The State of New Hampshire
Superior Court

Rockingham

BRENT TWEED, ET AL.

v.

TOWN OF NOTTINGHAM, ET AL.

No. 218-2019-CV-0398

ORDER ON NOTTINGHAM WATER ALLIANCE'S MOTION TO INTERVENE

At issue is whether Nottingham Water Alliance ("NWA") should be allowed to intervene in support of a town ordinance being challenged by the plaintiffs. After considering the pleadings, arguments, and applicable law, NWA's motion to intervene is DENIED.

Facts and Procedural History

On March 16, 2019, the voters of the Town of Nottingham voted to enact "The Freedom from Chemical Trespass Rights-Based Ordinance" (the "Ordinance"). See Doc 1, Ex. 1 (hereinafter cited as "Ordinance").[1] This Ordinance creates (or asserts as already existing) a bevy of rights, the violation of which would expose a business or government entity to a fine of $1,000 per day. Ordinance, § 2(a). Among the rights it confers upon the residents of Nottingham, the Ordinance purports to create a right for any resident, ecosystem, or natural community "to intervene in any action concerning this Ordinance." Id. at § 2(d).

[1] "Doc." references refer to the numbers assigned to the documents in the Court's file.

Shortly after the Ordinance was enacted, the plaintiffs, an individual resident of Nottingham and a Delaware LLC doing business in New Hampshire, filed suit in this Court challenging the Ordinance under a plethora of legal and constitutional theories and seeking a declaratory judgment that the law is facially invalid. See Doc. 1 (Compl.). After the Town of Nottingham filed an answer, NWA moved to intervene in the case on the grounds that it has a direct and apparent interest in the case because it played a central role in enacting the law. See Doc. 8 (Defs.' Answer); Doc. 11 (NWA Mot. Intervene). Further, NWA alleged that it has substantive rights both created in and protected by the Ordinance, including the right to "participate in lawsuits concerning its legality." Doc. 11 at 4. Finally, NWA claimed that its members' interests are not adequately represented by the Town of Nottingham acting alone as a party in the case because it was the citizens of Nottingham, and not the "municipal corporation," who enacted the Ordinance. Id. at 5.

The plaintiffs filed an objection to NWA's motion to intervene, arguing that NWA lacks a sufficiently direct and apparent interest to justify intervention. See Doc. 13 (Pls.' Obj. Mot. Intervene). In their motion, the plaintiffs raise concerns that adding NWA as a party will greatly increase the duration and cost of litigation in this case. Specifically, the plaintiffs point to the relationship between NWA and the Community Environmental Legal Defense Fund ("CELDF"), which the plaintiffs allege has a history of frivolous and time-consuming litigation over similar ordinances.[2]

[2] The plaintiffs also attached an order from the U.S. District Court for the Western District of Pennsylvania (Baxter, M.J.), which imposed sanctions on an attorney for CELDF for pursuing frivolous claims and defenses. See Doc. 13, Ex. H (Pennsylvania General Energy Co., LLC v. Grant Township, Case No. 14-CV-209 (W.D. Pa. 2018)).

NWA filed a response to the plaintiffs' objection, laying out in greater detail its legal basis for intervention. See Doc. 16 (NWA Resp. Pls.' Obj. Mot. Intervene). NWA again claimed that the Ordinance created a right for it to intervene in the case. Additionally, NWA argued that potential litigation costs are irrelevant to the Court's analysis of the legal standard for intervention. Finally, NWA reiterated that the Town of Nottingham does not have the same motivation as NWA in defending the Ordinance.

Currently, there is a temporary injunction in place barring the enforcement of the Ordinance, and there is a motion to dismiss filed by NWA which is held in abeyance until the resolution of its motion to intervene. See Doc. 12 (NWA Mot. Dismiss).

Analysis

I. NWA Must Establish Standing to Intervene in this Litigation

NWA advances three main arguments as to why its motion to intervene should be granted: (1) the Ordinance creates a legal right for residents of Nottingham (and NWA on their behalf) to intervene in cases involving the Ordinance; (2) NWA has a direct and apparent interest in the litigation because it played an integral role in the passage of the Ordinance; and (3) the Town has a different motivation in defending the Ordinance because the citizens of Nottingham—ostensibly represented by NWA—and not the "municipal corporation," lobbied for and enacted the Ordinance. Each of these arguments is addressed below. Before the Court addresses these specific issues, the Court will address the issue of whether a prospective intervenor must have standing to be involved in the litigation.

