

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION**

GAINESVILLE RESIDENTS UNITED, et al.

Plaintiffs,

v.

Case No.: 1:23-CV-176

RON DESANTIS, in his official capacity as
Governor of the State of Florida, et al.,

Defendants.

**ATTORNEY GENERAL MOODY’S UNOPPOSED
MOTION TO INTERVENE**

Pursuant to Rule 24, Federal Rules of Civil Procedure and 28 U.S.C. § 2403(b), Ashley Moody in her official capacity as Attorney General of the State of Florida (“Attorney General”) moves to intervene to defend the constitutionality of House Bill 1645 (the Act) which amends Article VII of the Gainesville City Charter, Ch. 12760, Laws of Florida (1927).

BACKGROUND

On July 3, 2023, Plaintiff filed a Complaint against Governor Ron DeSantis, Attorney General Ashley Moody, Secretary of State Cord Byrd, and the City of Gainesville (City) alleging that the Act is unconstitutional and seeking declaratory and injunctive relief. On September 11, 2023, the Attorney General filed a Motion to Dismiss the Complaint. On October 2, 2023, Plaintiff voluntarily dismissed the

Attorney General and the Secretary of State from the lawsuit. DE 34. On December 22, 2023, the Court granted the Governor's Motion to Dismiss. DE 37. The Court also entered an Order to Show Cause requiring the Plaintiff to show why the claims against the City should not be dismissed for lack of standing. DE 38. Plaintiffs responded to that Order to Show Cause on January 4, 2024. DE 40. The Court's determination as to its jurisdiction to hear this matter remains pending.

In an abundance of caution, the Attorney General is filing this motion to intervene pursuant to 28 U.S.C. §2403(b) and Rule 24, Federal Rules of Civil Procedure and requests that the Court relieve her of the obligation to file a response to the Complaint until such time as the Court has determined whether it has jurisdiction to proceed.¹ If the Court determines that it has jurisdiction, the Attorney General requests 20 days to file a response to the Complaint.

MEMORANDUM OF LAW

A. The Attorney General should be permitted to intervene as a matter of right pursuant to Rule 24(a)(1) and 28 U.S.C. 2403(b)

Rule 24(a)(1), Federal Rule of Civil Procedures provides that the court must permit intervention by anyone who is “given an unconditional right to intervene by a federal statute.” Fed. R. Civ. P. 24(a). The Attorney General has the right to intervene in this matter pursuant to 28 U.S.C. § 2403(b) which provides:

¹ The Attorney General has filed a similar motion in a related case, *Doughtie v. City of Gainesville*, Case No. 1:23-cv-210-AW-MJF (ND Fla. 2023).

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Under this statute, the Attorney General shall be permitted to intervene as a matter of right to defend the constitutionality of the Act. The Act clearly implicates the “public interest” as it amends the Charter for the City of Gainesville, Florida, and implicates the administration and management of the City’s utility system.

There is currently no agency, officer, or employee of the State defending the constitutionality of the Act. The only remaining defendant is the City, which is a municipal corporation. The purpose of section 2403(b) is to guarantee that the State has an opportunity to be heard when the constitutionality of a state law is at issue. That guarantee cannot be met here unless the Attorney General is permitted to intervene. Therefore, the Attorney General should be allowed to intervene pursuant to Rule 24(a)(1) or independently through 28 U.S.C. 2403(b).

B. The Attorney General should be permitted to intervene as a matter of right pursuant to Rule 24(a)(2).

Rule 24(a)(2) requires intervention on timely motion to anyone who “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately protect that interest.” Fla. R. Civ. P. 24(a)(2). The burden of showing adequacy of representation is minimal and the intervener need only show that the representation “may be inadequate.” *Stone v. First Union Corp.*, 371 F.3d 1305, 1311 (11th Cir. 2004).

In determining whether a motion to intervene is timely, courts must consider: (1) the length of time during which the proposed intervenor knew or reasonably should have known of its interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor’s failure to move for intervention as soon as it knew or should have known about its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the motion to intervene was timely. *Ga. v. U.S. Army Corp. of Eng’rs*, 302 F.3d 1242, 1259 (11th Cir. 2002). “[T]imeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is

to be successfully employed to regulate intervention in the interest of justice.” *Id.* (citing *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989)).

