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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT
 GALLATIN COUNTY

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| <p>MONTANANS AGAINST IRRESPONSIBLE DENSIFICATION, LLC,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>STATE OF MONTANA,</p> <p style="text-align: center;"><i>Defendant,</i></p> | <p>Cause No.: DV-16-2023-0001248DK</p> <p style="text-align: center;">SHELTER WF'S MOTION TO INTERVENE</p> |
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Shelter WF, Inc. moves to intervene as a defendant in support of the laws challenged by Montanans Against Irresponsible Densification, LLC in its Amended Complaint, which was filed on December 19, 2023. Shelter WF moves to intervene as a matter of right under Montana Rule of Civil Procedure 24(a)(2). Alternatively, Shelter WF moves for permission to intervene under Rule 24(b)(1)(B).

Shelter WF has contacted both the Plaintiff and Defendant in this case. The State of Montana does not oppose this motion but Montanans Against Irresponsible Densification opposes Shelter WF's intervention.

In support of this motion, Shelter WF has contemporaneously filed its proposed answer in intervention and has served this motion and accompanying exhibits on the existing parties as provided in Rule 5, Mont. R. Civ. P.

Shelter WF further states as follows:

A. Shelter WF’s mission and goals.

1. Shelter WF, Inc. is a Montana nonprofit public benefit corporation that was formed in April of 2022 for one purpose: to make homes in Whitefish more affordable. While the scope of its mission has expanded to the entire Flathead Valley and Montana as a whole, Shelter WF continues to advocate for the same goals it started with: to educate the community about housing affordability; to demystify local government processes; to make it easier for people to understand what is happening with housing law and policy; and to help people understand how to get involved to support and accomplish those goals in their own community.

2. In support of these goals, Shelter WF has adopted a mission statement: “Shelter WF aims to fix the broken housing system in Whitefish, the Flathead Valley, and Montana. Our community-led movement advocates for policy reforms that lead to an abundance of homes in all shapes and sizes.”

3. Shelter WF envisions a Montana that preserves our wide-open rural spaces while giving everyone access to an affordable place to live, and it envisions communities that grow stronger through livable and environmentally friendly urban spaces.

4. Consistent with that mission and those visions, Shelter WF has adopted specific values, which are stated on the front page of its website at shelterwf.org:

- a. “Community: We believe that in vibrant communities, everyone is valued for their diversity and life experience. When homes are affordable, our communities are stronger and more resilient.”

- b. “Empowerment: We believe that everyone should have the resources to participate in conversations around housing. Our current system fails to allow this, instead catering to those with the wealth, power, or free time to block new homes for all of us. Housing our community is worth fighting for—even if controversial.”
- c. “Affordability: The housing crisis is fundamentally caused by a shortage of available homes. We advocate for policy solutions that allow our communities to respond to population shifts by building new types of homes, not by raising prices.”
- d. “Environmental Stewardship: We recognize the importance of minimizing the footprint of our urban spaces. Land use policies that minimize sprawl and promote denser housing in existing neighborhoods are crucial to protecting wild spaces, outdoor recreation, and connected natural ecosystems.”
- e. “Abundance: We believe that homes will only be affordable when they are abundant. We fight to restore a housing system that produces enough homes for everyone who lives here, no matter their income.”

B. The Governor’s Housing Task Force and Shelter WF’s efforts prior to the 2023 legislative session.

5. In July of 2022, Governor Gianforte established by [Executive Order No. 5-2022](#)¹ the Housing Advisory Counsel, also known as the Governor’s Housing Task Force. The Task Force was—and remains—charged with developing “short- and long-term recommendations and strategies for the State of Montana to increase the supply of affordable, attainable workforce

¹ Attached as Exhibit 1. For ease of reference, and where it is practicable, Shelter WF is including links directly to the original source of the exhibits.

housing.” To develop those recommendations and strategies, the Task Force was directed to seek input from a wide variety of stakeholders.

6. Shelter WF’s co-founder and board president, Nathan Dugan, [was appointed by Governor Gianforte to the Task Force along with 25 others](#).² The members include state legislators, local government officials, representatives from the real estate and construction industries, and representatives from special interest groups that had particularized interests and expertise in affordable housing and related policy issues—like Shelter WF.

