FILED

OCT 30 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DOUG LAIR; et al., Plaintiffs - Appellees, v. STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; et al., Defendants - Appellants.	No. 12-35809 D.C. No. 6:12-cv-00012-CCL District of Montana, Helena ORDER

DOUG LAIR; et al., Plaintiffs, and RICK HILL; et al., Intervenor-Plaintiffs - Appellants, v. STEVE BULLOCK, in his official capacity as Attorney General of the State of Montana; et al., Defendants - Appellees.	No. 12-35889 D.C. No. 6:12-cv-00012-CCL District of Montana, Helena

SVG/Moatt

Before: GOULD, CLIFTON, and BYBEE, Circuit Judges.

Rick Hill, A Lot of Folks for Rick Hill, and Lorna Kuney filed a motion in their appeal No. 12-35889 to clarify our October 16, 2012, opinion in appeal No. 12-35809 granting a stay pending appeal. We deny the motion to amend or clarify our order. However, we grant the motion for permissive intervention in appeal No. 12-35809 by the movants in appeal No. 12-35889, and the movants may file a brief on the merits to inform the panel that is hearing that appeal on the permanent injunction. We do not now decide whether intervention in the district court should have been granted.

Rule 24 of the Federal Rules Civil Procedure provides guidance for our analysis of intervention on appeal. *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). But "[i]ntervention at the appellate stage is, of course, unusual" and should not be granted under ordinary circumstances. *Id.* Under Rule 24(a)(2), we require that an applicant make four showings to qualify for intervention as of right:

> (1) it has a "significant protectable interest" relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant's interest.

Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998). An applicant's "[f]ailure to satisfy any one of the requirements is fatal to the application, and we need not reach the remaining elements if one of the elements is not satisfied." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

Here, the proposed intervenors do not show that the existing parties may not adequately represent their interest. The "most important factor" to determine whether a proposed intervenor is adequately represented by a present party to the action is "how the [intervenor's] interest compares with the interests of existing parties." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (citations omitted). Where the party and the proposed intervenor share the same "ultimate objective," a presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a "compelling showing" to the contrary. *Id.* (citing *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1305 (9th Cir. 1997).

The movants contend that they will be inadequately represented because, unlike Appellees, they are subject to a state court's temporary restraining order enforcing Montana's campaign contribution limits. The movants, however, share the same "ultimate objective" as the Appellees—both groups seek to defend the district court's earlier ruling that Montana's campaign contribution limits are

unconstitutional. The fact that movants are faced with a state court order enforcing the Montana law is not a "compelling showing" and does not distinguish their interest from Appellees'. Because the movants do not show that the Appellees will not adequately represent their interests in the litigation, we do not address any of the other requirements of Rule 24(a)(2), and we deny intervention of right.

Under Rule 24(b)(1)(B), we may permit intervention by litigants who "ha[ve] a claim or defense that shares with the main action a common question of law or fact." Here, we find that movants have met their burden because there is a common question of law or fact. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002). Accordingly, we grant permissive intervention under Rule 24(b)(1)(B). The movants may file a brief on the merits in appeal No. 12-35809 with the appellees in accordance with our prior scheduling order in that appeal. We hereby consolidate these two appeals, which shall proceed on the same schedule as that issued in No. 12-35809.

We deny the requested emergency relief and decline to amend our opinion.

The motion is **DENIED IN PART** and **GRANTED IN PART**.