IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

WASHINGTON COUNTY,	Case No. 22CV07782
Plaintiff,	OREGON SECRETARY OF STATE'S MOTION TO INTERVENE
v.	ORAL ARGUMENT REQUESTED
TIM SIPPEL,	
Defendant.	**ORS 20.140 - State fees deferred at filing**

UTCR MATTERS

The Oregon Secretary of State requests oral argument on this motion and estimates that

15 minutes will be required. Official court reporting services are requested.

Conferral is not required for this motion to intervene under ORCP 22. *See* UTCR 5.010.

MOTION TO INTERVENE

The Oregon Secretary of State moves for an order allowing it to intervene in this case to

offer evidence and argument in support of a judgment declaring that the Washington County

District Attorney's February 15, 2022 order to the Washington County Elections Office is

erroneous and invalid. This motion is supported by the following Points and Authorities.

POINTS AND AUTHORITIES

"At any time before trial, any person who has an interest in the matter in litigation may,

by leave of court, intervene." ORCP 33 C. "The Secretary of State is the chief elections officer of

this state, and it is the secretary's responsibility to obtain and maintain uniformity in the

application, operation and interpretation of the election laws." ORS 246.110. The Secretary's

specific duties include the certification of vote tally systems. ORS 246.550, 246.560. The

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1 Secretary is also required to review and approve each county's election security plan, which

2 must address among other things its "[s]ecurity procedures for vote tally systems, including

3 computer access to vote tally systems." ORS 254.074. The Secretary has an interest in the

4 uniform application and interpretation of Oregon law to fulfill these statutory duties to preserve

5 the integrity of elections.

6 These "interests would be immediately and directly affected by the operation of a

7 judgment" requiring adherence to the District Attorney's order. *See Taylor v. Portland Adventist*

8 *Med. Ctr.*, 242 Or App 92, 106 (2011). Washington County is one of fifteen counties in Oregon

9 that use Clear Ballot to administer elections. *See* Secretary's Proposed Complaint in Intervention

10 ¶ 8. Requiring the production of the Clear Ballot database would directly jeopardize the security

11 of elections in each of these counties.

12 "In exercising its discretion, the court shall consider whether the intervention will unduly

13 delay or prejudice the adjudication of the rights of the original parties." ORCP 33 C. The Court

14 also considers "the prejudice that denial of intervention would cause to the [intervenor's]

15 interests." *Taylor*, 242 Or App at 107 (citing *Samuels v. Hubbard*, 71 Or App 481, 489 (1984)).

16 The Secretary's participation would not unduly delay this case. Mr. Sippel has not yet

17 responded to the complaint. Nor does the Secretary intend to inject new claims or defenses into

18 the action. Rather, she seeks to present evidence and argument to aid the Court's adjudication of

19 the exemptions from disclosure Washington County has asserted. In particular, her expertise in

20 election administration will assist the Court by presenting evidence about "the software or the

21 electronic ballot database at issue" that the District Attorney's office acknowledged it did "not

22 possess the technical expertise to independently analyze…." Complaint, Exh. A, at 7. As the

23 District Attorney's order noted, this Court should enjoy the "benefit of a fully developed

24 evidentiary record" in adjudicating these issues. *See id.* The Secretary wishes to assist the Court

25 by developing that record.

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1   Denial of intervention would prejudice the Secretary's interest in the security and

2   administration of elections, particularly in the 14 other counties in Oregon that use Clear Ballot

3   computer programs to conduct elections. If the Clear Ballot "SQL database and all data files that

4   it references" are ordered to be disclosed (*see* Complaint, Exh. A, at 7), they will become

5   publicly available, and the Secretary's interest in maintaining the security of elections

6   administered with those systems will be impaired.

7   Therefore, the Secretary requests that the Court grant this motion to allow her to

8   intervene under ORCP 23 C to present evidence and argument in support of the applicability of

9   the claimed exemptions and to seek a judgment that the District Attorney's order is erroneous

10   and invalid.

11   DATED March __21__, 2022.

12   Respectfully submitted,

13   ELLEN F. ROSENBLUM
Attorney General

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                           s/ Brian Simmonds Marshall

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17   Trial Attorney
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19   Of Attorneys for Intervenor
Oregon Secretary of State

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4   IN THE CIRCUIT COURT OF THE STATE OF OREGON

5   FOR THE COUNTY OF WASHINGTON

6   WASHINGTON COUNTY, | Case No. 22CV07782

7   Plaintiff, | OREGON SECRETARY OF STATE'S
                                            | COMPLAINT IN INTERVENTION
8   v.

9   TIM SIPPEL,

10   Defendant. | **ORS 20.140 - State fees deferred at filing**

11

12   Proposed intervenor, the Secretary of State of the State of Oregon, by and through her

13   undersigned attorney, pleads as follows:

14   1.

