are also member-only entities; class B club members are screened for "good moral character," pay an annual membership fee, and are subject to a waiting period prior to membership. K.S.A. 41-2641. And, a "private club," as that term is used in HB 2221, is "an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members." HB 2221, § 2(k). In other words, the general public is unable to simply walk into a club and take advantage of the services provided to club members. On the other hand, drinking establishments, such as those run by two of the intervenors, are open to the general public. K.S.A. 41-2601(i).

The Kansas Legislature may have exempted clubs from the ban in recognition of the fact that club members may have joined and, in some cases, paid annual dues with the expectation that they would be able to smoke at the club. In addition, the legislature may have exempted "private clubs" because such clubs are outdoor facilities where the danger of secondhand smoke is significantly less as compared to the danger of secondhand smoke in an enclosed facility.

In upholding exemptions within its state's smoking ban, the Supreme Court of Connecticut recognized that classifications, which differentiate between private clubs and public cafés, survive rational basis review. *See Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 293-94 (2007). The *Batte-Holmgren* court held that "exempting private clubs from the ban is justified by the fact that such clubs are distinguishable from restaurants and cafés because state statutes provide that they are not open to the public and because the members of the club may have joined the club and paid their membership fees with the expectation that they would be able to smoke in the club facility." *Id.*, 281 Conn. at 293-94. In so holding, the *Batte-Holmgren* court emphasized that:

> Equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and

> economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

Id., 281 Conn. at 296 (citation omitted).

Just like Connecticut's private clubs, class A and class B clubs and "private clubs" in Kansas are not open to the public and may have members who joined with the expectation that they would be able to smoke at the club. Accordingly, the Kansas Legislature's decision to exempt some such clubs from the ban survives the "very lenient" rational basis standard of review. Thus, plaintiff's and intervenors' equal protection claims fail. Therefore, their applications for temporary injunctions should be denied, and defendant's motion to dismiss should be granted.

4. The exemption for the state-owned casino is rationally related to the State's legitimate economic interest in the casino's continued success.

Intervenors argue that the ban's exemption allowing smoking in the state-owned casino, but not allowing it in bingo halls, violates equal protection principles. Undoubtedly, the State has a legitimate interest in its own economic health. The exemption for the state-owned casino is rationally related to the State's legitimate economic interest because the State has an ownership interest in the casino. Pursuant to K.S.A. 74-8734(h)(12), the State receives "not less than 22% of lottery gaming facility revenues." For the year 2010, the State's ownership interest in the Boot Hill Casino and Resort in Dodge City has resulted in year-to-date deposits of over $3.5 million to the state general fund. (Ex. C, Martin Affidavit, ¶ 3.) By comparison, during the same time period, the statewide bingo tax[5] has only generated $424,677 in fees. (Ex. C, Martin Affidavit, ¶ 3.) In other words, the casino contributes substantially more to the State's economy than do all bingo halls combined. Thus, the State's economic interest in the casino and the desire to further

[5] Kansas Statute 79-4704 levies a variety of taxes on bingo games.

its success provides a rational basis for the Kansas Legislature's decision to exempt the casino from the smoking ban.

Equal protection arguments that are either identical or nearly identical to intervenors' equal protection claim in this case have been raised and rejected in Nevada, New Jersey, Colorado, and Connecticut.

In *Flamingo Paradise Gaming, LLC v. Chanos*, 2009 Nev. 39, 217 P.3d 546 (2009), the Supreme Court of Nevada held that a statute, which allowed smoking at businesses with nonrestricted licenses but banned it at businesses with restricted licenses, did not run afoul of equal protection principles because "while both types of business licenses contribute to the gaming economy, a business operating under a nonrestricted license contributes substantially more to the state's economy. Therefore, economics provides a rational basis for distinction in the statute." *Id.*, 217 P.3d at 560. The *Flamingo* court concluded that "the differing treatment of these types of businesses under the statute is allowed to promote nonrestricted gaming licensees [*sic*] further success and continued substantial benefit to the state's economy. Whether these are the reasons why the classification was made is irrelevant as they are rational reasons for allowing the classification." *Id.* (citation omitted).