Here, the Attorney General has a direct, substantial, and legally protectable interest in the enforceability of Florida’s laws and the intervention factors support her request to intervene as a matter of right. First, the Attorney General is the “chief state legal officer.” Fla. Const. Art. IV, § 4(b). She has the authority to intervene in cases “in which the state may be a party, or in anywise interested.” Fla. Stat. § 16.01(4)-(5). She has the “sole and exclusive” authority to represent the State of Florida in a federal court. *State ex rel. Shevin v. Weinstein*, 353 So. 2d 1251, 1254 (Fla. 3d DCA 1978). The Complaint challenges the constitutionality of the Act, which was duly enacted into law by the Florida Legislature, and the State “clearly has a legitimate interest in the continued enforceability of its own statutes.” *Maine v. Taylor*, 477 U.S. 131, 137 (1986); *see also* Fed. R. Civ. P. 5.1(c) (providing that state attorneys general have a right to intervene to defend the constitutionality of a state statute).

Second, intervention is necessary to protect the State’s interests. The City previously filed a separate lawsuit in state court against the Governor, the Attorney General, and the Secretary of State challenging the constitutionality of the Act.²

² In the state court case, summary judgment was granted in Defendants’ favor. *See City of Gainesville, Florida v. State of Florida*, Second Judicial Circuit Case Co. 2023-CA-1928, Omnibus Order Granting Defendants’ Motions for Summary Judgment dated Sept. 29, 2023, and Final Judgment dated December 11, 2023.

Therefore, it is evident that the City will not put forth a strong defense to the constitutionality of the law or raise arguments including those related to standing, which plainly implicates the Court's jurisdiction to even hear the case. Under these circumstances, the Attorney General should be permitted to intervene as a matter of right to ensure that the State's interest in defending the constitutionality of its laws is adequately represented.

Third, the Attorney General is seeking to intervene in a timely manner. Until December 22, 2023, another state actor was a named defendant in the lawsuit. After the Governor's dismissal, the potential need for intervention arose. If the case proceeds, intervention would be necessary to ensure that the constitutionality of the duly enacted law will be adequately defended. The State would be prejudiced if the Attorney General is denied intervention.

Finally, the parties would not be prejudiced by intervention. On September 27, 2023, the Court entered an Order deferring entry of a scheduling order and discovery until the state court ruled in the related matter. DE 33. No new litigation schedule has been proposed. Therefore, intervention will not delay the proceedings.

C. Alternatively, the Attorney General should be allowed to intervene by permission pursuant to Rule 24(b)(1).

Rule 24(b)(1) permits intervention on timely motion by anyone who: "(A) is given a conditional right to intervene by federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P.

24(b)(1). “In exercising its discretion,” a court “must consider whether intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). The requirement of having a common question of law or fact is “construed liberally.” *In re Estelle*, 516 F.2d 480, 485 (5th Cir. 1975). The intervener does not need to have a “direct or pecuniary interest in the subject matter of the litigation. *Id.* (citing *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940)).

The Attorney General’s defense of the Act involves a common question of law or fact. Both “the main action” and the Attorney General’s defense center on whether the Act is constitutional. The state has a compelling interest in the outcome of this action, i.e. the enforceability of a duly enacted law. And, as discussed above, the Attorney General sought to intervene in a timely manner; allowing intervention would not unduly delay or prejudice the adjudication of these proceedings; and the Attorney General would suffer prejudice if not permitted to intervene to provide a robust defense to the constitutionality of the Act.

REQUEST FOR RELIEF

WHEREFORE, Attorney General Ashley Moody requests the Court to allow her to intervene and to relieve her of the obligation to file a response to the Complaint until the Court has made a determination as to jurisdiction. If the Court determines that it has jurisdiction, the Attorney General requests 20 days to file a response to

the Complaint.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ Anita J. Patel
Anita J. Patel (FBN 0070214)
Special Counsel
Anita.Patel@myfloridalegal.com
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
850-414-3300

CERTIFICATE OF ATTORNEY CONFERENCE

Pursuant to Local Rule 7.01(C), the undersigned counsel conferred with counsel for the Plaintiffs who state that they do not oppose the relief sought herein.

/s/ Anita J. Patel
Anita J. Patel

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(F)

Pursuant to Local Rule 7.1(F), this motion and memorandum contains 1704 words.

/s/ Anita J. Patel
Anita J. Patel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which provides notice to all parties, on this 26th day of January 2024.

/s/ Anita J. Patel _____

Anita J. Patel