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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF DOUGLAS

CHRIS QUINN, *et al.*

Plaintiffs,

v.

STATE OF WASHINGTON; DEPARTMENT
OF REVENUE, *et al.*

Defendants.

No. 21-2-00075-09

Consolidated (Proposed) with
No. 21-2-00087-09

EDMONDS SCHOOL DISTRICT,
ADRIENNE STUART, MARY CURRY,
TAMARA GRUBB, AND
WASHINGTON EDUCATION
ASSOCIATION'S MOTION TO
INTERVENE AS DEFENDANTS

APRIL CLAYTON, *et al.*

Plaintiffs,

v.

STATE OF WASHINGTON, DEPARTMENT
OF REVENUE, *et al.*

Defendants.

1 **I. INTRODUCTION**

2 The Edmonds School District, Tamara Grubb (a teacher), Adrienne Stuart (a parent), Mary
3 Curry (an early learning and childcare provider), and the Washington Education Association
4 (“WEA”) (collectively, “Education Parties”), seek to intervene in this litigation to defend the
5 validity and constitutionality of a law that will invest billions of dollars in our state’s children.
6 Engrossed Substitute Senate Bill 5096 (“ESSB 5096”) establishes an excise tax that will provide
7 significant funding for public education in Washington, including for K-12 classrooms, special
8 education, and early learning. Education Parties have a strong and distinct interest in ensuring that
9 ESSB 5096 remains Washington law. They will receive state funding generated by the tax or they
10 are individuals, such as parents and teachers, directly impacted by changes in education funding.
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12 Intervention is warranted, either by permission or as of right. Permissive intervention is
13 appropriate because all of the requirements under Civil Rule 24(b) are met. First, this Motion is
14 timely because it is filed at the beginning of this litigation and before answers have been filed in
15 either case. Second, Education Parties’ defense has common questions of law and fact with this
16 litigation: whether the capital gains tax is an excise or property tax and thus, subject to certain
17 constitutional requirements, and whether the tax is otherwise constitutional. Third, granting
18 intervention will not cause undue delay or prejudice to the other parties. Litigation has only just
19 begun and Education Parties plan to coordinate with State Defendants to reduce potential
20 duplication in their filings to the extent possible. State Defendants do not object to Education
21 Parties’ intervention.¹
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24 Intervention as of right also is appropriate under Civil Rule 24(a). Intervenors have a
25 substantial interest that could be impaired by the outcome of this litigation and cannot be
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27 ¹ Plaintiffs have not indicated their position on intervention as of the time of this filing.

1 adequately protected by the existing parties. While the State is obligated to defend enacted laws,
2 intervention is common to permit aligned parties with distinct interests the ability to participate in
3 the case. Accordingly, Education Parties respectfully request that this Court grant intervention.

4 II. STATEMENT OF FACTS

5 A. **ESSB 5096 funds important public education investments through a tax on the** 6 **voluntary capital gains transactions of Washington’s wealthiest residents.**

7 In passing ESSB 5096, the legislature intended both to help Washington meet its
8 “paramount duty” to “amply provide every child in the state with an education” and to make
9 progress toward rebalancing Washington’s regressive tax code. Declaration of Gregory J. Wong
10 (“Wong Decl.”), Ex. C § 1. The law does so by imposing a 7% tax on the sale or exchange of long-
11 term capital assets, i.e. stocks, bonds, business interests, or other investments, in excess of
12 \$250,000 annually. *Id.* § 5. Revenue from the tax is dedicated to the state’s Education Legacy
13 Trust Account (“ELTA”) and the Common School Construction Account (“CSCA”). *Id.* § 2. In
14 the first six years, the Washington State Department of Revenue forecasts that the law will generate
15 over \$2.5 billion. *Id.*, Ex. D. The tax will be paid almost exclusively by the richest 1% of
16 Washington residents, or those earning a minimum of \$660,000 per year. *Id.*, Ex. E.