In *Amiriantz v. New Jersey*, 2006 WL 3486814 (D. N.J. 2006) (unpublished), *affirmed*, 251 Fed. Appx. 787 (3d Cir. 2006) (unpublished), a federal district court in New Jersey recognized that state's economic interests are a rational basis for exempting casinos from the statewide smoking ban. The *Amiriantz* court held that "the same economic concerns that prompted the Legislature to restrict gaming to Atlantic City in order to promote the City's redevelopment and 'provide meaningful and permanent contribution to the economic viability of the resort, convention, and tourist industry of New Jersey' provide rational bases for the different

treatment accorded to casino gaming areas under the [statewide smoking ban]." *Id.*, 2006 WL 3486814 at *5.

In *Coalition For Equal Rights, Inc. v. Owens*, 458 F. Supp. 2d 1251 (D. Colo. 2006), a federal district court in Colorado held that Colorado's economic interest in its casinos provided a rational basis for exempting the casinos from that state's smoking ban. The *Owens* court found that "[c]asinos provide more revenue to the state and, because they are more concentrated, provide more direct economic support to the three small towns in which they are concentrated. This striking of economic balance is sufficient to satisfy rationality review." *Id.*, 458 F. Supp. 2d at 1260-61.

Finally, in *Batte-Holmgren*, the Supreme Court of Connecticut held that a statute prohibiting smoking in restaurants and cafés but exempting private clubs and casinos did not violate café owners' right to equal protection. In discussing Connecticut's rational basis arguments, the court held that "the exemption for casinos also satisfies rational basis review because the legislature reasonably could have chosen to exempt the casinos due to concern about the state's ability to enforce the legislation against the Indian tribes that own the casinos or out of sensitivity for the tribes' sovereign status and the tribes' economic and political relationships with the state, which result in millions of dollars a year in additional revenue for the state." *Id.*, 281 Conn. at 293-94 (emphasis added).

Just like the legislatures in Nevada, New Jersey, Colorado and Connecticut, the Kansas Legislature may have exempted the casino in an attempt to further its success and, thus, its contributions to the Kansas economy. Thus, intervenors' right to equal protection is not violated by the smoking ban's casino exemption. Therefore, intervenors' application for a temporary injunction should be denied, and defendant's motion to dismiss should be granted.

C. The smoking ban does not violate intervenors' rights under the due process clauses of the Fifth and Fourteenth Amendments.

Intervenors' claim that the smoking ban violates rights guaranteed to smokers by the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution fails because intervenors do not have standing to bring claims on behalf of smokers, smoking is not a fundamental right, the right to choose to smoke (to the extent such a right exists) is not impinged by the legislation, and the ban and its exemptions satisfy rational-basis review.[6]

Intervernors are four businesses. They are not individuals, and they do not have standing to bring claims on behalf of smokers. An organization "has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). In this case, intervenors businesses have no membership. They are bars and bingo halls that are completely open to the public. In addition, intervenors are unable to satisfy the second standing requirement because the promotion of smokers' rights is not germane to any of the intervenors' business purposes. The purpose of a bar is to sell drinks; the purpose of a bingo hall is to hold bingo games. Intervenors cannot reasonably argue that the purpose of their businesses is to advance the rights of smokers *American Legion Post #149*, 164 Wash. 2d at 320 (holding that American Legion Post did not have standing to assert rights on behalf of smokers because "[s]moking is not germane to any of the [Post's] purposes"); *compare with C.L.A.S.H.*, 315 F. Supp. 2d at 469 (holding that organization had standing to challenge smoking ban because it was "formed and organized for the purpose of protecting the rights of smokers").

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[6] Intervenors do not specify whether their due process claims implicate substantive or procedural due process. Because their brief addresses only substantive due process, defendant assumes intervenors are not claiming a procedural due process violation.

