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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 Case No. 0403-03057

7 INTERVENOR-DEFENDANT
8 DEFENSE OF MARRIAGE
9 COALITION'S OBJECTION TO
10 BENTON COUNTY'S MOTION TO
11 INTERVENE

6 MARY LI and REBECCA KENNEDY;
7 STEPHEN KNOX, M.D., and ERIC
8 WARSHAW, M.D.; KELLY BURKE and
9 DOLORES DOYLE; DONNA POTTER
10 and PAMELA MOEN; DOMINICK VETRI
11 and DOUGLAS DEWITT; SALLY
12 SHEKLOW and ENID LEFTON; IRENE
13 FARRERA and NINA KORICAN;
14 WALTER FRANKEL and CURTIS
15 KIEFER; JULIE WILLIAMS and COLEEN
16 BELISLE; BASIC RIGHTS OREGON, an
17 Oregon not-for-profit corporation; and
18 AMERICAN CIVIL LIBERTIES UNION
19 OF OREGON, an Oregon not-for-profit
20 corporation,

21 Plaintiffs,

22 MULTNOMAH COUNTY, a political
23 subdivision of the state of Oregon,

24 Intervenor-Plaintiffs,

25 v.

26 STATE OF OREGON; THEODORE
KULONGOSKI, in his official capacity as
Governor of the State of Oregon, HARDY
MYERS, in his official capacity as Attorney
General of the State of Oregon; GARY
WEEKS, in his official capacity as Director
of the Department of Human Services of the
State of Oregon; and JENNIFER
WOODWARD, in her official capacity as
State Registrar of the State of Oregon,

Defendants,

- and -

DEFENSE OF MARRIAGE COALITION,

1 an assumed business name of OREGON)
FAMILY COUNCIL, an Oregon not-for-)
2 profit corporation; CECIL MICHAEL)
THOMAS; NANCY JO THOMAS; DAN)
3 MATES; and DICK JORDAN OSBORNE)
Intervenor-Defendants.)

5 **INTRODUCTION**

6 Benton County has filed to intervene in the above action without making the grounds for
7 its intervention clear. In fact, Benton County has no right to intervene, and permissive
8 intervention (which the County does not specifically request) is unnecessary as Multnomah
9 County already brings a “home rule” county’s perspective to this case. The intervention of
10 Benton County will needlessly exacerbate the costs and complexity of this already complex
11 litigation. Their motion to intervene should be denied.

12
13 **ARGUMENT**

14 Benton County justifies its intervention by claiming it “has the authority to ‘disregard’
15 what it deems an unconstitutional statute,” in the context of the mandamus action currently
16 pending in Benton County. However, Benton County makes no effort to produce authority, nor
17 can Defendant-intervenors find any authority, that that mandamus action gives Benton County a
18 right to intervene in *this* action.

19
20 **I. BENTON COUNTY HAS NO RIGHT TO INTERVENE.**

21 ORCP 33B allows a party to intervene as of right where “a statute of this state, these rules
22 [the ORCPs], or the common law, confers an unconditional right to intervene.” ORCP 33B.
23 Benton County has not pointed to any such authority that allows intervention in Plaintiffs’ case.
24 Benton County cites—curiously—to ORS 34,130(4), which allows intervention into a mandamus
25 action by an “adverse party” to the mandamus action. Under ORS 34.105, an adverse party (is “a
26 beneficially interested party to a judicial or administrative proceeding from which a mandamus

1 proceeding arises, whose interests are adverse to the relator.” ORS 34.105(1). Benton County
2 has not demonstrated that Plaintiff have even filed a proper mandamus action (no writ has
3 issued), nor does it show how it is beneficially interested in the Multnomah County case. Benton
4 County’s apparent justification is a mandamus action against *it*, filed and ongoing in Benton
5 County. Benton County seeks to intervene here because of a case in Benton County. The county
6 makes absolutely no effort to plead a right to intervene in the current Multnomah County action,
7 as is their burden in a motion to intervene. Indeed, Benton County has no such right here, and
8 cannot plead a right to intervene under ORCP 33B.

