The Honorable Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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 Auditor, Defendants,	NO. 3:23-cv-06014-TMC DEFENDANT STEVE HOBBS'S OPPOSITION TO MOTION TO INTERVENE

I. INTRODUCTION

This Court entered a consent decree in this matter on March 15, 2024, and Secretary of State Steve Hobbs has since substantially complied with that decree. The matter is now concluded and the deadline for appeal has long passed. Despite public reports about the lawsuit at the time it was filed, and despite Auditor Beaton receiving actual notice of the Consent Decree shortly after it was entered, Proposed-Intervenors waited until six months after entry of judgment to seek intervention in this closed case. Proposed-Interventors, however, cannot hope to meet the requirements to demonstrate a right to intervene in this case at such a late and prejudicial stage. Their insinuation of collusion based purely on the political parties of the Defendants provide no grounds for the extraordinary relief they request.

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

Post-judgment intervention is highly disfavored in this Circuit given the prejudice resulting to parties in reopening litigation that has been fully and finally resolved. Proposed-Intervenors cannot demonstrate the extraordinary circumstances that could overcome such disfavor here. Proposed-Intervenors' motion is self-evidently untimely, coming after judgment has been entered, the appellate deadline expired, and the Consent Decree substantially implemented. And the prejudice to the parties is particularly stark given Proposed-Intervenors' stated intent to seek a last-minute change in the election laws governing the November 2024 General Election, which the parties took great pains to avoid in the Consent Decree. On top of this, Proposed-Intervenors fail to demonstrate a significant legally protectable interest that could justify intervention. While they assert an interest in enforcing state laws and Article III limitations on this Court, this type of generalized grievance cannot even demonstrate standing, let alone a right to intervene in a closed case.

In any event, there is no point to Proposed-Intervenors participating in this case now. They claim that, if intervention were granted, they would bring a motion to dismiss. But they ignore that a consent decree is a final judgment that can only be modified or set aside under Rule 60. And under clear precedent in this Circuit, Proposed-Intervenors do not have standing to bring a motion under Rule 60 because they did not participate in pre-judgment proceedings. And even if they could establish standing to bring the motion in the first place (which they cannot), they could never meet the exceedingly high bar to vacate a judgment.

This matter is final and closed. Intervention now is too late and futile besides. Proposed-Intervenors' motion should be denied.

II. FACTS AND PROCEDURAL HISTORY

Before the Consent Decree in this case, Washington law required all residents registering to vote to attest that they will have lived at their registration address for at least 30 days before the next election. *See* Wash. Rev. Code § 29A.08.230. Before 2019, Washington also required

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

voters to register to vote before Election Day. *See* SB 5227, 66th Leg., Reg. Sess., 2019 Wash. Laws ch. 291. In 2019, Washington enacted same-day voter registration, allowing anyone to register to vote up to and including the day of the election. *Id.*

The Alliance filed this lawsuit on November 7, 2023. Dkt. #1. The Alliance broadly publicized the lawsuit, and it was announced in legal news publications covering voting issues. *See* Rachel Riley, Wash. Can't Block New Residents From Voting, Retirees Say, Law360, https://www.law360.com/articles/1764615/wash-can-t-block-new-residents-from-voting-retirees-say (November 8, 2023); *see also* Democracy Docket, Washington Durational Residence Requirement Challenge, https://www.democracydocket.com/cases/washington-durational-residency-requirement-challenge/.[2]

The Alliance alleged that Washington's 30-day durational residency requirement for voter registration violated the Voting Rights Act, First Amendment speech and associational rights, and Fourteenth Amendment Equal Protection and Right to Travel rights. Dkt. #1 at 16-20. Critical to the Alliance's allegations was their argument that, after Washington enacted same-day voter registration, the durational residency requirement became unlawful. *See* Dkt. #1 at 15-16. The Alliance acknowledged that Washington has an interest in maintaining accurate voter registration records, and a voter registration deadline before election day may validly serve that interest. *See* Dkt. #1 at 2-3. But once Washington enacted same day voter registration, the Alliance alleged that Washington no longer had an interest in preventing bona fide residents who

[2] *See also* Internet Archive, Wayback Machine URL = https://www.democracydocket.com/cases/washington-durational-residency-requirement-challenge/ (showing this lawsuit was publicized no later than December 1, 2023).

had lived in a particular precinct for less than thirty days from registering in that precinct. Dkt. #1 at 3.

