

The Honorable Donald Haley

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

HEATHER ANDERSEN and LESLIE
CHRISTIAN; PETER ILGENFRITZ and DAVID
SHULL; JOHANNA BENDER and SHERRI
KOKX; JANET HELSON and BETTY
LUNDQUIST; DAVID SERKIN-POOLE and
MICHAEL SERKIN-POOLE; VEGAVAHINI
SUBRAMANIAM and VAIJAYANTHIMALA
NAGARAJAN,

Plaintiffs,

vs.

RON SIMS, King County Executive; DEAN
LOGAN, King County Director of Records,
Elections, and Licensing Services Division; and
CHERYLE A. BROOM, King County Auditor,

Defendants.

NO. 04-2-04964-4SEA

MOTION TO INTERVENE

Calendar Date: March 29, 2004

[Oral Argument Requested]

I. RELIEF REQUESTED

Washington State Senator Val Stevens, State Representative Gigi Talcott, Pastors Doug Wheeler, Tony Morris, Harvey Drake, and Washington Evangelicals for Responsible Government (“WERG”) (collectively referred to as the “Applicants”) move the Court for an order permitting them to intervene as defendants. This motion is based on the unconditional right to intervene pursuant to CR 24(a)(2). Should this Court determine that the Applicants do not meet the

1 requirements of CR 24(a)(2), they request permissive intervention under CR 24(b). Applicants
2 request oral argument.

3 II. FACTS

4 On March 8, 2004, Plaintiffs filed a complaint with this Court seeking to strike down
5 Washington State's Defense of Marriage Act ("DOMA") and redefine marriage to include same-
6 sex couples. RCW 26.04.010 et seq. Plaintiffs allege that Washington's Constitution requires
7 King County to issue marriage licenses to same-sex couples. See Complaint. Plaintiffs are same-
8 sex couples who were denied marriage licenses. They refer throughout their complaint to the
9 religious and child-rearing aspects of marriage that are the bedrock of this time-honored
10 institution. One couple are clergy and state "it offends their sense of justice that they are unable to
11 sign civil marriage certificates for the same sex-couples they have married." Id., at 3. Others
12 raising children rightly refer to marriage as "the nation's oldest and most traditional institution for
13 child rearing" and desire state sanctioned marriage for the legitimacy it confers. Id., at 4.

14 The Legislature clearly had these same issues in mind when it enacted DOMA in 1998.
15 The Legislature specifically found that Washington had a "compelling interest . . . to reaffirm its
16 historical commitment to the institution of marriage between a man and a woman . . . and to protect
17 that institution." RCW 26.04.010 (Intent, c.1). It also specifically cited to and "codif[ied] the
18 Singer opinion . . ." Id. The court stated :

19 The institution of marriage as a union of man and woman, uniquely involving the
20 procreation and rearing of children within a family, is as old as the book of Genesis. . . .
21 This historic institution manifestly is more deeply founded than the asserted contemporary
22 concept of marriage and societal interests for which petitioners contend.

23 Singer v. Hara, 11 Wn.App 247, 264, 522 P.2d 1187 (1974).

1 That the history of marriage and its crucial role in the procreation and rearing of children
2 are issues at the heart of this legal controversy cannot and is not disputed by Plaintiffs. Indeed,
3 Plaintiffs represent a variety of perspectives and experiences that they believe make them as a
4 group representative of same-sex couples who seek state sanctioned marriage. The Applicants
5 respectfully submit that a counter-perspective of the complex and multi-faceted issues that
6 underlie this legal debate can only be fully presented if the Applicants are permitted to be heard.

7 The Applicants are lawmakers who debated and voted in favor of DOMA and who have a
8 direct, ongoing role in formulating public policy that directly bears on marriage and families.
9 They are African-American clergy who, like several of the plaintiffs, solemnize marriage, see
10 first-hand the fragility of the institution of marriage, and provide counsel and succor to parents and
11 children. They have experienced bigotry and strongly believe that preserving traditional marriage
12 has little to do with civil rights discrimination. The Applicants also include WERG, which is a
13 501(c)(4) organized to influence state public policy and legislation on a variety of issues that
14 impact the family and religious organizations. WERG played an instrumental role in the passage
15 of DOMA.

16 Ron Sims is the principal defendant named in this action. He has publicly admitted to
17 inviting Plaintiffs to sue him, referring to them as courageous and reportedly suggesting that “[w]e
18 diminish ourselves in our unwillingness to accept gay marriage.” Steven T. O’Ban Decl., Ex. 1.
19 Mr. Sims helped orchestrate the controversy because he wanted to “develop a brilliant case” “that
20 was not compromised.” O’Ban Decl., Ex. 1. Mr. Sims has gone so far as to include his own
21 statement recommending that DOMA be struck down on King County’s *official* website. O’Ban
22 Decl., Ex. 2.
23

1 myriad of issues of child-rearing, intervene when families are in crisis and assist families shattered
2 by divorce. Declarations of Wheeler, Morris, and Drake, ¶ 2.

