

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

_____)	
EDWARD W. REYNOLDS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-cv-00069-PLM-PJG
)	
GREG TALBERG, et al.,)	Hon. Paul L. Maloney
)	
Defendants,)	
)	
STAND WITH TRANS, a Michigan)	
Corporation, and WILLIAMSTON HIGH)	
SCHOOL GAY-STRAIGHT ALLIANCE,)	
an unincorporated association,)	
)	
Proposed Defendant-Intervenors.)	
_____)	

**STAND WITH TRANS AND WILLIAMSTON HIGH SCHOOL
GAY-STRAIGHT ALLIANCE’S MOTION FOR LEAVE TO FILE
A REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION
TO INTERVENE AS DEFENDANTS PURSUANT TO FED. R. CIV. P. 24(b)**

Pursuant to Rule 7.3(c) of the Local Rules for the United States District Court for the Western District of Michigan, proposed intervenors Stand with Trans and the Williamston High School Gay-Straight Alliance (the “Intervenors”), through their undersigned counsel, respectfully move this Court for leave to file a Reply Memorandum of Law in Support of their Motion to Intervene as Defendants Pursuant to Fed. R. Civ. P. 24(b) (the “Reply Brief”). A copy of the proposed Reply Brief is attached as Exhibit A to this Motion. The Reply Brief is under ten pages in length, responds only to specific issues and arguments raised in the Plaintiffs’ opposition brief to their motion, and is necessary to correct Plaintiffs’ misinterpretation of legal standards as stated in their brief.

Pursuant to the Western District of Michigan Local Rule 7.1(d), counsel for Intervenors contacted counsel for Plaintiffs and for the existing Defendants, to request concurrence in the relief requested in this Motion. Plaintiffs and Defendants concur in the relief requested.

WHEREFORE, Intervenors respectfully request the Court's leave to file the attached Reply Brief in support of their Motion.

Respectfully submitted,

Date: March 30, 2018

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EXHIBIT A

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I. INTRODUCTION

Proposed Defendant-Intervenors (“Movants”) Stand with Trans and the Williamston High School Gay-Straight Alliance (“GSA”) have met the requirements for permissive intervention under Fed. R. Civ. P. 24(b). They have defenses that share common questions of law and fact with the main action, and intervention would not disturb the Court’s jurisdiction. Additionally, discretionary factors weigh in favor of permitting intervention, as intervention will not delay or prejudice the proceedings and Movants have a strong interest in the case.

II. ARGUMENT

A. Stand with Trans and the Williamston High School GSA Meet the Threshold Requirements for Permissive Intervention Under Rule 24(b)(1).

1. Movants share a common defense with the main action.

Under Rule 24(b)(1)(B), the requirement of “a claim or defense that shares with the main action a common question of law or fact” is a “liberal standard.” *Usery v. Brandel*, 87 F.R.D. 670, 677 (W.D. Mich. 1980). Stand with Trans and the Williamston High School GSA’s defenses will involve multiple legal questions in common with the original action, including the legality of the District’s policies and actions under constitutional, federal, and state law. If the case continues beyond the motion to dismiss, Movants’ defenses will also involve multiple factual questions in common, including the availability of single-user facilities, the District’s practices related to restroom and locker room use, and the necessity of anti-harassment and bullying policies for LGBT students.

Plaintiffs cite no authority for their argument that Movants cannot have a “defense” to Plaintiffs’ claims because Plaintiffs have no freestanding claims against Movants. Movants share a defense with the main action because they stand to suffer a devastating personal

impact as a result of the litigation should Plaintiffs' claims succeed. *See Am. Humanist Ass'n v. Maryland-Nat'l Capital Park & Planning Comm'n*, 303 F.R.D. 266, 271 (D. Md. 2014) (granting permissive intervention to American Legion to defend constitutionality of cross on public property because "Putative Intervenor share a common defense with Defendant regarding the constitutionality of the Peace Cross"). Unlike the existing Defendants, Movants specifically represent LGBT students' interests in protection from school-based harassment and discrimination, on which this litigation is centered. Permitting Movants to intervene would rightly allow in the voices of those who will be directly impacted by the relief Plaintiffs seek.

2. There is no basis for denying intervention on jurisdictional grounds because Movants would be defendant-intervenor in a federal-question case.

Plaintiffs' argument that Movants do not meet jurisdictional requirements for permissive intervention is meritless. The requirement of "an independent basis for jurisdiction" is of concern only in cases where intervention would "expand the courts' jurisdiction." *Usery*, 87 F.R.D. at 679, 681. Where, as here, movants seek to intervene as defendants and raise no new claims, and the Court's original jurisdiction is based on federal questions rather than diversity, there is no risk that Movants will inappropriately enlarge the Court's jurisdiction. In fact, the very Wright & Miller passage cited by Plaintiffs, and on which the *Usery* Court relies, concludes: "In federal-question cases there should be no problem of jurisdiction with regard to an intervening defendant" 7C Wright, Miller & Kane, *Federal Practice & Procedure* § 1917 (3d ed. 2010). *See also Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) (rejecting jurisdictional bar against permissive intervention where minister sought to defend constitutionality of challenged tax exemption policy).