Even if the Court finds that intervenors have standing to pursue claims on behalf of smokers, intervenors' due process claims still fail. The due process clause "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 719 (1997). Rights identified as fundamental include the rights to marry, have children, direct the education and upbringing of one's children, marital privacy, the use of contraception, and bodily integrity. *Id.*, 521 U.S. at 720 (collecting cases). Intervenors now ask the court to add the right to smoke, or at least the right to choose to smoke, to this list. Defendant is not aware of any court in any jurisdiction that has found smoking or the choice to smoke to be a fundamental right. For their part, intervenors have not directed the court to any such case. That courts have not recognized such a right comes as no surprise because, as the *Glucksberg* court held, "[b]y extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action." *Id.*

Because smoking is not a fundamental right, intervenors' due process claims are subject to rational basis review. *Allright Colorado, Inc. v. City and County of Denver*, 937 F.2d 1502, 1511-12 (10th Cir. 1991) (holding that equal protection and due process challenges to economic legislation require only a rational basis showing by defendants); *Coalition for Equal Rights, Inc. v. Owens*, 458 F. Supp. 2d 1251, 1263 (D. Colo. 2006) ("[R]ationality review for due process challenges is the same as that for equal protection challenges."); *see also Malinski v. New York*, 324 U.S. 401, 415 (1945) (Frankfurter, J., concurring) ("To suppose that 'due process of law' meant one thing in the Fifth Amendment and another in the Fourteenth is too frivolous to require elaborate rejection."). As demonstrated in the equal protection portion of this brief, the ban and its exemptions are rationally related to legitimate legislative purposes. Accordingly, intervenors' due process rights have not been violated.

In addition, intervenors' claim that the ban impinges their right to decide to smoke is simply untrue. Under the ban, smokers will still be free to make choices, including choosing to smoke. Smokers will not, however, be allowed to act on their choice in an impermissible location. Intervenors' argument that, because the choice to smoke cannot be prohibited, the act of smoking cannot be forbidden finds no support in the facts of this case, the law in any jurisdiction in the country, or common sense.

The Kansas statewide smoking ban does not violate intervenors' due process rights. Thus, intervenors' application for a temporary injunction should be denied, and defendant's motion to dismiss should be granted.

D. Intervenors' privacy and association claims are wholly without merit.

Intervenors' arguments that the smoking ban violates clubs' rights of privacy and association fail for a number of reasons. First, intervenors are businesses that are completely open to the public. As such, they do not have standing to assert privacy or association claims on behalf of member-only clubs because no intervenor is a club. Second, intervenors certainly do not have standing to assert claims on behalf of clubs' customers; they have no relationship whatsoever with those individuals. Even if the Court finds that intervenors have standing to assert claims on behalf of clubs and their customers, intervenors' privacy claim fails because there is no privacy interest in smoking. *American Legion Post #149*, 164 Wash. 2d at 601 ("Because there is not a fundamental right to smoke, there is no privacy interest in smoking in a private facility.").

Intervernors' argument that the ban violates clubs', their customers', and intervenors' customers' right to smoke arising from the right of association also lacks merit. Intervenors have completely failed to indicate what type of associational rights (the freedom of expressive association or intimate association) they seek to assert. Regardless, intervenors' association

claim fails because the ban does nothing to prevent individuals from associating with one another or forming intimate relationships. *See American Legion Post #149*, 164 Wash. 2d at 604 (rejecting plaintiff's association claim because the smoking ban "does not directly interfere with [intimate human] relationships or a person's ability to join the [plaintiff's organization]"). In addition to the Washington Supreme Court, other courts have rejected challenges to smoking bans on the grounds that the bans interfere with individuals' freedom of association. *See, e.g., Players, Inc. v. City of New York*, 371 F. Supp. 2d 522, 544-45 (S.D.N.Y. 2005) (rejecting social club's claim that a smoking ordinance violated freedom of association of intimate relationships); *City of Tucson v. Grezaffi*, 200 Ariz. 130, 136 (Ct. App. 2001) (rejecting a restaurant owner's claim that a smoking ordinance violated freedom of association); *Taverns for Tots, Inc. v. City of Toledo*, 341 F. Supp. 2d 844, 849-53 (N.D. Ohio 2004) (rejecting organization's claim that a smoking ban interfered with freedom of association).

The Kansas statewide smoking ban prohibits smoking, nothing more. Nothing in the ban prohibits individuals from associating with one another in any location. Intervenors cannot prevail on the merits of their freedom of association claims because they do not have standing to assert them, and the smoking ban does not in any way restrict their ability to freely associate. Therefore, intervenors' application for a temporary injunction should be denied and defendant's motion to dismiss should be granted.[7]

E. Intervenors' claims brought pursuant to the Privileges or Immunities Clause of the Fourteenth Amendment are frivolous.

