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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 NEVADA RESTAURANT ASSOCIATION,)
12 a Nevada non-profit corporation; RETAIL) **CASE NO. 3:08-cv-00118-BES-VPC**
13 ASSOCIATION OF NEVADA, a Nevada)
14 non-profit corporation; WYNN LAS VEGAS,)
15 LLC, a Nevada limited liability company;)
16 NEVADA MOTOR TRANSPORT)
17 ASSOCIATION, INC., a Nevada non-profit)
18 corporation; and NEVADA MANUFACTURERS)
19 ASSOCIATION, INC., a Nevada non-profit)
20 corporation; and NEVADA TAVERN OWNER'S)
21 ASSOCIATION, a Nevada trade association,)

22 Plaintiff,)

23 vs.)

24 PEST COMMITTEE, a Nevada Ballot Advocacy)
25 Group; TONY BADILLO, an individual; JACK)
26 LIPSMAN, an individual; AL MAURICE, an)
27 individual; ROSS MILLER, in his official capacity)
28 as Secretary of State for the State of Nevada; and)
DOES I through X, inclusive,)

Defendants.)

PEST COMMITTEE, a Nevada Ballot Advocacy)
Group; TONY BADILLO, an individual; JACK)
LIPSMAN, an individual; AL MAURICE, an)
individual,)

Cross-complainants,)

1 vs.)
2)
3 ROSS MILLER, in his official capacity)
4 as Secretary of State for the State of Nevada.)
5)
6 Cross-defendant.)
7)

8 **MEMORANDUM OF DEFENDANTS AND CROSS COMPLAINANTS IN OPPOSITION**
9 **TO CULINARY WORKERS UNION LOCAL 226’S MOTION TO INTERVENE**

10 COME NOW the PEST COMMITTEE, a Nevada Ballot Advocacy Group, TONY
11 BADILLO, JACK LIPSMAN, and AL MAURICE, by and through their counsel, KERMIT L.
12 WATERS, ESQ., who are the DEFENDANTS in this case and hereby oppose the Motion to
13 Intervene by the Culinary Worker Union Local 226 in the case for the following reasons:

14 **I. THE PROPOSED INTEVENOR HAS NOT MET THE REQUIREMENTS
15 FOR INTERVENTION AS A MATTER OF RIGHT.**

16 1. Federal Rule of Civil Procedure 24 provides as follows:

17 (a) “Intervention of Right. Upon timely application anyone shall be permitted to intervene in an
18 action: (1) when a statute of the United States confers an unconditional right to intervene; or
19 (2) when the applicant claims an interest relating to the property or transaction which is the
20 subject of the action and the applicant is so situated that the disposition of the action may as a
21 practical matter impair or impede the applicant’s ability to protect that interest, unless the
22 applicant’s interest is adequately represented by the existing parties.” (emphasis added).

23 There is no statute of the United States that confers an unconditional right to intervene on
24 behalf of the Culinary Workers Union Local 226, so they cannot be using the first section of the
25 rule for their claim of an intervention of right.

26 With respect to the second prong of FRCP 24(a), the Culinary Workers Union Local 226
27 needs to prove that their interests are “*not adequately represented*” by the existing parties. In
28 their Motion to Intervene pursuant to Nevada Rule of Civil Procedure 24(a) and Nevada Revised
Statute 12.130 that was filed in state court on February 26, 2008 and received by Defendants on

1 February 28, 2008, it appears that the Culinary Union’s motion was prepared by the same law
2 firm that represents the other plaintiffs. Defendants do not understand how one of the most
3 prominent law firms in the state and representing the second largest casino in the state cannot
4 adequately represent the interests that the Culinary Union asserts will not be “adequately
5 represented by the existing parties.” The only other asserted interest is that all of the plaintiffs in
6 this lawsuit are business interests, and that the Culinary Union represents employees and they can
7 challenge the deficiencies of the initiative from the employee’s perspective.
8

9
10 Although Defendant’s concede that the Motion by the Intervenor is timely, and although
11 the Defendant’s see that the analytical distinction between employer’s and employees, this is not a
12 traditional civil action, but rather a pre-election challenge as to whether or not the language of a
13 proposed initiative violates the Single Subject law. The arguments of the Culinary Union, and
14 frankly of the plaintiffs, should be made in the media and left for flyers, but not in court. After
15 all, the purpose of an initiative is to “change” the law. If parties do not like the proposed changes,
16 they need to get 50% of the voting public to agree with them, and not the vote of a District Judge.
17 Since the Culinary Union claims that their pre-election objections to the proposed initiative are
18 the same as the other plaintiffs, their application to intervene should fail under FRCP 24(a).
19

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21 **II. LIKewise, THE COURT SHOULD REJECT THE CULINARY UNION’S
22 REQUEST FOR PERMISSIVE INTEVENTION**

23 Federal Rule of Civil Procedure 24(b) states in relevant part:

24 (b) Permissive intervention. Upon timely application anyone may be permitted to intervene in
25 an action: (1) when a statute of the United States confers a conditional right to intervene; or
26 (2) when an applicant’s claim or defense and the main action have a question of law or fact in
27 common....” (Emphasis added).
28

29 Defendants once again raise all of the points previously raised about the interests of the Culinary
30 Union being adequately protected by the same law firm that they are asking to represent them on

1 behalf of the other plaintiffs. On page 5 at line 21 of their Motion to Intervene, it states:
2 “Furthermore, the Union does not *intend to assert additional claims beyond those which the*
3 *existing Plaintiffs have already stated.* Rather, the Union intends only to join in some of existing
4 claims of Plaintiffs with which the Union concurs..” If the Union is only going to be making the
5 same arguments as the other Plaintiffs, there is no need for them to be allowed to intervene.
6 Furthermore, since this is a pre-election challenge, rather than a civil lawsuit where one can
7 easily lose their rights if they fail to join in a lawsuit, the plaintiffs and the Culinary Union will
8 have their day in front of the voters and fight for their political interests with the electorate.
9
10

11 III. CONCLUSION

12 For the foregoing reasons, the Court should issue an order denying the Culinary Union’s
13 Motion to Intervene. (attached as Exhibit A).
14
15

16 DATED: March 13, 2008

17 By: _____/s/_____

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24 **Attorney for Defendants**
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1 **CERTIFICATE OF SERVICE**

2 In addition to electronic service filed by my employer, I certify that I am an employee of the Law
3 Office of Kermitt Waters in Las Vegas, Nevada and that on the 13th day of March, 2008, I
4 served the Opposition to the Motion to Intervene on behalf of Defendants PEST Committee,
5 Tony Badillo, Jack Lipsman, and Al Maurice. I deposited a copy of the above and foregoing
6 Opposition to Motion to Intervene in the United States Mail, postage prepaid at Las Vegas,
7 Nevada, to the last known address(es) of:

8 **KUMMER KAEMPFER BONNER
9 RENSHAW & FERRARIO**

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EVELYN WASHINGTON
An employee of Kermitt Waters, Esq.

25 This is to certify a copy of the foregoing was served upon all counsel of record by means of the
26 Court's electronic filing system on March 13, 2008.

27 */s/ Kermitt L. Waters*
28 **KERMITT L. WATERS**
Attorney for Defendants and Cross Complainants

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EXHIBIT “A”