

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF WASHINGTON

WASHINGTON COUNTY,

Plaintiff,

v.

TIM SIPPEL,

Defendant.

Case No.: 22CV07782

**TIM SIPPEL'S CORRECTED  
OPPOSITION TO OREGON  
SECRETARY OF STATE'S MOTION TO  
INTERVENE**

ORAL ARGUMENT REQUESTED

**I. INTRODUCTION**

The Secretary of State ("Secretary") seeks to intervene based on conclusory allegations that the production of a ballot database from Washington County will directly jeopardize the security of elections. The Secretary offers no evidence that this is true. The Secretary's *ipse dixit* just proclaims a security threat and her entitlement to intervene.

1 Permissive intervention under ORCP 33C is not liberally construed.<sup>1</sup> Rather, the  
2 grounds for intervention are strict.<sup>2</sup> The third party must show that it will directly and  
3 immediately suffer by direct legal operation of the judgment.<sup>3</sup>

4 The District Attorney found that there was insufficient evidence that production of a  
5 database from a test election implicates any security concerns for Washington County. The  
6 Secretary’s conclusory allegations fail to demonstrate how production of a database will  
7 directly and immediately cause security concerns for the State. The Secretary’s motion  
8 should be denied.

## 9 **II. ARGUMENT**

### 10 **A. The Election System has a Work Product Portion that is Public.**

11 Washington County licenses its election system from Clear Ballot Group, Inc.  
12 pursuant to Personal Services Contract BCC 15-1219 (“PSC” or “contract”).<sup>4</sup> The PSC has a  
13 portion titled “Standard Contract Terms and Conditions” that explicitly defines Work  
14 Product as including “**databases**, templates, file formats, scripts, links, procedures . . . .”<sup>5</sup>  
15 Work Product is “the exclusive property of the County.”<sup>6</sup> Even if Work Product could be  
16  
17  
18

---

19 <sup>1</sup> *Taylor v. Portland Adventist Med. Ctr.*, 242 Or. App. 92, 102 (2011).

20 <sup>2</sup> *Id.*

21 <sup>3</sup> *Id.*

22 <sup>4</sup> Decl. Tim Sippel, Ex. A (filed contemporaneously with this brief).

<sup>5</sup> *Id.* at p. 9 ¶ 22 (emphasis added).

<sup>6</sup> *Id.*

1 argued to contain protectable intellectual property, there are no restrictions on what the  
2 County can do with it.<sup>7</sup>

3 Because Work Product is owned by Washington County with no restrictions it  
4 subject to production through a public records request.<sup>8</sup> Mr. Sippel's public records request  
5 only seeks a database which is defined as Work Product under the contract.

6 **B. The Election System has a Licensed Software Portion that is Confidential.**

7 Attachment B to the PSC defines the portion of the Washington County's Election  
8 System that is confidential.<sup>9</sup> Attachment B restricts the use of Licensed Software by  
9 Washington County<sup>10</sup> and asserts that the Licensed Software is protected by Clear Ballot's  
10 intellectual property.<sup>11</sup> Licensed Software is defined as the Object Code version of Clear  
11 Ballot's software.<sup>12</sup> Object Code is defined as the computer programs.<sup>13</sup>

12 To the extent that there is conflict between the Standard Contract Terms and  
13 Conditions and Attachment B, the Standard Contract Terms and Conditions take  
14 precedence over Attachment B.<sup>14</sup>

---

15  
16 <sup>7</sup> *Id.* ("if any of the work product contain intellectual property of the Contract that is or  
17 could be protected by federal copyright, patent, or trademark laws, or state trade secret  
18 laws, Contractor hereby grants County a perpetual, royalty-free, fully paid-up, nonexclusive  
and irrevocable license to copy, reproduce, perform, dispose of, use and reuse, in whole or  
in part, and authorize others to do so.")

19 <sup>8</sup> ORS § 192.314(1).

20 <sup>9</sup> Decl. Tim Sippel, Ex. A at p. 27.

21 <sup>10</sup> *Id.* at p. 27-28, ¶ 3.2.

22 <sup>11</sup> *Id.* at p. 28, ¶ 3.4.

<sup>12</sup> *Id.* at p. 27, ¶ 1.5.

<sup>13</sup> *Id.* at p. 27, ¶ 1.6..

