

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

SHEILA DUNDON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 16AC-CC00338
)	
JASON KANDER,)	
)	
Defendant.)	

**INTERVENOR APPLICANTS’
MOTION TO INTERVENE AS PARTY DEFENDANTS AND
SUGGESTIONS IN SUPPORT**

COME NOW Joy Sweeney, Amy Fite, Kevin Hillman, Jennifer M. Joyce, Christopher K. Limbaugh, Timothy A. Lohmar, Robert P. McCulloch, Dan Patterson, Jean Peters-Baker, Dwight Scroggins, Matt A. Selby, Daniel L. White and Eric G. Zahnd (“Intervenors”), pursuant to Missouri Supreme Court Rule 52.12, and respectfully move this Court for leave to intervene in the above-captioned action as Defendants for the purpose of asserting their interests set forth herein and in support of their Motion, states as follows:

1. Joy Sweeney is a citizen, resident, registered voter and taxpayer of the State of Missouri.
2. Amy Fite is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Christian County.
3. Kevin Hillman is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Pulaski County.
4. Jennifer M. Joyce is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Circuit Attorney of the City of St. Louis.

5. Christopher K. Limbaugh is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Cape Girardeau County.

6. Timothy A. Lohmar is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of St. Charles County.

7. Robert P. McCulloch is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of St. Louis County.

8. Dan Patterson is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Greene County.

9. Jean Peters-Baker is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Jackson County

10. Dwight K. Scroggins, Jr. is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Buchanan County.

11. Matt A. Selby is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Stone County.

12. Daniel L. White is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Clay County.

13. Eric G. Zahnd is a citizen, resident, registered voter and taxpayer of the State of Missouri and the duly elected Prosecuting Attorney of Platte County.

14. Intervenors are opponents of the Initiative Petition labeled Constitutional Amendment to Article XVI, Relating to Legalizing Marijuana for Medical Purposes, version 6, 2016-135 (“Initiative Petition”). *See* Sweeney Affidavit, ¶3; *see* McCulloch Affidavit, ¶3.

Initiative Petition 2016-135

15. The Initiative Petition sample sheet was filed with the Secretary of State on November 4, 2015. The Initiative Petition would purport to legalize marijuana, a substance which is illegal under federal law.

16. Marijuana is a destructive drug, with no proven benefits (medical or otherwise).

17. The CSA [Controlled Substances Act] designates marijuana as a Schedule I drug. 21 U.S.C. § 812.

18. “Schedule I drugs are categorized such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.” *Gonzales v. Raich*, 545 U.S. 1, 14 (2005).

19. Marijuana is a gateway drug, which destroys children’s lives and results in addiction and a lifetime of suffering.

20. With ever increasing rates of addiction to currently legal drugs, purported legalization which could lead to ease of access to marijuana would be a devastating mistake for millions of Missourians.

21. The Federal Drug Enforcement Agency has recently re-affirmed that marijuana will remain a Schedule I controlled substance under federal law.

22. On August 9, 2016, Secretary of State Kander issued a Certificate of Insufficiency for the Initiative Petition.

23. The Certificate of Insufficiency showed that the requirement for Congressional District 2 was 32,337 signatures. The total number of valid signatures submitted by proponents was 30,095. This amounts to a deficiency of 2,242 signatures.

24. Intervenors support Defendant Kander's determination that the Initiative Petition is insufficient under the Missouri Constitution and Chapter 116, RSMo.

25. Intervenors further believe and assert that the Initiative Petition is otherwise defective in that it violates article I, Section 3 of the Missouri Constitution, in that marijuana is a Schedule I drug under Federal law, and that possession, manufacture and distribution of marijuana is a criminal offense under Federal law. *Gonzales v. Raich*, 545 U.S. 1, 14 (2005).

26. Plaintiffs have requested that the Secretary of State reverse his determination of insufficiency and place the measure on the November 8, 2016 general election ballot.

