

COMMONWEALTH OF KENTUCKY
 FRANKLIN CIRCUIT COURT
 DIVISION II
 CASE NO. 20-CI-00471
Electronically filed

DAVID M. WARD, *et al.*

Plaintiffs

v.

SECRETARY OF STATE *ex rel.*
 Michael G. Adams, *et al.*

Defendants

**ATTORNEY GENERAL DANIEL CAMERON'S MOTION TO INTERVENE
 ON BEHALF OF THE COMMONWEALTH OF KENTUCKY**

Plaintiffs challenge the constitutionality of 2020 Kentucky Acts, Chapters 85 and 101, as codified in KRS 421.576, 421.550, 421.530, 421.520, 421.510, and 421.500. As the Commonwealth's chief law officer, the Attorney General respectfully moves, under Rule 24, to intervene as a Defendant in this action to defend the constitutionality of Kentucky law.

ARGUMENT

I. The Attorney General, on behalf of the Commonwealth, may intervene as of right.

Under Rule 24.01, "[u]pon timely application, anyone shall be permitted to intervene in an action . . . when a statute confers an unconditional right to intervene." The court may also grant permissive intervention, upon a timely motion, "(a) when a statute confers a conditional right to intervene or (b) when an applicant's claim or

defense and the main action have a question of law or fact in common.” Rule 24.02. The Commonwealth’s motion satisfies both rules.

There can be no doubt that the Attorney General has an unconditional right to intervene in this action. Kentucky law gives the Attorney General the statutory right “to be heard” in “any proceeding which involves the validity of a statute.” KRS 418.075(1) (emphasis added; *see also* KRS 418.075(2); Rule 24.03. As our highest court has put it, “[t]here is no question as to the right of the Attorney General to appear and be heard in a suit brought by someone else in which the constitutionality of a statute is involved.” *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865, 868 (Ky. 1974); *see also Commonwealth ex rel. Beshear v. Commonwealth ex rel. Bevin*, 498 S.W.3d 355, 361 (Ky. 2016) (“[T]he Attorney General must defend duly adopted statutory enactments that are not unconstitutional.”). Furthermore, under Kentucky law, the Attorney General is the Commonwealth’s chief law officer and, as such, may “enter his appearance in all cases . . . in which the Commonwealth has an interest[.]” KRS 15.020 (emphasis added). Attorney General Cameron is, in the words of the Supreme Court, the “attorney for the people of the State of Kentucky.” *Commw. ex rel. Conway v. Thompson*, 300 S.W.3d 152, 173 (Ky. 2009) (citation omitted). Under these authorities, Attorney General Cameron unquestionably has an “unconditional right to intervene” under Rule 24.01.

II. The Court should grant the Attorney General, on behalf of the Commonwealth of Kentucky, permissive intervention.

The Attorney General also satisfies the elements for permissive intervention because he is seeking to defend the constitutionality of the two laws being challenged

by Plaintiffs. Rule 24.02 provide that “anyone may be permitted to intervene in an action: (a) when a statute confers a conditional right to intervene or (b) when an applicant’s claim or defense and the main action have a question of law or fact in common.”

As explained above, the Commonwealth, by and through Attorney General Cameron, has an unequivocal statutory *right* to intervene. At a minimum, however, the relevant statutes provide the Attorney General the unconditional right to intervene, the statutes undeniably grant a conditional right to intervene under Rule 24.02(a). Moreover, permissive intervention under Rule 24.02(b) is appropriate because the Commonwealth’s defenses necessarily involve “a question of law or fact in common” with Plaintiffs’ claims.

III. The Attorney General’s motion is timely.

Both intervention as of right and permissive intervention require a timely motion. The Attorney General is moving to intervene only twelve days after Defendants filed their answer to Plaintiffs’ Complaint. At the time of this motion, there also has been no discovery. *See Government Employees Ins. Co., v. Winsett*, 153 S.W.3d 862, 863 (Ky. App. 2004) (insurance company’s motion to intervene was timely when “[n]o judgment, settlement or other event has occurred disposing of the case at [the] time” the motion was filed). This motion is therefore timely.

