

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**NATIONAL RIGHT TO LIFE** )  
**POLITICAL ACTION** )  
**COMMITTEE STATE FUND,** )  
 )  
**PLAINTIFF** )  
 )  
**v.** )  
 )  
**JOHN D. DEVINE, ET AL.,** )  
 )  
**DEFENDANTS** )

**Civil No. 96-359-P-H**

**ORDER ON MOTION TO INTERVENE**

The National Right to Life Political Action Committee State Fund has sued the Maine Commission on Governmental Ethics and Election Practices. It requests a declaration and injunction that a recent citizen campaign financing initiative violates the First Amendment. The Commission is actively defending the lawsuit through the Office of the Attorney General. Maine Citizens for Clean Elections, an incorporated association of several Maine organizations that worked together to draft and sponsor the Clean Election Act, gathered the necessary signatures to put it on the ballot, and then campaigned for its adoption by the voters, has moved to intervene as a defendant in order to support the constitutionality of the statute.

The motion is **DENIED**. For intervention of right, the First Circuit has specified four factors that come primarily from the language of Rule 24(a): timeliness; interest; potential prejudicial effect on the interest; and inadequate representation by the current parties. Fed. R. Civ. P. 24(a)(2); see also

Conservation Law Foundation v. Mosbacher, 966 F.2d 39, 41 (1st Cir. 1992). The parties here focus their argument on the adequacy of representation, but I find that the intervenors fall short on both that element and on the interest requirement.

On the interest requirement, the First Circuit has stated that “[t]here is no precise and authoritative definition of the interest required to sustain a right to intervene,” Travelers Indem. v. Dingwell, 884 F.2d 629, 638 (1st Cir. 1989), and has quoted the treatise writers’ statement that “‘this is a question not worth answering.’” Mosbacher, 966 F.2d at 42 (quoting 7C Charles A. Wright, Arthur R. Miller and Mary K. Kane, et al., Federal Practice & Procedure § 1908, at 263 (1986)).

Nevertheless, I conclude that the intervenors here have only the interest that all citizens possess who support particular legislation. Yes, the intervenor here has gone to great lengths to bring this legislation into effect through the initiative process and has spent vast quantities of time and money in the process. The same can be said of many lobbyists, however, and the cases are clear that they do not thereby gain intervention status as of right. See Keith v. Daley, 764 F.2d 1265, 1269 (7th Cir.) (stating that an “interest as chief lobbyist . . . is not a direct and substantial interest sufficient to support intervention”), cert. denied, 474 U.S. 980 (1985); Resort Timeshare Resales, Inc. v. Stuart, 764 F. Supp. 1495, 1498-99 (S.D. Fla. 1991) (same). Only the Ninth Circuit has conferred on initiative proponents the mantle of virtually automatic qualification to intervene as of right, and the Supreme Court has recently vacated that decision as moot and, in the process, cast doubt on the Ninth Circuit’s reasoning. See Yniguez v. Arizona, 939 F.2d 727, 735 (9th Cir. 1991) (creating a “virtual per se rule that the sponsors of a ballot initiative have a sufficient interest in the

subject matter of the litigation to intervene”), vacated as moot, 65 U.S.L.W. 4169 (U.S. Mar. 3, 1997).<sup>1</sup>

More importantly, the Attorney General, representing the defendants who compose the Commission on Governmental Ethics and Election Practices, can adequately defend this new statute, one of the critical tests under Rule 24(a) and First Circuit precedent.<sup>2</sup> The would-be intervenor suggests that somehow because this statute came into effect through the initiative process the Attorney General is less capable of defending it, but that is no more than an *ipse dixit*. There is no suggestion here that the Attorney General plans to mount other than a full-fledged defense. Second, both the would-be intervenor and the Attorney General state that the would-be intervenor has more money to spend on the lawsuit. I am not aware, however, that rich intervenors succeed and poor intervenors fail. Certainly the Maine Citizens for Clean Elections can make available to the Attorney General any research data or other materials that may be helpful in defending the case and indeed can carry out research to support the defense.

Finally, I observe as the Resort Timeshare court did, that Rule 24 is designed “to foster economy of judicial administration.” Resort Timeshare, 764 F. Supp. at 1499 (quoting Stallworth v. Monsanto Co., 558 F.2d 257, 265 (5th Cir. 1977)). That goal is not served by generally permitting intervention on the part of those who support legislation, however strongly. At such time as it

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<sup>1</sup> In the Supreme Court, the question was Article III standing, not intervention, but the Court’s reasoning that initiative proponents are not to be treated like state legislators in defending the constitutionality of the laws still applies. See Arizonans for Official English v. Arizona, No. 95-974, slip op. at 18 (Mar. 3, 1997) (stating that ballot initiative sponsors are not “agents of the people . . . to defend . . . the constitutionality of initiatives made law of the State”).

<sup>2</sup> Contrary to the would-be intervenor, the issue of adequate representation does indeed focus on the interest to be asserted in the lawsuit, not the general so-called organizational interests. The latter are relevant only insofar as they affect the litigating interest, not the different media and political organizing stances that may be taken.

appears that the Attorney General is not vigorously defending the legislation's constitutionality, then it will be appropriate to reconsider intervention. For this reason I also deny permissive intervention.

I conclude that the more appropriate way to recognize the interests of Maine Citizens for Clean Elections is to permit the organization to participate as *amicus curiae*. See id. at 1500-01 (using *amicus curiae* in lieu of intervention). Adding an additional defendant to defend the same case that the Attorney General is already defending will only complicate the proceedings without adding any advantage.

The motion to intervene is **DENIED**, but Maine Citizens for Clean Elections may file legal memoranda as *amicus curiae*.

**SO ORDERED.**

**DATED THIS 19<sup>TH</sup> DAY OF MARCH, 1997.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**