

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

KC TENANTS,)
)
Plaintiff,)
)
v.) Case No. 20-000784-CV-W-HFS
)
DAVID M. BYRN, in his official)
capacity as the Presiding Judge)
for the 16th Judicial Circuit)
Court, Jackson County, Missouri,)
)
MARY A. MARQUEZ, in her)
official capacity as the Court)
Administrator for Jackson)
County, Missouri,)
)
Defendants,)
)
and,)
)
HELLA SHRIVER; JAMES GORHAM;)
NATIONAL ASSOCIATION OF)
RESIDENTIAL PROPERTY)
MANAGERS,)
)
)
Proposed Intervenors-Defendants.)

**SUGGESTIONS IN SUPPORT OF
PROPOSED INTERVENORS' MOTION TO INTERVENE
AS DEFENDANTS**

TABLE OF CONTENTS

TABLE OF CONTENTSi
TABLE OF AUTHORITIESii
INTRODUCTION.....1
BACKGROUND2
LEGAL STANDARD.....7
ARGUMENT.....8
 I. PROPOSED INTERVENORS HAVE STANDING8
 A. Proposed Intervenors Hella Shriver and James Gorham Have Standing.....8
 B. Proposed Intervenor National Association of Residential Property Managers Has
 Standing.....9
 II. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT9
 A. This Motion Is Timely.....10
 B. The Proposed Intervenors Have Recognized Interests in the Subject Matter of This
 Litigation11
 C. The Proposed Intervenors’ Interests May Be Impaired by This Case’s Disposition.....12
 D. The Proposed Intervenors’ Interests Will Not Be Adequately Protected by the Existing
 Parties13
 III. ALTERNATIVELY, PROPOSED INTERVENORS SHOULD BE PERMITTED TO INTERVENE14
CONCLUSION.....15

TABLE OF AUTHORITIES

Cases

<i>Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Acad.</i> , 643 F.3d 1088 (8th Cir. 2011)	12
<i>Animal Prot. Inst. v. Merriam</i> , 242 F.R.D. 524 (D. Minn. 2006)	13, 16
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	10
<i>Christopher v. Harbury</i> , 536 U.S. 403 (2002)	7
<i>Craig v. Simon</i> , No. 20-CV-2066, 2020 WL 5988497 (D. Minn. Oct. 9, 2020)	9, 12, 14, 17
<i>Crossroads Grassroots Policy Strategies v. FEC</i> , 788 F.3d 312 (D.C. Cir. 2015)	13
<i>Friends of Earth, Inc. v. Laidlaw Env'tl Servs., Inc.</i> , 528 U.S. 167 (2000).....	11
<i>Fund for Animals, Inc. v. Norton</i> , 322 F.3d 728 (D.C. Cir. 2003).....	13
<i>Kansas Pub. Employees Retirement Sys.</i> , 60 F.3d 1304 (8th Cir. 1995)	16
<i>Little Rock Sch. Dist. v. N. Little Rock Sch. Dist.</i> , 378 F.3d 774 (8th Cir. 2004)	17
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	9
<i>Mausolf v. Babbitt</i> , 85 F.3d 1295 (8th Cir. 1996).....	9, 12, 15, 16
<i>Med. Liab. Mut. Ins. Co. v. Alan Curtis LLC</i> , 485 F.3d 1006 (8th Cir. 2007).....	13
<i>Mille Lacs Band of Chippewa Indians v. State of Minn.</i> , 989 F.2d 994 (8th Cir. 1993).....	15, 16
<i>Missouri Coal. for Env't Found. v. Wheeler</i> , No. 2:19-CV-4215, 2020 WL 2331201 (W.D. Mo. May 11, 2020).....	11, 18
<i>Murphy by Murphy v. Piper</i> , No. CV 16-2623, 2018 WL 2088302 (D. Minn. May 4, 2018).....	15, 16
<i>N. Dakota ex rel. Stenehjem v. United States</i> , 787 F.3d 918 (8th Cir. 2015)	11, 12
<i>Nat'l Parks Conservation Ass'n v. U.S. E.P.A.</i> , 759 F.3d 969 (8th Cir. 2014)	passim
<i>S. Dakota ex rel. Barnett v. U.S. Dep't of Interior</i> , 317 F.3d 783 (8th Cir. 2003).....	18
<i>S. Dakota v. Ubbelohde</i> , 330 F.3d 1014 (8th Cir. 2003)	10
<i>Sierra Club v. Robertson</i> , 960 F.2d 83 (8th Cir. 1992).....	16
<i>Smith v. SEECO, Inc.</i> , 922 F.3d 398 (8th Cir. 2019)	8
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016).....	9
<i>Summers v. Earth Island Inst.</i> , 555 U.S. 488 (2009).....	11
<i>United States v. Metro. St. Louis Sewer Dist.</i> , 569 F.3d 829 (8th Cir. 2009)	9
<i>United States v. Union Elec. Co.</i> , 64 F.3d 1152 (8th Cir. 1995).....	13, 15, 16
<i>Webb v. Dr Pepper Snapple Grp., Inc.</i> , No. 4:17-00624-CV, 2018 WL 1990509 (W.D. Mo. Apr. 26, 2018).....	12

