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7 **IN THE SUPERIOR COURT OF THURSTAN COUNTY, STATE**
8 **OF WASHINGTON**

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10 **KAREN L. UNGER**
11 Plaintiff

12 v

13 **KIM WYMAN,**
14 **JOHN SCANNEL**
15 Defendants

) Civil Case No. 18-2-02629-34

) **William Scheidler's**

) **CR 24 MOTION To**
) **INTERVENE; MOTION To**
) **DISMISS; DISQUALIFY, and**
) **AFFIRMATION of**
) **INTERVENOR**

16 Noted for June 1, 2018

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18 **I. IDENTITY OF INTERVENOR AND INTERVENOR'S AFFIRMATION**
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20 I, William Scheidler, do hereby affirm, under penalty of perjury,
21 the following is true. I am a resident, a taxpayer, and a voter of
22 Washington State, and moves to intervene in this action. I propose
23 that as an *intervenor* neither party will be prejudiced by this
24 intervention because the case is still young. Defendant, John
25 Scannell, has not yet appeared, no hearings have been conducted.
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1 Proposed Intervenor also submits that he is a true party in
2 interest with respect to the issues raised herein.

3 Pursuant to CR 24(a)(1) and 24(a)(2), proposed Intervenor
4 moves this Court for leave to intervene in this action as of right and
5 in sympathy with defendant, John Scannell. The grounds for this
6 Motion are set forth in the Memorandum below.
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9 **II. MEMORANDUM**

10 **A. Facts Supporting Proposed Intervenor's Motions.**

11 John Scannell has twice before appeared upon the ballot for
12 Washington State Supreme Court justice. In 2014, Mr. Scannell ran
13 against incumbent justice, Debra Stephens, and garnered 351k votes,
14 or 22%, in the general election. In 2016, Mr. Scannell ran against
15 incumbent justice, Barbara Madsen, and garnered 76k votes, or 6%,
16 in the primary election.
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20 Both Debra Stephens and Barbara Madsen, as sitting Supreme
21 Court justices, are bound by Article 4, SECTION 28 -- OATH OF
22 JUDGES, which states,
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24 *“Every judge of the supreme court, and every judge of a*
25 *superior court shall, before entering upon the duties of his*
26 *office, take and subscribe an oath that he will support the*
27 *Constitution of the United States and the Constitution of the*
28 *State of Washington, and will faithfully and impartially*

1 *discharge the duties of judge to the best of his ability, which*
2 *oath shall be filed in the office of the secretary of state.”*

3 Neither Justice Stephens nor Justice Madsen petitioned for the
4 removal of John Scannell from the ballot in these two previous
5 elections. This is a significant fact because it is their solemn duty, by
6 their constitutional oath, to uphold Article 4, section 17¹ and not aid
7 in its violation. Now in 2018, plaintiff, Karen Unger, is taking a
8 position that is directly opposite to the positions of Justice Stephens
9 and Madsen by claiming Scannell’s candidacy is precluded by
10 Washington Constitution!
11

12 Additionally, Justice Stephens, Madsen, and Unger are
13 associates of an agency of the state, the Washington State Bar. As Bar
14 associates they share the same constitutional and statutory obligations
15 under RCW 2.48 – the Bar Act. The law mandates Bar Associates
16 report Bar Associates who violate the rules of professional conduct
17 or violate the code of judicial conduct. This is codified as RCW
18 2.48.230 which calls into statute, Rule 8.3 of the American Bar
19 Association, which mandates (in part),
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26 ¹ Article 4, section 17, states, “No person shall be eligible to the office
27 of judge of the supreme court, or judge of a superior court, unless he
28 shall have been admitted to practice in the courts of record of this
state, or of the Territory of Washington.”

1 (a) A lawyer who knows that another lawyer has committed a
2 violation of the Rules of Professional Conduct that raises a
3 substantial question as to that lawyer's honesty, trustworthiness
4 or fitness as a lawyer in other respects, shall inform the
5 appropriate professional authority.

6 (b) A lawyer who knows that a judge has committed a violation
7 of applicable rules of judicial conduct that raises a substantial
8 question as to the judge's fitness for office shall inform the
9 appropriate authority.

