE OF MAILING**

SLO County Citizens for Good Government, Inc. vs. County of San Luis
Obispo

22CVP-0007

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I, Chelsie Simms, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **06/17/2022** I emailed a copy of the attached **Order Granting Motion to Intervene by League of Women Voters of San Luis Obispo County, Inc.** The foregoing document was addressed to each of the above parties.

OR

Document served electronically pursuant to CRC§2.251(b)(1)(B).

Dated: 6/17/2022

Michael Powell, Clerk of the Court

By: /s/ Chelsie Simms Deputy Clerk
Chelsie Simms