

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

THE FUND FOR ANIMALS, Inc., et al.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:98-CV-365-S

GOVERNOR PAUL PATTON, et al.

DEFENDANTS

**ORDER**

This matter comes before the court on a motion by the Wildlife Conservation Fund of America (“WCFA”) and several of its members to intervene in this action pursuant to FED. R. CIV. P. 24(a)(2). In this case, the plaintiffs have brought constitutional challenges to the Commonwealth of Kentucky’s procedure for selecting nominees from which the Governor will appoint members to the Commonwealth of Kentucky, Department of Fish and Wildlife Resources Commission (“the Commission”). *See* KRS 150.022. The nominees for the appointment are currently selected by a vote of “sportsmen” at a meeting called by the commissioner. KRS 150.022(3). A “sportsman” is defined as an individual who has been licensed to hunt or fish in Kentucky for the past two consecutive years or who has legally hunted or fished in Kentucky for the past two consecutive years. KRS 150.022(11).

The plaintiffs argue that the current process for selecting nominees unconstitutionally prevents participation by citizens who are not “sportsmen.” The plaintiffs do not qualify as “sportsmen” because they refuse to hunt or fish or to purchase a hunting or fishing license. They reason that the proceeds of the license funds support hunting and fishing activities, which the plaintiffs oppose. Because they cannot vote for nominees, the plaintiffs believe that members of their group will never be selected as nominees, therefore, will never be appointed to the Commission. The plaintiffs seek an injunction on the operation of KRS 150.022 as a means of

electing members to the Commission and a declaration that the actions of the Commission are void.

The prospective intervenor, the WCFA, is a national non-profit organization which, according to affidavits it has presented, is dedicated to protecting the heritage of hunting, trapping, and fishing in America. The WCFA is said to achieve its mission through public education, issue research, and participation in legal proceedings. The WCFA seeks to intervene in this action pursuant to Rule 24. For the reasons below, this court will grant WCFA's motion to intervene.

Rule 24 provides that “[u]pon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” FED. R. CIV. P. 24.

The plaintiffs do not dispute that the motion to intervene was timely filed. The complaint was filed on June 9, 1998; the motion to intervene was filed on July 24, 1998. *See Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6<sup>th</sup> Cir. 1997) (holding that an intervention was timely as a matter of right when it was filed two weeks after the complaint and the case was in its initial stage).

The intervenors have an interest in the subject matter of this action. The Sixth Circuit “has opted for a rather expansive notion of the interest sufficient to invoke intervention of right.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6<sup>th</sup> Cir. 1997). The prospective intervenors are the individuals and organizations whose members engage in the nomination process and regulated sporting activities at issue. They, therefore, have an interest in preserving the current nomination process and in preserving their current right to legally hunt and fish.

The disposition of this case may impair or impede the prospective intervenors' interest. Although the burden is on the proposed intervenor to establish an impairment to his interest, that

burden is minimal. It is only necessary that the intervenor establish that impairment is possible, not that it is certain. Stare decisis effects can provide a sufficient basis for a finding of impairment of the intervenor's interest. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6<sup>th</sup> Cir. 1997).

If the plaintiffs prevail in this action, the intervenors will not be able to vote in the nomination process or pursue currently legal sporting activities. The plaintiffs argue that their success will not interfere with the intervenors' participation in the election process because if they are successful, all Kentucky citizens will be permitted to vote. However, the relief sought by the plaintiffs is an injunction on the operation of KRS 150.022 as a means of electing members to the Commission and a declaration that the actions of the Commission are void. Therefore, a victory for the plaintiffs will result in an injunction on the current process without establishing a new process for selecting members of the Commission.

The interest of the prospective intervenors is not adequately represented by the defendants. The prospective intervenors need only show that their interests *may be* inadequately represented, not that they are in fact inadequately represented. Whereas the primary interest of the government is managing the state's fish and wildlife resources and administering the statutory scheme for using those resources, the primary interest of the prospective intervenor is participating in the nomination process and using the state's fish and wildlife resources. These interests are distinct.

Furthermore, it is sufficient if the prospective intervenor can prove that the "existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6<sup>th</sup> Cir. 1997). The intervenors raise different standing and failure to state a claim arguments in support of dismissing this action. Governor Paul Patton argues, in his motion to dismiss, that the plaintiffs have no standing because they have no injury. Because the process at issue is not an election but an executive branch appointment, Patton argues that the plaintiffs have no fundamental right to participate in the process. Furthermore, Patton argues that the plaintiffs will not be able to prove that the current process is an

unconstitutional violation of the equal protection clause because there is no fundamental right or suspect class at issue. In contrast, the prospective intervenors argue that the plaintiffs lack standing because their alleged injury is the result of their own refusal to take the steps necessary to be able to vote. The plaintiff's moral opposition to the regulations does not create standing. The prospective intervenors also argue that the Eleventh Amendment bars the plaintiffs' claim and that Count I contains no cognizable claim for relief .

Thus, the Wildlife Conservation Fund of America has met all four requirements for intervention as a matter of law. Accordingly, this court will **GRANT** their motion to **INTERVENE** in this action.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE  
UNITED STATES DISTRICT COURT

cc: Counsel of Record