

**IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT**

CHARLES ARAUJO, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO. G-2016-1008
	)	
GOVERNOR PHIL BRYANT, et al.	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION OF GLADYS  
OVERTON, ANDREW OVERTON, SR., ELLA MAE JAMES, AND TIFFANY MINOR  
TO INTERVENE AS DEFENDANTS**

Plaintiffs respectfully oppose the motion of Gladys Overton, Andrew Overton, Sr., Ella

## **ARGUMENT**

### **I. Applicants Have No Right To Interv**



constitutionality of the CSA, the State Defendants (and their counsel, the Attorney General) are

*adequate representation.” Id.* at 281 (emphasis added). The court additionally reasoned that the proposed intervenors “do not assert that students have any rights that the Attorney General has not also asserted in support of the statute” and, as a result, “would add nothing to this action except additional parties.” *Id.*

Numerous other federal courts have likewise held that adequate representation is presumed where a government entity is a party defendant.<sup>1</sup> These courts recognize that a government body, which is entrusted w5

alone the heightened showing of inadequacy required where, as here, existing Defendants are represented by the state Attorney General.

Instead, Applicants rely on *Guaranty National Insurance Co. v. Pittman*

proceedings; and the judgment debtor took no appeal from the judgment. *Id.* at 1273. The *Perry* court found that these “unique facts” were absent in the case before it, and concluded that intervention was properly denied where “[the putative intervenor] has the same ultimate objective as [the existing defendant], those interests are adequately represented by [the existing defendant] absent a showing of adversity of interest, collusion, or nonfeasance, and there is none.” *Id.*

General adequately represents Applicants' sole interest in upholding the constitutionality of the CSA.

Courts routinely deny permissive intervention when intervention as of right is denied based on the government's adequate representation. *See, e.g., In Re Thompson*, 965 F.2d 1136, 1142 n.10 (1st Cir. 1992) ("As we conclude that [proposed intervenors] cognizable legal interests were adequately represented by the [existing defendant], it is unnecessary to deal with the requisites for permissive intervention."); *Tutein v. Daley*, 43 F. Supp. 2d 113, 131 (D. Mass. 1999) ("[W]here, as here, intervention as of right is decided based on the government's adequate representation, the case for permissive intervention diminishes, or disappears entirely."); *Menominee Indian Tribe of Wisconsin v. Thompson*, 164 F.R.D. 672, 678 (W.D. Wis. 1996) ("When intervention of right is denied for the proposed intervenor's failure to overcome the presumption of adequate representation by the government, the case for permissive intervention disappears.").

Since Applicants' interest is adequately represented by existing parties, permissive intervention risks the potential for delay and increased costs, with no measurable additional benefit to the Court's ability to determine the legal issue in this case. Although intervention is inappropriate, Plaintiffs do not oppose Applicants' participation in this matter as *amici curiae*. *See Holly Ridge Assocs., LLC v. North Carolina Dep't of Env't & Natural Res.*, 648 S.E.2d 830, 837 (N.C. 2007) (noting that intervenors that should not have been permitted to intervene could have sought to participate as *amici curiae*).

### **III. Applicants Violated Rule 24(c) Because They Failed to Submit a Proposed Pleading.**

Denial of the pending motion to intervene is appropriate for the additional reason that Applicants fail to comply with Mississippi Rule of Civil Procedure 24(c), which requires a



motion to intervene to be “accompanied by a pleading setting forth the claim or defense for which intervention is sought.” Federal courts have denied motions to intervene for failure to comply with Federal Rule of Civil Procedure 24(c). *See Brown v. Colegio de Abogados de Puerto Rico*, 277 F.R.D. 73, 76 (D.P.R. 2011) (“The requirements of Rule 24(c) are mandatory.”); *Gaskin v. Pennsylvania*, 231 F.R.D. 195, 196 n.1 (E.D. Pa. 2005) (“Such utter disregard for Rule 24(c) warrants denial of the motion.”); *Harlem Valley Transp. Ass’n v. Stafford*, 360 F. Supp. 1057, 1066 n.11 (S.D.N.Y. 1973) (denying motion to intervene where unaccompanied by proposed pleading and where “the grounds for allowing intervention are far from self-evident”). Since Applicants have failed to file the required pleading, the pending motion to intervene should be denied.

### **CONCLUSION**

For the foregoing reasons, Applicants motion to intervene should be denied.

RESPECTFULLY SUBMITTED this 22nd day of August, 2016.

/s/ Lydia Wright  
Lydia Wright, MS Bar # 105186  
William B. Bardwell, MS Bar # 102910  
Southern Poverty Law Center  
111 E. Capitol Street, Suite 280

**CERTIFICATE OF SERVICE**

I, Lydia Wright, hereby certify that a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by electronic mail to all parties by the Court's electronic filing system. Parties may access this filing through the Court's MEC/ECF System.

SO CERTIFIED, this 22nd day of August, 2016.

/s/ Lydia Wright  
Lydia Wright, MS Bar # 105186