

THE HONORABLE RICHARD A. JONES

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-RAJ

PROPOSED INTERVENOR-
DEFENDANT WASHINGTON
STATE DEMOCRATIC CENTRAL
COMMITTEE'S REPLY IN
SUPPORT OF MOTION TO
INTERVENE

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

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ARGUMENT	1
A. WSDCC’s Motion is Timely	2
B. WSDCC Has an Interest in This Action Under FRCP 24(a)	2
C. WSDCC Cannot Rely on the Existing Parties to Represent Its Interests	5
D. Permissive Intervention is Warranted	5
E. WSDCC’s Proposed Answer and Motion to Dismiss Comply with the Civil Rules	6
III. CONCLUSION	6

I. INTRODUCTION

Plaintiffs seek to call into question the validity of the 2020 election, suggesting (without any evidence) that fraud was committed across the State in favor of Democratic candidates. The Washington State Democratic Central Committee (“WSDCC”) has an interest in protecting its candidates and voters from unfounded attempts to challenge the validity of the election long after the time for doing so has passed. Accordingly, WSDCC is entitled to intervention as of right under Federal Rule of Civil Procedure (“FRCP”) 24(a) and permissive intervention under FRCP 24(b). Washington Election Integrity Coalition United’s (“WEiCU”) Opposition (“Opp.”) not only mischaracterizes the applicable legal standard, but attempts to use WSDCC’s Motion to Intervene (“Mot.”) as “evidence” of WSDCC’s supposed nefarious scheme to engage in “election fraud.” The absurd suggestion only further underscores why WSDCC should be a participant in this suit: to protect its reputational interests and the validity of the election. WSDCC respectfully submits that it readily satisfies FRCP 24’s requirements and that its Motion for Intervention should be granted.

II. ARGUMENT¹

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 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)). The Ninth Circuit favors intervention. *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (“[T]he requirements for intervention are broadly interpreted in favor of intervention.”). WSDCC satisfies each of these requirements. Moreover, WSDCC should be granted permissive intervention because its defense

¹ WEiCU itself asserts only violations of the Public Record Act. *See Washington Election Integrity Coalition United et al. v. Wise et al.*, No. 2:21-cv-01394-RAJ, ECF No. 18 at 3 (W. D. Wash. 2021) (“WEiCU is a party only to the PRA action . . .”). All other claims in this action are brought by the citizen plaintiffs. WEiCU, however, broadly advocates on behalf of the citizen plaintiffs in its Opposition. *See, e.g.*, Opp. at 4 (“Plaintiffs are asserting statutory claims involving an election official . . . relating to the conduct of their Elections Director.”).

1 and the main action have a question of law or fact in common. FRCP 24(b).

2 **A. WSDCC's Motion is Timely**

3 WEiCU's assertion that the Court should delay ruling on WSDCC's Motion to Intervene
4 until the Court decides WEiCU's Motion to Remand is unsupported by any law.² *See* Opp. at 2.
5 Moreover, WEiCU has not identified any prejudice that would be caused by WSDCC's
6 intervention at this stage in the proceedings. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d
7 825, 836–37 (9th Cir. 1996) (citing *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990))
8 (in determining if a motion to intervene was timely, considering “(1) the stage of the proceedings;
9 (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to
10 intervene.”). In fact, the Ninth Circuit directs parties to move to intervene as soon as practicable.
11 *California Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1120
12 (9th Cir. 2002) (“[a] party seeking to intervene must act as soon as he knows or has reason to know
13 that his interests might be adversely affected by the outcome of the litigation.”). The Court should
14 permit WSDCC to intervene at the outset of this case so that it may fully participate in this action.

