FILED
Court of Appeals
Division I
State of Washington
3/31/2023 8:00 AM

No. 85083-1
King County Superior Court Case No. 22-2-19384-1 SEA

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

VET VOICE FOUNDATION, THE WASHINGTON BUS, EL CENTRO DE LA RAZA, KAELEENE ESCALANTE MARTINEZ, BETHAN CANTRELL, DAISHA BRITT, GABRIEL BERSON, and MARI MATSUMOTO
**Respondents/Plaintiffs**,

v.

STEVE HOBBS, in his official capacity as Washington State Secretary of State, JULIE WISE, in her official capacity as the Auditor/Director of Elections in King County and a King County Canvassing Board Member, SUSAN SLONECKER, in her official capacity as a King County Canvassing Board Member, and STEPHANIE CIRKOVICH, in her official capacity as a King County Canvassing Board Member,
**Defendants/Respondents**,

REPUBLICAN NATIONAL COMMITTEE and WASHINGTON STATE REPUBLICAN PARTY,
**Proposed Intervenor-Defendants/Petitioners**.

# ANSWER TO MOTION FOR DISCRETIONARY REVIEW

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# TABLE OF CONTENTS


**Page**

I. INTRODUCTION ........ 1

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR ........ 3

III. STATEMENT OF THE CASE ........ 4

IV. ARGUMENT ........ 8

A. Petitioners Do Not Meet the High Standard for Discretionary Review Under RAP 2.3(b)(1). ........ 9

1. The Superior Court Properly Denied Petitioners' Request to Intervene as of Right. ........ 10

a. Legal Standard for Intervention as of Right. ........ 10

b. The Superior Court Properly Determined That Defendants Will Adequately Represent Petitioners' Legitimate Interest. ........ 12

c. The Superior Court Properly Rejected Petitioners' Other Purported Interests. ........ 15

2. The Superior Court Properly Exercised Its Discretion in Denying Petitioners' Request for Permissive Intervention. ........ 20

a. Legal Standard for Permissive Intervention. ........ 20

b. The Superior Court Did Not Abuse Its Discretion. ........ 22

3. The Superior Court's Order Did Not Render Further Proceedings "Useless." ........ 25

B. Petitioners' Motion Does Not Satisfy the Strict Requirements for Discretionary Review Under RAP 2.3(b)(2). ........ 28

1. The Superior Court Did Not Commit Probable Error. ........ 29

**TABLE OF CONTENTS**
**(continued)**

**Page**

2. The Superior Court's Order Did Not Substantially Alter the Status Quo or Substantially Limit Petitioners' Freedom to Act. .......... 29

V. CONCLUSION .......... 32

## TABLE OF AUTHORITIES

**Page(s)**

**CASES**

*Aguirre v. AT&T Wireless Servs.*,
109 Wn. App. 80, 33 P.3d 1110 (2001) .............................. 23

*Am. Discount Corp. v. Saratoga W.*,
81 Wn.2d 34, 499 P.2d 869 (1972) ..................................... 19

*Arakaki v. Cayetano*,
324 F.3d 1078 (9th Cir. 2003)............................................. 12

*Cal. ex rel. Lockyer v. United States*,
450 F.3d 436 (9th Cir. 2006)............................................... 23

*City of Seattle v. Holifield*,
170 Wn.2d 230, 240 P.3d 1162 (2010) ................................. 8

*City of Seattle v. Williams*,
101 Wn.2d 445, 680 P.2d 1051 (1984) ................................. 8

*Conservation Law Found. Of N.E., Inc. v. Mosbacher*,
966 F.2d 39 (1st Cir. 1992) ................................................. 16

*Hartley v. State*,
103 Wn.2d 768, 698 P.2d 77 (1985) ................................... 31

*In re Adoption of M.J.W.*,
8 Wash. App. 2d 906, 438 P.3d 1244 (2019)...................... 26

*In re Dependency of N.G.*,
199 Wn.2d 588, 510 P.3d 335 (2022) .......................... passim

*In re Grove*,
127 Wn.2d 221, 897 P.2d 1252 (1995) ................................. 8

## TABLE OF AUTHORITIES
## (continued)

**Page(s)**

*Judicial Watch, Inc. et al. v. Griswold*,
No. 20-cv-02992-PAB-KMT, 2021 WL 4272719 (D. Colo. Sept. 20, 2021) .................................... 29

*Long v. Dugan*,
57 Wn. App. 309, 788 P.2d 1 (1990) .................................. 31

