COURT OF COMMON PLEAS
ADAMS COUNTY, OHIO

SHAWN D. COOLEY, et al,
c/o Robert A. Klingler
895 Central Ave, Suite 300
Cincinnati, Ohio, 45202-1984
Plaintiffs,

Vs.

JOSEPH E. FOREMAN, AKA AFROMAN, et al
1299 Russellville Rd.
Winchester, OH 45697
Defendants

Vs.

ARTHUR S. WEST,
120 State Ave. NE # 1497
Olympia, WA 98501
Applicant for intervention

CASE NO. CVH - 20230069

MEMORANDUM IN SUPORT OF MOTION TO INTERVENE

This is an action "for permanent injunctive relief; **for *impoundment of merchandise, goods, and other materials, and/or their destruction,*...**" (See Plaintiff's Complaint, Count 1, Page 16), as well as "an Order **permanently enjoining** all Defendants... ***from publishing*** Plaintiffs' personas for commercial purposes, ***publishing*** false information and information that puts Plaintiffs in a false light, and ***publishing*** unreasonable private information about them;" (See Plaintiff's Complaint, Count 5, Pp. 16). The material to which the relief is sought includes YouTube videos depicting"the officers involved set to music" which include the Official Music Videos of the songs "*Will You Help Me Repair my Door*" and "*Lemon Pound Cake*". (See Plaintiffs' Complaint, Pp. 10, section l).

In addition, the plaintiffs seek to prohibit publication and distribution of reports, images and printed material such as the "*Lemon Pound Cake*" T Shirt. (See Complaint at Page 7-8, at items d, e, f, and g).

Claiming a 1st Amendment interest in the receipt of the music videos, printed material, reports, and other information at issue in this case, Arthur West has respectfully moved for intervention under ORCP 24 (A) and (B). By means of a pleading filed April 10, 2023, plaintiffs have objected to the application.

Unfortunately, rather than reasonably disputing that serious 1st Amendment issues are presented by their attempts to stifle publication and distribution of music videos and YouTube and instagram posts and to stage a modern day version of the Germanic bibliophobic incendiary activities of 1933[1], by means of "***impoundment***" and "***destruction***" of defendants' publications, plaintiffs have filed a response replete with irrelevant ad hominem attacks but devoid of any serious argument as to the 1st Amendment issues.

Plaintiffs fail to credibly dispute West's 1st Amendment interests. Nor do they make any showing of the adequacy of representation of these important issues that they, in the otherworldly and mystical manner of Carnac the Magnificent, prognosticate will be provided by some unknown "phantom" attorney that they, curiously, decline to identify.

Instead, the plaintiffs' objection demonstrates **1.** that a thorough knowledge of the 1st Amendment and constitutional law is necessary to identify and adequately address the serious 1st Amendment issues presented by the instant classic example of a SLAPP (Strategic Lawsuit Against Public Participation) Suit: **2.** that plaintiff has failed to credibly deny West's interest: **3.** that no

1 See Heidtmann, Horst. "Book Burning." In *Encyclopedia of the Third Reich*, edited by Christian Zentner and Friedemann Bedüaurftig, 99-100. New York: MacMillan, 1991. (Reference DD 256.5 .G763 1991 v.1)

adequate representation of West's interests can be expected from persons unknown, and **4.** that plaintiffs have a marked flatness of affect that prevents them from exhibiting any vestige of a sense of humor or, in the case of both Mr. Foreman's works and West's Linkedin post, prevents them from distinguishing between parody and reality.

A. The applicable legal standard requires that Rule 24 be construed liberally in support of intervention and that intervention be allowed upon the minimal showing that an applicant's interest *might* be compromised

As a primary consideration, it is clearly established that Rule 24 of the Ohio Rules of Civil Procedure, which governs intervention, is to be construed liberally in favor of intervention. *State ex rel. Polo v. Cuyahoga County Bd. Of Elections,* 73 Ohio St.3d 143, 1995-Ohio-269, 656 N.E.2d 1277; *State ex rel. Strategic Capital Investors, Ltd. v. McCarthy* (1998), 126 Ohio App.3d 237, 248, 710 N.E.2d 290.