15   On October 29, 2021, Defendant Timothy Sippel made a public records request to the

16   Washington County Elections Office for:

17   [a]n electronic copy of the ballot database from a public test of the

18   voting system. [The request] include[s] not only ballot image files,

19   but also the MySQL database and all data files that it references.

20   [T]his request is for the database from a public test of the voting

21   system, rather than of actual election results.

22   The Washington County Elections Office denied the request on November 12, and Mr. Sippel

23   appealed to the Washington County District Attorney on November 16.

24   2.

25   By letter dated February 15, 2022, the Washington County District Attorney's Office

26   issued an order requiring the Washington County Elections Office to "[p]roduce an electronic

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Attachment 1 to Oregon Secretary
of State's Motion to Intervene

1   copy of the ballot database from a public test of the voting system. The production shall include

2   not only ballot image files, but also the SQL database and all data files that it references."

3   3.

4   On March 4, 2022, Washington County filed this case to seek a declaratory judgment that

5   the District Attorney's order was erroneous and invalid.

6   4.

7   The District Attorney's order is erroneous because it requires production of information

8   that is exempt from disclosure because it "would reveal or otherwise identify security measures,

9   or weaknesses or potential weaknesses in security measures, taken or recommended to be taken

10 to protect … [i]nformation processing … systems, including the information contained in the

11 systems…." ORS 192.345(23). Public availability of the SQL database and the data files that it

12 references would compromise the security of the system and the data it contains by providing

13 additional information to aid malicious actors in the breaching those computer systems.

14   5.

15   The order is also erroneous because requires production of "[c]omputer programs

16 developed or purchased by or for any public body for its own use," which are exempt from

17 disclosure under ORS 192.345(15). Production of the SQL database would include software

18 created by Clear Ballot and licensed by Washington County for its own use in administering

19 elections.

20   6.

21   The order is also erroneous because it requires production of information exempt from

22 disclosure as a trade secret under ORS 192.345(2). Production of the SQL database would

23 require Washington County to make public software that is uniquely provided by Clear Ballot,

24 not publicly available, and from which Clear Ballot derives commercial value and business

25 advantage.

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Attachment 1 to Oregon Secretary
                                                          of State's Motion to Intervene

7.

1 "The Secretary of State is the chief elections officer of this state, and it is the secretary's

2 responsibility to obtain and maintain uniformity in the application, operation and interpretation

3 of the election laws." ORS 246.110. The Secretary's duties include the certification of vote tally

4 systems. ORS 246.550, 246.560. The Secretary is also required to review each county's election

5 security plan, which must address among other things its "[s]ecurity procedures for vote tally

6 systems, including computer access to vote tally systems." ORS 254.074.

8.

7 Washington County is one of 15 counties in Oregon that use Clear Ballot computer

8 programs in the administration of elections.

9.

9 The Secretary of State has a protectable interest in the outcome of this litigation.

10 Washington County's production of information as required by the District Attorney's order

11 would undermine the election security of all 15 counties that use Clear Ballot programs to

12 administer their elections. It would also undermine election vendors' reliance on Oregon law,

13 including the exemptions available under public records laws, to protect their property rights

14 when selling and licensing their computer programs to Oregon counties, and thereby impair the

15 Secretary's interest in the administration of elections.

Attachment 1 to Oregon Secretary
of State's Motion to Intervene

1   10.

2   The Oregon Secretary of State requests a judgment in her favor, including a declaration

3   that the District Attorney's February 15, 2022 order is erroneous and invalid and that the

4   information ordered to be released is exempt from disclosure under ORS 192.345, and such other

5   relief as may be just and proper.

6

7   DATED March 21 , 2022.

8   Respectfully submitted,

9   ELLEN F. ROSENBLUM
                                                       Attorney General
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11

12   s/ Brian Simmonds Marshall
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15   Of Attorneys for Intervenor

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Attachment 1 to Oregon Secretary
of State's Motion to Intervene

CERTIFICATE OF SERVICE

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2   I certify that on March 21 , 2022, I served the foregoing OREGON SECRETARY OF

3   STATE'S MOTION TO INTERVENE AND COMPLAINT IN INTERVENTION upon the

4   parties hereto by the method indicated below, and addressed to the following:

5   Jason Bush   ___ HAND DELIVERY
       Washington County Counsel   X MAIL DELIVERY
6   155 N First Ave Ste 340   ___ OVERNIGHT MAIL
7   Hillsboro, OR 97124   X SERVED BY E-FILING
            Of Attorneys for Plaintiff   X SERVED BY EMAIL:
8   jason_bush@co.washington.or.us

9   Tim Sippel   ___ HAND DELIVERY
       14193 NW Lakeview Drive   X MAIL DELIVERY
10   Portland, OR 97229   ___ OVERNIGHT MAIL
11   ___ SERVED BY E-FILING
                                                     X SERVED BY EMAIL:
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