

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

JAKE MAGGARD, *et al.*

Plaintiffs,

v.

STATE OF MISSOURI, *et al.*,

Defendants.

Case No. 25AC-CC09120

**INTERVENOR PUT MISSOURI FIRST SUGGESTIONS IN OPPOSITION TO PLAINTIFFS' NOTICE OF HEARING, AND MOTION FOR PRELIMINARY INJUNCTION AND CONSOLIDATION WITH HEARING ON THE MERITS**

Pursuant to Missouri Rule of Civil Procedure 44.01(c), Intervenor Put Missouri First ("Intervenor"), by and through counsel, respectfully move this Court to deny Jake Maggard, and Greff Lombardi's (together "Plaintiffs") request to call up their Motion for Preliminary Injunction and Consolidation with Hearing on the Merits for January 20, 2026. Plaintiffs' request should be denied because they failed to comply with the notice requirements of Rule 44.01(c), and the notice provided was not reasonable under the facts and circumstances of this case.

**Argument**

**Deficiency of Service and Notice**

Missouri's Rules of Civil Procedure provide for the time and computation of service for a written motion and notice thereof. Specifically, Missouri Rule of Civil Procedure 44.01(c) provides that "A written motion, ..., and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by law or court rule

or by order of the court.” Mo. Ct. R. 44.01(c). Further, Missouri’s Rules of Civil Procedure provide for the computation of time saying:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included . . . . When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Mo. Ct. R. 44.01(a).

At issue here is Plaintiffs Motion (and notice of said motion) for Preliminary Injunction and Consolidation with Hearing on Merits. Plaintiffs filed this Motion and Notice on Wednesday January 14, 2026. *See generally Plaintiffs’ Motion for Preliminary Injunction and Consolidation with Hearing on Merits; see also Notice of Hearing.*<sup>1</sup> Plaintiffs seek to have this Motion heard on Tuesday January 20, 2026. *Notice of Hearing.* Between the date of Plaintiffs’ Motion and proposed hearing date are a Saturday, Sunday, and Martin Luther King Day, a legal holiday. These days “shall be excluded in the computation,” and “the day of the act . . . is not to be included.” Accordingly, Plaintiffs Notice and Motion have provided an insufficient amount of notice in that they were served three days before the time specified for the hearing. Further, there is no other period fixed by law, or fixed by court rule, nor has there been any order, or request for an order, by this Court.<sup>2</sup>

### **Unreasonably Deficient Service**

When notice of a proceeding has been given for a time less than the five days required by Rule 44.01, we consider if the notice given was

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<sup>1</sup> Multiple Notices of Hearing have been filed in this case, accordingly for this suggestion in opposition, Intervenor’s refer to Plaintiffs’ Notice of Hearing filed on January 14, 2026.

<sup>2</sup> Another exception under Rule 44.01(d) provides for an additional three days if the Motion or Notice is sent by Mail; yet, Plaintiffs’ Certificate of Service makes clear that both documents were sent by the Court’s electronic filing system.

reasonable under the facts and circumstances. *Jenkins v. Jenkins*, 784 S.W.2d 640, 643–44 (Mo.App.1990). Reasonable notice was a prerequisite to the court's power to enter an order in defendant's favor. “In our system of jurisprudence reasonable notice to a litigant (when there exists even the possibility of action adverse to his interests) is deemed to be of the essence of fairness and justice”—“a prerequisite to the lawful exercise of the court's power”—“basic in simple fundamental justice.” *Baker v. Baker*, 274 S.W.2d 322, 326 (Mo.App.1954) (quoting *Hoppe v. St. Louis Public Service Co.*, 361 Mo. 402, 235 S.W.2d 347, 349, 350, 351 (1951)). “It is a cardinal principle, that whenever a party's rights are to be affected by a summary proceeding, or motion in court, that party should be notified, in order that he may appear for his own protection.” *Wheatley v. State*, 559 S.W.2d 526, 527 (Mo. banc 1977).

*Sitelines, L.L.C. v. Pentstar Corp.*, 213 S.W.3d 703, 706–07 (Mo.App. E.D. 2007).

It is fundamentally unreasonable—and inconsistent with principles of fair procedure—to deny adequate notice when a new motion raises different issues than those originally set for hearing. *Id.* at 707. In *Sitelines*, Plaintiffs provided less than five days’ notice on a motion to compel arbitration. *Id.* Plaintiffs sought to have this motion heard at the same time as a motion for summary judgment. *Id.* The Court, in reviewing if the deficiency was reasonable noted that the issues raised by the two motions were completely different. *Id.* The Court observed that the summary judgment motion involved the application of contract law to a breach of contract claim whereas the motion to compel arbitration involved the application of contract law to a claim of an unperformed conditions precedent. *Id.* Accordingly, the Court held that it would have been error by the trial court if it had not denied defendants motion as untimely. *Id.*

Similar to *Sitelines*, Plaintiffs’ deficit notice correlates to a day on which arguments are already set to be held. This date was set to hear arguments on both Defendant and Intervenor’s Motions to Dismiss. These Motions raise the

issues of standing, ripeness, political questions, and the properness of a declaratory judgment action. *See generally* Intervenor Motion to Dismiss; Defendant Motion to Dismiss. In comparison, Plaintiffs' Motion for Preliminary Injunction and Consolidation raises numerous issues that have no bearing on the Motions to Dismiss and indeed are not raised in them, including—two separate merits arguments, separate irreparable-harm analyses for Plaintiffs, Defendants, and proposed Intervenor, the balancing of those harms, and a request to consolidate the preliminary-injunction hearing with the merits. As is evident from even a cursory review of Defendants' Motions to Dismiss and Plaintiffs' Motion, the issues presented by each are entirely different. Moreover, where two issues within the same field of contract law have been deemed sufficiently distinct that proceeding on a motion with deficient notice would render a trial court's ruling erroneous, Plaintiffs' deficient notice here is plainly unreasonable, as questions of justiciability are fundamentally unrelated to merits-based claims, the showing and balancing of irreparable harm, or requests to consolidate proceedings.

Intervenor stands ready to work with the other parties and the Court to set a schedule that allows this case to proceed expeditiously, provided all parties have reasonable notice of such schedule.

### **Conclusion**

WHEREFORE Intervenor, for the reasons set forth above, respectfully request this Court to refuse allowing Plaintiffs' Motion for Preliminary Injunction and Consolidation with Hearing on Merits to be called up at the hearing scheduled for January 20, 2026 and for other such relief this Court deems appropriate.

Respectfully submitted,

**ELLINGER BELL LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via the Court's electronic filing system on January 16, 2026 on all parties of record.

/s/ Marc H. Ellinger

