SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DANIEL M. SNYDER, Plaintiff, v. CREATIVE LOAFING, INC., *et al.*, Defendants.	)	Case No. 2011 CA 003168 B Judge Todd E. Edelman Next Event: Motions Hearing on Oct. 14, 2011, at 2 p.m.

UNOPPOSED MOTION OF THE DISTRICT OF COLUMBIA TO INTERVENE FOR THE LIMITED PURPOSE OF DEFENDING THE VALIDITY OF A STATUTE ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA

Pursuant to SCR-Civil 24-I, the District of Columbia, with the consent of all parties, respectfully moves the Court for leave to intervene in this action. The District seeks to intervene solely for the limited purpose of presenting argument to defend the validity of the Anti-SLAPP Act of 2010, a statute enacted by the unanimous vote of the DC Council and signed by Mayor Gray that sat before Congress for the required period of review and took legal effect earlier this year. The District takes no position on the merits of any parties' claims or defenses in the underlying lawsuit, does not intend to burden the Court or parties with pleadings other than this motion and any memoranda and oral argument concerning the Anti-SLAPP Act's validity, and does not intend to serve discovery on any party. The Court's August 29, 2011 Notification Pursuant to Superior Court Rule of Civil Procedure 24(c), as well as the text of Superior Court Rule 24-I, make clear that the District has a right to intervene in this action because the validity of a District law affecting the public interest has been drawn into question in this matter. Plaintiff asserts that the Anti-SLAPP Act, D.C. Law 18-351, *codified at* D.C. Official Code §§

16-5501 *et seq*., violates the Home Rule Act and the United States Constitution. *See* Plaintiff's Opposition to Defendant's Special Motion to Dismiss the Complaint at 2, 4–13.

Moreover, as more fully set forth in the attached memorandum, the District also is entitled to intervene as a matter of right pursuant to Superior Court Rule 24(a).

Pursuant to SCR-Civil 12-I(a), the undersigned discussed the subject motion with counsel for all parties, who consented to the relief requested herein.

A proposed order granting the requested relief is attached.

DATE: August 30, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies filed and served electronically through eFiling for Courts, this 30th day of August, 2011, or via electronic mail:

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DISTRICT OF COLUMBIA'S MEMORANDUM
IN SUPPORT OF ITS UNOPPOSED MOTION TO INTERVENE

Pursuant to SCR-Civil 24, the District of Columbia seeks leave to intervene in this action for the limited purpose of defending the validity of its legislation, a provision of which has been drawn into question by the parties in this matter. The District takes no position on the merits of any parties' claims or defenses in the underlying lawsuit, does not intend to burden the Court or parties with pleadings or its participation in hearings other than this motion and any memoranda and oral argument concerning the Anti-SLAPP Act's validity, and does not intend to serve discovery on any party. The District is entitled to intervene in this action as of right, the parties consent to the District's intervention, and the District's intervention is consistent with the prior orders issued in this case by the Court. The motion should be granted.

I. Background

On June 17, 2011, the defendants filed a Special Motion to Dismiss the Complaint, pursuant to D.C. Official Code § 16-5502 *et seq.* ("the Anti-SLAPP Act"). On August 5, 2011, the plaintiff filed his Opposition to the Special Motion, which asserts that the Anti-SLAPP Act, D.C. Law 18-351, *codified at* D.C. Official Code §§ 16-5501 *et seq.*, violates the Home Rule Act

and is, in the plaintiff's view, "unconstitutional." Plaintiff's Opposition to Defendant's Special Motion to Dismiss the Complaint at 2.[1]

On August 25, 2011, the Court issued an order granting the parties' Joint Motion to Alter the Briefing Schedule. The order contemplates that the District may file a brief "addressing the Anti-SLAPP Act's constitutionality." On August 30, 2011, the Attorney General of the District of Columbia received the Court's Notification Pursuant to Superior Court Rule of Civil Procedure 24(c). The Court's notice was provided pursuant to SCR-Civil 24(c), which states, in pertinent part:

> When . . . the validity under the District of Columbia Self-Government and Government Reorganization Act of 1973, of an . . . enactment of any type affecting the public interest of the District of Columbia is drawn into question in any action in which the District of Columbia or an officer, agency, or employee thereof is not a party, the Court shall notify the [Attorney General] in a manner similar to that provided for notice upon the Attorney General of the United States in Title 28, U.S.C. § 2403.

Id.