17 Each year, the first \$500 million collected from the tax will be deposited into the ELTA.
18 Wong Decl., Ex. A § 2(1)(a). Funds from the ELTA “may be used only for support of the common
19 schools [(i.e., K-12 public schools)], and for expanding access to higher education through funding
20 for new enrollments and financial aid, early learning and childcare programs, and other educational
21 improvement efforts.” *Id.* § 3; RCW 83.100.230. In the current budget, the majority of the ELTA
22 funds crucial investments in K-12 public schools. The legislature appropriated approximately \$1.4
23 billion for general apportionment and \$54.7 million for special education from the ELTA. *Id.*, Ex.
24 H at 376, 396. General apportionment dollars are the foundational funding of our public schools,
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1 providing money for core education needs such as teachers, materials, supplies, and operations
2 costs.² Every district and every public school in Washington receives general apportionment
3 dollars, with the amount varying depending on multiple factors, most importantly student
4 enrollment.³ For example, the Edmonds School District was allotted \$188.2 million in general
5 apportionment funds from the State for the 2020-21 school year. *See* Wong Decl., Ex. J. The
6 Eastmont School District, which is smaller, was allotted \$49.8 million in general apportionment
7 for the same school year. *See* Wong Decl., Ex. I. Special education dollars are specifically
8 designated to assist children diagnosed with special needs.⁴ Again, districts and public schools
9 throughout Washington receive special education dollars. For the 2020-21 school year, Edmonds
10 School District was allotted over \$37 million and Eastmont School District \$7.4 million in state
11 funds for special education students. *See* Wong Decl., Exs. I and J.

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14 In addition, the ELTA funds early learning and higher education. In the current budget, the
15 legislature apportioned \$24.1 million in ELTA funds for Washington’s Early Childhood Education
16 Assistance Program (“ECEAP”). Wong Decl., Ex. H at 289. ECEAP provides free early learning
17 childcare or preschool to support development and learning, family support, and child health
18 coordination and nutrition. Declaration of Mary Curry (“Curry Decl.”) ¶ 5. The state provides
19 subsidies to providers who enroll income-eligible children. *Id.* Similarly, the Working Child Care
20 Connections (“WCCC”) program provides state-subsidized childcare for working families with
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25 ² *See* “A Citizen’s Guide to Washington State K-12 Finance” at 5-9 (2015), *available at*
26 <http://annrivers.src.wastateleg.org/wp-content/uploads/sites/10/2016/03/K-12-funding-guide.pdf> (last visited Jul 5,
2021). Washington State Senate staff prepared this report to help explain the often complex education funding
27 system. While some of the cited laws have been updated since published in 2015, the explanations of general
apportionment and special education funding still apply in relevant part.

³ *See supra* note 2.

⁴ *See supra* note 2 at 9-10.

1 young children. *Id.* The legislature recognizes that these investments in high-quality early learning
2 and childcare are crucial for a child’s success in school and life. Wong Decl., Ex. A § 1.

3 Any revenue from the capital gains tax above \$500 million each year is dedicated to the
4 CSCA. Wong Decl., Ex. A § 2(1)(b). This account assists school districts with capital projects,
5 such as the building or renovation of school buildings. In Edmonds, several of the District’s
6 schools have undergone necessary capital projects over the last five to six years. Declaration of
7 Gustavo Balderas (“Balderas Decl.”) ¶ 11. These projects include renovation or replacement of
8 the Lynndale Elementary, Lynnwood Elementary, Mountlake Terrace Elementary, and Madrona
9 K-8 school buildings, and construction of a new Alderwood Middle School. *Id.* These projects
10 were funded in part by the State Construction Assistance Program (which in turn is funded by the
11 CSCA). *Id.* The District received approximately \$33.762 million in state construction funding for
12 these projects. *Id.* The District has several additional capital projects that are planned for the next
13 5-10 years. *Id.* For example, Edmonds currently is building Spruce Elementary School and
14 planning to renovate or replace Oak Heights Elementary School. *Id.* The District intends to request
15 state assistance in funding the construction of both projects. *Id.*

18 **B. Education Parties have a cognizable interest in the capital gains tax revenue.**

19 Education Parties have a distinct interest in the constitutionality of ESSB 5096 because
20 they particularly benefit from the dedicated funding described above.