15 **B. WSDCC Has an Interest in This Action Under FRCP 24(a)**

16 WSDCC has a strong interest in ensuring that the official certified results of Washington's
17 November 2020 valid election remain undisturbed, on behalf of its affiliated candidates and voters.
18 *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the
19 unanimous view of the Seventh Circuit that the Indiana Democratic Party had standing to challenge
20 a voter identification law that risked disenfranchising its members); *Owen v. Mulligan*, 640 F.2d
21 1130, 1132 (9th Cir. 1981) (holding that “the potential loss of an election” inflicts injury on a
22 political party). Although WEiCU continue to insist that Plaintiffs are not currently seeking

23
24 ² WEiCU also asserts that this Court lacks jurisdiction to hear WSDCC's Motion because Defendants' Notice of
25 Removal is “defective” in some unexplained way. Opp. at 2. Any procedural defect in Defendants' Notice of Removal,
26 however, would not affect this Court's subject matter jurisdiction, and may be cured at any point prior to entry of
judgment. *See Soliman v. Philip Morris Inc.*, 311 F.3d 966, 970 (9th Cir. 2002) (“[A] procedural defect existing at the
time of removal but cured prior to entry of judgment does not warrant reversal and remand of the matter to state
court.”) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 703 (9th Cir. 1998) (abrogated on other grounds by *Rueda Vidal*
v. Bolton, 822 F. App'x 643, 644 (9th Cir. 2020))).

1 decertification of the 2020 election, Opp. at 6, it is entirely unclear what relief they do seek, or
 2 what they hope to gain from an “audit” of the results. WSDCC should in all events be allowed to
 3 participate to protect its candidates and voters. And decertification aside, the mere pendency of
 4 this case threatens the same harms to WSDCC by giving credence to the unsupported conspiracy
 5 theory that the 2020 election was somehow rife with fraud.

6 WEiCU also suggests that elected officials become nonpartisan once they are elected and
 7 that, therefore, WSDCC has no interest in protecting the reputations of WSDCC’s affiliated
 8 Democratic officeholders. *See* Opp. at 7 (“Interestingly, the DCC expresses a concern for the
 9 ‘reputations’ of the Democrat party ‘officeholders’ . . . This is an extraordinary statement and an
 10 admission against interest that the officeholders remain ‘Democrat-owned’ once they are in office.
 11 If the elected officials represent the people (and not the interests of the DCC), the DCC cannot
 12 possibly have an interest in the outcome of the action.”). WSDCC works to elect Democrats who,
 13 in turn, work to uphold Democratic values once they are in office. It is no secret that a Democratic
 14 candidate remains a Democrat once in office (just as Republican or Independent elected officials
 15 are and remain Republicans or Independents). Those Democratic officeholders may also seek
 16 reelection, and WSDCC has an interest in defending their future election prospects by refuting this
 17 baseless attack on their election.

18 To be clear, the burden on WSDCC to show a cognizable interest for the purpose of FRCP
 19 24(a) is not a strenuous one. Whether an applicant for intervention has an interest “is a practical,
 20 threshold inquiry, and [n]o specific legal or equitable interest need be established.” *Citizens for*
 21 *Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). The interest
 22 inquiry is primarily a “practical guide to disposing of lawsuits by involving as many apparently
 23 concerned persons as is compatible with efficiency and due process.” *Jackson v. Abercrombie*, 282
 24 F.R.D. 507, 513–14 (D. Haw. 2012) (quoting *Forest Conservation Council v. U.S. Forest Serv.*,
 25 66 F.3d 1489, 1496 (9th Cir. 1995) (abrogated on other grounds by *Wilderness Soc. v. U.S. Forest*
 26 *Serv.*, 630 F.3d 1173, 1178 (9th Cir. 2011))). In general, the intervention requirements should be

1 construed “broadly in favor of intervention.” *Prete*, 438 F.3d at 954. WSDCC’s interests are
 2 clearly at issue here under any construction of FRCP 24’s requirement.

