

IN THE COLE COUNTY CIRCUIT COURT
STATE OF MISSOURI

SHANNON ROBINSON, ET AL.,)	
)	
PLAINTIFFS,)	
)	
V.)	Case No. 20AC-CC00515
)	
MISSOURI DEPARTMENT OF)	
HEALTH & SENIOR SERVICES)	
)	
DEFENDANT)	
)	
MELANIE HUTTON, ADMINISTRATOR,)	
COOPER COUNTY PUBLIC HEALTH CENTER,)	
in her official capacity,)	
)	
INTERVENOR-DEFENDANT)	

MOTION TO INTERVENE

COMES NOW Intervenor-Defendant, by and through the undersigned counsel, pursuant to Supreme Court Rule 52.12(a) and (b)(3), and states:

1. Intervenor-Defendant is the duly appointed Administrator of the Cooper County Public Health Center, which was formed in accordance with Chapter 205, RSMo.
2. Rural county public health centers, like the Cooper County Public Health Center, are “established, maintained and operated for the improvement of health of all inhabitants of said county or counties.” Section 205.050, RSMo.
3. Pursuant to its express statutory authority under § 192.300, RSMo, the Cooper County Public Health Center has enacted county public health regulations “as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county, . . .”

4. On November 22, 2021, the Court entered a Judgment in this case.

5. According to the Judgment, “DHSS and local health authorities are ordered to refrain from taking actions pursuant to 19 CSR 20-20.010 *et seq.* that require independent discretion in in a manner inconsistent with this opinion” *Judgment*, ¶ 5, page 16.

6. Further, according to the Judgment, “this Court orders that any and all discretionary rules or orders, whether written or verbal, that have been issued outside the protections of the Missouri Administrative Procedure Act, and constitute a statement of general applicability that implements, interprets, or prescribes law or policy, or closes a business based on the opinion or discretion of an agency official without any standards or guidance, by the Director of the Department of Health and Senior Services and all local authorities as defined by 19 CSR 20-20.010(26), are null and void. *Judgment*, ¶ 7, page 17.

7. Despite the apparent limited applicability of ¶¶ 5 and 7 in the Judgment only to county health orders deriving their authority from 19 CSR 20-20.010 *et seq.*, the Attorney General sent letters dated December 7, 2021 to all local county health agencies, including the Cooper County Public Health Center. A copy of the letter is attached hereto and incorporated herein as Exhibit 1.

8. In the December 7, 2021 letter, the Attorney General states, *inter alia*, “Under this judgment, all mask mandates, quarantine orders, and other public health orders that are based on any of the invalidated regulations or issued outside the

protections of the Missouri Administrative Procedure Act are null and void. You should stop enforcing and publicizing any such orders immediately.” *Exhibit 1, page 2.*

9. Further, in the December 7, 2021 letter, the Attorney General states, “Failure to follow the court’s judgment may result in enforcement action against you to remove orders the court has determined are constitutional and illegal. We encourage you to take immediate action to remove all unconstitutional and illegal orders.” *Id.*

10. Despite the apparent limited applicability of ¶¶ 5 and 7 in the Judgment only to county health orders deriving their authority from 19 CSR 20-20.010 et seq., on December 12, 2021 while a guest on *This Week in Missouri Politics*, the Attorney General stated “the ruling says you can’t be delegating that kind of authority to these county health bureaucrats” and “we’ve sent correspondence out letting these folks know, including school boards, know what the ruling is and they’re expected to follow the law because we will be enforcing it.”

11. The December 7, 2021 letter and statements made by the Attorney General have created confusion and significant uncertainty concerning to the scope and applicability of the Judgment entered by the Court on November 22, 2021.

12. Although the Cooper County Public Health Center was not a party to this lawsuit. its current health regulations enacted under § 192.300 are drawn into question by the December 7, 2021 letter, the statements made by the Attorney General, as well as several stories in the news media, which strongly imply that all county health orders and regulations “are null and void,” and thus, create confusion and significant uncertainty.

13. Based on the December 7, 2021 letter, several other county health boards in Missouri have suspended all county health orders and regulations concerning COVID-19 testing, monitoring, and related measures, which places the health of Cooper County residents at risk.

14. Based on the apparent misinterpretation of the scope and applicability of the Judgment by the Attorney General, as well as his statements that the Judgment will not be appealed by the State, the confusion and significant uncertainty which have been created will continue to persist regarding: (a) the lawful authority of the Cooper County Public Health Center to enact county health orders and regulations under § 192.300; (b) whether its prior health regulations are lawful; and (c) whether the Court intended for the Judgment to render null and void all county health orders.

15. The Cooper County Public Health Center claims an interest relating to the transaction that is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the its' ability to protect that interest, and the foregoing legal interests of the Cooper County Public Health Center are not currently and adequately represented by any of the parties in this lawsuit.

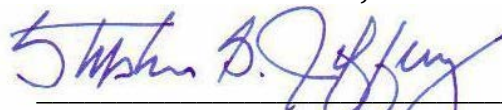
16. Because the lawsuit and the Judgment involve the validity of prior county health regulations enacted by the Cooper County Public Health Center and involve interpretations of § 192.300, 19 CSR 20-2.010 *et seq.*, and the Missouri Administrative Procedure Act, the Intervenor-Defendant requests the Court to allow intervention of right under Supreme Court Rule 52.12(a), or, alternately, allow permissive intervention in this lawsuit under Supreme Court Rule 52.12(b)(3).

17. In accordance with Supreme Court Rule 52.12(c), Intervenor-Defendant has attached its pleading, attached hereto and incorporated herein as Exhibit 2.

Wherefore, Intervenor-Defendant prays the Court grant the Motion to Intervene, vacate the November 22, 2021 Judgment, and award such further relief the Court considers just and appropriate.

Respectfully submitted,

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ATTORNEYS FOR INTERVENOR-DEFENDANT

Certificate of Service

I certify that a true copy of the foregoing was served on all counsel of record via the Court's e-filing system on this 14th day of December 2021.