27. Plaintiffs also request a finding that Sections 116.060 and 116.130.1 and 15 CSR 30-15.010 and 15 CSR 30-15.020 do not apply to a determination of sufficiency under Section 116.200, RSMo, or alternatively, are invalid under article III, Section 49 *et seq.* of the Missouri Constitution.

28. Pursuant to Rule 52.12(a)(2), a party may intervene under the following circumstances:

(a) **Intervention as of right:** Upon timely application anyone shall be permitted to intervene in an action...(2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition may as a practical matter impair or impede the applicant's ability to protect the interest unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon 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...

Intervention as of Right

29. In *State ex rel. Nixon v. American Tobacco Co.*, the Missouri Supreme Court set forth the elements of Rule 52.12(a) intervention as of right as follows:

[A]n applicant seeking intervention must file a timely motion and ‘show three elements: (1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant’s ability to protect the interest is impaired or impeded; and (3) that the existing parties are inadequately representing the applicant’s interest.’

34 S.W.3d 122, 127 (Mo. banc 2000) (quoting *Timmermann v. Timmermann*, 891 S.W.2d 540, 542 (Mo. App. 1995)).

30. Missouri courts have always liberally construed Rule 52.12 (and its predecessor) to permit broad intervention. *State ex rel. St. Joseph Association of Plumbing, Heating and Cooling Contractors*, 579 S.W.2d 804, 806 (Mo. App. 1979); see also *Bolin v. Anders*, 559 S.W.2d 235, 247 (Mo. App. 1977); *State ex rel. Hughes v. Smith*, 485 S.W.2d 646, 651 (Mo. App. 1972). When the three elements are satisfied, “the right to intervene is absolute and the motion to intervene may not be denied.” *Nixon*, 34 S.W.3d at 127.

31. As discussed below, Intervenors meet all three elements for intervention as of right.

Intervenors have an Interest Relating to Transaction which is the Subject of this Action

32. Intervenors have a substantial interest in the subject of this case and that interest is consistent with the required interest to permit intervention as of right. As the Missouri Supreme Court stated:

‘Interest’ generally means a concern which is more than a mere curiosity, or academic or sentimental desire. One interested in the action is one who is interested in the outcome and result thereof because he has a legal right which will be directly affected thereby

or legal liability which will be directly and largely diminished by the judgment or decree in such action.

In the Matter of Trapp, 593 S.W.2d 193, 204 (Mo. banc 1980).

33. Intervenors have an interest in upholding the constitutional provisions of the State of Missouri and in not seeing the Initiative Petition, which violates the Missouri Constitution, on the November ballot. *See Sweeney Affidavit; McCulloch Affidavit.*

34. Opponents of Initiative Petitions have been granted intervention in similar 116.200, RSMo, actions. *See Committee for a Healthy Future v. Carnahan*, Case No. 06AC-CC00707; *Yes to Stop Callaway Committee v. Kirkpatrick*, 685 S.W.2d. 209 (Mo. App. W.D. 1984).

35. The interest of Intervenors is more than a mere curiosity, or sentimental desire, but rather they are interested in the outcome and result of the litigation. Intervenors have an interest in seeing the measure declared unconstitutional. *See Sweeney Affidavit ¶6; McCulloch Affidavit ¶5.*

36. Intervenors have already expended time in advocating for drug prevention and should the measure be placed on the ballot will expend non-public resources to advocate against the measure. *See Sweeney Affidavit ¶¶4, 7; McCulloch Affidavit, ¶5.*

37. Opponents, like proponents, of initiative petitions have a unique, individualized interest in litigation challenging any part of such initiative petitions and thus are deemed to have a sufficient interest to be allowed to intervene as a matter of right. *See Allred v. Carnahan*, 372 S.W.3d 477 (Mo. App. W.D. 2012).

Intervenors' Interests will be Impaired and Impeded

38. Intervenors' interest will be "impaired or impeded, as a practical matter" if the intervention is denied. *State v. City of St. Joseph*, 579 S.W.2d 804, 807-808 (Mo. App. W.D. 1979). See Sweeney Affidavit, ¶8; McCulloch Affidavit, ¶6.

