Hon. Tiffany M. Cartwright

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

WASHINGTON STATE ALLIANCE FOR RETIRED AMERICANS,

Plaintiff,

v.

STEVE HOBBS, in his official capacity as Washington State Secretary of State, MARY HALL, in her official capacity as Thurston County Auditor, and JULIE WISE, in her official capacity as King County Elections Director,

Defendants.

JIM WALSH and MATT BEATON,

[Proposed] Intervenor-Defendants.

No. 3:23-cv-06014-TMC

MOTION TO INTERVENE

Noting Date: October 11, 2024

Oral Argument Requested

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I. Introduction.

Franklin County Auditor Matt Beaton was blindsided when a constituent asked him what he would do about applications for voter registration that violate the state Constitution, in light of the settlement agreed to in this case by the Attorney General. Jim Walsh, chairman of the Washington State Republican Party, faced a trickle, then a flood of calls from constituents asking the same question. Of course, for the Intervenors, the first they heard of a court order erasing a long-standing requirement of the state Constitution came long after entry this Court's Order.

In the version of events related to Intervenors by concerned constituents, this Court's Order approved an uncontested, un-litigated settlement agreement between the Democrat candidate for governor, the Democrat candidate for Secretary of State, the Democrat auditor of majority-Democrat Thurston County, the Democrat elections director of majority-Democrat King County, and Democrat elections lawyer Elias.[1] It appeared to the callers that Elias picked his "opponents" with care, ensuring that no one named in the lawsuit would actually be adverse to his preferred policy outcomes. His nominal client had never filed suit in this Court before, and he didn't bother to name a single member of the supposed client who had any interest in the outcome of the litigation. Despite his failure to properly invoke the Court's jurisdiction, not a single one of the named defendants even raised to this Court "the irreducible constitutional minimum of standing." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016) (cleaned up). And all the Democrat party member defendants agreed with Democrat lawyer Elias that he had discovered a heretofore unknown facial violation of both the federal Voting Rights Act ***and*** the United States Constitution. Even though each and every defendant had taken an oath of office to defend and support both the Constitutions of Washington and the United States, none of them had previously happened to notice—before Elias brought it to their attention—that the December 15, 1791 ratification of the First Amendment had precluded the prospect of Washington State maintaining its own constitution's 30 day residency requirement.

[1] As detailed in the Motion to Dismiss, Mr. Elias lacks a client with standing.

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Or at least that is the version of events told to Intervenors by their concerned constituents. Of course, it is possible that in Washington state—unlike in other cases in which Elias purported to represent state members of the same organization—someone actually does have standing, and Elias' failure to name that member of the plaintiff organization was a mere oversight. It is possible that the defendants made a serious inquiry into the merits of the claim, and in good faith reached the opposite conclusion of U.S. District Courts who faced actual challenges to virtually identical claims. But Democrat Attorney General Robert Ferguson hastily agreed to a settlement that purports to bind not only the three named defendants but also Republican Franklin County Auditor Matt Beaton and eliminates the shared right and obligation of Republican Party Chair Jim Walsh—also a Republican member of the Washington State House of Representatives—from prescribing "The Times, Places and Manner of holding Elections for Senators and Representatives …" U.S. Const. art. I, § 4, cl. 1. This Court should not allow a group of partisans representing only one political party to co-opt its authority for the purpose of making such a momentous change to state law and the state Constitution.

Federal Rule of Civil Procedure 24(a) gives a party a right to intervene where it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Auditor Beaton has just as much of an interest in the subject of this action as Auditor Hall and Elections Director Wise, an interest that Attorney General Ferguson saw fit to dispose of without any notice to him. Beaton, together with Walsh and the party he chairs, all have an interest in protecting and defending not both the state Constitution's residency requirement as well as the federal Constitution's Article III limits on judicial power, neither of which were addressed by any party invited to the action by Elias. They should be allowed to intervene to vindicate those rights.