<sup>14</sup> *Id.* at p. 2 ¶ 4.3.

1 Mr. Sippel's public records request does not seek production of any Licensed  
2 Software. It seeks production of a database that falls under the definition of Work Product.

3 **C. Mr. Sippel Only Seeks Production of Work Product.**

4 Through a public records request to Washington County, Tim Sippel sought:

5 An electronic copy of the ballot database from a public test of the voting  
6 system. [The request] include[s] not only ballot image files, but also the  
7 MySQL database and all data files that it references. [T]his request is for the  
database from a public test of the voting system, rather than of actual election  
results.<sup>15</sup>

8 The database sought by Mr. Sippel falls squarely within the definition of Work Product. As  
9 explicitly specified in the contract, the database sought by Mr. Sippel is a public record and  
10 the public has a right to see it.<sup>16</sup>

11 **D. Washington County's Excuses for Denying Mr. Sippel's Request.**

12 Washington County denied Mr. Sippel's request citing three statutory exemptions.

- 13 (1) ORS 192.345(15) which protects from disclosure "computer programs  
developed or purchased for any public body for its use."  
14 (2) ORS 192.345(2) which provides protection for trade secrets.  
15 (3) ORS 192.345(23) which excludes from disclosure records that would "identify  
16 security measures, or weaknesses or potential weaknesses in security  
measures" taken to protect information systems.

17 Washington County's reliance on these three exemptions is without merit. The first  
18 excuse ("computer programs") does not apply because Mr. Sippel is not seeking the  
19  
20  
21

---

22 <sup>15</sup> DA Order, Washington County Complaint, Exhibit A, p. 1.

<sup>16</sup> ORS 192.314.

1 Licensed Software as defined by the Clear Ballot contract. Mr. Sippel is seeking a database  
2 which falls explicitly within “Work Product” which belongs entirely to the County.<sup>17</sup>

3 Washington County’s second excuse (“trade secret”) is similarly without merit. The  
4 only protected trade secrets described in the Clear Ballot contract is for the Licensed  
5 Software. The database sought by Mr. Sippel is explicitly defined within “Work Product” as  
6 not being protected by trade secrets.

7 Washington County’ third excuse (“security”) is also without merit. If there was a  
8 security risk in producing a database, then that would be an exceedingly poor design by  
9 Clear Ballot. If there was a security risk in producing a database, Clear Ballot would not  
10 have included the database in the definition of “Work Product.”<sup>18</sup> If there was a security  
11 risk in producing a database, Clear Ballot would not have written the contract to make the  
12 database “the exclusive property of the County.”<sup>19</sup>

13 Moreover, during the course of his interaction with Washington County, Mr. Sippel  
14 was told by Washington County that none of the equipment relating to voting and  
15 tabulation were connected to the Internet.<sup>20</sup> Additionally, the Heritage Foundation, in its  
16 report on election integrity for Oregon, reports that: “Per correspondence with state  
17 election official, all equipment and computers related to voting and tabulating are stand-  
18  
19

---

20 <sup>17</sup> Decl. Tim Sippel, Ex. A, pg. 9 ¶ 22 (“Such work products include, but are not limited to:  
21 **databases . . . .**”) (emphasis added).

22 <sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Decl. of Tim Sippel, ¶ 4.

1 alone. None of them is ever connected to the Internet. All updates and data transfers occur  
2 offline via encrypted removable media.”<sup>21</sup>

3 In view of the isolation of the County’s election equipment from the Internet, a  
4 hacker with perfect knowledge of the County’s computer system could not obtain access  
5 without breaking into Washington County’s physical facility.

6 **E. The DA’s Order.**

7 Mr. Sippel appealed Washington County’s rejection of his request to the Washington  
8 County District Attorney. In a well-reasoned Order dated February 15, 2022, the  
9 Washington County District Attorney (“District Attorney”) rejected Washington County’s  
10 arguments and ordered Washington County to produce the requested database.<sup>22</sup>

11 In response to the DA’s Order, Washington County filed this action seeking a  
12 declaration that it is not obligated to produce the requested database.

13 Now comes Oregon’s Secretary of State (“Secretary”) seeking to intervene on the  
14 basis that the District Attorney’s Order would prejudice the security of elections in Oregon.