9

10 **II. BENTON COUNTY NEEDLESSLY COMPLICATES THIS COMPLICATED LITIGATION.**

11 Under ORCP 33C, a court may permit within its good discretion intervention by any party
12 with “an interest.” ORCP 33. But Benton County has no interest in this *Multnomah County*
13 litigation. Instead, it seeks to bootstrap itself into this case for reasons that have little to do with
14 the actual dispute raised by the Plaintiffs regarding the Multnomah County branch of the State
15 Vital Statistics Bureau’s refusal to record licenses. Not only does Benton County have zero
16 interest in the pending action against a Multnomah County office of the State, but a Multnomah
17 County ruling has no authoritative effect in Benton County. Benton County seems to want to
18 intervene simply to jump on the judicial bandwagon. It has no interest in what the Multnomah
19 County office of the State Vital Statistics Bureau does.

20 The intervention of Benton County also adds a significant tactical advantage to the
21 Plaintiffs’ side in this case. Multnomah County already is present as an intervenor, and the
22 addition of Benton County will not add a new or different perspective to this case. Instead, it
23 will be simply one more set of documents, one more set of arguments (largely duplicative of
24 Multnomah County’s arguments in all likelihood), and one more counsel with which to ensure
25 conferral and service for no objectively justifiable rationale, that Intervenor-Defendants Defense
26 of Marriage Coalition and other individuals (collectively “DOMC”) will need to accommodate.

1 Intervenor-Defendants DOMC dismissed pending, valid claims against Intervenor-
2 Plaintiff Multnomah County and others to take part in this case. In other words, Intervenor-
3 Defendants have a reason to be in this lawsuit. DOMC is a newly formed umbrella organization
4 with distinctly limited resources, and exacerbating the costs and complexity of this litigation will
5 only harm the Intervenor-Defendants. Benton County brings no different perspective, no
6 different legal theory, and no judicial economy to the parties already in this suit. Intervention
7 under ORCP 33C should not be granted where it “will unduly delay or prejudice the adjudication
8 of the rights of the original parties.” Intervenor-Defendants have special status in this suit by
9 virtue of the sacrifice they have made to be part of this process. Benton County brings nothing
10 new to this action but expense and inevitable delay to the State and to the Intervenor-Defendants.

11 Finally, Benton County advances no good reason why it (as opposed to the remaining 34
12 counties not part of this suit or seeking intervention) deserves to intervene. If Benton County is
13 admitted, on what grounds may Lane, Coos, Tillamook, Malheur, Morrow, Clackamas, Jackson,
14 Polk, Clatsop, Jefferson and all the other counties of Oregon be excluded? The ruling of the
15 Oregon Supreme Court will apply to Benton County as it will to all the other counties of the
16 State. There is no good reason for Benton to be included as a party now.

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1 CONCLUSION

2 For the foregoing reasons, Benton County's motion to intervene should be denied.

3 DATED this 29th day of March, 2004.

4 O'DONNELL & CLARK, LLP

5 

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing INTERVENOR-DEFENDANT DEFENSE OF
3 MARRIAGE COALITION’S OBJECTIONS TO BENTON COUNTY’S MOTION TO
4 INTERVENE, upon:

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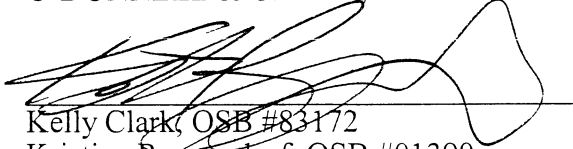
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1 by mailing a copy thereof, contained in a sealed envelope, with postage thereon prepaid,
2 addressed to said attorney, and deposited in the United States Post Office at Portland, Oregon on
3 the 29th day of March, 2004.

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