Constitutional Provisions

U.S. Const. amend. I.....	6
U.S. Const. amend. V.....	6
U.S. Const. amend. XIV	6
U.S. Const. art. IV, § 2	6

Statutes

18 U.S.C. § 3559.....	2
18 U.S.C. § 3571.....	2
42 U.S.C. § 243.....	2
42 U.S.C. § 264.....	2
42 U.S.C. § 268.....	2
42 U.S.C. § 271.....	2

Rules and Regulations

42 C.F.R. § 70.18.....2
42 C.F.R. § 70.2.....2
85 Fed. Reg. 55292 (Sept. 4, 2020).....2
Administrative Order No. 2020-154 (Sept. 4, 2020).....3
Fed. R. Civ. P. 24(a)(2)..... 6, 7, 10
Fed. R. Civ. P. 24(b)(1)(B)..... 7, 14
Fed. R. Civ. P. 24(b)(3).....7
Fed. R. Civ. P. 24(c).....7

Other Authorities

HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 Frequently Asked Questions (Oct. 9, 2020)..... 2, 4

INTRODUCTION

When Proposed Intervenor, Hella Shriver, James Gorham, and the members of the National Association of Residential Property Managers (“NARPM®”) rented their respective properties, they expected that their tenants would uphold their end of the contract and pay their rent. They also expected, if the tenants did not, that they could resort to the Jackson County, Missouri court system to enforce their contracts and evict their tenants, so that they could regain possession of their property and lease it to tenants who would meet their contractual obligations. Proposed Intervenor upheld their end of the bargain. They provided a habitable home to their tenants and have continued to pay for maintenance, utilities, taxes, and other upkeep expenses. When their tenants breached their agreement, some well before the COVID-19 pandemic took hold, Proposed Intervenor should have been able to follow the lawful processes laid down by Missouri law for retaking possession of their homes.

Proposed Intervenor failed to anticipate, however, that the U.S. Centers for Disease Control and Prevention (“CDC”), a federal agency, would issue an unprecedented, unilateral order suspending *state* law under the unsupported premise that doing so was “necessary” to control the COVID-19 pandemic. CDC’s sweeping actions are not authorized by statute or regulation. But even if they were, they comprise an historically unheard-of affront to core constitutional limits on federal power.

Plaintiff’s requested relief improperly asks this Court to enter an Order that would permit CDC’s unlawful Order to be enforced, thus violating Proposed Intervenor’s constitutional rights. For these reasons, the Proposed Intervenor respectfully request this Court to grant their motion to intervene and docket their Proposed Answer (attached hereto as an exhibit), and that they be permitted to participate in the preliminary injunction proceedings.

BACKGROUND

On September 1, 2020, Acting Chief of Staff for the CDC issued an order entitled, “*Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19.*” 85 Fed. Reg. 55292 (Sept. 4, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-09-04/pdf/2020-19654.pdf> (“CDC Order”). Upon its September 4, 2020 publication, the CDC Order became effective and remains so until December 31, 2020 “unless extended.” *Id.* at 55297.

