IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ELAINE BLANCHARD, KEEDRAN FRANKLIN, PAUL GARNER, and BRADLEY WATKINS, Plaintiffs (dismissed), and ACLU OF TENNESSEE, INC., Intervening Plaintiff, v. CITY OF MEMPHIS, TENNESSEE, Defendant.	)	Case No. 2:17-cv-2120-JPM-egb

ORDER DENYING MOTION TO INTERVENE

Before the Court is the Motion to Intervene filed by Elaine Blanchard, Keedran Franklin, Paul Garner, and Bradley Watkins (the "Blanchard Plaintiffs") on December 14, 2018. (ECF No. 168.) The Blanchard Plaintiffs were dismissed from this lawsuit for lack of standing on June 30, 2017. (See O. Granting Mot. Dismiss as to Blanchard Plaintiffs, ECF No. 41.) The Blanchard Plaintiffs now "seek to intervene in the post-trial litigation strictly for the purpose protecting their interests under this Court's October 26, 2018 Opinion and Order." (Mem. Supp. Mot. Intervene, ECF No. 168-1 at PageID 6463.)

This case involves the violation by the City of Memphis (the "City") of a consent decree between the City and the ACLU of Tennessee, Inc. (the "ACLU-TN"). (See Order and Opinion, ECF No. 151.) On August 15, 2018, the City filed a Motion for Relief from Judgment or Order,

seeking to vacate or modify the original consent decree. (ECF No. 124.) The Court established a schedule in anticipation of an evidentiary hearing on the Motion for Relief, which was later stayed on the joint request of the ACLU-TN and the City. (ECF Nos. 175, 178.)

The Blanchard Plaintiffs' Motion to Intervene, which was filed before the Court stayed the modification proceedings, asserts that the Blanchard Plaintiffs "have a substantial and cognizable interest in this Court's ruling on the Motion to Modify." (Mot. Intervene, ECF No. 168 at PageID 6459.) The Blanchard Plaintiffs assert that they may intervene as of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Blanchard Plaintiffs seek to be permitted to intervene under Rule 24(b)(1). (Id.)

I. Rule 24(a)(2)

Under Rule 24(a)(2), "[o]n 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." "In this circuit, proposed intervenors must establish four elements in order to be entitled to intervene as a matter of right: (1) that the motion to intervene was timely; (2) that they have a substantial legal interest in the subject matter of the case; (3) that their ability to protect that interest may be impaired in the absence of intervention; and (4) that the parties already before the court may not adequately represent their interest." Grutter v. Bollinger, 188 F.3d 394, 397–98 (6th Cir. 1999).

The Blanchard Plaintiffs have failed to satisfy the second element for Rule 24(a)(2) intervention, which calls for a "direct, substantial, legally protectable interest." Michigan State

AFL-CIO v. Miller, 103 F.3d 1240, 1246 (6th Cir. 1997) (quoting Athens Lumber Co. v. Federal Election Comm'n, 690 F.2d 1364, 1366 (11th Cir.1982)). While the right to intervene in this Circuit is "rather expansive," "this does not mean that any articulated interest will do." Coal. to Defend Affirmative Action v. Granholm, 501 F.3d 775, 780 (6th Cir. 2007) (discussing Michigan State AFL-CIO v. Miller, 103 F.3d at 1245).

The Blanchard Plaintiffs assert that they are intended beneficiaries of the consent decree, because the decree prohibits political intelligence against "any person." (ECF No. 168-1 at PageID 6464-65.) The Blanchard Plaintiffs claim that they therefore have a substantial legal interest in the modification of the decree. (Id.) The Blanchard Plaintiffs argument, however, would require the Court to permit intervention by anyone, because the consent decree does not limit "person" to persons in Memphis. Even if such a limitation were to be read into the decree by implication, the Court finds that an articulated interest beyond simply being a member of the public is necessary for intervention under Rule 24(a)(2). Coal. to Defend Affirmative Action v. Granholm, 501 F.3d at 780 ("this does not mean that any articulated interest will do"); Athens Lumber Co., 690 F.2d at 1364 ("general concern ... shared with… all citizens" is insufficient for Rule 24(a)(2) intervention). The Blanchard Plaintiffs do not articulate any interest separate from that shared by the public generally. The Court finds that they therefore lack a substantial legal interest in the subject matter.

The Blanchard Plaintiffs have also not shown that the fourth element for Rule 24(a)(2) intervention is satisfied. (See ECF No. 168-1.) While the burden for inadequate representation is minimal, it nonetheless falls with the would-be intervenor. See Michigan State AFL-CIO v. Miller, 103 F.3d at 1247. The Blanchard Plaintiffs do not explain how the ACLU-TN's

representation would be inadequate or contrary to their interests. Without a showing on this point, Rule 24(a)(2) intervention must be denied.

The Blanchard Plaintiffs fail to satisfy the second and the fourth requirements for necessary intervention. Each is an independently sufficient ground for denial of a motion to intervene under Rule 24(a)(2). The Blanchard Plaintiffs' Motion is therefore DENIED insofar as it seeks Rule 24(a)(2) intervention.

II. Rule 24(b)(2)

Under Rule 24(b), "[u]pon timely application anyone may be permitted to intervene in an action: ... (2) when an applicant's claim or defense and the main action have a question of law or fact in common.... In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." The Blanchard Plaintiffs do not identify a question of law or fact that would permit their intervention. (See ECF No. 168-1.)

Simply sharing some positions with a party, in this case presumably the ACLU-TN, is not a common question of law. Bay Mills Indian Cmty. v. Snyder, 720 F. App'x 754, 757-58 (6th Cir. 2018). Being affected by the result of this litigation is similarly insufficient to pose a common question of law or fact. Id. at 758. The Court finds that to adopt the Blanchard Plaintiffs' arguments would allow anyone to intervene. See id. (analogizing that an interpretation of Rule 24(b) that "would allow any employer to intervene in any Title VII suit… would be much too broad."). Lacking a common question of law or fact, the conditions for Rule 24(b)(2) are not satisfied.

III. Conclusion

For the reasons set forth above, the Court finds that the conditions for intervention are not satisfied. The Motion to Intervene is therefore DENIED.

IT IS SO ORDERED, this 14th day of January, 2019.

/s/ Jon McCalla
JON P. McCALLA
UNITED STATES DISTRICT JUDGE