

FILED

05-06-2024

CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

NO: 2024AP000330--OA

PLANNED PARENTHOOD OF WISCONSIN,
KATHY KING, M.D.,
ALLISON LINTON, M.D., M.P.H.,
MARIA L.,
JENNIFER S.,
LESLIE K., and
ANNAIS L.,

Petitioners,

v.

JOEL URMANSKI,
ISMAEL R. OZANNE, and
JOHN T. CHISHOLM,

Respondents.

**RESPONDENT JOHN T. CHISHOLM'S BRIEF IN OPPOSITION TO
CONDITIONAL PETITION TO INTERVENE, OR, IN THE ALTERNATIVE, TO FILE
AMICUS BRIEF, ON BEHALF OF WISCONSIN RIGHT TO LIFE, WISCONSIN
FAMILY ACTION, AND PRO-LIFE WISCONSIN**

NOW COMES Respondent, John T. Chisholm, by and through his attorney, Leib Knott Gaynor LLC by Samuel J. Leib and Aaron D. Birnbaum, and herein submit their opposition to Proposed Intervenor, Wisconsin Right to Life, Wisconsin Family Action and Pro-Life Wisconsin's Petition to Intervene, or, in the alternative, to file Amicus Brief.

ARGUMENT

Proposed Intervenor move to intervene pursuant to Wis. Stat. § 803.09(1)¹ which requires a movant to meet four elements: (1) the motion must be made in a timely fashion; (2) the movant claim an interest sufficiently related to the property or transaction which is the subject of the action; (3) the disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; (4) the movant's interest is not adequately represented by existing parties. *See State ex rel. Bilder v. Delavan Tp.*, 112 Wis. 2d 539, 545, 334 N.W.2d 252 (1983). Despite Proposed Intervenor's assertions, they fail to meet any of the statutory requirements to intervene as a matter of right.

I. Proposed Intervenor Have No Interest Related to this Action

The interest Proposed Intervenor must show as having relation to this action must be "of such direct and immediate character that the intervenor will either gain or lose by the direct operation of the judgment." *Lodge 78, Int'l Ass'n of Machinists v. Nickel*, 20 Wis. 2d 42, 46, 121 N.W.2d 297 (1963) Identifying an indirect interest such as spending money

¹ Wis. Stat. 803.09(1) states:

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.

on lobbying and education is not enough. “One whose interest is indirect cannot intervene as a matter of right.” *Id.*

Proposed Intervenor’s interest is nothing more than indirect. By their own admissions, Proposed Intervenors are “advocacy organization[s]”. Miller Aff. ¶ 4; File Aff. ¶ 4; Weininger Aff. ¶4. Proposed Intervenors do not enforce any statute, nor provide any health care to any Wisconsin citizens. They merely operate to advocate and attempt to educate people on their specific beliefs. *See* Miller Aff.; File Aff.; Weininger Aff. Nothing in their operations of advocacy and education is so sufficiently and directly related to the subject of this action – providing necessary healthcare to women in Wisconsin without the fear of criminal prosecution. Therefore, Proposed Intervenors have failed to show any direct interest showing a gain or loss by direct operation of any judgment and their motion should be denied.

II. The Disposition of this Action Would Not Impair or Impede Proposed Intervenor’s Interest

Contrary to Proposed Intervenor’s claim, their interests would not be impaired or impeded by the disposition of this action. Their remote, indirect interest in providing advocacy and education services would not be affected by this Court’s ruling. They would still retain their right to provide advocacy and education services. Nothing in the Court’s ruling would prevent Proposed Intervenors from exercising their right to continue to provide these services.

As a contrast, the proper parties have already been joined to this action as Respondents Urmanski, Ozanne, and Chisholm have a clear interest and would be directly

affected as they have the duty and obligation to enforce and administer justice pursuant to respective criminal statutes, including those in question in this matter. Conversely, Proposed Intervenor cannot show more than an indirect interest in the outcome of this action and therefore, their motion to intervene should be denied.

