

Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NORTHWEST SCHOOL OF SAFETY, a  
Washington sole proprietorship, PUGET  
SOUND SECURITY, INC., a Washington  
corporation, PACIFICA NORTHWEST  
ASSOCIATION OF INVESTIGATORS, INC.,  
a Washington corporation, FIREARMS  
ACADEMY OF SEATTLE, INC., a  
Washington corporation, DARRYL LEE, XEE  
DEL REAL, JOE WALDRON, GENE  
HOFFMAN, ANDREW GOTTLIEB, ALAN  
GOTTLIEB, GOTTLIEB FAMILY  
REVOCABLE LIVING TRUST, a Washington  
trust, and SECOND AMENDMENT  
FOUNDATION, a non-profit organization,

Plaintiffs,

v.

BOB FERGUSON, Attorney General of  
Washington (in his official capacity),  
WASHINGTON ATTORNEY GENERAL'S  
OFFICE, and JOHN R. BATISTE, Chief of the  
Washington State Patrol (in his official  
capacity), and DOES I-V,

Defendants.

No. 3:14-cv-6026 BHS

CHERYL STUMBO, WASHINGTON  
ALLIANCE FOR GUN  
RESPONSIBILITY, AND  
EVERYTOWN FOR GUN SAFETY  
ACTION FUND FOR I-594'S REPLY  
IN SUPPORT OF THEIR MOTION TO  
INTERVENE AS DEFENDANTS

STUMBO, WAGR, AND EVERYTOWN'S REPLY IN  
SUPPORT OF THEIR MOTION TO INTERVENE  
Case No. 3:14-cv-6026 BHS

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## I. INTRODUCTION

Plaintiffs do not contest that Proposed Intervenors meet the threshold requirements for permissive intervention.<sup>1</sup> And they acknowledge, as they must, that under such circumstances, this Court has the discretion to grant intervention. Yet Plaintiffs urge this Court to deny intervention, relying on no more than inapposite case law and speculation. None of the cases Plaintiffs cite involve intervention by the actual drafters and official proponents of an initiative, as is the case here. Proposed Intervenors will bring unique insight to the litigation that the parties lack, and will help ensure that the interests of the voters are fully represented. As for Plaintiffs' claims of potential prejudice and delay, they are based solely on speculation. This Court should thus grant Proposed Intervenors' Motion to Intervene as Defendants.

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## II. ARGUMENT

At the outset, it is telling that Plaintiffs do not dispute that Proposed Intervenors meet the Ninth Circuit's threshold requirements for permissive intervention applicable here: (1) their defense shares common questions of law and fact with the main action, and (2) their motion is timely. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011).<sup>2</sup> Thus, the Court has *broad* discretion in granting intervention. *Doe v. Harris*, No. C12-5713 TEH, 2013 WL 140053, at \*2 (N.D. Cal. Jan. 10, 2013). Indeed, in this Circuit, similarly-situated sponsors of ballot initiatives are routinely permitted to intervene. *See id.* (granting intervention to proponents of ballot measure); *see also, e.g., Jackson v. Abercrombie*, 282 F.R.D. 507, 520 (D. Haw. 2012) (same); *Bates v. Jones*, 904 F. Supp. 1080, 1086 (N.D. Cal. 1995) (same); *see also Yniguez v. State of Arizona*, 939 F.2d 727, 733 (9th Cir. 1991) (observing that

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<sup>1</sup> Proposed Intervenors incorporate the defined terms from their Motion to Intervene. Dkt. No. 14.

<sup>2</sup> The Ninth Circuit's third threshold requirement, "independent ground for jurisdiction," does not apply here, as Proposed Intervenors seek to intervene as Defendants and thus present no claims, but only defenses. *See Freedom from Religion Found., Inc.*, 644 F.3d at 843-44.

1 “[t]here is a virtual *per se* rule that the sponsors of a ballot initiative have a sufficient interest in  
2 the subject matter of litigation concerning that initiative to intervene”); *Sagebrush Rebellion, Inc.*  
3 *v. Watt*, 713 F.2d 525, 526-29 (9th Cir. 1983) (granting intervention to a group that had  
4 “participated actively in the administrative process” leading to the Secretary of the Interior’s  
5 actions establishing a wildlife preserve); *Washington State Bldg. & Constr. Trades Council v.*  
6 *Spellman*, 684 F.2d 627, 629-30 (9th Cir. 1982) (finding that the district court’s denial of a  
7 motion to intervene by a public interest group that sponsored an initiative was error); *cert.*  
8 *denied*, 461 U.S. 913 (1982); *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th  
9 Cir. 1996) (noting, “[T]he cases in which we have allowed public interest groups to intervene  
10 generally share a common thread . . . these groups were directly involved in the enactment of the  
11 law or in the administrative proceedings out of which the litigation arose.”).

12 Plaintiffs ignore these cases and instead object to intervention on grounds that Proposed  
13 Intervenors’ interests are adequately represented by the State and that intervention will cause  
14 undue delay or prejudice to the existing parties. Both of these arguments are without merit.