The Attorney General further notes that the Court of Appeals and the Supreme Court have recently granted a motion to intervene by the Attorney General in defense of Kentucky law. *Louisville/Jefferson Cty. Metro Gov’t Waste Mgmt. Dist. v. Jefferson*

Cty. League of Cities, Inc., 2019-SC-520 (Ky. Apr. 24, 2020); *Louisville/Jefferson Cty. Metro Government v. Commonwealth, Finance & Admin. Cabinet*, 2019-CA-362, 2019-CA-1013 (Ky. App. Apr. 22, 2020). This Court should do the same here.

Wherefore, Attorney General Daniel Cameron, on behalf of the Commonwealth of Kentucky, respectfully moves this Court to grant its motion to intervene. As required by Rule 24.03, an answer accompanies this motion.

Respectfully submitted,

Daniel Cameron
ATTORNEY GENERAL

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S. Chad Meredith (No. 92138)
Carmine G. Iaccarino (No. 93838)
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*Counsel for Intervening Defendant,
Commonwealth of Kentucky ex rel.
Attorney General Daniel Cameron*

NOTICE

With leave of Court, this motion to intervene shall come on for a hearing before the Franklin Circuit Court on July 20, 2020, at 9:00 a.m., or as soon thereafter as counsel may be heard.

CERTIFICATE OF SERVICE

I certify that on July 14, 2020, a copy of the above was filed electronically with the Court and served through the Court's electronic filing system and was served by U.S. Mail, postage prepaid on July 15, 2020, on the following:

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Attorney General Daniel Cameron*

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Intervening Defendant

**ANSWER TO PLAINTIFFS’ COMPLAINT BY INTERVENING DEFENDANT
ATTORNEY GENERAL DANIEL CAMERON, ON BEHALF OF THE
COMMONWEALTH OF KENTUCKY**

The Intervening Defendant, Commonwealth of Kentucky, *ex rel.* Attorney General Daniel Cameron, answers the Plaintiffs’ Complaint as follows:

1. The Commonwealth is without sufficient information to admit or deny the allegations set forth in paragraphs 1 through 6, 9, 14, 16, 17, 20, 21, 23, 24, 26, 37, 44, 45, 46, 47, 56, 57, 60, 61, 73, 75, 77, 78, 84, 85, 92 through 96, 98, and 99 of the Plaintiffs’ Complaint, and therefore denies those allegations.

2. In response to paragraphs 7, 8, 13, 18, 66, 68, 69 and 74 of the Plaintiffs' Complaint, the Commonwealth states that Section 256 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

3. In response to paragraphs 10, 25, 28, 36, 38, 70, and 71 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 85 speaks for itself, and it denies any interpretation or construction of the law at variance with the text. The Commonwealth is without sufficient information to admit or deny the remainder of the allegations set forth in paragraphs 10, 25, 28, 36, 38, 70, and 71 of the Plaintiffs' Complaint, and therefore denies those allegations.

4. In response to paragraphs 11, 12, 15, and 25 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 85 speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

5. In response to paragraph 19 of the Plaintiffs' Complaint, the Commonwealth states that Section 2 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

6. In response to paragraphs 27, 32, 33, and 40 of the Plaintiffs' Complaint, the Commonwealth states that the provisions of the Kentucky Constitution speak for themselves, and it denies any interpretation or construction of the law at variance with the text of those provisions.

7. In response to paragraphs 41, 51, and 79 through 83 of the Plaintiffs' Complaint, the Commonwealth states that the provisions of 2020 Kentucky Chapter

101 speak for themselves, and it denies any interpretation or construction of the law at variance with the text of those provisions.

8. In response to paragraphs 29, 30, 31, and 34 of the Plaintiffs' Complaint, the Commonwealth states that Section 257 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

9. In response to paragraph 35 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 85 and Section 26 of the Kentucky Constitution speak for themselves, and it denies any interpretation or construction of the law at variance with the text of those provisions.

10. In response to paragraph 42 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 101 speaks for itself, and it denies any interpretation or construction of the law at variance with the text. The Commonwealth is without sufficient information to admit or deny the remainder of the allegations set forth in paragraph 42 of the Plaintiffs' Complaint, and therefore denies those allegations.

