

**IN THE CIRCUIT COURT OF WASHINGTON COUNTY, ARKANSAS
CIVIL DIVISION**

**PROTECT FAYETTEVILLE, f/k/a REPEAL 119;
PAUL SAGAN; PETER TONNESSON; and
PAUL PHANEUF**

PLAINTIFFS

and

THE STATE OF ARKANSAS

INTERVENOR

vs.

Case No. 72CV-15-1510

**THE CITY OF FAYETTEVILLE, Washington County, Arkansas;
LIONELD JORDAN, in his official capacity as Mayor of Fayetteville;
ADELLA GRAY, SARAH MARSH, MARK KINION, MATTHEW
PETTY, JUSTIN TENANT, MARTIN W. SCHOPPMAYER JR.,
JOHN LATOUR and ALAN LONG, in their official capacities as
Aldermen of the Fayetteville City Council**

DEFENDANTS

Brief in Support of Motion to Intervene

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INTRODUCTION

Proposed Intervenor PFLAG Fayetteville/Northwest Arkansas (“PFLAG of NWA”), Anthony Clark, Noah Meeks, and Liz Petray (collectively, “Proposed Intervenor”) respectfully submit this brief in support of their motion to intervene.

In 2015, as Fayetteville was considering an ordinance that would protect members of its local lesbian, gay, bisexual, and transgender (“LGBT”) community from discrimination that this community historically has faced, the Arkansas General Assembly rushed to enact Ark. Code Ann. §§ 14-1-401-403 (“Act 137”). Act 137 prevents localities “from adopt[ing] or enforc[ing] an ordinance . . . that creates a protected classification or prohibits discrimination on a basis not contained in state law.” Plaintiffs and Plaintiff-Intervenor the State now seek to apply Act 137 to enjoin the enforcement of Fayetteville’s anti-discrimination ordinance—Ordinance 5781—which was passed by popular vote in September 2015 after extensive public debate in the Fayetteville community.

Proposed Intervenor are individual LGBT residents of Fayetteville and a local non-profit organization that includes LGBT members who live and work in Fayetteville. Proposed Intervenor devoted time, effort, and money to the campaign to pass Ordinance 5781 and all now benefit from its protections. They possess substantial interests in this litigation, which will address whether Act 137 effects a deprivation of LGBT individuals’ constitutional rights and will determine whether the protections against discrimination they worked for and now enjoy as a result of the municipal ordinance will be nullified in Fayetteville and precluded elsewhere. The existing parties do not share or adequately represent Proposed Intervenor’s interests, and the motion is timely in light of the Arkansas Supreme Court’s remand. Proposed Intervenor should therefore

be granted intervention as of right (or alternatively by permission of this Court) as Defendants in this action.

FACTUAL BACKGROUND

In late 2014, Fayetteville voters narrowly repealed Ordinance 5703, which would have extended civil rights protections to members of the LGBT community within the city. In the months following Ordinance 5703's defeat, Fayetteville residents, including Proposed Intervenors, continued to engage in a robust public discourse on the subject of nondiscrimination protections for LGBT individuals in the community.

The Arkansas General Assembly sought to short-circuit this percolating debate and prevent local communities from addressing the issue as they saw fit through a democratic process. In early 2015, the legislature enacted Act 137, prohibiting "[a] county, municipality, or other political subdivision of the state" from "adopt[ing] or enforc[ing] an ordinance, resolution, rule, or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law." Contemporaneous reports reflect that legislators who sponsored and supported Act 137 acknowledged that the legislation was a reaction to the Fayetteville City Council's August 2014 passage of nondiscrimination protections for LGBT persons.¹

On June 16, 2015, the City Council referred Ordinance 5781, a new measure on the subject of LGBT civil rights protections, to Fayetteville voters for enactment or rejection in a special election to be held September 8, 2015. Ordinance 5781 sought to "ensure that all of [Fayetteville's] citizens and visitors will be free from unfair discrimination" by "extend[ing]