On March 11, 2024, the Parties jointly moved for the entry of a Consent Decree. The Consent Decree held that Washington's durational residency requirement violated the Voting Rights Act and the Fourteenth Amendment (but not the First) and enjoined the Defendants from enforcing the durational residency requirement. Dkt. #35 at 3; Dkt. #37 at 5-6. The Consent Decree required Secretary Hobbs to issue new voter registration forms removing any attestation that the voter will have lived at their registration address for 30 days prior to the next election. Dkt. #37 at 6.

The Parties specifically timed the enforcement provisions of the Consent Decree to avoid changes to election practices or policies too close to the November 2024 Election. Even though the parties jointly moved for entry of the decree in March, they agreed that, if this Court did not enter the Consent Decree before August 2024, the bulk of the Defendants' obligations under the Consent Decree would not go into effect until after the November election. Dkt. #37 at p. 6 ¶ 2.

This Court granted the motion and entered the Consent Decree on March 15, 2024. Dkt. #36; Dkt. #37. This required the Secretary and the County Defendants to take steps to conform with the decree "in advance of the November 2024 elections as soon as practicable." Dkt. #37 at p. 6 ¶ 2. The time to appeal the Consent Decree expired on April 15, 2024.

Secretary Hobbs has since substantially complied with the terms of the decree. Just four calendar days after entry of the Consent Decree, on March 19, 2024, the Director of Elections in the Office of the Secretary of State, Stuart Holmes, forwarded a copy of the Consent Decree to each of the county auditors, including Matt Beaton. Declaration of Stuart Holmes, Ex. 1. In that

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

email, he summarized the Secretary of State's responsibilities under the agreement including to "amend the state's voter registration form and online voter registration . . . to exclude the state's 30-day durational residency requirement;" and that "[v]oters cannot be denied the right to register or right to vote in any election on the basis that the registrant or voter has not resided at their current address to vote for at least thirty days before election day." Holmes Decl. Ex. 1. And on May 21, 2024, the Secretary of State filed a notice of proposed rulemaking amending the voter registration form to comply with the Consent Decree, which was published in the Washington State Register. Wash. State Reg. § 24-11-136 (May 21, 2024). The notice of proposed rulemaking mentioned this action by name and cause number as part of the "Reasons Supporting Proposal." *Id.* The Office of the Secretary of State maintains a list of email addresses of parties interested in election related rulemakings and sent this notice of proposed rulemaking to everybody on that list on May 28, 2024. Holmes Decl., ¶ 6; *id.*, Ex. 3. The notice of proposed rulemaking was also sent, via email, to every county auditor, including Matt Beaton, on May 28, 2024. Holmes Decl., ¶ 7; *id.*, Ex. 4. A public hearing on the proposed rule was held on June 25, 2024, at the Washington State Library in Tumwater. Wash. State Reg. § 24-11-136; Holmes Decl., ¶ 7. The Republican candidate for Washington Secretary of State, Dale Whitaker, appeared at that public hearing and gave testimony against the rule. *Id.* The rule amending the voter registration form was adopted as a final rule on July 25, 2024, and became effective on August 25, 2024. Wash. State Reg. § 24-16-019; Holmes Decl., ¶ 8.

In July 2024, mainstream news publications issued numerous articles regarding the Consent Decree. *E.g.*, TJ Martinell, Ferguson, Hobbs agree to settlement voiding original Washington Constitution voter rule, The Center Square (July 10, 2024) available at:

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

https://queenannenews.com/news/2024/jul/10/ferguson-hobbs-agree-to-settlement-voiding-original-washington-constitution-voter-rule/; Eric Tegethoff, 30-day residency requirement of WA voter registration struck down, MyEdmondsNews, July 16, 2024 available at: https://myedmondsnews.com/2024/07/30-day-residency-requirement-for-wa-voter-registration-struck-down/. Mr. Whittaker was quoted publicly disapproving of the settlement. TJ Martinell, Ferguson, Hobbs agree to settlement voiding original Washington Constitution voter rule, The Center Square (July 10, 2024) available at: https://queenannenews.com/news/2024/jul/10/ferguson-hobbs-agree-to-settlement-voiding-original-washington-constitution-voter-rule/. Bryan Elliot, the Republican county auditor for Kittitas County, also publicly disapproved of the Decree. *Id.*

Now, six months after the Consent Decree was entered, five months after expiration of the deadline to appeal, and a month before the November 2024 Election, Proposed-Intervenors move to intervene in an attempt to undo the Consent Decree. Dkt. #38.

