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CASE NUMBER: 17-2-18848-4 SEA

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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

S. MICHAEL KUNATH,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

SUZIE BURKE, *et al.*,

Plaintiff,

v.

CITY OF SEATTLE, *et al.*,

Defendant.

DENA LEVINE, *et al.*,

Plaintiff,

v.

CITY OF SEATTLE,

Defendant.

No. 17-2-18848-4 SEA

ORDER GRANTING MOTION
TO INTERVENE

This matter came before the court for consideration of the Economic Opportunity Institute’s (“EOI’s”) Motion to Intervene (“**Motion**”).

1 For the reasons explained below, the court grants the Motion.

2 **1. Documents Considered**

3 The Court has considered the pleadings and other documents filed by the parties, and
4 in particular the following items, including their attachments:

<u>Pleading</u>	<u>Dkt. No.</u>
Economic Opportunity Institute’s Motion to Intervene	31
Declaration of John Burbank in Support of Economic Opportunity Institute’s Motion to Intervene	32
Declaration of Claire Tonry in Support of Economic Opportunity Institute’s Motion to Intervene	33
Plaintiff Kunath’s Response to Motion to Intervene	37
Declaration of Matthew F. Davis in Support of [Plaintiff’s] Response to Motion to Intervene	38
Burke Plaintiffs’ Opposition to Economic Opportunity Institute’s Motion to Intervene	39
City of Seattle’s Response to Economic Opportunity Institute’s Motion to Intervene	40
Levine Plaintiffs’ Joinder to Burke Plaintiffs’ Opposition to Economic Opportunity Institute’s Motion to Intervene	41
Economic Opportunity Institute’s Reply in Support of Its Motion to Intervene	42

20 Pursuant to CR 24(a) and CR 24(b), EOI has moved to intervene in these
21 consolidated cases on the side of Defendant City of Seattle (“**City**”),

22 so it can raise and litigate, among other things, a constitutional
23 challenge to RCW 36.65.030, which is relied upon by the
24 plaintiffs in the consolidated action.

24 Motion, p. 2 (Dkt. 31).

25 The Plaintiffs oppose the Motion. Citing CR 24(a), they argue that EOI has an
26 insufficient interest in the outcome of the action, the disposition of the action will not impair
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1 or impede EOI's ability to protect its interest, EOI can protect its interest by filing its own
2 separate lawsuit, and EOI's interest will be adequately protected by the City. Plaintiff
3 Kunath's Opposition, pp. 2-4 (Dkt. 37); Burke Plaintiffs' Opposition, pp. 3-9 (Dkt. 39).

4 Citing CR 24(b), the Plaintiffs argue that it would be inappropriate to permit EOI to
5 intervene because "no common question of law exists;" and that allowing EOI to intervene
6 "would effectively invite numerous other organizations to intervene as a means of advancing
7 their own case theories or political agendas" and "would unnecessarily and unduly complicate
8 and delay this matter. Burke Plaintiffs' Opposition, pp. 3-9 pp. 10-11; *see also* Plaintiff
9 Kunath's Opposition, pp. 4-9.

10 The City does not directly indicate its position as to whether it believes EOI has a right
11 to intervene under CR 24(a). The City states that it "appreciates" that EOI "wishes to add its
12 views on the issues in support of the City. The City's primary concern appears to be that
13 EOI's intervention "could involve the State also moving to intervene in these cases," and that
14 "[t]he State's potential intervention could result in delay." City's Response, at p. 2.

15 The City urges that EOI's participation should be limited to filing an amicus brief.
16 City's Response, p. 2; *see also* Plaintiff Kunath's Opposition, p.10.