The Order provides that “a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action, shall not evict any covered person from any residential property in any jurisdiction to which this Order applies during the effective period of the Order.” *Id.* at 55292. A “covered person” is “any tenant, lessee, or resident of a residential property who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating” certain information outlined in the CDC Order including nonpayment of rent. *Id.* at 55293. The CDC Order *criminalizes* violations of the Order, which is enforced by the U.S. Department of Justice. *See id.* at 55296; *see also* 18 U.S.C. §§ 3559, 3571; 42 U.S.C. §§ 243, 268, 271; 42 C.F.R. § 70.18; *HHS/CDC Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 Frequently Asked Questions* (Oct. 9, 2020) available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf> (“CDC Order Guidance”).

CDC’s Order is purportedly authorized by 42 U.S.C. § 264 and 42 C.F.R. § 70.2, but neither provision grants the agency the broad authority to void state laws here in Missouri, or across the country, unilaterally. 85 Fed. Reg. at 55297.

In response to the CDC’s Order, the 16th Judicial Circuit for Jackson County, Missouri issued Administrative Order No. 2020-154 (“Administrative Order”). *In re: Temporary Halt in Residential*

Evictions to Prevent the Further Spread of COVID-19 in Response to Centers for Disease Control and Prevention Order Published on September 4, 2020, Administrative Order No. 2020-154 (Sept. 4, 2020). The Administrative Order states that “the CDC Order does not contain specific language preventing the filing of or processing of legal actions in the Missouri State Courts or in any other jurisdiction.” *Id.* at 2. The Administrative Order sets out a process that permits those with a legal right to pursue eviction to seek a writ of execution if they verify “that the party seeking the writ of execution has not been provided with an executed copy of a Declaration Form from the persons against whom the eviction is sought, or that the party seeking the writ of execution is evicting the persons on grounds not precluded by the CDC Order.” *Id.* at 2-3, ¶ 1. The Administrative Order also permits those with a legal right to pursue eviction or a possessory action who have been provided a Declaration Form pursuant to the CDC Order to request an evidentiary hearing. *Id.* at 3, ¶ 7. However, in circumstances where the CDC Order is deemed to apply and the tenant is a “covered person,” the Administrative Order still precludes those with a legal right to pursue eviction or a possessory action interest from receiving full relief under the law.

Plaintiff KC Tenants filed this case challenging the Administrative Order on September 30, 2020 seeking, among other things, “a declaratory judgment that Administrative Order No. 2020-154 and its implementation by Defendants violates the Supremacy Clause and Fourteenth Amendment to the United States Constitution as well as federal law” and issuance of “preliminary and permanent injunctions prohibiting violation of the CDC’s nationwide eviction moratorium or Plaintiff’s right to due process.” ECF No. 1 at 25 (“Complaint”).

On October 9, 2020, the CDC issued its CDC Order Guidance, which purportedly clarifies that the Order “is not intended to terminate or suspend the operations of any state or local court. Nor is it intended to prevent landlords from starting eviction proceedings, provided that the actual eviction

of a covered person for non-payment of rent does NOT take place during the period of the Order.” CDC Order Guidance at 1(emphasis in original).

The Proposed Intervenor are landlords or a property management organization representing landlords who own and operate properties in Jackson County who have been denied the ability to seek otherwise lawful evictions because of the CDC Order.

Proposed Intervenor Hella Shriver owns a residential property in Independence, Missouri that she rented to two tenants in October 2019 for \$795 per month. Declaration of Hella Shriver (Oct. 22, 2020) ¶ 3 (attached as Exhibit 1) (“Shriver Decl.”). As of the date of this filing, the tenants have not paid any rent since August 2020. Shriver Decl. ¶ 5. Ms. Shriver is entitled to an eviction for nonpayment of rent, but when she finally accessed the Jackson County court system, her tenants presented her with a declaration consistent with the CDC Order, and the presiding judge stayed her case until January 2021, and denied her request for an eviction order based on the tenants’ damage to her property. Shriver Decl. ¶¶ 7-9. Ms. Shriver was not given an opportunity to challenge the accuracy of the affidavits, nor was she provided a copy of the affidavits. Shriver Decl. ¶ 10. On information and belief, Ms. Shriver has a good-faith basis to believe the tenants’ affidavits are false. *Id.* By the time Ms. Shriver’s case is allowed to proceed, her tenants will owe her some \$4,225 in unpaid rent, but Ms. Shriver will continue to incur monthly maintenance costs, ordinary wear and tear to her property, and the lost opportunity to rent or use the house at the fair market value of at least \$795 per month. Shriver Decl. ¶ 12. Because her tenants have attested in their CDC Declaration that they are insolvent, Ms. Shriver has no hope of recovering the lost rent and fees.

