IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DWIGHT RUSSELL, et al., *Plaintiffs,* v. HARRIS COUNTY, TEXAS, et al., *Defendants.*	Civil Action No. 4:19-cv-226

MEMORANDUM IN SUPPORT OF OPPOSED MOTION TO INTERVENE BY THE STATE OF TEXAS, GREG ABBOTT, GOVERNOR OF TEXAS, AND KEN PAXTON, ATTORNEY GENERAL OF TEXAS

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INTRODUCTION

In *ODonnell v. Harris County*, 892 F.3d 147, 163-66 (5th Cir. 2018) (*ODonnell I*), the Fifth Circuit provided clear guidance about the procedures necessary to satisfy the Constitution in bail proceedings. When this Court provided substantive—not just procedural—relief on remand, the Fifth Circuit reversed, and instructed the Court to implement the relief the *ODonnell I* panel ordered. *ODonnell v. Goodhart*, 900 F.3d 220, 225-26, 228 (5th Cir. 2018) (*ODonnell II*). That decision "binds the district courts in this circuit." *ODonnell v. Salgado*, 913 F.3d 479, 482 (5th Cir. 2019) (*ODonnell III*).

Despite that, plaintiffs filed this suit and later sought emergency, substantive relief ordering the release of thousands of felony arrestees—exactly what the Fifth Circuit rejected. In response, the defendants here chose simply to raise the white flag: They "do not contest" any of the plaintiffs' arguments, even though it portends further federal intrusion into the State's criminal justice system and imperils the public safety as they now appear to seek the immediate release of those accused of serious felonies and their motion also potentially seeks the release of alleged murderers, rapists, and burglars. *See, e.g.*, Gabrielle Banks, *Harris County Judge Releases Murder Suspect After the Inmate Said He Feared Coronavirus in Jail*, Houston Chron. (Mar. 23, 2020), https://bit.ly/2y8K7lx.

The State of Texas, the Governor of Texas, and the Attorney General of Texas ("State Intervenors") seek to intervene to defend the bail procedures that form the basis for plaintiffs' confinement. Because the liberty interest at stake and the bail procedures at issue are creatures of state law, the State Intervenors have an interest in the outcome of this case. They also have an interest in protecting the public's health and safety in the wake of the coronavirus pandemic. At the moment, these important interests are entirely unrepresented in this case. Mandatory intervention under Civil Rule 24(a)(2) is therefore appropriate. At the very least, the State Intervenors should be permitted to intervene under Civil Rule 24(b)(1)(B).

This Court's recent order only highlights the need for intervention here. On March 27, 2020, this Court ordered the Attorney General—a non-party—"to respond to the plaintiffs' motion" requesting a temporary restraining order and preliminary injunction. This request for briefing by the Attorney General is certainly appropriate because the defensive position in this case is not being represented by the "defendants." This Court has asked the Attorney General to supply what the defendants will not. Yet the Attorney General may not be bound by orders of this Court unless and until it makes him a party to the litigation. *Cf. Smith v. Bayer Corp.*, 564 U.S. 299, 312 (2011). The Attorney General intends to substantively respond, but rather than briefing as invited amicus, he respectfully asks the Court to grant the motion to intervene in order to fully participate as a party and defend the merits.

ARGUMENT

I. The Court Should Permit the State Intervenors to Intervene Under Civil Rule 24(a)(2).

Under the Federal Rules of Civil Procedure, a non-party must be allowed to intervene (1) when it has an interest relating to the subject of the action and (2) disposing of the action may practically "impair or impede" that interest, (3) unless the parties "adequately represent" that interest. Fed. R. Civ. P. 24(a)(2). The State Intervenors may intervene as of right in this matter because they satisfy all three requirements.

A. The State Intervenors have important interests that relate to the subject of this action.

The Fifth Circuit has said before that courts may not define the requisite interest for intervention purposes "too narrowly." *Ford v. City of Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001). The State Intervenors have a "direct, substantial, legally protectable interest." *In re Lease Oil Antitrust Litig.*, 570 F.3d 244, 250 (5th Cir. 2009) (quotation omitted). And those interests are related to "the subject of the action"—requisite bail procedures designed to protect the public and ensure operation of the

State's criminal justice system. Fed. R. Civ. P. 24(a). An interest "is sufficient if it is of the type that the law deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Wal–Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 566 (5th Cir. 2016) (quotation omitted).

