

THE HONORABLE BENJAMIN A. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State
Nonprofit Corporation; TAMBORINE
BORRELLI; MARY ROSE WEIDRICH;
TIFFANY NEVILS; BOBBIE LELAND;
SHARON HUSTER; AMY BRITSAS; KEYRA
PEREZ; TAMMIE CORBIN; ALLEN
CORBIN; SHERIE SUTER; PEGGY
NORMET; DIANE SCHMIDT; JORGE
DELGADO; EUGENE DELOZIER; FLORA
HERNANDEZ; TAIZ CEPEDA; JOE
KEESLAR,

Plaintiffs,

v.

MARY HALL, Thurston County Auditor;
THURSTON COUNTY, and DOES 1-30,
inclusive,

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Proposed Intervenor
Defendant.

No. 3:21-cv-05787-BHS

PROPOSED INTERVENOR-
DEFENDANT WASHINGTON
STATE DEMOCRATIC CENTRAL
COMMITTEE'S MOTION TO
INTERVENE

ORAL ARGUMENT REQUESTED

NOTE ON MOTION CALENDAR:
NOVEMBER 12, 2021

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S MOTION TO
INTERVENE (NO. 3:21-CV-05787-BHS)

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. IDENTITY OF INTERVENOR	2
III. ARGUMENT	2
A. WSDCC satisfies Rule 24(a)'s requirements for intervention as of right.	2
1. The Motion is timely.....	3
2. WSDCC has an interest in the outcome of this litigation.	3
3. Disposition will impair and impede the WSDCC's ability to protect its interests.	5
4. WSDCC's interests are not adequately represented by Defendants.	7
B. Alternatively, WSDCC should be allowed permissive intervention	8
IV. CONCLUSION.....	9

I. INTRODUCTION

Nearly a year after the November 2020 election, the Washington Election Integrity Coalition United and its *pro se* supporters (“Plaintiffs”) have filed a Complaint filled with entirely fabricated claims of election fraud. Plaintiffs’ effort to delegitimize the integrity of our State elections appears to be little more than a cut and paste of similar cases filed throughout the country immediately after the 2020 Presidential Election. Federal and state court judges roundly rejected every one of those election contests, and with them, their unsubstantiated claims of voter and election fraud. Now, after all the votes have been counted and the results certified by the county and the state, and officials have been sworn in, Plaintiffs file this action seeking to unseal ballots from Washington’s 2020 General Election and “audit” Clark County’s (“the County”) election department, claiming their votes have been “diluted” and seeking injunctive relief regarding certain election procedures.¹ Compl. ¶ 5. The Washington State Democratic Central Committee (“WSDCC”), on its own behalf and on behalf of Democratic voters throughout the state, with this Motion seeks to intervene to defend and protect the integrity of Washington’s electoral system.

WSDCC meets the applicable requirements for intervention as of right and permissive intervention under Federal Rule of Civil Procedure (“FRCP”) 24. The Motion is timely. It was