Rule 24(A) provides:

> Upon timely application anyone shall be permitted to intervene in an action:... (2) when 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 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 the parties. Ohio R. Civ. Pro. 24(A) (emphasis added).

Under this Rule, a person may intervene as a defendant and file an answer and defenses to the complaint. *See generally McKesson Medical-Surgical Minnesota, Inc. v. Medico Medical Equip. & Supplies, Inc.*, No. 84912, 2005 WL 1119801 (Ohio App. 8th Dist. May 12, 2005).

Ohio courts consider whether to grant intervention as of right under Rule 24(A)(2) using a three-part test:

> 1.The intervenor claims an interest relating to the property or transaction which is the subject of the action;
>
> 2. The intervenor is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest; and
>
> 3. The existing parties do not adequately represent his or her interest. *Blackburn v. Hamoudi* (1986), 29 Ohio App.3d 350, 352, 29 OBR 479, 505 N.E.2d 1010.

If a party's "interests *might* be compromised by disallowing intervention," the party must be allowed to intervene as a matter of right. *HER, Inc. v. Parenteau,* 153 Ohio App.3d 704, 2003-Ohio-4370, 795 N.E.2d 720 at ¶ 17 (emphasis added); *see also Blackburn*, 29 Ohio App. 3d at 354 ("While the [applicant's] claim may be shown to be without merit, . . . it is not required that the interest be proven or conclusively determined before the motion is granted."); *Najjar v. Twp. of Riveredge* (June 20, 1991), Cuyahoga App. No. 60778 ("[i]t is not required that the applicant's interest be conclusively determined before the motion to intervene will be granted, as the applicant is entitled to his day in court.").

The burden of showing the inadequacy of representation of parties is a minimal one. *See Fairview Gen. Hosp. v. Fletcher* (1990), 69 Ohio App.3d 827, 835, 591 N.E.2d 1312. Only where the interests of the party and the putative intervenor are "virtually identical" should this Court require any heightened showing before allowing intervention. *Toledo Coal. for Safe Energy v. Pub. Util. Comm'n of Ohio* (1982), 69 Ohio St.2d 559, 562 n.5, 433 N.E.2d 212.

In the present case, intervention Under Rule 24(A)(2) is warranted because Intervenor West has interests that are not identical to the other defendants: interests which may be compromised in the absence of intervention, and which are not adequately represented by the existing parties.

Under the facts and law of this case, there is simply no credible dispute that plaintiff has met the requirements for intervention under both section A and B of Ohio Rule of Civil Procedure

24. Intervention should be granted as of right under Rule 24(A)(2). In addition, there are a number of particular reasons why intervention is appropriate in this case.

1. Some knowledge of the 1st Amendment and constitutional law is necessary to identify and adequately address the serious 1st Amendment issues presented by the instant classic example of a Strategic Lawsuit Against Public Participation (SLAPP) Suit

The abusive nature of this lawsuit and the serious 1st Amendment issues it poses to both the existing defendants as publishers and distributors of information and to citizens like West who seek to receive this information are readily apparent to any serious student of 1st Amendment jurisprudence in that this case has all of the elements of a Strategic Lawsuit Against Public Participation (SLAPP) Suit.

SLAPP Suits were first identified by Professors Pring and Canan in their 1988 Article[2] *Strategic Lawsuits against Public Participation* and their landmark Book, *Slapps: Getting Sued For Speaking Out,* Temple University Press; First Edition (January 22, 1996).

Their 1988 Article notes that:

(E)very year in the United States, hundreds, perhaps thousands, of civil lawsuits are filed that are aimed at preventing citizens from exercising their political rights or punishing those who have done so. In 1979, when the National Organization for Women (NOW) organized a boycott of conventions in states whose legislatures had not ratified the Equal Rights Amendment, the attorney general of Missouri sued NOW on behalf of affected local business...The NAACP and Bayview of San Francisco protested police brutality and coverups; the Police Officers Association sued for $50 million...