Together the State of Texas, the Governor of Texas, and the Attorney General of Texas have an interest in the enforcement of state laws, the orderly operation of the State's criminal justice system, the public's safety from recidivism, and the public health in the face of a rapidly developing pandemic. Although the State Intervenors do not need Article III standing to intervene as defendants, *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1952 (2019), their interests at stake here would nevertheless suffice to meet Article III standing's higher bar.

The State of Texas unquestionably has a *parens patriae* interest in the well-being of her citizens. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982) ("[A] State has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general."); *see also Massachusetts v. EPA*, 549 U.S. 497, 520 & n.17 (2007) (noting States are entitled to "special solicitude in [Article III standing] analysis" because of their *parens patriae* status); *Louisiana v. Texas*, 176 U.S. 1, 19 (1900). That includes an interest in keeping the public safe from crime. *See, e.g.*, *Addington v. Texas*, 441 U.S. 418, 426 (1979). It also includes an interest in keeping the public healthy in the face of disease. A State "has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Jacobson v. Massachusetts*, 197 U.S. 11, 27-28 (1905); *cf. Sierra Club v. City of San Antonio*, 115 F.3d 311, 315 (5th Cir. 1997).

The State of Texas also has a sovereign interest in the enforcement of its own laws. *Alfred L. Snapp & Son, Inc.*, 458 U.S. at 601 ("the power to create and enforce a legal code" is one "easily identified" example of sovereign interest). As the Fifth

Circuit put it, "[t]he state *qua* state has an important sovereign interest" in ensuring that its own statutory schemes are "properly enforced." *Sierra Club v. City of San Antonio*, 115 F.3d 311, 315 (5th Cir. 1997). And like every sovereign, Texas has an interest in overseeing its own criminal justice system. *See Kelly v. Robinson*, 479 U.S. 36, 49 (1986) (noting "the States' interest in administering their criminal justice systems free from federal interference"); *cf. Gamble v. United States*, 139 S. Ct. 1960, 1968 (2019). And Texas state law creates the liberty interest that forms the basis of this action. *See ODonnell I*, 892 F.3d at 153, 158 (citing Tex. Const. art. I, § 11 and Tex. Code Crim. Proc. art. 17.15).

The Governor of Texas and the Attorney General of Texas are both tasked with important responsibilities to further these interests. Chapter 418 of the Texas Government Code, for example, furnishes the Governor with sweeping authority to protect the public from disasters like the coronavirus pandemic, which presents an "imminent threat of widespread or severe damage, injury, or loss of life." Tex. Gov't Code § 418.004(1).

That authority includes the power to declare a state of disaster; *id.* § 418.014, to use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster;" *id.* at § 418.017(a); to control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area, *id* at § 418.018(c); and to suspend the operation of certain laws, *id.* § 418.016(a). *See also* Proclamation, Office of Tex. Governor (March 13, 2020). And the Attorney General "has general and constitutional authority to represent the state and its officials in all actions in which the state is interested," like this one. *Hundall v. UTEP*, 2013 WL 12090655, at *3 (W.D. Tex. 2013) (citing Tex. Const. art. IV, § 22 and Tex. Gov't Code §§ 402.021, 402.023).

In sum, the State Intervenors have important interests in the public safety and public health, the implementation of the State's criminal justice system, and the

enforcement of state laws. This suit, which seeks to further undermine entirely lawful bail practices with a view to setting loose potentially dangerous felony arrestees, implicates each of those interests. It also has state-wide implications, which further demonstrates why the State Intervenors should be permitted to intervene. Local officials, like the defendants, cannot represent the State's interests because local governments are "not endowed with the same prerogatives in representing the interests of its residents as is the state in protecting the interests of its citizens, *particularly where, as here, city and state level interests may be in conflict*." *City of Safety Harbor v. Birchfield*, 529 F.2d 1251, 1256 n.7 (5th Cir. 1976) (emphasis added).

