The Honorable John H. Chun
Noted for August 31, 2016
Without Oral Argument

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

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 DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL No. 28; WAYNE AU, PH.D., on his own behalf; PAT BRAMAN, on her own behalf; DONNA BOYER, on her own behalf and on behalf of her minor children; and SARAH LUCAS, on her own behalf and on behalf of her minor children,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

Case No. 16-2-18527-4 SEA

REPLY IN SUPPORT OF MOTION TO INTERVENE AS INTERVENOR-DEFENDANTS (MOTION TO DISMISS LODGED)

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In response to the motion to intervene in the first charter schools case in King County Superior Court, *League of Women Voters of Washington v. State*, No. 13-2-24977-4, plaintiffs argued: "The effectiveness of charter schools has no bearing on—and will only distract from—the complex constitutional questions raised by Plaintiffs' claims." Pls.' Resp. to Mot. to Intervene, *League of Women Voters of Washington*, No. 13-2-24977-4 (King Cty. Super. Ct. Aug. 5, 2013). If that language sounds familiar, it should. Plaintiffs repeat it verbatim in this action, now opposing intervention in a suit that will affect Intervenors more than any other party currently at the table. Opposition to Motion to Intervene ("Opp'n") at 2.

Plaintiffs simply copied and pasted the same argument made in August 2013—three years ago. In that first action, King County Superior Court Judge Jean Rietschel allowed the intervention of the Washington State Charter Schools Association and organizations seeking to open charter schools, among other intervenors. In allowing intervention then, Judge Rietschel recognized that the intervenors in the first charter schools suit in King County Superior Court had a right to intervene to protect their then-nascent interests in charter schools, which at the time were not yet operating. Today, with several charter public schools now open in Washington, serving hundreds of students, those interests are more considerable and more important and deserve to be represented in this action by Intervenors. Highlighting the "complex legal issues" in this case and the "valuable legal prospective" that Intervenors can provide, the Attorney General has urged that "[i]ntervention is appropriate." Def. State of Washington's Reply in Support of Motion to Intervene ("State Reply") at 2. The Court should grant Intervenors' motion to intervene as of right pursuant to CR 24(a), or at least exercise its discretion to allow intervention pursuant to CR 24(b), so Intervenors can represent these important interests through their unique perspective.

I. ARGUMENT

A. The Court Should Allow Intervention.

Washington courts liberally interpret their intervention rules: "When in doubt, intervention should be granted." *Columbia Gorge Audubon Soc'y v. Klickitat Cty.*, 98 Wn. App.

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618, 630, 989 P.2d 1260 (1999) (citation omitted). Nevertheless, through two arguments Plaintiffs try to create doubt about the parents and educators seeking to intervene here. First, regarding intervention as a matter of right, Plaintiffs claim Intervenors have not shown that their interests will not be adequately protected without intervention. This argument fails. Washington courts liberally construe the rules *in favor* of intervention and require only a minimal showing of inadequate representation. Inadequate representation has repeatedly been found in cases involving the State and private actors seeking intervention because the State's general duty to protect the public interest does not sufficiently protect the narrower interests of private groups. This is already factually established in this case, as Intervenors and the Attorney General have filed legally distinct motions to dismiss. *See infra* Section I.A.1.

Second, Plaintiffs argue permissive intervention should not be allowed because the case might take longer to resolve. Plaintiffs support this argument with their self-serving assertion that allowing intervention will double the briefing and argument in the case. Even assuming this is true, this is insufficient to establish "undue burden" or "prejudice." The Intervenors are entitled to present arguments germane to the issues at hand, have already done so, and are the right persons to do so, as they stand to lose the most in this dispute over the constitutionality of the very charter public schools with which they interact and depend upon every day. *See infra* Section I.A.2.

1. <u>Intervenors Are Entitled to Intervene as a Matter of Right</u>.

The parties agree on the four factors for intervention as a matter of right: (1) motion is timely; (2) intervenor claims an interest which is the subject of the action; (3) intervenor is so situated that the disposition will impair or impede the intervenor's ability to protect the interest; and (4) the existing parties do not adequately protect or represent the intervenor's interest. Motion to Intervene at 4; Opp'n at 4 n.1.

Plaintiffs do not challenge Intervenors' demonstration of factors 1-3. Nor could they. The Intervenors represent the individuals and organizations who have the biggest interest in the constitutionality of the Charter Public Schools Act. The Intervenors are the parents of students

and are students who attend or hope to attend these charter public schools. Their day-to-day lives, as well as hopes for their education and futures, will be materially and adversely affected should this law be struck down. The Intervenors are the charter public schools themselves and the organizations which have helped those schools navigate the rules and regulations set up pursuant to the Charter Public Schools Act. These are the folks who have worked tirelessly on the ground to implement the law in accordance with its letter and spirit. These are the people who will see all of those efforts potentially obviated by an adverse ruling in this case.