Proposed Intervenor James Gorham owns a residential property in Kansas City, Missouri that he leased out in October 2019 for \$685 per month. Gorham Decl. ¶¶ 3-4 Declaration of James Gorham (Oct. 20, 2020) (attached as Exhibit 2) (“Gorham Decl.”). Mr. Gorham managed the property

through Swift Realty & Property Management (“Swift RPM”), which is a member of NARPM®. Gorham Decl. ¶ 5. The tenant stopped paying rent almost immediately, and as of December 2019, was already delinquent for November and December rent and owed \$1,370 plus late fees. Gorham Decl. ¶ 6. On December 12, 2019, Swift RPM served the tenant with a notice to vacate the apartment for nonpayment of rent. Gorham Decl. ¶ 7. The tenant thereafter made partial payments toward the outstanding balance. Gorham Decl. ¶ 8. On April 22, 2020, Swift RPM again served the tenant with a notice to vacate for nonpayment of rent, but the eviction filings could not be accomplished because of court closures in Jackson County, Missouri. Gorham Decl. ¶ 10. Throughout 2020, the tenant continuously paid rent late and eventually stopped paying altogether. Gorham Decl. ¶¶ 9-13.

In September 2020, through his new property management company, TREH Property Management (“TREH KC, LLC”), Mr. Gorham again sought to evict his tenant, now owing more than \$4,600 in unpaid rent and late fees. Gorham Decl. ¶¶ 12-13. However, the tenant served TREH KC, LLC with a declaration consistent with the CDC Order. Gorham Decl. ¶ 13. As a result, Mr. Gorham has not been able to obtain a court hearing in Jackson County, Missouri to pursue the eviction process. Gorham Decl. ¶ 15. Mr. Gorham will continue to incur monthly maintenance costs, ordinary wear and tear to his property, and the lost opportunity to rent or use the house at the fair market value of at least \$685 per month. Gorham Decl. ¶ 17. Because his tenant has attested in her CDC Declaration that she is insolvent, Mr. Gorham has no hope of recovering the lost rent and fees.

Proposed Intervenor NARPM® is a member organization representing 5,425 residential property managers nationwide. Declaration of Gail S. Phillips (Oct. 20, 2020) ¶ 1 (attached as Exhibit 3) (“Phillips Decl.”). NARPM® members manage more than 2 million rental units across the country. Phillips Decl. ¶ 2. At least 14 of NARPM®’s members manage 2,194 residential units in Jackson County, Missouri. Phillips Decl. Decl. ¶ 3. NARPM® member Myeisha Wright owns TREH KC,

LLC, a property management company in Kansas City, which manages rental properties in Jackson County, Missouri. Phillips Decl. ¶ 4. At least one of Treh KC, LLC's managed properties has a tenant who has failed to pay rent for more than one month, and the company is entitled to seek eviction for nonpayment of rent under Missouri law. Phillips Decl. ¶ 5. However, the tenant has provided Ms. Wright with a declaration consistent with the CDC Order, and, as a result, the company is unable to seek an eviction using the Jackson County court system. Phillips Decl. ¶ 6-7.

Plaintiff's requested relief improperly asks this Court to enter an Order that would enforce CDC's unlawful Order, thus violating Proposed Intervenor's constitutional rights. If Plaintiff prevails in this matter, Proposed Intervenor will be stripped of their fundamental constitutional right of access to courts under the U.S. Constitution because the relief the Plaintiff seeks impermissibly denies Proposed Intervenor from accessing their only lawful means of evicting a delinquent tenant. *See Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002); *see also* U.S. Const. art. IV, § 2 (Privileges and Immunities Clause), amend. I (Petition Clause), amend. V (Due Process Clause), amend. XIV (Equal Protection and Due Process Clauses).

Perhaps more fundamentally, Plaintiff assumes the underlying validity of the CDC Order. However, the Order is an invalid exercise of CDC's limited authority and is void. Thus, to avoid enforcing an invalid order in a way that deprives Proposed Intervenor of their constitutional rights, this Court must permit intervention.