39. The judgment in this action will frustrate Intervenors' interests in seeing that the proposed amendment is not made part of the Missouri Constitution.

40. If Intervenors are not able to sustain this intervention, they may at a future date be precluded from raising certain claims in that such claims may be precluded as not having been raised at the earliest possible time, which is the case before this Court.

41. Specifically, Intervenors may at a future date be precluded from raising the constitutional claims regarding the validity of the proposed Initiative Petition in that such claims may be precluded as not having been raised at the earliest possible time, which is the current case. See Sweeney Affidavit, ¶8; McCulloch Affidavit, ¶6.

None of the existing parties adequately represent the Intervenors' Interests

42. Intervenors' interests are not adequately represented by any other party to this action. See *Alsbach v. Bader*, 616 S.W.2d 147, 151 (Mo. App. E.D. 1981).

43. No other party to this litigation has any similar interest to those interests of the Intervenors, as Opponents, in this matter.

44. Intervenors have different interests than Plaintiffs as Intervenors believe and assert that the Secretary correctly determined the Initiative Petition lacked sufficient signatures and that the proposed measure is unconstitutional. See Sweeney Affidavit, ¶9; McCulloch Affidavit, ¶7.

45. Intervenors, as Opponents, have interests different than Defendant Kander. *See* Sweeney Affidavit, ¶10; McCulloch Affidavit, ¶8.

46. Defendant Kander has an interest in carrying out his official duties under Chapter 116, RSMo, and not in the underlying invalidity of the Initiative Petition.

47. Intervenors have an interest different than Defendant Kander in that Intervenors have an interest in seeing that the measure is declared unconstitutional. *See* Sweeney Affidavit, ¶9; McCulloch Affidavit, ¶7.

48. Defendant Kander, in carrying out his official duties under Chapter 116, RSMo, has no legal interest in the underlying Initiative Petition, or in advocating for or against the amendments contained therein. *See Allred v. Carnahan*, 372 S.W.3d 477, 487 (Mo. App. W.D. 2012).

49. In *Allred v. Carnahan*, 372 S.W.3d 477, 487 (Mo. App. W.D. 2012), the Court found that where the first two elements for intervention as of right were met, the intervenor-applicant need only make a “‘minimal showing’ that the representation by State Defendants may be inadequate.”

50. Intervenors’ Motion is timely since the Petition was filed on August 12, 2016.

Permissive Intervention

51. In the alternative, and without waiving any of the arguments proposed above regarding intervention as of right, Intervenors should be granted permissive intervention under Missouri Supreme Court Rule 52.12(b) in this case.

52. Rule 52.12(b) authorizes the Court to permissively allow intervention where Intervenor's proposed claim and/or defenses have a question of law or fact in common with the existing litigation.

53. Intervenor has an individualized interest in the Initiative Petition, and their proposed claims and defenses have questions of law and fact in common with the existing litigation.

54. The claims brought by Intervenor in the proposed answer, defenses, and cross-claim relate to and are part and parcel of the underlying action, to-wit, the invalidity and insufficiency of the Initiative Petition.

55. Whether the Court determines intervention is a matter of right or permits intervention, Intervenor should be allowed to intervene in this matter.

56. The intervention will not delay or impede the adjudication of this case. See Sweeney Affidavit, ¶11; McCulloch Affidavit, ¶9. Attached to this Motion to Intervene is a proposed Answer, including defenses and cross-claim, to be filed upon this Court issuing its order granting intervention.

57. Additionally, attached to this Motion to Intervene, as Exhibits A and B, are Affidavits providing evidentiary support of the claims made herein.

58. Defendant Kander does not object to this Motion to Intervene.

59. Plaintiffs oppose this Motion to Intervene.

60. WHEREFORE, Intervenor pray that this Court enter an order permitting their intervention as Intervenor/Defendants and directing the Circuit Clerk to file the Answer, attached to this Motion, and for such other relief as this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing were delivered via electronic transmission, this 18th day of August, 2016, to:

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