

THE HONORABLE LEROY MCCULLOUGH
Hearing Date: April 12, 2023
Without Oral Argument

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State
Nonprofit Corporation; DOUG BASLER;
HOWARD FERGUSON; DIANA BASS;
TIMOFEY SAMOYLENKO; MARY
HALLOWELL; SAMANTHA BUCARI;
RONALD STEWART; LYDIA ZIBIN;
CATHERINE DODSON,
Plaintiffs,

v.

JULIE WISE, Director of King County
Elections; KING COUNTY, and DOES 1-30,
inclusive,

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,
Proposed Intervenor
Defendant.

No. 21 2 12603-7 KNT

WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE'S RENEWED
MOTION TO INTERVENE

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY OF INTERVENOR 2

III. ISSUE PRESENTED..... 2

IV. EVIDENCE RELIED UPON 2

V. BACKGROUND 2

VI. ARGUMENT..... 6

 A. WSDCC satisfies Rule 24(a)'s requirements for intervention as of
 right..... 6

 1. The Motion is Timely. 7

 2. WSDCC has an interest in the outcome of this litigation. 7

 3. Disposition will impair and impede WSDCC's ability to
 protect its interests. 10

 4. WSDCC's interests are not adequately represented by
 Defendants. 11

 B. Alternatively, WSDCC should be allowed permissive intervention 13

VII. CONCLUSION..... 14

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I. INTRODUCTION

Nearly a year after the November 2020 election, the Washington Election Integrity Coalition United (“WEiCU”) and its *pro se* supporters (“Plaintiffs”) 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 seek to unseal ballots from Washington’s 2020 General Election and “audit” King County’s (“the County”) election department, claiming their votes have been “diluted” and seeking injunctive relief regarding certain election procedures. 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 the integrity of Washington’s electoral system.

WSDCC meets the requirements for intervention as of right and permissive intervention under Washington Superior Court Civil Rule (“CR”) 24. The Motion is timely—WSDCC submitted its original motion to intervene just two weeks after the complaint was first filed and is renewing its request to intervene now that this case has been remanded. 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.

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2 As required by CR 24(c), this Motion is accompanied by a Proposed Answer, which
3 is attached as Exhibit A.¹
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5 6 **II. IDENTITY OF INTERVENOR**

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8 WSDCC is the governing body of the Washington State Democratic Party, which
9 works to elect Democrats, uphold Democratic values, and support Democrats across the State.
10 Decl. of Tina Podlodowski (“Podlodowski Decl.”) ¶ 3. It is composed of two people from
11 each Legislative District and County. *Id.* ¶ 2. It holds monthly meetings, nominates and
12 endorses local candidates, recruits and manages precinct committee officers, passes
13 resolutions, and campaigns for local candidates. *Id.* This action and the relief requested impact
14 the Washington State Democratic Party, its supporters, and its elected officials.
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21 22 **III. ISSUE PRESENTED**

23 Whether Proposed Intervenor WSDCC should be permitted to intervene in this action
24 pursuant to the liberal standards for intervention in CR 24.
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27 28 **IV. EVIDENCE RELIED UPON**

29 WSDCC relies on the Declaration of Tina Podlodowski (“Podlodowski Decl.”) filed
30 as Exhibit B to WSDCC’s Motion to Intervene, and all other exhibits attached to this
31 Motion.
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35 36 **V. BACKGROUND**

37 On September 22, 2021, nearly a year after the 2020 General Election, Plaintiffs filed
38 this belated election contest. Plaintiffs allege widespread election fraud occurred during
39 Washington’s November 2020 General Election. Without explaining the factual basis for their
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44 ¹ WSDCC has filed a declaration by Kevin J. Hamilton in support of this Motion. The
45 following are attached to Mr. Hamilton’s declaration: a Proposed Answer as Exhibit A (to ensure
46 compliance with CR 24(c)); a declaration from WSDCC Chair Tina Podlodowski in support of this
47 Motion as Exhibit B; and a Proposed Motion to Dismiss as Exhibit C, which WSDCC seeks to file if
it is granted intervention.