10 **B. Authority Relied Upon**

11 In addition to Article 4, sections 17 and 28, and the Bar Act,
12 RCW 2.48, cited above, this matter concerns Article 1, section 4,
13 **RIGHT OF PETITION AND ASSEMBLAGE.**

14 “The right of petition and of the people peaceably to
15 assemble for the common good shall never be abridged.”

16 Additionally, Article 1, section 19, **FREEDOM OF
17 ELECTIONS.**

18 “All Elections shall be free and equal, and no power, civil
19 or military, shall at any time interfere to prevent the free
20 exercise of the right of suffrage.”

21 RCW 2.28.030, Judicial officer defined—When disqualified.

22 “A judicial officer is a person authorized to act as a judge
23 in a court of justice. Such officer shall not act as such in
24 a court of which he or she is a member in any of the
25 following cases:

26 (1) In an action, suit, or proceeding to which he or she is
27 a party, or in which he or she is directly interested.

28 (2) When he or she was not present and sitting as a member
of the court at the hearing of a matter submitted for its
decision.

1 b. Justice Stephens and Justice Madsen have a conflict
2 of interest that would preempt them from raising
3 this issue because Article 4, section 28 mandates
4 they exercise their duty “*faithfully and*
5 *impartially*”.

6
7 Any other explanation implicates Justice Stephens and Justice
8 Madsen in the constitutional violation of Article 4, section 28. And
9 they, as now alleged by Ms. Unger, would be assisting in perpetrating
10 a fraud upon society by not upholding Article 4, section 17, when they
11 failed to petition to remove Mr. Scannell from the ballots of 2014 and
12 2016. Ms. Unger needs to explain the conduct of Justices Stephens
13 and Madsen that collides with her claims that would implicate them
14 in constitutional violations.

15
16 THEREFORE, the present petition should be dismissed as moot
17 (res judicata), or in the alternative, charges must be filed against
18 Justice Stephens and Justice Madsen under RCW 9A.80.010 – Official
19 misconduct and 42.20.080 – Breach of duty, in ‘turning a blind eye’
20 to Mr. Scannell’s unconstitutional place on the 2014 and 2016 ballots.

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22 **2. Supporting Motion to Disqualify.**

23 Washington’s Constitution Article 4, SECTION 17, states,
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1 *“No person shall be eligible to the office of judge of the*
2 *supreme court, or judge of a superior court, unless he*
3 *shall have been admitted to practice in the courts of record*
 of this state, or of the Territory of Washington.”

4 When the Washington State Bar Act was passed in 1933², (RCW
5 2.48) it requires *“all persons who are admitted to practice in*
6

7
8 ² The Bar Act may be unconstitutional for a host of reasons. Let’s
9 start with, Article 12, SECTION 1 CORPORATIONS, HOW
10 FORMED. It states, “Corporations (also “associations”) may be
11 formed under general laws, **but shall not** be created by special acts”.
12 Clearly the Bar Act is a special act creating a special association –
13 the WSBA.

14 Next is the WSBA’s “monopoly” powers and privileges. To practice
15 law, you must be a WSBA associate. To be a judge, you must be a
16 WSBA associate ... the Washington State Bar not only controls an
17 entire branch of government, but every lawyer who practices law
18 either in private practice or in the public sector – such as prosecutors,
19 attorney general, and on boards, commissions and committees. Such
20 a monopoly of power seems to violate Article 12 SECTION 22
21 MONOPOLIES AND TRUSTS which states perfectly clear,
22 “Monopolies and trusts **shall never be allowed in this state**, and no
23 incorporated company, copartnership, **or association of persons** in
24 this state shall directly or indirectly combine or make any contract
25 with any other incorporated company,...

26 Then there are the “privileges” enjoyed by associates of an
27 unconstitutional association who have unconstitutional monopoly
28 powers that no other association, corporation, or person can ever hope
to have — which is, the total control of an entire branch of
government that answers only to itself. This seems to violate Article
1, section 12 — “No law shall be passed granting to any citizen, class
of citizens, or corporation other than municipal, privileges or
immunities which upon the same terms shall not equally belong to all
citizens, or corporations”. NO OTHER person (a.k.a., John Scannell)
is allowed to play in their sandbox, have total control of a branch of
government, and get to be the rule-maker, interpreter, administer, and
decision-maker of their own conduct as the WSBA.

