

DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO
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FORT COLLINS, CO 80521-2761
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DATE FILED: March 27, 2014
CASE NUMBER: 2013CV31385

Plaintiff: Colorado Oil and Gas Association

v.

Defendant: City of Fort Collins, Colorado

▲ FOR COURT USE ▲

Case No. 13CV31385
Courtroom: 5B

Order Denying Motion to Intervene

This matter comes before the Court on Proponents' Motion to Intervene. After reviewing the Motion, the Response, the Reply and the applicable law, the Court finds and orders:

Background

The Colorado Oil and Gas Association ("Plaintiff") brought suit against the City of Fort Collins ("City") challenging the validity of Ballot Measure 2A ("Measure"). The Measure, which places a moratorium on hydraulic fracturing and the storage of hydraulic fracturing waste products within the City for five years, was passed by voters of the City on November 5, 2013. The Plaintiff argues that the Colorado Oil and Gas Conservation Act preempts the Measure and requests the Court enter a permanent injunction against its implementation.

In response to the Complaint, the City filed an Answer, which alleges that the Measure is a "valid exercise of the power of the City of Fort Collins and its citizens." Answer ¶ 51. The Answer also requests the Court not enter a permanent injunction against the Measure. *Id.* ¶¶ 56-59. Finally, the Answer asserts as affirmative defenses that Plaintiff failed to state a claim upon which relief can be granted, that Plaintiff lacks standing, and that the Plaintiff's claims are barred by the Colorado Constitution. *Id.* at 5.

Members of Healthy Fort Collins, the Sierra Club, and Earthworks ("Proponents") move to intervene, pursuant to C.R.C.P. 24(a) and (b). Concurrently

with the Motion to Intervene, Proponents filed a Proposed Motion to Dismiss which, like the City's Answer, alleges that Plaintiff lacks standing.

Law and Analysis: Intervention as of Right

Under C.R.C.P. 24(a), a party is entitled to intervene in a pending action as a matter of right when: (1) the application is timely; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest; and (4) the applicant's interest is not adequately represented by existing parties. *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

To determine whether a proposed intervenor is adequately represented by existing parties, the Colorado Supreme Court has mandated the following: "If [the intervenor's] interest is identical to that of one of the present parties, or if there is a party charged by law with representing his interest, then a compelling showing should be required to demonstrate why this representation is not adequate. *Id.* at 31 (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1909, 318-19 (2d ed.1986)). Indeed, "[r]epresentation by the governmental authorities is considered adequate in the absence of gross negligence or bad faith on their part." *Denver Chapter of Colorado Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 496 (Colo. 1962) (quoting Moore's Federal Practice, 2d ed., at § 24.08).

Here, the City represents identical interests to the Proponents: both seek to defend the validity of the Measure. The City's interest in protecting its rights as a home rule city and to protect the health and welfare of the residents of Fort Collins coincides directly with the Proponents' interest to defend the Measure they helped passed.

Further, Proponents have not made any showing that the City has engaged in gross negligence or bad faith. Quite to the contrary, the City has hired outside counsel for the sole purpose of defending the Measure and has raised affirmative defenses in its Answer. Within the Answer, the City alleges that the Plaintiff lacks standing. The Proponents Motion to Dismiss asserts the same argument.

Therefore, Proponents are not entitled to intervene under C.R.C.P. 24(a).

Law and Analysis: Permissive Intervention

Pursuant to C.R.C.P. 24(b) the Court may allow a party to intervene "when an applicant's claim and the original cause of action present common questions of law or fact, so long as the intervention will not unduly delay or prejudice the rights of the original parties." *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). A trial court has considerable discretion in granting or denying the motion. *Id.*

The Intervenors have failed to show how their Intervention will help advance the case or assist the Court further in making the Court's determinations. Preemption is a legal issue that is largely defined by existing law.

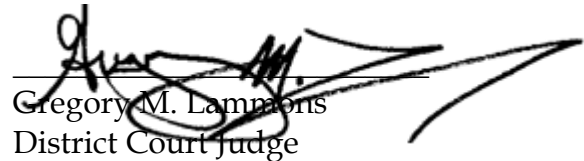
The request for permissive intervention is denied.

Conclusion

The Court denies Proponents' request to intervene under C.R.C.P. 24(a) and (b).

Dated: March 27, 2014.

BY THE COURT:



Gregory M. Lammons
District Court Judge