¹ See, e.g., "Bill to ban anti-discrimination laws at city, county level advances," ARK. NEWS (Feb. 5, 2015), <http://www.arkansasnews.com/article/20150205/NEWS/302059903> (reporting that "[Senator Bart] Hester told the panel he filed the bill in reaction to an ordinance the Fayetteville City Council approved last summer that included prohibitions against discrimination based upon sexual orientation or gender identity in housing, employment and public service.").

existing protections” under the Uniform Civil Rights Protection Article “to lesbian, gay, bisexual, and transgender citizens and visitors.” The City believed this ordinance was not precluded by Act 137 (a view with which the Arkansas Supreme Court subsequently disagreed). The voters in Fayetteville ratified Ordinance 5781 by a margin of 53 to 47.

PROCEDURAL BACKGROUND

On August 31, 2015, Protect Fayetteville, a group opposing Ordinance 5781, joined with a number of individuals also opposed to the Ordinance (collectively, “Plaintiffs”) to seek to enjoin the special election regarding Ordinance 5781. To that end, Plaintiffs filed a Motion for Emergency Temporary Restraining Order in this Court, alleging, *inter alia*, that Ordinance 5781 violated Act 137. On September 3, 2015, this Court denied Plaintiffs’ motion to enjoin the special election.

After Ordinance 5781 was ratified at the special election, Plaintiffs filed an Amended Complaint on October 15, 2015, seeking to enjoin enforcement of the ordinance that the Fayetteville voters had adopted. On November 19, 2015, the State of Arkansas (“the State”) moved to intervene in support of Plaintiffs’ effort to void the outcome of the Fayetteville election, and on November 25, 2015, this Court granted the State’s motion to intervene.

On March 1, 2016, this Court granted summary judgment in favor of Defendants as to all Counts of the Amended Complaint. Regarding Count IV, this Court concluded that Ordinance 5781 did not violate Act 137 as it “prohibits discrimination on bases already contained in state law, in compliance with Act 137.” Given that conclusion, this Court reasoned that it “need not address the constitutionality of Act 137.”

Plaintiffs and the State appealed this Court’s ruling as to Count IV of the Amended Complaint. On appeal, the Arkansas Supreme Court reversed on statutory construction grounds.

Protect Fayetteville v. City of Fayetteville, 2017 Ark. 49, 9, 510 S.W.3d 258, 263 (2017). The Arkansas Supreme Court noted that the issue of the constitutionality of Act 137 was “not addressed by the circuit court” and was therefore “not preserved for appeal.” *Id.* at 10. The Court remanded, leaving the constitutional questions unresolved. Those constitutional questions are now squarely before this Court.

PROPOSED INTERVENORS

Proposed Intervenor are LGBT residents of Fayetteville and an organization whose membership includes LGBT people who live and work in Fayetteville. The individual Proposed Intervenor have spoken publicly regarding the importance of non-discrimination protections for the LGBT community and participated in the campaign for Ordinance 5781. As LGBT residents of Fayetteville, they directly benefit from the legal protections of Ordinance 5781 in areas such as housing, employment, and public accommodations and now stand to lose those protections unless Ordinance 5781 is upheld. As citizens of Arkansas, they are intentionally injured by Act 137, which was enacted in order to legally and politically disadvantage LGBT Arkansans by impairing their ability to obtain through the democratic process civil rights protections enjoyed by other groups.

As set out in the proposed Answer and Counterclaim of Proposed Intervenor, PFLAG of NWA is the Fayetteville area’s local chapter of PFLAG, the United States’ largest organization for parents, families, friends, and allies united with people who identify as LGBT. Founded almost three decades ago, PFLAG of NWA has around thirty members local to Fayetteville, including a number of LGBT individuals. Members of PFLAG of NWA publicly supported the campaign for Ordinance 5781.