15 **F. The Secretary of State Has No Support for Its Motion to Intervene.**

16 The Secretary must show that its interest is such “a direct and immediate character  
17 that the intervenor will either gain or lose by the direct legal operation of the judgment.”<sup>23</sup>  
18 Permissive intervention under ORCP 33C is not liberally construed.<sup>24</sup> This requirement is  
19

---

20 <sup>21</sup> The Heritage Foundation, Election Integrity Scorecard, State Scorecard: Oregon,  
21 <https://www.heritage.org/electionscorecard/pages/states/or.html> (viewed Apr. 3, 2022).

22 <sup>22</sup> Washington County Complaint, Exhibit A.

23 <sup>23</sup> *Taylor*, 242 Or. App. at 102 (2011).

24 <sup>24</sup> *Id.*

1 strictly applied.<sup>25</sup> The Secretary asserts that she has a general security interest in elections,  
2 but she has not provided any evidence of how that security interest would be directly  
3 affected by production of the election database of a test election.

4 The few statements made by the Secretary in support of her motion actually cut  
5 against her Motion. The Secretary notes that she must review and approve each county's  
6 election security plan. She also notes that her duties include certification of each vote tally  
7 system.

8 In view of the fact that Washington County's election system has been in operation  
9 since the 2016 elections,<sup>26</sup> the Secretary would have already approved of Washington  
10 County's equipment. The Secretary would have already approved the standardized contract  
11 with Clear Ballot that makes databases a public document. The Secretary would have  
12 already determined that Washington County's system is sufficiently protected through its  
13 security plan and the security of the Licensed Software. The Secretary would have already  
14 determined that with an air-gap the risk of hacking was adequately mitigated.

15 Having reviewed and approved everything, the Secretary is already aware that, under  
16 its contract with Clear Ballot, Washington County's database is a public record subject to  
17 public records requests. In her motion, she does not assert any reasons that she did not  
18 previously recognize that the standardized Clear Ballot contract entered into by  
19 Washington County created a security risk by making the database a public record.

---

22 <sup>25</sup> *Id.*

<sup>26</sup> *See* Sippel Decl., Ex. A, p. 13

1 The Secretary does not assert how, in view of all the protections of Washington  
2 County's Election system, there is a security risk in producing a database. She does not  
3 explain what the purported security risk is. She does not explain how, in the six years since  
4 2016, she is just now discovering this supposed and previously undiscovered security risk.

5 The Secretary fails to state how the security of Washington County's election system  
6 is "of such a direct and immediate character" that the State of Oregon will lose by the  
7 direct legal operation of the judgment.<sup>27</sup> Particularly, in light of the fact that Washington  
8 County's election system is isolated and not connected to the Internet, the Secretary has  
9 not explained how the disclosure of a database could lead to a hacker getting access to  
10 Washington County's systems.

11 Conclusory speculation that disclosure of the database would impair security of the  
12 State's election systems is insufficient to show a "direct and immediate" loss by the State of  
13 Oregon. The Secretary has not met her burden to show a "direct and immediate" loss by  
14 the State of Oregon.<sup>28</sup>

15 **G. Mr. Sippel will be Prejudiced by the Secretary's Intervention.**

16 Mr. Sippel is an individual. It is already a daunting task for Mr. Sippel to battle with  
17 a governmental organization with the resources of Washington County. Now the State of  
18 Oregon wants to pile on. Washington County and the State of Oregon will occupy more of  
19 the Court's time on their side than Mr. Sippel. In short, the Secretary's intervention will  
20 allow the Secretary and the County to gang up on Mr. Sippel, two on one.

---

21  
22 <sup>27</sup> See *id.*

<sup>28</sup> See *Taylor*, 242 Or. App. at 102.



1 **III. CONCLUSION**

2 The Secretary's conclusory assertions do not establish that Court should grant the  
3 Secretary's Motion to Intervene.

4  
5 Respectfully submitted,

6 Dated: April 5, 2022

7 By: s/ Stephen J. Joncus  
8 **Stephen J. Joncus**, OSB No. 013072  
9 JONCUS LAW P.C.  
10 13203 SE 172<sup>nd</sup> Ave Ste 166 #344  
Happy Valley, Oregon 97086  
(971) 236-1200  
steve@joncus.net

11 *Attorney for Defendant Tim Sippel*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

Dated: April 5, 2022

Stephen J. Joncus