¹ This lawsuit is one of several copycat lawsuits filed across Washington State. Lawsuits against Clark, King, Snohomish, Whatcom, and Pierce counties were originally filed in state superior court, but have since been removed to this Court. *Washington Election Integrity Coalition United et al. v. Anderson*, 3:21-cv-05726-RAJ (Oct. 1, 2021), ECF No. 1; *Washington Election Integrity Coalition United et al. v. Fell*, No. 2:21-cv-1354-RAJ (Oct. 4, 2021), ECF No. 1; *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 3:21-cv-05746-RAJ (Oct. 7, 2021), ECF No. 1; *Washington Election Integrity Coalition United et al. v. Wise*, No. 2:21-cv-01394-RAJ (Oct. 13, 2021), ECF No. 1; *Washington Election Integrity Coalition United et al. v. Bradrick*, 2:21-cv-01386-RAJ (Oct. 13, 2021), ECF No. 1. Two lawsuits, in Franklin and Lincoln counties, remain in state court. *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11 (Oct. 5, 2021), DKT 1; *Washington Election Integrity Coalition United et al. v. Schumacher*, No. 21-2-00042-22 (Oct. 4, 2021), DKT 1. Each of the lawsuits contains virtually identical claims on behalf of an organization called “Washington Election Integrity Coalition United,” and different county-specific collections of pro se individuals, all apparently recruited at roving statewide meetings called to generate support for the effort. See Associated Press, *Lawsuits claiming 2020 ballots were manipulated come to WA*, SEATTLE TIMES (Sept. 21, 2021, 10:36 AM), <https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-manipulated-come-to-washington/>; Shari Phiel, *Lawsuits Filed in Three Washington Counties Claim Votes Were ‘Flipped’*, THE CHRONICLE, <https://www.chronicle.com/stories/lawsuits-filed-in-three-washington-counties-claim-votes-were-flipped,273108>. The WSDCC is seeking intervention in each and every lawsuit and, should intervention be granted, would be the only party before the Court other than the “Washington Election Integrity Coalition United” to be a party to all of the lawsuits.

submitted to the Thurston County Superior Court just two weeks after the Complaint was filed, *see* ECF Nos. 4-2 at 6; ECF No. 4-7 at 1–13, and WSDCC is now refileing it with this Court after removal. The WSDCC has a substantial interest in protecting the legitimacy of its candidates’ electoral victories from partisan attacks, ensuring that the results of Washington’s 2020 election stand, and defending its candidates’ future election prospects.

As required by FRCP 24(c), this Motion is accompanied by a Proposed Answer, which is attached as Exhibit A.²

II. IDENTITY OF INTERVENOR

The WSDCC is the governing body of the Washington State Democratic Party, which works to elect Democrats, uphold Democratic values, and support Democrats across the state. Decl. of Tina Podlodowski (“Podlodowski Decl.”) ¶ 3. It is composed of two people from each Legislative District and County. *Id.* ¶ 2. It holds monthly meetings, nominates and endorses local candidates, recruits and manages precinct committee officers, passes resolutions, and campaigns for local candidates. *Id.* This action and the relief requested impact the Washington State Democratic Party, its supporters, and its elected officials.

III. ARGUMENT

WSDCC seeks to intervene in this case as a matter of right under FRCP 24(a) or, in the alternative, permissively under FRCP 24(b). WSDCC plainly meets the requirements to intervene as of right under FRCP 24(a), and thus, easily meets the requirements for permissive intervention under FRCP 24(b).

A. WSDCC satisfies Rule 24(a)’s requirements for intervention as of right.

FRCP 24(a) provides an absolute right of intervention if the intervenor shows: (1) timely application for intervention; (2) an interest which is the subject of the action; (3) that the disposition will impair or impede the applicant’s ability to protect the interest; and (4) the applicant’s interest

² WSDCC has attached the following hereto: a Proposed Answer as Exhibit A (to ensure compliance with FRCP 24(c)); a declaration from WSDCC Chair Tina Podlodowski in support of this Motion as Exhibit B; and a proposed Motion to Dismiss as Exhibit C, which WSDCC seeks to file if it is granted intervention.

is not adequately represented by the existing parties. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). Generally, FRCP 24(a) is “construe[d] . . . liberally in favor of potential intervenors.” *Sw. Center for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (citing *Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc. v. United States Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011)). WSDCC satisfies all four requirements and is entitled to intervene as of right under FRCP 24(a).

1. The Motion is timely.

Courts in the Ninth Circuit consider three factors in determining whether a motion to intervene is timely: “(1) the stage of the proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836-37 (9th Cir. 1996) (citing *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990)). WSDCC’s Motion to Intervene was submitted in Thurston County Superior Court just two weeks after the Complaint was filed. *See* ECF No. 4-2 at 6; ECF No. 4-7 at 1–13 (showing that the Complaint was filed September 21, 2021, and WSDCC’s Motion to Intervene was filed October 6, 2021). After Defendants filed a Notice of Removal, it was transferred to this Court as part of the Verification of State Court Records, and WSDCC is now resubmitting it to this Court. *See* ECF Nos. 1, 4-7. No substantive orders have been issued in this case. There has therefore been no delay, and no possible risk of prejudice to the other parties.