*Lundquist v. Seattle School District No. 1*,
2019 WL 7483935 (Wash. Ct. App. Dec. 18, 2019) (unpublished) ............................................................ 36

*Maybury v. City of Seattle*,
53 Wn.2d 716, 336 P.2d 878 (1959) ..................................... 8

*Mi Familia Vota v. Fontes*,
No. 2:22-cv-00509-SRB (D. Ariz. June 23, 2022)........................................................................ 12, 29

*Minehart v. Morning Star Boys Ranch, Inc.*,
156 Wn. App. 457, 232 P.3d 591 (2010) ............................ 10

*Miracle v. Hobbs*,
333 F.R.D. 151 (D. Ariz. 2019............................................. 25

*Montgomery v. Air Serv Corp., Inc.*,
9 Wn. App. 2d 532, 446 P.3d 659 (2019) ........................... 31

*One Wis. Inst., Inc. v. Nichol*,
310 F.R.D. 394 (W.D. Wis. 2015) ................................ 20, 25

*Perry v. Proposition 8 Off. Proponents*,
587 F.3d 947 (9th Cir. 2009)............................ 11, 12, 13, 25

*PEST Comm. v. Miller*,
648 F. Supp. 2d 1202 (D. Nev. 2009)........................... 12, 28

**Page(s)**

*Sea-Pac Co. v. United Food & Commercial Workers Local Union 44*,
103 Wn.2d 800, 699 P.2d 217 (1985) ................................ 30

*State v. Rohrich*,
149 Wn. 2d 647, 71 P.3d 638 (2003) ................................ 26

*State v. Taylor*,
193 Wn. 2d 691, 444 P.3d 1194 (2019) ................................ 26

*United States House of Representatives v. Price*,
No. 16-5202, 2017 WL 3271445 (D.C. Cir. Aug. 1, 2017) ................................ 16

*United States v. Arizona*,
No. CV 10-1413-PHX-SRB, 2010 WL 11470582 (D. Ariz. Oct. 28, 2010) ................................ 11

*United States v. City of L.A.*,
288 F.3d 391 (9th Cir. 2002) ................................ 12

*Westerman v. Cary*,
125 Wn.2d 277, 892 P.2d 1067 (1994) ................................ 11

*Wise v. Circosta*,
978 F.3d 93 (4th Cir. 2020) ................................ 21

**STATUTES**

RCW 29A.04.230 ................................ 14

**RULES**

CR 24(a) ................................ 11, 20

## TABLE OF AUTHORITIES
**(continued)**

**Page(s)**

CR 24(b) ........................................................................ 25, 27

CR 24(b)(2) ................................................................. 25, 26, 27

RAP 2.3(b)(1) ..................................................................... passim

RAP 2.3(b)(2) ..................................................................... passim

**OTHER AUTHORITIES**

1 Wash. State Bar Ass'n, *Washington Appellate Practice Deskbook* § 4.4(2)(a) (4th ed. 2016) .............. 26, 30

# I. INTRODUCTION

The Republican National Committee and the Washington Republican Party seek the remarkable remedy of discretionary review of the denial of their motion to intervene to defend Washington's requirement to verify ballot signatures, which disenfranchises and otherwise burdens tens of thousands of lawful Washington voters every election cycle. But Petitioners cannot show that the Superior Court made an obvious or probable error, and they otherwise fail to establish the necessary elements for interlocutory review of non-dispositive order.

The Superior Court correctly denied Petitioners' motion to intervene on grounds that the current Defendants -- Washington's Secretary of State and King County election officials, who are collectively represented by a virtual army of highly experienced lawyers -- would adequately defend the interest that Petitioners have in upholding signature verification. The Superior Court also correctly determined that permissive intervention would unduly delay and prejudice the

parties in light of the urgent need to expedite this litigation ahead of the rapidly approaching 2024 primary and general elections.

The Superior Court could have foreclosed participation by Petitioners in this litigation, but instead left the door open. The Superior Court denied the motion *without prejudice* so that Petitioners could re-raise their request if the circumstances changed and also allowed Petitioners to participate as amici for dispositive motions. In other words, Petitioners got a seat at the table.

Despite those avenues to participation and that interlocutory review is strongly disfavored, Petitioners nonetheless seek review of that decision. But they fail to establish why their request for discretionary review differs from similar piecemeal proceedings that are routinely rejected by Washington courts. They fail to show that the Superior Court erred. And they fail to meet the other required elements for discretionary review too: Petitioners do not and cannot show

that any error "renders further proceedings useless" or "substantially alters the status quo or substantially limits the freedom of a party to act."

