

Patrick B. Hughes, #16648
ADAMS JONES LAW FIRM, P.A.
1635 N. Waterfront Parkway, Suite 200
Wichita, KS 67206-6623
Phone: (316) 265-8591 / Fax: (316) 265-9719
Email: phughes@adamsjones.com

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

SUSAN E. WALKER)	
Bourbon County Clerk,)	
)	
Plaintiff,)	
)	
v.)	Case No. BB-2026-CV-000048
)	
JAMES CRUX)	
Bourbon County Attorney,)	
)	
Defendant.)	
_____)	

**KYLE R. PARKS, KEVIN WAGNER AND LYLE K. OWENBY'S
REPLY IN SUPPORT OF MOTION TO INTERVENE**

Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby submit this reply in support of their Motion to Intervene. Plaintiff's response confirms, rather than defeats, the basis for intervention. Plaintiff asks this Court to adjudicate the validity of the recall petition initiated by Parks, Wagner, and Owenby, but then asks the Court to proceed without them because the amended petition no longer names them and no longer seeks an injunction directed to them by name. That is not the standard under K.S.A. 60-224. The statute looks to the movants' interest and practical impairment, not caption formalism. The motion should be granted. At minimum, permissive intervention should be allowed

so that the persons whose recall petition is being challenged may defend that petition and present their statutory defense under K.S.A. 60-5320.

I. Plaintiff's capacity argument addresses the wrong issue.

Plaintiff's principal response is that a "recall committee" lacks capacity to sue or be sued under *Collins v. Hoeme*, 40 Kan. App. 2d 93, 189 P.3d 566 (2008). That argument does not answer the motion before the Court.

The proposed intervenors are Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby. They are natural persons. Plaintiff acknowledges that "[a]s individuals, they have that capacity." Plaintiff's Response at 9. That should end the threshold capacity objection. The fact that Parks, Wagner, and Owenby are the recall committee members does not strip them of their individual capacity to appear in court. Nor does it make them a nonentity. They are the individual electors who signed and filed the proposed recall petition. They are also the persons the recall statutes identify as having a statutory role in matters relating to the recall. K.S.A. 25-4322 provides that "[t]he recall committee shall represent all sponsors and subscribers in matters relating to the recall" and that notice on recall matters may be served on any member of the recall committee. The statute therefore confirms that Parks, Wagner, and Owenby are not strangers to the dispute. They are the statutorily designated recall participants whose petition Plaintiff seeks to invalidate.

Plaintiff's response treats "recall committee" language as though it dissolves the individual movants into a legally nonexistent association. That is not correct. The proposed intervenors seek intervention as individuals and as the persons occupying the

statutory role assigned by K.S.A. 25-4322. *Collins* does not hold that such persons lose the ability to intervene as individuals when their own recall petition is being challenged.

II. *Collins* does not bar intervention.

Collins does not control this intervention motion. *Collins* was a post-recall damages case. Terry Collins sued the recall committee for damages after an allegedly invalid recall process. The Court of Appeals held that the Recall Act did not authorize an action for damages against the recall committee as an entity. *Collins*, 40 Kan. App. 2d at 97-98.

That is not this case.

This is not a damages claim against a recall committee. This is a motion by individual persons to intervene in an existing action under K.S.A. 60-224 because Plaintiff seeks a judgment invalidating the recall petition they initiated.

Collins should not be extended beyond what it decided. It did not involve intervention. It did not involve individual recall sponsors seeking to defend the ongoing recall process. It did not hold that individual recall committee members lack a protectable interest in the validity of their own recall petition. It did not hold that an elected official may seek a judicial declaration invalidating a recall petition while excluding the electors who initiated it.

Plaintiff's reading would create an unfair and unnecessary asymmetry. Plaintiff could file an action seeking to invalidate the recall petition, but the people who filed the recall petition could not participate because they are "the recall committee." Nothing in *Collins* requires that result. Nothing in K.S.A. 60-224 permits it.

III. The amended petition still seeks relief that would practically impair the proposed intervenors' interests.

Plaintiff argues that intervention is unnecessary because the amended petition no longer seeks an injunction directly against Parks, Wagner, and Owenby and no longer seeks to stop circulation of the recall petition. That is too narrow.

The amended petition still seeks to declare the recall petition invalid. It still asks the Court to enjoin certification of the recall petition, to enjoin any recall election from being held based on the recall petition, and to enjoin certification of any recall-election result. The amended petition therefore still seeks to disable the recall petition initiated by Parks, Wagner, and Owenby.

K.S.A. 60-224(a)(2) does not require the proposed intervenor to be the named target of an injunction. It requires a timely motion by a person who “claims an interest relating to the property or transaction that is the subject of the action” and who is situated so that disposing of the action may, “as a practical matter,” substantially impair or impede the person’s ability to protect that interest, unless existing parties adequately represent the interest.

The “transaction” that is the subject of this action is the recall petition process initiated by Parks, Wagner, and Owenby. Their interest is not abstract. Plaintiff asks the Court to adjudicate whether their recall petition is invalid, whether their petition may be certified, whether a recall election may occur based on it, and whether any recall-election result may be certified. A judgment granting that relief would practically impair their interest in the recall process even if the injunction is formally directed to the county

attorney, the election officer, county election officials, or some other official rather than to Parks, Wagner, and Owenby by name.

IV. The proposed intervenors' interest is specific, direct, and different from the general interest of other county residents.

Plaintiff argues that Parks, Wagner, and Owenby are “no different than any other person in the County.” That is incorrect.