B. Discretionary Factors Weigh in Favor of Permitting Intervention.

1. Intervention will cause no undue delay or prejudice.

Contrary to Plaintiffs' assertion, there is no reason to believe intervention will unduly delay or prejudice the proceedings.¹ Plaintiffs make unspecified claims of delay and prejudice, with no arguments to support what those might be. They simply claim "this case would be prejudiced and delayed by having two additional parties." But the mere presence of additional parties is not sufficient to demonstrate undue delay or prejudice, or intervention would never be permitted. Rather, when applicants move to intervene in the early stages of litigation, as Movants have done here, "[i]ntervention is... possible without much risk of prejudice or disruption." *Usery*, 87 F.R.D. at 675. *See also United States v. Marsten Apartments*, 175 F.R.D. 265, 268 (E.D. Mich. 1997) (finding the possibility of some additional discovery insufficient to find undue prejudice or delay).

Movants are prepared to adhere to any discovery, briefing, or trial schedule this Court may order for the original parties. Movants have no intention to delay these proceedings, nor have they taken any actions to delay them. Speculative concerns about delay are insufficient to weigh against permissive intervention. *See, e.g., Shy v. Navistar Int'l Corp.*, 291 F.R.D. 128, 134 (S.D. Ohio 2013) (rejecting opposition to intervention where the party "did not present a single example of the prejudice it might face").

2. Additional discretionary factors favor intervention.

This Court has approved the following factors laid out by the Ninth Circuit in exercise its discretion over permissive intervention motions:

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[,...] whether

¹ Plaintiffs do not contest the timeliness of the motion. *See Fed. R. Civ. P. 24(b)(1)*.

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.

Usery, 87 F.R.D. at 677 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). Plaintiffs treat some of these factors as dispositive elements of permissive intervention, which they are not, but to the extent the Court wishes to consider them, they weigh heavily in Movants' favor.

Plaintiffs attempt to impose a standing requirement on Movants where none exists, and mischaracterize their interests in the litigation. The Sixth Circuit has made clear that even an intervenor-as-of-right “need not have the same standing necessary to initiate a lawsuit.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997).² The intervenor-by-permission also “does not even have to be a person who would have been a proper party at the beginning of the suit.” *Usery*, 87 F.R.D. at 677. As the Supreme Court held in *SEC v. U.S. Realty & Improvement Co.*, permissive intervention “dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.” 310 U.S. 434, 459 (1940) (emphasis added). To the extent the *Usery* case suggested otherwise, it misstated the Supreme Court's holding. Standing is, at most, a discretionary factor in considering permissive intervention. *See Spangler*, 552 F.2d at 1329. As the Sixth Circuit has noted, it only becomes a requirement when the intervenor-defendant seeks to appeal and the original defendant does not. *See, e.g., Associated Builders & Contractors v. Perry*, 16 F.3d 688, 690-91 (6th Cir. 1994).

² While standing is not a necessary element of permissive intervention, Movants do not concede they would not meet the test for Article III standing.

Nonetheless, Movants have a substantial interest in this case. Plaintiffs claim Movants do not have an interest in the litigation because they have “no contractual or business relation” with the parties and “would not suffer any financial harm.” But neither this Court nor the Sixth Circuit has ever held financial injury is the only type of interest to consider. A personal, dignitary, and emotional interest in the subject of the litigation is of equal concern. Movants are organizations that represent LGBT students and their families in Williamston and throughout the state of Michigan who stand to be negatively impacted, emotionally and even physically, by a ruling that anti-discrimination and anti-bullying protections based on sexual orientation or gender identity are unlawful, or that schools are barred from permitting transgender students to use facilities consistent with their gender identity. Accordingly, they have a substantial interest in the outcome of this case. *See Am. Humanist Ass’n*, 303 F.R.D. at 270-71 (granting permissive intervention in light of movants’ “strong interest in the subject matter of this litigation”).

Movants are also uniquely positioned to contribute to the full development of the factual and legal questions in this case, which center on the legality of anti-discrimination protections for LGBT students. They advance a legal position relevant to the merits of the case, and while their interests are aligned with the District’s at this stage, the District’s interests are not the same as Movants’. As Plaintiffs acknowledge, the District is charged with representing the interests of all students. While all students benefit from the District’s commitment to fairness and equal treatment of LGBT students, Movants are *specifically* concerned with the safety, dignity, and survival of LGBT youth, in Williamston and throughout Michigan. Members of Stand with Trans and the Williamston High School GSA have advocated for the very laws, policies, and practices that Plaintiffs’ lawsuit, if successful, would eviscerate. They have

members and supporters whose own safety, access to an education, and ability to participate in public life—or that of their children—would be endangered if Plaintiffs were to prevail. *See* Keith Decl. ¶¶ 11-12; Ellefson Decl. ¶ 8; L.B. Decl. ¶¶ 13-15. Movants have relationships to LGBT communities and in-depth knowledge of LGBT law and policy that the District does not, and can provide or secure expert testimony on specific issues facing LGBT youth. Their legal arguments are consistent with the District’s, but also include arguments about how the District would violate the law if it did not treat transgender students consistent with their gender identity.

III. CONCLUSION

Stand with Trans and the Williamston High School GSA respectfully request that the Court grant them leave to intervene.

Date: March 30, 2018

Respectfully submitted,

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