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The Honorable David A. Nichols

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

JESSICA BRAAM, etc., et al,

Plaintiffs,

vs.

STATE OF WASHINGTON, etc., et al.,

Defendants.

NO. 98-2-01570-1

PLAINTIFF-INTERVENOR CHILDREN'S  
ALLIANCE REPLY IN SUPPORT OF  
MOTION TO INTERVENE

THE CHILDREN'S ALLIANCE,

Plaintiff-Intervenor,

vs.

STATE OF WASHINGTON, etc., et al.,

Defendants.

Defendants raise three arguments in opposition to the motion to intervene. First, they

1 complain that by substituting the current Secretary of DSHS, Dennis Braddock, for the former  
2 Secretary, Lyle Quasim, The Children's Alliance has somehow interjected "new" issues and  
3 defendants into this case. Second, they quibble over whether The Children's Alliance, an  
4 organization that concededly consists of members who provide foster care or who are otherwise  
5 responsible for the welfare of children in the state, has an "interest" in the outcome of this case.  
6 Finally, they argue the intervention is untimely and will prejudice them, without ever  
7 explaining why. Ranging from the flat-out ridiculous to the merely wrong, defendants'  
8 arguments do not merit denial of the motion.

9 **I. THE SUBSTITUTION OF DEFENDANT BRADDOCK FOR DEFENDANT**  
10 **QUASIM MAKES NO CONCEIVABLE DIFFERENCE TO THIS LITIGATION**

11 Plaintiffs filed a complaint identifying Lyle Quasim as a defendant by virtue of his role  
12 as the Secretary of Defendant DSHS. The naming of Mr. Quasim was appropriate, as he was  
13 the Secretary of DSHS at the time plaintiffs first filed their complaint.

14 Now, however, Mr. Quasim is no longer the Secretary. Mr. Braddock is.  
15 Consequently, The Children's Alliance named Mr. Braddock instead of Mr. Quasim.

16 Amazingly, defendants object to this seemingly inevitable bow to reality. Was The  
17 Children's Alliance supposed to sue Mr. Quasim now that he is no longer the Secretary of  
18 DSHS? '

19 Clearly not! The claims of The Children's Alliance against Mr. Braddock are no  
20 different from the plaintiffs' claims against Mr. Quasim. All The Children's Alliance has done  
21 is update the complaint to correctly identify the current Secretary of DSHS. The Children's  
22 Alliance has added nothing new, nothing exotic.

23 No doubt plaintiffs will shortly amend their complaint to substitute Mr. Braddock for

24 ' Defendants may be reading the proposed complaint in intervention to seek damages personally from  
25 Mr. Braddock. The Children's Alliance does not seek such damages, and if these needs to be clarified  
26 by stipulation or amendment, The Children's Alliance will do so.

27 <sup>2</sup> One wonders what the defendants' reaction would have been had The Children Alliance done  
28 so. One suspects they would have raised a whirlwind of objections to a suit against a private  
29 citizen for acts he committed while holding office.

1 Mr. Quasim under CR 25 as well. There is also no doubt that a substitution of Mr. Braddock  
2 for Mr. Quasim is proper. In the federal system, when a public officer leaves office, the  
3 successor is automatically substituted. *See Mumford v. Basinski*, 105 F.3d 264,273 (6<sup>th</sup> Cir.  
4 1997); Fed. R. Civ. P. 24(d). Although Washington's version of Rule 24 does not provide for  
5 automatic substitution, suggesting that a formal motion is more appropriate, there is no rule or  
6 case that prohibits substitution. Certainly defendants have cited none.

7 Defendants' position apparently is that The Children's Alliance should name Mr.  
8 Quasim in their initial complaint, and then move to substitute parties later. Defendants cite no  
9 law for the proposition that this excessively formal course of action is required. Still, The  
10 Children's Alliance is certainly willing to do this two-step if the Court would prefer such a course  
11 of action.

