

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

SUPERIOR COURT

Case No. 218-2019-CV-00398

_____))
 BRENT TWEED,))
 G&F GOODS, LLC,))
 Plaintiffs,))
))
 v.))
))
 TOWN OF NOTTINGHAM, NEW HAMPSHIRE))
 DONA DANIS))
 Defendants,))
))
 and))
))
 NOTTINGHAM WATER ALLIANCE, INC.,))
))
 Intervenor-Defendant.))
 _____)

MOTION TO INTERVENE IN TWEED V. NOTTINGHAM

The Nottingham Water Association (“NWA”), by and through its undersigned counsel, respectfully petitions this Court for leave to intervene pursuant to New Hampshire Superior Court Civil Rule 15. The NWA submits an Appearance and a Motion to Dismiss, attached, and through this petition and accompanying affidavit asserts its interest in these proceedings.

PRELIMINARY STATEMENT

The Freedom from Chemical Trespass Rights-Based Ordinance (“Ordinance”) is a Constitutional, binding, and enforceable municipal law that Nottingham voters properly enacted on March 16, 2019. The NWA was instrumental in enacting the Ordinance, which

enshrines the NWA members' right to local self-government. Plaintiffs' lawsuit jeopardizes this right; the NWA moves to intervene to protect itself and its members from injury.

FACTS

The NWA is a nonprofit corporation with four individual officers, all of whom are residents and voters of the Town of Nottingham. The NWA represents and serves over 100 people through its advocacy and mobilization work, all of whom are residents of the Town of Nottingham.

The New Hampshire Department of State lists the NWA's principle purpose as "educat[ing] the residents of Nottingham about local self-government."

The NWA drafted and proposed the Ordinance, making its adoption their primary organizational goal from March 2018 to March 2019.

Through the efforts of its individual officers and participants, the NWA engaged in a year-long community education campaign and collected enough signatures to place the Freedom from Chemical Trespass Rights-Based Ordinance ("Ordinance") before the electorate on the 2019 Town Meeting ballot.

The Ordinance took effect on March 16, 2019, but it has never been enforced.

STANDARD OF LAW

"Any 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." N.H. Super. Ct. Civ. R. 15, (formerly R. 139).

"The right of a party to intervene in pending litigation in this state has been rather freely allowed as a matter of practice." *Brzica v. Trustees of Dartmouth College*, 147 N.H. 443, 446 (2002). To intervene in a case, an applicant must have a right involved in the trial, and must

demonstrate a direct and apparent interest in the case. *Lamarche v. McCarthy*, 158 N.H. 197, 199 (2008).

New Hampshire courts allow parties to intervene without finding that the intervenor has standing. *See, e.g., Am. Fed'n of Teachers v. State*, 167 N.H. 294, 299 (2015) (assuming, “without deciding, that the non-individual plaintiffs have standing to be intervenors”), and *G2003B, LLC v. Town of Weare*, 153 N.H. 725, 727 (2006) (allowing residents to intervene in a dispute over the constitutionality of a municipal ordinance). Trial courts may allow a party to intervene even after finding that the intervenor lacks standing. *Profl Fire Fighters of N.H. v. State of N.H.*, 167 N.H. 188, 191 (2014) (affirming the trial court’s ruling that “dismissed the ... plaintiffs for lack of standing, but allowed them to proceed as intervenors”).

While the New Hampshire Rules favor intervention more than the Federal Rules of Civil Procedure, even in federal District Court standing requirements do not apply to intervenors. The First Circuit declined to rule whether intervenors must have federal Constitutional standing, but the majority of Federal Circuits find that intervenors need not comply with Article III Standing requirements. *Daggett v. Commission on Governmental Ethics & Election Practices*, 172 F.3d 104, 109 (1st Cir. 1999) and *King v. Governor of the State of New Jersey*, 767 F.3d 216, 245 (3d Cir. 2014).

Interpreting the more onerous “interest” requirements for intervening using Federal Rule 24, the First Circuit allowed intervenors to defend the Constitutionality of a challenged law that affected the intervenors in a manner distinct from the law’s effect on the “ordinary run of citizens.” *Daggett*, 172 F.3d at 110.