New Hampshire's Civil Rules of Procedure state that "[a]ny person shown to be interested may become a party to any civil action upon filing and service of an

Appearance and pleading briefly setting forth his or her relation to the cause . . . ." Super. Ct. Civ. R. 15 (formerly R. 139). "A person who seeks to intervene in a case must have a *right* involved in the trial and his *interest* must be direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege." Snyder v. New Hampshire Sav. Bank, 134 N.H. 32, 35 (1991) (quoting R. Wiebusch, 4 New Hampshire Practice, Civil Practice and Procedure § 176 at 129–30 (1984)) (emphasis in original). Thus, the test for determining whether to allow a prospective litigant intervenor status has two element: (1) the aspiring intervenor must have a direct and apparent interest to be vindicated through the court process and (2) the potential intervenor must have a right that is involved in the litigation already pending in court. For the reasons set forth below, the first element of intervenor status goes to the potential intervenor's standing to seek a judicial remedy. The second prong on the intervenor test is whether that prospective intervenor should be allowed to vindicate that legal or equitable interest in a case already pending in court between other parties. Whether to grant or deny a motion to intervene is ultimately within the discretion of the Court. Lamarche v. McCarthy, 158 N.H. 197, 200 (2008) (quotation omitted).

NWA cites three cases for the proposition that a party does not need to establish standing to intervene in cases challenging the validity of a law. See Doc. 11 at 3. However, these cases are premised on the opposite conclusion. See Am. Fed'n of Teachers v. State, 167 N.H. 294, 299 (2015) (stating that "we assume, without deciding, that the non-individual plaintiffs have standing to be intervenors" in the case, when the parties failed to raise the issue on appeal); Prof'l Fire Fighters of N.H. v. State, 167 N.H. 188, 191 (2014) (concluding the same); G2003B, LLC v. Town of Weare, 153 N.H. 725,

728 (2006) ("[W]e assume without deciding that the intervenors have standing to contest the trial court's ruling."). By assuming that the parties did have standing before starting their analysis, the Supreme Court implied that the parties needed some degree of standing to continue in the case as intervenors. See also In re Keene Sentinel, 136 N.H. 121, 125 (1992) (finding that because a newspaper had standing to petition the trial court for records, it could intervene in a divorce case in which it was seeking records). More importantly, because standing is a prerequisite for subject matter jurisdiction, a court cannot allow a party to seek judicial relief without establishing that the party has standing under the New Hampshire Constitution. See Duncan v. State, 166 N.H. 630, 639-40 (2014).

The federal courts are split on the issue of whether a prospective intervenor must establish standing under Article III of the U.S. Constitution. See City of Chicago v. Fed. Emergency Mgmt. Agency, 660 F.3d 980, 984 (7th Cir. 2011) (citing cases). Generally, those courts which do not require an intervenor to have Article III standing reason that so long as there is a "case or controversy" between the primary litigants, the potential inventor does not need to establish it has independent standing to pursue a judicial remedy. See, e.g., Loyd v. Alabama Dep't of Corr., 176 F.3d 1336, 1339 (11th Cir. 1999) ("we note that this circuit has held that a party seeking to intervene need not demonstrate that he has standing in addition to meeting the requirements of Rule 24 as long as there exists a justiciable case and controversy between the parties already in the lawsuit" (quotation omitted)).

This Court finds the analysis of the federal circuit courts which require Article III standing persuasive. As the Seventh Circuit succinctly explained:

> The cases that dispense with the requirement overlook the fact that even if a case is securely within federal jurisdiction by virtue of the stakes of the existing parties, an intervenor may be seeking relief different from that sought by any of the original parties. His presence may turn the case in a new direction—may make it really a new case, and no case can be maintained in a federal court by a party who lacks Article III standing.

Id. at 985 (citations omitted).

The Ordinance at issue in the case at bar purports to grant standing to intervene to "[a]ny resident, and any ecosystem or natural community." Ordinance, § 2(d). As a general proposition, "[s]tanding under the New Hampshire Constitution requires parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress." Petition of Guillemette, 171 N.H. 565, 569 (2018) (quotation omitted). While the Ordinance attempts to establish standing, it is abundantly clear that neither a statute nor ordinance can provide standing to an individual or organization when the party does not have a concrete legal or equitable interest in the outcome of the litigation. See Duncan, 166 N.H. at 645 (striking down statute which granted standing to taxpayers to challenge unlawful spending by a municipality).