III. ARGUMENT

Proposed-Intervenors fail to establish any of the four showings necessary to justify intervention as a matter of right under Rule 24(a). A party moving to intervene as of right bears the burden to prove four things: "(1) their motion is timely; (2) they have a 'significantly protectable interest relating to the property or transaction which is the subject of the action;' (3) 'the disposition of the action may as a practical matter impair or impede [their] ability to protect that interest;' and (4) their 'interest is inadequately represented by the parties to the action.'" *E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1001 (9th Cir. 2024) (citing *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc)). As a

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

preliminary matter, Proposed-Intervenors address only timeliness, and devote no argument to the other three showings they are required to make. *See generally* Dkt. #38. Further, their motion is supported by no sworn testimony or any other admissible evidence. *Id.* Proposed-Intervenors have utterly failed to meet their burden to justify intervention in this case, and their motion should be denied on this basis alone. *See Key Bank of Puget Sound v. Alaskan Harvester*, 738 F. Supp. 398, 405 (W.D. Wash. 1989) ("In view of the applicant's failure to present any evidence explaining its tardy prosecution of its claim, its application for leave to intervene is denied."); *see also Orange Cty. v. Air California*, 799 F.2d 535, 538 (9th Cir. 1986) (requiring moving party to "convincingly explain" why intervention should be granted).

But beyond Proposed-Intervenors' failure to carry their burden, their motion is demonstrably not timely because it comes months *after* judgment was rendered and the time to appeal the Consent Decree has expired. And they can have no interest relating to this action because they lack standing to seek relief from the judgment under Rule 60(b), which at this stage, is the only way the Consent Decree could be altered or vacated. Finally, intervention would be futile because Proposed-Intervenors could never meet the exceptionally high bar to vacate the Consent Decree. Their motion to intervene is untimely, baseless, and utterly futile. It should be denied.

A. The Intervention Motion Is Not Timely

Courts in the Ninth Circuit consider three factors to determine if a motion to intervene is timely: "the stage of the proceeding, prejudice to other parties, and the reason for and length of the delay." *U.S. v. Or.*, 913 F.2d 576, 588 (9th Cir. 1990). Here, all three factors weigh against granting intervention.

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

First, the late stage of the proceedings weighs strongly against intervention. This action is over, a consent decree has been negotiated and entered by the Court, the time to appeal has expired, and the Consent Decree has been substantially implemented. This case exemplifies why a motion to intervene filed after judgment "weighs heavily against" intervention. *Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.* (*DTSC*), 309 F.3d 1113, 1119 (9th Cir. 2002). In all but "exceptional cases," intervention after judgment should be denied. *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978); *see also Calvert v. Huckins*, 109 F.3d 636, 638 (9th Cir. 1997) ("postjudgment intervention is generally disfavored because it creates 'delay and prejudice to existing parties'"); *U.S. v. Wash.*, 86 F.3d 1499, 1504 (9th Cir. 1996) ("The period of final implementation is too late a stage of the proceeding to permit intervention to relitigate such basic questions."); *Or.*, 913 F.2d at 588 ("[W]aiting until after entry of a consent decree weighs heavily against intervention."). And a motion to intervene filed after the time to appeal has expired is even more "strongly disfavor[ed]." *Chevron Env't Mgmt. Co. v. Env't Prot. Corp.*, 335 F.R.D. 316, 323 (E.D. Cal. 2020).

Second, permitting intervention here would disrupt the "delicate balance" achieved by the parties and substantially prejudice the parties. *See Or.*, 913 F.2d at 589. Whether intervention would result in prejudice is the "most important" part of the timeliness analysis. *U.S. v. Groner*, 475 F.2d 550, 554 (5th Cir. 1972) (quoting C. Wright & A. Miller, *supra,* § 1916, at 575) (internal quotation marks omitted). Here, prejudice is evident on the face of the Consent Decree. The Consent Decree included specific provisions ensuring that enforcement of its provisions would not disrupt the November general election. Dkt. #37 at p. 6 ¶ 2. These timing provisions were central to the Secretary's interest in ensuring that the November election was orderly and

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

any changes to Washington election law would not be made on the eve of the election. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5, 127 S. Ct. 5 (2006) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."). Secretary Hobbs has now substantially implemented the decree in time for the November election. Holmes Decl. ¶ 8. Proposed-Intervenors plainly state they seek to upset this result, even though they had actual notice of these implementation efforts and could have attempted to intervene earlier to avoid disruption to the election. Declaration of William McGinty (McGinty Decl.), Ex. 1 at 6:9-11 ("[T]he question of whether or not to register voters within those deadlines is coming up on an actual election day."); *see also* Holmes Decl., Ex. 4; *see also* Wash. State Reg. § 24-11-136. Intervention now, less than a month before the November election, underscores the prejudice to the parties and the carefully crafted timing of their settlement.