3 These religious leaders have a professional interest in preserving this institution, which
4 centuries of experience has shown is the best arrangement for raising children. They work with
5 diverse, nontraditional parenting environments: foster parents, adoptive parents, single parents,
6 children raised by grandparents. These arrangements are examples of loving people doing the best
7 they can in a less than ideal situation. But each minister knows first-hand that children yearn for
8 the ideal, a mom and dad. Even when raised by devoted adoptive parents, children instinctively
9 desire to know, and often seek out, their biological parents. Id., ¶ 3.

10 As well-articulated by Plaintiffs and the court in Singer, this Court must necessarily
11 consider the moral, sociological and personal ramifications of re-defining traditional marriage.
12 Just as this court should hear from the Plaintiffs themselves about the consequences of not being
13 married in the eyes of the state, this court must hear from religious leaders whose calling it is to
14 bless the vows exchanged in marriage and then to nurture those marriages and the children they
15 produce.

16 Additionally, as African-Americans, they have an interest in, and can articulate better than
17 the County, that in their view the defense of marriage is not about discrimination. Slavery, Jim
18 Crow laws and red-lining cannot be compared to retaining in its historic form the definition of
19 marriage grounded in tradition, biology, sociology and common sense. Marriage was not created
20 to oppress people. It was created principally for children. Id., ¶ 4.

21 The final Applicant is WERG. WERG's purpose is to influence state public policy and
22 legislation on a variety of issues that impact the family and religious organizations. WERG
23

1 employs a lobbyist for the Washington State Legislature and to state government agencies. WERG
2 has over 300 financial contributors from Washington State. Joseph B. Fuiten Decl., ¶¶ 3-4.

3 WERG played an instrumental role in the passage of Washington's DOMA. In support of
4 DOMA's passage, WERG arranged citizen testimony for the various legislative committees,
5 provided background information to legislators and citizens, and was very active in lobbying both
6 state representatives and senators. The passage of DOMA was WERG's primary legislative
7 objective in the 1998 legislative session. WERG's supporters believe that defending the law that
8 WERG played such an active role in enacting is the most important social and cultural issue facing
9 the state and nation. Fuiten Decl., ¶ 5.

10 III. ISSUE

11 May the Applicants intervene as defendants?

12 IV. EVIDENCE

13 This motion is based on the declarations of Senator Val Stevens, Representative Gigi
14 Talcott, Pastors Doug Wheeler, Tony Morris, and Harvey Drake, Joseph B. Fuiten, and Steven T.
15 O'Ban, and all attached exhibits.

16 V. AUTHORITY

17 CR 24 grants intervention as a matter of right and permissive intervention.

18 The Rule states:

19 (a) Intervention of Right. Upon timely application anyone shall be permitted to
20 intervene in an action:

21 (1) when a statute confers an unconditional right to intervene; or

22 (2) when the applicant claims an interest relating to the property or transaction
23 which is the subject of the action and he is so situated that the disposition of
the action may as a practical matter impair or impede his ability to protect that

1 interest, unless the applicant's interest is adequately represented by existing
2 parties.

3 (b) Permissive Intervention. Upon timely application, anyone may be permitted to
4 intervene in an action:

5 (1) When a statute confers a conditional right to intervene; or

6 (2) When an applicant's claim or defense and the main action have a question of
7 law or fact in common. . . . In exercising its discretion the court shall
8 consider whether the intervention will unduly delay or prejudice the
9 adjudication of the rights of the original parties.

10 **A. The Applicants may intervene as a matter of right.**

11 Senator Stevens, Rep. Talcott, Clergy and WERG (the "Applicants") have a right to
12 intervene under CR 24(a)(2) if they establish the following three requirements: (1) an interest in
13 the lawsuit; (2) a risk that disposition in their absence will practically or legally impair their ability
14 to protect the interest; and (3) that existing parties do not adequately protect their interests.

15 Spokane County v. State ex rel. Public Employment Relations Comm'n, 136 Wn.2d 644, 649, 966
16 P.2d 305 (1998); Westerman v. Cary, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994). The
17 requirements of CR 24(a) are liberally construed to favor intervention, and a motion to intervene is
18 timely if it is filed before the commencement of the trial. American Discount Corp. v. Saratoga
19 West, Inc., 81 Wn.2d 34, 43, 499 P.2d 869 (1972). The Applicants meet all three requirements for
20 intervention as a matter of right.