Anthony Clark is a gay man who has lived in Fayetteville for twelve years. Mr. Clark made financial contributions in support of the campaigns for both Ordinance 5703 and Ordinance 5781. Mr. Clark attended the City Council meeting at which Ordinance 5781 was debated, canvassed door-to-door in support of the Ordinance, and spoke in favor of the Ordinance at a rally and a fundraising event. On August 17, 2015, Mr. Clark posted a blog entry in favor of Ordinance 5781 on the website of his Fayetteville company, Clark Partners Realty, writing:

Should our neighbors be fired from their job, denied housing, or kicked out of a restaurant simply because of their race, gender, or religion? Of course not! The ordinance doesn't limit anyone's rights, but rather gives the same protections to even more people. How can this not be a good thing?

Anthony Clark, "It's Quite Simple," *Clark Partners Realty* (Aug. 17, 2015) <http://clarkpartners.wpengine.com/its-quite-simple/>.

Noah Meeks is a transgender man living in Fayetteville. Mr. Meeks spoke in favor of Ordinance 5703 and Ordinance 5781 at the public meetings of the Fayetteville City Council before each was adopted. Mr. Meeks has also been a leader in Fayetteville's LGBT community, serving as a Support Group Facilitator for the Northwest Arkansas Center for Equality and speaking to faith groups and local media on his experience as a transgender man and the issues facing the transgender community.

Liz Petray is a transgender woman and a lifelong Arkansan who moved to Fayetteville to study at the University of Arkansas. She worked on the For Fayetteville campaign and also devoted significant personal time to support passage of Ordinance 5781. Ms. Petray has studied and written about political movements to provide nondiscrimination protection to LGBT people.

As members of the LGBT community in Fayetteville, Proposed Intervenors all receive protections from discrimination under Ordinance 5781 that will be nullified unless that Ordinance is upheld.

I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE “AS OF RIGHT” UNDER ARKANSAS RULE OF CIVIL PROCEDURE 24(A)(2).

To intervene as a matter of right pursuant to Arkansas Rule of Civil Procedure 24(a)(2),² a proposed intervenor must file a timely motion showing: “(1) that he has a recognized interest in the subject matter of the primary litigation, (2) that his interest might be impaired by the disposition of the suit, and (3) that his interest is not adequately represented by existing parties.” *Certain Underwriters at Lloyd’s, London v. Bass*, 461 S.W.3d 317, 326 (2015). “[I]f a party meets all three factors under Rule 24(a)(2), intervention as a matter of right cannot be denied.” *Id.* Proposed Intervenors satisfy all requirements and are therefore entitled to intervene as of right.

A. Proposed Intervenors Have a Strong and Recognized Interest in Act 137 Being Held Unconstitutional.

As LGBT individuals residing in Fayetteville and a Fayetteville area organization that has LGBT members, Proposed Intervenors have a strong and recognized interest in this litigation. Because the Arkansas Supreme Court has now held that local ordinances extending civil rights protections to LGBT individuals are prohibited by the language of Act 137, Proposed Intervenors will lose the important nondiscrimination protections provided by Ordinance 5781

² Arkansas Rule of Civil Procedure 24(a)(2) provides:

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 which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

Ark. R. Civ. P. 24(a). Because Arkansas Rule of Civil Procedure 24 mirrors that of Federal Rule of Civil Procedure 24, it is appropriate to look to the application of the federal rule when its Arkansas equivalent. *See, e.g., Matson v. Lamb Assoc.*, 328 Ark. 705, 710, 947 S.W.2d 324, 326 (Ark. 1997) (citing federal law regarding intervention and noting that Federal Rules of Civil Procedure 24(a) and (b) are identical to Arkansas Rules of Civil Procedure 24(a) and (b)).

upon which they depend unless Act 137 is held unconstitutional. And given the General Assembly's longstanding refusal to enact non-discrimination protections for LGBT Arkansans, unless Ordinance 5781 is upheld, Proposed Intervenorors will be precluded from accessing any protections against discrimination in employment, housing or public accommodations because Act 137 reorders the political process to strip away their ability to advocate for such protections on the local level. "[I]n cases challenging various statutory schemes as unconstitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention." 7C Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 1908.1, at 285 (2d ed. 1986).