With the passage of time, the case against intervention has only grown stronger. While Petitioners delayed filing their Motion for Discretionary Review, the case continued. Both sides have served and responded to discovery. Respondents are preparing to take depositions and have invited Defendants to do the same. Respondents are also preparing to file their summary judgment motion in early June 2023, as they have been telling Defendants for months. Intervention at this point, as the Superior Court noted, would inevitably cause delay and prejudice not only to the parties before this Court but to the citizens of the entire state.

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Should the Court of Appeals allow interlocutory review of the Superior Court's Order denying intervention when

Petitioners have not satisfied the requirements of either RAP 2.3(b)(1) or (2)?

## III. STATEMENT OF THE CASE

Respondents challenge as unconstitutional the requirement that election officials "verify" a voter's identity by comparing the signature on the back of the ballot envelope with that voter's signature on file ("Signature Verification Requirement"). A-200–A-206.[1]

Respondents allege that the Signature Verification Requirement is fundamentally flawed faux science that has disenfranchised more than 113,000 Washington voters over the last decade. A-170. In the 2020 general election alone, nearly 24,000 Washington voters had their lawfully cast ballots entirely thrown out. A-180. Tens of thousands more voters had their ballots initially rejected for purportedly non-matching signatures but were able to later "cure" the errors committed by election officials in rejecting their ballots, demonstrating the

[1] For convenience, citations to "A" refer to the Appendix submitted by Petitioners.

arbitrariness and fundamental flaws of the verification requirement. *Id.*

While the Signature Verification Requirement affects voters of all stripes, it disproportionately burdens and disenfranchises people of color, young voters, and citizens living overseas, including active-duty military voters. A-189–A-193. Voters with disabilities or illnesses, and those belonging to language minority groups, are especially vulnerable to disenfranchisement. A-193–A-194.

Respondents filed suit against Secretary Hobbs and the King County Defendants on November 22, 2022. A-129–A-167. Both Defendants answered on January 18, 2023. R-7–R-51.[2]

Respondents made it clear from the outset that they intended to pursue this litigation on an accelerated basis to allow for resolution (including any appeals) prior to the 2024 elections. A-76–A-81. Specifically, Respondents told

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[2] Citations to "R" refer to Respondents' appendix.

Defendants in mid-December that they planned to move for summary judgment in late spring or early summer. *Id.* Respondents reaffirmed that expectation multiple times since, identified early June as the filing date, and invited Defendants to promptly take discovery to facilitate a full adjudication on the merits. R-5.

On January 17, 2023, Petitioners filed their motion to intervene. A-14–A-48. In opposing that motion, Respondents told the Superior Court and Petitioners of their plan to file a summary judgment motion in early summer. A-65–A-66.

On February 7, 2023, the Superior Court denied the motion, holding that Petitioners and Defendants "share the exact same interest in maintaining current signature matching requirements" and that there was no reason to believe that Defendants "will not fully and adequately represent [Petitioners'] interests in this particular lawsuit." A-9. The Superior Court also denied permissive intervention "given the very tight timeline in this case." *Id*.

But the Superior Court left two doors open for Petitioners to participate in this case. First, the Superior Court denied intervention without prejudice "if the current procedural posture of the case changes (e.g., if defendant[s] do not defend the case on its merits)." *Id*. Second, the Superior Court authorized Petitioners to file amicus briefs for any dispositive motions. *Id*.

Meanwhile, the case continued. In January, Plaintiffs issued discovery requests to both Defendants, R-5, and Defendants unsuccessfully moved to change venue from King County to Thurston County. R-3.

By the time Petitioners sought discretionary review from this Court, Plaintiffs had propounded a second round of discovery requests to Defendant Hobbs and subpoenaed third-party witnesses. R-5–R-6. And Defendants reinforced their litigation team, responded to discovery requests, and propounded their own interrogatories and requests for production. R-3; R-6. Respondents answered those discovery requests. R-6.

Nearly a month after the Superior Court denied their motion to intervene, Petitioners filed a notice seeking discretionary review. A-211–A-213. Petitioners then waited until the last possible day to file their brief. The hearing on this motion is set for June 30, 2023, several weeks after Respondents intend to file their motion for summary judgment.

## IV. ARGUMENT

Interlocutory review is a disfavored, "extraordinary remed[y]," that is only "granted sparingly." *City of Seattle v. Holifield*, 170 Wn.2d 230, 246. 240 P.3d 1162 (2010) (citing *City of Seattle v. Williams*, 101 Wn.2d 445, 455, 680 P.2d 1051 (1984)). "Piecemeal appeals of interlocutory orders must be avoided in the interests of speedy and economical disposition of judicial business." *Maybury v. City of Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959). For these reasons, "[a] party moving for discretionary review of an interlocutory trial court order bears a heavy burden." *In re Grove*, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995).