21 1. The Applicants have an interest in the lawsuit that will be impaired if Plaintiffs
22 prevail.

23 In determining whether an adequate interest exists, the Court balances the concerns of the
24 parties and the applicant. American Discount, 81 Wn. 2d at 42. Courts construe an applicant's
25 interests broadly. Vashon Island Committee for Self-Government v. Washington State
26 Bound.Rev. Bd. For King County., 127 Wn.2d 759, 903 P.2d 953 (1995). "Not much of a

1 showing is required . . . to establish an interest. ” Columbia Gorge Audubon Society v. Klickitat
2 County, 98 Wn. App. 618, 628, 989 P.2d 1260 (1999) (citing American Discount, 81 Wn.2d at
3 41).

4 Courts have found that an applicant has a valid interest that will be impaired if he or she
5 has played a significant role in passing or enforcing challenged legislation and the applicant is
6 better suited to make certain arguments to the court than the governmental party defending the
7 action. See Fritz v. Gorton, 8 Wn. App. 658, 661, 509 P.2d 82 (1973); (“Petitioner’s relationship
8 with this litigation springs from its concern for the policy expressed in the act. The League was a
9 significant force in drafting Initiative 276, getting it placed on the ballot, and campaigning for its
10 adoption.”) National Farm Lines v. Interstate Commerce Comm’n., 564 F.2d 381, 383-84 (10th
11 Cir. 1977).

12 Senator Stevens voted in favor of DOMA and chairs the Senate’s Children and Family
13 Services and Corrections Committee. Her passionate support for DOMA was grounded in part in
14 the experience she has gained fashioning public policy to support and protect traditional marriage
15 as the Chair of this Committee. Stevens Decl., ¶ 5. Rep. Talcott co-sponsored DOMA. Talcott
16 Decl., ¶ 4. Senator Stevens and Rep. Talcott have a direct interest in seeing this law, and the
17 traditional institution of marriage with all of its policy implications, upheld. Likewise, WERG
18 rallied needed support and testimony to help enact DOMA.

19 Senator Stevens, Rep. Talcott and WERG object to Plaintiffs’ attempt to short-cut the
20 democratic process by using the judiciary to redefine a vital social relationship that the people
21 through their elected leaders have defined and protected. The Washington territorial legislature
22 enacted the first marriage statute in 1854. RCW 26.04.020 (1998) (originally enacted 1854, p. 96,
23 § 115.). In the 150 years that followed, the legislature has reserved to itself the prerogative of

1 prohibiting certain unions based, for example, on consanguinity and polygamy. Senator Stevens
2 and Rep. Talcott have an interest in protecting the legislature's 150-year-old prerogative to define
3 marriage as the citizens' representatives. Stevens Decl., ¶ 6; Talcott Decl., ¶ 5.

4 Clergy also have an interest that will be impaired by this litigation. As Plaintiffs'
5 complaint suggests, this Court cannot rule on DOMA's constitutionality without considering the
6 role traditional marriage has played in society and its relation to procreation and the rearing of
7 children. As some of the Plaintiffs' have reportedly stated, they waited to file suit until they
8 recruited the right same-sex couples who could represent a variety of perspectives. O'Ban Decl.,
9 Ex. 3. Likewise, Clergy respectfully submit that this Court should hear the counter-viewpoints of
10 others qualified to speak on these issues because of their varied experience ministering to some of
11 the most vulnerable families and children.

12 Clergy's duties largely involve rolling up their sleeves and working closely with marriages
13 and families under great strain, often in crises. Wheeler, Morris, and Drake Decls., ¶¶ 2-3. They
14 have a substantial interest in marriage being preserved in its traditional form, gravely concerned
15 that redefining it to apply to all who profess a "long-term relationship" will divest it of its basic
16 purpose: "uniquely involving the procreation and rearing of children." Singer, supra, at 264.
17 Clergy have a direct interest in the preservation of the historic institution of marriage to which
18 they devote their professional lives. Id., ¶ 5.

19 2. The existing parties cannot adequately protect the Applicants' interest.

20 The Applicants do not believe that their interests will be adequately protected by the
21 County. Washington law requires only a minimal showing that the possibility exists that the
22 Applicant's interests will not be adequately protected by the existing parties. Columbia Gorge, 98
23 Wn. App. at 629 (citing United States v. Brooks, 163 F.R.D. 601, 604 D. Or. 1995); California v.

1 Tahoe Regional Planning Agency, 792 F.2d 775, 778 (9th Cir. 1986). The Court of Appeals
2 identified the relevant inquiry,

3 The relevant questions are: Will the [Plaintiff] undoubtedly make all the [Intervenor's]
4 arguments? That is, is the [Plaintiff] able and willing to make those arguments? Will the
5 [Intervenor] more effectively articulate any aspect of its interest? It is not necessary that
6 the intervenor's interest be in direct conflict with those of the existing parties. It is only
7 necessary that the interest may not be adequately articulated and addressed. . . . When in
8 doubt, intervention should be granted.