Moreover, Proposed Intervenorors have a constitutional interest in not being subject to legal disadvantages imposed upon them as the result of the legislature's "animosity" or a "bare . . . desire to harm" them as members of a "politically unpopular group." *See Romer v. Evans*, 517 U.S. 620, 634 (1996). Although Act 137 is facially neutral, it is clear that the law was enacted for the very purpose of denying LGBT Arkansans the ability to obtain local civil rights protections, such as those provided by Ordinance 5781.³ Should the Court grant this motion, Proposed Intervenorors, relying on established Supreme Court precedent, will prove that (i) Act 137 violates Proposed Intervenorors' right to equal protection by impermissibly and intentionally subjecting the LGBT community to a law that "make[s] them unequal to everyone else" and that does not "further a proper legislative end," *Romer*, 517 U.S. at 635; and (ii) it does this by

³ Proposed Intervenorors, if permitted to intervene, would introduce evidence establishing this impermissible purpose, including contemporaneous statements from legislators reflecting this purpose. *See Village of Arlington Hgts v. Metrop. Housing Devel. Corp.*, 429 U.S. 252, 366-68 (1977) (explaining that "[d]etermining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," and identifying "subjects of proper inquiry" in determining whether discriminatory intent existed).

(continued ...)

unconstitutionally restricting and impeding Proposed Intervenor's ability to effect change within the local democratic process.⁴

B. Proposed Intervenor's Interest Could Be Impaired by the Disposition of this Litigation.

Proposed Intervenor's interest in maintaining Ordinance 5781 and seeing Act 137 invalidated as unconstitutional will be impaired if Act 137 is upheld by this Court, the Arkansas Supreme Court, or the United States Supreme Court in this action. Intervention is appropriate to prevent a party's interests from being impaired where a party would be bound by the "stare decisis effect" of a court's ruling on an issue "of first impression." *UHS of Arkansas, Inc. v. City of Sherwood*, 296 Ark. 97, 103-04, 752 S.W.2d 36, 39 (1988). In such cases, a party denied the ability to intervene in an action would suffer a "practical impairment" as a result of an adverse ruling if required to instead "proceed[] with [their] own litigation" before the same court. *Id.*

No court has yet determined whether Act 137 is constitutional. This Court's resolution of the question, which directly impacts Proposed Intervenor's interests, will therefore be the first ruling on the subject. As the history of this case demonstrates, any ruling by this Court is likely to be appealed to the Arkansas Supreme Court, whose decision will be binding statewide, and could even be appealed to the United States Supreme Court. Proposed Intervenor may be excluded from any potential appeal if they are not permitted to intervene in this Court. *See Arkansas Dep't of Health v. Westark Christian Action Council*, 319 Ark. 288, 290, 890 S.W.2d

⁴ See *Schuetz v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623, 1632 (2014) (Kennedy, J., plurality opinion) (noting the "unremarkable principle" that "the state may not alter the procedures of government" to target minorities); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 474 (1982) (holding unconstitutional the intentional "reallocation of power . . . from the existing decisionmaking body, in such a way as to burden minority interests"); *Hunter v. Erickson*, 393 U.S. 385, 393 (1969) ("[T]he State may no more disadvantage any particular group by making it more difficult to enact legislation on its behalf than it may dilute any person's vote or give any group a smaller representation than another of comparable size.").

(continued ...)

582, 583 (1995) (denying motion to intervene in the Arkansas Supreme Court “[b]ecause there was no motion to intervene filed in the trial court before that court lost jurisdiction of the case.”).

⁵ Therefore, Proposed Intervenors should be granted intervention in this litigation as of right to prevent impairment of their ability to argue the unconstitutionality of Act 137 in the future.

C. Proposed Intervenors’ Interests Are Not Adequately Represented by the Existing Parties.

Proposed Intervenors’ interests as members of the LGBT community targeted by Act 137 and individuals who receive protections under Ordinance 5781 are not adequately represented by any existing party. “The requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972). Once the proposed intervenor makes such a showing, “the party opposing intervention bears the burden of persuasion to demonstrate that the intervenor’s interests are adequately represented by existing parties.” *Certain Underwriters at Lloyd’s*, 2015 Ark. at 16, 461 S.W.3d at 327.