A. NWA does not have general standing to seek judicial relief

The New Hampshire Supreme Court has set forth the following principles for courts to apply in determining whether a party has standing to seek judicial relief:

> [W]e focus on whether the party suffered a legal injury against which the law was designed to protect. Neither an abstract interest in ensuring that the State Constitution is observed nor an injury indistinguishable from a generalized wrong allegedly suffered by the public at large is sufficient to constitute a personal, concrete interest. Rather, the party must show that its own rights have been or will be directly affected.

State v. Actavis Pharma, Inc., 170 N.H. 211, 215 (2017) (quotations omitted), cert. denied, 138 S. Ct. 1261 (2018).

A party must have a direct and apparent interest in the outcome of the case in order to intervene. Snyder, 134 N.H. at 35. NWA has no apparent legal rights at stake in the underlying litigation. Contrary to NWA's argument, playing an integral role in the passage of an ordinance by itself does not create a sufficiently direct and apparent interest in litigation involving said ordinance. See Doc. 11 at 4. Nor does the fact that an "unfavorable result . . . would waste the resources that the NWA invested in promotion and securing the right to local self-government" create a direct and apparent interest either. Id.; see Samyn-D'Elia Architects, P.A. v. Salter Cos., 137 N.H. 174, 177–78 (1993). Indeed, if this were the case, then it would open the floodgates for any number of special interest groups to intervene in litigation involving laws they lobbied for or against. Any lobbyist, political action committee, political party, or even candidate who supported specific legislative could move to intervene under NWA's interpretation. It would essentially create a situation in which the trial courts would become inundated with briefs from would-be intervenors every time the Court is asked to rule on the validity of a controversial law. From a public policy perspective, and in the interests of judicial economy, this cannot be the intended purpose of intervention.

NWA's position is not analogous to that of the Office of Mediation and Arbitration ("OMA") in Lamarche. In Lamarche, the Supreme Court ruled that a government agency had standing to intervene on in an interlocutory appeal to defend the constitutionality of a Superior Court rule which collected fees to fund its operation. Lamarche, 158 N.H. at 199. The OMA therefore had a direct and apparent interest in

the outcome of the appeal, even if it did not have any interest in the underlying tort litigation. Id. at 201. In other words, the source of funds to maintain OMA's operations was dependent on the constitutionality of the court rule governing alternative dispute resolution. Here, however, NWA has no such direct and apparent interest. Whether the Ordinance is struck down or upheld has no bearing whatsoever on the funding or continued operation of the NWA as a non-profit organization. Whether the Ordinance is constitutional or not has no bearing on NWA's ability to continue to represent the residents of Nottingham, and to continue advocating and educating as it wishes. See Doc. 11 at 2 ("The New Hampshire Department of State lists the NWA's principle purpose as 'educat[ing] the residents of Nottingham about local self-government.'"). Thus, NWA has no legally cognizable interest in the outcome of this litigation.

NWA's position is more akin to that of the Aviation Association in Rye v. Ciborowski, 111 N.H. 77 (1971). In, the Supreme Court affirmed the trial court's denial of intervention by the Aviation Association of New Hampshire. Id. at 82. The underlying dispute was over the scope of the defendant's variance to operate a private landing strip on his property. Id. The Aviation Association sought to intervene in the case to brief the trial court on the desirability of the location as an airport, and the trial court denied the motion. Id. The Supreme Court affirmed this denial, finding that the issue before the trial court related to the scope of the variance granted to the defendant. Id. Therefore the Aviation Association had no interest in the case and the denial of its motion to intervene was not an abuse of discretion. Id.

Here, NWA is similarly situated as a special interest group seeking to defend an Ordinance it lobbied to enact. It is neither a party nor a representative of any of the

parties in the underlying dispute (though it does purport to represent *some* of the taxpayers of Nottingham). For these reasons, the Court finds that NWA does not have a "direct and apparent interest" in the outcome of the case that would suffer or be sacrificed by the Court denying its motion to intervene. See Snyder, 134 N.H. at 35.

In summary, the Court concludes that NWA has neither any legal rights at stake nor a "direct and apparent" interest in the outcome of this litigation. For these reasons, NWA does not have standing to intervene under the general standing principles embodied in the New Hampshire Constitution.