2 See *Strategic Lawsuits against Public Participation*, Penelope Canan and George W. Pring, Social Problems Vol. 35, No. 5 (Dec., 1988), pp. 506-519 (14 pages), Oxford University Press

We call these cases "strategic lawsuits against public participation" or SLAPPs: attempts to use civil tort action to stifle political expression. It is this political retaliation, through the law, that distinguishes SLAPPs from the commonly observed intimidation and retaliation...

To qualify as a SLAPP according to professors Pring and Canan, a case had to be

1. a civil complaint or counterclaim (for monetary damages or injunction),
2. filed against non-governmental individuals and/or groups,
3. because of their communications to a government body, official, or the electorate,
4. on an issue of some public interest or concern.

The present case brought by the Adams County Sheriff against a citizen making music videos and other publications about a botched police raid on his residence meets all of these criteria and is a textbook example of a classic SLAPP Suit threatening constitutional rights broadly.

As Gillian Phillips, Director of Editorial and Legal Services, Guardian News and Media, UK observes more recently in his Article, Strategic Lawsuits Against Public Participation[3]:

> Strategic Lawsuits Against Public Participation are– "*a weapon to intimidate people who are exercising their constitutional rights, restrain public interest in advocacy and activism; and convert matters of public into technical private law disputes*"

In his seminal 1989 article, "SLAPPs: Strategic Lawsuits against Public Participation", Professor Pring wrote that:

> "*The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a "price" for speaking out politically. The price is a*

3 *See Strategic Lawsuits Against Public Participation*, Gillian Phillips, *International In-house Counsel Journal*, Vol.14, No. 54, Winter 2021, 1

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multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings."

Due to suits like those filed by the Coolies, et al, active community members are now being forced to assess the value of their public participation against the potential risk of being hauled into the court-room by those whose business interests might be adversely affected. Unfortunately, a price is being fixed on the exercise of Constitutional rights as citizens are forced to defend against frivolous, retaliatory lawsuits.

When approving New York legislation aimed at SLAPP suits, Governor Mario Cuomo stated, "[t]he aim of SLAPP suits is simple and brutal. The individual is to regret ever having entered the public arena to tell government what she thinks about something directly affecting her."

According to the international activists' and lawyers' task force Protect the Protest, the telltale signs of a SLAPP law suit are that it:

- targets forms of free speech,
- takes advantage of a power imbalance,
- threatens to bankrupt the defendant,
- attempts to remain in court as long as possible,
- is part of a usually wider public relations offensive designed to bully critics...

Quintessential difficulties that permeate the increasing use of intimidation suits involve notions of due process, fairness, free speech, ability to petition government, and representation. SLAPP suits typically involve a party such as Mr. Foreman, who suffers from an enormous inequality of resources compared to the Adams County law enforcement community. The advantaged party is able to use the legal process as a tool of intimidation and retaliation. Intimidation is no longer an element of the process, but becomes the recognized purpose and goal.

This goal exploits the legal process in an effort to punish citizens such as Mr. Foreman for their involvement in constitutionally protected activities, and, incidentally, to prevent citizens such as West from exercising their constitutional rights to receive the information that the Coolies are employing the full weight of the State to attempt to suppress.

The broad chilling effect that plaintiffs in this suit hope to effect is frightening, and is of paramount concern to every citizen, such as the applicant for intervention, who has an interest in receiving the information the defendants are publishing in order to exercise his own "fundamental" constitutionally protected interests, which include holding government entities accountable for their actions. Based upon the foregoing, intervention should be allowed.

2. Plaintiffs have failed to credibly deny West's *fundamental* interest in receipt of information

It is black letter law that "*the right to receive publications is . . . a fundamental right*," the protection of which is "*necessary to make the express guarantees [of the First Amendment] fully meaningful.*"

Despite their virulent personal attacks and blanket denials, plaintiffs have failed to credibly dispute West's constitutionally protected interests as a potential recipient of protected expression; in receiving publications such as "*Will You Help Me Repair my Door*", and "*Lemon Pound Cake*" as well as the Lemon Pound Cake T-shirt, his interest in viewing works of art and receiving information and reports on police misconduct - interests which are being deliberately threatened by the plaintiffs in this case in a textbook example of an abusive SLAPP Suit.

