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SUPREME COURT

**STATE OF WISCONSIN
SUPREME COURT**

Case No. 2024AP000330

PLANNED PARENTHOOD OF WISCONSIN, on behalf of itself, its employees, and its patients; KATHY KING, M.D. and ALLISON LINTON, M.D., M.P.H., on behalf of themselves and their patients; and MARIA L., JENNIFER S., LESLIE K., and ANAIS L.,

Petitioners,

v.

JOEL URMANSKI, in his official capacity as District Attorney for Sheboygan County, Wisconsin; ISMAEL R. OZANNE, in his official capacity as District Attorney for Dane County, Wisconsin; JOHN T. CHISHOLM, in his official capacity as District Attorney for Milwaukee County, Wisconsin,

Respondents.

**PETITIONERS' RESPONSE IN OPPOSITION TO MOTION TO
INTERVENE SUBMITTED ON BEHALF OF WISCONSIN RIGHT TO
LIFE, WISCONSIN FAMILY ACTION, AND PRO-LIFE WISCONSIN**

INTRODUCTION

Petitioners oppose the motion to intervene filed by Wisconsin Right to Life, Wisconsin Family Action, and Pro-Life Wisconsin ("Proposed Intervenors") in this matter. Petitioners do not oppose the Proposed Intervenors' alternative request to file an amicus brief.

This matter seeks to determine whether Wisconsin's arcane abortion ban, Wis. Stat. § 940.04, if interpreted to prevent a woman from obtaining an abortion in all circumstances except to save the life of the mother, violates the fundamental rights declared in Article I, Section 1 of the Wisconsin Constitution of persons who may become pregnant and of the physicians who provide care to them.

In their Motion, Proposed Intervenors claim a wide range of indirect interests related to their opposition to abortion, but do not even allege that the outcome of this matter will prevent or regulate in any way how Proposed Intervenors may continue to oppose abortion. Their stated interest in opposing abortion does not give Proposed Intervenors the right to intervene in this or every lawsuit related to abortion, nor should the Court exercise its discretion to allow their intervention here.

ARGUMENT

The Proposed Intervenors do not meet the criteria for intervention under section 803.09(1), nor should they be permitted to intervene under subsection (2). The organizations do not have an interest sufficiently related to any property or transaction which is subject to the action; the litigation here will not impair or impede those interests; and Respondent

District Attorney Joel Urmanski (“DA Urmanski”) is adequately representing the interests of those who oppose abortion.

I. The Proposed Intervenors do not meet the criteria to intervene.

Section 809.13 provides that the court may grant a petition to intervene upon a showing that the petitioner's interest meets the requirements of sections 803.09 (1), (2), or (2m).

Sections 803.09(1) sets forth the requirements for intervention as of right:

Upon timely motion anyone shall be permitted to intervene in an action when the movant claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest, unless the movant's interest is adequately represented by existing parties.

Wis. Stat. § 803.09(1). The statute imposes four requirements: (1) that the petition to intervene is timely; (2) that the petitioner claims an interest sufficiently related to the subject of the action; (3) that disposition of the action may as a practical matter impair or impede the petitioner’s ability to protect that interest; and (4) that the existing parties do not adequately represent the petitioner’s interest. *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1.

B. Proposed Intervenorors have not demonstrated an interest sufficiently related to the subject of the action.

The Proposed Intervenorors rely on *State ex rel. Bilder v. Township of Delavan*, 112 Wis. 2d 539, 334 N.W.2d 252 (1983), in arguing that they have an interest and should be permitted to intervene. Proposed Intervenorors' Brief in Support of Motion to Intervene, pp. 4-5. In *Bilder*, a newspaper was allowed to intervene to protect its *statutory* interest to obtain public records and argue against a protective order which would shield such records from view. *Bilder*, 112 Wis. 2d at 546 (citing the newspaper's interest under Wis. Stat. § 59.14).

Unlike *Bilder*, Proposed Intervenorors cannot cite any statutory right that may be limited by the outcome of this decision. Instead, the premise of their interest is that they wish to influence or limit what other people do with their own bodies and their zygotes, blastocysts, or fetuses (or, "the unborn"). Proposed Intervenorors' Brief in Support of Motion to Intervene, pp. 4-7. The Proposed Intervenorors' desire to limit what choices other individuals make does not create a legal interest for the organizations that gives them the ability to intervene here.

The Proposed Intervenorors cite to *Dobbs*, 595 U.S. at 301 in support of their proposition that they have a "legitimate and legally protectable interest." Proposed Intervenorors' Brief in Support of Motion to Intervene,

p. 4. However, the *Dobbs* Court was discussing the **legislature's** determination of legitimate **state interests**. The Court did not find or conclude that an advocacy group opposing abortion has a legally protectable interest or has a right to intervene in cases dealing with abortion.