Third, Proposed-Intervenors have not explained why they waited so long to file their motion. Notably, they do not indicate when they first learned of this lawsuit or the Consent Decree. *See generally* Dkt. #38. In fact, they do not include any admissible evidence about how they learned of this action at all. Proposed-Intervenors had reason to know of the action as early as December of 2023 when it was publicized in legal publications. *See supra* § II. And they had actual notice of the Consent Decree no later than March 19, before expiration of the time to appeal, when Secretary Hobbs informed all of the county auditors (including Mr. Beaton) about it. Holmes Decl. ¶ 4; Holmes Decl., Ex. 1. Proposed-Intervenors have not "convincingly explain[ed]" (*see Orange County*, 799 F.2d at 538) their delay, and have not met their burden to

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

establish that their motion is timely. It should be denied on this ground alone. *See Key Bank of Puget Sound*, 738 F. Supp. at 405 (W.D. Wash. 1989).

B. Proposed Intervenors Lack a Significantly Protectable Legal Interest Relating To This Action

Proposed-Intervenors also lack a significantly protectable legal interest in this action. The "operative inquiry" under this prong is whether the proposed intervenors' asserted interest is "protectable under some law,' and whether 'there is a relationship between the legally protected interest and the claims at issue.'" *Cal. Dep't of Toxic Substances Control v. Jim Dobbas*, Inc., 54 F.4th 1078, 1088 (9th Cir. 2022). If these "two core elements are not satisfied, a putative intervenor lacks any 'interest' under Rule 24(a)(2), full stop." *Id.* "Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry." *Greene v. U.S.*, 996 F.2d 973, 976 (9th Cir. 1993).

Here, Proposed-Intervenors assert that "Auditor Beaton has just as much of an interest in the subject of this action as Auditor Hall and Elections Director Wise." Motion at 2. But that is plainly false. Auditors Hall and Wise were named defendants in the complaint and the Consent Decree specifically binds their future conduct. The Consent Decree does not even mention Auditor Beaton, and he is not a party to it.

Proposed-Intervenors also assert that Auditor Beaton and Mr. Walsh have an interest in defending the state's "residency requirement as well as the federal Constitution's Article III limits on judicial power." Motion at 2. But this type of generalized grievance is not even enough to establish Article III standing, much less a significant legally protectable interest warranting intervention. *See, e.g.*, *U.S. v. Alisal Water Corp.,* 370 F.3d 915, 920 (9th Cir. 2004) ("It is settled beyond peradventure ... that an undifferentiated, generalized interest in the outcome of an

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

ongoing action is too porous a foundation on which to premise intervention as of right.") (quoting *Public Serv. Comp. of N.H. v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998)); *see also Raines v. Byrd*, 521 U.S. 811, 829 (1997) (holding that individual legislators lacked standing to challenge constitutionality of federal statute where they alleged "no injury to themselves as individuals" and their alleged institutional injury was "wholly abstract and widely dispersed"). Here, Auditor Beaton and Mr. Walsh are not the intended beneficiaries of state residency laws or Article III, so as to demonstrate a legally protectable interest under Rule 24. *Cf., Cal. ex rel. Lockyer v. U.*S., 450 F.3d 436, 441 (9th Cir. 2006) (finding intended beneficiaries of a law have a sufficiently "direct, non-contingent, [and] substantial" interest in challenge to federal law as to warrant intervention under Rule 24).

Their lack of a legally protectable interest is underscored by the fact that, even if intervention were granted, they could do nothing to vacate the Consent Decree. With the time to appeal expired, their only option would be to bring a motion to vacate the judgment under Rule 60(b) and Proposed-Intervenors do not even have standing to bring such a motion. Proposed-Intervenors attached a "Motion to Dismiss" to their motion to intervene, indicating that they would bring such a motion should the Court grant intervention. Dkt. #38-1. But a consent decree is a judgment, and like all other judgments can only be vacated under Rule 60. *Espinoza v. United Student Aid Funds, Inc.*, 553 F.3d 1193 (9th Cir. 2008) ("After a judgment . . . is finalized, and the time for appeal has run, the judgment can only be reconsidered in the limited circumstances provided by Rule 60(b)."); *see also Heal the Bay, Inc. v. McCarthy*, 2015 WL 13357656 at *4 (N.D. Cal. March 9, 2015) ("The appropriate procedural mechanism to void a final judgment for

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

lack of subject matter jurisdiction is a motion under Rule 60(b)(4), not a motion under Rule 12(h)(3).").

