

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
AT LAFAYETTE**

AARON GUIDRY, *et al.*,

Plaintiffs,

v.

TERESA ELBERSON, *et al.*

Defendants.

c/w

**AMBER ROBINSON, MATTHEW
HUMPHREY,**

Plaintiffs,

v.

TERESA ELBERSON,

Defendant.

CIVIL ACTION NO. 6:18-CV-01232

JUDGE ROBERT SUMMERHAYS

MAG. JUDGE PATRICK HANNA

MOTION TO INTERVENE

Amber Robinson and Matthew Humphrey, pursuant to Rule 24 of the Federal Rules of Civil Procedure as well as Local Rule 7.6, move to intervene in the above-captioned case, *Aaron Guidry et al. v. Teresa Elbersson et al.*, No. 6:18-cv-01232 (W.D. La.). Pursuant to Rule 24, intervenors are filing herewith their Complaint in Intervention against Defendant Teresa Elbersson. In support, Plaintiff-Intervenors state the following:

Amber Robinson and Matthew Humphrey are members of Acadiana Supporters of Drag Queen Story Time. They would like to use the public library for the purposes of planning a Drag Queen Story Time and for holding such an event. They are unable to do so at present because

Defendant Teresa Elberson is not allowing use of the public library for that purpose. Defendant Elberson also is requiring every applicant planning to use any library meeting room to sign a form that unconstitutionally infringes on their First Amendment rights.

On October 16, 2018, the parties appeared for a motions hearing before this Court. Defendant Teresa Elberson, in her capacity as librarian, voluntarily agreed through counsel to “stand down” on planning a Drag Queen Story Hour for the duration of the lawsuit. Subsequently, Defendant Elberson’s counsel “agreed to streamline all reservation requests directed toward the library, in an effort to ensure compliance with the agreement to stand down,” during a telephone status conference on Dec. 4, 2018, according to the Court’s minute entry. Doc. 124.

Defendant Elberson generated a form that she is now requiring every individual planning to use library space to sign. That form requires attestation that “the purpose of your use of the Lafayette Public Library’s meeting room does not pertain in any way to ‘Drag Queen Story Hour,’ directly or indirectly.”

Amber Robinson reserved a room at the Lafayette Public Library (the “Library”) for use on December 22, 2018. Robinson is unable to use the room unless she signs a form certifying she is not using the room for Drag Queen Story Time–related purposes by today, Friday, December 21, 2018. Robinson objects to the form and will not sign it. She cannot proceed with her use of the library without Court intervention.

Matthew Humphrey has a room reserved at the Lafayette Public Library on January 2, 2019. Humphrey was required to sign a form attesting that he is not using the room for Drag Queen Story Time-related purposes to be able to use it. Plaintiffs move this Court for intervention of right, pursuant to Rule 24(a)(2), and alternatively for permissive intervention, pursuant to Rule 24(b).

Rule 24 provides for two types of intervention, “Intervention of Right” and “Permissive Intervention.” Rule 24(a)(2), which sets forth the requirements for intervention as of right, states in relevant part:

On timely motion, the court must permit anyone to intervene who ...claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). Rule 24(b) provides for permissive intervention. Under that provision, the Court may permit anyone to intervene who has a claim or defense that shares with the main action a common question of fact. Fed. R. Civ. P. 24(b).

“Federal courts should allow intervention when no one would be hurt and the greater justice could be attained,” *Doe # 1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (citing *Sierra Club v. Espy*, 18 F. 3d 1202, 1205 (5th Cir. 1994)). A court should grant a motion for intervention of right where the movant has a “direct, substantial, and legally protectable interest” in the subject matter of the litigation; the denial of intervention could significantly impair or impede the movant’s ability to protect this interest; and the movant’s protectable interests may not be adequately represented by the existing parties. *Edwards v. City of Houston*, 78 F. 3d 983, 999 (5th Cir. 1996); *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 732 F. 2d 452, 463 (5th Cir. 1984) (*en banc*). The inquiry under 24(a)(2) is “a flexible one, which focuses on the particular facts and circumstances surrounding each application ... and intervention of right must be measured by a practical rather than technical yardstick.” *Texas E. Transmission Corp.*, 923 F. 2d 410, 413 (quoting *United States v. Allegheny-Ludlum Indust., Inc.*, 517 F. 2d 826, 841 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976)).

This Court should grant Ms. Robinson and Mr. Humphrey's motion to intervene because they satisfy both the requirements to intervene as of right and for permissive intervention. First, this Court should grant intervention as of right because Ms. Robinson and Mr. Humphrey have a significant, legally protectable interest in the proceedings. They are both Library patrons who have sought to use the Library's meeting room for a Drag Queen Story Time event, which is the subject of this litigation. Their First Amendment rights of speech and association have been violated by Defendant Elberson's promulgation of a policy and a form that purports to exclude their events. Consequently, their interests have already been impaired by the disposition of the case, and it is likely that their interests will continue to be impaired. Finally, the existing parties may not adequately protect their interests in ensuring that their First Amendment freedoms are protected. That is readily evident in the Library's agreement to "stand down" and the creation of the aforementioned form.

Rule 24 "represents 'an accommodation between two potentially conflicting goals: to achieve judicial economies of scale by resolving related issues in a single lawsuit, and to prevent the single lawsuit from becoming fruitlessly complex or unending.'" *United States v. Texas E. Transmission Corp.*, 923 F. 2d 410, 413 (5th Cir. 1991) (quoting *Smuck v. Hobson*, 408 F. 2d 175, 179 (D.C. Cir. 1969) (*en banc*)). Ms. Robinson and Mr. Humphrey's intervention in this matter will serve both goals.

Undersigned counsel contacted the other parties' attorneys on December 20, 2018, and informed them of intervenors' intention to file the attached Complaint. The other parties' attorneys were provided a copy of the attached Complaint today, December 21, 2018, before the filing of this motion. Plaintiffs Warriors for Christ oppose the intervention. Counsel for Defendant do not oppose intervention but reserve their rights to litigate the merits of Intervenors' claims.

WHEREFORE, Ms. Robinson and Mr. Humphrey respectfully request that this Court grant their Motion to Intervene and enter an order:

- a. Granting Ms. Robinson and Mr. Humphrey's Motion to Intervene;
- b. Adding Ms. Robinson and Mr. Humphrey to Case No. 6:18-cv-01232 as full party plaintiff-intervenors; and
- c. Directing the Clerk of Court to enter Ms. Robinson and Mr. Humphrey's Complaint in Intervention, and allowing them to proceed on their claim stated therein.

Respectfully submitted by:

/s/ Katie Schwartzmann

/s/ Bruce Hamilton

Katie Schwartzmann, La. Bar No. 30295 (T.A.)

Bruce Hamilton, La. Bar No. 33170

ACLU Foundation of Louisiana

P.O. Box 56157

New Orleans, Louisiana 70156

Telephone: (504) 522-0628

Facsimile: (888) 534-2996

Email: bhamilton@laaclu.org

kschwartzmann@laaclu.org

Attorneys for Plaintiff-Intervenors

CERTIFICATE OF SERVICE AND CONSENT SOUGHT

I hereby certify that on the 21st day of December, 2018, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, and that service will be provided through the CM/ECF system. Additionally, all parties were advised by electronic mail late December 20 of this filing and consent for this filing was sought. Plaintiffs do not consent to the filing. Defendant does not oppose intervention but reserves her rights to oppose Intervenors' substantive claims. Pleadings have been electronically transmitted via electronic mail on this date. /s/ Katie Schwartzmann