3 WEiCU’s Opposition, replete with accusations against WSDCC, only further evidences
 4 WSDCC’s interest in this action. WEiCU accuses WSDCC of attempting to “influence the
 5 outcome of elections” and asserts that WSDCC’s wish to intervene in this action is an “admission
 6 of guilt” that “exposes the [WS]DCC as NOT wanting election integrity in Thurston County.”
 7 Opp. at 5. Hardly. WEiCU’s attempt to recharacterize WSDCC’s Motion to Intervene as a smoking
 8 gun only demonstrates *WEiCU*’s goal of painting Democratic entities and election officials as
 9 intent on committing fraud with unsupported accusations.³ *See id.*; *see also* Podlodowski Decl.
 10 ¶ 5. The suggestion is as absurd as it is unsupported by actual evidence.

11 Courts across the country have consistently allowed Democratic entities to intervene in
 12 disputes regarding the 2020 election.⁴ *See, e.g., Paher v. Cegavske*, No. 20-cv-00243-WGC, 2020
 13 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to Democratic
 14 National Committee (“DNC”), Democratic Congressional Campaign Committee (“DCCC”), and
 15 Nevada State Democratic Party where “Plaintiffs’ success on their claims would disrupt the
 16 organizational intervenors’ efforts to promote the franchise and ensure the election of Democratic
 17 Party candidates”); *Issa v. Newsom*, No. 20-cv-01044-CKD, 2020 WL 3074351, at *4 (E.D. Cal.
 18 June 10, 2020) (granting intervention as of right to the DNC in suit brought by Republican entities);
 19 *Donald J. Trump for President, Inc. v. Cegavske*, No. 20-CV-1445 VCF, 2020 WL 5229116, at *1
 20 (D. Nev. Aug. 21, 2020) (granting intervention to DNC, DCCC, and Nevada State Democratic
 21 Party in suit brought by President Trump’s campaign);⁵ *Donald J. Trump for President, Inc. v.*

22 ³ WEiCU’s assertion that it is a nonpartisan organization is irrelevant. Opp. at 6. WEiCU’s lawsuit perpetuates the
 23 unsupported and harmful notion that election fraud is committed by or to benefit Democrats. Podlodowski Decl. ¶ 6.
 24 There is no evidence—none—to support such a proposition and WEiCU certainly offers none.

25 ⁴ WSDCC is not required to demonstrate, as WEiCU alleges, that WEiCU could have brought this lawsuit against
 26 WSDCC in the first instance. *See* FRCP 24; Opp. at 5. In fact, none of the 2020 election contest cases cited in this
 paragraph could have been brought directly against the Democratic parties that were allowed intervention.

⁵ Although WEiCU attempts to distinguish the facts of the *Paher v. Cegavske* and *Donald J. Trump for President, Inc. v. Cegavske* cases, the holdings of those cases support WSDCC’s motion to intervene as of right. The courts concluded that the intervening Democratic entities had demonstrated sufficient protectable interests to “ensure voters

1 *Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020) (granting
 2 permissive intervention in a lawsuit challenging the 2020 election results to the City of Detroit,
 3 Michigan NAACP, the DNC, and the Michigan Democratic Party); *Libertarian Party of*
 4 *Pennsylvania v. Wolf*, No. 20-cv-2299, 2020 WL 6580739, at *1 (E.D. Pa. July 8, 2020) (granting
 5 permissive intervention to the Pennsylvania Democratic Party in a 2020 election dispute); *Davis*
 6 *v. Stapleton*, No. CV 20-62-H-DLC, 2020 WL 4815083, at *1 (D. Mont. Aug. 19, 2020) (granting
 7 intervention to the DCCC in a 2020 election dispute); *Cook Cty. Republican Party v. Pritzker*, 487
 8 F. Supp. 3d 705, 711 (N.D. Ill. 2020) (granting the DCCC’s motion to intervene in 2020 election
 9 dispute). There is no reason to depart here.