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2 claims, Plaintiffs assert that the County Director engaged in widespread “election fraud” by:
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4 flipping, deleting, and adding votes; participating in “party preference”; identifying who voted
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6 some ballots and creating a “record of the voters’ party preferences”; and leaving ballots
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8 unsecure. Compl. ¶¶ 10–15, 23–26, 33–34. Plaintiffs also assert, without any factual basis,
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10 that 400,000 votes were added, 6,000 votes were flipped, and “thousands of voters were
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12 removed” in “one or more statewide races before, during, and/or after the election”—an
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14 unidentified portion of which was perpetrated in the County by the Director or by other
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16 election officials. *Id.* ¶ 26.

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18 Plaintiffs further allege that they attempted to serve the County with a public records
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20 request under Washington’s Public Record Act (“PRA”) so that they could inspect ballots
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22 from the 2020 election, but that the County denied their request. *Id.* ¶ 51. Plaintiffs challenge
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24 the County’s actions under Washington’s election contest statutes, contend that the County
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26 violated the PRA, and allege an assortment of constitutional claims under the Washington and
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28 U.S. Constitutions. *Id.* ¶ 5. Plaintiffs ask for breathtaking and unwarranted “relief,” including:
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30 (1) an order declaring that the County broke the law and barring the County from doing so
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32 moving forward; (2) a license to “audit” the County’s election department; and (3) an order
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34 allowing them to inspect ballots from the 2020 election. *Id.* at 17–18.

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36 WSDCC swiftly sought to intervene in this action on October 6, 2021—just two weeks
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38 after the complaint was filed. Wash. State Democratic Cen. Comm. Mot. to Intervene, DKT
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40 8, Oct. 6, 2021. On October 13, 2022, before that Motion was decided, Defendants filed a
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42 notice of removal in the U.S. District Court for the Western District of Washington.
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44 *Washington Election Integrity Coalition United et al. v. Wise*, No. 2:21-cv-01394-LK, ECF
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46 No. 1. WSDCC promptly sought to intervene in the federal court. *Id.* at ECF No. 14. On
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2 October 20, 2021, the King County Defendants filed an answer and counterclaim against
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4 Plaintiffs before the federal court. *Id.* at ECF No. 10.

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6 Plaintiff WEiCU filed similar lawsuits across Washington State, including against
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8 Clark, Snohomish, Whatcom, Lincoln, Franklin, Thurston, and Pierce counties.² Each of the
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10 lawsuits contained virtually identical claims on behalf of WEiCU and different county-
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12 specific collections of pro se individuals, all apparently recruited at roving statewide meetings
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14 called to generate support for the effort. *See* Associated Press, *Lawsuits claiming 2020 ballots*
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16 *were manipulated come to WA*, SEATTLE TIMES (Sept. 21, 2021, 10:36 AM),
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18 [https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-](https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-manipulated-come-to-washington/)
19
20 [manipulated-come-to-washington/](https://www.seattletimes.com/seattle-news/politics/lawsuits-claiming-2020-ballots-were-manipulated-come-to-washington/); Shari Phiel, *Lawsuits Filed in Three Washington Counties*
21
22 *Claim Votes Were ‘Flipped’*, THE CHRONICLE, [https://www.chronline.com/stories/lawsuits-](https://www.chronline.com/stories/lawsuits-filed-in-three-washington-counties-claim-votes-were-flipped,273108)
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24 [filed-in-three-washington-counties-claim-votes-were-flipped,273108](https://www.chronline.com/stories/lawsuits-filed-in-three-washington-counties-claim-votes-were-flipped,273108). WSDCC sought to
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26 intervene in those actions before the respective superior courts.³ Defendants in the Clark,
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28 Snohomish, Whatcom, Thurston, and Pierce cases also removed, and this action was
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34 ² *Washington Election Integrity Coalition United et al. v. Anderson*, No. 21-2-07551-9 (Sept.
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36 21, 2021); *Washington Election Integrity Coalition United et al. v. Hall*, No. 21-2-01641-34 (Sept.
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38 21, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06
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40 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Fell*, No. 21-2-04302-31
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42 (Sept. 16, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-
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44 37 (Sept. 10, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-
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46 50572-11 (Oct. 5, 2021); *Washington Election Integrity Coalition United et al. v. Schumacher*, No.
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21-2-00042-22 (Oct. 4, 2021).