1 *accordance with the provisions of RCW 2.48.010 through 2.48.180,*
2 *shall become by that fact active members of the state bar” (RCW*
3 *2.48.021). This has effectively swallowed Article 4, Section 17 and*
4 *amended it to say, “No person shall be eligible to the office of judge*
5 *of the supreme court, or judge of a superior court, unless he shall be*
6 *a member of the Washington State Bar.”*
7

8
9 This means only WSBA associates may be judges in Washington
10 State as only those who are authorized to practice law in Washington
11 State, a prerequisite to be judge, are WSBA associates.
12

13 This “kidnapping of a constitutional provision by a statute”
14 alters the very language of the provision underlying plaintiff’s
15 petition. Said another way, the Bar Act created an ‘unsolvable riddle
16 that comingles an “agency of the state – the WSBA, with the judicial
17 branch. There is NO SEPARATION or practical distinction between
18 one or the other – an agency of the state or the judicial branch -- and
19 therefore creates an “institutional conflict” of interest. Such a
20 ‘Pandora’s box’ of unconstitutional monopoly powers and privileges
21 may be why neither Justice Stephens nor Justice Madsen wanted to
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1 open this ‘box’ by challenging Mr. Scannell’s position on the ballots
2 in 2014 and 2016.

3 Furthermore, as the only legal alternative for Justice Stephens
4 and Justice Madsen failure to petition to remove John Scannell from
5 the ballot in either the 2014 general election or the 2016 primary
6 election is because they cannot be “fair and impartial”, required by
7 Article 4, section 28. Therefore these justices, in fact the whole
8 Supreme Court justices must be disqualified for conflict under RCW
9 2.28.030 “disqualification for conflict.”
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13 Hence if there is such a Pandora’s box of constitutional
14 violations how can Mr. Scannell ever receive a fair hearing in
15 Washington State’s courts when all the judges are disqualified?
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17 THEREFORE, all Washington State Bar Associates/judges must
18 disqualify from deciding all substantive issues, or, as the law
19 provides³, submit them to a jury for resolution. Or, the Governor must
20 appoint a person to serve as judge who is not a WSBA associate, so
21 the Cornucopia of constitutional issues and due process fairness can
22 be sorted out and the true violators prosecuted.
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28 ³ RCW 4.40.050 submitted to a referee or jury.

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3. Supporting Motion to Intervene.

All the preceding paragraphs are included by reference and clearly demonstrate the Bar Act collides with ‘fairness’ and that Citizens have NO CHOICE in their selection of judges ... it is a WSBA associate or no one – a consequence of the Bar Act of 1933. This limiting judges to only members of an ‘agency of the state’ is a matter of broad public concern and a matter concerning the common good – meaning, to have the constitutional freedom to elect from a representative population and not be forced to elect from the segregated population of WSBA associates. The 351,000 votes cast for Mr. Scannell – who is not a Bar associate, despite the wide publicity about his disbarment proves this is a matter of substantial public interest. It is an Article 1, Sec 4 matter that needs to be addressed.

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SCHEIDLER HAS STANDING TO INTERVENE AS OF RIGHT.

1. The Intervenor Satisfies the Requirements for Intervention as of Right as Set Forth in CR 24(a)(1) and CR 24(a)(2)

CR 24 provides: (a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede

1 his ability to protect that interest, unless the applicants interest is
2 adequately represented by existing parties.

3 CR 24(a), which provides for intervention in an action as a
4 matter of right, is liberally construed to favor intervention. See
5 *OLVER v. FOWLER* 161 Wn.2d 655 (2007). Each of these
6 requirements for intervention as of right have been addressed above.
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8 The Intervenor's *unabridged right* to intervene comes from the
9 plain language of Article 1, SECTION 4 RIGHT OF PETITION AND
10 ASSEMBLAGE. The right of petition and of the people peaceably to
11 assemble *for the common good shall never be abridged*. Mr.
12 Scheidler's association with defendant Scannell on this matter
13 concerning the public good mandates intervention per CR 24(a)(1).
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16 "All constitutional provisions are self-executing", *PEDERSON*
17 *v. MOSER* 99 Wn.2d 456, 662 P.2d 866; "The broad language of
18 the constitutional provision is self-executing", *STATE EX REL.*
19 *CLARK v. HOGAN*. 49 Wn. (2d) 457, 461.

