COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

JANE DOE and JOHN DOE, individually and as parents and next friends of DOECHILD-1, DOECHILD-2, and DOECHILD-3, and the AMERICAN HUMANIST ASSOCIATION, Plaintiffs, v. ACTON-BOXBOROUGH REGIONAL SCHOOL DISTRICT, THE TOWN OF ACTON PUBLIC SCHOOLS, and DR. STEPHEN E. MILLS, as SUPERINTENDENT OF SCHOOLS, Defendants, and DANIEL JOYCE and INGRID JOYCE, individually and as parents and next friends of D. Joyce and C. Joyce, and THE KNIGHTS OF COLUMBUS, a Connecticut tax-exempt corporation, Defendant-Intervenors.	Civil Action No. 10-04261

MEMORANDUM OF REASONS AND AUTHORITIES IN SUPPORT OF PROPOSED DEFENDANT-INTERVENORS' MOTION TO INTERVENE

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INTRODUCTION

Pursuant to Mass. R. Civ. P. 24, the following proposed intervenors respectfully seek leave to intervene in this case as defendant-intervenors:

1. D. Joyce and C. Joyce (Acton-Boxborough School District students who desire to continue to recite the Pledge of Allegiance as an important component of their education) ("Student-Intervenors")
2. Daniel Joyce and Ingrid Joyce (parents of these students) ("Parent-Intervenors"); and
3. The Knights of Columbus (a Connecticut tax-exempt corporation instrumental in the inclusion of the words "under God" in the Pledge) ("Knights").

These students, their parents, and the Knights of Columbus (collectively "Intervenors") respectfully request leave to intervene in this case as a matter of right to protect their substantial interest in defending, against Plaintiffs' constitutional challenge, the constitutionality of the Pledge of Allegiance that is recited daily in Acton-Boxborough public schools. As students and parents of students in the Acton-Boxborough public school system, the Student- and Parent-Intervenors will undoubtedly be affected by the outcome of this proceeding. A determination regarding the constitutionality of the Pledge will directly impact the content of the education they receive from Massachusetts public schools and the way in which they declare their commitment to the ideals of their country reflected in the Pledge. Furthermore, as the very entity that led the way in recommending the addition of the phrase "under God" to the Pledge in 1954, the Knights have a particularly strong interest in the Pledge's constitutionality that may be impaired if denied the opportunity to intervene in this proceeding.

As set forth in detail below, Intervenors may intervene both as of as of right under Mass. R.

Civ. P. 24(a) and by permissive intervention under Mass. R. Civ. P. 24(b). Plaintiffs assent to this motion. Defendants assent to this motion.[1]

BACKGROUND

Proposed Student- and Parent-Intervenors are residents of Acton, Massachusetts. All Student-Intervenors currently attend public schools in the Acton-Boxborough School District.

Student- and Parent-Intervenors recognize that at least since the Declaration of Independence was written, our national ethos has held that we have inalienable rights that the State cannot take away, because the source of those inalienable rights is an authority greater than the State. Ex. 1, ¶ 21 ("Answer"); *see also Newdow* v. *Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1029 (9th Cir. 2010) ("the Framers believed that God endowed people with certain inalienable rights, rights no government could take away"), *no cert. pet. docketed.* They recognize that the Pledge and its use of the phrase "under God" is, like the Declaration, a statement of political philosophy, not of theology. Answer ¶ 21. And they understand that this political philosophy depends for its force on the premise that our rights are only inalienable because they inhere in a human nature that has been "endowed" with such rights by a "Creator." Answer ¶ 22. Accordingly, these Intervenors believe that the continued recitation of the Pledge is an important element of a public school education in order to teach and reaffirm the limited nature of the American Republic, bound as it is to respect the inalienable rights of its people. *Id.* Parent-Intervenors therefore encourage their children to participate in the voluntary recitation of the Pledge at their respective schools, and Student-Intervenors desire to continue to recite the Pledge at those schools. Parent-Intervenors believe that Student-Intervenors' education will be diminished if their schools alter the Pledge. Moreover, Parent-Intervenors believe that by editing the words "under God" out of the Pledge,

[1] All Parties have agreed that Defendant-Intervenors will not seek discovery.

the government would send a message of unreasoned hostility towards religion by stating that any government use of the word "God"—religious or not—is unconstitutional. Answer ¶ 23.

On January 15, 2011, the American Humanist Society and Plaintiffs Jane and John Doe, parents of Doechildren -1, -2, and -3 filed an amended complaint (the "Complaint") against the Acton-Boxborough Regional School District, the Town of Acton Public Schools, and Superintendent of Schools Stephen E. Mills. The Complaint alleges that Massachusetts General Laws, Chapter 71, § 69, which requires public school teachers to lead students in the Pledge of Allegiance—which includes the phrase "under God"—violates the equal protection provision of the Massachusetts state constitution (MA Const. Amend. 106), Massachusetts' educational access requirement (Mass. Gen. Laws, Chapter 76, § 5), and the school district's nondiscrimination policy. The Complaint demands, *inter alia*, that this Court: 1) declare the Pledge of Allegiance violative of the equal protection rights of humanists and atheists; 2) order the Defendants to forbid classroom recitation of the present form of the Pledge of Allegiance; 3) order the Defendants to endorse patriotic ceremonies only if those ceremonies do not refer to God; and 4) declare that removing "under God" from the Pledge of Allegiance does not violate the equal protection rights of individuals such as Intervenors. Compl. Count III.

The Defendants filed an answer to the amended complaint on July 7, 2011. The Student- and Parent-Intervenors—students and parents of students in the Massachusetts public school system who want the recitation of the Pledge to continue as a part of public school education—and the Knight-Intervenors—the very entity instrumental, at least in part, in the inclusion of the phrase "under God" in the Pledge—now file this timely motion to intervene to protect their substantial interests in this case.

The Knights of Columbus: The Knights of Columbus is the largest Catholic laymen's organization with approximately 1.8 million members in a dozen countries. The Knights have 41,000 members in Massachusetts, including the town of Acton. At least one of its members has a child attending Acton-Boxborough public schools. Answer ¶ 5. Ever since its beginnings in the basement of a church in New Haven, Connecticut, its members have understood that American ideals and democracy flow from an authority greater than the government, and that the government must respect the inalienable rights shared by all, Catholic and non-Catholic alike. Answer ¶ 5.

In 1951, the Supreme Board of Directors of the Knights of Columbus amended the Pledge of Allegiance regularly recited at their organizational meetings to include the phrase "under God." *See Amendment of K. of C. for Pledge of Allegiance Adopted by Senate*, New Haven Register, May 13, 1954; *"Under God" Under Attack*, Columbia, Sept. 2002, at 8-9. In 1952, the Knights recommended this amendment to the President, Vice-President, and members of both Houses of Congress. *See K. of C. Urged Revised Oath*, New York Journal-American, May 18, 1954. The Knights urged this amendment to the Pledge at the height of the Cold War between the United States and Soviet Union to distinguish the nature and extent of human rights in the United States from that in communist Russia. The Knights understood that including the phrase "under God" in the Pledge would draw a distinction between the "natural rights" philosophy of Madison, Jefferson, and other Founders on which the American system is based and the Soviet philosophy that rights, such as they are, are conferred by the State. Answer ¶ 5.

Consistent with the Knight's recommendation, Congress officially amended the Pledge in 1954 to include the phrase "under God."[2] Pub. L. No. 83-396. Congress was motivated by the

[2] Codified at 4 U.S.C. § 4, the Pledge as amended in 1954 reads as follows:

same principle that drove the Knight's recommendation: *i.e.*, that the dignity of man and certain inalienable rights cannot be usurped by the government or its laws. As the House of Representatives Report on the joint resolution adding "under God" to the Pledge stated:

> Our American Government is founded on the concept of the individuality and the dignity of the human being. Underlying this concept is the belief that the human person is important because he was created by God and endowed by Him with certain inalienable rights which no civil authority may usurp.

H.R. Rep. No. 83-1693, at 1-2 (1954); *see also* Pub. L. No. 107-293 (2002) (amending Pledge statute in 2002 and describing in greater detail Congress' reasons for including "under God" in the Pledge). President Dwight D. Eisenhower similarly recognized this principle when he thanked the Knights for their role in promoting the amendment:

> [W]e are particularly thankful to you for your part in the movement to have the words "under God" added to our Pledge of Allegiance. These words will remind Americans that despite our great physical strength we must remain humble. They will help us to keep constantly in our minds and hearts the spiritual and moral principles which alone give dignity to man, and upon which our way of life is founded. For the contribution which your organization has made to this cause, we must be genuinely grateful.

Letter from Dwight D. Eisenhower to Luke E. Hart, Supreme Knight of the Knights of Columbus, Aug. 17, 1954, *reprinted in "Under God" Under Attack*, Columbia, Sept. 2002, at 9.

In light of their involvement in shaping the present language of the Pledge, the Knights have a strong interest in defending the constitutionality of the Pledge (and its daily recitation in public schools in Massachusetts and around the country) so that the Pledge may continue to serve as a daily reminder for all Americans of the political philosophy that has animated this country since

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> I pledge allegiance to the flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

Congress reaffirmed the Pledge in 2002. Pub. L. No. 107-293 (2002); *see also Rio Linda Union Sch. Dist.*, 597 F.3d at 1029-32 (recounting history).

its Founding, that is, that the inalienable rights with which all citizens are endowed must be respected by the State precisely because they are prior to the State. Answer ¶ 21. The Knights have already successfully intervened to defend the Pledge in federal court in California, *Rio Linda Union School District*, 597 F.3d 1007, and in New Hampshire, *Freedom From Religion Foundation* v. *Hanover School District*, 626 F.3d 1 (1st Cir. 2010), *cert. denied*, 131 S.Ct. 2992 (2011). The Knights intend to continue defending the Pledge wherever it may be challenged. The Knights seek both individual standing and associational standing to assert the rights of their members.

ARGUMENT

I. Intervenors are entitled to intervene as of right under Mass. R. Civ. P. 24(a).

In addition to the "threshold question of timeliness," Massachusetts courts examine three factors to determine whether a proposed intervenor may intervene in an action as of right:

> [a] judge should allow intervention as of right when (1) the applicant claims an interest in the subject of the action, (2) he is situated so that his ability to protect his interest may be impaired as a practical matter by the disposition of the action, and (3) his interest is not adequately represented by the existing parties.

Johnson Turf & Golf Mgmt., Inc. v. *City of Beverly*, 60 Mass. App. Ct. 386, 389 (2004). Proposed Intervenors easily satisfy all four criteria.

A. The motion to intervene is timely.

Since this case is still in its early stages, and Plaintiffs will not be prejudiced by the motion, Intervenors' motion is timely. *Frostar Corp.* v. *Malloy*, 77 Mass. App. Ct. 705, 714 (2010) (citing 7C Wright & Miller, *Federal Practice & Procedure* § 1916 (3d ed. 2010)) ("The most important consideration in deciding whether a motion for intervention is untimely is whether the

delay in moving for intervention will prejudice the existing parties to the case.").[3] The addition of Intervenors to the case will not make a material difference to Plaintiffs' preparation of the case. This case does not rely heavily on factual questions, but legal ones, and Intervenors' entry into the case will not delay discovery. Intervenors will comply with existing scheduling orders.

Intervenors' stake in the case became much stronger after this Court denied a motion to dismiss on May 25, 2011. Because the suit was not dismissed, the Pledge will now be the subject of a trial or a summary judgment ruling, raising the prospect that the Pledge will be found unconstitutional. Very little has occurred since that time, and the entry of Intervenors into this case does not materially affect Plaintiffs' preparation for this case. Thus, there is no delay or prejudice to the existing parties. Nor is there any basis for finding that intervention would delay the Plaintiffs from obtaining relief from any alleged inequity. Accordingly, Intervenors satisfy the timeliness requirement.

B. Intervenors have an interest in the subject of this litigation.

Intervenors arguably have *more* of an interest in the subject matter of this lawsuit than do Plaintiffs. Because reciting the Pledge is completely voluntary, Intervenors are the ones who will be silenced if Plaintiffs are successful, while Plaintiffs can already be silent now if they choose to be. "No punishment of any kind may be imposed on a student who elects, as a matter of principle, to abstain from participation [in the Pledge]." *Opinions of the Justices to the Governor,*

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[3] Massachusetts courts have frequently relied on federal court precedent when deciding whether a party has the right to intervene. "The language of Fed. R. Civ. P. 24(a)(2) (1982) is substantially the same as the language of Mass. R. Civ. P. 24(a)(2). Where there is an identity of the language and no compelling reason to do otherwise, our practice is to adhere to judicial constructions of the Federal rule in construing our similar State rule." *Attorney Gen.* v. *Brockton Agric. Soc'y,* 390 Mass. 431, 434 n.3 (1983) (citation omitted), quoted in *Ben* v. *Schultz*, 47 Mass. App. Ct. 808, 812 (1999); *see also Frostar Corp.* v. *Malloy*, 77 Mass. App. Ct. 705, 712 (Mass. App. Ct. 2010) *review denied*, 458 Mass. 1109 (2010) (collecting and applying federal cases to question of intervention in Massachusetts state courts).

372 Mass. 874, 880 (1977); *see also W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624 (1943). Thus proposed Intervenors "belong to a small group, quite distinct from the ordinary run of citizens, who could expect" to be subject to an injunction barring them from continuing to recite the Pledge. *Daggett* v. *Comm'n on Gov't Ethics & Election Practices*, 172 F.3d 104, 110 (1st Cir. 1999) (potential for injunction binding intervenors constituted interest sufficient to intervene).

Specifically with respect to the Student- and Parent-Intervenors, there can be little doubt that students have a significant interest in the content of the education that they receive, and that parents have an equally significant interest in the content of the education that their children receive. The Pledge of Allegiance—the subject matter of this lawsuit—is an important component of the content of a public school education. By instilling patriotism and teaching about the nature of this country's Republican form of government, the Pledge achieves the educational purpose of "inculcat[ing] patriotism and . . . instill[ing] a recognition of the blessings conferred by orderly government under the Constitutions of the State and nation." *Commonwealth* v. *Johnson*, 309 Mass. 476, 484 (1941); *see also Rio Linda Union Sch. Dist.*, 597 F.3d at 1037.

Accordingly, to protect their interest in the educational content they receive from the public schools, Student- and Parent-Intervenors have an interest in the specific content of the Pledge. It is their position that without the words "under God" in the Pledge, the quality of the content of the public school education they receive would decline. In their view (as discussed above), removal of the words "under God" would mean that the Pledge would no longer serve to teach and remind students of the political philosophy that has guided this Republic since its Founding—*i.e.*, that citizens have inalienable rights that the State cannot take away because "a

power greater than the government gives the people their inalienable rights." *Rio Linda Union Sch. Dist.*, 597 F.3d at 1037.

In sum, there can be little doubt that Student- and Parent-Intervenors' interest in the content of the education they receive from the public schools—as implicated by this lawsuit concerning the constitutionality of the Pledge—is an interest that provides a sufficient basis for intervention. Indeed, Massachusetts courts have recognized the right of parents and their school-aged children to intervene in cases that affect their interests in the nature and content of their care and education. *See, e.g.*, *Curtis* v. *Sch. Comm. of Falmouth*, 420 Mass. 749, 755 (1995) (parents have a legitimate interest in school activities relating to "moral standards, religious beliefs, and elements of good citizenship"); *In re Hilary*, 450 Mass. 491, 502 (2008) (a parent's right to intervene in case involving care of child was on par with right to counsel).

Numerous federal courts, including the U.S. Supreme Court, have also acknowledged student and parental rights to intervene, even in cases in which a school district is already a party to the action. *See, e.g.*, *Zelman* v. *Simmons-Harris*, 536 U.S. 639 (2002); *Agostini* v. *Felton*, 521 U.S. 203 (1997). Indeed, federal courts have uniformly allowed interventions by parents and the Knights in other lawsuits specifically challenging the constitutionality of the Pledge. *See supra* p. 5.

As for the Knights of Columbus, it was, at least in part, because of their recommendation that Congress amended the Pledge of Allegiance in 1954 to include the words "under God" in the Pledge. *See supra* pp. 3-5. Accordingly, the Knights have a particular and special interest in defending the constitutionality of the Pledge. Where the role that a particular organization has played in influencing a law is at stake, courts have repeatedly granted intervenor status as of right to defend its interests in the law. *See, e.g.*, *Yniguez* v. *Arizona*, 939 F.2d 727 (9th Cir. 1991)

(intervention as of right by sponsors of ballot initiative declaring English to be the official language in litigation challenging the constitutionality of that statute); *see also Newdow* v. *Congress of the U.S.*, 2006 WL 47307, at *3 (E.D. Cal. Jan. 6, 2006) (granting intervenor status to public interest group because of its interest in "public expressions of the nation's religious history and heritage"). The Knights also have a strong associational interest in representing the rights of their members who live in Acton. *Int'l Union* v. *Brock*, 477 U.S. 274, 281 (1986).

C. The disposition of this action threatens to create a practical impediment to Intervenors' ability to protect their interests.

"It generally is agreed that in determining whether disposition of the action will impede or impair the movant's ability to protect its interest *the question must be put in practical terms rather than in legal terms*." 7C Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 1908.2 (2007) (emphasis added). Massachusetts courts have taken a broad view of "practical interests." "[B]ecause rule 24(a) is intended to protect practical interests, it is not limited strictly to legal or equitable concerns." *Motor Club of Am. Ins. Co.* v. *McCroskey*, 9 Mass. App. Ct. 185, 189 (1980) (citing *Nuesse* v. *Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

In interpreting the analogous rule of Fed. R. Civ. P. 24(a), the First Circuit has noted that "[t]he 'practical' test of adverse effect that governs under Rule 24(a) is easily satisfied" where a proposed intervenor "could be subject to a federal court injunction against implementation of [a] statute." *Daggett*, 172 F.3d at 110 (citing *Atlantis Dev. Corp.* v. *United States*, 379 F.2d 818, 824-25 (5th Cir. 1967)); *see also Utah Ass'n of Cntys.* v. *Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (practical impairment is sufficient and legal impairment not required because "court is not limited to consequences of a strictly legal nature") (quotations omitted). And though Intervenors "might challenge various determinations in separate proceedings, those proceedings would be

constrained by the *stare decisis* effect of the lawsuit from which it had been excluded." *Sierra Club* v. *EPA*, 995 F.2d 1478, 1486 (9th Cir. 1993) (internal citations omitted); *see also Sierra Club* v. *Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994) (*stare decisis* effect of decision is sufficient potential impairment to satisfy requirements of Rule 24(a)(2)).

Practically speaking, it is evident that the Intervenors' interests would be impaired by a judgment that inclusion of the words "under God" in the Pledge is unconstitutional. Student- and Parent-Intervenors' significant interest in preserving the present language of the Pledge as an important component of their education would be completely extinguished by a declaration that the Pledge is unconstitutional and an injunction prohibiting recitation of the Pledge. Indeed, the effect on their education would be direct and dramatic. The Pledge that Student-Intervenors began reciting on a daily basis when they first entered the public school system would suddenly be altered to strip out the words "under God." Without those words, the Pledge would no longer serve to teach and remind Student-Intervenors (and others) of the political philosophy that has guided this country since its Founding: that government is limited in its power and may not take away the inalienable rights endowed by a Creator. Accordingly, Student- and Parent-Intervenors should have a full and fair opportunity to defend their interest in the Pledge because it is they, rather than the school districts, who will be directly affected by the outcome of this litigation and "constrained by the *stare decisis* effect of th[is] lawsuit." *Sierra Club* v. *EPA*, 995 F.2d at 1486 (citation omitted).

Similarly, in addition to the impact on the members of the Knights' organization, it is evident that the interests of Knights would be significantly impacted by a holding that declares unconstitutional the very language of the Pledge that they succeeded in having added to the Pledge in 1954. Consistent with the precedent cited above governing the intervention of

organizations in cases challenging laws that they helped to enact, Knights must also be afforded the full and fair opportunity to defend the constitutionality of the Pledge.

D. The Intervenors' interests are not adequately represented by the parties.

Intervenors' interest in being able to continue to benefit from the educational value of the Pledge is unique and cannot be adequately represented by the present Defendants. "An applicant for intervention as of right has the burden of showing that representation may be inadequate," but "the burden 'should be treated as minimal.'" *Frostar Corp.*, 77 Mass. App. Ct. at 712 (2010).

"Typically, an intervenor need only make a 'minimal' showing that the representation afforded by a named party would prove inadequate." *B. Fernandez & Hnos., Inc.* v. *Kellogg*, 440 F.3d 541, 545 (1st Cir. 2006) (citing *Trbovich* v. *United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). In other words, the moving party "ordinarily should be allowed [to intervene] unless it is clear that the [existing] party will provide adequate representation for the absentee." 7C Wright, Miller & Kane § 1909. For instance, it may be in the school district's interest to alter or end Pledge recitation in order to avoid the difficulty and expense of continued litigation. It is unclear whether the Defendant school district shares interest in continuing the practice of reciting the Pledge in Acton's schools, as opposed to defending the constitutionality of its compliance with governing Massachusetts statutes. Whatever the case, the school district's interest in maintaining the Pledge differs in kind, degree and perhaps intensity from Intervenors':

> One way for the intervenor to show inadequate representation is to demonstrate that its interests are sufficiently different in kind or degree from those of the named party. *See United Nuclear Corp.* v. *Cannon*, 696 F.2d 141, 144 (1st Cir. 1982); *Glancy* v. *Taubman Cts., Inc.*, 373 F.3d 656, 675 (6th Cir. 2004) ("Asymmetry in the intensity . . . of interest can prevent a named party from representing the interests of the absentee.").

Kellogg, 440 F.3d at 546.

For example, Student- and Parent-Intervenors are uniquely situated to make arguments from the perspective of public school students who recite the Pledge daily. Similarly, the Knights are uniquely situated to provide information and offer arguments from the perspective of an entity that was instrumental in the inclusion of the words "under God" in the Pledge. Finally, undersigned counsel for Intervenors litigates extensively on religious liberty issues in state and federal courts throughout the country, and thus is capable of presenting information and arguments that would shed additional light on the various issues before the Court.

II. In the alternative, Intervenors satisfy the requirements of Mass. R. Civ. P. 24(b) for permissive intervention.

Permissive intervention in Massachusetts is appropriate "when an applicant's claim or defense and the main action have a question of law or fact in common." Mass. R. Civ. P. 24(b)(2). The Intervenors' interests and proposed defenses involve questions of law and fact related to the main action. As students and parents of students in the Massachusetts public school system, Student- and Parent-Intervenors will undoubtedly be affected by the outcome of this proceeding. A determination regarding the constitutionality of the Pledge will directly impact the way in which they begin each school day and affect the nature of their public school education. Knight-Intervenors' interest in the issue before the Court, namely the constitutionality of the Pledge that they helped to amend in 1954, will be significantly impaired by a determination finding the Pledge and its recitation unconstitutional.

This Court has broad authority to grant permissive intervention. "'Permissive intervention is wholly discretionary with the trial court,' and the decision of the trial court will be reversed only for clear abuse of discretion." *Commonwealth* v. *One Hundred Twenty-five Thousand One Hundred Ninety-one Dollars*, 76 Mass. App. Ct. 279, 283 (2010) (citing *Massachusetts Fed'n of*

Teachers, AFT, AFL-CIO v. *School Comm. of Chelsea*, 409 Mass. 203, 209 (1991); *United States Postal Serv.* v. *Brennan*, 579 F.2d 188, 191-92 (2d Cir. 1978).

If denied the opportunity to intervene and defend their interests in this case, Intervenors would be impaired in their ability to defend the Pledge in any subsequent proceeding. Permissive intervention is designed to protect parties from such impairment. *See* 7C Wright, Miller & Kane § 1911 (where intervention as of right would be improper, the scales of justice may nevertheless be tipped "in favor of allowing permissive intervention" when the doctrine of *stare decisis* would bar the protection of interest in subsequent suit); *see also EEOC* v. *Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1045-46 (D.C. Cir. 1998) (counseling "flexible approach" to permissive intervention under Fed. R. Civ. P. 24(b)) (emphasis added).

CONCLUSION

For the reasons set forth above, Intervenors meet all the requirements for intervention as of right under Mass. R. Civ. P. 24(a) and satisfy the criteria for permissive intervention under Mass. R. Civ. P. 24(b). Intervenors therefore respectfully request that their Motion to Intervene be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Patrick Kennedy, hereby certify that a true copy of the above document was served upon the attorney of record for each other party by first-class mail, postage prepaid, on October 20, 2011.

J. Patrick Kennedy, BBO #565778