Proposed Intervenor satisfies the standards to intervene as of right under Federal Rule of Civil Procedure 24(a). First, Proposed Intervenor has standing. Second, the motion is timely because it was filed within weeks of the Complaint and before any significant proceedings occurred. Third, because Proposed Intervenor has standing, they have a recognized interest in the subject matter of this case. Fourth, their interests will not be adequately protected by the existing parties. Even if this

Court determines that Proposed Intervenors may not intervene as of right, they should still be permitted to intervene under Rule 24(b) because their participation will provide a unique point of view that will aid the Court in the disposition of this case.

LEGAL STANDARD

Under Rule 24(a),

the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2).

The Court may also “permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). A motion to intervene must “be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” Fed. R. Civ. P. 24(c).

Courts should construe motions to intervene liberally in favor of the proposed intervenors. *Smith v. SEECO, Inc.*, 922 F.3d 398, 405 (8th Cir. 2019); *see also Nat’l Parks Conservation Ass’n v. U.S. E.P.A.*, 759 F.3d 969, 973 (8th Cir. 2014) (“A court ruling on a motion to intervene must accept as true all material allegations in the motion to intervene and must construe the motion in favor of the prospective intervenor.”). To intervene in an action, the prospective intervenors must have Article III standing. *See Nat’l Parks Conservation Ass’n*, 759 F.3d at 974; *see also Mausolf v. Babbitt*, 85 F.3d 1295, 1300-01 (8th Cir. 1996).

ARGUMENT

I. PROPOSED INTERVENORS HAVE STANDING

Prospective intervenors “must establish Article III standing in addition to the requirements of Rule 24.” *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 833 (8th Cir. 2009). “The requirements for Article III standing are (1) injury, (2) causation, and (3) redressability.” *Nat’l Parks Conservation Ass’n*, 759 F.3d at 974; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (To have standing, a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”). An injury in fact is “‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo*, 136 S. Ct. at 1548 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). For standing, “prospective intervening defendant[s] may establish an imminent injury sufficient for the purpose of standing by demonstrating that the remedies sought by the plaintiff, if granted would threaten the prospective intervenor[s]’ interests.” *Craig v. Simon*, No. 20-CV-2066, 2020 WL 5988497, at *2 (D. Minn. Oct. 9, 2020) (citing *S. Dakota v. Ubbelohde*, 330 F.3d 1014, 1025 (8th Cir. 2003)). Injury in fact may also be established by showing a “[r]isk of direct financial harm.” *Nat’l Parks Conservation Ass’n*, 759 F.3d at 975. At the outset of litigation, as here, establishing standing is a “relatively modest” burden. *Bennett v. Spear*, 520 U.S. 154, 171 (1997).

A. Proposed Intervenors Hella Shriver and James Gorham Have Standing

Proposed Intervenors Shriver and Gorham meet the qualifications for individual standing. Proposed Intervenors have been and continue to be harmed by the CDC’s Order because, under the Order, they are denied the ability to pursue lawful eviction processes and regain possession of their unique property. They have also suffered direct financial harms. Those harms will be further compounded if Plaintiff’s requested relief is granted because it will shut the courthouse doors on them

completely, violating their constitutional right of access to courts under the U.S. Constitution. A denial of Plaintiff's motion for preliminary relief and a denial of Plaintiff's claims on the merits will redress the harm Proposed Intervenors will suffer if Plaintiff prevails. Furthermore, as this Court has invited the parties to brief the underlying validity of CDC's Order, and Proposed Intervenors will argue that the order is an invalid exercise of agency authority, a decision from this Court invalidating the CDC Order will benefit Proposed Intervenors immediately.

B. Proposed Intervenor National Association of Residential Property Managers Has Standing

An association has standing to sue on behalf of its members, where, as here, "its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of Earth, Inc. v. Laidlaw Env'tl Servs., Inc.*, 528 U.S. 167, 181 (2000); *Missouri Coal. for Env't Found. v. Wheeler*, No. 2:19-CV-4215, 2020 WL 2331201, at *4 (W.D. Mo. May 11, 2020). To support associational standing, prospective intervenors must "make specific allegations establishing that at least one identified member had suffered or would suffer harm." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009).