21 Edmonds School District relies on state general apportionment and special education
22 funding to provide an excellent public education to over 20,000 students. Balderas Decl. ¶¶ 6, 8.
23 The District was allotted over \$225 million in general apportionment and special education funds
24 from the State for the 2020-21 school year. *Id.* ¶ 8; Wong Decl., Ex. J. This funding pays for,
25 among other necessities, staff salaries, materials, supplies, and operating costs. Balderas Decl. ¶ 9.
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1 Edmonds also provides a wide variety of programs and services to those who qualify for special
2 education services, i.e. occupational/physical therapy, speech therapy, intensive academic support,
3 intensive social and emotional support, and developmental kindergarten. *Id.* ¶ 10. All of the
4 District’s programs, both general and special education, would benefit from additional funding,
5 especially as the District works to help students adjust to in-person schooling after the effects of
6 the recent global pandemic. *Id.*

8 Further, as described above, the District has historically benefited from state construction
9 funds. *Id.* ¶ 11. And it anticipates applying for award of state construction funds for future projects.
10 *Id.* Both ELTA and CSCA funding are important factors that allow Edmonds to provide a quality
11 public education to its many students. *Id.* ¶ 8. The revenue from the capital gains tax will only help
12 in this regard.

14 Tamara Grubb is a junior high school English teacher, and has been a teacher for the
15 Eastmont School District (“Eastmont”) in Douglas County for over 30 years. Declaration of
16 Tamara Grubb (“Grubb Decl.”) ¶ 3. Ms. Grubb is also the current president of the Eastmont
17 Education Association. *Id.* ¶ 4. In that role, she represents the interests of Eastmont educators and
18 works to improve public education. *Id.* Eastmont has undergone several essential capital projects
19 over the last several years, including the reconstruction and modernization of several schools. *Id.*
20 ¶ 7. These projects were funded in part by the CSCA. *Id.* In addition to these past projects,
21 Eastmont is seeking CSCA funding for other necessary capital improvements in the coming years.
22 *Id.*

24 Further, Eastmont has seen experienced growth in the number of students that require
25 special education services. *Id.* ¶ 6. Special education expenditures have increased significantly in
26 the last five years. *Id.* Eastmont relies on state funding to provide special education services. *Id.* ¶

1 5. But annual special education expenditures consistently exceed available revenues and must be
2 paid for by other revenue sources, such as local levies. *Id.* ¶ 6. Additional state resources will allow
3 Eastmont to better serves its students and families. As both an educator, and a representative of
4 educators, Ms. Grubb has an interest in revenue that will support Eastmont’s schools and teachers.
5