Petitioners' Motion does not come close to meeting the heavy burden required to derail the proceedings below. They fail to demonstrate that the Superior Court erred in denying their request to intervene. They fail to prove that the denial rendered further proceedings useless. And they fail to show that the Superior Court's decision substantially altered the status quo or limited their freedom to act outside of the litigation. This Court should deny Petitioners' Motion.

### A. Petitioners Do Not Meet the High Standard for Discretionary Review Under RAP 2.3(b)(1).

To qualify for discretionary review under RAP 2.3(b)(1), Petitioners must show two elements: (a) that the Superior Court "committed an obvious error," and (b) that the Superior Court's decision "would render further proceedings useless." Petitioners cannot show either. "An obvious error is an act or decision that is clearly contrary to existing statute or case law and is not a matter of discretion." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 464, 232 P.3d 591 (2010).

The Superior Court made no such error in denying Petitioners' motion to intervene—the Superior Court's Order was consistent with, rather than contrary to, statutory and case law. In fact, the Superior Court did not err at all but rather correctly denied the motion on the grounds that Defendants will adequately represent the sole legitimate interest Petitioners identified and that intervention would cause undue delay and prejudice by disrupting the tight timeline in this case.

### 1. The Superior Court Properly Denied Petitioners' Request to Intervene as of Right.

The Superior Court correctly denied intervention as of right on grounds that Defendants will adequately represent Petitioners' interest in maintaining the Signature Verification Requirement. A-9.

#### a. Legal Standard for Intervention as of Right.

Petitioners bore the burden to establish all four elements to intervene as of right: (1) timely application for intervention; (2) an interest which is the subject of the action; (3) that they

were so situated that the disposition will impair or impede the applicant's ability to protect the interest; and (4) their interest is not adequately represented by the existing parties. *Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067 (1994); CR 24(a). "Failure to satisfy any one of the requirements is fatal to the application." *United States v. Arizona*, No. CV 10-1413-PHX-SRB, 2010 WL 11470582, at *1 (D. Ariz. Oct. 28, 2010) (citing *Perry v. Proposition 8 Off. Proponents*, 587 F.3d 947, 950 (9th Cir. 2009)).

To satisfy the fourth element, Petitioners had to overcome the presumption that the existing Defendants adequately represent their interests. *Perry*, 587 F.3d at 950–51. A separate presumption of adequacy also applies when the government acts on behalf of its constituency. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); *United States v. City of L.A.*, 288 F.3d 391, 401 (9th Cir. 2002).

#### b. The Superior Court Properly Determined That Defendants Will Adequately Represent Petitioners' Legitimate Interest.

Because Petitioners failed to overcome the presumption of adequacy, the Superior Court properly found that Petitioners had no right to intervene. The Superior Court determined that Petitioners and Defendants share the "exact same interest in maintaining current signature matching requirements" and that Petitioners provided "no basis . . . to conclude that the current defendants will not fully and adequately represent the intervenor defendants' interests[.]" A-9.

The Superior Court's conclusions are entirely consistent with the law and with evidence of Defendants' interest in maintaining the Signature Verification Requirement through a vigorous defense. "Where [an existing] party and the proposed intervenor share the same 'ultimate objective,' a presumption of adequacy of representation applies." *Perry*, 587 F.3d at 950–51.

Petitioners do not and cannot dispute that Defendants share the same ultimate objective in maintaining the Signature

Verification Requirement. As the Chief Elections Officer of the state, Secretary Hobbs' ultimate objective (and statutory obligation) in this litigation is to defend the constitutionality of the Signature Verification Requirement. *See* RCW 29A.04.230. Petitioners also "seek to intervene to defend the constitutionality of Washington's longstanding signature verification procedure." A-17. Defendants will adequately defend this shared ultimate objective and, by extension, the interests that they share with Petitioners.

Secretary Hobbs is represented by an Attorney General's office that is known for its willingness to aggressively litigate on behalf of the state. A-88–A-116. And King County, the largest county in the state, comes to this litigation armed with multiple lawyers with deep litigation and electoral experience.