7. The Task Force was directed to produce two initial reports. The first was to include recommendations and strategies to increase the supply of affordable, attainable workforce housing, “specifically focusing on measures the Legislature could consider and the Governor could sign into law.” The second report was similar, except it was to focus on “regulatory changes and best practices that could be adapted by state agencies and local governments.”

8. The Task Force timely produced both reports. [The first report](#)³—directed at measures the legislature could consider—is 65 pages long and includes 18 recommendations within three categories: regulatory reform; incentives to encourage regulatory reforms; and investments in improved government efficiency, workforce development, and private sector home construction.

9. [The second report](#)⁴—directed at regulatory changes and best practices that could be adopted by state agencies and local governments—is 59 pages long and includes 18

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

recommendations within three subcategories: regulatory capacity and efficiency; information gathering and reporting; and the use of new and existing programs to further those goals.

10. In both reports, the 36 total recommendations included the rationale for each recommendation; the barriers addressed by that recommendation; and the key strategies to implementing each recommendation. Each recommendation also included any dissenting opinions related to that recommendation, regardless of whether the dissent was voiced by a member of the Task Force or by public comment.

11. The public participation process was robust. For both reports, all Task Force and subtask force groups held open meetings and encouraged the public to share questions, comments, and suggestions. The Department of Environmental Quality—which was charged with providing administrative support for the Task Force—hosted a website that identified appointed members and their affiliations; published meeting recordings; and solicited public comment through an interactive comment portal.

12. Overall, in the creation of the two reports, the Task Force and its subtask groups met over 30 times. Every meeting was noticed to the public via a dedicated website and email listserv, and every meeting included time dedicated to public comments, questions (including comments disguised as questions), and suggestions. All were open for participation from anywhere in the world with internet access.

13. Recordings of every meeting of the Task Force and all subtask groups are—and will presumably remain—available on YouTube, and are organized by date and topic at <https://deq.mt.gov/about/Housing-Task-Force>.

14. The Task Force remains in place, its work continues, and Dugan is still a member. In fact, the Task Force is once again meeting on the same date this motion is being filed.

C. The challenged bills and resulting laws emerge from the work of the Task Force, its stakeholders, and other groups—including Shelter WF.

15. Both of the reports produced by the Task Force were published before the 68th Montana Legislature [convened](#) on January 2, 2023.

16. During the 2023 legislative session, several bills directly related to the Task Force’s work, and several that were indirectly related to that work, were introduced and eventually passed by both houses of the Legislature and then signed into law by the Governor.

17. Notably, SB323 and SB528 arose directly from the Task Force’s work, and SB245 contains recommendations from both reports. Shelter WF also worked to find sponsors for SB245, and it coordinated with the Frontier Institute on the drafting and sponsorship of SB382. Both SB528 and SB382 were sponsored by members of the Task Force.

18. Consistent with Montana law and constitutional mandate, each of those bills slowly worked its way through the Montana Legislature, a multi-step process [perhaps best illustrated by this graphic](#),⁵ which is part of the orientation packet for new legislators.

19. While an exhaustive explanation of how a bill becomes law is well beyond the scope of this motion, suffice to say it is a long process involving both houses of the Montana Legislature, committees in both houses, multiple public hearings in those committees, three votes in each house, and then—if it gets that far—likely a conference committee where members of both houses negotiate the final language of the bill. If a bill gets that far—and most do not even come close—it might just end up on the desk of the Governor, who can either sign it or veto it.

20. All or parts of four of those bills are now challenged by MAID, and parts of two have been preliminarily enjoined by this Court. Each of those four bills includes laws that are directly relevant to the work and mission of Shelter WF.

⁵ Exhibit 5.

21. The bills, of course, needed more help than the Task Force and Shelter WF alone could provide. All the reforms were passed during a fraught legislative session that made national headlines for other bills—many of which were hyper-partisan—which are now also subject to legal challenges in forums across Montana.

22. The pro-housing bills now challenged by MAID, however, were the result of work by notably bipartisan coalitions. Those diverse coalitions included entities like the Frontier Institute, Americans for Prosperity, the Blackfeet Tribe, the Billings Chamber of Commerce, the Associated Students at the University of Montana, Forward Montana, the Montana Environmental Information Center, and Shelter WF itself, which had laid the groundwork for the legislative session long before it formally started.