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42 ³ WSDCC sought to intervene in Clark, Whatcom, Lincoln, Franklin, and Thurston county
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44 superior court. *See Washington Election Integrity Coalition United et al. v. Hall*, No. 21-2-01641-34
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46 (Oct. 6, 2021); *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 21-2-01775-06
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48 (Oct. 6, 2021); *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 21-2-00949-37
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50 (Oct. 6, 2021); *Washington Election Integrity Coalition United et al. v. Beaton*, No. 21-2-50572-11
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52 (Oct. 8, 2021); *Washington Election Integrity Coalition United et al. v. Schumacher*, No. 21-2-
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54 00042-22 (Oct. 11, 2021). WSDCC did not seek to intervene in Snohomish and Pierce County, since
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56 both were removed immediately after they were filed.

1 consolidated with those cases.⁴ WSDCC also promptly sought to intervene in each of the
2 federal cases. *Id.* at ECF No. 14. The Lincoln and Franklin County cases remained in state
3 court. WSDCC was granted intervention as of right in Lincoln County. *See* Decl. of Kevin J.
4 Hamilton (“Hamilton Decl.”), Ex. D. Both WSDCC and Lincoln County filed motions to
5 dismiss and, on March 28, 2022, the Lincoln County Superior Court granted those motions.
6 *See* Hamilton Decl., Exs. E, F. The court found that WEiCU’s “election claims [were]
7 untimely and barred by statute and the equitable doctrine of laches,” that WEiCU lacked
8 standing, and failed to state a claim. Hamilton Decl., Exs. E at 1. The court also determined
9 that WEiCU’s claims were “frivolous” and “interposed for improper purposes.” *Id.* The
10 Franklin County Superior Court similarly disposed of WEiCU’s election contest filed there
11 (prior to ruling on WSDCC’s Motion to Intervene in that action). *See* Hamilton Decl., Ex. G
12 (holding that “Plaintiffs lack standing and have failed to state a claim upon which relief can
13 be granted”).
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27 As a result of their frivolous election claims, the Lincoln County Superior Court
28 ordered plaintiffs to pay the County’s defense costs of \$22,586.31. *See* Hamilton Decl., Ex.
29 F at 2. This is not the only time WEiCU has been sanctioned in connection with their baseless
30 challenge to the November 2020 General Election. The Washington Supreme Court also
31 ordered WEiCU to pay \$28,384.70 as a result of an election lawsuit filed directly with the
32 Supreme Court.⁵ Hamilton Decl., Ex. I. Washington’s Solicitor General subsequently filed a
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41 ⁴ *Washington Election Integrity Coalition United et al. v. Anderson*, No. 3:21-cv-05726-LK,
42 ECF No. 1; *Washington Election Integrity Coalition United et al. v. Hall*, No. 3:21-cv-05787-LK,
43 ECF No. 1; *Washington Election Integrity Coalition United et al. v. Kimsey*, No. 3:21-cv-05746-LK,
44 ECF No. 1; *Washington Election Integrity Coalition United et al. v. Fell*, No. 2:21-cv-1354-LK, ECF
45 No. 1; *Washington Election Integrity Coalition United et al. v. Bradrick*, No. 2:21-cv-01386-LK,
46 ECF No. 1.

47 ⁵ There, WEiCU filed a petition in the Washington Supreme Court alleging that Governor Jay Inslee violated the Constitution by “pressur[ing]” employees of the Department of Licensing to

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2 bar complaint against WEiCU’s counsel, Virginia Shogren, stating that there is “no
3 meaningful dispute that Ms. Shogren’s legal arguments were frivolous” and that she had
4 “specific knowledge that the legal arguments about certain essential elements were frivolous.”
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8 *See* Hamilton Decl., Ex. K at 2.