Intervenors ask the Court to rule that the statewide smoking ban violates rights "guaranteed by the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution." (Intervenors' Br. in Support of Inj. Relief, p. 18.) For their part, intervenors

[7] It is unclear whether intervenors are also claiming that the ban violates smokers' right of free speech. Intervenors do not have standing to bring such a claim on behalf of smokers. Even if they do have standing, the claim fails. *See C.L.A.S.H.*, 315 F. Supp. 2d at 479 ("[T]he right of free speech, like the rights of assembly and association, is not inherently accompanied by the unrestricted ability to smoke everywhere.").

have failed to cite even a single case from any jurisdiction that supports their position that the privileges or immunities clause of the Fourteenth Amendment is in any way implicated by the ban. Instead, intervenors assert, without explanation, that the ban impinges their right to enter into contracts and to travel. Many of intervenors' claims, including those asserted under the Fourteenth Amendment, seem to be identical to those asserted by the plaintiffs in *NYC C.L.A.S.H., Inc. v. City of New York*, 315 F. Supp. 2d 461 (S.D.N.Y. 2004), which addressed the constitutionality of New York City's smoking ban. The *C.L.A.S.H.* court rejected those claims in their entirety, and intervenors in this case do not seem to have offered any more compelling rationale for their claims' viability than did the *C.L.A.S.H.* plaintiffs.

"It is well established that the only privileges or immunities protected by the Fourteenth Amendment are those that 'owe their existence to the Federal government, its National character, its Constitution, or its laws.'" *Kleinsmith v. Shurtleff*, 571 F.3d 1033, 1047 (10th Cir. 2009) (citing *Slaughter-House Cases*, 83 U.S. 36, 79 (1872)); *see Powers v. Harris*, 379 F.3d 1208, 1214 (10th Cir. 2004) (holding that the Fourteenth Amendment's privileges or immunities clause does not protect an individual's right to pursue an occupation). As established in previous sections of this brief, smoking is not a fundamental right; therefore, it certainly is not a right that owes its existence to the federal government.

As to intervenors' contract claim, defendant is aware of no legal authority that stands for the proposition that the Fourteenth Amendment's privileges or immunities clause somehow protects an implied contract to smoke between a drinking establishment and its customer, if such a contract even exists. *C.L.A.S.H.*, 315 F. Supp. 2d at 484 ("The Court is not persuaded that there is an implied binding and enforceable agreement to smoke between a bar or restaurant owner and a smoker when the smoker enters an establishment, anymore than there is a binding agreement between these parties committing the smoker to purchase alcohol or food."). Like the

C.L.A.S.H. court, this Court should find that intervenors' implied contract claim is wholly without merit.

As to intervenors' right to travel claim, they have failed to explain how the ban restricts anyone's right to travel – a task that would be exceptionally difficult because the ban does not restrict travel in any way whatsoever. *See C.L.A.S.H.,* 315 F. Supp. 2d at 480 (rejecting plaintiff's right to travel claim because "[t]he Court cannot countenance [the plaintiff's] suggestion that the Smoking Bans will deter travel to and within New York State . . . Smokers remain free to travel as they please, to no less degree than non-smokers, and may still smoke while they drive their automobiles or walk in the streets").

Intervenors' Fourteenth Amendment privileges or immunities clause claim is completely without merit. Therefore, intervenors' application for temporary injunction should be denied, and defendant's motion to dismiss should be granted.

F. The smoking ban is not an excessive use of police power because it is rationally related to legitimate state interests, including the promotion of the public's general welfare.