11. In response to paragraphs 43, 49, 50, 52, 53, 54, 55, 58, and 59 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 101 speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

12. In response to paragraph 63 and 65 of the Plaintiffs' Complaint, the Commonwealth states that Section 4 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

13. In response to paragraphs 64, 70, 72, and 74 of the Plaintiffs' Complaint, the Commonwealth states that Section 256 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text. The Commonwealth is without sufficient information to admit or deny the remainder of the allegations set forth in paragraphs 64, 70, 72, and 74 of the Plaintiffs' Complaint, and therefore denies those allegations.

14. In response to paragraph 67 of the Plaintiffs' Complaint, the Commonwealth states that Section 256 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text. The Commonwealth is without sufficient information to admit or deny the remainder of the allegations set forth in paragraph 67 of the Plaintiffs' Complaint, and therefore denies those allegations.

15. In response to paragraph 84 of the Plaintiffs' Complaint, the Commonwealth states that Attorney General Opinion 2020-08 speaks for itself.

16. In response to paragraph 86 of the Plaintiffs' Complaint, the Commonwealth states that Sections 60 and 150 of the Kentucky Constitution and 2020 Kentucky Acts Chapter 89 speak for themselves, and it denies any interpretation or construction of the law at variance with the text.

17. In response to paragraph 87 of the Plaintiffs' Complaint, the Commonwealth states that Section 145 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

18. In response to paragraph 88 of the Plaintiffs' Complaint, the Commonwealth states that Section 147 of the Kentucky Constitution speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

19. In response to paragraphs 89 through 91 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 89 speaks for itself, and it denies any interpretation or construction of the law at variance with the text.

20. In response to paragraph 97 of the Plaintiffs' Complaint, the Commonwealth states that 2020 Kentucky Acts Chapter 89 speaks for itself, and it denies any interpretation or construction of the law at variance with the text. The Commonwealth is without sufficient information to admit or deny the remainder of the allegations set forth in paragraph 97 of the Plaintiffs' Complaint, and therefore denies those allegations.

21. In response to paragraphs 22, 39, 48, 62, and 76 of the Plaintiffs' Complaint, the Commonwealth incorporates herein by reference the preceding denials, admissions, and averments as if set forth herein in their entirety.

22. The Commonwealth denies any allegations set forth in the Plaintiffs' Complaint not specifically admitted above.

AFFIRMATIVE DEFENSES

23. The Commonwealth denies any allegations set forth in the Plaintiffs' Complaint not specifically admitted above.

24. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

25. Plaintiffs have failed to join parties that are necessary and indispensable to the resolution of this suit, and are therefore in violation of Rule 19.

26. The Commonwealth pleads all applicable affirmative defenses allowed under Rule 8.03.

27. The Commonwealth reserves his right to amend its answer to assert or raise additional affirmative defenses and to assert any third-party complaints, counterclaims, or cross-claims, as necessary, after discovery and an investigation into the facts and circumstances of this case.

WHEREFORE, the Intervening Defendant, Commonwealth of Kentucky *ex rel.* Attorney General Daniel Cameron, demands as follows:

1. That the Plaintiffs' Complaint be dismissed, with prejudice;
2. For its costs herein expended; and
3. For any and all other relief to which it may appear entitled.

Respectfully submitted,

Daniel Cameron
ATTORNEY GENERAL

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Intervening Defendant

ORDER

Attorney General Daniel Cameron having moved to intervene on behalf of the Commonwealth of Kentucky, and the Court being sufficiently advised, it is hereby ORDERED:

1. The Commonwealth of Kentucky *ex rel.* Attorney General Daniel Cameron’s motion to intervene is **GRANTED**; and
2. The Clerk shall file of record the answer tendered with the Intervening Defendant’s motion.

It is **SO ORDERED** this the ___ day of _____, 2020.

Judge, Franklin Circuit Court

CLERK'S CERTIFICATE OF SERVICE

I certify that on July ___, 2020, a copy of the above was served on the following by U.S. Mail, postage prepaid:

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