6 Adrienne Stuart is a resident of Tacoma, Washington. She is a parent of two school-aged
7 children who attend public school in the Tacoma School District. Declaration of Adrienne Stuart
8 (“Stuart Decl.”) ¶¶ 2, 3. One of her children is currently enrolled in preschool, and the other is
9 entering second grade in the fall. *Id.* ¶ 3. Her children have higher educational support needs due
10 to developmental disabilities and both need Individualized Education Programs to accommodate
11 these needs. *Id.* ¶ 4. Ms. Stuart and her family rely on the Tacoma School District’s special
12 education program for access to appropriate services that are essential to their ability to receive a
13 basic education. *Id.* For example, one of her children is non-linguistic and is learning to use a Tobii
14 eye-gaze device to interact with the world. *Id.* ¶ 5. This device requires daily practice with his
15 paraeducator and family, and guidance of an experienced speech language pathologist, which he
16 receives through the public school system. *Id.* He also receives necessary occupational therapy
17 from his public school. *Id.* Without these trained educators, Ms. Stuart’s child would be unable to
18 receive an education. *Id.* Special education resources are essential for her children’s education. *Id.*
19 ¶¶ 5, 6. Accordingly, Ms. Stuart has a vested interest in increased funding that allows her children
20 to get the education they deserve and to which they are legally entitled.
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23 Mary Curry is the director of Pathways Enrichment Academy (“Pathways”), a family
24 childcare program in Tacoma, Washington. Curry Decl. ¶ 3. Pathways’ mission is to make quality
25 education available to all children, regardless of their available resources. To that end, Pathways
26 supports early learning education through ECEAP. *Id.* ¶ 5. Pathways receives state subsidies that
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1 help fund the cost of ECEAP services. *Id.* Pathways is also licensed by the Washington State
2 Department of Social and Health Services to accept children that rely on the WCCC subsidy for
3 childcare needs. *Id.* Half of the children attending Pathways are subsidized by the state, and the
4 others are subsidized through other sources, such as the City of Tacoma or the military. *Id.* ¶ 7.
5 Even with the additional funding provided by these programs, Pathways would not be able to
6 continue without the addition of outside funds. *Id.* Additional funding for the ECEAP and WCCC
7 programs would help Ms. Curry continue to provide essential preschool and childcare for at-risk
8 children. *Id.* ¶ 9. In particular, anything that would allow for an increase in eligibility for and the
9 amount of those subsidies will allow Pathways to operate and serve more children. *Id.*

11 The Washington Education Association (“WEA”) is a non-profit corporation that is the
12 largest representative of public school employees in Washington. Declaration of Larry Delaney
13 (“Delaney Decl.”) ¶ 4. WEA represents the educators that need ELTA and CSCA funds to do their
14 jobs. *Id.* ¶¶ 6, 7. WEA members include state public school teachers and other staff members, as
15 well as parents of students in the State’s public school system. *Id.* ¶ 4. WEA’s mission is to
16 advocate for excellence, inclusion, and a racially equitable public school system for all students,
17 staff, and communities. *Id.* ¶ 5. Its vision is outstanding public schools for every student in
18 Washington. *Id.* WEA represents its members’ interests in creating a stronger public education
19 system in the state through its advocacy and lobbying, including by its participation in this action.
20 *Id.* ¶ 8. WEA also worked closely with advocates and other labor organizations to lobby for passage
21 of the capital gains tax bill. *Id.* This is because the tax will provide much needed funding for public
22 education while not contributing to the already regressive tax code. *Id.* WEA intervenes in this
23 matter to protect its members’ interests in funding that will better serve thousands of students and
24 teachers in our state.
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1 **III. AUTHORITY AND ARGUMENT**

2 **A. Permissive intervention under CR 24(b) is appropriate.**

3 A party may intervene in an action either as a matter of right or by permission. CR 24.
4 Here, permissive intervention is appropriate and warranted under CR 24(b). On timely motion, the
5 Court may permit anyone to intervene “[w]hen an applicant’s claim or defense and the main action
6 have a question of law or fact in common.” CR 24(b)(2). The propriety of intervention is solely
7 within the Court’s discretion. *Ford v. Logan*, 79 Wn.2d 147, 150, 483 P.2d 1247 (1971). Further,
8 “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay
9 or prejudice the adjudication of the rights of the original parties.” CR 24(b)(2). Trial courts should
10 thus deny intervention only when evidence of delay or prejudice is established. *Wilson Sporting*
11 *Goods v. Pedersen*, 76 Wn. App. 300, 303, 886 P.2d 203 (1994).