In claiming Intervenors have not established factor 4—inadequacy of representation—Plaintiffs ignore both the law of Washington and the facts of this case. Washington courts "liberally construe [their] rules in favor of intervention." *Olver v. Fowler*, 161 Wn.2d 655, 664, 168 P.3d 348 (2007) (citing *Columbia George*, 98 Wn. App. at 623). This liberal construction is evident in the minimalist standard that has been set forth for demonstrating inadequacy of representation by existing parties. "The burden of making [an inadequacy] showing should be treated as *minimal*." *Fritz v. Gordon*, 8 Wn. App. 658, 661-62, 509 P.2d 83 (1973) (emphasis added). A court looks at whether the State will "undoubtedly make all the [Intervenors'] arguments" and whether the Intervenors will "more effectively articulate any aspect of [their] interest?" *Columbia Gorge*, 98 Wn. App. at 630. In considering those questions, "it is not necessary that the intervenor's interest be in direct conflict with those of existing parties." *Id.* To the contrary, "[i]t is only necessary that the interest may not be adequately articulated and addressed." *Id.* Plaintiffs claim *Columbia Gorge* is inapposite because the case involved intervention by a sovereign Indian nation in a case involving an environmental interest organization. Opp'n at 5. This ignores the reasoning of the case and the standard it sets forth. The court allowed intervention there even though the intervenor would be "simply another voice asking for the same result" because it was advocating based on "different reasons." *Columbia Gorge*, 98 Wn. App. at 628-30.

In cases involving state actors and private citizens, such as this, the Washington Supreme Court has been clear: "We have [] repeatedly concluded that the state's general duty to protect

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the public interest does not sufficiently protect the narrower interest of private groups." *Pub. Util. Dist. No. 1 of Okanogan Cty. v. State*, 182 Wn.2d 519, 532-33, 342 P.3d 308 (2015) (finding no abuse of discretion in the determination that the private citizen intervenors' particularized interests in the protection of wildlife sanctuaries and shrub steppe lands would not be adequately represented by the State's broader interest in the protection of school lands for the interests of the general public); *CLEAN v. City of Spokane*, 133 Wn.2d 455, 460-62, 947 P.2d 1169 (1997) (allowing intervention as a matter of right by real estate developers in an action to defend a city ordinance because the city had a broader interest in protecting all of its residents, not just the particular commercial interests of the developers); *Loveless v. Yantis*, 82 Wn.2d 754, 756 n.1, 759, 513 P.2d 1023 (1973) (allowing homeowners and residents to intervene to oppose construction of condominiums in addition to the county because the county needed to consider the viewpoint of all the residents and intervenors' viewpoint was "more sharply focused").

In this case, while both the Intervenors and the Attorney General will advocate for the constitutionality of the law, they will do so for different reasons. The Attorney General will defend the law based solely on his duty to defend the constitutionality of duly enacted legislation, based on the interests of all Washingtonians. By contrast, Intervenors are motivated to defend the constitutionality of this legislation, not out of a legal duty, but out of obligation to the actual Washington students, teachers, staff, schools, and parents served by this law. The fact that the State may not make all of the Intervenors' arguments due to the difference between these viewpoints is already apparent from the existing record in this case. While both the State and the Intervenors have filed motions to dismiss, the arguments made in these motions differ. The State did not make the standing objections the Intervenors did, demonstrating that the Intervenors' particular viewpoint in this case will allow for arguments that materially differ from the State. *Loveless*, 82 Wn.2d at 759 (citing county's failure to make same arguments as intervenors as showing inadequacy of representation). This is a case where the Intervenors' particularized interest is not adequately represented by the State and mandatory intervention therefore should be granted.

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2. Permissive Intervention Will Not Unduly Delay This Case.

Citing to no authority, aside from the rule itself, Plaintiffs argue discretionary intervention should also be denied because the litigation is time sensitive and "allowing intervention will double the amount of briefing and double the amount of argument . . . ." Opp'n at 5-6. The Washington Supreme Court has rejected the need to respond to an intervenor's arguments as sufficient to establish the "undue burden" or "prejudice" necessary to preclude permissible intervention: "[A]ccepting [such] reasoning would largely foreclose intervention because there is always 'prejudice' that arises out of having to respond to an intervenor's arguments." *Pub. Util. Dist. No. 1*, 182 Wn.2d at 533. As the State acknowledges, this case presents "complex legal issues." Intervenors will not delay the litigation but rather will appropriately "provide this Court with a valuable legal perspective that will ensure that the Court will have the benefit of all relevant legal arguments." State Reply at 2.

The primary "interest" cited by the Plaintiffs as presenting urgency is the need to "not to unduly interrupt the education of charter school students." Opp'n at 5. This is precisely what Intervenors seek to ensure through their intervention. The fact that Intervenors have already and will continue to make distinct legal arguments does not demonstrate "undue burden" or "prejudice" to Plaintiffs, but rather shows that there are a number of viewpoints which need to be considered in weighing the important constitutional questions that have been raised in this suit. Who is more appropriate to present their specific viewpoint than those attending, running, and assisting the very charter public schools whose existence hangs in the balance in this case?

Plaintiffs ask the Court to limit Intervenors to "legal issues" before the Court, but provide no Washington authority for such a limitation. Judge Rietschel placed no such limitation on the first charter schools action, and none is appropriate here. Intervenors do not oppose any reasonable adjustment to briefing page limits should intervention be granted.

II. CONCLUSION

Because Movants satisfy CR 24's criteria for intervention as of right, the Court should grant this motion, or, in the alternative, exercise its discretion to permit Movants to intervene.

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