B. NWA does not have standing under Pt. I, Art. 8 of the New Hampshire Constitution.

While NWA does not have standing under the general principles established in the State Constitution, the Court must address whether a recent amendment to the New Hampshire Constitution, which expanded standing to taxpayers is a basis for NWA's motion to intervene. In November 2018, voters in New Hampshire amended the State Constitution to state in relevant part:

> [A]ny individual taxpayer eligible to vote in the State shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer.

N.H. Const. Part I, Art. 8.

When the Court's inquiry requires it to interpret a provision of the Constitution, it must look to the provision's purpose and intent. Warburton v. Thomas, 136 N.H. 383, 386-87 (1992). "The first resort is the natural significance of the words used by the framers. The simplest and most obvious interpretation of a constitution, if in itself

sensible, is most likely to be that meant by the people in its adoption." Bd. of Trustees, N.H. Judicial Ret. Plan v. Sec'y of State, 161 N.H. 49, 53 (2010) (internal quotations omitted). Thus, in interpreting the meaning of Part I, Article 8 of the Constitution, the Court must inquire into both the plain meaning of the language as understood by the voters who ratified the amendment as well as the surrounding circumstances in which it was passed. See Warburton, 136 N.H. at 387.

The plain language of the constitutional amendment states that it grants taxpayers the standing to petition the court to determine whether a state or political subdivision has spent or allocated funds "in violation of a law, ordinance or constitutional provision." N.H. Const. pt. I, art. 8 (emphasis added). Alone, this language establishes that taxpayers in New Hampshire would have standing to seek a declaratory judgment when there is an allegation that a town acted unlawfully. The plain language of the provision does not support the proposition that a taxpayer can seek a declaration that an ordinance is a lawful exercise of power—which is NWA's position here.

Moreover, the historical context in which the amendment was passed— including its relationship to previous attempts by the legislature to create generalized taxpayer standing—makes it clear that the intent of the amendment was to create standing to *challenge* government spending which violates the law or Constitution. The 2018 constitutional amendment establishing so-called "taxpayer standing" was added to Part I, Article 8 of the New Hampshire Constitution. The first sentence of that constitutional provision establishes the principle that all government actors must be accountable to the people. There is no need to seek judicial intervention simply to declare that

municipal government has passed a lawful ordinance. To do so would not further the goal of Article 8, namely to hold the government accountable. Governments (or their officials) need only be held to answer for their conduct if they take action that violates the law. This is the principle that the language of the 2018 amendment codified in the New Hampshire Constitution.

This interpretation is consistent with the historical context in which the 2018 amendment was ratified. In 2012, in response to a series of decisions by the Supreme Court that limited taxpayer standing for declaratory judgment actions, the legislature amended RSA 491:22 to create general taxpayer standing in such actions. The statute stated in relevant part:

> The taxpayers of a taxing district in this state shall be deemed to have an equitable right and interest in the preservation of an orderly and lawful government within such district; therefore any taxpayer in the jurisdiction of the taxing district shall have standing to petition for relief under this section when it is alleged that the taxing district or any agency or authority thereof has engaged, or proposes to engage, in conduct that is unlawful or unauthorized, and in such a case the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced.

RSA 491:22 (as amended in 2012).

The invalidation of this provision of the Declaratory Judgment Statute by the New Hampshire Supreme Court ultimately precipitated the aforementioned efforts to amend the New Hampshire Constitution. See Duncan v. State, 166 N.H. 630 (2014). Thus, the statute's language is illustrative of the intent of the 2018 amendment—to overrule the holding in Duncan and allow taxpayers to have standing to *challenge* laws in declaratory judgment actions—and not to intervene in their defense. See RSA 491:22 ("therefore any taxpayer in the jurisdiction of the taxing district shall have standing to petition for relief under this section when it is alleged that the taxing district ... has engaged, or

proposes to engage, in conduct that is unlawful or unauthorized") (emphasis added). Therefore, because NWA is moving to intervene *in support of* a challenged law and not to challenge the law itself, NWA's motion does not fall within the rights guaranteed under Part I, Article 8 of the New Hampshire Constitution.

II. NWA May Seek Status as an Amicus Curiae Without Standing to Pursue Judicial Relief.

Although the Court finds that NWA does not have standing to intervene, the Court has considered the related issue of whether NWA should be allowed to participate in this litigation as amicus curiae. An amicus curiae, or literally a "friend of the court," is not a party to a lawsuit but either (1) petitions the Court or (2) is requested by the Court to file a brief because that entity has a strong interest in the subject matter. See Black's Law Dictionary at 102 (10th ed. 2014). The Court recognizes that neither party has requested that NWA join the lawsuit as amicus curiae and that in such a case, the Court should exercise caution in inviting an amicus brief. See Strasser v. Doorley, 432 F.2d 567, 569 (1st Cir. 1970). However, where the amicus falls short of a right to intervene but still has a "special interest that justifies [its] having a say," the Court in its discretion may extend the invitation. See id.

