

THE HONORABLE JOHN H. CHUN
Noted for August 31, 2016
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION, IAM&AW DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION 21; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL NO. 28; WAYNE AU, PH.D., on his own behalf and on behalf of his minor child; PAT BRAMAN, on her own behalf; and DONNA BOYER, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

No. 16-2-18527-4 SEA

PLAINTIFFS' OPPOSITION TO
MOTION TO INTERVENE

1 *League of Women Voters*, 184 Wn.2d at 401; *see also Sch. Dist. No. 20 v. Bryan*, 51 Wash. 498,
2 504, 99 Pac. 28 (1909) (“Promised benefit and greater gain have been alike urged as reasons” to
3 evade the education provisions of the Constitution “but without avail.”).

4 A pro-charter coalition, including the Washington State Charter School Association,
5 charter schools, a charter management organization, and students and parents (collectively,
6 “Intervenors”), now moves to intervene. But the sole focus of the proposed intervention seems
7 to be to litigate whether charter schools are good or bad policy and whether charter schools are
8 effective or not. For example, Intervenors contend that their “interests go well beyond the
9 constitutional inquiry” and propose to present and defend these other interests before the Court.
10 Motion to Intervene (“Mot.”) at 4-5. This is the same page in the playbook used in the *League of*
11 *Woman Voters* litigation. In fact, the *League of Women Voters* Court criticized several of the
12 same organizations for filing amicus briefs in opposition to I-1240 that “largely address[ed] the
13 perceived benefits of charter schools and their successes in other states.” 184 Wn.2d at 401 n.7
14 (Counsel for Intervenors authored one of those amicus briefs.)

17 Because Intervenors appear only to want to raise factual issues irrelevant to the lawsuit
18 and have not identified a single legal issue that they are concerned will not be adequately
19 addressed by the Attorney General, granting intervention of right is not appropriate. If
20 Intervenors’ only basis for intervention is to argue the benefits of charter schools, their proper
21 role is as an amicus. Allowing even permissive intervention is unwarranted in view of the
22 potential for undue delay and prejudice and concerns for judicial economy. At a minimum, the
23 Court should exercise its discretion to limit intervention to the constitutional issues that are
24 relevant to the case. Plaintiffs further request that, as needed, the Court make reasonable
25
26
27

1 accommodations with regard to timing and page limits to ensure Plaintiffs have an opportunity to
2 respond to both the State's and Intervenors' arguments on the merits.

3 **II. STATEMENT OF ISSUES**

4 1. Whether the Court should deny intervention as a matter of right under CR 24(a)
5 because Intervenors fail to show that their interests will not be adequately represented by the
6 Attorney General.

7
8 2. Whether the Court should deny permissive intervention under CR 24(b)(2)
9 because Intervenors' participation as a party would delay resolution of this time-sensitive lawsuit
10 without any apparent benefit to the Court's consideration of the merits of the case.

11 **III. EVIDENCE RELIED UPON**

12 Plaintiffs rely upon the pleadings, papers, and records on file in this matter.

13 **IV. AUTHORITY & ARGUMENT**

14 **A. Intervenors Are Not Entitled to Intervene as a Matter of Right.**

15 Intervenors adequately state the law as to intervention of right. Mot. at 4.¹ Intervenors
16 also demonstrate that their motion is timely and that they have an interest in the outcome of the
17 litigation. *Id.* at 4-6. But intervention as a matter of right requires more—namely, a showing
18 that Intervenors' interests will not be adequately protected without intervention. *See* CR 24(a).
19 Thus, the Supreme Court has held that intervention should be denied where the movant's
20 interests would be adequately represented by the Attorney General, even though the movant
21 might be affected by the ultimate outcome of the case. *See Spokane County v. State*, 136 Wn.2d
22 644, 649, 966 P.2d 305 (1998).
23
24

25
26 ¹ There are four requirements that must be met to justify intervention as of right: (1) timely application for
27 intervention; (2) an applicant claims an interest which is the subject of the action; (3) the applicant is so situated that
the disposition will impair or impede the applicant's ability to protect the interest; and (4) the applicant's interest is
not adequately represented by the existing parties. *Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994).