And, under Rule 60(b), only a party that participated in the trial court proceedings is permitted to move to vacate and only where the equities favor hearing the motion. *Citibank Intern. v. Collier-Traino, Inc.*, 809 F.2d 1438, 1441 (9th Cir. 1987) (holding standards applicable to non-party appeals apply to non-party motions under Rule 60(b), those standards being "(1) the party participated in the proceedings below; and (2) the equities favor hearing the appeal."). Proposed-Intervenors, of course, did not participate in these proceedings to date, and thus do not have standing to move to vacate the Consent Decree. *Heal the Bay, Inc.*, 2015 WL 13357656 at *4 (holding that party who had not participated in the district court proceedings "[a]part from their petition to intervene" lacked standing to bring a motion under Rule 60(b)). Proposed-Intervenors thus have no practical interest in this matter, because they have no right to request vacation of the Consent Decree. Proposed-Intervenors fail to establish this prong of the Rule 24(a), which independently requires denial of their intervention motion. *See Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009) ("Failure 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.").

C. Intervention Would Be Futile Because Proposed-Intervenors Have No Practical Way To Protect Any Asserted Interest

Even if they did have standing to move to vacate the Consent Decree under Rule 60(b), they could never meet the very high bar to vacate a judgment. Accordingly, they have no practical way to protect their claimed interest, and intervention is pointless.

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

Here, Proposed-Intervenors claim that the Consent Decree is void because the Court lacked jurisdiction to enter it. *See* Dkt. #38-1. Such a claim must be brought under Rule 60(b)(4), permitting relief from a judgment if "the judgment is void." *See Wadsworth v. KSL Grand Wailea Resort, Inc.*, 2014 WL 4829479 at *3 (D. Hawai'i Sept. 26, 2014). "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered the judgment lacked even an 'arguable basis' for jurisdiction." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010) (quoting *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986).

Proposed-Intervenors cannot clear this exceedingly high bar to vacate a judgment. Their principal argument is that the Alliance lacks Article III standing, and thus the Court lacks jurisdiction. *See generally* Dkt. #38-1. But at the pleading stage, which is where this case settled, a plaintiff need only make "general factual allegations of injury resulting from the defendant's conduct." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The Alliance alleged that "[t]he Durational Residence Requirement harms new members of the Alliance who move to Washington or to a new county or precinct within the month leading up to any federal election." Dkt. #1 at p. 6 ¶ 18. This is sufficient for Article III standing at the pleading stage. *California Rest. Ass'n. v. Berkeley*, 89 F.4th 1094, 1100 (9th Cir. 2024) (holding that "[a]ssociation has easily established standing" at the pleading stage where it alleged "one or more of its members" would be injured by challenged ordinance). There are simply no grounds for vacation of the Consent Decree for lack of standing under Rule 60(b). *See Wadsworth*, 2014 WL 4829479 at *6 (rejecting motion to vacate premised on lack on Article III standing).

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
7141 Cleanwater Dr SW
PO Box 40111
Olympia. WA 98504-0111
(360) 709-6470

Proposed-Intervenors also seek intervention to litigate the merits of the Alliance's claims, namely whether Washington's 30-day durational residency requirement violates the Voting Rights Act or any constitutional provision and whether the Alliance is barred by laches from bringing the claim. Dkt. #38-1 at 8-12. But a motion to vacate a judgment is not a substitute for a timely appeal. *Espinosa*, 559 U.S. at 270; *see also Casey v. Albertson's, Inc.*, 362 F.3d 1254, 1261 (9th Cir. 2004) ("[T]he merits of a case are not before the court on a rule 60(b) motion."). These issues are settled, and cannot be raised now, well past the time to appeal. There is simply no reason for Proposed-Intervenors to intervene at this late date, because they have no grounds upon which to vacate the Consent Decree. Accordingly, intervention should be denied because intervention cannot protect any interest they may have had in this case.

IV. CONCLUSION

The motion to intervene should be denied.

DATED this 7th day of October 2024.

ROBERT W. FERGUSON
Attorney General

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General
TERA M. HEINTZ, WSBA #54921
KARL D. SMITH, WSBA #42988
Deputy Solicitors General
7141 Cleanwater Drive SW
PO Box 40111
Olympia, WA 98504-0111
(360) 709-6470
william.mcginty@atg.wa.gov
tera.heintz@atg.wa.gov
karl.smith@atg.wa.gov
Counsel for Defendant Steve Hobbs

I certify that this memorandum contains 3,904 words, in compliance with the Local Civil Rules.

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 7th day of October 2024, at Olympia, Washington.

/s/ William McGinty
WILLIAM MCGINTY, WSBA #41868
Assistant Attorney General