Over 50 years ago, the Supreme Court decision in Lamont v. Postmaster General, 381 U.S. 301 (1965), invalidated a statute allowing the Postmaster General to regulate the flow of

"communist political propaganda" through the mails. Lamont set several First Amendment precedents. Lamont was the first time the Supreme Court invalidated a federal statute under the speech and press clauses of the First Amendment, the first case to hold that the First Amendment includes a "right to receive," and the first time a justice used the phrase "marketplace of ideas" in a judicial opinion.

The Lamont Court invalidated the law because it acted as a limitation on the unfettered exercise of the potential recipient's First Amendment rights, concluding that the statute was "almost certain to have a deterrent effect..." and thus "amount[ed] to an unconstitutional abridgment of the addressee's (AKA recipient's) First Amendment rights."

Justice Douglas wrote the Court's unanimous opinion, and Justice William J. Brennan Jr. wrote a separate concurrence, which held that the 'Right to receive publications' was a fundamental right. Justice Brennan made explicit what had been implicit in the majority opinion, declaring that "*the right to receive publications is . . . a fundamental right*," the protection of which is "*necessary to make the express guarantees [of the First Amendment] fully meaningful*." Although mentioned in a concurrence only, the "right to receive" was clearly acknowledged by the entire Court because the Court premised its holding on the addressee's, rather than the speaker's, constitutional claims.

Building on Justice Oliver Wendell Holmes Jr.'s use of the phrase "competition of the market" in his famous dissent in Abrams v. United States (1919), Justice Brennan stated in Lamont: "It would be a barren marketplace of ideas that had only sellers and no buyers." By comparing the exchange of ideas to the exchange of goods in a marketplace, Justice Brennan highlighted the intrinsic necessity of buyers of goods and, analogously, the importance of a "right to receive" ideas.

As the 1st Circuit ruled more recently in *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011), the 1st Amendment broadly protects conduct related to the gathering and dissemination of information,

including activities like filming on duty police officers and distributing such information to third parties:

"It is firmly established that the First Amendment's aegis extends further than the text's proscription on laws 'abridging the freedom of speech, or of the press,' and encompasses a range of conduct related to the gathering and dissemination of information,"... "The filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within these principles. Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting 'the free discussion of governmental affairs.'"

This right to gather and disseminate news is not one that belongs solely to the media, a particularly important principle in this modern era of the news industry, when "changes in technology and society have made the lines between private citizen and journalist exceedingly difficult to draw," the court said.

"The proliferation of electronic devices with video-recording capability means that many of our images of current events come from bystanders with a ready cell phone or digital camera rather than a traditional film crew, and news stories are now just as likely to be broken by a blogger at her computer as a reporter at a major newspaper. Such developments make clear why the news-gathering protections of the First Amendment cannot turn on professional credentials or status."

The clearly established right to receipt of information such as that discussed by the Glik Court is a necessary corollary[4] to the free discussion of governmental affairs that West seeks to defend from abridgment in this instant case. Under the liberal standards of Rule 24, intervention should be granted to protect this "self-evident" and "fundamental" interest.

4 "We accept as self-evident the suggestion in the brief of intervenors (The League of Women Voters) that the right to receive information is the fundamental counterpart of the right of free speech." *Fritz v. Gorton*, 83 Wn. 2d 275, 296 (Wash. 1974)

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3. No adequate representation of West's interests can be expected from persons unknown

As noted above, "[i]t is not required that the applicant's interest be conclusively determined before the motion to intervene will be granted, as the applicant is entitled to his day in court." If a party's "interests might be compromised by disallowing intervention," the party must be allowed to intervene as a matter of right. Further, the burden of showing the inadequacy of representation of parties is a minimal one.