B. Disposition of this action will impair the State Intervenors' interests.

The State Intervenors must also show "that disposing of the action may as a practical matter impair or impede" their interests. Fed. R. Civ. P. 24(a)(2). That does not require a would-be intervenor to demonstrate that a judgment in the action would have binding effect on the would-be intervenor. All that matters is whether the judgment "may" have a "practical" impact on the would-be intervenor's interest. *See Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 828-29 (5th Cir. 1967). A decision awarding the relief plaintiffs seek here—a temporary restraining order or a preliminary injunction potentially releasing over 4,000 felons—will undoubtedly do that. The nominal defendants here have agreed to give plaintiffs everything they ask. Proposed Order 1. Acceding to that request will practically impair every interest detailed above.

Injunctive relief will imperil the State's interest in public safety. The plaintiffs ask this Court to order the release of thousands of persons arrested on felony charges—including murder, rape, burglary, and domestic violence.[1] And the

[1] Plaintiffs' Motion asks for the release of *any* person arrested for a felony offense without limit to the type of offense. Plaintiffs' most recent proposed TRO summitted around midnight on March 28, 2020

defendants, in an effort to signal their support for bail reform policies, do not oppose the plaintiffs' request. A recent study conducted by a former federal judge, however, shows that the unsecured pretrial release of arrestees pursuant to bail-reform efforts in Chicago, Illinois, has already led to an increase in violent crime there. *See* Paul G. Cassell & Richard Fowles, *Does Bail Reform Increase Crime?* (Univ. of Utah Coll. of Law, Research Paper No. 349, Mar. 2, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3541091; Paul Cassell, *Bail Reform in Chicago Appears to Have Increased Crime*, Volokh Conspiracy (Feb. 19, 2020), https://bit.ly/3b3eRm9.[2]

Recent events in this State and elsewhere confirm what this new study suggests. Just last month, Jacques Dshawn Smith murdered two people one week after being having bail set in Dallas County, pursuant to a scheme similar to the one this Court has already ordered.[3] This double homicide has drawn "additional attention to a larger trend in the bail system in Dallas County, which was the subject of very vocal frustration in the Dallas City Council's Public Safety and Criminal Justice Committee." Charity Nicholson, *Dallas County Bail Reform Policies Scrutinized Following Increase in Homicides*, The Texan (Feb. 26, 2020), https://perma.cc/A397-MUKW; *cf.* Katie Honan, *NYPD Officials Say New Bail Law Is Leading to a Crime Increase*, Wall St. J. (Mar. 5, 2020), https://on.wsj.com/2IWFai1.

The threat to public safety is particularly acute for victims of domestic violence. Plaintiffs that this Court orders released would be required to stay at home under existing shelter-in-place orders. That will expose domestic violence victims—a spouse, a child, an elderly relative—to further violence at the hands of the same

seems to imply they may have a smaller class of arrestees in mind. In an abundance of caution, the State Intervenors must assume that the Plaintiffs request sweeps broadly.

[2] This "more recent scholarship," *Khan v. Normand*, 683 F.3d 192, 195 (5th Cir. 2012) (per curiam), undercuts the research that the plaintiffs presented to this court in the *ODonnell* case.

[3] Notably, the Plaintiffs' lawyers in this case from Civil Rights Corp were also involved in the bail litigation that brought about the creation of Dallas county's current permissive pre-trial release scheme.

attacker. That tragic story is already playing out across the world. *See* Emma Graham Harrison et al., *Lockdowns Around the World Bring Rise in Domestic Violence*, Guardian (Mar. 28, 2020), https://bit.ly/2xsxyBs; Marissa J. Lang, *Domestic Violence Will Increase During Coronavirus Quarantines and Stay-at-Home Orders, Experts Warn*, Wash. Post (Mar. 27, 2020), https://wapo.st/2QRVOn4.