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10 On September 30, 2022, the court in the federal cases determined that plaintiffs lacked
11 Article III standing and that the court had no supplemental jurisdiction over the state law
12 claims. *Id.* at ECF No. 44. The court dismissed the Pierce, Clark, Snohomish, Whatcom,
13 Thurston, and Pierce cases with prejudice, since remand would be futile (because the
14 underlying state law claims were obviously meritless and their dismissal by the state courts
15 was inevitable). However, since the King County Defendants had filed meaningful
16 *counterclaims*, the federal court remanded all of the state law claims to this Court (including
17 Defendants’ counterclaims). *Id.* On October 17, 2022, the federal court notified this Court that
18 this action was remanded. Notice of Remand, DKT 15. WSDCC now renews its motion to
19 intervene.
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30 VI. ARGUMENT

31 WSDCC seeks to intervene in this case as a matter of right under CR 24(a) or, in the
32 alternative, permissively under CR 24(b). WSDCC plainly meets the requirements to
33 intervene as of right under CR 24(a), and thus, easily meets the requirements for permissive
34 intervention under CR 24(b).
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39 A. WSDCC satisfies Rule 24(a)’s requirements for intervention as of right.

40 CR 24(a) provides an absolute right of intervention if the intervenor shows: (1) timely
41 application for intervention; (2) an interest which is the subject of the action; (3) that the
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register non-citizens to vote. *See* Hamilton Decl., Ex. H at 6. The Court promptly dismissed the case
as frivolous. *See* Hamilton Decl., Exs. I, J.

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2 disposition will impair or impede the applicant’s ability to protect the interest; and (4) the
3 applicant’s interest is not adequately represented by the existing parties. *Wilson v. Mt. Solo*
4 *Landfill, Inc.*, 184 Wn. App. 1030, 2014 WL 6068043, at *2 (2014) (citing *Westerman v.*
5 *Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994)). WSDCC satisfies all four requirements
6 and is entitled to intervene as of right under CR 24(a).
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12 **1. The Motion is Timely.**

13 A motion for intervention is timely when made prior to trial. *Am. Disc. Corp. v.*
14 *Saratoga W. Inc.*, 81 Wn.2d 34, 43, 499 P.2d 869 (1972). Leave to intervene should be
15 interpreted as timely to allow an intervention of right unless it would work a hardship on one
16 of the original parties. *Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023 (1973) (citations
17 omitted). Intervention has been allowed in Washington as late as the trial court’s oral decision
18 for the purposes of appeal. *Ford v. Logan*, 79 Wn.2d 147, 149, 483 P.2d 1247 (1971). WSDCC
19 sought to intervene in this action just two weeks after the Complaint was filed. *Washington*
20 *Election Integrity Coalition United et al. v. Wise*, No. 2:21-cv-01394-LK, ECF No. 14. The
21 case was subsequently removed, and WSDCC swiftly sought to intervene in the federal action.
22 The federal action was remanded before the Court ruled on WSDCC’s motion to intervene.
23 WSDCC again promptly seeks intervention now that the case is remanded — no substantive
24 activity has taken place in the case. *See* Notice of Remand, DKT 15. There has therefore been
25 no delay, and no possible risk of prejudice.
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39 **2. WSDCC has an interest in the outcome of this litigation.**

40 WSDCC has an interest in the outcome of this action. “[A] party has a right to
41 intervene in an action either where he has an interest in the matter in litigation, or has an
42 interest in the success of either party thereto.” *Moses Lake Homes, Inc. v. Grant Cnty.*, 49
43 Wn.2d 182, 185, 299 P.2d 840 (1956). An intervenor’s interest is to be construed broadly.
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2 *Vashon Island Comm. for Self-Gov't v. Wash. State Boundary Review Bd. for King Cnty.*, 127
3 Wn.2d 759, 765, 903 P.2d 953 (1995); *Fritz v. Gorton*, 8 Wn. App. 658, 509 P.2d 83 (1973);
4
5 *Columbia Gorge Audubon Soc'y v. Klickitat Cnty.*, 98 Wn. App. 618, 629, 989 P.2d 1260
6
7 (1999) (“Not much of a showing is required, however, to establish an interest. And insufficient
8
9 interest should not be used as a factor for denying intervention.”). The “interest” requirement
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11 is met if the intervenor could either gain or lose by the direct operation or immediate effect of
12
13 a possible final judgment. *Am. Discount*, 81 Wn.2d at 36. When in doubt, intervention should
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15 be granted. *Id.* at 40.

