

**STATE OF NEW HAMPSHIRE**

**ROCKINGHAM, SS.**

**SUPERIOR COURT**

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BRENT TWEED, et al, Plaintiffs, )  
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 v. )  
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 TOWN OF NOTTINGHAM, et al, Defendants. )  

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Case No. 218-2019-CV-00398

**RESPONSE TO PLAINTIFFS’ OBJECTION TO MOTION TO INTERVENE**

Intervenor-Defendant Nottingham Water Alliance, Inc (“NWA”), by and through its undersigned counsel and pursuant to New Hampshire Superior Court Rule 13A, submits response to Plaintiffs’ Objection to the NWA’s Motion to Intervene.

**ARGUMENT**

The NWA’s Motion to Intervene presented ample facts to show a right and a direct, apparent interest in the case. This ends the inquiry under Rule 15; Plaintiffs qualms with the community rights movement have nothing to do with the legal standard at issue.

- 1. The NWA has a right and a direct and apparent interest in this case because the disputed ordinance vests residents of Nottingham with the right to intervene, and Plaintiffs’ lawsuit jeopardizes a right at the heart of the NWA’s organization.**

The legal standard for this motion is not in dispute: to intervene, the NWA must show a right involved in the trial and a direct and apparent interest in the case. Pls’ Obj. ¶ 1, citing N.H. Super. Ct. R. 15.

An intervenor has a “right” involved a trial if a statute or rule creates a cause of action related to the underlying litigation. *Snyder v. New Hampshire Saving Bank*, 134 N.H. 32, 35 (1991)

(finding a “right involved in [an] equity action” because the intervening corporation was among a class of persons legally entitled to notice of the disputed foreclosure sale).

To have a “direct and apparent interest,” an intervenor need not have a stake in the underlying subject matter; a party may intervene to uphold a law that the pleadings call into question. *Lamarche v. McCarthy*, 158 N.H. 197, 200 (2008) (acknowledging that the Office of Mediation and Arbitration’s “sole reason for intervening is to determine Rule 170’s constitutionality.”).

New Hampshire residents have a right and a direct, apparent interest to intervene in litigation between their municipality and a party seeking to overturn an ordinance. *G2003B, LLC v. Town of Weare*, 153 N.H. 725, 727 (2006). Town of Weare residents successfully intervened under circumstances mirroring the fact pattern before the Court today: a plaintiff sued a town to challenge the constitutionality of a citizen-petitioned municipal ordinance that voters adopted on Town Meeting Day. *Id.* at 726 and NWA’s Mot. at 2.

The Weare Select Board “sent a letter to certain residents of Weare, particularly those residents who circulated the petition to place the zoning amendment on the March 2002 ballot,” recognizing the group’s distinct interest in defending the ordinance. *Town of Weare*, 153 N.H. 725 at 727. Like the *Weare* intervenors, the NWA and its members are responsible for the petition to place the disputed ordinance on the Town Meeting Day ballot. *Id.*

The Freedom from Chemical Trespass Rights-Based Ordinance (“Ordinance”) codifies NWA members’ rights such as the the Rights to Self-Government, a Healthy Climate, and Clean Air. Ordinance, § 1(a)-(c). The NWA and its members, as residents of Nottingham, have a statutory “right to intervene in any action concerning this Ordinance in order to enforce or defend it, and in such an action, the Town of Nottingham shall not be deemed to adequately represent their particularized interests.” *Id.* at § 2(d).

Residents have a right to intervene in litigation over a voter-enacted ordinance even when that ordinance does not explicitly create this right. *Town of Weare*, 153 N.H. 725, 727. The NWA has an inherent, and here explicit, right to intervene and also has a direct and apparent interest in exercising this right to protect the Ordinance that affirms it.

The NWA is situated similarly to the Office of Mediation and Arbitration in *Lamarche*, who intervened to uphold the constitutionality of a law speaking to their organizational purpose, when an existing party in the dispute called that law into question. 158 N.H. 197, 200.

The NWA formed to educate and advance the right of local self-government. NWA's Mot. at 2. As Plaintiffs note, the right to local self-government "is at the heart of this case." Pls' Obj. at ¶ 4. The Town of Nottingham does not share the NWA's or its members' interest in the inherent rights and protections that the Ordinance codifies.