The Proposed Intervenors also assert a financial interest, suggesting a variety of ways that this Court's recognition of a constitutional right may add to their costs. Proposed Intervenors' Brief in Support of Motion, pp. 5-6. But regardless of this Court's decision, Wisconsin women will continue to seek abortions (including out of state, if needed). Unanswered questions about abortion access and restrictions will remain – to be addressed by the legislature, the courts, or both. Hence, the Proposed Intervenors will likely continue to spend funds as they have for some time.

C. The Proposed Intervenors' asserted interests will not be impaired or impeded by the outcome of this litigation.

The disposition of this matter will not impair or impede the Proposed Intervenors' ability to protect their asserted interests. *See Helgeland*, ¶ 38. To the extent that they are concerned about the myriad of statutes governing abortion in Wisconsin, and any impact of this litigation, Proposed Intervenors may and will continue to lobby and advocate, as they have done for decades.

D. District Attorney Urmanski adequately represents the Proposed Intervenors' interests.

This Court should also determine that, to the extent the Proposed Intervenors have demonstrated interests sufficiently related to this matter, any such interests are adequately represented by DA Urmanski. As indicated by DA Urmanski's Response in Opposition to Petition for an Original Action, DA Urmanski plans to vigorously defend the constitutionality of section 940.04 (*see, e.g.*, pp. 18-24).

"If a movant's interest is identical to that of one of the parties... a compelling showing should be required to demonstrate that the representation is not adequate. When the potential intervenor's interests are substantially similar to interests already represented by an existing party, such similarity will weigh against the potential intervenor. In determining whether an existing party adequately represents a movant's interest, we look to see if there is a showing of collusion between the representative and the opposing party; if the representative fails in the fulfillment of his duty; or if the representative's interest is adverse to that of the proposed intervenor." *Helgeland*, ¶¶ 86-87.

Here, Proposed Intervenors cannot meet the necessary standard. Proposed Intervenors do not allege any collusion between the Petitioners and DA Urmanski, nor that DA Urmanski has failed or will fail in fulfilling

his duty in this matter. Although Proposed Intervenors claim that they may approach this litigation somewhat differently than DA Urmanski (“it is unclear if they will make that argument in the same way as the Proposed Intervenors,” Proposed Intervenors’ Brief in Support of Motion, p. 10), Proposed Intervenors do not allege their interests are actually adverse from DA Urmanski. And “mere disagreements over trial strategy... are not sufficient to demonstrate inadequacy of representation.” *Helgeland*, ¶ 112.

E. The criteria for permissive intervention are also not met.

Under section 803.09(2), a court may allow discretionary intervention if the petitioners’ “claim or defense and the main action have a question or law or fact in common,” the request is timely made, and intervention will not unduly delay or prejudice the parties. The Proposed Intervenors’ Motion does not meet these criteria. In particular, the unnecessary addition of Proposed Intervenors as parties to this matter is likely to cause significant unwarranted delay without a corresponding benefit. “Where... the interests of the applicant in every manner match those of an existing party and the party's representation is deemed adequate, [a] court is well within its discretion in deciding that the applicant's contributions to the proceedings would be superfluous and that any resulting delay would be undue.” *Nat'l Collegiate Athletic Ass'n v.*

Corbett, 296 F.R.D. 342, 350 (M.D. Pa. 2013) (quoting *Hoots v. Pennsylvania*, 672 F.2d 1133, 1136 (3d Cir. 1982)); *Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (upholding denial of permissive intervention where court found intervention would cause delay without a corresponding benefit as existing defendants adequately represented interests).

Hence, the Petitioners request that the Proposed Intervenors' request for permissive intervention also be denied.

CONCLUSION

The Proposed Intervenors do not meet the criteria for intervention as a right or permissive intervention. For the reasons stated above, the Petitioners believe that any arguments the Proposed Intervenors wish to advance on this topic are appropriately raised in an amicus brief, versus through intervention.

For the reasons articulated above, the Proposed Intervenors' Motion to Intervene should be denied.

Respectfully submitted this 29th day of April, 2024.

PINES BACH LLP

Electronically signed by Diane M. Welsh

Diane M. Welsh, SBN 1030940
Christa O. Westerberg, SBN 1040530
Will Kramer, SBN 1102671

Samantha R. Foran, SBN 1122735
122 West Washington Ave., Suite 900
Madison, WI 53703
(608) 251-0101 (telephone)
(608) 251-2883 (facsimile)
dwelsh@pinesbach.com
cwesterberg@pinesbach.com
wkramer@pinesbach.com
sforan@pinesbach.com

*Attorneys for Petitioners Planned
Parenthood of Wisconsin, Dr. Kathy
King, Dr. Allison Linton, Maria L.,
Jennifer S., Leslie K., and Anais L.*

CERTIFICATION

I hereby certify that this document conforms to the requirements set forth under Wis. Stat. § 809.81.

Dated this 29th day of April, 2024.

PINES BACH LLP

Electronically signed by Diane M. Welsh
Diane M. Welsh, SBN 1030940