16
17 WSDCC is dedicated to representing the interests of Washington’s Democratic voters
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19 by supporting the election of Democratic candidates across Washington. Podlodowski Decl.
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21 ¶ 2. It seeks to intervene as a defendant in this matter to protect the rights of its affiliated
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23 candidates and voters across Washington. *See id.* ¶ 4–6.

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25 WSDCC has an interest in ensuring the official certified results of Washington’s 2020
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27 election remain undisturbed and their credibility unimpeached. *See id.* ¶ 6. Plaintiffs seek an
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29 Arizona-style “audit” of the 2020 election, contrary to state law. Compl. ¶ 5, 56. Although
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31 Plaintiffs claim they are not seeking de-certification of the election, they nonetheless ask the
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33 Court to “determine rights” with regard to “vote flipping.” *Id.* ¶ 29. The request thus appears
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35 to seek an unofficial and extraordinary “audit” of 2020 ballots, contrary to law, and an
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37 alteration of certified election results or at least to call them into question. Plaintiff’s Equal
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39 Protection and “vote dilution claims” similarly appear to target the election’s outcome. *Id.*
40
41 ¶ 61(b).

42
43 WSDCC’s intervention is needed to ensure that the final, certified results of
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45 Washington’s 2020 election are not disturbed, on behalf of their affiliate candidates and
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47 Washington’s Democratic voters who elected those candidates. *See Podlodowski Decl.* ¶ 6;

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2 *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the
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4 unanimous view of the Seventh Circuit that the Indiana Democratic Party had standing to
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6 challenge a voter identification law that risked disenfranchising its members); *Owen v.*
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8 *Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding that “the potential loss of an election”
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10 inflicts injury on a political party).¹ WSDCC plainly has an interest in this action.

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12 In addition, groups and individuals like the Plaintiffs here suggest that fraud is
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14 perpetrated by or to benefit Democratic election officials and depict themselves as watchdogs,
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16 vowing to “restor[e] . . . transparent, secure and publicly verified elections.” Washington
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18 Election Integrity Coalition United, *Support Our Work*, GIVE SEND GO,
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20 <https://givesendgo.com/GX2Y> (last visited Oct. 4, 2021); *see also* Podlodowski Decl. ¶ 5. By
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22 creating a false narrative unsupported by any factual evidence that Washington elections are
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24 replete with fraud and vowing to put an end to it, they seek to create and foster a fictional
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26 problem. This unsupported lawsuit serves to propagate and spread that misinformation,
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28 undermining public confidence in our elections and our democratic system of elections.
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30 Indeed, that appears to be the whole purpose of its filing. This threatens to damage Democratic
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32 candidates’ and officeholders’ reputations, and ultimately threatens Democratic candidates’
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34 future successes at the ballot box. Podlodowski Decl. ¶ 6. In fact, WSDCC has been
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36 sanctioned twice for perpetuating these unsupported election fraud claims: by the Lincoln
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38 County Superior Court and the Washington Supreme Court. *See* Hamilton Decl., Exs. F, J. In
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40 a recent bar complaint against WEiCU’s counsel, Washington’s Solicitor General called
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42 WEiCU’s election claims “unfounded and baseless allegations” that have “the predictable
43
44 effect of undermining the public’s faith in our democratic institutions.”

45
46 WSDCC’s interests are clearly at issue here under the broad construction of that
47
requirement in Washington law. *Vashon Island*, 127 Wn.2d at 765.

1 **3. Disposition will impair and impede WSDCC’s ability to protect its**
2 **interests.**

3
4 In addition, disposition “of the action may as a practical matter impair or impede”
5 WSDCC’s ability to protect its interests. CR 24(a)(2). While Washington courts have not
6 elaborated on this third requirement of CR 24(a), other courts have concluded that if a
7 proposed intervenor has a protectable interest in the outcome of the litigation, courts have
8 “little difficulty concluding” that its interests will be impaired. *California ex rel. Lockyer v.*
9 *United States*, 450 F.3d 436, 442 (9th Cir. 2006); *see also Brody By & Through Sugzdinis v.*
10 *Spang*, 957 F.2d 1108, 1123 (3d Cir. 1992) (If an intervenor “can show that they possess a
11 legal interest in this action, then it naturally follows that such an interest would be affected by
12 this litigation.”).