The NWA, as an organization representing the residents who championed the voter-enacted Ordinance, has an interest in seeing that Ordinance upheld distinct from the Town of Nottingham's interests as a municipal corporation. *See, e.g., Town of Weare*, 153 N.H. 725 (noting that the Town of Weare would not "expend the amount of money from the Town budget necessary for a vigorous defense."). The Ordinance also codifies the inherent right to local self-government, giving the NWA a direct organizational interest.<sup>1</sup>

The legislative body that enacted this Ordinance was the Nottingham residents, not the Nottingham Select Board or any other arm of the municipal corporation. These residents and

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<sup>1</sup> As a nonprofit entity formed to advocate for the right to local self-government, by and for the residents of Nottingham, the NWA may represent these interests in court. *See, e.g. Developmental Disabilities Advocacy Ctr., Inc. v. Melton*, 689 F.2d 281, 288 (1st Cir. 1982) (reaffirming a corporation's standing "to assert its claim on its own behalf because, though a corporation, it is directly engaged in those activities, claimed to be constitutionally protected" at issue in the case). The corporate entity in *Melton* intervened to protect its organizational interest, which included advocating for its constituents. *Id.* Similarly, the NWA intervenes as both an advocate for its constituents, the residents of Nottingham, and for its organizational purpose, the residents' right to local self-government.

the organization they have formed to advocate for themselves deserve a seat in the courtroom to protect their own duly enacted law.

**2. Litigation costs and Plaintiffs' opinion of the Community Environmental Legal Defense Fund are irrelevant to the legal standard for intervention.**

The issue before this Court is whether the NWA has a right and an interest in defending an Ordinance that its members enacted to protect their rights and further the NWA's organizational goal of promoting the right to local self-government. Whether Plaintiff agrees with this organizational goal is irrelevant. Plaintiff seeks to bury the lede with a 73 page diatribe against the work of the Community Environmental Legal Defense Fund and its affiliates. This objection is conspicuously devoid of case law connecting the legal standard for intervention with an existing party's opinion of a non-profit organization that provides funding and organizational support but is neither a client nor a counsel of record in the case.<sup>2</sup>

Concern that an intervenor will increase the volume of litigation or hold an existing party accountable to a contested legal obligation provides no grounds to deny a motion to intervene. *See, e.g., In re Wallack*, No. 2013-0790, 2014 BL 488225, \*2 (N.H. Nov. 20, 2014) (allowing "an adult child to intervene in her parents' post-divorce litigation to enforce or protect her interest under the terms of the divorce decree.").

Plaintiffs oppose both the Ordinance and the NWA's Motion to Intervene because Plaintiffs are concerned with the Town of Nottingham spending Plaintiffs' tax dollars on efforts that Plaintiffs disapprove of. Pls.' Compl. at ¶ 5 and Pls.' Obj. at ¶4. This objection is not a legal basis for denying intervention. Nor does the Community Environmental Legal Defense Fund's advocacy work or funding bear on the right and interest that the NWA has in this case.

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<sup>2</sup> Not only are Plaintiffs' propensity arguments irrelevant, but also many are misleading. For example, the Pennsylvania District Court sanctions order is on appeal and none of the attorneys involved in that case have ever before been sanctioned. Pls' Obj. at ¶ 22 and *Pennsylvania General Energy Co., LLC v. Grant Township*, Docket No. 19-01963 (3d. Cir. May 3, 2019), Court Docket.

The salient facts are clear: the NWA was formed by a group of Nottingham residents to represent their interests under the Ordinance, which the residents passed as both an exercise and codification of their right to local self-government. The Town of Nottingham does not represent the legislative body responsible for adopting this Ordinance, and lacks the NWA's motivation to defend it.

The law does not allow a plaintiff to object out of fear that an intervenor will present a more rigorous defense than the original defendant.

### CONCLUSION

The NWA's Motion to Intervene speaks for itself. Plaintiffs' objections fail to disprove the NWA's right and direct, apparent interest in the litigation, and Plaintiffs' aspersions against the community rights movement have no relevance to the decision before the Court. Therefore, the NWA respectfully asks this Court to grant the NWA's motion to intervene.

Respectfully submitted,



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Water Alliance, Inc.*

Dated: June 3, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was electronically delivered this date to all counsel of record, specifically:

Michael Courtney, attorney for Defendants Town of Nottingham and Donna Danis

Richard Lehmann, attorney for Plaintiffs Brent Tweed and G&F Goods, LLC.

Dated: June 3, 2019.

/s/Kira Kelley

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