A showing of distinct impact is sufficient, but not necessary, for a state court to grant a motion to intervene pursuant to New Hampshire Rule 15. Parties intervening in New Hampshire courts must show only a right at stake and an interest in the litigation.

ARGUMENT

The NWA's interest in this case stems both from the central role that the NWA played in enacting the Ordinance, and from the NWA's stake in the substantive rights that the Ordinance protects.

The NWA catalyzed the adoption of the Ordinance. Voters enacted the Ordinance as a direct result of the NWA's efforts, fulfilling the NWA's primary organizational goal. Without the time and resources that the NWA expended drafting the Ordinance and educating Nottingham residents about their right to local self-government, the dispute before this Court would not exist.

Plaintiffs' claims seek a result that would undo the gains that the NWA and its members have secured. An unfavorable result in this lawsuit would waste the resources that the NWA invested in promoting and securing the right to local self-government.

Substantively, the Ordinance acutely protects the rights of the NWA in two ways. First, the Ordinance codifies a right at the heart of the NWA's organizational purpose: local self-government. "All residents of Nottingham possess a right of self-government." *Freedom from Chemical Trespass Rights-Based Ordinance*, § 1(a). The Ordinance protects Nottingham residents' right to local self-government, and exemplifies an exercise of this right through its very existence.

Second, the Ordinance bestows upon residents' the right to enforce the lawsuit and to participate in lawsuits concerning its legality: "[a]ny resident of Nottingham may enforce or defend this Ordinance." Ordinance, § 2(d). As an organization comprised entirely of residents of Nottingham, the NWA has an interest in representing and protecting the residents' ability to bring suit to uphold the provisions in the Ordinance.


The NWA has a sufficient interest even according to federal precedent because the disputed Ordinance applies distinctly to the NWA and its individual members, but the NWA need only to meet the State requirements. State precedent allows an organizational party to intervene in a dispute between two parties if the organization has an interest the constitutionality of the law that provides the basis for the dispute. *Lamarche*, 158 N.H. at 201 (“Nor does the fact that the OMA has no direct or apparent interest as a party in the subject matter of the underlying personal injury litigation bar it from intervening.”). The NWA has an interest in upholding the constitutionality of a municipal law that codifies a right at the heart of the NWA’s reason for existing and provides a mechanism for NWA members themselves to litigate over that right.

The Town of Nottingham does not adequately represent the NWA’s interests because the people of Nottingham, not the Town of Nottingham, enacted this Ordinance. The Ordinance protects NWA members and other Nottingham residents, but does not protect the municipal corporation. The Town has interests distinct from the NWA’s.

For the reasons listed above, the NWA seeks permission from this Court to intervene. If this Court favorably considers this request, the NWA will file a timely Motion to Dismiss the Complaint (proposed Motion attached), and is prepared to fully air any and all issues before the Court.

Respectfully submitted,

Dated: May 15, 2019



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Water Alliance, Inc.*

AFFIDAVIT OF JOHN TERNINKO, MEMBER OF NOTTINGHAM WATER ALLIANCE, INC.

I, John Terninko, of Nottingham New Hampshire, solemnly swear to the best of my knowledge that the contents in the Motion to Intervene in Tweed v. Nottingham are true and correct.

Specifically, I state the following facts to be true:

1. The NWA has four officers, all of whom are residents and voters of the Town of Nottingham.
2. The NWA represents and serves over 100 people through its advocacy and mobilization work, all of whom are residents of the Town of Nottingham.
3. Adopting this specific Ordinance was the NWA's primary goal from, at a minimum, March 2018 to March 2019.
4. Since December, 2016, the NWA has been working to publicize the concept of a rights-based ordinance and of local self-government.
5. The NWA promoted this Ordinance by hosting public meetings, sending flyers to residences in Nottingham and West Nottingham, distributing information to Nottingham residents in person, and posting information at local businesses, the library, and other public spaces.

By: John Terninko

Dated this 15th Day of May, 2019 in Lee, New Hampshire.

John Terninko personally appeared before me and has indicated that this verification is his free act and deed.

By: Megan A. Parke
Notary Public

My commission expires:

MEGAN A. PARKE, Notary Public
My Commission Expires August 28, 2022