II. Argument

Under Superior Court Rule 24-I, the District must be permitted to intervene here, for the limited purpose of defending the validity of the Anti-SLAPP Act.[2] Rule 24-I provides:

> In any case in which the Court has sent a notification to the . . . Corporation Counsel of the District of Columbia pursuant to Rule 24(c), the Court *shall permit . . . the District of Columbia . . . to intervene* for the presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

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[1] The District of Columbia Self-Government and Government Reorganization Act of 1973 is also known as the "Home Rule Act." *Stuart v. Walker*, 6 A.3d 1215, 1217 (D.C. 2010), *vacated pending rehearing en banc* (July 8, 2011).

[2] The text of SCR-Civil 24-I parallels that of 28 U.S.C. § 2403.

Id. (emphasis added). That is precisely the case here, as the Court has sent a 24(c) notification to the Attorney General in this matter. Accordingly, under the plain language of Rule 24-I, the Court "shall permit the District . . . to intervene" to defend the statute's validity. *Id*; *see also Stuart v. Walker,* 09-CV-900, Order (D.C. Sept. 28, 2009) (granting the District's motion to intervene under D.C. App. R. 44—the District of Columbia appellate analogue to Superior Court Rule 24—for the purpose of defending the validity under the Home Rule Act of the Arbitration Act of 2007); *Andrew v. American Import Center*, No. 09-CV-893, Order (D.C. Sept. 3, 2009) (same).

In addition, the District otherwise qualifies for intervention as a matter of right, pursuant to SCR-Civil 24(a), which provides, in relevant part:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

SCR-Civil 24(a)(2).

The District clearly meets this test.

First, the District has "an interest in the transaction which is the subject matter of the suit," *Calvin-Humphrey v. District of Columbia*, 340 A.2d 795, 798 (D.C. 1975), because it has a duty to defend the plaintiff's challenge to the validity of a provision of District law. *See* D.C. Official Code § 1-204.22 ("[T]he Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control . . . ."); *see also id*., at § 1-301.81(a)(1) ("The Attorney General for the District of Columbia . . . shall have charge and conduct of all law business of the said District and . . . shall be responsible for upholding the public interest. The Attorney General

shall have the power to control litigation and appeals, as well as the power to intervene in legal proceedings on behalf of this public interest.").

Moreover, the resolution of plaintiff's challenge to the validity of the statute could impair the District's ability to protect its interests. *McPherson*, 833 A.2d at 994. "To satisfy this element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." *HSBC Bank USA, N.A. v. Mendoza*, 11 A.3d 229, 235 (D.C. 2010) (citations omitted). It is clearly possible that, if the Court rules in favor of plaintiff's assertions regarding the Anti-SLAPP Act, it would cast grave doubt on the validity of that legislation, and could have a profound impact on the rights of political participants in the District of Columbia who would otherwise seek to invoke the protections of the Anti-SLAPP statute. Such possibility, alone, is sufficient to satisfy this element of the test for mandatory intervention. *See Akiachak Native Community [convert to full cite]*, 584 F.Supp.2d at 7 ("[T]he prejudice caused by an unfavorable judgment in the present case would sufficiently impair Alaska's interests for the purpose of satisfying Rule 24(a) intervention as of right.").

The final factor under Rule 24(a) intervention imposes a similarly minimal burden on the District. "[T]he standard for measuring inadequacy is low . . . ." *Fund for Animals v. Norton*, 355 U.S. App. D.C. 268, 322 F.3d 728, 736 n.7 (2003). While the defendants and *amici* may defend the validity of the Anti-SLAPP, their articulated views, even if they substantially overlap with the District's, are not the equivalent to the position of the sovereign on important public-interest legislation. This factor, too, weighs in favor of mandatory intervention. *See HSBC Bank*, 11 A.3d at 236 (putative intervenor need only show "'that representation of his interest 'may be' inadequate . . . .' This is true even if there is a significant overlap between the would-

be intervenor's interest and that of a party . . . .") (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)); *Atlantic Sea Island Group LLC v. Connaughton*, 592 F.Supp.2d 1, 7 (D.D.C. 2008) (in holding that the State of New Jersey could intervene as of right, reasoning in part that the existing defendants "cannot be expected to protect New Jersey's interest to its full extent.").

III. Conclusion

The District's motion to intervene should be granted, and the District should be permitted to intervene in this case for the limited purpose of defending the validity of the Anti-SLAPP Act.

DATE: August 30, 2011

Respectfully submitted,

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