12 **II. THE CHILDREN'S ALLIANCE NEED NOT HAVE STANDING, BUT A**  
13 **SIMPLE "INTEREST" TO INTERVENE**

14 Defendants next object to intervention because, they claim, The Children's Alliance has  
15 no "interest" in the outcome of this action. More specifically; they complain that The  
16 Children's Alliance lacks "standing" to sue them, and therefore cannot intervene.

17 Defendants cite only one case, *I'Guez v. Arizona*, 939 F.2d 727 (9<sup>th</sup> Cir. 1991), in  
18 support of their claim that The Children's Alliance must have "standing" to sue in order to  
19 intervene. Yet *Yniguez* stands for *exactly the opposite proposition!!!* In other words, *Yniguez*  
20 clearly holds that under most circumstances, an intervenor need only have an "interest" in the  
21 litigation, as opposed to "standing" to sue.

22 In *Yniguez*, the Ninth Circuit first referred to its earlier holding that Rule 24 imposes  
23 only four prerequisites to intervention, one of which is an "interest" in the litigation. *Id.* at 731.  
24 The Ninth Circuit went on to caution that where the original party drops out of the case (in the  
25 case before it the original party declined to appeal a judgment), the intervenor cannot continue  
26 to pursue its claims if it only has an "interest" in the litigation. Rather, in that situation, the

1 intervenor must also have standing under Article III of the United States Constitution. *Id.*  
2 Thus, under the reasoning of *Yniguez*, if plaintiffs settle this case, The Children's Alliance  
3 cannot proceed with its case unless it has standing.

4 This is not merely the undersigned's reading of *Yniguez*. It is the interpretation of the  
5 authors of a respected treatise on federal civil procedure authored by three individuals, one of  
6 whom is a Ninth Circuit Judge and the other of whom is a United States District Judge. In that  
7 treatise, the authors cite *Yniguez* for the proposition that: "Several circuits hold that an  
8 intervenor as of right need not have Article III standing in order to intervene, so long as a  
9 justiciable case or controversy exists between the parties already in the lawsuit." See WILLIAM  
10 W. SCHWARZER, ET AL., FEDERAL CIVIL PROCEDURE BEFORE TRIAL at 7-47 (2001 ed.). So  
11 much for *Yniguez*.

12 Defendants contend, in footnote one to their opposition, that "Washington courts follow  
13 federal court precedent" regarding Rule 24, and point to *Yniguez* as the "federal court  
14 precedent" this Court should follow. So be it. To follow *Yniguez*, however, is to reject  
15 defendants' "standing" argument. Defendants, in other words, are hoisted with their own  
16 petard.

17 This Court need not rely on defendants' strange appeal to a federal case that rejects the  
18 very argument they make. No Washington cases impose the "standing" requirement to which  
19 defendants refer.

20 To the contrary, Washington cases merely require (as does the Ninth Circuit) that the  
21 intervenor have an "interest" in the litigation, and they give the definition of "interest"  
22 exceedingly broad meaning. In *American Discount Corporation v. Saratoga West, Inc.*, 81  
23 Wn. 2d 34 (1972), for example, our Supreme Court rejected the argument that a party must  
24 have an economic interest in the litigation in order to have an "interest" that justifies  
25 intervention. In so holding, the Court quoted with approval the following passage from *Smuck*  
26 *v. Hobson*, 408 F.2d 175, 178-80 (D.C. Cir. 1969) which concerned the 1966 amendments to

1 Federal Rule 24 that are identical to Washington’s CR 24:

2 The effort to extract substance from the conclusory phrase  
3 “interest” or “legally protectable interest” is of limited promise  
4 . . . [I]n the context of intervention the question is not whether a  
5 lawsuit should be begun, but whether already initiated litigation  
6 should be extended to include additional parties. The 1966  
7 amendments to Rule 24(a) have facilitated this, the true inquiry,  
8 by eliminating the temptation or need for tangential expeditions  
9 in search of “property” or someone “bound by a judgment.” It  
10 *would be unfortunate to allow the inquiry to be led once again  
11 astray by a myopic fixation upon ‘interest.’ Rather, as Judge  
12 Leventhal recently concluded for this Court, “[A] more  
13 instructive approach is to let our construction be guided by the  
14 policies behind the ‘interest’ requirement. \* \* \* (T]he interest  
15 test is primarily a practical guide to disposing of lawsuits by  
16 involving as many apparently concerned persons as is  
17 compatible with efficiency and due process. ”*