West has already more than met this minimal showing under a Rule that is to be interpreted liberally in favor of intervention. However, in this case it is also to be considered in the context of adequacy of representation that West has a long history of litigating difficult constitutional issues, including the 1st and 4th Amendments and the limitations of privacy to be afforded public officers.

In *West v. Vermillion*, 196 Wn. App. 627, 384 P.3d 634 (2016), *review denied*, 187 Wn.2d 1024, *cert. denied*, 138 S. Ct. 202 (2017) West filed briefing in and prevailed at every level of our Court system up to the Supreme Court of the United States, to set new precedent.

As one reviewer[5] described it:

The *West* court further expanded *Nissen*'s rejection of constitutional barriers to the PRA, holding that the Fourth Amendment of the United States Constitution and Article 1, Section 7 of the Washington State Constitution do not prohibit ordering an agency employee to search for and produce responsive public records contained on private devices. 384 P.3d at 638-39. The court also concluded that the First Amendment right to freely associate did not provide a basis to shield public records. The *West* court considered the Nissen court's holding that there is no constitutional privacy

5 See https://www.bbllaw.com/court-appeals-holds-city-employees-must-produce-e-mails-public-record-personal-accounts/

interest in a public record dispositive, and that this was not limited only to privacy interests enumerated under specific provisions. Thus, the *West* court expanded *Nissen*'s holding in broadly rejecting First Amendment privacy interests.

This current case involves complicated issues of constitutional law and alleged privacy interests of public officers in the conduct of their duties. West is familiar with these types of issues and has litigated them successfully all the way up to the Supreme Court of the United States of America. Under these circumstances it is doubtful that any counsel, no matter how skilled, without a background in appellate litigation of 1st Amendment or constitutional law could adequately represent West's interests in this case.

West has met the minimal burden of demonstrating a potential interest that may not be adequately represented by the "phantom" counsel that the plaintiffs decline to identify in their response. Intervention should be granted under the established legal standards of the State of Ohio.

4. Plaintiffs have a marked flatness of affect that prevents them from exhibiting any vestige of a sense of humor or, in the case of both Mr. Foreman's works and West's Linkedin post, prevents them from distinguishing between parody and reality.

In the very first sentence of their response, plaintiff's counsel attempts to take a humorous post on Linkedin out of context to mischaracterize plaintiff as a dangerous "professional troublemaker". In addition to being petty, scurrilous and prejudicial, and inadmissible under ER 402 and 404, this ad hominem assault clearly demonstrates one of the driving forces behind this litigation, that the plaintiffs' and their counsel lack even a scintilla of a sense of humor and are apparently incapable of discerning the difference between parody and reality or truth and fiction.

Just as the plaintiffs fail to realize that they are merely the butt of a series of jokes by a comedic artist, portions of whose music videos and utterances (like those of Mr. Nutterbutter in

Murray v. Oliver) are simply humorous parody not to be taken seriously by a reasonable person, they obviously completely fail to recognize the parody inherent in a post that describes a party as a "Quixotic Troublemaker", "Sea Dragon Conqueror", and, most especially, a "Bokononist".

Certainly, for example, no reasonable person would believe (as Mr. Foreman recounts in the video "Lemon Pound Cake") that "Mama's Pound Cake...tastes so nice, it made the Sheriff want to put down his gun and cut him a slice" or that the Officer Cooley "Seized my cake and my porno mag called Boom Boom" and that subsequently "Something happened to his camera on the way to the evidence room".

Similarly, no reasonable person would confuse "Quixotic[6]" for "Professional", believe that West was a Galactic Effectuator like Miro Hetzel, or engaged in the business of a commercial "Sea Dragon Conqueror[7]" or that he follows the precepts of Bokononism, a fictitious religion known only from the pages of Kurt Vonnegut's humorous novel *Cat's Cradle*, where the inhabitants of a mythical isle follow an ostensibly fictitious faith[8] expressed mainly in a series of Calypso songs[9], believe that all their teachings are a series of benevolent lies, (Foma) and engage in a surrealistic podiatric ritual known as "Boku Maru".