III. Proposed Intervenor's Interest is Already Adequately Represented by Existing Parties

In order to “intervene in a suit in which a state is already a party, [one] must overcome this presumption of adequate representation through more than a minimal showing that the representation might be inadequate.” *Hegeland v. Wis. Municipalities*, 2008 WI 9, ¶ 21, 307 Wis. 2d 1, 745 N.W.2d 1, citing *Environmental Defense Fund, Inc. v. Higginson*, 631 F.2d 738, 749 (D.C. Cir. 1979). Further, “[i]t is not enough to show that the movant could bring additional, cumulative arguments to the table; there must be actual divergence between the state’s position on the primary issue and the potential intervenor’s position.” *Id.*

Proposed Intervenor cites the positions Respondent Urmanski has taken in a separate and distinct case, *Kaul v. Urmanski*, No. 23AP2362 (filed Feb. 27, 2024). However, Proposed Intervenor cannot point to any position taken in the present case that is not being adequately represented by the existing parties. Thus, Proposed Intervenor’s argument is premature at best. Proposed Intervenor has failed to show any actual divergence between DA Urmanski’s position and their own. Further, Respondent Urmanski will likely take the exact same position as Proposed Intervenor, making their interest already adequately represented. Any further argument would be redundant and

superfluous. “Such cumulative arguments may always be brought forward through amicus curiae briefs...” *Id.*

Thus, Proposed Intervenor has failed to show how their interest is not already represented by existing parties and their motion is better suited as an amicus curiae brief.

IV. The Court has an Interest in Striking a Balance Between Efficiency and Due Process

Wisconsin Courts have evaluated motions to intervene in a practical rather than technical manner “with toward ‘disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.’” *Wolff v. Town of Jamestown*, 229 Wis. 2d 738, 742-743, 601 N.W.2d 301 (Ct. App. 1999) The *Wolf* Court saw the purpose of this approach is to strike a balance between two conflicting objectives underlying Wis. Stat. 803.09(1): “the protection of an efficient judiciary through the resolution of related issues in a single lawsuit, and the protection of an original party’s ability to conduct its own lawsuit without undue complications.” *Hegeland*, at ¶ 6, citing *Wolff*, at 743. Ultimately, courts “allow intervention as a matter of right only where the intervenor is ‘necessary to the adjudication of the action.’” *Id.*, citing *City of Madison v. WERC*, 2000 WI 39, ¶11 n.11, 234 Wis 2d 550, 610 N.W.2d 94 (citing *White House Milk Co. v. Thomson*, 275 Wis. 243, 247, 81 N.W.2d 725 (1957)).

Allowing Proposed Intervenor to join as parties could potentially create havoc in this matter. If granted intervention, Proposed Intervenor would not only be allowed the same brief schedule as the other parties but could also have the opportunity to present oral argument or file motions, including those for recusal of Wisconsin Supreme Court

Justices. In Case No. 2021 AP 1450-OA, after being allowed intervention in that matter, counsel for Proposed Intervenor filed a Motion to Recuse Justice Protasiewicz. Birnbaum Aff. Ex. A. Should Proposed Intervenor's motion to intervene be granted, nothing would prevent them from filing similar motions, unnecessarily complicating the matter while sacrificing the efficient due process of the properly joined parties.

Thus, intervention of Proposed Intervenor is not necessary for this action and their involvement should not be allowed to complicate or overburden this process.

CONCLUSION

For the foregoing reasons, Respondent Chisholm requests that the Court deny Proposed Intervenor's Motion to Intervene or, in the alternative, to file Motion to Amicus Brief be denied.

Dated this 6th day of May, 2024.

LEIB KNOTT GAYNOR LLC

Attorneys for Respondent

John T. Chisholm

Electronically signed by Samuel J. Leib

Samuel J. Leib (SBN: 1003889)

Aaron D. Birnbaum (SBN: 1054441)

P.O. Address

219 North Milwaukee Street

Suite 710

Milwaukee, WI 53202

P: 414-276-2102

F: 414-276-2140

E: sleib@lkglaw.net

abirnbaum@lkglaw.net