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21 There can be no doubt that disposition of this matter has the potential to impair
22 WSDCC’s ability to protect its interests. Federal courts have routinely concluded that
23 interference with a political party’s electoral prospects constitutes a direct injury that satisfies
24 Article III standing, which goes beyond the requirement needed for intervention under CR
25 24(a)(2) in this case. *E.g., Owen*, 640 F.2d at 1132 (holding that “the potential loss of an
26 election” is sufficient injury to confer Article III standing); *Tex. Democratic Party v. Benkiser*,
27 459 F.3d 582, 586–87 (5th Cir. 2006) (political party had suffered injury-in-fact when “its
28 congressional candidate’s chances of victory would be reduced”); *Pavek v. Simon*, 467 F.
29 *Supp. 3d* 718, 742 (D. Minn. 2020) (“[S]everal circuits have recognized” that a “political party
30 can show direct injury if the defendant’s actions hurt the candidate’s or party’s chances of
31 prevailing in an election.”); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994) (Conservative
32 Party had representative standing because the party “stood to suffer . . . competition on the
33 ballot . . . and a resulting loss of votes”); *Hollander v. McCain*, 566 F. *Supp. 2d* 63, 68 (D.N.H.
34 2008) (“[C]ourts have held that a candidate or his political party has standing to challenge the
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1 inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the
2 candidate's or party's own chances of prevailing in the election.”).

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5 This action is designed to threaten WSDCC's political prospects by alleging—without
6 support—some unidentified “fraud” or “misconduct” in the administration of the election.
7 Podlodowski Decl. ¶5. The Democratic National Committee and similar political
8 organizations were routinely granted intervention as of right in election disputes over the exact
9 same election. *E.g., Paher v. Cegavske*, No. 20-cv-00243-WGC, 2020 WL 2042365, at *2 (D.
10 Nev. Apr. 28, 2020) (granting intervention as of right to Democratic National Committee and
11 state Democratic party where “Plaintiffs’ success on their claims would disrupt the
12 organizational intervenors’ efforts to promote the franchise and ensure the election of
13 Democratic Party candidates”); *Issa v. Newsom*, No. 20-cv-01044-CKD, 2020 WL 3074351,
14 at *4 (E.D. Cal. June 10, 2020) (granting intervention as of right to the DNC in suit brought
15 by a Republican Representative, the National Republican Congressional Committee, and
16 California Republican Party); *Donald J. Trump for President, Inc. v. Cegavske*, No. 20-CV-
17 1445 VCF, 2020 WL 5229116, at *1 (D. Nev. Aug. 21, 2020) (granting intervention to
18 national and state Democratic parties in suit brought by President Trump’s campaign).

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WSDCC's interests would be no less impaired here. Recognizing as much, the Lincoln
County Superior Court granted WSDCC intervention as of right. *See* Hamilton Decl., Ex. D.
WSDCC easily satisfies this requirement of CR 24(a)(2).

4. WSDCC's interests are not adequately represented by Defendants.

WSDCC cannot rely on the parties in this case to adequately represent its interests.
“The intervenor need make only a minimal showing that its interests may not be adequately
represented.” *Columbia Gorge Audubon Soc’y*, 98 Wn. App. at 629. It is not necessary that
the intervenor's interest be in direct conflict with those of the existing parties. *Id.* at 630. It is

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2 only necessary that the interest may not be adequately articulated and addressed. *Id.* (citing
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4 *Am. Discount*, 81 Wn.2d at 41). Washington Courts have articulated three relevant questions:
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6 Will the Defendants “undoubtedly” make all WSDCC’s arguments? Are Defendants able and
7
8 willing to make those arguments? And will WSDCC more effectively articulate any aspect of
9
10 its interest? *Id.* Once an applicant for intervention shows interests different than those of the
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12 existing parties, the requirement of showing that such interest would not be given adequate
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14 representation is minimal. *Fritz*, 8 Wn. App. at 661–62.