2. WSDCC has an interest in the outcome of this litigation.

WSDCC has an interest in the outcome of this action. Applicants have a right to intervene when they “demonstrate a ‘significantly protectable interest’ in the lawsuit” *Id.* at 837. This “practical . . . inquiry” does not require applicants to establish any “specific legal or equitable interest” *Sw. Center for Biological Diversity*, 268 F.3d at 818 (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993)). “It is generally enough that the interest [asserted] is protectable under some law, and that there is a relationship between the legally protected interest

1 and the claims at issue.” *Id.* (quoting *Sierra Club v. United States EPA*, 995 F.2d 1478, 1484 (9th
 2 Cir. 1993, *abrogated on other grounds by Wilderness Soc. v. United States Forest Service*, 630
 3 F.3d 1173, 1179 (9th Cir. 2011)).

4 WSDCC is dedicated to representing the interests of Washington’s Democratic voters by
 5 supporting the election of Democratic candidates across Washington. Podlodowski Decl. ¶ 2. It
 6 seeks to intervene as a defendant in this matter to protect the rights of its affiliated candidates and
 7 voters across Washington. *See id.* ¶ 4–6.

8 The WSDCC has an interest in ensuring the official certified results of Washington’s 2020
 9 election remain undisturbed and their credibility unimpeached. *See id.* ¶ 6. Plaintiffs appear to seek
 10 some sort of Arizona-style “audit” of the 2020 election, contrary to state law. Compl. ¶¶ 5, 49.
 11 Although Plaintiffs claim they are not seeking de-certification of the election, they nonetheless ask
 12 the Court to “determine rights” with regard to “vote flipping.” *Id.* ¶ 30. The request thus appears
 13 to seek an unofficial and extraordinary “audit” of 2020 ballots, contrary to law, and an alteration
 14 of certified election results or at least to call them into question. Plaintiff’s Equal Protection and
 15 “vote dilution claims” similarly appear to target the election’s outcome. *Id.* ¶ 54(b).

16 WSDCC’s intervention is needed to ensure that the final, certified results of Washington’s
 17 2020 election are not disturbed, on behalf of their affiliate candidates and Washington’s
 18 Democratic voters who elected those candidates. *See* Podlodowski Decl. ¶ 6; *Crawford v. Marion*
 19 *Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the unanimous view of the Seventh
 20 Circuit that the Indiana Democratic Party had standing to challenge a voter identification law that
 21 risked disenfranchising its members); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981)
 22 (holding that “the potential loss of an election” inflicts injury on a political party). WSDCC plainly
 23 has an interest in this action.

24 In addition, groups and individuals like the Plaintiffs here suggest that fraud is perpetrated
 25 by or to benefit Democratic election officials and depict themselves as watchdogs, vowing to
 26 “restor[e] . . . transparent, secure and publicly verified elections.” Washington Election Integrity

Coalition United, *Support Our Work*, GIVE SEND GO, <https://givesendgo.com/GX2Y> (last visited Oct. 4, 2021); *see also* Podlodowski Decl. ¶ 5. By creating a false narrative unsupported by any factual evidence that Washington elections are replete with election fraud and vowing to put an end to it, they seek to create and foster a fictional problem. This unsupported lawsuit serves to propagate and spread that misinformation, undermining public confidence in our elections and, indeed, our democratic system of elections. Indeed, that appears to be the whole purpose of its filing. The effort threatens to damage Democratic candidates' and officeholders' reputations, and ultimately threatens Democratic candidates' future successes at the ballot box. Podlodowski Decl. ¶ 6.