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6 See, i.e. *El Ingenioso Hidalgo Don Quixote de la Mancha*, Madrid: Don Joaquin Ibarra, 1780

7 See *Miro Hetzel, Galactic Effectuator*, and *The Moon Moth, Galaxy Science Fiction (August 1961)*, by Jack Vance for the literary significance of the appellation "Sea Dragon Conqueror".

8 See https://celebrity.fm/what-is-bokononism-in-cats-cradle/ Unlike most religions that claim to have answer to life, the universe, and everything, Bokononism proudly wears its falsity like an ironic t-shirt from Hot Topic. (Or an ironic "Lemon Pound Cake" T shirt from Afromerch?)

9 See Wikipedia https://en.wikipedia.org/wiki/Cat%27s_Cradle The semi-humorous religion secretly practiced by the people of San Lorenzo, called Bokononism, encompasses concepts unique to the novel (Cat's Cradle). Many of these concepts use words from the San Lorenzan dialect of English. Many of its sacred texts, collectively called *The Books of Bokonon*, are written in the form of calypso songs.[13] Bokononist rituals are equally strange or absurdist; for example, the supreme religious act consists of any two worshippers rubbing the bare soles of their feet together to inspire spiritual connection.

These types of primary misunderstandings, caused in part by plaintiffs' apparent collective flatness of affect, underly the whole of this frivolous lawsuit. Like the equally humorless Coal magnate Bob Murray, plaintiffs simply don't get the joke, and would rather litigate than laugh.

This is a sad reality because humor plays a powerful and unique role in human life, with wide-ranging effects on many aspects of functioning. Humor is a basic ingredient of binding in society; it provides an effective means of communicating a wide range of ideas, feelings and opinions (Brownell and Gardner, 1988). Humor is therapeutic, providing a mechanism for coping with daily stressors (Lefcourt and Martin, 1986) and having positive effects on the immune (Lefcourt *et al.*, 1990) and central nervous (Fry, 1992) systems. It is such a key element in the human behavioral repertoire that it is considered to be *a defining human attribute* (Nahemow, 1986). In fact it is so highly valued and desired that very few people are willing to admit to a lack of a sense of humor (Omwake, 1937; Allport, 1961).

Unfortunately, plaintiffs and their counsel appear to be among this small subgroup, with their humorless ad hominem attack upon West in the very first sentence of their Reply and their failure to recognize the parody inherent in much of Mr. Foreman's publications underscoring their stilted and uniquely mirthless litigation posture in this case.

Plaintiffs' irrelevant and prejudicial references to West's Linkedin page[10] should be stricken under ER 402 and 404, or in the alternate, if West's status as a "Quixotic" "Bokononist" is deemed to be relevant by the Court, it should take judicial notice that as Bokononist, West would have a unique 1st Amendment religious interest in a Calypso song such as "Lemon Pound Cake" not being suppressed, since, after all, the sacred texts of the Bokononist religion are, by some divinely inspired coincidence, similarly expressed in Calypso songs.

10 See, attached, a screenshot of West's Linkedin Page as of 4-16-2023

Just as access to ammunition is necessary to the effectual exercise of rights under the Second Amendment, access to information is a necessary corrolary to the informed exercise of rights under the 1st Amendment. Obviously, the right to speak is only so good as the information one has to speak with.

For the foregoing reasons, intervention should be granted in order to allow for protection of West's interest in the *"fundamental right"* to receive information, the protection of which is *necessary to make the express guarantees of the First Amendment fully meaningful*.

Respectfully submitted this day of April 17, 2023.

S/ Arthur West
ARTHUR WEST

DECLARATION OF SERVICE

I, Arthur West, certify as follows:

On April 17, 2023, I served the above Motion in Support on Robert A. Klinger and Bruce Rivers, counsel for the parties, by emailing a copy to their email addresses per electronic service agreements.

I also electronically served Access Media, and Counsel Tyrell Cantrell. I certify the foregoing to be correct and true under penalty of perjury of the laws of the State of Washington.

Done this 17th day of April, 2023, in Olympia, Washington.

S/ Arthur West
ARTHUR WEST

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