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16 Defendants’ interest is defined solely by their statutory duties to conduct elections. But
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18 WSDCC’s interests are broader. While Defendants may have an interest in ensuring that the
19
20 election results are upheld, those Defendants do not share WSDCC’s interest in defending *its*
21
22 *candidates’* victories and reputations against Petitioners’ allegations, and hence, Defendants
23
24 will not and cannot represent WSDCC in that respect. Because their interests diverge, the
25
26 Defendants—who are all election officials—cannot adequately represent WSDCC’s interests.
27
28 *See Podlodowski Decl.* ¶ 4–6; *Issa*, 2020 WL 3074351, at *3 (“Defendants’ arguments turn
29
30 on their inherent authority as state executives and their responsibility to properly administer
31
32 election laws” but “[intervenor is] concerned with ensuring their party members and the voters
33
34 they represent have the opportunity to vote”). Courts have “often concluded that governmental
35
36 entities do not adequately represent the interests of aspiring intervenors,” *Fund for Animals,*
37
38 *Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *accord Citizens for Balanced Use v. Mont.*
39
40 *Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011); *Associated Gen. Contractors of Am. v.*
41
42 *Cal. Dep’t of Transp.*, No. 09-01622, 2009 WL 5206722, at *2–3 (E.D. Cal. Dec. 23, 2009)
43
44 (granting intervention where defendant state agency’s “main interest is ensuring safe public
45
46 roads and highways” and agency “is not charged by law with advocating on behalf of minority
47
business owners” as intervenors would), including specifically in cases regarding the right to

1
2 vote. *See Paher*, 2020 WL 2042365, at *3 (granting intervention as of right where intervenors
3
4 “may present arguments about the need to safeguard Nevada[ns’] right to vote that are distinct
5
6 from [state defendants’] arguments”). WSDCC cannot be sure that Defendants will make all
7
8 WSDCC’s arguments in this action.

9
10 **B. Alternatively, WSDCC should be allowed permissive intervention**

11 In the event this Court concludes that WSDCC may not intervene as a matter of right,
12
13 permissive intervention is clearly appropriate. CR 24(b) provides in relevant part:
14

15
16 (b) Permissive Intervention. Upon timely application, anyone may be
17
18 permitted to intervene in an action:

19
20

21
22 (2) When an applicant’s claim or defense and the main action have a
23
24 question of law or fact in common In exercising its discretion the
25
26 court shall consider whether the intervention will unduly delay or
27
28 prejudice the adjudication of the rights of the original parties.

29 As with CR 24(a), CR 24(b) should be liberally construed to permit permissive intervention.

30 For the reasons discussed in Part A supra, WSDCC’s motion is timely. WSDCC also
31
32 has defenses to Plaintiffs’ claims that share common questions of law and fact—for example,
33
34 whether Plaintiffs have stated valid claims. Significantly, intervention will result in neither
35
36 prejudice nor delay. WSDCC has an undeniable interest in a swift resolution of this action and
37
38 is confident that its intervention in this case will result in expeditious resolution of this
39
40 litigation. It is in the interest of justice to allow all those with affected interests, including both
41
42 sides of the political spectrum, to participate in this case. *See, e.g., Donald J. Trump for*
43
44 *President, Inc. v. Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17,
45
46 2020) (granting permissive intervention in a lawsuit challenging the 2020 election results to
47
the City of Detroit, Michigan NAACP, the Democratic National Committee, and the Michigan

1 Democratic Party); *Libertarian Party of Pennsylvania v. Wolf*, No. 20-cv-2299, 2020 WL
2 6580739, at *1 (E.D. Pa. July 8, 2020) (granting permissive intervention to the Pennsylvania
3 Democratic Party in a 2020 election case). WSDCC cannot rely on Defendants to protect the
4 rights of its affiliate candidates and voters from partisan attacks.
5
6
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8

9
10 **VII. CONCLUSION**

11 For the reasons set forth, WSDCC respectfully requests that the Court grant its Motion
12 for Intervention.
13
14

15
16
17
18 Dated: March 30, 2023

s/ Kevin J. Hamilton

19
20 **I certify that this memorandum contains**
21 **3,777 words, in compliance with the Local**
22 **Civil Rules.**

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CERTIFICATE OF SERVICE

On March 30, 2023, 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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**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 March 30, 2023.


June Starr
