

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

SHANNON ROBINSON, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 20AC-CC00515
)	
MISSOURI DEPARTMENT OF HEALTH)	
AND SENIOR SERVICES,)	
)	
Defendant.)	

**ST. LOUIS COUNTY AND JACKSON COUNTY’S
MOTION TO INTERVENE AND STAY**

COME NOW St. Louis County and Jackson County (together, “Intervenors”), by and through their respective undersigned counsel, and pursuant to Missouri Supreme Court Rule 52.12, move to intervene in this lawsuit and stay the Judgment pending resolution on appeal or this Court’s reconsideration of the Judgment. In support of this Motion, Intervenors state as follows:

1. On January 13, 2021, Plaintiffs Shannon Robinson, Twisted Tree, B&R STL LLC d/b/a Satchmo’s Bar & Grill, and Church of the Word (“Plaintiffs”) filed their First Amended Petition for Declaratory Judgment against Defendant Missouri Department of Health and Senior Services (“DHSS”).

2. In their First Amended Petition, Plaintiffs sought to challenge local public health measures indirectly, by challenging the lawfulness of certain DHSS regulations on which local public health authorities relied to initiate such measures.

3. On November 22, 2021, the Court entered its Judgment in favor of Plaintiffs, striking down certain DHSS regulations.

4. In public statements, the Missouri Attorney General's Office, which represents DHSS in this matter, has indicated that it does not intend to file an appeal even though DHSS desires to do so.

5. Intervenors seek to intervene pursuant to Rule 52.12 to preserve and defend the lawfulness of the DHSS regulations at issue by appealing the Judgment and alternatively requesting that this Court reconsider the Judgment.

6. Rule 52.12 provides, in pertinent part:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the . . . transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that 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; or (3) when the validity of a statute, regulation or constitutional provision of this state, or an ordinance or regulation of a governmental subdivision thereof, affecting the public interest, is drawn in question in any action to which the state or governmental subdivision or an officer, agency or employee thereof is not a party

7. Intervenors should be permitted to intervene as a matter of right under Rule 51.12(a) because: (1) they have an interest in preserving the subject matter of the lawsuit, including upholding their public health orders promulgated pursuant to DHSS regulations (and therefore the regulations themselves); (2) disposition of this action will impede Intervenors' interest in that the Judgment hinders Intervenors' ability to implement public health orders for *all contagious diseases*; and (3) Intervenors' interests are not adequately represented by the existing parties, as the Missouri Attorney General refuses to appeal the Judgment, a decision that is against the apparent wishes of his client and either "in bad faith or . . . arbitrary or capricious." *State ex rel. Dolgin's, Inc. v. Bolin*, 589 S.W.2d 106, 110 (Mo. Ct. App. 1979).

8. Intervenor should alternatively be allowed to permissively intervene under Rule 51.12(b) because Intervenor are not parties to this action but their defenses have common questions of law and fact with the main action; namely, they seek to defend the legality of the DHSS regulations at issue.

9. In addition, the Court's November 22, 2021 Judgment should be stayed pending resolution of an appeal of the Judgment or reconsideration of the Judgment by the Court because, as discussed in greater detail in Intervenor's Memorandum in Support of Motion to Intervene and Stay, Motion for New Trial, and Memorandum in Support of Motion for New Trial, great confusion exists as a result of the Court's November 22, 2021 Judgment regarding the powers and duties of, among others, local public health authorities, in respect to *all* contagious diseases. That this confusion exists during a significant public health crisis militates even further in favor of staying the Court's Judgment while a judicial review of the Judgment can occur.

10. This Motion for Intervention and Stay is timely because substantial justice requires intervention and intervention by the Intervenor will not result in prejudice to any party.

11. Intervenor file contemporaneously their Memorandum in Support of Motion to Intervene and Stay, which is incorporated herein. In addition, Exhibits A-N are attached hereto, incorporated herein, and discussed more fully in Intervenor's accompanying Memorandum in Support of their Motion to Intervene and Stay.

12. As required by Rule 52.12(c), Intervenor's Answer and Affirmative and Additional Defenses is attached hereto and incorporated herein as Exhibit L. If granted intervention, Intervenor intend to file their Notice of Appeal, which is attached hereto and incorporated herein as Exhibit M. Alternatively, if the Court desires to reconsider its Judgment, Intervenor would file

their Motion for New Trial, Memorandum in Support of their Motion for New Trial, and Exhibit 1 in support of said Motion, which are attached hereto and incorporated herein as Exhibit N.

WHEREFORE, Intervenors respectfully move that this Court enter an order granting this Motion, thereby permitting St. Louis County and Jackson County to intervene in the matter pending before this Court, and staying the Judgment pending resolution of an appeal of the Judgment or reconsideration thereof by this Court.

Dated: December 13, 2021

Respectfully submitted,

**OFFICE OF THE COUNTY
COUNSELOR OF JACKSON COUNTY**

**BETH ORWICK
COUNTY COUNSELOR**

/s/ Bryan O. Covinsky (w/consent)
Bryan O. Covinsky
Dawn Joanna Diel
Andrew Joseph Gnefkow
Jackson County Courthouse, 2nd Floor
415 12th St.
Kansas City, MO 64106
(816) 881-3811 tel.
bcovinsky@jacksongov.org
ddiel@jacksongov.org
agnefkow@jacksongov.org

/s/ Beth Orwick
Beth Orwick, #52089
County Counselor
Office of County Counselor
41 S. Central, Ninth Floor
Clayton, MO 63105
(314) 615-7042 tel.
(314) 615-3732 fax
borwick@stlouiscountymo.gov

Attorneys for St. Louis County

Attorneys for Jackson County

LEWIS RICE LLC

Neal F. Perryman, #43057
Michael L. Jente, #62980
Jacqueline K. Graves, #64875
Benjamin M. Farley, #69073
600 Washington Ave., Ste. 2500
St. Louis, Missouri 63101-1311
Tel: (314) 444-7661
Fax: (314) 612-7661
E-mail: nperryman@lewisrice.com
mjente@lewisrice.com
jgraves@lewisrice.com
bfarley@lewisrice.com

Attorneys for St. Louis County

CERTIFICATE OF SERVICE AND
CERTIFICATE OF COMPLIANCE WITH RULE 55.03(a)

I hereby certify that a copy of the foregoing pleading was served via the Court's electronic filing system on this 13th day of December 2021, on all parties of record. In addition, the undersigned counsel certifies under Rule 55.03(a) of the Missouri Rules of Civil Procedure that he has signed the original of this Certificate and the foregoing pleading.

/s/ Beth Orwick