II. Procedural History.

Plaintiff, the Washington State Alliance For Retired Americans, filed this suit on October 7, 2023, and filed a First Amended Complaint on October 20, 2023. Plaintiff's FAC alleges that

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the requirement in Washington's Constitution that a voter "have lived in the state, county, and precinct thirty days immediately preceding the election at which they offer to vote," Wash. Const. art. VI, § 1, violates Section 202 of the Voting Rights Act and the First and Fourteenth Amendments to the United States Constitution. It similarly alleged that the corresponding sections of the Revised Code of Washington, RCW 29A.08.230, and Washington Administrative Code, WAC 434-230-015, violate the same federal laws and constitutional provisions. FAC, Doc. 16 ¶¶ 7–10 (Oct. 20, 2023). Plaintiff sought a declaration that the challenged requirement is invalid and a permanent injunction forbidding its enforcement. *Id.* at 20-21. Plaintiff's complaint named as defendants the Secretary of State and two county elections officials, the Thurston County Auditor and King County Director of Elections. *Id.* ¶¶ 19-20.

The County Defendants filed Answers on December 8, 2023, and the Secretary of State filed an Answer on January 4, 2024. Two months later, after nothing at all had happened in the case, the parties notified the Court that they had resolved the matter, and on March 8, 2024, filed a motion for consent judgment voiding the state Constitution. The Court entered that order on March 15, 2024 and closed the case.

III. Argument.

"An order granting intervention as of right is appropriate if (1) the applicant's motion is timely; (2) the applicant has asserted an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that without intervention the disposition may, as a practical matter, impair or impede its ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties." *U.S. ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992). "To determine whether a motion for intervention as of right is timely, we consider the totality of circumstances facing the would-be intervenor, with a focus on three primary factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay. When evaluating these factors, courts should be mindful that the crucial date for assessing the timeliness of a motion to intervene is when proposed intervenors should have been aware that their interests

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would not be adequately protected by the existing parties." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835–36 (9th Cir. 2022) (cleaned up).

A. The Stage Of The Proceeding.

Although the case has been closed on this Court's docket, nothing ever actually happened. None of the existing parties did any substantive work on the matter. This is not a case where intervention will re-open discovery or create the need for existing parties to re-do work they already completed.

B. Prejudice To Other Parties.

Allowing intervention creates no prejudice to plaintiff, because it has not identified any member who would be harmed by the status quo *ante*. With no harmed member, intervention leaves the plaintiff in the same completely disinterested position as if the suit had never been filed, as it is now, settled by the partisan allies it selected as defendants, or if Beaton and Walsh prevail and have the settlement thrown out. Nor is there prejudice to the named defendants to allow Beaton and Walsh to determine whether they were properly subject to this Court's authority. If, as Beaton and Walsh contend, the plaintiff lacks standing, then the Court's Order imposing the settlement is void *ab initio*. It can only benefit the settling defendants to have their own oaths to the State Constitution rehabilitated by eliminating the Order due to the lack of Art. III jurisdiction. Further, it is no prejudice to demand that the existing parties allow Beaton and Walsh to defend their interests. "Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree. The parties to a lawsuit presumably know better than anyone else the nature and scope of relief sought in the action, and at whose expense such relief might be granted. It makes sense, therefore, to place on them a burden of bringing in additional parties where such a step is indicated, rather than placing on potential additional parties a duty to intervene when they acquire knowledge of the lawsuit." *Martin v. Wilks*, 490 U.S. 755, 765 (1989).

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C. Reason For And Length Of The Delay.

Review of the Court's docket shows that March 8 was the first time Beaton or Walsh could even know that the Attorney General had declined to assert any defense—including standing—to the pending claim. And from that date, the Court entered the settlement and closed the case only one week later, on March 15. But in all that time, although the case purports to bind Beaton as and auditor and affects Walsh's party as well as his role as a legislator, no one had served them or attempted to make them parties. Neither had any reason to know that their rights and obligations were at stake. Neither Beaton nor Walsh had any recognizable opportunity to seek to intervene in that narrow window, when the Attorney General and Beaton's co-election officials took no steps to alert them to the existence of the case. Having missed the one-week window when the case was open and not defended, their present motion to intervene is just as timely today as it would have been on March 16th. There is no legally identifiable difference between seeking to intervene the day after the case was closed and today.

IV. Conclusion.

For the foregoing reasons, and in order to actually contest the serious issues concerning Plaintiff's lack of sanding, this Court's ensuing lack of authority, and the other legal flaws in Plaintiff's case, as demonstrated in the accompanying proposed Motion to Dismiss, this Court should (1) re-open the case; and either (2) dismiss the entire matter as void *ab initio* for lack of a genuine controversy or (3)(a) grant the Motion to Intervene; and (3)(b) enter Intervenor-Defendants' Motion to Dismiss.

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September 16, 2024.

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By: _____

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