18 *Id.* at 40-41 (boldface added; other edits in original). The *Sarutogu West* court went on to hold  
19 that the “interest” requirement “should viewed as a prerequisite rather than relied upon as a  
20 determinative criterion for intervention” and held that “[if] barriers are needed to limit  
21 extension of the right to intervene,” they should be found elsewhere. *Id.* at 41.

22 Defendants make no claim that The Children’s Alliance lacks an interest in the outcome  
23 of this litigation. They cannot refrain, however, from nit-picks about the fact that the  
24 Children’s Alliance merely consists of “organizations such as the League of Women Voters of  
25 Washington and the Fremont Public Association.” (Opp. at 1.) The implication, of course, is  
26 that these organizations have no conceivable concerns about foster care in the State of  
Washington.

Even if this were true, and The Children’s Alliance does not concede the truth of this  
unspoken innuendo, what of the other dozens of organizations who belong to The Children’s  
Alliance, organizations identified in the moving papers? Defendants make no mention of them.

Well, let The Children’s Alliance introduce just a few of its members, through the  
information on their respective web pages.<sup>3</sup> One member is the Casey Family Program. The

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<sup>3</sup> Copies of the web pages, with web addresses on them should the Court wish to view them, are attached as an Appendix to this Reply.

1 Casey Family Program “provides an array of services for children and youth, with foster care as  
2 its core.”

3 Or the Children’s Home Society? They describe their mission as follows: “Through  
4 adoption support, family support, parent education, early childhood development, advocacy,  
5 counseling, residential and foster care, Children’s Home Society of Washington has served  
6 Washington state’s children and families for more than 100 years.”

7 How about Deaconess Children’s Services? They “began as the Snohomish County  
8 Orphanage Association.”

9 Then there’s the Foster Parents Association of Washington State. Their mission is “to  
10 empower, to support and to advocate for foster families in order to enrich the quality of life for  
11 Washington State’s children in foster care.”

12 Oh, let’s not forget Lutheran Social Services of Washington & Idaho. Among the  
13 services they provide is foster care, “emphasizing a child’s need for permanency.” Why this  
14 emphasis? According to the website, it’s to “prevent the harmful effects on children and their  
15 families of prolonged foster care and multiple moves.”

16 Medina Children’s Services is another member. It operates a foster-adoption program  
17 that “recruits and prepares families to adopt children who are currently living in foster care.”

18 Meanwhile, the Metropolitan Development Council of Tacoma offers a number of  
19 services. These include “foster family support” and a “foster parent retention project.” Other  
20 services include “foster family assessment” and “foster family assistance for children  
21 demonstrating inappropriate sexual behavior.”

22 Pioneer Human Services provides “mental health services, including adolescent and  
23 family counseling.” Integrated Family Preservation Services of Catholic Community Services  
24 “specialize[s] in providing intensive in-home services for families with children or youth that  
25 are at risk of out-of-home placement.” Ryther Child Center provides “intensive therapeutic  
26 residential treatment” for “children ages 6- 12 who have been physically and sexually abused

1 and/or are undergoing major life crises and transitions.” Treehouse pays for special classes in  
2 music and art, membership fees for athletic teams, scouts and other group activities, and it  
3 helps foster families send foster children on field trips and to graduation ceremonies. United  
4 Way of Pierce County provided nearly three quarter of a million dollars last year to fund  
5 “child/family support, child care, and foster/residential care services.” Volunteers of America  
6 offers programs to support “foster care and adoption.”