And it is not just violent offenders that pose a threat. Released fraudsters will be presented with new opportunities to prey on Texans, especially the elderly, during this pandemic. Zack Friedman, *Beware These Coronavirus Scams*, Forbes (Mar. 20, 2020), https://bit.ly/2xzJT6B. Likewise burglars, regarded incorrectly by some as non-violent, and habitual drunk drivers, even those who have committed intoxication manslaughter, would be free to roam the streets under the Plaintiffs' requested relief.[4]

If those practical effects for individual Texans were not enough, a decision here could likely impact the State Intervenors' institutional and legal interests as well. *See Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (noting "a state official directly concerned in effectuating the state policy has an 'interest' in a legal controversy involving the Comptroller which concerns the nature and protection of the state policy"). The State Intervenors believe, based on Plaintiffs' filings and sworn statements made by high-ranking Harris County officials in other cases, that plaintiffs are currently confined pursuant to bail proceedings that faithfully implement Texas law. *See ODonnell I*, 892 F.3d at 153, 158.

If this Court releases over 4,000 felons on what amounts to a personal recognizance bond, that will violate Texas law: The Code of Criminal Procedure dictates that only the court before whom a defendant's criminal case is pending may

[4] It is worth pointing out that Plaintiffs not only seek the release of those currently in the jail, but also those that *will be* arrested during the life of the Court's order. This is alarming because it is simply impossible to know exactly what kind of felons will be brought into the Harris County Jail and then promptly let go in the future.

release on personal bond a defendant who is charged with various serious felonies. Tex. Code. Crim. Proc. art. 17.03. Plus, Texas law dictates that mandatory bond conditions must be imposed for certain crimes. *See, e.g., id.* art. 17.41 (listing mandatory conditions for those accused of sexual crimes involving a child victim); art. 17.441 (requiring the installation of a breathalyzer in the vehicle of habitual drunk drivers). It is unclear how this Court could possibly ensure that all mandatory conditions are put into place and ensure that the conditions are enforced.

The State Intervenors also believe the procedures that formed the basis for plaintiffs' existing confinement fully complied with the U.S. Constitution and the terms of the Fifth Circuit's model injunction. *See ODonnell I*, 892 F.3d at 164-66. Awarding yet further relief interferes with the operation of the State's bail scheme in accordance with state law. *Accord Smith v. Pangilinan*, 651 F.2d 1320 (9th Cir. 1981); *Avery v. Heckler*, 584 F. Supp. 312 (D. Mass. 1984); *Dixon v. Heckler*, 589 F. Supp. 1512 (S.D.N.Y. 1984).

Moreover, any decision cutting against binding precedent might impact other cases where the State or its officials *are* parties. That interest alone suffices. *Atlantis Dev. Corp.*, 379 F.2d at 828-29. An earlier decision by the Fifth Circuit is a perfect example. The *ODonnell* case produced several published decisions from the Fifth Circuit. *See ODonnell v. Goodhart*, 900 F.3d 220 (5th Cir. 2018) (*ODonnell II*); *ODonnell v. Harris County*, 892 F.3d 147 (5th Cir. 2018) (*ODonnell I*). And the Fifth Circuit has already made it clear that an automatic release mandate, like the one Plaintiffs seek here, is improper because it "smuggles in a substantive remedy via a procedural harm." *ODonnell II*, 900 F.3d at 228. As the Fifth Circuit put it, release simply "goes too far." *Id.* Those decisions not only control in this case, but also in similar cases where state officials *are* participating as defendants. *See, e.g.*, *Daves v. Dallas County*, 341 F. Supp. 3d 688, 691 (N.D. Tex. 2018) (citing *ODonnell I* and

ODonnell II); *Booth v. Galveston County*, No. 3:18-CV-00104, 2019 U.S. Dist. LEXIS 133937, at *23-25 (S.D. Tex. Aug. 7, 2019) (same).

C. The parties cannot show that they adequately represent the State Intervenors' interests.

The next question is whether the existing parties adequately represent the State Intervenors' interests. Arguably, the burden of persuasion on that question belongs to the parties. *See* 7C Wright & Miller, Federal Practice & Procedure § 1909 (3d ed.). But even if the State Intervenors shoulder it, their burden is "not a substantial one." *Brumfield v. Dodd*, 749 F.3d 339, 345 (5th Cir. 2014). Then-Judge Blackmun summarized three scenarios when inadequate representation obviously exists—namely, when the party sought to be replaced (1) may be colluding with the opposing party, (2) takes a position adverse to the would-be intervenor, or (3) fails to diligently pursue the would-be intervenor's interests. *Stadin v. Union Elec. Co.*, 309 F.2d 912, 919 (8th Cir. 1962). "'The potential intervener need only show that the representation *may* be inadequate.'" *John Doe No. 1 v. Glickman*, 256 F.3d 371, 380 (5th Cir. 2001) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added).