10 **C. WSDCC Cannot Rely on the Existing Parties to Represent Its Interests**

11 Although WEiCU contends that only the County can defend this lawsuit, Opp. at 4, the
 12 County will not adequately represent WSDCC’s interests in this action. WSDCC is “required only
 13 to make a minimal showing that representation of its interests may be inadequate.” *People v. Tahoe*
 14 *Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). Here, the County’s interest is in
 15 ensuring that election laws are properly administered. WSDCC, however, moves to intervene to
 16 protect the reputation and future successes of its candidates and to uphold the valid results of the
 17 2020 election on behalf of its affiliate candidates and voters. *See Issa*, 2020 WL 3074351, at *3
 18 (granting intervention as of right to the DCCC and the Democratic Party of California where the
 19 State’s interests in implementation of a challenged law differed from intervenors’ partisan interests
 20 in representing Democratic voters).

21 **D. Permissive Intervention is Warranted**

22 Additionally and alternatively, WSDCC satisfies the requirements for permissive
 23 intervention. FRCP 24(b) provides that the Court may grant permissive intervention to any party

24 _____
 25 of the Democratic Party can vote” and “ensure the election of Democratic Party candidates,” warranting intervention
 26 as of right. *See Paher*, 2020 WL 2042365, at *2; *Donald J. Trump for President, Inc.*, 2020 WL 5229116, at *1. Here,
 WSDCC has an interest in ensuring that the votes cast by Democratic voters during the 2020 election remain counted
 and undisturbed, and that the baseless conspiracy theory articulated in the Complaint does not unjustifiably threaten
 the reputations and electoral prospects of Democratic candidates.

1 who “has a claim or defense that shares with the main action a common question of law or fact.”
 2 Here, as described in its Motion to Intervene, WSDCC has defenses that share such common
 3 questions of law or fact, such as whether Plaintiffs have stated a valid claim for relief.

4 WEiCU insists that WSDCC should not be permitted to intervene under FRCP 24(b)’s
 5 because WSDCC seeks to “influence the outcome of elections.” Opp. at 5. *Of course* WSDCC
 6 seeks to advance Democratic candidates who will prevail in elections—but that hardly makes
 7 permissive intervention inappropriate. Indeed, it demonstrates the opposite: that the party should
 8 be allowed intervention. WSDCC’s Motion is timely, it has plainly demonstrated an interest in the
 9 outcome of the litigation sufficient to support permissive intervention, and WEiCU has not
 10 identified any prejudice that will result from WSDCC’s intervention. Given WSDCC’s clear
 11 interest in protecting its candidates and voters, particularly in lawsuits that advance unsupported
 12 allegations of fraud, WSDCC should be allowed to intervene.

13 **E. WSDCC’s Proposed Answer and Motion to Dismiss Comply with the Civil Rules**

14 WEiCU takes issue with WSDCC attaching its Proposed Answer and Motion to Dismiss
 15 to its Motion to Intervene, Opp. at 5–6, but WSDCC attached these proposed pleadings to comply
 16 with the requirements of the Federal Rules of Civil Procedure. WSDCC filed its Proposed Answer
 17 to comply with FRCP 24(c), which requires proposed intervenors to attach “a pleading that sets
 18 out the claim or defense for which intervention is sought.” WSDCC filed its Proposed Motion to
 19 Dismiss to avoid waiving the FRCP 12(b) defenses it raised in its Proposed Motion. *See* FRCP
 20 12(b) (“A motion asserting any of [the CR 12(b)] defenses must be made before pleading if a
 21 responsive pleading is allowed.”). Should WSDCC be granted intervention, it will file its Proposed
 22 Motion to Dismiss.