15 **A. Proposed Intervenors have unique interests in this litigation.**

16 Plaintiffs focus primarily on only one of the *Spangler* discretionary factors—whether the  
17 intervenors’ interests are adequately represented by existing parties. *See Spangler v. Pasadena*  
18 *City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Plaintiffs first mischaracterize the  
19 Proposed Intervenors’ interests, claiming their involvement in I-594’s passage was merely  
20 “sponsoring and campaigning for I-594.” Dkt. No. 25 at 2. As discussed in detail in the  
21 Proposed Intervenors’ Motion, the Proposed Intervenors were directly responsible for the  
22 creation of the Initiative, including drafting the Initiative as well as sponsoring and advocating  
23 for its passage both in the state legislature and with the people. Their specific involvement in  
24 drafting the Initiative makes them uniquely responsible for and invested in its success. Indeed,  
25 Proposed Intervenors’ 18-month long involvement with the Initiative from genesis to voter  
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1 approval gives them unique insight into the Initiative’s language and intent. This insight will  
2 inform the legal issues before the Court. Again, courts have granted permissive intervention to  
3 similarly situated groups. *See Doe*, 2013 WL 140053 at \*2 (granting permissive intervention to  
4 proponents of ballot measure); *Jackson*, 282 F.R.D. at 520 (same).

5 Plaintiffs next contend that because I-594 is already in effect and the State Attorney  
6 General is defending the Initiative, “any purported expertise related to the initiative process is  
7 more appropriately confined to an amicus curiae brief.” Dkt. No. 25 at 3. First, as described  
8 above, Proposed Intervenors drafted the law and were its primary proponents for 18 months prior  
9 to its passage and the Attorney General’s involvement. Proposed Intervenors’ interest and  
10 expertise therefore go beyond the “initiative process” and are relevant to the law itself. Notably,  
11 the Attorney General does not oppose Proposed Intervenors’ participation as defendants.

12 Second, the authorities Plaintiffs cite for this argument do not address initiatives by the  
13 people and are otherwise inapposite. In *Hawai’i Floriculture & Nursery Association v. County*  
14 *of Hawai’i*, No. 14-00267, 2014 WL 4199342 (D. Haw. Aug. 22, 2014), the proposed  
15 intervenors were not the drafters or sponsors of the county ordinance they sought to defend, but  
16 rather a public interest organization and several individuals. *Id.* at \*1 & n.1. Proposed  
17 Intervenors here are not similar mere supportive bystanders. Plaintiffs also cite *U.S. v. Portland*,  
18 No. 3:12-cv-02265-SI, 2013 U.S. Dist. LEXIS 188465 (D. Or. Feb. 19, 2013). But that case did  
19 not involve an initiative process or a challenge to legislation, but rather a suit brought by the  
20 United States against the City of Portland to remedy an alleged pattern of excessive force by the  
21 Portland Police Bureau toward individuals with mental illness. *Id.* at \*1-2, 17. When a coalition  
22 of faith-based and community organizations dedicated to police reform sought to intervene as a  
23 plaintiff in the action, the district court denied permissive intervention in part because the  
24 coalition’s “primary purpose in intervening appears to be to add into the case the issue of alleged  
25 unconstitutional practices by the Police Bureau relating to race” and “[t]his would impermissibly  
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1 expand the scope of the case as the United States, as Plaintiff, has chosen to frame it.” *Id.* at \*26.  
2 In contrast, here Proposed Intervenors do not seek to expand the scope of the litigation by  
3 bringing new claims.

4 Finally, *Westlands Water District v. United States*, 700 F.2d 561 (9th Cir. 1983), another  
5 case not involving an initiative, primarily analyzed intervention as of right and denied permissive  
6 intervention without additional analysis. *Id.* at 563. There, a nonprofit environmental protection  
7 organization sought to intervene as a defendant in an action brought by a state water district  
8 against the United States involving contract rights to water. *Id.* at 561-62. In upholding the  
9 district court’s denial of intervention as of right, the Court of Appeals explained that the  
10 nonprofit had no legally protectable interest supporting intervention as a party in a suit involving  
11 rights under contracts to which it was not a party. *Id.* at 563. Thus, the nonprofit had no interest  
12 in the subject matter of the contract suit. *Id.* In contrast, here Proposed Intervenors have a  
13 significant interest in the legality of I-594.

14 Plaintiffs further argue that the State will adequately defend I-594’s constitutionality.  
15 But, again, the cases Plaintiffs cite are inapposite and none involve a proposed intervenor who  
16 drafted the legislation at issue. *See Prete v. Bradbury*, 438 F.3d 949, 952-52, 953-54 n.6 (9th  
17 Cir. 2006) (case solely addressed intervention as of right; nevertheless, facts did not indicate that  
18 proposed intervenors drafted the law at issue); *Perry v. Proposition 8 Official Proponents*, 587  
19 F.3d 947, 949-50, 956 (9th Cir. 2009) (proposed intervenor was a public interest organization,  
20 not the official proponent of proposition). In contrast, courts have permitted intervention in  
21 circumstances similar to these, even where the Attorney General is defending an initiative,  
22 because “the participation of official proponents in a suit challenging a ballot initiative may help  
23 ensure that the interests of the voters who approved the initiative are fully represented and that  
24 ‘all viable legal arguments in favor of the initiative’s validity are brought to the court’s  
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1 attention.”” *Doe*, 2013 WL 140053, at \*2 (quoting *Perry v. Brown*, 52 Cal.4th 1116, 1151, 134  
2 Cal.Rptr.3d 499, 265 P.3d 1002 (2011)).