While the City of Fayetteville has an interest in defending Ordinance 5781 as the will of Fayetteville’s City Council and voters, Proposed Intervenors, as members of the LGBT community who benefit from the protections of Ordinance 5781, have a personal interest that is not shared by the City itself or the public at large, namely their interest in not having the protections they currently enjoy nullified by the State. This interest is all the more compelling where, as here, the State has sought to enjoin these protections because of animus against the LGBT community.

⁵ Even if the Proposed Intervenors could later intervene on appeal without having first intervened at the circuit court, that would not sufficiently protect their interest because that would not afford them all rights of a party including the right to take discovery and present evidence.

See Romer, 517 U.S. at 634. Furthermore, Proposed Intervenor have a unique interest in ensuring that the political process is not restructured to burden their ability to advocate for legal protections for themselves and other LGBT individuals at the local level. *See Schuette*, 134 S. Ct. at 1650 (Breyer, J., concurring).

Although in some cases where a government is tasked with defending a law there arises a presumption of adequate representation under the *parens patriae* doctrine, no such presumption applies in this case, as the interests of Proposed Intervenor as LGBT citizens are not shared by the public at large. *See Chiglo v. City of Preston*, 104 F.3d 185, 188 (8th Cir. 1997) (“If the citizen stands to gain or lose from the litigation in a way different from the public at large, the *parens patriae* would not be expected to represent him.”). Especially in light of Fayetteville’s recent history—in which an ordinance protecting LGBT citizens was enacted by popular vote just one year after the repeal of a similar ordinance—the City cannot be presumed to be an adequate representative of the LGBT community’s interests. Indeed, a change in the political inclinations of Fayetteville officials or voters could alter the City’s position in the litigation. *See Planned Parenthood of Minnesota, Inc. v. Citizens for Cmty. Action*, 558 F.2d 861, 870 (8th Cir. 1977) (finding intervenors had presented sufficient evidence to show that city-defendant was not an adequate representative of their interests in defending ordinance that was “passed by a 5 to 2 vote,” as “a switch of two votes could completely change the attitude of the City Council and the municipality in regard to the issues presented in this litigation.”).

D. Proposed Intervenor’s Motion to Intervene Is Timely in Light of the Arkansas Supreme Court’s Remand.

The motion to intervene is timely, as the Arkansas Supreme Court’s mandate, issued on March 16, 2017, has now made clear that Proposed Intervenor’s interest in having Act 137 found unconstitutional will be resolved by this litigation. The timeliness of a motion to

intervene is determined by reference to all of the circumstances of a case. *McLane Co., Inc. v. Davis*, 342 Ark. 655, 659, 33 S.W.3d 473, 475 (2000). Particularly, case law establishes that this Court should consider: 1) how far the proceedings have progressed; 2) if there has been any prejudice to other parties caused by the delay; and 3) the reason for any delay. *Id.* “Timeliness under Rule 24(a) is a matter lying within the discretion of the trial court and will not be subject to reversal absent abuse of that discretion.” *Cupples Farms P’ship v. Forrest City Prod. Credit Ass’n*, 310 Ark. 597, 602, 839 S.W.2d 187, 190 (1992).

Given Proposed Intervenor’s substantial interest in having Act 137 struck down as unconstitutional, intervention is timely under the circumstances of the case. There has been no discovery and no rulings by this Court or the Arkansas Supreme Court on the constitutionality of Act 137. Because the constitutional questions in this litigation have not yet been addressed by the Court, the existing parties will suffer no prejudice if Proposed Intervenor is permitted to intervene to address this issue.⁶ See *UHS of Arkansas, Inc. v. City of Sherwood*, 296 Ark. 97, 104, 752 S.W.2d 36, 39 (1988.); accord *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999 (8th Cir. 1993) (reversing as an abuse of discretion district court’s order denying intervention where, although motion to intervene was filed “eighteen months after suit had been commenced,” delay in seeking intervention did not result in prejudice because “the underlying litigation scarcely had progressed beyond the initial filing of pleadings” and “the parties had not even commenced discovery.”).