Here, there is no question that the defendants are inadequately representing the State Intervenors' interests. In fact, they are sabotaging them. Rather than defending against plaintiffs' claims, defendants have conceded defeat. As the plaintiffs' proposed order explains:

> Defendants do not contest the factual allegations in Plaintiffs' Motion, that Plaintiffs are likely to succeed on the merits of their constitutional arguments, that relief is in the public interest, or that Plaintiffs are facing ongoing irreparable harm, including a heightened risk of serious illness or death if there is a widespread outbreak of Covid-19 in the Harris County Jail.

Proposed Order 1. In other words, the "Defendants do not contest" *anything*—all while knowing that the Fifth Circuit held that the automatic release mandate Plaintiffs seek is improper. *ODonnell II*, 900 F.3d at 228. Accordingly, this case easily

satisfies this prong under any of the classic bases for finding inadequate representation.

First, the defendants' decision to give plaintiffs everything they want gives rise to the possibility of outright collusion between the plaintiffs and the defendants. Plaintiffs want release from jail—despite having been given bond hearings that fully complied with this Court's decision on remand from the Fifth Circuit—because of fear that they will encounter the coronavirus in custody. Defendants have agreed to give them everything they asked for. This "situation emanate[s] from the collusion of the original parties." *Cuthill v. Ortman-Miller Mach. Co.*, 216 F.2d 336, 339 (7th Cir. 1954). At the very least, it raises an *inference* of collusion, which is itself sufficient to support intervention. *See Park & Tilford v. Schulte*, 160 F.2d 984, 988 (2d Cir. 1947) (permitting intervention to avoid "even the appearance of any concerted action").

Second, the defendants have taken a position that is adverse to the State Intervenors' interests. Rather than seeking to prevent felony arrestees from being released en masse, protect the public from further exposure to the coronavirus, maintain orderly operation of the State's criminal justice system, and help preserve already scarce police resources, defendants have chosen to do the opposite. On countless occasions, this Court has recognized that taking a position so diametrically-opposed to the would-be intervenors' interests results in inadequate representation. *See, e.g.*, *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 435 (5th Cir. 2011); *Ford v. City of Huntsville*, 242 F.3d 235, 240-41 (5th Cir. 2001).

Finally, the defendants are failing to diligently pursue the State Intervenors' interests. Even if the defendants have not colluded with the plaintiffs and even if they have not affirmatively taken an adverse position (by simply refusing to take any position at all), the defendants' representation is still plainly inadequate. Where an existing party and the would-be intervenor have a unity of interests, representation is still be inadequate where the existing party fails to diligently pursue those

interests. *Int'l Mortg. & Inv. Corp. v. Von Clemm*, 301 F.2d 857, 861 (2d Cir. 1962) (noting existing parties "have shown a conspicuous disinterest in asserting the rights of" the would-be intervenor); *Pyle-Nat'l Co. v. Amos*, 172 F.2d 425, 427 (7th Cir. 1949) (permitting intervention where plaintiffs "arranged a settlement with the defendants for exactly one-half of the sum contended by the suit to be due"). Here, the defendants have announced that they intend to do *nothing* on that score.

D. The request to intervene is timely.

Finally, this motion to intervene is "timely." Fed. R. Civ. P. 24(a). The Fifth Circuit has noted that Rule 24's timeliness inquiry "is contextual; absolute measures of timeliness should be ignored." *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994). Plaintiffs filed this case on January 21, 2019, ECF No. 1, and it has barely progressed since then. Instead, the parties have repeatedly sought stays of this proceeding. The State Intervenors, therefore, seek intervention well "before discovery [has] progressed" and they do not "not seek to delay or reconsider phases of the litigation that ha[ve] already concluded." *Wal-Mart Stores*, 834 F.3d at 565. Moreover, the State Intervenors have sought to intervene at the earliest possible moment. They may not have been able to intervene earlier—*i.e.*, before the defendants abandoned their duty to defend against this action. *See Jansen v. City of Cincinnati*, 904 F.2d 336, 341 (6th Cir. 1990) (noting the intervenors "were not aware . . . that their interest was inadequately represented by the City until the City responded to the plaintiffs' summary judgment motion").

