

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

GROCERY MANUFACTURERS)	
ASSOCIATION, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	
)	Case No. 5:14-cv-00117-CR
WILLIAM H. SORRELL, in his official capacity))	
as the Attorney General of Vermont, <i>et al.</i> ,)	
)	
<i>Defendants,</i>)	
and)	
)	
VERMONT PUBLIC INTEREST RESEARCH))	
GROUP and CENTER FOR FOOD SAFETY,))	
)	
<u><i>Proposed Intervenor-Defendants.</i></u>)	

VERMONT PUBLIC INTEREST RESEARCH GROUP AND CENTER FOR FOOD SAFETY’S REPLY IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE MOTION TO JOIN DEFENDANTS’ MOTION TO DISMISS

Vermont Public Interest Research Group and the Center for Food Safety (“Movants”) respectfully request that the Court grant Movants’ Motion for Leave to File Motion to Join Defendants’ Motion to Dismiss (Docs. 31 & 31-1). The purpose of this Reply is to briefly correct some of the erroneous and misleading assertions that Plaintiffs have put forth in opposition (Doc. 41).

First, Movants’ non-party status does not make their Motion to Join “premature.” *See* Pls.’ Resp. (Doc. 41) at 1. Movants filed a Motion for Leave to file their subsequent Motion to Join precisely because of their current status, rather than filing a motion without leave, as a party with existing intervenor status would have done. Further, Movants noted that they sought to join the State’s Motion to Dismiss “if the Court allows Movants to participate in this case.” Mot. to Join (Doc. 31-1) at 2.

Second, Movants had no reason to attach a “proposed filing” to their Motion to Join. *See* Doc. 41 at 1. Such a filing would have been superfluous because Movants explicitly stated that they sought to adopt the laws and facts set forth in Defendants’ Motion to Dismiss. Doc. 31-1 at 1. Movants also stated that they did not seek to file motion papers in addition to those already filed by Defendants, and for these reasons Movants’ filing was timely. *Id.* at 2 (“Movants are not attempting to file a separate motion to dismiss after Defendants’ August 8th deadline . . . has passed.”). Rather, Movants sought to ensure their right to participate in the remaining stages of the potentially dispositive Motion to Dismiss, including Reply briefing. *Id.*

Third, it is untrue that Movants took “no steps at all to coordinate” with the parties. *See* Doc. 41 at 2. As Movants noted in their motions, they reached out to both the State and Plaintiffs prior to the filing and the State consented to both motions. Mot. for Leave (Doc. 31) at 3; Doc. 31-1 at 4. Further and more generally, Movants have done everything possible to avoid delaying these proceedings while protecting their significant interests in this important case as parties, beginning with filing a timely Motion to Intervene, and now requesting to participate in a potentially dispositive phase of the case in the most accommodating way possible. Given the situation, Movants’ request was entirely appropriate.

Fourth, Movants have no duty to provide Plaintiffs with “what they intend to say” in any Reply briefing. *See* Doc. 41 at 2. *See also* Model Rules of Prof’l Conduct R. 1.6(a) (2013) (“A lawyer shall not reveal information relating to the representation of a client”); *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947) (explaining work product protection). Upon permission by this Court, Movants’ Reply will respond to Plaintiffs’ Opposition, as replies ever have.

For these reasons, Movants respectfully request that the Court grant their Motion for Leave and Motion to Join, in the event the Court grants Movants the opportunity to participate in this case.

DATED: September 17, 2014

Respectfully submitted,

By: /s/ Laura B. Murphy

Laura B. Murphy

Environmental & Natural Resources Law Clinic
Vermont Law School

P.O. Box 96, 164 Chelsea Street

South Royalton, VT 05068

Telephone: (802) 831-1123

Fax: (802) 831-1631

Email: lmurphy@vermontlaw.edu

With contributions from student clinicians:

Emily Laine

Andrew Minikowski

George Kimbrell (*Pro Hac Vice Pending*)

Aurora Paulsen (*Pro Hac Vice Pending*)

Center for Food Safety

917 SW Oak Street, Suite 300

Portland, OR 97205

Telephone: (971) 271-7372

Fax: (971) 271-7374

Email: gkimbrell@centerforfoodsafety.org

apaulsen@centerforfoodsafety.org

Counsel for Proposed Intervenor-Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2014, I electronically filed with the Clerk of Court the following document:

Vermont Public Interest Research Group and Center for Food Safety's Reply in Support of Their Motion for Leave to File Motion to Join Defendants' Motion to Dismiss

using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

For Plaintiffs:

Matthew B. Byrne
Judith E. Coleman
Catherine E. Stetson

For Defendants:

Jon T. Alexander
Lee Turner Friedman
Kate T. Gallagher
Kyle H. Landis-Marinello
Daniel N. Lerman
Lawrence S. Robbins
Megan J. Shafritz
Naomi Sheffield
Alan D. Strasser

And I also caused to be served, by United States Postal Service, the following non-NEF parties:

E. Desmond Hogan
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004

DATED: South Royalton, VT, September 17, 2014

By: /s/ Laura B. Murphy
Laura B. Murphy
Environmental & Natural Resources Law Clinic
Vermont Law School
P.O. Box 96, 164 Chelsea Street
South Royalton, VT 05068
Telephone: (802) 831-1123
Fax: (802) 831-1631
Email: lmurphy@vermontlaw.edu