⁶ Intervention would not result in delay, as this Court’s order of April 24, 2017 makes clear that motion practice with respect to the State’s motion for summary judgment on the constitutional question remains ongoing. Per this Court’s order, the time has not yet expired for the State to respond to Defendants’ motion for enlargement of time. Should the Court grant Proposed Intervenor’s motion to intervene, Proposed Intervenor would request no more than two weeks from the Court’s order on the motion to intervene to respond to the State’s motion for summary judgment.

Proposed Intervenor seek to intervene now because it has only recently been determined that constitutional questions affecting the LGBT community will be resolved by this litigation. Plaintiffs' Amended Complaint in this matter initially brought six different Counts against the City, including a host of procedural arguments regarding the manner by which Ordinance 5781 was enacted. The City in response argued that the Ordinance was duly enacted and did not conflict with State law. This Court agreed with both of the City's arguments. The Arkansas Supreme Court's opinion of February 23, 2017 disagreed with the latter conclusion, but left the question of Act 137's constitutionality to be resolved by this Court on remand. Therefore, the constitutionality of Act 137, which is of significant consequence to Proposed Intervenor and the LGBT community in Arkansas more broadly, will necessarily be resolved by the resolution of the single remaining cause of action in this case.

Only now that the issues in dispute have narrowed has it become clear that the City's interests are not so similar that it can adequately represent Proposed Intervenor's personal interests in this litigation. *See Legal Aid Soc. of Alameda Co. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) ("[T]he relevant circumstance [] for determining timeliness is when the intervenor became aware that its interest would no longer be protected adequately by the parties."). Proposed Intervenor did not delay in seeking intervention once it became clear that, unless found unconstitutional, Act 137 will prevent LGBT individuals in Arkansas from seeking civil rights protections from their localities. While the City adequately represented the arguments that Ordinance 5781 was properly enacted and was not barred by the language of Act 137, the City does not adequately represent Proposed Intervenor's interest in not being subject to legal and political disadvantages imposed on them as a result of the legislature's desire to harm a politically unpopular group and in seeing Act 137 held unconstitutional.

II. IN ANY EVENT, PROPOSED INTERVENORS SHOULD BE GRANTED PERMISSIVE INTERVENTION PURSUANT TO RULE 24(B).

Even if this Court does not grant intervention as of right under Rule 24(a), permissive intervention should be allowed under Arkansas Rule of Civil Procedure 24(b), which states:

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. . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“Permissive intervention is a matter within the circuit court’s discretion and is subject to the abuse-of-discretion standard of review.” *Whaley v. Beckham*, 2016 Ark. 196, 4, 492 S.W.3d 65, 67 (2016).

As set forth above, the motion is timely submitted to this Court and will not prejudice the adjudication of the rights of the original parties. The legal question remaining in the main action is whether Act 137 is unconstitutional. Proposed Intervenor’s counterclaim and defenses present this same question, as they seek to contend that Act 137 is unconstitutional. Proposed Intervenor would contribute to the full development of the issues in this case, as their firsthand experience with Ordinance 5781 demonstrates the real-world effects of Act 137’s unconstitutional interference with LGBT individuals’ participation in the political process and the impact of losing these protections. *See H.L. Hayden Co. of N.Y. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986) (internal quotations and citation omitted) (courts have permitted intervention where intervenors will “significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.”).

Given that the outcome of this litigation will directly and personally affect the Proposed Intervenors, they should not be left on the sidelines while the question of their ability to fully participate in their community is being decided. As such, the Court should permit intervention by Proposed Intervenors for purposes of challenging the constitutionality of Act 137.

CONCLUSION


For the foregoing reasons, the Motion to Intervene as of Right of Proposed Intervenors should be granted. In the alternative, they should be permitted to intervene under Rule 24(b).

Dated: April 25, 2017

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CERTIFICATE OF SERVICE

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