Indeed, both Secretary Hobbs and the King County Defendants have some of their most experienced and best lawyers defending the Signature Verification Requirement. Attorneys from both the Washington State Attorney General

and the Solicitor General's office represent Secretary Hobbs in this matter. The Attorney General's office has even supplemented its team as this case has progressed. R-3. And the King County Defendants are represented by three Senior Deputy Prosecuting Attorneys, one of whom is a near 30-year veteran of the King County Prosecuting Attorney's office. A-83. This is hardly evidence that Defendants will "shirk" their duties as Petitioners claim. Mtn. at 18.

Petitioners argue that the Superior Court erred by not weighing the Defendants' neutrality on the intervention motion. Mot. at 19. Petitioners seem to claim that Defendants must *say* that they are going to adequately represent Petitioners' interests to avoid an obvious error. That makes little sense.[3] Here,

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[3] Petitioners' cases to this point are easily distinguishable. In *Conservation Law Found. Of N.E., Inc. v. Mosbacher*, the government was not merely "silent on any intent to defend," but had failed to answer or defend the case and was in the process of agreeing to a consent decree that imposed additional burdens on intervenors. 966 F.2d 39 (1st Cir. 1992). And in *United States House of Representatives v. Price*, the intervenors were justifiably concerned that the Trump Administration would not adequately defend the Affordable Care Act, given the

Defendants' *actions* clearly indicate that they are defending the case. All Defendants answered the complaint and raise defenses. Defendants have responded (and objected) to discovery from Plaintiffs. Secretary Hobbs moved to change venues to gain a tactical advantage in the litigation. Petitioners' "silence" argument is meritless. [4]

**c. The Superior Court Properly Rejected Petitioners' Other Purported Interests.**

Instead of directly challenging whether Defendants adequately represent the interest in preserving the Signature Verification Requirement, Petitioners focus on other purported interests. But Petitioners' purported interests range from highly generalized to irrelevant, from illegitimate to nonsensical, and all were properly disregarded by the Superior Court.

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"accumulating public statements by high-level officials about a potential change in position and the [Trump Administration's] joinder with the [Republican-led House of Representatives] in an effort to terminate [an] appeal." No. 16-5202, 2017 WL 3271445, at *2 (D.C. Cir. Aug. 1, 2017).

[4] And in the event that Defendants failed to defend the case on the merits, the Superior Court invited them to renew their request for intervention.

Petitioners' laundry list of purported interests include: "elections to be conducted fairly," wanting "Republican voters to vote [and] Republican candidates to win," "ensuring their party members and the voters they represent have the opportunity to vote," "advancing their overall electoral prospects," and "allocating their limited resources to inform voters about the election producers." Mot. at 10, 14–15.

Petitioners' scattershot list of generalized interests in the election process falls well short of the "direct, substantial, [and] legally protectable" interests that are required for intervention as of right. *Am. Discount Corp. v. Saratoga W.*, 81 Wn.2d 34, 38, 499 P.2d 869 (1972). Indeed, the very generality of the list demonstrates Petitioners' inability to identify any specific, direct, substantial, and legally protectable interests.

The interest in fair elections is neither specific nor particular to Petitioners. Every citizen has an interest in fair elections and ensuring all eligible voters have an opportunity to vote. *See One Wis. Inst., Inc. v. Nichol*, 310 F.R.D. 394, 397

(W.D. Wis. 2015) ("asserted interest in fraud-free elections" was not unique to proposed-intervenor Republican legislators and voters and so did not warrant intervention). And of course, Defendants share that interest and are representing it in this litigation. Nothing about Petitioners makes their interests unique, warranting intervention. Certainly, what Petitioners suggest cannot be the standard for intervention as of right. Otherwise, CR 24(a) would be meaningless because *any* voter or group of voters could intervene here or in any other voting rights case.

Petitioners' remaining claimed interests are partisan, some of which Defendants may not share. But the interests are not of the legally protectable sort that may warrant intervention. For example, Petitioners fail to explain how ensuring that "their party members and the voters they represent have the opportunity to vote," Mot. at 14–15, would be diminished by eliminating a procedure that consistently disenfranchises tens of thousands of voters who cast lawful ballots in each election—

including, presumably many would-be Republican voters. Petitioners presented no evidence (statistical or otherwise) that Washington's Signature Verification Requirement has a partisan impact.