1 Here, Intervenors fail to show any basis for concern that their rights will not be
2 adequately protected by the Attorney General. *See* Mot. at 6-7 (contending merely that there is
3 no “guarantee”). There is no reason to presume the Attorney General’s office will not raise all
4 relevant legal arguments to protect Intervenors’ rights. To the contrary, the Attorney General
5 vigorously defended I-1240 before the superior court and the Supreme Court in *League of*
6 *Women Voters*. This is unlike *Columbia Gorge Audubon Society v. Klickitat County*, 98 Wn.
7 App. 618, 630, 989 P.2d 126 (1999) (cited in Mot. at 6-7), where the court held that a private
8 environmental organization would not adequately protect the interests of the sovereign Indian
9 nation that sought intervention.
10

11 Although Intervenors suggest that they are “uniquely familiar with the law’s legislative
12 history and intent,” they do not explain how. *See* Mot. at 6. And for good reason as there is no
13 how. The Charter School Act’s legislative history is fully documented through the bill history,
14 written reports, and legislative statements of record. Intervenors have nothing unique to offer on
15 the Act’s history or, for that matter, any of the constitutional issues presented in this case. Under
16 the circumstances here, Intervenors are not entitled to intervene as a matter of right. *See Spokane*
17 *County*, 136 Wn.2d at 649.
18

19 **B. Permissive Intervention Would Unduly Delay Resolution of this Case.**

20 Intervenors alternatively request permissive intervention under CR 24(b)(2), which
21 specifically directs the Court to consider whether “intervention will unduly delay or prejudice the
22 adjudication of the rights of the original parties.” Tellingly, Intervenors ignore the adverse
23 impact of their intervention on the control and timing of the lawsuit. *See* Mot. at 7. This
24 litigation is time sensitive. Prompt resolution is critical so as not to unduly interrupt the
25 education of charter school students. But allowing intervention will double the amount of
26
27

1 briefing and double the amount of argument with no apparent benefit to the merits of the case.
2 Again, the Attorney General will mount a vigorous and comprehensive defense of the Charter
3 School Act. Intervenors should not be permitted to delay the resolution of these important
4 constitutional issues in order to inject irrelevant policy arguments.

5
6 If permissive intervention is granted, it should be conditioned to limit Intervenors to the
7 legal issues before the Court with adjustments to the standard briefing requirements to allow
8 Plaintiffs the opportunity to respond adequately. *See* C. Wright & A. Miller, *Federal Practice*
9 *and Procedure*, § 1913 (3d ed.) (“Since the court has discretion to refuse intervention altogether,
10 it also may specify the conditions on which it will allow the applicant to become a party. In this
11 way it can order the proceedings so as to minimize delay and prejudice to the existing parties.”).

12 V. CONCLUSION

13
14 For the foregoing reasons, Plaintiffs request that the Court deny the Motion to Intervene.
15 Alternatively, at a minimum, Plaintiffs request that the Court limit intervention to the
16 constitutional questions presented by this case and, as needed, make reasonable accommodations
17 with regard to timing and page limits.

18 DATED this 29th day of August, 2016.

19 PACIFICA LAW GROUP LLP

20
21
22 By /s/ Paul J. Lawrence

Paul J. Lawrence, WSBA # 13557

Jessica A. Skelton, WSBA # 36748

Jamie L. Lisagor, WSBA # 39946

23
24
25 Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I am and at all times hereinafter mentioned was a citizen of the United States, a resident
3 of the State of Washington, over the age of 21 years, competent to be a witness in the above
4 action, and not a party thereto; that on the 29th day of August, 2016 I caused to be served a true
5 copy of the foregoing document upon:
6

7 David A. Stoler
8 Noah Purcell
9 Aileen Miller
10 Rebecca Glasgow
11 Assistant Attorney General of Washington
12 1125 Washington Street SE
13 P.O. Box 40100
14 Olympia, WA 98504-0100
15 Phone: 360.753.6200
16 Email: daves@atg.wa.gov
17 Email: noahp@atg.wa.gov
18 Email: aileenm@atg.wa.gov
19 Email: rebeccag@atg.wa.gov

- via facsimile
- via overnight courier
- via first-class U.S. mail
- via email service agreement
- via electronic court filing
- via hand delivery

20 *Attorneys for Defendant State of Washington*

21 I declare under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23 DATED this 29th day of August, 2016.

24 
25 _____
26 Dawn Taylor
27