It has long been held that "[a] state possesses an inherent power to regulate certain businesses and professions for the good of society. This 'police power,' as the term has become known, gives a state the right to act to protect and promote public health, safety, morals, peace, quiet, and law and order." *State ex rel. Stephan v. Lane*, 228 Kan. 379, 384 (1980). "The police power of the State extends not only to the protection of the public health, safety and morals, but also to the preservation and promotion of the public welfare." *Id.* The State's police power has some limits. The Kansas Supreme Court describes those limits as follows:

> Almost every exercise of the police power will necessarily either interfere with the enjoyment of liberty or the acquisition, possession and production of property, or involve an injury to a person, or deprive a person of property within the meaning of the Fourteenth Amendment to the Constitution of the United States. Nevertheless, it is well settled that an exercise of the police power

> having such an effect will be valid if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public, and if it is not unreasonable or arbitrary.
>
> Whether an exercise of the police power does bear a real and substantial relation to the public health, safety, morals or general welfare of the public, and whether it is unreasonable or arbitrary are questions which are committed in the first instance to the judgment and discretion of the legislative body, and, unless the decisions of such legislative body on those questions appear to be clearly erroneous, the courts will not invalidate them.

Grigsby v. Mitchum, 191 Kan. 293, 302 (1963) (emphases added).

Courts employ the same rational basis test to determine whether an exercise of police power is excessive as they use when conducting an equal protection analysis. *See New York City Friends of Ferrets v. City of New York*, 876 F.Supp. 529, 534 (S.D.N.Y. 1995) (holding that where "the exercise of police power does not affect fundamental rights . . . we apply the same rational basis analysis used under the constitutional guarantee of equal protection") (citing *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976)).

The Kansas statewide smoking ban is an acceptable use of police power because it promotes the general welfare of the public. Furthermore, the ban's exemptions are not unreasonable or arbitrary because they are rationally related to legitimate state interests. Defendant incorporates herein the arguments contained within its equal protection section relating to the rational bases for each challenged exemption. Because the smoking ban is not an excessive use of police power, intervenors will not prevail on the merits. Therefore, the intervenors' application for a temporary injunction should be denied, and defendant's motion to dismiss should be granted.

II. NEITHER PLAINTIFF NOR INTERVENORS HAS DEMONSTRATED IRREPARABLE HARM.

Neither plaintiff nor intervenors has submitted any evidence that either would suffer irreparable harm should the smoking ban go into effect on July 1, 2010. Instead, both have

submitted affidavits that contain nothing more than speculation, hunches, and, in some cases, factual errors.

In contrast, defendant has submitted the affidavit of Eduardo Ramirez, who co-owns and operates Cousins Club, a Topeka drinking establishment. Cousins went smoke free on July 1, 2009. (Ex. F, Ramirez Affidavit, ¶ 3.) It did so voluntarily and directly competed against bars and clubs where smoking was allowed. (Ex. F, Ramirez Affidavit, ¶ 4.) Mr. Ramirez's affidavit confirms what common sense suggests is true: customers do not leave bars that prohibit smoking; they simply step outside before lighting up. (Ex. F, Ramirez Affidavit, ¶ 6.) Cousins has not experienced any noticeable loss of customers and, most importantly, has not experienced any decrease in revenue since voluntarily going smoke free. (Ex. F, Ramirez Affidavit, ¶ 6.) Mr. Ramirez's testimony is factual; it does not contain unfounded speculation or hunches.

A. Plaintiff will not be irreparably harmed because its nearest competitor is more than 20 miles away, and plaintiff has provided no actual evidence that it will lose business as a result of the smoking ban.

In support of its position on irreparable harm, plaintiff submitted the affidavit of Kevin Haislip, the owner of Downtown Bar & Grill. Mr. Haislip testified that "[b]ecause over 80% of my daily clientele are smokers, they will all go to [other] bars [if they cannot smoke at my club]." (Haislip Affidavit, ¶ 5.) Of course, Mr. Haislip's sworn statement is not fact; it's speculation. More troubling, Mr. Haislip attached to his affidavit a list of what he calls "Class B bars that are less than 20 minutes from my bar." (Haislip Affidavit, ¶ 3.) The list contains the names of 11 class B clubs. Mr. Haislip speculates that his smoker clientele will leave him for the class B clubs on this list. (Haislip Affidavit, ¶ 5.) What Mr. Haislip failed to disclose in his sworn affidavit is that, of the 11 clubs he claims will take his business, only three have received exemptions from the smoking ban. (Ex. D, Byrne Affidavit, ¶ 15.) The three clubs are Tom's Country Stampede in Leavenworth, Chatterbox in Lansing, and Fred's Place in Perry. (Ex. D,

