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IN THE SIXTH JUDICIAL DISTRICT
DISTRICT COURT, BOURBON COUNTY, KANSAS
CIVIL DEPARTMENT

SUSAN E. WALKER)
Bourbon County Clerk,)
)
Plaintiff,)
)
v.)
)
JAMES CRUX)
Bourbon County Attorney,)
and)
KYLE R. PARKS,)
KEVIN WAGNER, &)
LYLE K. OWENBY)
Recall Committee)
)
Defendants.)
_____)

Case No. BB-2026-CV-000048

**KEVIN WAGNER'S MOTION TO SET ASIDE
ORDER DISMISSING DEFENDANT RECALL COMMITTEE
AND OBJECTION TO MOTION TO DISMISS DEFENDANT RECALL COMMITTEE**

COMES NOW, Defendant Kevin Wagner for his Motion to Set Aside Order
Dismissing Defendant Recall Committee and his objection to Plaintiff's motion to
dismiss the recall committee members from the case states as follows:

I. The Order granting Plaintiff's motion to dismiss defendant recall committee should be set aside.

On May 28, 2026, Plaintiff filed a Motion to Dismiss Defendant Recall Committee. At the time recall committee member Kevin Wagner had already entered his appearance and filed a motion under K.S.A. 60-5320, which had the effect, pursuant to subsection (e), of staying motions in the case. Regardless of whether that stay was effective, under Kansas Supreme Court Rule 133(b), Defendant Wagner had 7 days to respond to the motion to dismiss. However, on May 29, 2026, the Court enter an order granting the motion. Defendant requests that this order be withdrawn pursuant to K.S.A. 60-260(a) or (b)(1) or (6), and that the Court consider the points below in connection with deciding the Motion to Dismiss Defendant Recall Committee.

II. By statute, the motion to dismiss is stayed by a K.S.A. 60-5320 motion to strike.

Kevin Wagner has filed a K.S.A. 60-5320 motion to strike. By statute this creates an automatic stay on motions. K.S.A. 60-5320 (e)(2). Whether the filing of the motion to dismiss was a violation of the stay or whether stay merely stays the resolution of the motion may be important to the later question of sanctions, but the point now is that the stay exists.

III. If this is going to proceed in any capacity, the recall committee members need to be parties.

Defendant Wagner would not object to the dismissal of case as whole. In fact, that is the appropriate disposition since it fails to state a claim—a point for decision in connection with a motion to strike or by a separate motion. However, as a member of the recall committee whose fundamental constitutional rights Plaintiff seeks to

adjudicate, he objects to the recall committee members' dismissal from the case merely to allow it to proceed without the overlay of their rights under the Kansas anti-SLAAP statute, K.S.A. 60-5320, under which Plaintiff and her counsel risk incurring fee-shifting obligations and sanctions.

Plaintiff's removal of her request for an injunction or restraining order directly against the recall committee does not end the recall committee's appropriate role in the case nor fully dispose of their rights under the anti-SLAPP statute.

Plaintiff filed a petition challenging the recall committee's recall process and whether they have (a) prematurely circulated a recall petition or (b) failed to satisfy the requirements for a valid recall petition. Plaintiff also sought injunctive relief with respect to the circulation of the recall petition.

Kevin Wagner filed a Motion to Strike under K.S.A. 60-5320. He asserts that Plaintiff lacks even a *prima facie* case. Rather than dismissing the baseless challenges to the recall effort, Plaintiff amended her Petition to remove the request for injunctive relief aimed specifically at the recall committee and now seeks to dismiss them as parties. Her Amended Petition continues to seek to adjudicate the question of whether they have prematurely circulated a recall petition and whether they failed to satisfy the requirement for a valid recall petition.

In practical terms this is yet another effort to silence the recall committee. This time, rather than attempting to silence them in the streets, she is attempting to silence them in the courtroom.

By statute, the recall committee “shall represent all sponsors and subscribers in matters relating to the recall. Notice on all matters pertaining to the recall may be served on any member of the recall committee” K.S.A. 25-4322. K.S.A. 60-219 requires joining parties if: “(A) In that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) As a practical matter, impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations because of the interest.”

The recall committee members have a due-process and fundamental interest in the constitutional and statutory recall petition process or, at the very least, claim to. As a result, they are persons who claim, “an interest relating to the subject of the action.” If they are not parties to the court challenge to the ripeness and validity of their recall petition they will have no right to notice and no opportunity to be heard, present evidence, or cross-examine witnesses. Thus, as a practical matter, disposing of the matter in their absence would impair or impede their ability to protect the interest.

In addition, if the recall committee members are not parties to this action, the judgment will not be binding on them. Thus, if the court were to enter judgment in Plaintiff's favor, the recall committee would be free to bring a mandamus action against Defendant Crux, subjecting him to inconsistent obligations if they prevail on that mandamus action.

Plaintiff can dismiss her First Amended Petition. She cannot use it as tool to shut out the recall committee from the litigation over whether their recall petition is valid.

IV. Wagner’s rights and interests under the anti-SLAPP statute persist.

Defendant Wagner has incurred attorney fees as a result on a claim by Plaintiff based on, relating to, or in response to his exercise of the right of free speech, right to petition and/or right of association. His entitlement to attorney fees under K.S.A. 60-5320(g)(1) has yet to be determined. Similarly, the Court has a policing function under K.S.A. 60-5320(g)(2) that includes imposing sanctions as necessary to deter conduct by others similarly situated to Plaintiff. Consequently, even if other recall committee members were to be dismissed, matters remain to be decided as to Defendant Wagner.

For these reasons, Plaintiff’s Motion to Dismiss Defendant Recall Committee should, at the proper time, be denied.

Respectfully submitted,
ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes
Patrick B. Hughes, #16648
Attorney for Kevin Wagner

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2026, the above and foregoing was filed via the Kansas Courts e-filing system, which will send notice of electronic filing to counsel of record.

/s/ Patrick B. Hughes