12 **1. The motion to intervene is timely and will not cause prejudice or delay.**

13 “[A] motion to intervene is timely if it is filed before the commencement of the trial.”
14 *Columbia Gorge Audubon Soc’y v. Klickitat Cty.*, 98 Wn. App. 618, 622, 989 P.2d 1260 (1999).
15 Education Parties’ Motion is timely. The complaints in this matter were filed on April 28, 2021
16 and May 20, 2021. Dkt. #1 (*Clayton*); Dkt. # 3 (*Quinn*). State Defendants have not answered either
17 complaint, and instead filed a motion to dismiss Plaintiffs’ complaints on June 14, 2021. Granting
18 intervention at this early stage in the proceedings will not cause any prejudice or hardship on the
19 parties. *See Loveless v. Yantis*, 82 Wn.2d 754, 759, 513 P.2d 1023 (1973); *see also State ex rel.*
20 *Keeler v. Port of Peninsula*, 89 Wn.2d 764, 767, 575 P.2d 713, 715 (1978) (finding no prejudice
21 where the motion to intervene was filed within a month of the complaint and well before trial).
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23 Nor will granting intervention delay this matter. Education Parties make this request before
24 litigation has truly commenced, and allowing intervention will not impede resolution or cause any
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1 additional expenditure of judicial resources. This case involves constitutional matters that likely
2 will resolve on summary judgment as pure questions of law. As such, Education Parties do not
3 intend to nor anticipate they would participate in any discovery that could delay resolution of this
4 matter. Further, Education Parties commit to working with State Defendants to coordinate on
5 filings in order to reduce potential duplication to the extent possible. Plaintiffs will suffer no delay
6 or prejudice as a result of Education Parties' intervention.

8 **2. Education Parties' defense shares common questions of law and fact with this**
9 **action.**

10 To qualify for permissive intervention the would-be intervenor's claim or defense must
11 share a common question of law or fact with the main action. CR 24(b)(2). But, "exact parallelism
12 between the original action and the intervention action is not required." *State ex rel. Keeler*, 89
13 Wn.2d at 767. Civil Rule 24(b) does not require that "permissive intervenors have an independent
14 claim or defense in addition to commonality of law or fact." *Pub. Util. Dist. No. 1 of Okanogan*
15 *Cty. v. State*, 182 Wn.2d 519, 532, 342 P.3d 308 (2015) ("*Pub. Util. Dist. No. 1*"). It is sufficient
16 that intervenors' defense have commonality with the main action; nothing more is required.

17 Here, Education Parties' defense of Plaintiffs' claims share common questions of law or
18 fact with this litigation: the constitutionality of ESSB 5096. In both matters, Plaintiffs assert that
19 ESSB 5096 is a property tax that violates various provisions of the Washington Constitution. *See*
20 *Complaint; First Amended Complaint*. Plaintiffs further allege that ESSB 5096 violates the
21 Commerce Clause of the United States Constitution. *Id.* Education Parties' defense of ESSB 5096
22 will directly address these claims. In particular, Education Parties will address Plaintiffs'
23 contention that the capital gains tax is a property tax. This contention forms the basis of the
24 majority of Plaintiffs' claims. Education Parties plan to present argument on this common question
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1 of law and on the other constitutional issues, and anticipate that their participation will be useful
2 in the adjudication of the significant issues before the Court.

3 Further, while State Defendants and Education Parties both seek a ruling on the
4 constitutionality of the capital gains tax, applicants may be permitted to intervene, “even if similar
5 relief is sought by another party.” *Pub. Util. Dist. No. 1*, 182 Wn.2d at 532 (citing to *Columbia*
6 *Gorge Audubon Soc’y*, 98 Wn. App. at 628–30). Indeed, intervention is frequently granted where
7 a party has an interest in a law that the government already is defending. In *CLEAN v. City of*
8 *Spokane*, 133 Wn.2d 455, 474, 947 P.2d 1169 (1997), real estate developers approached the City
9 of Spokane asking for assistance with the renovation and expansion of a parking garage on one of
10 their properties. The City agreed, and passed an ordinance authorizing its support, which was then
11 challenged by plaintiffs. *Id.* at 460-61. The real estate developers then moved to intervene as parties
12 with an interest in the validity of the ordinance. *Id.* at 474. The Court allowed intervention because
13 disposition of the action would impair the developers’ ability to protect their interests. *Id.*

