

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE ex rel NORM SMITH; LYNN HERBERT; ANDY OWENS, SR.; ELIN MILLER;
DOTTY RANDALL STAPLETON; KEITH TYMCHUK; CHUCK IRELAND; GEORGIA
STILES; BILL MARKHAM; and SUSAN MORGAN,
Relators-Respondents,

v.

PATRICIA HITT, in her official capacity as Douglas County Clerk,
Defendant-Respondent,

and

JOHN PARKER,
Intervenor-Appellant.

Douglas County Circuit Court No. 15CV24992

Court of Appeals No. A161069

ORDER DENYING MOTION TO INTERVENE

Larry Saccato, who purports to appear “ex rel People of Douglas County,” moves to intervene on appeal in this action to assert that Article VI, § 8, of the Oregon Constitution is unconstitutional under the United States Constitution.¹

The court understands Saccato’s use of “ex rel” (on the relation of) to mean that Saccato purports to represent the legal interest or authority of, in this case, the “People” of Douglas County. However, if the court correctly understands Saccato’s position, he seeks to assert the legal interest or authority of “citizens of the State of Oregon” who reside in Douglas County.

It further appears from the judgment from which the appeal is taken that this is a mandamus action in which Norm Smith, *et al.*, seeks to compel defendant Douglas County Clerk to accept the Declaration of Candidacy of Susan Morgan as candidate for the office of Douglas County Commissioner for a third consecutive term, notwithstanding the existence of a county ordinance that purports to limit a person to two consecutive terms as county commissioner. Relators contend, and the trial court ruled, that the county ordinance is unconstitutional under Article VI, § 8, of the Oregon Constitution.

¹ The court also has considered Saccato’s first supplement to his application and acknowledges receipt of the second supplement.

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REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

It does not appear that any party to the action in the trial court asserted that Article VI, § 8, of the Oregon Constitution was unconstitutional under the United States Constitution. Allowing Saccato to intervene on appeal would result in the appeal presenting a significant new issue that was not litigated in the trial court. Apart from presenting a significant new issue that neither the parties nor the trial court addressed, it is possible that the parties might have developed the factual record differently had the issue of the constitutionality of Article VI, § 8, been raised in the trial court.

Therefore, the motion to intervene is denied.

James W. Nass

02/24/2016
10:53 AM

JAMES W. NASS
APPELLATE COMMISSIONER

c: James L Buchal
Charles Lee
Sharon A Rudnick
Lawrence J Saccato

ej

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