And even if they made such a showing, an interest in disproportionately disenfranchising voters of an opposition party is hardly a legally protectable interest. *See Wise v. Circosta*, 978 F.3d 93, 100 (4th Cir. 2020). No one has a legitimate, cognizable interest in preventing fully qualified voters from participating in our democracy

Petitioners' asserted interest in avoiding diversion of resources is not implicated by this litigation. *See* Mot. at 10, 15. While avoiding diversion of resources certainly *could* be a legally protectable interest, Petitioners' invocation of that interest here makes no sense. Petitioners argue that if the Signature Verification Requirement is enjoined, they will be forced to allocate resources to "fight[] confusion." *Id*. at 12. But what confusion do Petitioners expect if that requirement is

invalidated? They identify none, and there would be none because the process for voters would not change. In fact, enjoining the requirement would *decrease* confusion in the election system, not the other way around. Unsurprisingly, Petitioners provide no support for their proposition, from Washington or any of the states that do not require signature verification.

Petitioners also fail to assert with any specificity why they support the Signature Verification Requirement or what harms to them specifically the law purports to prevent that are not shared by anyone else. *See Aguirre v. AT&T Wireless Servs.*, 109 Wn. App. 80, 87, 33 P.3d 1110 (2001) (an interest must be more than speculative). Nor did Petitioners put forward any actual members or examples of their members who would be harmed by Plaintiffs' success. This lack of specificity or credibility is precisely why courts reject "generalized" and "undifferentiated" interests. *See Cal. ex rel. Lockyer v. United*

*States*, 450 F.3d 436, 441 (9th Cir. 2006). The Superior Court correctly did so here as well.[5]

### 2. The Superior Court Properly Exercised Its Discretion in Denying Petitioners' Request for Permissive Intervention.

The Superior Court correctly denied Petitioners' request for permissive intervention on grounds that it would cause undue delay and prejudice by disrupting the "very tight timeline" in this case. A-9.

#### a. Legal Standard for Permissive Intervention.

Under CR 24(b), Petitioners had to show that their claim or defense has a question of law or fact in common with the

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[5] Petitioners assert that the Superior Court "properly assumed" that striking down the Signature Verification Requirement will impede their interests as if the Superior Court endorsed their arguments. Mot. at 11. Not so. The Superior Court plainly took no position on this third element because Petitioners so clearly did not meet the fourth element. Moreover, Petitioners' warning of the persuasive effect of an adverse ruling is a red herring. This Court's determination would not bind any of the other states where the procedure may be challenged. And in any event, this is hardly evidence of a "harm." If Respondents prevail, then the litigation should have persuasive effect. But that's an issue for another day, in another state, in another court.

main action, and that the intervention will not "unduly delay or prejudice" the adjudication of the parties' rights. CR 24(b)(2). Notably, where an applicant fails to overcome the strong presumption of adequate representation, "the case for permissive intervention disappears." *Nichol*, 310 F.R.D. at 399; *see also Perry*, 587 F.3d at 955 (district court properly denied permissive intervention where movants were adequately represented by existing parties).

Because the trial court has "considerable discretion to allow intervention" under CR 24(b)(2), a denial of permissive intervention will be reversed only if the trial court abused its discretion. *In re Adoption of M.J.W.*, 8 Wash. App. 2d 906, 917, 438 P.3d 1244 (2019); *In re Dependency of N.G.*, 199 Wn.2d 588, 599, 510 P.3d 335, 340 (2022). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds, i.e., "if it rests on facts unsupported in the record." *State v. Rohrich*, 149 Wn. 2d 647, 654, 71 P.3d 638 (2003); *In re N.G.*, 199 Wn.2d at 599.

#### b. The Superior Court Did Not Abuse Its Discretion.

The Superior Court correctly exercised its discretion in denying Petitioners' permissive intervention "given the very tight timeline in this case." Petitioners argue that the Superior Court failed to consider whether intervention would cause undue delay or prejudice because the Order did not expressly state so. Mot. at 21. But CR 24(b)(2) does not require the Superior Court "to enter written findings" of undue delay or prejudice—only that the Superior Court "demonstrate somewhere on the record that it considered whether intervention would cause undue delay or prejudice." *See In re N.G.*, 199 Wn.2d at 600. By denying intervention "given the very tight timeline in this case," the Superior Court plainly considered whether intervention would cause undue delay or prejudice and determined that it would. A-9.[6]

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[6] Petitioners lean heavily on statements from *In re N.G.* that a failure to demonstrate consideration whether intervention would lead to undue delay or prejudice is an abuse of discretion. *See* Mot. at 20–21. That reliance is misplaced

Moreover, the Superior Court reached its decision with good reason. Allowing Petitioners to intervene would have inevitably delayed and disrupted the proceedings, increased litigation costs, and prejudiced the existing parties and the voting public. *See PEST Comm.*, 648 F. Supp. 2d at 1214 (declining to allow permissive intervention despite movants meeting the threshold factors because their interests were already met by existing parties and "adding [movants] as parties would unnecessarily encumber the litigation").