14 Similarly, in *Loveless v. Yantis*, the plaintiffs challenged a planning commission’s order
15 denying the application for preliminary approval of a plat on Cooper Point. 82 Wn.2d at 758. The
16 Cooper Point Association, Cooper’s Point Water Company, and a local land owner moved to
17 intervene in the matter. *Id.* at 757. As property owners and residents of Cooper Point, the
18 intervenors would be directly impacted by the outcome of the case. *Id.* at 757-59. The Washington
19 Supreme Court reversed the trial court’s decision to deny intervention because the intervenors had
20 a direct interest in the matter. *Id.* at 760.

21 Here, Education Parties and State Defendants both have an interest in the validity of the
22 capital gains tax, but Education Parties have a distinctly direct interest in the benefits of the tax. In
23 particular, Education Parties have an interest in the funds that allow them to benefit from, or
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1 provide, proper public education in Washington. Additionally, as a proponent of ESSB 5096, WEA
2 has an interest in ensuring that additional funding for public education comes from less regressive
3 revenue sources. Thus, while the desired outcome is the same, Education Parties’ interests are
4 separate from that of State Defendants.

5
6 Moreover, allowing intervention in important constitutional cases that present significant
7 issues of public importance is routinely allowed. Indeed, all counsel in this case were party to a
8 similar proceeding recently where intervention was granted involving a more remote interest. In
9 *Kunath v. City of Seattle*, the plaintiffs (represented by the same legal counsel as Plaintiffs in this
10 litigation) brought a constitutional challenge to an ordinance establishing a citywide income tax.
11 10 Wn. App. 2d 205, 211, 444 P.3d 1235, *as amended on denial of reconsideration* (Aug. 7, 2019).
12 The Economic Opportunity Institute (“EOI”), a non-profit corporation, moved to intervene as a
13 defendant to assert a legal argument they believed was dispositive of the case. *Id.* at 212. While
14 EOI did not directly benefit from the tax, it was instrumental in the development and passage of
15 the ordinance. *See* Wong Decl. ¶ 7. The plaintiffs argued that intervention was unnecessary
16 because, among other things, the city would vigorously defend its law. *Id.* The trial court disagreed
17 and granted EOI’s motion to intervene as a defendant under CR 24(b). *See Kunath*, 10 Wn. App.
18 2d at 212; *see also* Wong Decl., Ex. F. If an interest in being a proponent of a law and asserting a
19 potentially different legal argument is sufficient to permit intervention, then it is even more
20 appropriate for those who would directly benefit from the law as is the case for Education Parties.
21 Further, courts routinely grant intervention as defendants for significant supporters of a law like
22 WEA here, even where the Washington Attorney General already is providing a vigorous defense
23 and there is no clear distinction between the arguments that may be made. *See League of Women*
24 *Voters of Washington v. State*, 184 Wn.2d 393, 400, 355 P.3d 1131 (2015), *as amended on denial*
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1 of reconsideration (Nov. 19, 2015) (recognizing the trial court’s decision to allow general
2 supporters of charter schools to intervene as defendants in a constitutional challenge to an initiative
3 establishing additional charter schools in Washington); see also *Fritz v. Gorton*, 8 Wn. App. 658,
4 661, 509 P.2d 83 (1973) (allowing a lobbyist that was a “significant force” in getting an initiative
5 adopted to intervene in part because its interest was sufficiently divergent from the State’s).
6 Granting intervention in cases like this ensures that all perspectives are before the Court, allowing
7 for a full and fair hearing on important legislation. Permissive intervention should be granted.
8

