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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|------------------------------|---|---------------------------------|
| VIVID ENTERTAINMENT, LLC; |) | Case No. CV 13-00190 DDP (AGRx) |
| CALIFA PRODUCTIONS, INC.; |) | |
| JANE DOE a/k/a KAYDEN KROSS, |) | ORDER GRANTING MOTION TO |
| |) | INTERVENE |
| Plaintiff, |) | |
| |) | [Dkt. No. 24] |
| v. |) | |
| |) | |
| JONATHAN FIELDING, DIRECTOR |) | |
| OF LOS ANGELES COUNTY |) | |
| DEPARTMENT OF PUBLIC HEALTH; |) | |
| JACKIE LACEY, LOS ANGELES |) | |
| COUNTY DISTRICT ATTORNEY, |) | |
| and COUNTY OF LOS ANGELES, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |
| |) | |
| |) | |

Presently before the court is Proposed Intervenors Michael Weinstein, Marijane Jackson, Arlette De La Cruz, Mark McGrath, Whitney Engeran, and the Campaign Committee Yes on B, Major Funding by the AIDS Healthcare Foundation (collectively "Proposed Intervenors")'s Motion to Intervene. Having considered the parties submissions and heard oral argument, the court adopts the following order.

1 **I. BACKGROUND**

2 On November 6, 2012, 57% of voters in Los Angeles County
3 approved Measure B. (Compl. ¶ 36.) Measure B requires producers
4 of adult films to obtain a permit from the Los Angeles County
5 Department of Public Health before production can take place. (Id.
6 ¶ 41.) To obtain the permit, valid for two years but subject to
7 revocation, a producer must pay a fee and evidence successful
8 completion of a blood borne pathogen training course. (Id.)
9 Additionally, Measure B requires the use of condoms by performers
10 for all acts of anal or vaginal sex during the production of adult
11 films. (Id. ¶ 42.)

12 Plaintiffs are corporations and individuals involved in the
13 adult film industry as producers, employers, and performers. (Id.
14 ¶¶ 8-11.) On January 10, 2013, they filed this action against
15 Jonathan Fielding, Director of Los Angeles County Department of
16 Public Health, in his official capacity; Jackie Lacey, Los Angeles
17 County District Attorney, in her official capacity; and the County
18 of Los Angeles (collectively "Defendants").

19 Proposed Intervenors were the official proponents of Measure
20 B. Proposed Intervenors drafted the language that would become
21 Measure B, collected signatures to qualify the Measure for the
22 November 2012 ballot, submitted the signatures for verification,
23 raised funds, and drafted an argument for the appearance of the
24 Measure on the ballot. (Weinstein Decl. ¶¶ 3, 5-7.) They filed
25 this Motion to Intervene on March 1, 2013.

26 **II. LEGAL STANDARD**

27 Rule 24(a)(2) of the Federal Rule of Civil Procedure governs
28 intervention as of right and provides, in pertinent part: "On

1 timely motion, the court must permit anyone to intervene who . . .
2 claims an interest relating to the property or transaction that is
3 the subject of the action, and is so situated that disposing of the
4 action may as a practical matter impair or impede the movant's
5 ability to protect its interest, unless existing parties adequately
6 represent that interest." Fed. R. Civ. P. 24(a)(2).

7 To intervene as of right under Rule 24(a)(2), the movant must
8 demonstrate that: "(1) it has a significant protectable interest
9 relating to the property or transaction that is the subject of the
10 action; (2) the disposition of the action may, as a practical
11 matter, impair or impede the applicant's ability to protect its
12 interest; (3) the application is timely; and (4) the existing
13 parties may not adequately represent the applicant's interest."
14 United States v. City of Los Angeles, 288 F.3d 391, 397 (9th Cir.
15 2002) (quoting Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir.
16 1998)). The movant-intervenor bears the burden of showing that all
17 the requirements for intervention have been met. Id. at 397.

18 In determining whether intervention is appropriate, courts are
19 guided by practical and equitable considerations, and the
20 requirements for intervention are broadly interpreted in favor of
21 intervention. Donnelly, 159 F.3d at 409; Forest Conservation
22 Council v. U.S. Forest Serv., 66 F.3d 1489, 1493 (9th Cir. 1995).

