UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

KATURIA E. SMITH, et al.,

Plaintiffs,

v.

THE UNIVERSITY OF WASHINGTON

LAW SCHOOL, et al.,

Defendants.

NO. C97-335Z

ORDER

The proposed intervenors, consisting of minority college students who intend to apply to the University of Washington Law School and current students at the Law School, move to intervene as of right as defendants or, alternatively, for permissive intervention. See docket nos. 105, 124. The Court, having considered all papers filed in support and in opposition to intervention, hereby DENIES the motion to intervene.

Federal Rule of Civil Procedure 24(a)(2) governs a party's application for intervention as of right in the federal courts. That rule provides:

> Upon timely application anyone shall be permitted to intervene in an action . . . 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(a)(2). The Ninth Circuit has broken down this rule into four elements, each of which must be demonstrated for intervention as of right to be proper: (1) the application must be timely; (2) the applicant must have a significantly protectable interest relating to the transaction that is the subject of the litigation; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability protect its interest; and (4) the applicant's interest must be inadequately represented by the parties before the court. League of United Latin American Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997).

In considering the timeliness of the application for intervention, courts consider three factors: the stage of the proceeding at which an applicant seeks to intervene; (2) prejudice to the other parties; and (3) the reason for and the length of delay. County of Orange v. Air California, 799 F.2d 535, 537 (9th Cir. 1986), cert. denied, 480 U.S. 946 (1987). "[A]ny substantial lapse of time weighs heavily against intervention." United States v. Washington, 86 F.3d 1499, 1503 (9th Cir. 1996).

The Court concludes that this motion to intervene is untimely. This action was commenced on March 5, 1997. The defendants filed an answer to the plaintiffs' Complaint on May 30, 1997, and an answer to the plaintiffs' Consolidated Amended Complaint on August 9, 1997. The Court has heard argument on and decided numerous substantive motions, such as plaintiffs' motion for class certification, which was granted; plaintiffs' motion to bifurcate the trial into liability and damage phases, which was also granted; defendants' motion for summary judgment on Title IX claims, which was denied; defendants' motion for summary judgment on § 1983 claims based on qualified immunity, which was denied; and defendants' motion to strike jury demand, which was granted in part and denied in part. Although the summary judgment motions were denied, the Court resolved complicated standing issues, substantially narrowed the issues, and rejected certain arguments raised by the parties. In addition, the parties have been engaged in discovery for

months, and have entered into a protective order governing the disclosure of confidential information. In short, the Court has taken substantial steps in streamlining this litigation and narrowing the issues to be tried. The proposed intervenors, without offering any adequate explanation for their thirteen-month delay in seeking intervention, now wish to join this litigation and inject new issues and matters that are well beyond the scope of the plaintiffs' claims and the Law School's defenses.

The proposed intervenors have also failed to demonstrate that their interests would be inadequately represented by the existing defendants. Where a governmental entity is the partly whose representation is deemed to be inadequate, "a much stronger showing of inadequacy is required." Hopwood v. State of Texas, 21 F.3d 603, 605 (5th Cir. 1994).' The applicants argue that the law school's interest in furthering a diverse student body "is not the same thing as the minority students' more focused interest in preserving their own access to an education at the Law School." Memorandum in Support of Intervention at l0 (emphasis in original). While the minority students may have a more "focused" interest, the Law School and the minority students have the same ultimate objective: to maintain the Law School's current admissions policy and practices so as to ensure a diverse student body. The Law School has vigorously defended its policy and practices thus far in this litigation, and there is no basis for concluding that it will not continue to do so.

The proposed intervenors argue that they can assert defenses the Law School is unwilling or unable to assert. These so-called "defenses," however, do not relate to the preservation of the current admissions system, but rather speak to the proposed intervenors' vision of what the admissions policy should be. The proposed intervenors challenge, for example, the Law School's reliance on standardized test scores as a predictor of academic performance, and argue that such a policy excludes well-qualified minority applicants. This

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' Even if the Court did not require a stronger showing of inadequacy, the Court would still find that plaintiffs have failed to demonstrate that the existing defendants will not adequately represent their interests.

criticism is more appropriately a challenge to, rather than a defense of, the current admissions system. The proposed intervenors are also concerned about the impact of the currently pending Initiative 200,

which targets all race-conscious policies of the State and local governments. The proposed intervenors contend that if they are not permitted to intervene, they would be foreclosed from challenging the constitutionality of that initiative in this litigation. [2] The issues the proposed intervenors wish to raise significantly expand the litigation beyond the claims asserted in the plaintiffs' Consolidated Amended Complaint, and are only tangential to the central issue in this case, that is, whether the Law School's current admissions policy and practices are constitutional under existing authority. Defendants have shown that they will vigorously defend the current system of admissions, and the proposed intervenors have failed to demonstrate that any interest they have in the current system will be inadequately represented by existing defendants. Accordingly, the motion to intervene as of right is denied.

The Court denies the motion for permissive intervention for the same reasons. The proposed intervention would substantially expand the scope of the litigation, needlessly complicate the issues, and unduly delay adjudication of the case.

The Court will, however, permit the proposed intervenors to participate in this litigation as amicus curiae. The proposed intervenors will be permitted to file briefs in support of or in opposition to motions filed by the parties. To ensure that the proposed intervenors have notice of any future motions, the parties are directed to serve counsel for the It 11 11 11

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2 The proposed intervenors do not argue, nor could they argue, that they would be precluded from challenging Initiative 200 in another lawsuit if they are not permitted to intervene

here.

intervenors with any pleadings hereafter filed in this lawsuit. The Clerk is directed to enter the proposed intervenors and their counsel on the docket as amicus curiae and send them copies of any future orders in this case.

IT IS SO ORDERED.

DATED this 23rd July, 1998.

THOMAS S. ZILLY

UNITED STATES DISTRICT JUDGE