NARPM® meets the qualifications for associational standing. They have made specific allegations that at least one of their members has suffered harm as result of the CDC Order and that that harm will be further compounded if Plaintiff's requested relief is granted. As with the individual Proposed Intervenors, the harm to the associational intervenor will be redressed by denial of Plaintiff's motion for preliminary relief and a denial of Plaintiff's claims on the merits.

II. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT

Under Rule 24(a), a party is entitled to intervene when its application is timely and it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated

that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.” *N. Dakota ex rel. Stenehjem v. United States*, 787 F.3d 918, 921 (8th Cir. 2015) (quoting Fed. R. Civ. P. 24(a)(2)). The Eighth Circuit has paraphrased Rule 24(a) to require that a prospective intervenor establishes its right to intervene if it “(1) ha[s] a recognized interest in the subject matter of the litigation that (2) might be impaired by the disposition of the case and that (3) will not be adequately protected by the existing parties.” *Id.* (quoting *Mausolf*, 85 F.3d at 1299). If these requirements are satisfied, “[a] court must permit intervention as of right.” *Craig*, 2020 WL 5988497, at *3 (citing *Nat’l Parks Conservation Ass’n*, 759 F.3d at 975).

A. This Motion Is Timely

Whether a motion to intervene is timely “is a decision within the district court’s discretion . . . and is based on all of the circumstances.” *Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1094 (8th Cir. 2011) (internal citation omitted); *Webb v. Dr Pepper Snapple Grp., Inc.*, No. 4:17-00624, 2018 WL 1990509, at *2 (W.D. Mo. Apr. 26, 2018) (same). The Eighth Circuit has articulated four factors for the Court’s specific consideration: “(1) the extent the litigation has progressed at the time of the motion to intervene; (2) the prospective intervenor’s knowledge of the litigation; (3) the reason for the delay in seeking intervention; and (4) whether the delay in seeking intervention may prejudice the existing parties.” *Tarek ibn Ziyad Acad.*, 643 F.3d at 1094.

The Proposed Intervenors’ motion is timely because Plaintiff filed its Complaint on September 30, 2020, *see* ECF No. 1, and this motion was filed 27 days later, *see* ECF No. 18, or before the litigation has meaningfully progressed. Granting this motion will not prejudice the existing parties, because the Proposed Intervenors have submitted a proposed brief in opposition to Plaintiff’s motion for preliminary injunction along with this motion and seek no delay in the proceedings.

B. The Proposed Intervenors Have Recognized Interests in the Subject Matter of This Litigation

The Article III standing analysis and determining whether a prospective intervenor has recognized interests in the subject matter of the litigation are substantially related. Under Rule 24(a)(2), an interest is cognizable “only where is it ‘direct, substantial, and legally protectable.’” *Med. Liab. Mut. Ins. Co. v. Alan Curtis LLC*, 485 F.3d 1006, 1008 (8th Cir. 2007) (quoting *United States v. Union Elec. Co.*, 64 F.3d 1152, 1161 (8th Cir. 1995)). “The interest test should be construed broadly, so as to include as many parties as practicable.” *Animal Prot. Inst. v. Merriam*, 242 F.R.D. 524, 527 (D. Minn. 2006). And where, as here, a prospective intervenor “has constitutional standing, it *a fortiori* has ‘an interest relating to the property or transaction which is the subject of the action.’” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015) (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003)).

As discussed above, Proposed Intervenors, or their members, have standing. Their interests in their unique real property interests are direct, substantial, and legally protectable. *See, e.g., BHA, Inc. v. NPS*, 777 F. Supp. 2d 424, 435 (E.D.N.Y.2011) (“[U]nauthorized interference with a real property interest constitutes irreparable harm as a matter of law, given that a piece of property is considered to be a unique commodity for which a monetary remedy for injury is an inherently inadequate substitute.”). Plaintiff’s Complaint seeks preliminary and permanent injunctions “prohibiting violation of the CDC’s nationwide eviction moratorium,” Complaint at 25, which would effectively shut the courthouse doors on Proposed Intervenors. Plaintiff also ultimately seeks a determination by this Court that Administrative Order No. 2020-154 is preempted by the CDC’s Order and federal law. *Cf. Craig*, 2020 WL 5988497, at *3 (Congressional candidate had an interest in the subject matter and outcome of litigation challenging the Minnesota Vacancy Statute when preliminary injunction asked Court to determine whether the statute was preempted). Among other arguments that Proposed

Intervenors intend to present to this Court is the view that the CDC's Order is unlawful and cannot preempt state law, especially when that alleged preemption violates their fundamental constitutional right of access to courts. Proposed Intervenors undoubtedly have an interest in the subject matter and outcome of this litigation.