23 Additionally, under Rule 24(b)(1)(B), a court "may permit" a
24 party to intervene who has (1) timely made a motion to intervene
25 and (2) has a claim or defense that shares with the main action a
26 common question of law or fact. Fed. R. Civ. P. 24(b)(1)(B).

27 **III. DISCUSSION**

28 **A. Intervention and Article III Standing**

1 Plaintiffs assert that in order to intervene under Rule 24,
2 Proposed Intervenors must meet not only the criteria for
3 intervention of right under the Federal Rules but also must
4 independently fulfill the requirements of Article III standing.
5 (Opp. at 15-18.) Neither the United States Supreme Court nor the
6 Ninth Circuit has explicitly addressed this issue. Perry v.
7 Proposition 8 Official Proponents, 587 F.3d 947, 950 n.2 (9th Cir.
8 2009) ("We have yet to decide whether putative intervenors must
9 satisfy standing independently of the parties to the case. The
10 circuits are split on this issue."); see also Prete v. Bradbury,
11 438 F.3d 949, 955 n.8 (9th Cir. 2006) (citing cases that demonstrate
12 circuit split). However, the Ninth Circuit has repeatedly allowed
13 intervention without requiring a demonstration of Article III
14 standing. See, e.g., Sagebrush Rebellion, Inc., v. Watt, 713 F.2d
15 525, 527 (9th Cir. 1983) (internal quotation marks
16 omitted) (mentioning a case in which "a public interest group was
17 entitled as a matter of right to intervene in an action challenging
18 the legality of a measure which it had supported," and noting that
19 "Rule 24 traditionally has received a liberal construction in favor
20 of applicants for intervention."); Doe v. Harris, no. C12-5713 THE,
21 2013 WL 140053, at *2 (N.D. Cal. Jan. 10, 2013) (granting permissive
22 intervention and stating that proponents of a ballot proposition
23 "are not required to demonstrate that they have independent Article
24 III standing in order to be permitted to intervene in this
25 action").

26 Because of the "liberal construction" of Rule 24 in this
27 circuit, the court declines to require that Proposed Intervenors
28

1 meet not only the Rule 24 requirements but also satisfy the
2 requirements for Article III standing.

3 **B. Intervention as of Right**

4 Proposed Intervenors argue that they are entitled to intervene
5 as a matter of right. Defendants do not oppose the Motion.
6 Plaintiffs do not challenge Proposed Intervenors' assertion that
7 they meet the first three criteria but do challenge their assertion
8 that they meet the fourth criterion (inadequate representation of
9 interests). The court will nonetheless consider whether Proposed
10 Intervenors meet all four Rule 24(a)(2) criteria.

11 **1. Timeliness**

12 To determine whether a motion to intervene is timely, the
13 court considers the following criteria: "(1) the stage of the
14 proceedings; (2) whether the parties would be prejudiced; and (3)
15 the reason for any delay in moving to intervene." Nw. Forest Res.
16 Council v. Glickman, 82 F.3d 825, 836 (9th Cir. 1996).

17 Here, the Complaint was filed on January 10, 2013, and served
18 on January 14, 2013. The Answer was initially due on February 4,
19 2013, and the parties stipulated to a 23-day extension, making the
20 Answer due on February 27. Proposed Intervenors filed this Motion
21 on March 1, 2013.

22 The court finds that Proposed Intervenors' Motion was filed at
23 an early stage of the proceedings and that there is no evidence of
24 any delay in so filing, thus meeting the first and third criteria.
25 Neither Plaintiffs nor Defendants argue that they would be
26 prejudiced by the timeliness of the Motion. The court therefore
27 finds that the second criterion is also met, and that the Proposed
28 Intervenors' Motion was timely.

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2. Significant Protectable Interest

Proposed Intervenor argue that they have a significant protectable interest in defending Measure B because they were the proponents of the ballot measure. They point to the recent California Supreme Court decision articulating the particular interests of ballot measure proponents, grounded in the California political process:

[B]ecause the initiative process is specifically intended to enable the people to amend the state Constitution or to enact statutes when current government officials have declined to adopt (and often have publicly opposed) the measure in question, the voters who have successfully adopted an initiative measure may reasonably harbor a legitimate concern that the public officials who ordinarily defend a challenged state law in court may not, in the case of an initiative measure, always undertake such a defense with vigor or with the objectives and interests of those voters paramount in mind. As a consequence, California courts have routinely permitted the official proponents of an initiative to intervene or appear as real parties in interest to defend a challenged voter-approved initiative measure in order to guard the people's right to exercise initiative power or, in other words, to enable such proponents to assert the people's, and hence the state's, interest in defending the validity of the initiative measure. Allowing official proponents to assert the state's interest in the validity of the initiative measure in