23. Indeed, well before the 2023 legislative session began, Shelter WF hired lobbyist Jake Brown to begin strategically connecting with legislators when there was less competition for their attention. Shelter WF also hired a part-time organizer to support WF's local work during the session, which freed up the board to dedicate its efforts to the bills working their way through the legislature.

24. Coupled with Dugan's work on the Task Force, the work of Shelter WF's active board and coordinator during the session, its pre-session coalition building efforts, and Brown's relationship with legislators, Shelter WF became the leading voice for pro-housing policy during the 2023 legislative session.

25. Shelter WF is therefore uniquely situated to defend the now-challenged laws in this case. Besides having a deep breadth of knowledge related to the subject matter of the bills themselves, Shelter WF is also well-positioned to coordinate with other groups and individuals who sponsored and supported the bills to marshal the evidence needed to show that the

challenged bills pass constitutional muster. Shelter WF also has the will and the resources to see this case to conclusion, no matter how long it takes.

I. Shelter WF is entitled to intervene in this case as a matter of right.

26. Shelter WF moves to intervene as a matter of right under Rule 24(a)(2), Mont. R. Civ. P., because it has an interest in the subject matter of this action and is situated such that disposing of this action would, as a practical matter, impede Shelter WF's ability to protect its interests. Under that Rule, a court "must permit" a non-party to intervene when four criteria are satisfied.

27. A party moving to intervene as a matter of right under Rule 24(a)(2) must satisfy four factors: (1) the motion must be timely; (2) the party must show an interest in the subject matter of the action; (3) the party must show that the protection of the interest may be impaired by the disposition of the action; and (4) the party must show that the interest is not adequately represented by an existing party. *Sportsmen for I-143 v. Montana Fifteenth Jud. Dist. Ct.*, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400. Montana's rule is essentially identical to the federal rule, which is interpreted liberally. *Id.*

28. *First*, this motion is timely. The operative complaint is less than a month old, and while the Court has preliminarily enjoined two of the challenged bills, it has not issued any decision on the ultimate merits of any of MAID's claims.

29. *Second*, Shelter WF has a substantial interest in the subject matter of the action. The Montana Supreme Court has held that public interest groups that supported challenged laws have a direct, substantial, and legally protectable interest in the litigation sufficient to intervene as a matter of right. *Sportsmen for I-143*, ¶ 12.⁶ This is the same as the federal rule, where courts

⁶ Shelter WF recognizes that a ballot initiative is not the same as a regular legislative bill, but Shelter WF's participation in the background research, the Task Force, the drafting, the diverse coalition building, and the lobbying supporting the challenged bills is unique and substantial.

consistently hold that a “public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.” *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (collecting cases).

30. In addition, the Montana Supreme Court has long held that intervention in constitutional challenges is different than in garden-variety cases, because “a court, in dealing with the life of a statute, is not going to close its eyes, or confine its search, within the boundaries that lawyers establish by pleadings.” *State ex rel. Abel v. Dist. Ct. of First Jud. Dist.*, 140 Mont. 117, 125, 368 P.2d 572, 576 (1962). Otherwise, “the life of any statute would depend on what lawyers stated, or failed to state concerning it.” *Id.* Thus, the Court held that intervention in constitutional challenges should generally be allowed, “in protection of the court, as well as the Legislature.” *Id.*

31. Here, Shelter WF is a public benefit corporation that worked to conceptualize, draft, and shepherd the now-challenged laws through the legislative process, and it has a direct, substantial, and legally protectable interest in this litigation, which is sufficient to mandate intervention as a matter of right under this factor.

32. *Third*, Shelter WF’s substantial work on the Governor’s Housing Task Force as well as its central role in shepherding the challenged laws through the hyper-partisan 2023 legislative session—both of which were in support of its overall policy goals of expanding the supply of affordable housing in Montana—would be impaired if MAID’s challenge is successful. This satisfies the third factor. *See, e.g., Sportsmen for I-143*, ¶ 13. Indeed, the entire substance of MAID’s complaint is that the challenged laws are too broad and do too much. But the challenged

Further, while Montana has a dearth of case law on intervention as a matter of right in this context, the overwhelming weight of federal law supports Shelter WF’s motion to intervene as a matter of right in an area directly affecting the organization’s overall goals. *E.g., California ex rel. Lockyer v. United States*, 450 F.3d 436 (9th Cir. 2006).

statutes are at the core of Shelter WF’s mission and the end result of its own work, and if it is not allowed to intervene, its core interests will be seriously impaired and its efforts before and during the 2023 legislative session will be for naught.