9 **B. Education Parties are also entitled to intervene as of right.**

10 Education Parties may also intervene by right. Civil Rule 24(a) contains four requirements
11 that must be met before intervention by right is granted: “(1) timely application for intervention;
12 (2) an applicant claims an interest which is the subject of the action; (3) the applicant is so situated
13 that the disposition will impair or impede the applicant’s ability to protect the interest; and (4) the
14 applicant’s interest is not adequately represented by the existing parties.” *Westerman v. Cary*, 125
15 Wn.2d 277, 303, 892 P.2d 1067 (1994). “[T]he requirements of CR 24(a) are liberally construed
16 to favor intervention.” *Columbia Gorge Audubon Soc’y*, 98 Wn. App. at 623.⁵
17

18 **1. Education Parties have an interest in the subject of this action that will be**
19 **impaired absent intervention.**

20 Education Parties have a substantial interest in this case as direct recipients or the
21 beneficiaries of capital gains tax revenue. For purposes of intervention, the meaning of “interest”
22 is to be “broadly interpreted using flexibility and a case-by-case analysis.” *Westerman*, 125 Wn.2d
23 at 303. The interest must “be of such a direct and immediate character that the intervener will either
24 gain or lose by the direct legal operation and effect of the judgment.” *Id.* (internal citations
25 omitted). “Not much of a showing is required, however, to establish an interest. And insufficient
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27 ⁵ As argued above, this Motion is timely and the first factor is met.

1 interest should not be used as a factor for denying intervention.” *See Columbia Gorge Audubon*
2 *Soc’y*, 98 Wn. App. at 629 (allowing Yakama Nation to intervene where they had at least a
3 demonstrable interest in the outcome of the lawsuit).

4 Here, Education Parties have a demonstrable interest in the projects and programs that the
5 revenue from the capital gains tax will support that is more than sufficient. The Edmonds School
6 District would receive direct funding to meet the education needs of its students and to renovate
7 and construct school buildings. Parent Adrienne Stuart’s two children will benefit from funding
8 that goes to support their basic education and particular special education needs. Teacher Tamara
9 Grubb and WEA will be on the direct receiving end of funding in the form of teacher salaries and
10 funding of supplies, operations, and safe and healthy school buildings. And early learning and
11 childcare provider Mary Curry will benefit from increased funding of ECEAP and childcare
12 subsidies, so she can serve low-income children in ensuring they have a fair start in life.⁶

13 Additionally, disposition of Plaintiffs’ claims could adversely affect Education Parties’
14 interests. Absent intervention in these cases, Education Parties will not have a judicial forum to
15 assert their arguments regarding the constitutionality of the law that will provide additional
16 revenue. This satisfies the minimal interest standard required by CR 24(a).⁷

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19 **2. Education Parties’ interests cannot be fully represented by the State.**

20 The Attorney General may not be able to adequately represent the interests of Education
21 Parties. Washington courts have found that the State’s “general duty to protect the public’s interest
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23 ⁶ WEA, as the organization that represents Washington’s educators, has sufficient interest in the outcome of this
24 litigation. Washington courts have held that organizations may intervene to represent the interests of their members,
25 where members have a direct interest in the subject of the lawsuit. *See Dioxin/Organochlorine Ctr. v. Dep’t of*
26 *Ecology*, 119 Wn.2d 761, 779, 837 P.2d 1007 (1992). WEA’s members are thousands of teachers who will directly
27 benefit from the capital gains tax revenue. Because WEA is intervening to protect their interests, it has a
demonstrable interest sufficient to intervene on their behalf. Also, as argued herein, WEA has a distinct interest as a
legislative supporter of the law.

⁷ Adrienne Stuart has a further interest in this case as a taxpayer who could be subject to the capital gains tax in the
future. Stuart Decl. ¶ 8.

