

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

**PETITION OF THE PEOPLE OF THE STATE OF ILLINOIS
FOR LEAVE TO INTERVENE**

The People of the State of Illinois, by Lisa Madigan, Attorney General of Illinois, move pursuant to § 2-408(a) of the Code of Civil Procedure, 735 ILCS 5/2-408(a) (2014), for leave to intervene as an additional defendant in this case. In support of this motion, the People state as follows.

1. Plaintiffs filed this lawsuit to obtain an order requiring the Illinois Comptroller to authorize payment of the union members' full wages in the absence of enacted appropriations legislation.
 2. On July 10, 2015, this court entered a temporary restraining order requiring the Comptroller to authorize payment of all state employees' full wages, and that order was converted into a preliminary injunction on August 13, 2015.

3. The core issue in this case is whether state employees may be paid in the absence of enacted appropriations legislation or whether the Appropriations Clause of the Illinois Constitution, Ill. Const. art. VIII, § 2(b), prohibits such payment. Plaintiffs claim that the failure to pay their wages in the absence of enacted appropriations legislation impairs their collective bargaining agreements in violation of the Contracts Clause of the Illinois Constitution, Ill. Const. art. I, § 16.

4. Section 2-408(a) of the Code of Civil Procedure provides that a party shall be permitted to intervene as of right when a statute provides an unconditional right to intervene or where the party is so situated to be adversely affected by the distribution of property at issue in the case. 735 ILCS 5/2-408(a) (2014).

5. The Illinois Constitution provides that the Attorney General “shall be the legal officer of the State.” Ill. Const. art. V, § 15. The Attorney General Act states that the Attorney General’s duties include appearing for and representing the People of the State in all cases in which the State or the People are interested. 15 ILCS 205/4 (2014). In a related context, Illinois Supreme Court Rule 19 permits the Attorney General to intervene in a matter on behalf of the State to defend a law or regulation against constitutional challenge. Ill. S. Ct. R. 19(a), (c).

6. The appellate court in this case has already held that, “as the State’s chief legal officer,” the Attorney General has the authority to defend this lawsuit “on behalf of the State because the State has a substantial interest in the outcome of this litigation.” *AFSCME v. State of Ill.*, 2015 IL App (5th) 150277-U, ¶ 14 (as corrected Aug. 26, 2015); *see id.* at ¶ 15 (explaining that the State is the real party in interest

and noting that “Illinois courts have found that nonparty State agencies have standing to file appeals in cases where they have a direct and substantial interest in the outcome even though they are not named as parties”). The appellate court’s determination that the State is the real party in interest and the Attorney General has the authority to defend this lawsuit on behalf of the State is law of the case. *See Krautsack v. Anderson*, 223 Ill. 2d 541, 552 (2006).

7. Although the Attorney General represents state officials, like the defendants in this case, the Attorney General also represents the interests of the People of the State. Therefore, the Attorney General seeks leave to intervene as of right in this case on behalf of the People of the State of Illinois to defend the State’s interest in this litigation.

8. Attached to this Petition as Exhibit A is the Motion to Present Additional Authority and to Dissolve Preliminary Injunction submitted by the People of the State of Illinois as their initial pleading upon intervention.¹

WHEREFORE, the People of the State of Illinois request that this Court grant them leave to intervene as an additional defendant in this matter and to file the accompanying Motion to Present Additional Authority and to Dissolve Preliminary Injunction.

Respectfully submitted,

¹ Defendant Illinois Comptroller Susana A. Mendoza does not join in this Petition or in the argument in the accompanying Motion to Present Additional Authority and to Dissolve Preliminary Injunction submitted with this Petition by the People of the State of Illinois. With regard to the Petition and the Motion, Comptroller Mendoza will abide by any ruling of this Court or any reviewing court.

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