7 These are by no means the only members of The Children’s Alliance who are involved  
8 in foster care. Nor are these the only members with concerns that relate to foster care. The  
9 Children’s Alliance includes members who deal with homeless children, children with  
10 chemical dependencies, and children with mental health conditions. It includes members who  
11 provide a variety of family support counseling and services, It includes organizations whose  
12 primary concern is addressing and preventing child abuse. And it includes organizations  
13 responsible for acting as advocates and guardians in the court system. (Copies of webpages  
14 from some of these organizations are also enclosed in the appendix to this brief.)

15 There really can be no question that The Children’s Alliance and its members have an  
16 interest in the outcome of this case. Defendants don’t seriously contend otherwise. Because  
17 they have such an interest, and because formal standing to sue isn’t required, defendants’  
18 arguments about the lack of standing of The Children’s Alliance are meritless.

19 **HI. THIS MOTION IS TIMELY AND WILL NOT PREJUDICE DEFENDANTS**

20 Defendants’ third objection to intervention is that it is untimely and will somehow  
21 prejudice them. The only basis for the former claim is the fact that the case has been pending  
22 for over two years. The only basis for the latter claim is that more discovery will be required  
23 and the trial might be longer.

24 **A. The Motion is Timely.**

25 Defendants’ complain that this case has been pending for over two years. That claim,  
26 without more, is meaningless. The mere fact that time has elapsed isn’t relevant. It’s what’s

1 happened in that time. Implicitly acknowledging this, defendants cite *Kreidler v. Eikenberry*,  
2 111 Wn. 2d 828 (1989), for the proposition that if a party seeks to intervene “before a ruling on  
3 the merits,” denial of intervention is proper. (Opp. at 3.)

4 Not quite. Defendants have carefully edited the language of *Kreidler* to make it say  
5 what it patently doesn’t say. *Kreidler*, in fact, merely holds that where a person seeks to  
6 intervene “after judgment,” the presumption against intervention kicks in. *Kreidler*, 111 Wn.  
7 2d at 832.

8 No judgment has been entered here. That’s clearly why defendants substitute the phrase  
9 “ruling on the merits” for the word “judgment” that the *Kreidler* court used. Defendants hope  
10 to substitute their partial and limited victory - on a procedural claim The Children’s Alliance  
11 hasn’t even brought - for a “judgment” that mandates denial of intervention.

12 Yet if anything, *Kreidler* supports The Children’s Alliance. Here, no judgment has  
13 been entered. If defendants are to be believed, judgment is at least seven months away.

14 This, in and of itself, supports the timeliness of this motion, for our Supreme Court has  
15 noted that motions to intervene before trial are timely. See *Saratoga West*, 81 Wn. 2d at 43.  
16 Defendants also ignore that a hearing on this motion follows closely on the heels of this Court’s  
17 certification of the plaintiff class, which was the catalyst for the intervention request of The  
18 Children’s Alliance. In its opening brief, The Children’s Alliance cited *Edwards v. Civ of*  
19 *Houston*, 78 F.3d 983 (5th Cir. 1996), for the proposition that such a course of action is  
20 appropriate and does not bar intervention. Defendants carefully ignore *Edwards*.

21 This motion is plainly timely. Defendants are left to argue prejudice.

22 **B. Defendants Have Shown No Prejudice.**

23 Defendants claim intervention will prejudice them. They say The Children’s Alliance  
24 has somehow expanded the issues to be litigated, which will require additional discovery and  
25 trial time.

