UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDWARD W. REYNOLDS, et al.,

Plaintiffs,

-vs-

GREG TALBERG, et al.,

Defendants,

STAND WITH TRANS, a Michigan Corporation, and WILLIAMSTON HIGH SCHOOL GAY-STRAIGHT ALLIANCE, an unincorporated association,

Proposed Defendant-Intervenors.

/

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE, AND PROOF OF SERVICE

Case No.: 1:18-cv-00069-PLM-PLG

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PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE

The American Civil Liberties Union (ACLU) filed a Motion to Intervene on behalf of two organizations, Stand With Trans and the Williamston High School Gay-Straight Alliance (Intervenors), based only upon permissive intervention, Fed. R. Civ. P. 24(b). To begin, despite the ACLU's contention, this lawsuit is not about discriminating against Intervenors. To the contrary, Plaintiffs filed this lawsuit to strike down policies which discriminate and violate citizen's rights, especially parents and people of faith. This lawsuit seeks to invalidate unconstitutional and unlawful school policies and force the Williamston School District to craft policies which equally protect ***all*** students within the confines of constitutional and statutory law. If Plaintiffs' lawsuit succeeds, it merely places the Williamston School District back to the position it was in at the beginning of this current school year. Indeed, the absence of these policies can hardly violate anyone's rights. This Court should deny the ACLU's Motion to Intervene for multiple reasons.

I. INTERVENORS DO NOT SHARE A CLAIM OR DEFENSE WITH THE MAIN ACTION.

Fed. R. Civ. P. 24(b) states:

> (1) In General. On timely motion, the court may permit anyone to intervene who:
> (A) is given a conditional right to intervene by a federal statute; or
> (B) has a claim or defense that shares with the main action a common question of law or fact.

"The Court enjoys broad discretion in its decision to grant permissive intervention." *Usery v. Brandel*, 87 F.R.D. 670, 677 (W.D. Mich. 1980). Intervenors make no claim that they should be granted intervention based upon a federal statute. Thus, Intervenors' only argue that they share a defense with Defendants in this case. However, because Plaintiffs are suing the government, Plaintiffs have no possible claims against Intervenors. This is especially so concerning Plaintiffs' constitutional claims, as the constitutional provisions at issue only apply to the government.

Intervenors are completely separate from the government (Williamston School Board), did not vote to adopt the policies in question, and do not have the power to change, modify, or rescind the policies. The Plaintiffs in this case do not, and could not, have any possible claims against Intervenors. How could Intervenors have a defense to a policy they did not create and do not have the power to enforce? The clear answer is they do not have any defenses to Plaintiffs' claims because they were not the parties who passed the policies. Intervenors did not violate Plaintiffs' legal rights, discriminate against Plaintiffs, violate Title IX, violate the Matt Epling Safe School Law, or violate Plaintiffs' right to privacy. Thus, it is impossible for Intervenors to have any defenses to Plaintiffs' claims because they have not engaged in any of the activities Plaintiffs are alleging. It may be true that Intervenors have a general interest in this case, which would be good cause to be *Amicus Curae*, however, such interest is insufficient to permit intervention.

Intervenors cite to *Usery v Brandel*, supra, to support their position. In that case, however, the Court held that the intervenors had a proper claim or defense because they had an economic interest and contractual relations with the parties in that case. *Id*. at 677. In *Usery*, the Intervenors were sharecroppers who had business contracts with Defendant and had employment relations through potential tax and employment regulations with Plaintiff. No such interest exists in this case.

The Intervenors in this case have no contractual or business relations with Plaintiffs or Defendants, and they would not suffer any financial harm as a result of the outcome of this case. The Intervenors in *Usery* did have an actual claim or defense because the entire case revolved around their contractual employment with Defendants. Thus, the Intervenors in *Usery* had a clear interest in the outcome of the case which included a claim or defense which shared common questions of law or fact.

The *Usery* Court also held:

> Even if the above prerequisites are satisfied, the Court must look to the circumstances as a whole to determine if participation is warranted. Rule 24(b) commands that the Court "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Numerous other factors may also be taken into account.
> ["]**These relevant factors include the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case.** The court may also consider whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.["]

Id. at 677 (citing *Spangler v. Pasadena City Board of Education*, 552 F.2d 1326, 1329 (9th Cir. 1977) (emphasis added).

In this case, Intervenors have no standing and have no legal position to defend. Again, Intervenors had nothing to do with the government action in this case or the passage of the contested policies. Further, Intervenors will not be harmed if the policies in this case are overturned and the Williamston School District is forced to only adopt policies which comply with the law.