Respondents made clear to the Superior Court in their briefing that they planned to pursue this litigation on an accelerated basis to allow for resolution (including any appeals) prior to the 2024 elections. A-65–A-66. Specifically, Respondents have repeatedly notified Defendants that they plan to file their motion for summary judgment in early June 2023. R-5. To that end, Respondents have already served multiple

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because the *N.G.* court's finding of error was based on an order "stated only that intervention was granted under CR 24(b) *and nothing more*." 199 Wn.2d at 600 (emphasis added).

rounds of discovery on Defendants and invited Defendants to take any needed discovery from Respondents. *Id*. Secretary Hobbs served discovery on Plaintiffs, and Plaintiffs have responded. *Id*.

Allowing Petitioners to intervene in the first instance, especially now, will dramatically slow this case's progress and jeopardize any resolution of the issue in advance of the 2024 election season. *Mi Familia Vota*, No. 2:22-cv-00509-SRB at 5 (denying Republican groups' motion to intervene where intervention would "unnecessarily delay this time-sensitive proceeding"); *Judicial Watch, Inc. et al. v. Griswold*, No. 20-cv-02992-PAB-KMT, 2021 WL 4272719, at *4-5 (D. Colo. Sept. 20, 2021) ("Permitting intervention 'would only clutter the action unnecessarily,' without adding any corresponding benefit to the litigation."). Indeed, the hearing on Petitioners' Motion is not set until June 30, 2023, weeks after Respondents intend to file their motion for summary judgment.

Finally, allowing Petitioners to intervene "will introduce unnecessary partisan politics into an otherwise nonpartisan legal dispute." *Miracle*, 333 F.R.D. at 156 (internal quotations omitted). Indeed, if the national and state Republican parties are allowed to intervene, it is not difficult to imagine that the national and state Democratic parties (or other partisan groups, candidates, or entities) would move to intervene—all advancing the same argument as Petitioners.

The Superior Court's discretionary decision to deny permissive intervention was certainly not manifestly unreasonable or based on untenable grounds.

**3. The Superior Court's Order Did Not Render Further Proceedings "Useless."**

Even if Petitioners could show obvious error in either the denial of the intervention as of right or permissive intervention—they cannot— their Motion should still be denied for failure to show that the Superior Court's error "render[ed] further proceedings useless." RAP 2.3(b)(1).

Further proceedings are more likely to be rendered "useless" by errors in deciding *dispositive* motions. *Cf. Sea-Pac Co. v. United Food & Commercial Workers Local Union 44*, 103 Wn.2d 800, 699 P.2d 217 (1985) (summary judgement); *Montgomery v. Air Serv Corp., Inc.*, 9 Wn. App. 2d 532, 537, 446 P.3d 659 (2019) (lack of personal jurisdiction); *Long v. Dugan*, 57 Wn. App. 309, 788 P.2d 1 (1990) (motion to dismiss); *see also Hartley v. State*, 103 Wn.2d 768, 773, 698 P.2d 77 (1985) (granting discretionary review when "[a] useless lawsuit would be prevented by a decision in favor of dismissing the State and County as defendants.").

In contrast, discretionary rulings and trial management decisions "rarely lend themselves to discretionary review." 1 Wash. State Bar Ass'n, *Washington Appellate Practice Deskbook* § 4.4(2)(a) (4th ed. 2016) at 4-37.

Moreover, the Superior Court's Order on its face demonstrates that further proceedings are not useless by

expressly providing *two* ways in which Petitioners can still impact the proceedings in this case.

First, the Superior Court denied Petitioners' motion to intervene "***without prejudice"*** and instructed Petitioners that they can renew their motion "if the current procedural posture of the case changes (e.g. if defendant does not defend the case on its merits)." A-9 (emphasis added). In other words, Petitioners can renew their petition to intervene if they feel the Defendants are no longer protecting Petitioners' interests. This alone demonstrates that further proceedings are not useless. Notably, Petitioners have not renewed their motion in the intervening months, confirming that Defendants are in fact fully and adequately defending this case on the merits.

Second, the Superior Court authorized Petitioners to file amicus briefs "for any dispositive motions brought in this case." *Id*. Petitioners can participate and advocate for their legitimate (and purported) interests. Amicus status further establishes that the proceedings will not be useless.