2E This argument, however, doesn’t give rise to a claim of prejudice. As set forth in the

1 cases cited in the opening brief of The Children’s Alliance. defendants must show prejudice  
2 from the &lay in intervening, not the intervention itself. (Mot. at 9-10.) Additional discovery  
3 or trial time presumably would be just as necessary as it would have had The Children’s  
4 Alliance intervened a year ago,

5 In any event, defendants’ claim that The Children’s Alliance has broadened the issues  
6 simply isn’t true. So far as The Children’s Alliance can tell, the Complaint in Intervention  
7 raises precisely the same claims that are already at issue in this case. Defendants’ claim to the  
8 contrary appears to be based upon the-specific allegations regarding to the lack of adequate  
9 mental health care for foster children that appear in the Complaint in Intervention. As best as  
10 the undersigned can tell, however, these allegations merely set forth more specifically what  
11 plaintiffs have contended all along, which is that the failure to provide adequate mental health  
12 assessments and care contributes toward the problem of multiple placements. Defendants can’t  
13 seriously claim they are surprised to learn of this allegation.

14 Given that The Children’s Alliance hasn’t raised new issues, defendants’ claim that they  
15 will need to conduct more discovery rings hollow. Indeed, defendants never identify a single  
16 subject on which they need additional discovery.<sup>4</sup>

17 Defendants’ last gasp is perhaps their strangest gambit. In one paragraph, they argue  
18 that the interests of The Children’s Alliance are “fully and adequately represented by the  
19 existing parties” because The Children’s Alliance has no interests divergent from those of  
20 foster children. (Opp. at 4.) In the *immediately following paragraph*, defendants do an about-  
21 face and contend the interests of the members of The Children’s Alliance “conflict with the  
22 foster children’s,” (Opp. at 5.)

23  
24 <sup>4</sup> Well, that’s not quite true. Defendants *do* insist they’re entitled to discovery and, one  
25 supposes, an evidentiary hearing on when members of The Children’s Alliance learned of this  
26 action. Similarly, defendants asked for this Court to postpone class certification while they  
tried the issues relating to certification. Defendants, it seems, want to try everything *except* the  
merits of this case.

1 Perhaps these two contradictory claims simply cancel each other out, like opposing  
2 algebraic variables. Perhaps not. Either way, defendants fail to explain why either claim is  
3 relevant to their prejudice argument.

4 **IV. CONCLUSION**

5 The Children's Alliance properly named Secretary Braddock instead of Mr. Quasim as  
6 the Secretary of DSHS. Defendants' complaints in this regard are meritless.

7 The Children's Alliance need not have formal "standing" to sue defendants in order to  
8 intervene, but simply an "interest" in the outcome of this litigation. Defendants don't contend  
9 The Children's Alliance lacks such an interest, as it plainly does. Denial of intervention on the  
10 grounds The Children's Alliance lacks standing is therefore improper.

11 Finally, defendants identify no basis for concluding intervention is untimely or that  
12 delay in intervening will somehow prejudice them. Denying intervention on the grounds that it  
13 is untimely or prejudicial would, therefore, be inappropriate.

14 For all of these reasons, this Court should grant the motion to intervene. The Children's  
15 Alliance has a clear and undeniable stake in the outcome of this case. Moreover, The  
16 Children's Alliance brings with it the expertise and knowledge of its members to bear on the  
17 issues before this Court, and can be of assistance to this Court as it evaluates whether  
18 defendants meet the legal obligations they owe to foster children in their custody.

19 DATED this 28th day of June, 2001

20 Respectfully submitted,

21 GARVEY, SCHUBERT & BARER

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24 Donald B. Scaramastra, WSBA #2 14 16  
25 Of Attorneys for Plaintiff-Intervenor The  
26 Children's Alliance

1 The undersigned declares as follows:

2 I am employed at Garvey, Schubert & Barer, attorneys for plaintiff-intervenor Children's  
3 Alliance.

4 On June 28,2001, I caused a true and correct copy of:

- 5 1. Plaintiff-Intervenor Children's Alliance Reply in Support of Motion to
- 6 Intervene; and
- 7 2. Certificate of Service

8 to be served on the following counsel in the manner shown:

9 Timothy C. Farris  
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21 I declare under penalty of perjury under the laws of the State of Washington that the foregoing  
22 is true and correct.

23 DATED this 28th day of June, 200 1

24   
 25 Donald B. Scaramastra

26