

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

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|----------------------------------|---|-----------------------|
| CHARLES BASYE, |) | |
| |) | |
| Relator/Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | Case No. 23BA-CV00122 |
| COLUMBIA PUBLIC SCHOOLS, et al., |) | |
| |) | |
| Defendants. |) | |

APPLICATION TO INTERVENE BY
BOONE COUNTY CLERK BRIANNA LENNON,
IN HER OFFICIAL CAPACITY

Boone County Clerk Brianna Lennon, in her official capacity, (“Proposed Intervenor”) respectfully moves this Court for leave to intervene in the above-captioned action, pursuant to Missouri Rule of Civil Procedure 52.12. In support of this Motion, Proposed Intervenor states as follows:

Background

There are 116 Local Election Authorities (LEAs) in the State of Missouri that conduct the general municipal elections in April of each year. In doing so these LEAs are processing election certifications from over 500 school districts and over 1,000 cities, towns, and villages by receiving and accepting those certifications from the city clerks or school district board secretaries, as appropriate. Absent the existence of some intergovernmental cooperative agreement, no person wishing to declare their candidacy for an office on a Missouri school district board or a Missouri municipality makes a direct candidate filing with the LEA. Instead, those filings are made with the clerk or secretary of that municipality or school board who then, in turn, communicate a combined and timely election notification to the LEA for all

bond issues, tax issues, candidate filings for open seats, or any other issue that the school board or municipality are authorized by law to put before voters in an April election.

Intervenor, Boone County Clerk Brianna Lennon, in her official capacity, has an important interest to protect the fair and consistent administration of local elections for all school districts and municipalities within Boone County. Intervenor has a further interest in ensuring that the decisions of this Court do not adversely impact the fair and consistent administration of municipal elections by LEAs throughout Missouri by creating some sort of “dual filing” dichotomy that would only confuse and impair the ability of LEAs to fairly and impartially administer local elections in Missouri.

Specific Averments

1. The Boone County Clerk (“County Clerk”) is the election authority for Boone County, pursuant to RSMo §115.015.
2. As the election authority, the County Clerk conducts all public elections within Boone County, including those conducted for a political subdivision, pursuant to RSMo §115.023.
3. For a political subdivision to conduct an election, RSMo §115.125 requires the political subdivision to notify the County Clerk by 5 p.m. on the tenth Tuesday before the election. Notification is provided by a written notice and sample ballot.
4. Each political subdivision is required to conduct its filing process pursuant to RSMo §115.127, to notify which candidates appear on the written notice and sample ballot provided to the County Clerk.
5. The County Clerk is therefore responsible for conducting the public election for Columbia Public School Board of Education, the defendants in this lawsuit.

6. Pursuant to Rule 52.12(a)(2), a party has a right to intervene:

[W]hen the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition may as a practical matter impair or impede the applicant's ability to protect the interest unless the applicant's interest is adequately represented by existing parties. *See also* RSMo §507.090.

7. The Missouri Supreme Court has set forth three elements of Rule 52.12(a), intervention as of right:

[A]n applicant seeking intervention must file a timely motion and 'show three elements: (1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant's ability to protect the interest is impaired or impeded; and (3) that the existing parties are inadequately representing the applicant's interest.' *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 127 (Mo. banc 2000) (quoting *Timmermann v. Timmermann*, 891 S.W.2d 540, 542 (Mo. App. 1995)).

8. Rule 52.12 "should be liberally construed to permit broad intervention." *Allred v. Carnahan*, 372 S.W.3d 477, 482-83 (Mo. App. 2012).

9. Proposed Intervenors have a substantial interest in the subject of this case and those interests are consistent with the required interests to permit intervention as of right. As the Missouri Supreme Court stated:

'Interest' generally means a concern which is more than a mere curiosity, or academic or sentimental desire. One interested in the action is one who is interested in the outcome and result thereof because he has a legal right which will be directly affected thereby or legal liability which will be directly and largely diminished by the judgment or decree in such action. *In the Matter of Trapp*, 593 S.W.2d 193, 204 (Mo. banc 1980).

10. As it relates to the first element, the County Clerk has an interest in determining who is the proper filing authority. A unique question not raised in the petition filed herein is whether filing in the County Clerk's office is proper for a political subdivision for a county that has

not given the County Clerk the right to accept filings. Although some counties do accept filings on behalf of other districts through the use of intergovernmental cooperative agreements, this is not the procedure in Boone County. This legal question far outreaches the boundaries of Boone County and is in fact, a matter of interest to *all* county clerks in Missouri. Creating a bifurcated filing system which permitted anyone to file a declaration of candidacy in the County Clerk's office instead of the individual political subdivision would be detrimental to the elections process. In this likely scenario, candidates could circumvent the political subdivision if they do not like the filing procedures. For example, the law allows districts to decide if they want to file candidates in chronological order or using a random number draw on the first day of filing. *See* RSMo §115.124. The political subdivisions with a charter have an even greater interest – what if a candidate for city council has to submit a signature petition under the charter, but the county clerk's office can just accept a filing without a petition because they are not subject to the charter? The plaintiff's Exhibit B directed to the Boone County Clerk is thus a legal nullity and should be given no legal effect.

11. For the second element, neither party in this case, represents the County Clerk's interest in determining whether the filing was proper and to protect the LEA's role in accepting election certifications for the April municipal elections only from the clerk or secretary of the political subdivision. The immediate case pertains only to the school district's compliance with statutory filing procedures. For all practical purposes, Proposed Intervenor would be unable, impaired, or impeded to protect their interests unless permitted to intervene.

12. Finally, with respect to the third element, since the issue of proper filing with the appropriate filing official is not raised by the parties, the County Clerk's interest is not represented, and any outcome of this case will have an impact on the applicant. If the court instructs the school district to accept that filing, this would result in a purported candidate filing with the County Clerk

which the political subdivision would be required to accept. This represents a clear division of interest in the law. *Allred* holds that “once a proposed intervenor establishes an interest in the underlying litigation and that such an interest may be impaired or impeded if intervention is not permitted, the third element is satisfied upon a ‘minimal showing’ that there is a divergence of interest between the proposed intervenor and the party.” 372 S.W.3d at 486.

13. Proposed Intervenors have established their right to intervene in this lawsuit.

14. In the alternative, and without waiving any of the arguments proposed above regarding the intervention of right, Proposed Intervenors should be granted permissive intervention under Rule 52.12(b), which authorizes the Court to permissively allow intervention when timely filed.

15. Since the Petitioner filed in the underlying matter on January 18, 2023, this intervention motion is timely.

16. Proposed Intervenor’s intervention will not delay or impede the adjudication of this case.

17. Pursuant to Rule 52.12(c), Proposed Intervenor has attached a proposed Answer of Proposed Intervenor.

WHEREFORE, Proposed Intervenor Boone County Clerk Brianna Lennon, in her official capacity, respectfully requests this Court grant her Application to Intervene, and for such other relief as this Court deems appropriate.

Respectfully submitted:

/s/ Charles J. Dykhouse

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COUNTY CLERK BRIANNA LENNON**

VERIFICATION

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

Brianna Lennon, first being duly sworn, deposes and says:

I, Brianna Lennon, am the duly-elected and serving County Clerk for Boone County, Missouri. I declare that I have read the foregoing Application to Intervene, that I am familiar with the information it contains, and that the matters as set forth therein are true and accurate to the best of my knowledge, information, and belief.



Brianna Lennon, Boone County Clerk

Subscribed and sworn to before me, a Notary Public, on this 20th day of January 2023.



Notary Public

My Commission Expires: 10/24/25