They are not merely voters who support a recall. They are the persons who initiated the recall petition. They are the persons who signed and filed the proposed recall petition. They are the persons identified by K.S.A. 25-4322 as the committee members who represent all sponsors and subscribers in matters relating to the recall. They are the persons whose petition Plaintiff says is invalid. They are the persons whose speech, association, and petitioning activity forms the basis of the challenged recall process.

No other Bourbon County resident stands in that posture. The proposed intervenors' interest is concrete and particularized: the validity and continuation of the recall petition they initiated and the protection of their rights and defenses in litigation directed at that petition.

Plaintiff also argues that the proposed intervenors' interests are not ripe because signed petitions allegedly had not yet been filed when Plaintiff responded. That argument misses the point. Plaintiff filed this case before any signed petitions were submitted. Plaintiff's own pleading seeks relief before certification, before election, and before certification of any election result. Having invoked judicial review at this stage,

Plaintiff cannot then argue that the recall sponsors' interest in defending the petition is premature.

V. Crux does not adequately represent the proposed intervenors' interests.

Plaintiff argues that County Attorney James Crux adequately represents the proposed intervenors because he will defend his statutory determination. But Crux's interest is not the same as the proposed intervenors' interest.

Crux's interest is institutional and official. His role concerns his statutory duties as county attorney, including his review and determination under the recall statutes. Parks, Wagner, and Owenby's interest is different. Their interest is in the recall petition they initiated, the statutory recall process they invoked, and their rights of petition, speech, and association in connection with a public official and a matter of local government. Those interests may overlap in some respects, but they are not identical. Crux is not the representative of the recall committee, the sponsors, or the subscribers. K.S.A. 25-4322 assigns that representative role to the recall committee, not to the county attorney. Nor can Crux be expected to assert the proposed intervenors' own rights and defenses under K.S.A. 60-5320. The proposed intervenors have attached a motion to strike under the Kansas Public Speech Protection Act. That defense arises from their own protected petitioning, speech, and association. It is not merely a defense to Crux's performance of his official duties.

The existing defendant also does not oppose intervention. To the contrary, Crux has advised the Court that Parks, Wagner, and Owenby have a sufficient interest to warrant intervention, incorporates the arguments made in the Motion to Intervene, and

consents to intervention. Plaintiff's adequate-representation argument is substantially weakened by the existing defendant's own position that the proposed intervenors should be allowed to participate.

VI. *Amicus* participation is not an adequate substitute for party status.

Plaintiff suggests that the proposed intervenors may participate, if at all, as *amici curiae*. That suggestion confirms the problem.

Amicus participation is not intervention. An *amicus* does not have the ordinary rights of a party. An *amicus* cannot file responsive pleadings as a matter of right, assert K.S.A. 60-5320 as a party, preserve issues as a party, participate in factual development if factual development becomes necessary, or protect appellate rights in the same way a party may.

Plaintiff seeks a judgment that would directly affect the proposed intervenors' recall petition. The proposed intervenors should not be reduced to optional commentators while the validity of their petition is adjudicated.

VII. The statutory requirements for intervention are satisfied.

The motion is timely. Parks, Wagner, and Owenby moved to intervene shortly after Plaintiff amended her petition, removed them from the caption, and sought to proceed without them. There has been no showing of prejudice from the timing of the motion.

The proposed intervenors have a substantial interest in the subject of the action. Plaintiff challenges the validity of their recall petition and seeks to stop the statutory consequences of that petition.

Disposition of the action in their absence may substantially impair or impede their ability to protect that interest. A judgment declaring their recall petition invalid or enjoining certification, election, or certification of election results would directly and practically affect the recall effort they initiated.

Existing parties do not adequately represent their interests. Crux's interest is limited to his official statutory role, and he has expressly stated that he consents to intervention.

Kansas law also requires K.S.A. 60-224(a) to be liberally construed in favor of intervention. *Herrmann v. Board of Butler County Comm'rs*, 246 Kan. 152, 155, 785 P.2d 1003 (1990). Applying that liberal construction here, intervention should be granted.

VIII. Alternatively, permissive intervention should be granted.

Even if the Court does not find intervention of right, permissive intervention should be allowed under K.S.A. 60-224(b). The proposed intervenors' defenses share common questions of law and fact with the main action. Plaintiff asks whether the recall petition is valid, whether the recall petition process may continue, whether the county attorney's review was sufficient, and whether the recall petition should be certified or lead to an election. The proposed intervenors seek to defend the validity of the same recall petition and to assert that Plaintiff's amended petition is subject to K.S.A. 60-5320.

There is no unfair prejudice in permitting intervention. The case is in its early stages. The proposed intervenors have already submitted the pleading they seek to file. The existing defendant consents to intervention. Permissive intervention would promote,

not undermine, efficient adjudication because it would ensure that the Court hears from the persons whose recall petition is directly challenged.

Conclusion

Plaintiff asks the Court to invalidate a recall petition while excluding the people who initiated it. K.S.A. 60-224 does not require that result. Parks, Wagner, and Owenby have a direct, substantial, and legally protectable interest in the validity of their recall petition. Disposing of this case without them may impair that interest as a practical matter. County Attorney Crux does not adequately represent their distinct rights and defenses, and he consents to intervention.

For these reasons, Kyle R. Parks, Kevin Wagner, and Lyle K. Owenby respectfully request that the Court grant their Motion to Intervene and permit them to file their proposed Motion to Strike Plaintiff's Verified Amended Petition under K.S.A. 60-5320. Alternatively, the Court should grant permissive intervention under K.S.A. 60-224(b).

Respectfully submitted,

ADAMS JONES LAW FIRM, P.A.

By: /s/ Patrick B. Hughes
Patrick B. Hughes, #16648
*Attorney for Kyle R. Parks
Kevin Wagner, and Lyle K. Owenby*

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 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