1 does not sufficiently protect the narrower interests of private groups.” *Pub. Util. Dist. No. 1*, 182
2 Wn.2d at 532 (citing to *CLEAN*, 133 Wn.2d at 460–62). And, the term “interest” should be
3 “construed broadly, rather than narrowly.” *Vashon Island Comm. for Self-Gov’t v. Washington*
4 *State Boundary Rev. Bd. for King Cty.*, 127 Wn.2d 759, 765, 903 P.2d 953 (1995). The Attorney
5 General must protect the interest of all of the citizens of this State, but this protection may not
6 adequately encompass the specific, individual needs of Education Parties.
7

8 While it is possible that State Defendants will make similar arguments to Education Parties,
9 they may not be able to effectively articulate the Education Parties’ particular interests. In
10 *Columbia Gorge Audubon Soc’y*, the Yakima Nation moved to intervene in a case involving an
11 energy company’s request for a permit to develop a wind-powered electrical power generation
12 facility. 98 Wn. App. at 628-30. The Court allowed the Yakama Nation to intervene even though
13 it was “another voice asking for the same result . . . only for different reasons,” because it was not
14 clear that plaintiffs would “undoubtedly” make all of the Yakama Nation’s arguments. *Id.* The
15 same is true here. There are multiple legal arguments regarding the constitutionality of the capital
16 gains tax that should be fully briefed in this case to fully inform the Court. For example, there are
17 at least two defenses to Plaintiffs’ primary argument. First, the capital gains tax is an excise tax
18 and therefore not subject to constitutional restrictions on property taxes. Second, even if the capital
19 gains tax is a property tax, it is constitutional because the case law that held an income tax is a
20 property tax was incorrectly decided and should be reversed. *See generally* Wong Decl., Ex. G.
21 Defendants prevailing on either argument would be determinative of the case. At this preliminary
22 stage, Education Parties cannot know exactly what State Defendants plan to argue. But Education
23 Parties should be allowed to intervene to ensure all potential arguments are before the Court. If
24 there is even a possibility that Education Parties’ interests may not be adequately articulated and
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1 argued, intervention is warranted. And if it turns out that State Defendants and Education Parties
2 are 100% aligned, then they will work together to file joint briefing as appropriate and not waste
3 the parties' or this Court's time.

4 Education Parties' direct interests in the legality of ESSB 5096 should be represented in
5 this lawsuit. Doing so causes no prejudice and only will serve to ensure all arguments are fully and
6 vigorously presented for consideration. Accordingly, intervention would serve the ends of justice
7 and should be granted.⁸

9 IV. CONCLUSION

10 This case presents significant constitutional questions. To ensure a full and fair hearing of
11 those issues, Education Parties—representing those who have a distinct interest in the benefits of
12 the capital gains tax—should be allowed to intervene as defendants in this early stage of the case.
13 Education Parties respectfully request this Court grant their motion to intervene.
14

15 DATED this 6th day of July, 2021.

17 PACIFICA LAW GROUP LLP

18 By s/ Gregory J. Wong
19 Gregory J. Wong, WSBA #39329
20 Michelle K. Vaughan, WSBA #54751

21 *Attorneys for Intervenors*

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23
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25
26
27 ⁸ As required by CR 24(c), Education Parties' proposed pleadings in response to Plaintiffs' Complaint and Amended
Complaint are attached as Exs. A and B to the Wong Decl.

1 **CERTIFICATE OF SERVICE**

2 I am and at all times hereinafter mentioned was a resident of the State of Washington, over
3 the age of 21 years and not a party to this action. On the 6th day of July, 2021, I caused to be
4 served a true copy of the foregoing document upon:

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21 *Attorneys For Defendants*

22 I declare under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct.

24 DATED this 6th day of July, 2021.

25 *s/ Thien Tran*
26 Thien Tran, Paralegal/Legal Assistant