20 Intervenor has a constitutional right as a citizen, elector, and
21 taxpayer to petition on matters that concern judicial candidates, and
22 the WSBA's monopoly that effectively limits freedom of elections.
23

24 "The judicial system and the administration of justice is
25 dependent on the honesty of attorneys as officers of the court".
26 *In re Disciplinary Proceeding Against Poole* 156 Wn.2d 196,
27 201 (2006).
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1 Because petitioner has a constitutional right of petition in
2 matters of public importance – the judicial system and its ‘officers of
3 the court’ -- this Court cannot deprive Scheidler of his right to
4
5 intervene under court rule authority.

6 “court rules cannot diminish constitutional rights”. *AUBURN v.*
7 *BROOKE* 119 Wn.2d 623 P.2d 212 (1992); “a substantive matter
8 and cannot be amended by a procedural court rule” *STATE v.*
9 *SCHULZE* 116 Wn.2d 154, 161 804 P.2d 566; See 28 USC 2072(b).

- 10 2. Or, the Intervenor has an interest *relating* to the transactions
11 subject of the action, per CR 24(a)(2).

12 The transactions subject of intervention specifically concerns
13 governments’ conduct towards the people they serve as discussed
14 above.

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16 3. The Intervenor’s Interests Will Be Impaired If Not Permitted
17 to Intervene

18 Defendant, Scannell, is appearing pro se and is not a lawyer. By
19 law, Scheidler’s interest in this case can only be pleaded by him as
20 the defendant may not practice law or represent Scheidler’s interests.
21

22 It remains at best uncertain whether the current parties’
23 arguments will encompass all possible issues related to the underlying
24 principles expressed in sections 1 and 2 above. The parties in this
25 case will only develop the limited issues pertaining to their individual
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1 situation and therefore only seek the relief that would provide them
2 their individual remedy.

3 Intervenor Scheidler will bring to the case a variety of fact
4 patterns involving both constitutional and statutory matters germane
5 to the notion of “just powers” expected of WA State’s ‘officers of the
6 court’ and the WSBA. Allowing Scheidler’s intervention will thus
7 sharpen the argument on both sides and provide the *Court*⁴ with a
8 more useful framework of advocacy from which to issue its decision.
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12 4. The Intervenor’s Application for Intervention is Timely

13 The motion is timely. The Plaintiffs’ complaint was recently
14 filed with this Court. Accordingly, intervention will not delay the
15 proceedings or prejudice either the Plaintiff or the Defendants.
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17 “The claim of right to intervene was thus raised prior to trial and
18 judgment and was thus timely. See *Thompson v. Huron Lumber*
19 *Co.*, 4 Wash. 600, 30 P. 741, 31 P. 25 (1892); *Colburn v. Spokane*
20 *City Club*, 20 Wn.2d 412, 147 P.2d 504 (1944).” *IN RE SIMMONS*
21 81 Wn.2d 34, 43 499 P.2d 874 (July 1972).
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27 ⁴ (Note: Judge distinguished from court. RCW 2.28.050 “A judge may
28 exercise out of court all the powers expressly conferred upon a judge
as contradistinguished from a court and not otherwise.”)

1 **D. In the Alternative, Intervenor Satisfies the**
2 **Requirements for Permissive Intervention as Set Forth in**
3 **CR 24(b)(2)**

4 The decision whether to allow permissive intervention is
5 committed to the sound discretion of the trial court.

6 “A court may allow a party to intervene in an action under CR
7 24 [b] on the grounds that the party has a separate and distinct
8 interest in the proceedings and that the party's participation is
9 likely to be of assistance to the court in focusing on the issues
10 in dispute.” *RECALL OF BUTLER-WALL* 162 Wn.2d 501, (2007)

11 The Intervenor clearly has an interest in WA State’s standard of
12 justice and the conduct of ‘officers of the court’. The proposed
13 intervention cannot and will not prejudice or delay the rights of any
14 of the existing parties unnecessarily. The Intervenor therefore
15 requests that the Court grant permissive intervention under Civil Rule
16 24(b), should the Court decide not to grant intervention as of right.
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19 **E. Conclusion**

20 For the foregoing reasons, proposed Intervenor William
21 Scheidler respectfully requests his motions to intervene, dismiss, and
22 disqualify be granted.
23

24 **F. Affirmation**

25 “I declare AND affirm under penalty of perjury under the laws of the
26 State of Washington that the foregoing is true and correct”: See GR
27 13.
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3 Dated: May 29, 2018
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