II. JURISDICTION.

The *Usery* Court held:

> The Secretary is doubtless correct in his argument that **an application for permissive intervention must be supported by an independent basis for jurisdiction, both over the intervenor as a party, and for any newly raised causes of action he may bring.** *Blake v. Pallan*, 554 F.2d 947, 955-56 (9th Cir. 1977); 7A C. Wright & A. Miller, Federal Practice & Procedure s 1917, at 592-93 (1972); 3B Moore's Federal Practice P 24.18(1) (2d ed. 1980). This requirement ensures that the district courts' statutory jurisdiction will not be expanded by indirectly raising an action which could not have originally been brought before them. It thus embodies the command of Fed.R.Civ.P. 82 that "(t)hese rules shall not be construed to extend or limit the jurisdiction of the United States district courts."

Id. at 678 (Emphasis added). See also, *Secretary of Dept. of Labor v. King*, 775 F.2d 666, 668 (6th Cir. 1985); *United States v. Certain Land Situated in City of Detroit*, 361 F.3d 305, 309 (6th Cir.

2004) (Judge R. Guy Cole, Jr., Concurring, "Only where intervention is permissive, pursuant to Rule 24(b), must independent jurisdictional grounds be shown. Moore's Federal Practice § 24.22 (3rd ed.1998).")

In this case, Intervenors neither provided any explanation or analysis as to how this Court has independent jurisdiction over their claims or defenses, nor did they even address the issue of jurisdiction. This, in and of itself, provides grounds to deny their motion to intervene. It is clear that Intervenors have no claim for diversity jurisdiction as all parties are from Michigan. Further, Intervenors have no grounds for federal jurisdiction as they have not alleged that any party in this case has done anything which violated the U.S. Constitution or federal law. Since there have been no allegations that Intervenors violated any constitutional or federal law, no claims exist for them to defend. U.S. const. art. III.

To the contrary, Intervenors affirmatively argue that there is no violation of the U.S. Constitution or any federal law in this case by any party. This Honorable Court does not have jurisdiction over Intervenors' non-violations of federal law. In short, Intervenors have no independent basis for jurisdiction for any claim or defense against any party to this action and their motion should be denied.

III. INTERVENTION WILL PREJUDICE AND DELAY THE RIGHTS OF THE PARTIES.

The *Usery* Court acknowledged:

> It is easy enough to see what are the arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief amicus curiae and not by intervention.

Usery, 87 F.R.D. at 678 (Citing *Crosby Steam Gage & Valve Co. v. Manning, Maxwell & Moore, Inc.*, 51 F.Supp. 972, 973 (D.Mass.1943) (Wyzanski, J.).

Despite these concerns, the *Usery* Court exercised its discretion to permit intervention only because of the very close business, contractual, and economic interests of the Intervenors. No such business, contractual, or economic interests exist in this case. Undoubtedly, this case would be prejudiced and delayed by having two additional parties. Indeed, there is already a second Motion to Dismiss filed by Intervenors. Further, Intervenors would add nothing to trial or the discovery process. Intervenors had nothing to do with the passage of these contested policies, is not the governmental entity at bar, and hold no authority to change or amend the policies. It is also clear that Intervenors would provide no relevant witness or other evidence as to Defendants' contested policies.

Intervenors' main goal, obviously, is to present arguments and attempt to convince this Honorable Court to dismiss Plaintiffs' claims. Intervenors can still present to the Court their arguments, while also not prejudicing or delaying the parties' rights, by proceeding as *Amicus Curae*. Plaintiffs have no objection to Intervenors filing *Amicus* briefs in this case to present their arguments. This would permit Intervenors to have their voices heard in this case, while also protecting the parties' rights. It would also cause the least amount of delay.

CONCLUSION

For all the reasons stated above, the ACLU's Motion to Intervene should be denied. Intervenors have no valid claim or defense in this case, failed to provide any grounds for jurisdiction, and their intervention would cause undue prejudice and delay to the parties. Plaintiffs request that the Motion to Intervene be denied and that the Court grant any other relief as is just and appropriate.

Respectfully submitted,

GREAT LAKES JUSTICE CENTER:

DATED: March 26, 2018

/s/ David A. Kallman
David A. Kallman (P34200)
Attorney for Plaintiffs

PROOF OF SERVICE

David A. Kallman hereby states that he did serve a copy of Plaintiffs' Response to Motion to Intervene on March 26, 2018 pursuant to Fed. R. Civ. P. 5(d) via the United States District Court for the Western District of Michigan electronic filing system.

DATED: March 26, 2018

/s/ David A. Kallman
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