

not become party until admitted through successful intervention); *Robert Ito Farm, Inc. v. Cty. of Maui*, 842 F.3d 681, 687 (9th Cir. 2016) (“a prospective intervenor is not a ‘party’ as that term is used in federal law. ... a prospective intervenor does not become a party to the suit unless and until he is allowed to intervene.”); *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 171 F.3d 1083, 1089 (7th Cir. 1999) (“an applicant for intervention is not a party, he wants to *become* a party.” (emphasis in original)).

5. Even if Applicants could join the Motion to Dismiss prior to being admitted as a parties in this matter, Applicants’ joinder is untimely.

6. Iowa Rules of Civil Procedure require a motion to dismiss be filed *before* the party answers. Iowa R. Civ. P. 1.421(1) (stating motion to dismiss is “pre-answer”); Iowa R. Civ. P. 1.411(1) (“Motions attacking a pleading must be served *before* responding to the pleading....” (emphasis added)).

7. Applicants filed their joinders to the Motion to Dismiss simultaneously with their answers, which renders the joinders untimely and requires dismissal.¹ *Walker Shoe Store, Inc. v. Howard’s Hobby Shop*, 327 N.W.2d 725, 726 (Iowa 1982) (holding motion to dismiss filed simultaneously with answer is untimely and must be dismissed); *Poole v. Putensen*, 274 N.W.2d 277, 279 (Iowa 1979) (same); *Grinnell v. State Bank v. Jones*, No. 15-0674, 2016 WL 1683119, at *2 (Iowa Ct. App. Apr. 27, 2016) (positively citing *Walker Shoe Store, Inc.* and holding motion to dismiss filed after answer is untimely); *see also Powell v. Khodari-Intergreen Co.*, 303 N.W.2d 171, 175 (Iowa 1981) (holding motion to dismiss must be filed before answer); *Riediger v. Marrland Dev. Corp.*, 253 N.W.2d 915, 916 (Iowa 1977) (same).

¹ If the Court grants the Applicants’ applications to intervene, which it should not, the Applicants may raise subject matter jurisdiction arguments at the summary judgment stage.

8. Further, as stated more fully in Plaintiffs' Combined Resistance to Applications for Intervention, which Plaintiffs incorporate by reference herein, Applicants' intervention must be denied. Defendants adequately represent Applicants' interests in this matter, as Applicants and Defendants' interests are aligned and Applicants inserting themselves in this matter would not serve the purposes of intervention. *See, e.g., State ex rel. Miles v. Minar*, 540 N.W.2d 462, 465 (Iowa 1995) (affirming denial of intervention application where applicant's interests were already adequately represented); *PEST Comm. v. Miller*, 648 F. Supp. 2d 1202, 1212-13 (D. Nev. 2009) (denying application to intervene and defend statute from single-subject matter lawsuit because the State was named defendant and was presumed to adequately represent interests of all citizens in these types of challenges). Because Applicants' intervention applications must be denied, they have no right to join the Defendants' Motion to Dismiss and their joinders should be struck. *See Terrill*, 70 N.W.2d at 838.

WHEREFORE, Plaintiffs respectfully request the Court strike the Applicants' joinders to Defendants' Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on November 30, 2020, I electronically filed the foregoing with the Clerk of Court using the Iowa Electronic Document Management System which will send a notice of electronic filing to the following:

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