33. *Fourth*, Shelter WF must show that its interests are not adequately represented by an existing party. The burden of making this showing is “minimal.” *Sportsmen for I-143*, ¶ 14. Here, while the State of Montana has an interest in affordable housing and in defending the constitutionality of duly passed legislation, the Supreme Court has held that groups “who actively drafted and supported” challenged laws “may be in the best position to defend their interpretation of the resulting legislation.” *Sportsmen for I-143*, ¶¶ 14–17. That is particularly true here, where Shelter WF has specific expertise, knowledge, and interests that go beyond even what the challenged bills address. *See, e.g., Sagebrush Rebellion v. Watt*, 625 F.2d 525, 527–28 (9th Cir. 1983) (conservation group’s interests in the protection of animals and its active participation in proceedings establishing a conservation area entitled it to intervene as of right in an action challenging the federal government’s establishment of the area).

34. Beyond that, while the Attorney General’s office is obviously staffed with capable attorneys, Shelter WF is concerned with some of the arguments the government made—or did not make—in opposition to the Plaintiff’s application for a preliminary injunction. For example, it appears the government did not address the first principles of a constitutional challenge to a statute: When reviewing “legislative enactments, the constitutionality of a legislative enactment is *prima facie* presumed, and every intendment in its favor will be made unless its unconstitutionality appears beyond a reasonable doubt.” *State v. Pine*, 2023 MT 172, ¶ 14, 413 Mont. 254. Thus, the party challenging the statute bears the burden of proving a statute is unconstitutional beyond a reasonable doubt, and if any doubt exists, it must be resolved in favor of the statute. *Id.*

35. Next, MAID argues that the challenged laws are facially unconstitutional, which means it must demonstrate “there is no set of circumstances in which the statute could be constitutionally applied.” *Broad Reach Power, LLC v. Montana Dep’t of Pub. Serv. Regul.*, 2022 MT 227, ¶ 11, 410 Mont. 450, 520 P.3d 301. Thus, facial challenges are not dependent on the facts of a particular case, because to prevail, the plaintiff must prove the statute *is unconstitutional in all cases*, which is a “difficult” task. *City of Missoula v. Mountain Water Co.*, 2018 MT 139, ¶ 21, 391 Mont. 422, 419 P.3d 685. This argument—which will likely be a major obstacle for MAID—does not appear to have been raised. Nor does it appear that the government addressed the work of the Task Force in opposing MAID’s application for a preliminary injunction. Again, however, the work of the Task Force is an area where Shelter WF has particularized knowledge and expertise, and Shelter WF therefore has specific and particularized interests in the challenged legislation that go well beyond the State’s more general goals in defending the constitutionality of a comprehensive statutory scheme.

36. Finally, Shelter WF recognizes this case is in its infancy, and the government likely has time to raise these issues. But the fact is the new laws that form the largest body of Shelter WF’s work are now in peril. Shelter WF is therefore uniquely situated to represent the interests of its members and the general public in relation to the substance of the challenged laws, when the current preliminary injunction has likely halted construction of desperately needed housing in this State, and when the required showing under this factor is “minimal.” *Sportsmen for I-143*, ¶ 14.

37. Shelter WF satisfies all the elements required for intervention as a matter of right under Rule 24(a)(2), and requests the Court grant this motion.

II. Alternatively, the Court should grant Shelter WF permission to intervene.

38. If the Court concludes Shelter WF has not satisfied the requirements to intervene as a matter of right, Shelter WF requests that the Court grant it permission to intervene under Rule 24(b)(1)(B) because Shelter WF has defenses to MAID's Amended Complaint that include questions of law and fact that are shared with this action, for all the reasons set out above.

Conclusion

Shelter WF respectfully requests that the Court grant its motion to intervene as a matter of right under Rule 24(a)(2) and direct the Clerk of Court to file its answer in intervention.

Alternatively, Shelter WF requests that the Court permit it to intervene, and direct the Clerk of Court to file its answer in intervention.

January 17, 2024.

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/s/ Jesse Kodadek
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