C. The Proposed Intervenors' Interests May Be Impaired by This Case's Disposition

As with the recognized interests analysis, determining whether a prospective intervenor's interests may be impaired by the case's disposition is also related to the Article III standing inquiry. *See, e.g., Safari Club Int'l v. Salazar*, 281 F.R.D. 32, 38 (D.D.C. 2012), *on reconsideration*, No. 11-CV-01564, 2012 WL 13069817 (D.D.C. Apr. 16, 2012). A prospective intervenor "must establish 'a "sufficient stake" in the litigation' by demonstrating that its interests may be impaired absent intervention." *Murphy by Murphy v. Piper*, No. CV 16-2623, 2018 WL 2088302, at *8 (D. Minn. May 4, 2018) (quoting *Union Elec. Co.*, 64 F.3d at 1161 (citation omitted)). And "[w]hen a third party files suit to compel governmental agency action that would directly harm a regulated [party], the [party's] economic interests in the lawsuit satisfy Rule 24(a)(2)'s recognized-interest requirement." *Nat'l Parks Conservation Ass'n*, 759 F.3d at 976 (permitting intervention when the movant's property and financial interests were "the ultimate target" of the litigation because plaintiffs were seeking to compel regulation affecting that property).

Again, Proposed Intervenors have standing. Thus, they have a recognized interest in the subject matter of this litigation and will be harmed if Plaintiff prevails. *See Craig*, 2020 WL 5988497, at *3 ("The Court's decision in this matter could impair or impede [proposed intervenor's] ability to protect the interest that he claims."). Like the plaintiffs in *Nat'l Parks Conservation Ass'n*, the remedy Plaintiff seeks here—to stop eviction processes in Jackson County—makes Proposed Intervenors' properties "the ultimate target" of the litigation. Plaintiff is effectively seeking to compel regulation of

the Proposed Intervenors' properties through the enforcement of the unlawful CDC Order and by requiring the 16th Judicial Circuit to comply with the same.

D. The Proposed Intervenors' Interests Will Not Be Adequately Protected by the Existing Parties

Rule 24(a)'s third requirement "is easy to satisfy" and prospective intervenors "face[] a 'minimal burden' of showing that [their] interests are not adequately represented by the parties." *Mausolf*, 85 F.3d at 1303 (quoting *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999 (8th Cir. 1993)); *Kansas Pub. Employees Retirement Sys.*, 60 F.3d 1304, 1308 (8th Cir. 1995) ("This requirement is met by a minimal showing that representation 'may be' inadequate.") (citation omitted). This element is evaluated by "comparing the interests of the proposed intervenor with interests of the current parties to the action, and intervention is appropriate if the interests are disparate, even if they share the same legal goal." *Animal Prot. Inst.*, 242 F.R.D. at 528 (citing *Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992)).

However, "when one of the parties is an arm or agency of the government, and the case concerns a matter of 'sovereign interest,' the bar is raised, because *in such cases* the government is 'presumed to represent the interests of all its citizens.'" *Mausolf*, 85 F.3d at 1303 (quoting *Mille Lacs*, 989 F.2d at 1000) (emphasis in original). But the "*parens patriae* presumption ... does *not* necessarily apply to all cases to which the government is a party" because "when the proposed intervenors' concern is not a matter of 'sovereign interest,' there is no reason to think the government will represent it." *Id.* (emphasis in original). "[W]here such a presumption of adequate representation arises ... it may be rebutted by a showing that the applicant's interest cannot be subsumed within the shared interest of the citizens of the state." *Union Elec. Co.*, 64 F.3d at 1169; *Murphy by Murphy*, 2018 WL 2088302, at *8 ("[A]n intervenor may overcome this presumption by 'show[ing] that its interests are distinct' and

‘not shared by the general citizenry.’”) (quoting *Little Rock Sch. Dist. v. N. Little Rock Sch. Dist.*, 378 F.3d 774, 780 (8th Cir. 2004)).