17 The court will not address whether EOI has a right to intervene pursuant to CR 24(a);
18 but the court concludes, on balance, that it is appropriate to permit EOI to intervene pursuant
19 to CR 24(b), for the following reasons:

- 20 1. It is within the court's discretion to permit intervention pursuant to CR 24(b).
21 *State ex rel. Keeler v. Port of Peninsula*, 89 Wn.2d 764, 767, 575 P.2d 713
22 (1978); *Westerman v. Cary*, 125 Wn.2d 277, 304, 892 P.2d 1067 (1994).
- 23 2. EOI's claim and the main actions share at least one common question of law,
24 namely, whether RCW 36.65.030 – upon which the Plaintiffs rely in asserting
25 their claims for relief – is valid. EOI and the Plaintiffs assert opposing
26 positions with respect to the same question: the Plaintiffs' arguments assume
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1 that RCW 36.65.030 is valid, while EOI argues that the statute is
2 unconstitutional. EOI argues that the Plaintiffs' claims cannot succeed if EOI's
3 claim succeeds. "Exact parallelism between the original action and the
4 intervention action is not required." *State ex rel. Keeler v. Port of Peninsula*,
5 89 Wn.2d 764, 767, 575 P.2d 713 (1978). The questions of law in EOI's claims
6 and the Plaintiffs' claims are sufficiently parallel for purposes of CR 24(b).

- 7 3. EOI's Motion is timely filed. EOI filed the Motion on September 6, 2017,
8 fifteen days after August 21, 2017, when the City filed its Answer to Plaintiff
9 Kunath's First Amended Complaint for Declaratory Relief (Dkt. 18); eight
10 days after August 29, 2017, when the City filed its Answer to the Burke
11 Plaintiffs' Amended Complaint for Declaratory and Injunctive Relief (Dkt.
12 21); and five days before September 11, 2017, when the City filed its Answer
13 to the Levine Plaintiffs' First Amended Complaint for Declaratory and
14 Injunctive Relief (Dkt. 36).
- 15 4. Permitting EOI to intervene will help prevent piecemeal litigation regarding
16 the validity of the Seattle ordinance at issue in this case. The court disagrees
17 with the Plaintiffs' suggestion or implication that it would serve judicial
18 economy to have multiple separate lawsuits involving the validity of the
19 ordinance pending at the same time.
- 20 5. Permitting EOI to intervene will not cause delay. EOI has committed to adhere
21 to the current briefing schedule.
- 22 6. Given the current procedural posture of the case (including the facts that (a) no
23 discovery will be conducted, (b) the City filed its most recent Answer only a
24 few days ago, on September 11, 2017 (Dkt. 36), (c) the briefing schedule calls
25 for the City to file its opening brief on September 29, 2017, with the Plaintiffs'
26 oppositions and cross motions to be served by October 23, 2017) it seems to
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1 the court that it is difficult for the Plaintiffs to argue that the briefing schedule
2 will have to be amended if EOI is allowed to intervene.

3 7. Viewing the matter from a different perspective, CR 15(a) allows a party to
4 amend its pleading within 20 days after the answer has been served, and allows
5 the responding party to serve its responsive pleading within 10 days. Thus, as
6 of September 6, 2017, the date on which EOI filed its motion, City had the
7 right, if it had so chosen (and still has the right as of this date, if it so chooses)
8 to amend at least one of its Answers to assert the constitutional issue that EOI
9 wishes to assert. That being the case, the court is unaware of any prejudice to
10 the Plaintiffs if EOI is permitted to intervene and assert the constitutional issue.

11 8. The court disagrees with the Plaintiffs' argument that allowing EOI to
12 intervene "would effectively invite numerous other organizations to
13 intervene." The court will not speculate whether or on what grounds any other
14 persons might seek to intervene.

15 Based on the current record, and for the reasons stated above, the court concludes that
16 it is appropriate to permit EOI to intervene pursuant to CR 24(b). The court therefore orders
17 as follows:

- 18 1. The court grants Economic Opportunity Institute's Motion to Intervene
19 (Dkt. 31).
- 20 2. Economic Opportunity Institute may file and serve forthwith a Complaint in
21 Intervention in the form attached to its Motion.

22 Date: September 20, 2017.

23
24 s/John R. Ruhl
25 John R. Ruhl, Judge
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 17-2-18848-4
Case Title: KUNATH ET AL VS CITY OF SEATTLE
Document Title: ORDER GRANTING MOTION TO INTERVENE
Signed by: John Ruhl
Date: 9/20/2017 9:18:09 AM

A rectangular box containing a handwritten signature in black ink that reads "John R Ruhl".

Judge/Commissioner: John Ruhl

This document is signed in accordance with the provisions in GR 30.

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