Indeed, New Hampshire courts appear to have implicitly adopted this principle in G2003B, LLC v. Town of Weare. In that case, the Supreme Court upheld the trial court's decision to allow residents of a town to intervene in a limited role. G2003B, 153 N.H. at 726–28. In G2003B, citizens passed an ordinance by ballot initiative that imposed a historic overlay district which encompassed the plaintiff's property and that prevented its subdivision and development. Id. at 726. Both the Weare board of selectmen and the town planning board opposed this ordinance. Id. After the plaintiff

sued alleging an unconstitutional taking, the town invited those citizens who circulated the petition to intervene because it "did not intend to expend the amount of money from the town budget necessary for a vigorous defense of the action." Id. While the trial court granted intervenor status to the citizens, it did so in a limited role, and they did not step in and legally represent the party defendants. Id. at 726–28. Indeed, the intervening citizens conceded on appeal that they could not act as a true party, and therefore could not block a consent decree between the town and the plaintiff. Id. at 728. Nonetheless, the trial court allowed the intervenors to argue why the overlay district was constitutional as to the subject parcel. Id. Although the decision describes the taxpayers in G2003B as having limited standing as intervenors, it appears that their role was more akin to amicus curiae to provide legal arguments in support of the constitutionality of the taxpayer-initiated ordinance where the town did not intend to do so.

At the New Hampshire Supreme Court, the role of amicus curiae is governed by Rule 30, and they may only participate in litigation by leave of the Court. Sup. Ct. R. 30. The Superior Court's rules are silent as to the issue of amicus curiae. This Court is unaware of any reported New Hampshire case addressing the role amicus curiae at the trial court level. Nonetheless, the Court retains the inherent authority to appoint amicus curiae at its discretion for the benefit of the Court. See Strasser, 432 F.2d at 569; Verizon New England v. Me. PUC, 229 F.R.D. 335, 338 (D. Me. 2005); Alliance of Auto. Mfrs. v. Gwadowsky, 297 F.Supp.2d 305, 306–07 (D. Me. 2003); see also Garabedian, 106 N.H. at 157 (observing that "courts of general jurisdiction in New Hampshire have 'inherent rule-making authority' to regulate their proceedings "as justice may require").

Alliance of Auto. Mfrs. v. Gwadowsky is particularly illustrative of the role amicus curiae can fill in the trial court. In Gwadowsky, the district court allowed an industry group to participate as amicus curiae in a lawsuit challenging a piece of legislation. Gwadowsky, 295 F.Supp.2d at 307–08. The court noted that the industry group had strongly supported the legislation at issue, had a unique and special interest in the outcome of the litigation, and was in a position to increase the court's basis of knowledge on the impact of the legislation from an industry standpoint. Id. at 307. Moreover, the industry group was allowed to participate as amicus curiae despite the fact that Maine's Attorney General was already adequately defending the challenged statute in the lawsuit. Id.

While NWA does not have a direct and apparent stake in this case sufficient to establish standing, it is undeniable that it does have some connection to the subject matter of the lawsuit. As NWA points out in its motion to intervene, it played an integral role in the passage of the Ordinance by expending time and resources both drafting the Ordinance and lobbying for its passage. Doc. 11 at 4. Moreover, it averred that it represents the views of over 100 residents of the Town of Nottingham. Id. at 7. Thus, just as the industry group in Gwadowsky and the taxpayers in G2003B were able to provide important insights to the Court, NWA may be able to provide a valuable perspective as to the impact of the legislation on the residents of Nottingham that it represents.

The issue of whether to allow a potential intervenor the opportunity to participate even in a limited role depends on whether the prospective intervenor's rights are already adequately represented in the litigation. See In re Stapleford, 156 N.H. 260,

262–63 (2006). In Stapleford, the Supreme Court affirmed the denial of a motion filed by two minor children to intervene in their parent's divorce. Id. at 263. The Court agreed with the marital master that the guardian ad litem (GAL) "represented the children's best interests and had adequately reported their preferences." Id. at 262. The Court also refused to apply the traditional intervention test, finding that as minors who lacked legal capacity, the appointment of a GAL is the traditional way to ensure that their interests were legally represented. Id. at 263; but see In re Goodlander and Tamposi, 161 N.H. 490, 506 (2011) (allowing the intervention of *adult* children in their parents' divorce proceedings to protect their interests as the beneficiaries of a trust).