3 In sum, unlike the proposed intervenors in Plaintiffs’ cited cases, Proposed Intervenors  
4 here played an integral role in drafting I-594 and have insight into the Initiative’s language and  
5 intent not currently represented by the parties in this action.<sup>3</sup>

6 **B. Plaintiffs’ claims of delay and prejudice are speculative.**

7 Plaintiffs contend without explanation or factual support that Proposed Intervenors’  
8 participation will cause delay and prejudice to the original parties. This argument lacks merit.  
9 First, Plaintiffs do not challenge the timeliness of Proposed Intervenors’ Motion. This  
10 concession undermines Plaintiffs’ argument that Proposed Intervenors’ participation will cause  
11 delay and prejudice. *See Northwest Forest Res. Council*, 82 F.3d at 836-37 (existing parties are  
12 not prejudiced when a motion to intervene is filed before any substantive rulings by the court);  
13 *U.S. E.E.O.C. v. Global Horizons, Inc.*, CV. No. 11-00257 DAE-RLP, 2012 WL 874868, at \*3  
14 (D. Haw. Mar. 13, 2012) (finding no prejudice to existing parties where motion to intervene was  
15 timely filed: “Any undue delay or prejudice perceived here does not flow from the  
16 intervention....”).

17 Second, Plaintiffs claim that permissive intervention will result in further delay and  
18 prejudice in that Proposed Intervenors “seek to use this case as a means to further their  
19 fundraising and public policy efforts,” and may “engage in redundant and potentially  
20 inflammatory discovery and motions simply so they can appease their benefactors”. Dkt. No. 25

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22 <sup>3</sup> Plaintiffs also cite *Donnelly v. Glickman*, 159 F.3d 405 (9th Cir. 1998), for the unremarkable proposition that  
23 district courts have discretion to grant or deny permissive intervention. The *Donnelly* court affirmed the district  
24 court’s denial of permissive intervention where “the proposed [intervenor-plaintiffs’] and plaintiffs’ claims share[d]  
25 no common factual proof,” the proposed intervenors’ interests were in direct conflict with the existing plaintiffs’  
26 interests resulting in prejudice to existing parties, and those differences would result in undue delay of the main  
action. *Id.* at 412. As discussed in Proposed Intervenors’ Motion and in this Reply, none of the court’s concerns in  
*Donnelly* are present here.

1 at 4, 5. These speculative concerns have no basis in fact. As the Proposed Intervenors argue in  
2 their Motion, they seek to intervene given their extensive involvement with I-594 and the  
3 significant interest of the voters in defending the law's constitutionality. Proposed Intervenors  
4 have no interest in submitting irrelevant or redundant briefing. Regardless, this Court is capable  
5 of managing the parties' submissions and argument. *See Jackson*, 282 F.R.D. at 520 (granting  
6 permissive intervention to proponents of ballot measure and noting, "Plaintiffs need not be  
7 concerned about [proposed intervenors] injecting extraneous issues into this case as the Court is  
8 capable of preventing the introduction of such issues.").

9 Finally, Plaintiffs contend—again without support—that Proposed Intervenors'  
10 participation would "dramatically raise the parties' fees" and further imply that Proposed  
11 Intervenors have no incentive to keep costs down because "the State will have to pick up the  
12 tab." Dkt. No. 25 at 5. Plaintiffs fail to explain how the potential award of attorney's fees is  
13 relevant to the issues of delay or prejudice. An award of attorney's fees is entirely separate from  
14 the question of intervention under Rule 24. Plaintiffs do not cite a single case in which a court  
15 denied intervention based solely on the speculative award of attorney's fees later in the litigation.  
16 To the extent Plaintiffs attempt to argue that the State or the public will be prejudiced by the  
17 potential award of fees, their argument is misplaced. The State does not oppose Proposed  
18 Intervenors' Motion on any grounds, much less the potential award of fees in Plaintiffs' favor.  
19 Plaintiffs' unsupported allegations provide no basis to deny permissive intervention.

### 20 III. CONCLUSION

21 Proposed Intervenors hold a unique interest in this litigation, and Plaintiffs offer no valid  
22 basis for denying permissive intervention. Proposed Intervenors respectfully request this Court  
23 grant their Motion to Intervene as Defendants.  
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1 DATED this 13th day of March, 2015.

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STUMBO, WAGR, AND EVERYTOWN'S REPLY IN  
SUPPORT OF THEIR MOTION TO INTERVENE - 7  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of March, 2015, I electronically filed the foregoing document with the United States District Court ECF system, which will send notification of such filing to the following:

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STUMBO, WAGR, AND EVERYTOWN'S REPLY IN  
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