II. Alternatively, the Court Should Permit the State Intervenors to Intervene Under Civil Rule 24(b)(1)(B).

If the Court does not grant the State Intervenors intervention as of right—which it should—it should grant for permissive intervention because the State Intervenors' position and this suit have a common question of law or fact. *See* Fed. R. Civ. P. 24(b)(1)(B) ("On timely motion, the court may permit anyone to intervene

who . . . (B) has a claim or defense that share with the main action a common question of law or fact.").

To obtain permissive intervention under Rule 24, the State Intervenors must demonstrate that: (1) the motion to intervene is timely; (2) its claim or defense has a question of law or fact in common with the existing action; and (3) intervention will not delay or prejudice adjudication of the existing parties' rights. *Id.*; *see United States v. LULAC*, 793 F.2d 636, 644 (5th Cir. 1986) ("Although the court erred in granting intervention as of right, it might have granted permissive intervention under Rule 24(b) because the intervenors raise common questions of law and fact."). The State Intervenors satisfy each of these factors.

First, as stated above, the State Intervenors' motion is timely. *See supra* Part I.D. Second, because the State Intervenors have filed the motion before the due date for the responsive pleading this Court requested, *see* Mar. 27, 2020, Order at 1, granting the Motion will not cause any delay or prejudice to the existing parties' rights to litigate the case. Third, the State Intervenors share common questions of law and fact with the main action. As stated above, this lawsuit is premised on state-created liberty interest and state-prescribed bail procedures. *See ODonnell I*, 892 F.3d at 153, 158. State judges utilize similar bail procedures across the State. *See, e.g.*, *Daves v. Dallas County*, 341 F. Supp. 3d 688 (N.D. Tex. 2018). The plaintiffs' lawsuit calls those procedures into question everywhere they are used. Only the State Intervenors will provide a state-wide perspective—and, at this point, only the State Intervenors will provide an adversarial presentation.

In considering whether to grant permissive intervention, the Court may also consider "(1) whether an intervenor is adequately represented by other parties; and (2) whether intervention is likely to contribute significantly to the development of the underlying factual issues." *Marketfare (St. Claude), L.L.C. v. United Fire & Cas. Co.*,

Nos. 06–7232, 06–7641, 06–7639, 06–7643, 06–7644, 2011 WL 3349821, at *2 (E.D. La. Aug. 3, 2011) (citing *Clements*, 884 F.2d at 189).

These factors provide additional support for granting permissive intervention in this case. As already discussed, the State Intervenors have a significant interest in protecting the public and overseeing the state criminal justice system. *See supra* Part I.A. These interests will not be adequately represented by defendants. *See supra* Part I.C. And the State Intervenors' ability to address these interests will contribute significantly to the just and equitable resolution of the constitutional questions presented. As this Court's order directing the Attorney General to respond acknowledges, Mar. 27, Order 1, the State Intervenors will raise additional legal issues that the party are unwilling to raise themselves.

Thus, even if the Court concludes that the State Intervenors are not entitled to intervene as of right, it should grant their request for permissive intervention.

CONCLUSION

The Court should grant the State Intervenors' motion to intervene as of right or, alternatively, to intervene permissively, and grant them all the same rights and responsibilities as a party to the lawsuit.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

I hereby certify that, I conferred with counsel for Plaintiffs and Defendants, via email on March 29, 2020, regarding the substance of the foregoing instrument. However, due to the fast-moving nature of this litigation, understandably, no response has yet been received. The parties are assumed to be opposed.

/s/Adam Arthur Biggs
ADAM ARTHUR BIGGS
Special Litigation Counsel

CERTIFICATE OF SERVICE

I, Adam Arthur Biggs, hereby certify that on this the 29th day of March, 2020, a true and correct copy of the foregoing document was transmitted using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS