IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE,
EASTERN DIVISION

FAYE NORED and CYNDI SHAFER,	)	**Civil Action No.: 1-98-1357**
Plaintiffs,	)	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE UNITED STATES' MOTION TO INTERVENE AS OF RIGHT OR, ALTERNATIVELY, TO INTERVENE BY PERMISSION**
v.	)	
WEAKLEY COUNTY EMERGENCY COMMUNICATIONS DISTRICT,	)	
Defendant.	)	

The United States files this Memorandum of Points and Authorities in support of its Motion to Intervene as of Right, or, Alternatively, to Intervene by Permission. The United States seeks to intervene in this action because it has claims against the Defendant that arise from the same facts that are at issue in this case, and because permitting both cases to proceed together in the same forum will conserve judicial resources and ensure the consistent application of federal law.

BACKGROUND

A. Statutory and Regulatory Background

The Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12101, et seq., prohibits employers, state and local governmental entities and places of public accommodation from discriminating against individuals with disabilities. An individual has a "disability" under the ADA if she has a physical or mental impairment that substantially limits one or more of her major life activities, if she has a record of such an impairment, or if

she is regarded as having such an impairment. 42 U.S.C. § 12102. Title I of the ADA, 42 U.S.C. §§ 12111 - 12117, prohibits all employers of more than 15 employees (including state and local governmental entities) from discriminating against qualified individuals with disabilities[1] on the basis of disability with regard to job application procedures, hiring, discharge, and other terms, conditions, and privileges of employment. Title II of the ADA, 42 U.S.C. §§ 12131 - 12130, prohibits state and local government entities from discriminating against individuals with disabilities in the provision of public services, programs and employment, subject to the standards applicable under Title I.

A state or local government employer is subject to both Title I and Title II of the ADA and can violate the prohibition against employment discrimination in various ways, including, but not limited to:

(a) using qualification standards, employment tests, or other selection criteria that illegally screen out, or tend to screen out, qualified individuals with disabilities (42 U.S.C. § 12112(b)(6));

(b) limiting or classifying job applicants or employees in a way that adversely affects the opportunities or status of such applicants or employees on the basis of their disabilities (42 U.S.C. § 12112(b)(1));

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[1] A "qualified individual with a disability" is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position they hold or seek to hold.

(c) utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability (42 U.S.C. § 12112(b)(3));

(d) subjecting applicants and employees to tests and inquiries which are not job-related or consistent with business necessity (42 U.S.C. § 12112(d)); and

(e) failing and/or refusing to make reasonable accommodations to the known physical or mental limitations of otherwise qualified individuals with disabilities, where such accommodations would not pose an undue hardship (42 U.S.C. § 12112(b)(5)).

The U.S. Department of Justice ("the United States" or "the Department") is the federal governmental agency charged by statute with administering and enforcing the ADA. The United States Attorney General is authorized to file suit to enforce the ADA whenever a pattern or practice of discrimination or other issue of general public importance has been identified, and may file suit under Titles I and II pursuant to 42 U.S.C. §§ 12117(a) and 12132, which incorporate the remedies provided in Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and the Rehabilitation Act of 1973, 29 U.S.C. § 794a, respectively.

A. **Factual Background**

In 1997, plaintiffs Faye Nored and Cyndi Shafer were employed as public safety dispatchers for Weakley County Emergency Communications District (hereinafter "Weakley County

ECD"), in Weakley County, Tennessee. They had performed the essential functions of their positions satisfactorily for several years and had given no one any cause for concern about their mental capabilities. On July 1, 1997, a state statute (Tenn. Code Ann. § 7-86-201) which had been enacted three years earlier became effective, requiring public safety dispatchers to "be free of all apparent mental disorders as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association,"[2] and mandating that "[a]pplicants be certified as meeting [this standard] by a qualified professional in the psychiatric or psychological fields." Three weeks later, on July 24, 1997, Weakley County ECD implemented the statute by requiring all public safety dispatchers to submit to psychological evaluations in order to determine whether they had any "mental disorders."

As a result of these evaluations, the psychological examiner hired by their employer submitted written reports about the plaintiffs stating, respectively, that Nored was subject to

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[2] The current edition of the Diagnostic and Statistical Manual of Mental Disorders is the Fourth Edition [hereinafter the "DSM-IV," or "DSM-III" if the Third Edition]. The DSM-IV is a compendium describing and categorizing various medical conditions which psychiatrists generally consider to be "mental disorders." DSM-IV at xxvii. Many of the conditions listed in the DSM-IV are capable of substantially limiting one or more of an individual's major life activities (qualifying them as "disabilities" under the ADA), but do not necessarily impact the ability of a given individual to perform the essential functions of her position, with or without an accommodation.

"emotional instability" and that Shafer was "overly reactive" and at risk of "impulse control difficulties." On the sole basis of these reports, which concluded that the plaintiffs were not "free of all apparent mental disorders" as required by the statute, Weakley County ECD immediately terminated their employment. Nored and Shafer deny that they have any "mental disorders" or any other physical or mental impairments which substantially limit a major life activity. However, both women are qualified individuals with disabilities under the ADA because they were misclassified as having such an impairment and because their employer regarded them as so impaired. 42 U.S.C. § 12102. By terminating their employment on this basis, Weakley County ECD discriminated against them on the basis of disability in direct violation of the ADA.

After they were discharged, plaintiffs filed this action against Weakley County ECD, challenging the validity of the state statute under the ADA and seeking reinstatement in their positions as well as compensatory and punitive damages. While not a valid defense under the ADA, Weakley County ECD has defended against the charge by arguing that it was simply complying with the mandatory terms of the state statute. On the basis of these facts alone, the Department has a sufficient interest in enforcing the ADA and in remedying the harms to these individual plaintiffs to file its own complaint, pursuant to its statutory authority, against Weakley County ECD, Weakley County and the State of Tennessee. In addition, as described below, its

claims against each of these entities are broader than, and inclusive of, the specific claims of the plaintiffs in this case.

B. **Challenged Statutory Provisions**

The state statute which Weakley County ECD relied upon to subject the plaintiffs to psychological examination and then to terminate their employment is only one of five different state statutes, all relating to mandatory qualifications for law enforcement positions, which the state of Tennessee has enacted and implemented containing the identical exclusionary standard. Each of these statutes broadly excludes from certain kinds of public employment any person with an "apparent mental disorder" which is listed in the DSM-IV. See Tenn. Code Ann. § 7-86-201 (applying to public safety dispatchers)[3]; Tenn. Code Ann. § 38-8-106 (applying to police officers)[4]; Tenn. Code Ann. § 8-8-102 (applying to sheriffs)[5]; Tenn. Code Ann. § 37-5-117 (applying to youth service officers)[6]; and Tenn. Code Ann. § 41-1-116

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[3] Section 7-86-201 states, in pertinent part: "(b) Except as provided in subsection (d)...all [public safety dispatchers] shall: ... (9) be free of all apparent mental disorders as described in the most recent edition of the [DSM-IV]."

[4] Section 38-8-106 states, in pertinent part: "... [A]ny person employed as a [police officer] ... shall: ... (9) Be free of all apparent mental disorders as described in the [DSM-III]."

[5] Section 8-8-102 states, in pertinent part: "(a) To qualify for election or appointment to the office of sheriff, a person shall: ... (7)... be free of all apparent mental disorders as described in the [DSM-III], or its successor."

[6] Section 37-5-117 states, in pertinent part: "[A]ny person employed as a youth service officer by the department of

(applying to correction officers)[7]. In addition, all five of these statutes require applicants and employees to be "certified" as meeting this standard "by a qualified professional in the psychiatric or psychological fields." Only one of them provides for any exception to its requirements, but this exception fails to bring the statute into compliance with the requirements of the ADA.[8]

All of these statutes violate the ADA on their face by establishing an employment qualification standard which broadly discriminates against all individuals with "apparent mental disorders" -- including mental impairments which rise to the

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children's services shall: ... (6) Be free from all apparent mental disorders."

[7] Section 41-1-116 states, in pertinent part: "Any person employed as a correctional officer by the department of correction shall: ... (7) Be free from all apparent mental disorders."

[8] Section 7-86-201(d) states: "Notwithstanding any other provision of law to the contrary, the law in effect prior to May 1, 1994, relative to public safety dispatchers shall apply to any person who is more than fifty (50) years of age, has more than five (5) years of continuous employment as a public safety dispatcher on May 20, 1998, and has a congenital defect or a disability which would qualify under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq." At a minimum, the statute on its face still violates the ADA's prohibition against medical inquiries and examinations -- which apply to all individuals, regardless of disability -- because such tests (and the inquiries, or assumptions, that would be necessary under this scheme to classify individuals as exempt) are neither job-related nor consistent with business necessity. 42 U.S.C. § 12112(d).

level of a disability -- without providing for an individualized assessment of the nature or severity of an individual's particular impairment or her present ability to safely perform the essential functions of the job, without considering the effect of any treatments that control or limit the effects of her impairment, and without even considering, much less providing for, reasonable accommodation. In addition, as occurred in this case, the statutes illegally require applicants and employees to submit to psychological tests that are neither job-related nor dictated by business necessity and that are thus prohibited by the ADA. 42 U.S.C. § 12112(d)(4).

Unlike the plaintiffs in this case, the Department has standing to challenge all five of these state statutes directly and in one forum, simultaneously acting on behalf of a class of potential claimants and eliminating the duplication of effort and waste of judicial resources that would necessarily attend a case-by-case challenge to each statute. In addition, while these plaintiffs are limited to the facts of their case, in which they allege that they do not in fact have any mental impairment, the Department's challenge to these five statutes encompasses not only protected individuals like the plaintiffs who are regarded as disabled, or who have been misclassified as having a disability, but those who actually are substantially limited in a major life activity or who have a record of being so limited.

The Department has contacted the State of Tennessee, which has preliminarily indicated that it does not intend to defend

these five statutes and is willing to engage in settlement negotiations to attempt to resolve this matter. Weakley County and Weakley County ECD continue to assert that they were simply following state law and have thus far indicated no interest in resolving the Department's claims without litigation. Therefore, to protect the Department's interests in its claims against the defendant in this case as well as its interests in its claims against Weakley County and the State of Tennessee which arise out of the same facts, the United States hereby moves to intervene in this case. Judicial and party resources will be conserved and the risk of inconsistent judicial determinations will be minimized by consolidating the plaintiffs' and the Department's claims in one action, and examining all five of the state statutes containing the identical discriminatory standard in one judicial forum.

ARGUMENT

A. The Department Is Entitled to Intervene as of Right

Intervention as of right is governed by Fed. R. Civ. P. 24(a)(2).[9] The U.S. Court of Appeals for the Sixth Circuit has set out a four-part test for determining whether a party shall be

[9] Fed. R. Civ. P. 24(a) provides, in pertinent part: "Upon timely application anyone shall be permitted to intervene in an action: ...(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede any applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

permitted to intervene as of right pursuant to this rule:

> (1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, [and](4) inadequate representation of that interest by parties already before the court.

Michigan State AFL-CIO v. Miller, 103 F.3d 1240, 1245 (6th Cir. 1997); Cuyahoga Valley Ry. Co. v. Tracy, 6 F.3d 389, 395-96 (6th Cir. 1993); Grubbs v. Norris, 870 F.2d 343, 345 (6th Cir. 1989). In this case, the Department meets all four requirements for intervention as of right.

1. The Department's Motion to Intervene Is Timely

Although intervention is most commonly granted when it is sought in the early stages of a proceeding, the stage of the proceedings during which intervention is sought is not dispositive. NAACP v. New York, 413 U.S. 345, 365-366 (1973). The determination as to whether a motion to intervene is timely "should be evaluated in the context of all relevant circumstances." Jansen v. City of Cincinnatti, 904 F.2d 336, 340 (6th Cir. 1990), citing Bradley v. Milliken, 828 F.2d 1186, 1191 (6th Cir. 1987). In particular, the Sixth Circuit has held that the following factors should be considered:

> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Jansen, 904 F.2d at 340, citing Grubbs, 870 F.2d at 345. As a general matter, "[t]he purpose of the timeliness inquiry is to prevent 'a tardy intervenor from derailing a lawsuit within sight of the terminal.'" United States v. BASF-Inmont Corporation, 52 F.3d 326, 1995 WL 234648 at **2 (6th Cir. 1995) (finding application for intervention untimely because it came at the final stage of litigation, as the parties awaited the court's approval of a consent decree), quoting United States v. South Bend Community Sch. Corp., 710 F.2d 394, 396 (7th Cir. 1983), cert. denied sub nom. Brookins v. South Bend Community Sch. Corp., 466 U.S. 926 (1984). Here, the litigation is not even close to termination, and far from derailing the case, the Department's intervention would bring focus to the legal issues involved and enable an efficient and comprehensive resolution.

The plaintiffs filed their complaint against Weakley County ECD on December 28, 1998 and it was served on the defendant on February 13, 1999. This litigation is still in its initial stages and the period of time originally granted for discovery has not yet elapsed. So far, discovery has not been extensive, and the defendant has yet to answer the discovery propounded by the plaintiffs. Although the United States is requesting a three-month continuance to permit it to conduct discovery as well, participation by the United States is not likely to unduly delay the resolution of the case. In addition, the brief extension of the discovery deadline would give the parties a fair opportunity for discovery from the federal agency responsible for

interpreting and enforcing the law.

Although the Department first heard of plaintiffs' action in early 1999, it was required by Department policy to conduct an independent investigation in order to determine if it had an interest in this case and to obtain approval within the Department to move to intervene. The Department's investigation revealed that its interests are implicated here and also uncovered other provisions of state law which include the same qualification standard as the statute plaintiffs challenge. Any delay which may have occasioned the Department's application for intervention has not and will not cause any prejudice to any of the existing parties. Special circumstances in this case also militate in favor of allowing the Department to intervene. In the present action, only Weakley County ECD is a defendant, and its chief defense to the plaintiffs' claims is that by terminating the plaintiffs' employment, it was simply complying with state law. While this is not a proper defense to a claim of employment discrimination under the ADA, it points to the fact that the State of Tennessee should be joined as a defendant in this action, and that its several laws implementing this disability-based standard are best considered together in one judicial forum.

Finally, far from being prejudiced, the parties in this case can only benefit from the Department's participation, since the Department has special expertise in interpreting and applying Titles I and II of the ADA. In addition, if the Department is

not permitted to intervene in this action, any judgment issued here cannot bind the Department, nor will it resolve the Department's claims against the defendant. Because only the Attorney General has the authority to file lawsuits in the public interest to enforce Titles I and II of the ADA against state and local government entities, the Department's intervention and assertion of its claims in this case would ensure that the defendant will not be forced to defend duplicative suits by the United States. Thus, the defendant will benefit even more than the other parties from the Department's intervention.

2. The Department Has A Substantial Legal Interest In this Action

The Sixth Circuit has "opted for a rather expansive notion of the interest sufficient to invoke intervention as of right," and has recognized that an applicant for intervention "need not have the same standing" that would be necessary to initiate the lawsuit. Michigan St. AFL-CIO, 103 F.3d at 1245, citing Purnell v. City of Akron, 925 F.2d 941, 948 (6th Cir. 1991) (where the court held that intervention as of right did not require "a specific or equitable interest") and Bradley, 828 F.2d at 1192.

The Department has at least two substantial legal interests at stake in this action. First, as described above, under 42 U.S.C. §§ 12117 and 12132, the Department has its own claims against the defendant, Weakley County and the State of Tennessee for violations of Titles I and II of the ADA. These claims are broader than, and inclusive of, the ADA-based claims of the plaintiffs in this case. Secondly, the Department has an

interest in ensuring that the Court has the relevant facts and legal arguments before it regarding the proper interpretation and application of Titles I and II of the ADA. The ADA is a relatively new statute and there are, as yet, few decisions reviewing disability-based job qualification standards explicitly defined in the text of state statutes such as those challenged in this case. The Sixth Circuit is the only court of appeals that has addressed the issue directly, and its opinion in that case speaks to the issue only in a very preliminary way. See Andrews v. State of Ohio, 104 F.3d 803, 807 (6th Cir. 1996) (holding that the determination of whether an employment qualification standard is job-related and consistent with business necessity requires analysis of the specific facts of each case).

Equally important, this case will remind state and local officials that the laws they enact or implement are subject to the requirements of the ADA. As the federal agency charged with administering the ADA, and promulgating the implementing regulations, and enforcing its requirements against state and local government entities, the Department has unique expertise in interpreting and applying these particular requirements. As the Supreme Court recently made clear, the Department's views on these issues are entitled to deference. Bragdon v. Abbott, 524 U.S. 624 (1998) ("As the agency directed by Congress to issue implementing regulations, to render technical assistance explaining the responsibilities of covered individuals and institutions, and to enforce [the ADA] in Court, the Department's

views are entitled to deference."), citing Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 844 (1984). The Department cannot effectively advocate its views on the implementation and application of Titles I and II unless it is permitted to intervene in this action.

3. Without Intervention, the Disposition of this Action May Impair the Department's Ability to Protect its Interests

In order to establish the third element of the four-part test for intervention as of right, an applicant for intervention need only show that impairment of its ability to protect its interests "is possible." Michigan St. AFL-CIO, 103 F.3d at 1247. Impairment is construed in "practical terms rather than legal terms," and is allowed if a party might be "practically disadvantaged by the disposition of the action." Horrigan v. Thompson, 1998 WL 246008 at *3 (6th Cir. 1998) (per curiam), citing 7C Charles A. Wright, Arthur R. Miller, Mary K. Kane, Federal Practice and Procedure § 1908 at p. 310 (2d ed. 1986). In addition, the Sixth Circuit has joined other circuits in holding that "the possibility of adverse stare decisis effects provides intervenors with sufficient interest to join in an action." Jansen, 904 F.2d at 342, citing United States v. State of Oregon, 839 F.2d 635, 638 (9th Cir. 1988); Neusse v. Camp, 385 F.2d 694, 702 (D.C. Cir. 1967); and Atlantis Dev. Corp. v. United States, 379 F.2d 818, 829 (5th Cir. 1967).

As a practical matter, without intervention, the Department's interests in its claims against the defendant,

Weakley County, and the State of Tennessee, and in its interpretation and application of Titles I and II of the ADA, may be impaired because of the stare decisis effect of a ruling in this case. If final judgment in this case were to absolve the defendant of liability for its implementation of this disability-based employment qualification standard, which the Department believes to be in clear violation of the ADA, and the Department were required to pursue its claims in a separate action, the Department would plainly face an uphill battle in attempting to convince the Court to find an ADA violation where it had not found one before, even if the Department presented facts, expert testimony, and legal arguments that differed from those presented to the Court in this case. Moreover, if the Court were to interpret and apply the requirements of Titles I and II of the ADA in a way that conflicted with the Department's views, the Department could also expect to have difficulty overcoming the stare decisis effect of such a ruling in any other action the Department litigated involving disability-based employment qualification standards.

4. Plaintiffs Cannot Adequately Represent the Department's Interests In This Action

To establish the final element, an applicant for intervention need merely establish that the existing parties "may not adequately represent their interests." Grutter v. Bollinger, 188 F.3d 394, 400 (6th Cir. 1999). The burden for this showing is "minimal." Horrigan, 1998 WL 246008 at *3, quoting Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n. 10

(1972). It is not necessary for an applicant to show that the representation "will in fact be inadequate." Michigan St. AFL-CIO, 103 F.3d at 1247. "It may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments." Id. Perhaps most importantly in this case, "[a]n interest that is not represented at all is surely not 'adequately represented,' and intervention in that case must be allowed." Grubbs, 870 F.2d at 347, citing 7C Charles A. Wright, Arthur R. Miller, Mary K. Kane, Federal Practice and Procedure § 1909 at p. 319 (2d ed. 1986).

It goes without saying that the United States' interests cannot be adequately protected by private parties. The claims against Weakley County ECD have been instituted by two private plaintiffs with limited resources. Unlike the Department, the private plaintiffs do not represent the public interest, but must instead represent their own individual interests. Even if plaintiffs had the expertise and knowledge required to advocate the Department's interpretation of Titles I and II of the ADA, which they do not, they would not be free to do so. More importantly, as discussed above, the Department has several claims against the defendant, Weakley County and the State of Tennessee which go beyond the plaintiffs' claims -- namely, to challenge all five of the state statutes containing the discriminatory qualification standard, and to protect the interests of all current and prospective public employees with mental impairments which satisfy the definition of disability

under the ADA. Only the Department will introduce evidence and make the legal arguments necessary to protect the broader public interests in this case. Absent intervention, the Department's interests and the public interest would be unprotected, and future efforts to enforce Titles I and II with respect to employment qualification standards would be impaired.

In sum, the Department has shown that its motion to intervene is timely and will not prejudice the existing parties; that it has a substantial legal interest in this action; that without intervention, its interests may be impaired; and that its interests along with the public interest are not and cannot be adequately represented by any of the private parties in this action. Accordingly, the Department should be granted leave to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2).

B. Alternatively, the Department Should Be Granted Permissive Intervention

Permissive intervention is governed by Fed. R. Civ. P. 24(b).[10] It is committed to the discretion of the court, and the rule provides that "in exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Id. Thus, by its terms, Rule 24(b)(2) requires only that the

[10] Fed. R. Civ. P. 24(b) provides: "(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene, or (2) when the applicant's claim or defense and the main action have a question of law or fact in common."

applicant make a timely application which does not unduly delay the case or prejudice the existing parties, and that its claim and the main action have a question of law or fact in common. As discussed above, the Department satisfies both of these requirements.

However, Rule 24(b)(1) also provides a separate ground for permissive intervention when a statute of the United States confers a conditional right to intervene. In this case, Titles I and II of the ADA incorporate by reference the remedies of Title VII of the Civil Rights Act and the Rehabilitation Act of 1973, which confer such a conditional right of intervention. See 42 U.S.C. §§ 12117(a) and 12132, incorporating 42 U.S.C. § 2000e-5 and 29 U.S.C. § 794a, respectively. Rule 24(b) makes special provision for permissive intervention by a federal agency when the statute that the agency enforces is at issue in a case. It provides, in pertinent part:

> When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal...governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.

As the governmental entity which enforces the ADA, the Department has a "sufficient interest in the maintenance of its statutory authority and the performance of its public duties to entitle it [to intervene]." SEC v. United States Realty & Imp. Co., 310 U.S. 434, 460 (1940).

Thus, if the Court should rule that the Department has not made the requisite showing for intervention as of right, the Court should nonetheless grant the Department permissive intervention in this suit.

CONCLUSION

For the foregoing reasons, the Department respectfully requests that the Court grant the Department leave to intervene in this case, either by right or by permission.

Respectfully submitted,
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Dated: November _____, 1999

CERTIFICATE OF SERVICE

Pursuant to Local Rule 7.2, undersigned counsel hereby affirms that copies of the accompanying Motion to Intervene, Memorandum of Points and Authorities in Support of Motion to Intervene, and Proposed Order have been served on all parties to this action on this, the _____ of November, 1999.

Respectfully Submitted,

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