Petitioners' failure to meet this necessary element is also evident in the single paragraph that they dedicate to it in their brief. Petitioners' only argument on this point is that being "sidelined for the duration of the case," their "rights essential . . . to defend their interests in this case" have been made "useless." Mot. at 25. But that's not the standard under RAP 2.3(b)(1). Only obvious errors that render "further *proceedings* useless" are reviewable. RAP 2.3(b)(1) (emphasis added). Petitioners offer no argument at all why the Superior Court's decision rendered "further *proceedings* useless."

Because declining intervention did not render further proceedings useless, Petitioners' motion should be denied under RAP 2.3(b)(1).

### B. Petitioners' Motion Does Not Satisfy the Strict Requirements for Discretionary Review Under RAP 2.3(b)(2).

To qualify for discretionary review under RAP 2.3(b)(2), Petitioners must show that both the Superior Court "committed probable error," and that the Superior Court decision

"substantially alters the status quo or substantially limits the freedom of a party to act." Petitioners show neither.

#### 1. The Superior Court Did Not Commit Probable Error.

For the same reasons as discussed in Section A(1)-(2) *supra*, the Superior Court did not commit probable error in denying Petitioners' request to intervene as of right or for permissive intervention.

#### 2. The Superior Court's Order Did Not Substantially Alter the Status Quo or Substantially Limit Petitioners' Freedom to Act.

Petitioners' argument also fails because they do not—and indeed cannot—argue that the denial of their motion to intervene had an *immediate effect outside the courtroom*.

An interlocutory order "substantially alters the status quo or substantially limits the freedom of a party to act" when it has an "immediate effect outside the courtroom." *See In re N.G.*, 199 at 595. RAP 2.3(b)(2) is "generally limited to an injunction or like orders having an 'immediate effect outside the courtroom,' such as an order requiring a party to sell the party's

home or restrain the party from doing so." *Lundquist v. Seattle School District No. 1*, 2019 WL 7483935, at *3 (Wash. Ct. App. Dec. 18, 2019) (unpublished). "For example, when a party is compelled by court order to remove a structure, the order, if given effect, quite literally alters the status quo." *Howland*, 180 Wn. App. at 207; *see also*, 1 *Washington Appellate Practice Deskbook* at 4-37 (remarking that RAP 2.3(b)(2) "typically requires a party to show that the party's substantive rights will be impaired in some fundamental manner outside of the pending litigation.").

For that reason, an interlocutory order that "merely . . . limits the freedom of a party to act in conduct of the lawsuit . . . is not sufficient to invoke review under RAP 2.3(b)(2)." *Howland*, 180 Wn. App. at 207.

Here, the Superior Court's Order actually preserved the status quo and merely limited Petitioners' actions within the context of this lawsuit. The original parties to the action continued to litigate. There was no injunction or order

requiring Petitioners to act or to refrain from acting. In fact, the *only* change to the status quo was to the benefit of Petitioners who can now file amicus briefs for any dispositive motions.

Again, Petitioners' single-paragraph argument on this point is telling. Petitioners argue that the Superior Court's Order "may result in Petitioners' voters hav[ing] their voting rights adversely determined outside the courtroom." Mot. at 25. This assertion fails on multiple levels. First, Petitioners fail to identify any "immediate effect" that alters the status quo. *See In re N.G.*, 199 Wn.2d at 595–96.

Second, Petitioners acknowledge that the purported harm raised is entirely speculative. *Id.* ("*may* result in …[.]") (emphasis added). This makes good sense, of course, because if Defendants are ultimately successful in maintaining the Signature Verification Requirement on the merits, then there would be no harm. Petitioners cite no authority that such speculative harm provides an "immediate effect outside the courtroom to substantially alter the status quo."

Third, Petitioners offer no rationale for *why* the Superior Court's order denying intervention would result in Petitioners' voters' rights being adversely determined. Petitioners fail to offer a single "right" that they lost because of the Order or that they would lose if Plaintiffs succeeded. Instead, Plaintiffs' lawsuit to end the Signature Verification Requirement is about *enfranchising voters* who have had their ballots wrongly denied.

The Superior Court's ruling did not grant or deny an injunction, nor did it involve any similar relief that limited Petitioners' freedom to act outside the context of litigation. On this basis alone, Petitioners' motion should be denied under RAP 2.3(b)(2).

## V. CONCLUSION

Respondents respectfully submit that the motion for discretionary review should be denied.

RESPECTFULLY SUBMITTED this 30th day of March, 2023.

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**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington, that on March 30, 2023, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 30th day of March, 2023.

*/s/ June Starr*
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| **Appellate Court Case Title:** | Vet Voice Foundation, et al., v. Steve Hobbs, et al., |

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