WSDCC's interests are clearly at issue here under the broad construction of FRCP 24(a). *Sw. Center for Biological Diversity*, 268 F.3d at 818.

3. Disposition will impair and impede the WSDCC's ability to protect its interests.

In addition, disposition "of the action may as a practical matter impair or impede" WSDCC's ability to protect its interests. FRCP 24(a)(2). If a proposed intervenor has a protectable interest in the outcome of the litigation, courts have "little difficulty concluding" that its interests will be impaired. *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006); *see also Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992) (noting that if the intervenor "can show that they possess a legal interest in this action, then it naturally follows that such an interest would be affected by this litigation").

There can be no doubt that disposition of this matter has the potential to impair the WSDCC's ability to protect its interests. Federal courts have routinely concluded that interference with a political party's electoral prospects constitutes a direct injury that satisfies Article III standing, which goes beyond the requirement needed for intervention under CR 24(a)(2) in this case. *E.g., Owen*, 640 F.2d at 1132 (holding that "the potential loss of an election" is sufficient injury to confer Article III standing); *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586–87

(5th Cir. 2006) (political party had suffered injury-in-fact when “its congressional candidate’s chances of victory would be reduced”); *Pavek v. Simon*, 467 F. Supp. 3d 718, 742 (D. Minn. 2020) (“[S]everal circuits have recognized” that a “political party can show direct injury if the defendant’s actions hurt the candidate’s or party’s chances of prevailing in an election.”); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994) (Conservative Party had representative standing because the party “stood to suffer . . . competition on the ballot . . . and a resulting loss of votes”); *Hollander v. McCain*, 566 F. Supp. 2d 63, 68 (D.N.H. 2008) (“[C]ourts have held that a candidate or his political party has standing to challenge the inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the candidate’s or party’s own chances of prevailing in the election.”).

This action threatens (and is designed to threaten) the WSDCC’s political prospects by alleging—without evidentiary support—some unidentified “fraud” or “misconduct” in the administration of the election. Podlodowski Decl. ¶ 5. The Democratic National Committee and similar political organizations were routinely granted intervention as of right in election disputes over the exact same election. *E.g., Paher v. Cegavske*, No. 20-cv-00243-WGC, 2020 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to Democratic National Committee, Democratic Congressional Committee, and Nevada State Democratic Party where “Plaintiffs’ success on their claims would disrupt the organizational intervenors’ efforts to promote the franchise and ensure the election of Democratic Party candidates”); *Issa v. Newsom*, No. 20-cv-01044-CKD, 2020 WL 3074351, at *4 (E.D. Cal. June 10, 2020) (granting intervention as of right to the DNC in suit brought by a Republican Representative, the National Republican Congressional Committee, and California Republican Party); *Donald J. Trump for President, Inc. v. Cegavske*, No. 20-CV-1445 VCF, 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention to DNC, DCCC, and NSDP in suit brought by President Trump’s campaign).

The WSDCC’s interests would be no less impaired. WSDCC easily satisfies this requirement of FRCP 24(a)(2).

1 **4. WSDCC’s interests are not adequately represented by Defendants.**

2 WSDCC cannot rely on the parties in this case to adequately represent its interests. “The
3 applicant is required only to make a minimal showing that representation of its interests may be
4 inadequate.” *People v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). The
5 Ninth Circuit has articulated three relevant questions: Will the Defendants “undoubtedly” make
6 all the WSDCC’s arguments? Are Defendants able and willing to make those arguments? And will
7 WSDCC “offer any necessary elements to the proceedings that other parties” might neglect? *Id.*
8 Once an applicant for intervention shows interests different than those of the existing parties, the
9 requirement of showing that such interest would not be given adequate representation is minimal.
10 *Fritz*, 8 Wn. App. at 661–62.