9 Columbia Gorge, 98 Wn. App. At 630 (citations omitted).

10 Furthermore, intervention should be allowed if an applicant demonstrates the possibility of
11 common interest between the plaintiff and defendant, the government's disinterest in the case, or a
12 private party has a similar, but divergent, interest from the government. See Fritz v. Gordon, 8
13 Wn. App. 658, 659-60, 661-62; 509 P.2d 83 (1973); National Farm Lines v. Interstate Commerce
14 Comm'n, 564 F.2d 381, 383 (10th Cir. 1977).

15 While the King County Prosecutor is obligated to defend DOMA, the Applicants are
16 deeply invested in preserving historical marriage and are, therefore, in a better position to
17 articulate the moral, sociological and historical grounds for marriage between a male and a female.
18 That the challenge to traditional marriage is the central social controversy before the state and
19 nation cannot be denied. It is imperative, therefore, that the parties litigating this issue be equally
20 vested in the outcome. No one can question the degree of commitment of Plaintiffs to their
21 position. Applicants respectfully submit that the defense of DOMA must be taken up by parties
22 such as they who are equally strong in their commitment, but to historical marriage.

23 The public comments of the primary defendant, King County Executive Ron Sims, only
further underscore the necessity for intervention. Mr. Sims not only urged Plaintiffs' counsel to
file this lawsuit against him, but actually played a significant role in preparing the case. Mr. Sims

1 candidly explained that while some wanted to file the suit sooner, he wanted to wait to “develop a
2 brilliant case” [against him] and “wanted this to be a legal case that was not compromised.”

3 O’Ban Decl., Ex. 1.

4 Mr. Sims has gone so far as to use King County’s official website to announce that DOMA
5 should be struck down. O’Ban Decl., Ex. 2. While Mr. Sims may have refused to violate state
6 law by issuing the marriage licenses, his public statements and clear sympathy for their cause, at a
7 minimum, raises reasonable doubt as to whether the defendants can adequately articulate and
8 address Applicants’ interests. Washington law requires that Applicants demonstrate a possibility
9 that they may not be adequately represented and any doubts should be resolved in favor of
10 intervention. Applicants have clearly met that burden. Their motion to intervene as a matter of
11 right should be granted.

12 **B. If this Court finds that the Applicants do not have a right to intervene,
13 they request that the Court permit intervention.**

14 Pursuant to CR 24(b), the Court may allow intervention when an applicant’s defense and
15 the main action have a common question of law or fact. The Court has discretion to allow
16 intervention, particularly where the intervenor is a government official that may be impacted by
17 the action. Westerman v. Cary, 125 Wn.2d 277, 304 (1994), 892 P.2d 1067, Ford v. Logan, 79
18 Wn.2d 147, 150, 483 P.2d 1247 (1971).

19 The Applicants’ respectfully request that this Court exercise its discretion by allowing
20 intervention. Applicants’ defenses contain common questions of law and fact with this action.
21 They desire to defend DOMA’s constitutionality and preserve traditional marriage. Senator
22 Stevens and Rep. Talcott have a strong interest in this action as this Court’s decision will affect
23

1 the validity of state marriage laws in general, an issue traditionally within the province of the
2 Legislature.

3 Clergy consists of pastors, who have historically exercised a moral voice in their
4 communities. Plaintiffs' themselves have said that marriage expresses a "commitment in the
5 deepest way that society provides" and that it is "universally respected and recognized."
6 Complaint, p. 7. Because this case requires consideration of issues so intimately involved with the
7 work done by Clergy and because Plaintiffs seek to re-define this time-honored societal
8 institution, Clergy should be permitted to provide a counter-balancing perspective. Mr. Sims'
9 unusual role in helping to orchestrate the lawsuit and his very public criticism of DOMA (using
10 King's County's website) also support intervention to preserve public confidence that the popular
11 law will be vigorously defended.

12 Finally, the Applicants have not unduly delayed in filing this motion nor will any prejudice
13 result to the existing parties by Applicants' involvement. The Applicants have filed this motion
14 less than two weeks after the Complaint was filed. Intervention would allow the Applicants to
15 contribute to the full and thorough development of the issues, presenting the concerns of a
16 government official whose daily duties and legislative authority will be affected and those who
17 serve in pastoral roles providing a moral voice in their communities.

18 VI. CONCLUSION

19 For these reasons, the Applicants respectfully request that this Court allow them to
20 intervene as defendants.

1 RESPECTFULLY SUBMITTED this 17th day of March, 2004.

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