UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA HAMMOND DIVISION

CITY OF HAMMOND,	
THOMAS MCDERMOTT, in his	
Official and personal capacities, and	
EDWARD FONTANEZ,)
)) Case No. 2:21-cv-00160-PPS-JEM
Plaintiffs,)
V.)
LAKE COUNTY JUDICIAL	
NOMINATING COMMISSION,	
Defendant.	

UNOPPOSED MOTION TO INTERVENE

The State of Indiana, by counsel, respectfully requests permission to intervene under Federal Rule of Civil Procedure 5.1(c). In support of this Motion, the State of Indiana states as follows:

1. Under Federal Rule of Civil Procedure 5.1(a)(1), a party that files a pleading drawing into question the constitutionality of a state statute must "file a notice of constitutional question stating the question and identifying the paper that raises it" and "serve the notice and paper" on the Attorney General. Fed. R. Civ. Pro. 5.1(a)(1). Then, the Attorney General may intervene in the action. *See* Fed. R. Civ. Pro. 5.1(c).

2. On August 13, 2021, the plaintiffs filed a Notice of Constitutional question identifying that they are challenging a state statute, Indiana Code § 33-33-45-28 and House Bill 1453. (ECF 6).

USDC IN/ND case 2:21-cv-00160-PPS document 13 filed 10/19/21 page 2 of 3

3. The State now requests to intervene in this matter as permitted by Federal Rule of Civil Procedure 5.1(c) to defend the constitutionality of the challenged State laws.

4. Further, 28 U.S.C. § 2403(b) provides that when the constitutionality of any statute of a "State affecting the public interest is called into 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"

4. The plaintiffs, through counsel, notified the undersigned that they do not object to the State of Indiana intervening in this case. The defendant, the Lake County Judicial Nominating Commission, a county body (Indiana Code § 33-33-45-27(b)), has not appeared in this case.

5. In accordance with Federal Rule of Civil Procedure 24(c), the State of Indiana is filing with this motion a responsive pleading.

WHEREFORE, the State of Indiana respectfully requests to intervene in this matter under Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403(b).

 $\mathbf{2}$

By:

Respectfully submitted,

THEODORE E. ROKITA Indiana Attorney General

Date: October 19, 2021

Jefferson S. Garn Section Chief, Administrative & **Regulatory Enforcement Litigation** Office of Indiana Attorney General Indiana Government Center South 5th Floor 302 West Washington Street Indianapolis, Indiana 46204-2770 Phone: (317) 234-7119 effe BEFRIEVED FROM DEMOCRACYDOCKET Email: Jefferson.Garn@atg.in.gov