11 Defendants’ interest is defined solely by their statutory duties to conduct elections. But the
12 WSDCC’s interests are broader. While Defendants may have an interest in ensuring that the
13 election results are upheld, those Defendants do not share the WSDCC’s interest in defending *its*
14 *candidates* victories and reputations against Petitioners’ partisan allegations, and hence,
15 Defendants will not and cannot represent the WSDCC in that respect. Because their interests
16 diverge, the Defendants—who are all election officials—cannot adequately represent WSDCC’s
17 interests. *See* Podlowski Decl. ¶ 4–6; *Issa*, 2020 WL 3074351, at *3 (“While Defendants’
18 arguments turn on their inherent authority as state executives and their responsibility to properly
19 administer election laws, the [intervenor is] concerned with ensuring their party members and the
20 voters they represent have the opportunity to vote in the upcoming federal election, advancing
21 their overall electoral prospects, and allocating their limited resources to inform voters about the
22 election procedures.”). Courts have “often concluded that governmental entities do not adequately
23 represent the interests of aspiring intervenors,” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728,
24 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893,
25 899 (9th Cir. 2011); *Associated Gen. Contractors of Am. v. Cal. Dep’t of Transp.*, No. 09-01622,
26 2009 WL 5206722, at *2–3 (E.D. Cal. Dec. 23, 2009) (granting intervention where defendant state

agency’s “main interest is ensuring safe public roads and highways” and agency “is not charged by law with advocating on behalf of minority business owners” as intervenors would), including specifically in cases regarding the right to vote. *See Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where Proposed Intervenors “may present arguments about the need to safeguard Nevada[ns]’ right to vote that are distinct from [state defendants]’ arguments”). Defendants will undoubtedly *not* make all WSDCC’s arguments in this action.

B. Alternatively, WSDCC should be allowed permissive intervention

In the event this Court concludes that WSDCC may not intervene as a matter of right, permissive intervention is clearly appropriate. FRCP 24(b) provides in relevant part:

(b) Permissive Intervention.

(1) On timely motion, the court may permit anyone to intervene who:

.....

(B) has a claim or defense that shares with the main action a common question of law or fact.

.....

(3) In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights

As with FRCP 24(a), FRCP 24(b)(1)(B) should be liberally construed so as to permit permissive intervention. *Newby v. Enron Corp.*, 443 F.3d 416, 422-23 (5th Cir. 2006) (stating that allowing intervention “comports with the observation that the ‘claim or defense’ portion of Rule 24(b)(2) has been construed liberally) (citing *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975); *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940)).

For the reasons discussed in Part A supra, WSDCC’s motion is timely. WSDCC also has defenses to Plaintiffs’ claims that share common questions of law and fact—for example, whether Plaintiffs have stated valid claims for relief. Significantly, intervention will result in neither prejudice nor undue delay. WSDCC has an undeniable interest in a swift resolution of this action

and is confident that its intervention in this case will result in expeditious resolution of this litigation. It is in the interest of justice to allow all those with affected interests, including both sides of the political spectrum, to participate in this case. *See, e.g., Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020) (granting permissive intervention in a lawsuit challenging the 2020 election results to the City of Detroit, Michigan NAACP, the Democratic National Committee, and the Michigan Democratic Party); *Libertarian Party of Pennsylvania v. Wolf*, No. 20-cv-2299, 2020 WL 6580739, at *1 (E.D. Pa. July 8, 2020) (granting permissive intervention to the Pennsylvania Democratic Party in a 2020 election case). The WSDCC cannot rely on Defendants to protect the rights of its affiliate candidates and voters from partisan attacks.

IV. CONCLUSION

For the reasons set forth above, Intervenor Washington State Democratic Central Committee respectfully requests that the Court grant its Motion for Intervention.

Dated: October 27, 2021

s/ Kevin J. Hamilton

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CERTIFICATE OF SERVICE

On October 27, 2021, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

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15
16 **I certify under penalty of perjury under the laws of the**
17 **State of Washington that the foregoing is true and correct.**

18 EXECUTED at Seattle, Washington, on October 27, 2021.

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27
s/ Kevin J. Hamilton

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