Generally, an intervenor's rights are adequately represented by government. Public Service Co. of New Hampshire v. Patch, 136 F.3d 197, 207 (1st Cir. 1998); Acra Turf Club, LLC v. Zanzuccki, 561 Fed.Appx. 219, 222 (3rd Cir. 2014) (affirming the trial court's denial of an organization's intervention as of right because its interests in the validity of the statute being challenged were sufficiently represented by the New Jersey Attorney General). In Patch, the First Circuit affirmed the district court's denial of intervention by rate paying utility consumers in a dispute between electric companies and the New Hampshire Public Utilities Commission ("PUC") because the PUC adequately represented their interests.[3] The Court held that the party seeking intervention bears the burden to prove "some tangible basis to support a claim of purported inadequacy" of representation. Id. Moreover, because their interests were represented by members of a representative government body, "the burden of persuasion is ratcheted upward," and the would-be intervenors must overcome a

[3] This case was decided interpreting Fed. R. Civ. P. 24(a). However, the federal rule mirrors the requirements for intervention in New Hampshire, so the Circuit Court's analysis is relevant here. Compare the elements of Fed. R. Civ. P. 24(a), with Super. Ct. Civ. R. 7 and Snyder, 134 N.H. at 34.

rebuttable presumption of adequate representation. Id. To overcome this presumption, intervenors must "demonstrate adversity of interest, collusion, or nonfeasance" in the representation. Moosehead Sanitary Dist. v. S. G. Phillips Corp., 610 F.2d 49, 54 (1st Cir. 1979); but see Daggett v. Comm'n on Gov't Ethics and Election Practices, 172 F.3d 104, 111 (1st Cir. 1999) (clarifying that Moosehead does not create an exclusive list of considerations). These cases illustrate the general principle that elected government officials adequately represent the interests of their constituents in litigation.

At this stage of the present litigation there is no evidence in the record that the residents' interests are not adequately represented by the Town government. Unlike the Town of Weare in G2003B, the Town of Nottingham has given no indication that it does not intend to vigorously defend the Ordinance. Indeed, the Town timely filed both an appearance and an answer to the complaint. See Docs. 3, 8. Furthermore, the burden is on NWA to overcome the presumption of adequate representation when a government representative defends a law on behalf of taxpayers. Other than alleging that the "municipal corporation" does not in fact represent the taxpayers of Nottingham—an assertion which is not in alignment with universally accepted constitutional principles—NWA brings forth no argument as to why the town's representation is inadequate. It has made no specific allegations of any "adversity of interests, collusion, or nonfeasance" on the part of the town. See Moosehead, 610 F.2d at 54. Moreover, NWA does not allege that the Town does not have the resources to vigorously defend the Ordinance. Absent such a showing, NWA's motion to intervene may be denied as the residents of Nottingham are adequately represented by the Town of Nottingham.

At this stage of the litigation, the Court will not grant NWA permission to intervene in this action, even in the limited role as amicus curiae. NWA may renew its motion if it can demonstrate that the Town of Nottingham will not adequately defend the constitutionality of the ordinance. If granted amicus status, NWA will only be allowed to participate in this case in a limited role. See Gwadowsky, 295 F.Supp.2d at 307–08. NWA may file briefs and memoranda on motions before the Court. See id. However, in this role, NWA is not a party to the lawsuit and does not legally represent any party to the lawsuit. Therefore, NWA would not have right to engage in any discovery. Nor would it have authority to file any substantive motions seeking relief from the Court.

NWD has filed a Motion to Dismiss (Doc. 12) arguing that the plaintiffs do not have standing to seek declaratory judgment. The Court will not consider this motion on its merits because NWA does not have standing to seek judicial relief. NWA is also not permitted to file other substantive motions, such as motions for summary judgment. The Court reserves until a later date the decision as to what extent, if any, NWA may participate as an amicus curiae in submitting legal memoranda or participating in oral arguments on dispositive motions.

Conclusion

Consistent with the foregoing, the Court holds that NWA does not have standing to intervene in this case. Consequently, the NWA's' motion to intervene is DENIED.

SO ORDERED.

8/6/2019
_____
DATE

_____
N. William Delker
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 08/06/2019