Byrne Affidavit, ¶ 15.) These three clubs are 26.1 miles, 22.0 miles and 24.1 miles, respectively, from plaintiff's club. (Ex. E.) Mr. Haislip's testimony that these clubs are within 20 minutes of his club is not worthy of belief because it is simply not true. Furthermore, it is not believable that smokers will drive approximately 30 minutes to go to a bar where they can smoke indoors as opposed to continuing to frequent Mr. Haislip's establishment where they would simply need to take a few steps outside in order to smoke. Mr. Haislip's affidavit should be given little weight because it is almost entirely speculative and largely inaccurate. In truth, Mr. Haislip's nearest smoking competitor is approximately 30 minutes away in a different city. It is exceedingly difficult to imagine that he will lose business on July 1 to any of these out-of-town clubs.

As to the affidavits of non-parties Gary Turner of Dodge City and Darty Saunders of Kansas City, neither provides relevant information in this case because, like Mr. Haislip's affidavit, both are entirely speculative as to the effect of the ban on their business's viability, and neither sheds light on whether Mr. Haislip, whose nearest competitor is approximately 30 minutes away, will suffer irreparable harm on July 1.

Because plaintiff has failed to show irreparable harm, its application for a temporary injunction should be denied.

B. Intervenors have failed to show irreparable harm because they have provided no actual evidence from which the Court could conclude that the ban will harm them at all.

Intervenors' irreparable harm evidence suffers from the same weaknesses as plaintiff's because it, too, is mere speculation. Mr. Issa's affidavit is especially suspect. In it, Mr. Issa claims to know what his smoker-clientele believe with respect to various constitutional rights, including associational rights. Mr. Issa does not claim to be a smoker and does not indicate that he has personal knowledge of any of the legal arguments he makes in his affidavit.

Similarly, Mr. Andrews' affidavit and his loss projections are mere hunches. He claims that smokers will leave his bingo hall to join clubs where bingo is played, but he does not identify a single club in proximity to his hall. Furthermore, he has failed to provide any evidence that any of his customers would satisfy the membership requirements of any class A or class B clubs, regardless of where those clubs are located. To the extent intervenors claim that their bingo halls will lose business to the state-owned casino, such a claim is obviously false. The intervenors are all located in and around Wichita. The only state-owned casino is located 150 miles away in Dodge City.

Because they have offered no actual evidence that they will suffer any injury whatsoever if, on July 1, they are obligated to ask their smoker customers to take a few steps outside before lighting up, intervenors' application for a temporary injunction should be denied.

III. IF ISSUED, THE INJUNCTION WOULD BE ADVERSE TO THE PUBLIC INTEREST AND WOULD CAUSE MORE DAMAGE TO THE STATE THAN TO EITHER PLAINTIFF OR INTERVENORS.

The negative health effects of smoking to smokers and nonsmokers alike are well known and, as noted in this brief's fourth footnote, have been recognized by multiple courts in many jurisdictions, including Kansas. Accordingly, there can be no real doubt that an injunction whose practical effect would be to allow individuals to continue to smoke in enclosed public places will be deleterious to public health. Thus, granting this injunction is adverse to the public interest. Given that plaintiff and intervenors have provided no actual evidence that they will be harmed in any way by the smoking ban, the injunction would cause more damage to the Kansas public than it would to plaintiff or intervenors. Because the injunction would be adverse to the public interest and would cause more damage to the State than to either plaintiff or intervenors, the Court should deny plaintiff's and intervenors' applications for temporary injunctions.

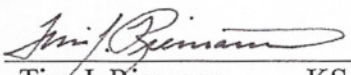
CONCLUSION

For the reasons stated herein, defendant asks the Court to deny plaintiff's and intervenors applications for temporary injunctions and grant defendant's motion to dismiss.

Respectfully Submitted,

OFFICE OF ATTORNEY GENERAL
STEVE SIX

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2010, I filed the foregoing with the clerk of the court and hand-delivered a copy of the same to:

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and a bench copy was hand-delivered to:

The Honorable Franklin R. Theis
Shawnee County Courthouse, Room 324
Topeka, Kansas 66603

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