Proposed Intervenor’s interests cannot be adequately represented by any of the current parties to this action. First, Plaintiff’s legal positions and the relief it seeks are in direct opposition to Proposed Intervenor’s view of the law and conflict with their unique real property and constitutional interests. Second, Defendants cannot adequately represent Proposed Intervenor because their interests are “separate and distinct” from Defendants’ interests. *Craig*, 2020 WL 5988497, at *4. Proposed Intervenor, as landlords, owners, or persons or entities with the legal right to pursue lawful eviction or possessory actions, have a distinct interest in the outcome of this litigation that is not shared by the State of Missouri or by the general citizenry. *Little Rock Sch. Dist.*, 378 F.3d at 780. The State of Missouri is defending the interests of the Jackson County judiciary in this case as neutral arbiters of the law. It can hardly be said that the judges whose interests the State is protecting are on the same side as the parties who appear before their courts.

Proposed Intervenor satisfy the requirements for intervention as of right and should be granted permission to intervene in this case and participate in the preliminary injunction proceedings.

III. ALTERNATIVELY, PROPOSED INTERVENORS SHOULD BE PERMITTED TO INTERVENE

In addition to satisfying the requirements for intervention as of right, Proposed Intervenor also satisfy the requirements for permissive intervention. Under Rule 24(b), a party is permitted to intervene when its application is timely and it “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). While “permissive intervention is wholly discretionary,” a court’s “principal consideration in ruling on a Rule 24(b) motion is whether the proposed intervention would unduly delay or prejudice the adjudication of the parties’ rights.” *S.*

Dakota ex rel. Barnett v. U.S. Dep't of Interior, 317 F.3d 783, 787 (8th Cir. 2003); *Missouri Coal. for Env't Found.*, 2020 WL 2331201, at *11 (quoting *id.*).

As previously discussed, Proposed Intervenors' motion is timely and will not cause undue delay or prejudice to the parties. *See supra* at 10-11. Proposed Intervenors have concurrently filed an appropriate pleading under Rule 24(c) and seek no delay in the Court's pending preliminary injunction proceedings. If permitted to intervene, Proposed Intervenors are prepared to argue their position before the Court and have submitted suggestions in opposition to the Plaintiff's motion for a preliminary injunction along with this motion. Proposed Intervenors are the only parties who are landlords and property managers, and they can provide a unique perspective that the Court may not otherwise hear. Their unique point of view will aid the Court in understanding the interests at stake in the disposition of this case. Moreover, as invited by the Court's Scheduling Order, Proposed Intervenors intend to "question the validity of the moratorium" from their position as housing providers and property managers who have been uniquely harmed by the CDC Order. *See* ECF No. 9.

Proposed Intervenors respectfully request that this Court grant them permissive intervention if it denies them intervention as of right.

CONCLUSION

For the foregoing reasons, the Court should grant Proposed Intervenors' motion to intervene, order that their Proposed Answer be entered on the docket, permit Proposed Intervenors to file a brief in opposition to Plaintiff's motion for preliminary injunction, and participate in oral argument.

Dated: October 27, 2020

Respectfully Submitted,

/s/Markham S. Chenoweth

Markham S. Chenoweth
Executive Director & General Counsel
W.D. Mo. Bar No. KS-001129
Kara Rollins
Litigation Counsel
Pro hac vice forthcoming
New Civil Liberties Alliance
1225 19th St. NW, Suite 450
Washington, DC 20036
Mark.Chenoweth@ncla.legal
(202) 869-5210
Counsel for Proposed Intervenors-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel of record.

Respectfully,

/s/ Markham S. Chenoweth

Markham S. Chenoweth

Executive Director & General Counsel

W.D. Mo. Bar No. KS-001129

New Civil Liberties Alliance

1225 19th St. NW, Suite 450

Washington, DC 20036

Mark.Chenoweth@ncla.legal

(202) 869-5210

Counsel for Proposed Intervenors-Defendants