1 such litigation (along with any public officials who may
2 also be defending the measure) (1) assures voters who
3 supported the measure and enacted it into law that any
4 residual hostility or indifference of current public
5 officials to the substance of the initiative measure will
6 not prevent a full and robust defense of the measure to
7 be mounted in court on the people's behalf, and (2)
8 ensures a court faced with the responsibility of
9 reviewing and resolving a legal challenge to an
10 initiative measure that it is aware of and addresses the
11 full range of legal arguments that reasonably may be
12 proffered in the measure's defense. In this manner, the
13 official proponents' general ability to appear and defend
14 the state's interest in the validity of the initiative
15 measure and to appeal a lower court judgment invalidating
16 the measure serves to enhance both the fairness of the
17 judicial process and the appearance of fairness of that
18 process.

19 Perry v. Brown, 52 Cal. 4th 1116, 1125-26 (2011) (internal citation
20 and quotation marks omitted). In short, under California law
21 proponents of a ballot measure are considered to have a protectable
22 interest that they have assumed on behalf of the state and the
23 voters, regardless of any separate, individual interest in the
24 measure that proponents may be able to demonstrate.

25 Consistent with the California Supreme Court decision, the
26 Ninth Circuit has held that initiative proponents have an interest
27 sufficient to meet the Rule 24 requirements. See, e.g. Prete, 438
28 F.3d at 954 (internal quotation marks omitted) ("for purposes of

1 intervention as of right, a public interest group that has
2 supported a measure (such as an initiative) has a significant
3 protectable interest in defending the legality of the measure”).

4 It is uncontested that Proposed Intervenors were the official
5 proponents of Measure B. (See generally Weinstein Decl.) As such,
6 the court finds that they have a significant protectable interest
7 in the subject matter of the litigation, sufficient to support
8 intervention.

9 3. Impairment of Interests

10 “[I]f an absentee would be substantially affected in a
11 practical sense by the determination made in an action, he should,
12 as a general rule, be entitled to intervene.” Sw Center for
13 Biological Diversity v. Berg, 268 F.3d 810, 822 (9th Cir.
14 2001) (quoting Fed. R. Civ. P. 24 advisory committee’s
15 notes) (internal quotation marks omitted). “[A]n adverse court
16 decision on [a ballot measure supported by a public interest group]
17 may, as a practical matter, impair the interest held by the public
18 interest group.” Prete, 438 F.3d at 954. Because Plaintiffs are
19 challenging the constitutionality of Measure B and seeking to
20 enjoin its enforcement, a decision in their favor would impair the
21 interests of Proposed Intervenors and their organization, the AIDS
22 Healthcare Foundation, who were the official proponents of the
23 ballot measure and who have an interest in taking steps they deem
24 necessary to ensure workplace protection from sexually transmitted
25 diseases for adult film performers. See Sagebrush Rebellion, 713
26 F.2d at 528 (“An adverse decision in this suit would impair the
27 society’s interest in the preservation of birds and their
28 habitats.”).

1 Plaintiffs do not challenge Proposed Intervenors' ability to
2 meet this criterion, and the court agrees that Proposed
3 Intervenors' interests would be impaired by a decision in favor of
4 Plaintiffs in this suit. Accordingly, Proposed Intervenors meet
5 the third criterion for intervention.

6 **4. Adequate Representation of Interests**

7 To determine whether a party will adequately represent the
8 interests of a proposed intervenor, the court considers "whether
9 [that party] will undoubtedly make all of the intervenor's
10 arguments, whether [that party] is capable of and willing to make
11 such arguments, and whether the intervenor offers a necessary
12 element to the proceedings that would be neglected." Id.