23 **III. CONCLUSION**

24 For the reasons set forth above, Proposed Intervenor Washington State Democratic Central
 25 Committee respectfully requests that the Court grant its Motion for Intervention.
 26

1 Dated: November 9, 2021

s/ Kevin J. Hamilton

2 Kevin J. Hamilton, WSBA No. 15648
3 KHamilton@perkinscoie.com
4 Amanda J. Beane, WSBA No. 33070
5 ABeane@perkinscoie.com
6 Reina A. Almon-Griffin, WSBA No. 54651
7 RAlmon-Griffin@perkinscoie.com
8 Nitika Arora, WSBA No. 54084
9 NArora@perkinscoie.com
10 **Perkins Coie LLP**
11 1201 Third Avenue, Suite 4900
12 Seattle, Washington 98101-3099
13 Telephone 206.359.8000
14 Facsimile 206.359.9000

15 *Attorneys for Proposed Intervenor Washington*
16 *State Democratic Central Committee*

CERTIFICATE OF SERVICE

On November 9, 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.

Jane Futterman
 THURSTON COUNTY
 PROSECUTING ATTORNEY'S
 OFFICE (CIVIL)
 CIVIL DIVISION - BLDG NO. 5
 2000 LAKERIDGE DRIVE SW
 OLYMPIA, WA 98502
 360-786-5540
 Fax: 360-709-3006
 Email: Futterj@co.thurston.wa.us

- ☐ Via hand delivery
☐ Via U.S. Mail, 1st Class,
 Postage Prepaid
☐ Via Overnight Delivery
☐ Via Facsimile
☒ Via Eservice

Virginia P. Shogren
 Virginia P. Shogren, P.C.
 961 W. Oak Court
 Sequim, WA 98382
 WEiCUattorney@protonmail.com

Mary Rose Wiedrich
 2741 Gull Harbor Rd NE
 Olympia, WA 98506
 Ph: 360-471-7035

- ☐ Via hand delivery
☒ Via U.S. Mail, 1st Class,
 Postage Prepaid
☐ Via Overnight Delivery
☐ Via Facsimile
☐ Via Eservice

Tiffany Nevils
 14607 148th Ave SE
 Yelm, WA 98597
 Ph: 360-259-7655

1
2 Bobbie Leland
3 4319 Frontier Dr SE
4 Olympia, WA 98501
5 Ph: 360-490-9045

6 Sharon Huster
7 11404 Cemetery Rd SE
8 Yelm, WA 98597
9 Ph: 360-400-3089

10 Amy Britsas
11 4720 Palermo Rosa Ln SW
12 Olympia, WA 98512
13 Ph: 360-951-7844

14 Keyra Perez
15 19723 147th Ave SE
16 Yelm, WA 98597
17 Ph: 360-894-0884

18 Tammie Corbin
19 16217 Bald Hill Rd SE
20 Yelm, WA 98597
21 Ph: 360-880-345

22 Allen Corbin
23 16217 Bald Hill Rd SE
24 Yelm, WA 98597
25 Ph: 253-363-4829

26 Sheri Suter
12140 Koeppen Rd SE
Rainier, WA 98576
Ph: 360-870-8703

CERTIFICATE OF SERVICE – 2

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

Petty Normet
11821 Blue Glacier Lane SE
Yelm, WA 98597
Ph: 253-318-4299

Diane Schmidt
8908 Pepperidge Ln SE
Yelm, WA 98597
Ph: 360-929-9338

Jorge Delgado
14224 148th Ave SE
Yelm, WA 98597
Ph: 360-559-9094

Eugene DeLozier
20044 Otoole Rd SE
Yelm, WA 98597
Ph: 828-217-9399

Flora Hernandez
14224 148th Ave SE
Yelm, WA 98597
Ph: 360-451-9761

Taiz Cepeda
19723 147th Ave SE
Yelm, WA 98597
Ph: 360-451-9757

Joe Keeslar
19723 147th Ave SE
Yelm, WA 98597
Ph: 360-870-1565

CERTIFICATE OF SERVICE – 3

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

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

EXECUTED at Seattle, Washington, on November 9, 2021.

s/ Kevin J. Hamilton

Kevin J. Hamilton, WSBA No. 15648
KHamilton@perkinscoie.com

CERTIFICATE OF SERVICE – 4

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000