13 Proposed Intervenors argue that the County will not adequately
14 represent their interests because the County Board of Supervisors
15 voted against adopting Measure B, County Counsel expressed
16 skepticism toward Measure B, and the Defendants desire the same
17 legal outcome as Plaintiffs. (Mot. at 16-17.) Most significantly,
18 Defendants have indicated that they "have declined to defend the
19 constitutionality of Measure B and have taken a position of
20 neutrality regarding whether Measure B is constitutional and/or
21 preempted by California law." (Defendants' Supplemental Statement
22 of Non-Opposition to Proposed Intervenors' Motion to Intervene at
23 2.)¹

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25 ¹ This is a more explicit statement of Defendants' position on
26 defending the Measure than that offered in their Answer, where they
27 stated:

28 Plaintiffs' Complaint presents important constitutional
questions that require and warrant judicial
determination. In a constitutional democracy, it is the
role of the courts to determine and resolve such

(continued...)

1 Plaintiffs argue in their Opposition, submitted before they
2 had the benefit of Defendants' Supplemental Statement of Non-
3 Opposition, that Proposed Intervenors have not demonstrated that
4 they are not adequately represented by Defendants because, since
5 the Measure became law, Defendants have acted to implement,
6 enforce, and defend it. (Opp. at 4.) They point to a letter sent
7 to "producers of adult films in Los Angeles County" explaining the
8 ordinance and its requirements. (Corn-Revere Decl. ¶ 2, Exh. A.)
9 They also point out that Proposed Intervenors do not cite any
10 statements made by Defendant critical of Measure B dating from
11 after it became law. (Id.) They assert further that "there is no
12 evidence in the record or the Motion from after November 6, 2012 to
13 support Proposed Intervenors' claim that Defendants desire Measure
14 B to be declared unconstitutional." (Opp. at 12.)

15 The court finds that Defendants' clear statement that it does
16 not intend to defend Measure B in this litigation is sufficient to
17 indicate that they are not adequately representing Proposed
18 Intervenors' interests. Insofar as Defendants have indicated that
19 they do not intend to make arguments in support of the
20 constitutionality and other validity of the Measure, there is a
21 clear indication of their inadequate representation of the

22 _____
23 ¹(...continued)
24 questions. To the extent that Plaintiffs have stated a
25 justiciable controversy, setting forth federal
26 constitutional challenges to the County of Los Angeles
27 Safer Sex in the Adult Film Industry Act ("Measure B"),
28 it is appropriate for the federal courts to determine and
resolve those challenges. Defendants encourage the Court
to resolve the merits of this action expeditiously.
(Answer at 1.) Among their affirmative defenses, Defendants
"reserve the right to have proponents of Measure B intervene and
defend the constitutionality of Measure B in light of Perry v.
Brown, 52 Cal.4th 1116 (2011)." (Id. at 13.)

1 interests of Proposed Intervenors. Because Defendants decline to
2 defend the Measure substantively, Proposed Intervenors will offer
3 an element to the proceedings that would otherwise be neglected,
4 namely, a full defense of the constitutionality and validity of the
5 Measure. "[I]n an instance . . . in which the public officials
6 have totally declined to defend the initiative's validity at all, .
7 . . it would clearly constitute an abuse of discretion for a court
8 to deny the official proponents of an initiative the opportunity to
9 participate as formal parties in the proceeding, either as
10 interveners or as real parties in interest, in order to assert the
11 people's and hence the state's interest in the validity of the
12 measure" Perry v. Brown, 52 Cal.4th at 1126.²

13 The court finds that Defendants will not adequately represent
14 the interests of Proposed Intervenors.

15 **5. Conclusion on Intervention as of Right**

16 Proposed Intervenors have met all four factors under Rule
17 24(a)(2) and the court therefore GRANTS intervention.

18 **C. Permissive Intervention**

19 Because the court has found that intervention by right is
20 appropriate, it need not consider permissive intervention.

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25 ² Even if the government defendants were defending the
26 measure, intervention by the official proponents might still be
27 warranted. Perry v. Brown, 52 Cal.4th at 1126 ("[I]n most instances
28 it may well be an abuse of discretion for a court to fail to permit
the official proponents of an initiative to intervene in a judicial
proceeding to protect the people's right to exercise their
initiative power even when one or more government defendants are
defending the initiative's validity in the proceeding.").

1 **IV. CONCLUSION**

2 For these reasons, the court GRANTS the Motion to Intervene.

3 IT IS SO ORDERED.

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6 Dated: April 16, 2013

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DEAN D. PREGERSON
United States District Judge