

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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JAMES CHAMBERLAIN,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
ALFRED MONTOYA, MD,	)	
DIRECTOR, MANCHESTER VA	)	Case No. 1:19-CV-00509-PB
MEDICAL CENTER,	)	
	)	
<i>Defendant,</i>	)	
	)	
NORTHEAST POW/MIA	)	
NETWORK et al.,	)	
	)	
<i>Intervenors.</i>	)	

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**INTERVENORS' MEMORANDUM IN SUPPORT OF ITS MOTION TO  
INTERVENE**

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## **INTRODUCTION**

The Northeast POW/MIA Network, represented by Robert Jones of Meredith, NH, its President; and members Paul Martin of Lyndeborough, NH; David Haskell of South Tamworth, NH; and Bruce Garry of Moultonborough, NH (collectively, the “Network”) submits this memorandum in support of its Motion to Intervene as defendants. The Network seeks to intervene here to protect its real-property interests and anti-discrimination interests in its Missing Man Table located in the lobby of the MVAMC (the “Table” or “Display”). The Network owns and maintains the Table to honor and remember prisoners of war and those missing in action (“POW/MIA”) and for the benefit of MVAMC patients, visitors, and employees. The Table, much like Missing Man Tables maintained at many U.S. Department of Defense (“DOD”) and U.S. Department of Veterans Affairs (“VA”) facilities across the country is consistent with DOD and VA missions and policies, and serves as a reminder of the selfless service, sacrifice, and valor of our POWs and those who remain MIA. Plaintiff’s suit threatens the Network’s interests by alleging that the Table’s placement off to the side of the lobby of the MVAMC violates the Establishment Clause and seeking the permanent removal of one of the core aspects of the Table: a family Bible donated to the Network for display on the Table by one of its oldest and most decorated members.<sup>1</sup>

## **STATEMENT OF FACTS**

### **I. POW/MIA AND THE NORTHEAST POW/MIA NETWORK**

During the Vietnam War, family members whose loved ones were listed as POW/MIA started a loosely organized group that evolved into the National League of POW/MIA Families

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<sup>1</sup> The MVAMC filed its first responsive pleading less than three weeks ago, and no other party has sought to intervene or join the action. (Dkt. No. 7).

(the “League”). (*Mission*, NATIONAL LEAGUE OF POW/MIA FAMILIES, <https://www.pow-miafamilies.org/mission.html> (last visited August 8, 2019)). The League’s mission is “to obtain the release and return of all prisoners, the fullest possible accounting for the missing, and the repatriation of remains of those not yet recovered who died while serving our nation.” (*Id.*).

The Network, while not an official member of the League, shares the same mission: work to return American POW/MIAs, repatriate the remains of deceased soldiers, and account for those who have not returned home; the Network also works to honor and remember those who are POW/MIA. (*Welcome to the Northeast POW/MIA Network*, NORTHEAST POW/MIA NETWORK, <https://northeastpowmianetwork.org/> (last visited August 8, 2019)). The Network consists of veteran and non-veteran volunteers who donate their time and money to call attention to the plight of American POW/MIAs. (*Id.*) The Network organizes an annual Freedom Ride dating back to 1993 and weekly vigils dating back to 1988. (Jones Aff., Ex. C at ¶¶ 6-7). The Network also owns and maintains the Table at the MVAMC lobby. (*Id.*, at ¶ 9; Martin Aff., Ex. D at ¶ 4). Members of the Network include Intervenor Bruce Garry of Moultonborough, NH, who is former U.S. Army, Army National Guard, and Department of Defense and served his country from 1972 until retirement in 2011; Robert Jones, of Meredith, NH, who is the President of the Network, served in the Navy and Marines from 1964 to 1968; David Haskell of South Tamworth, NH, served in the Marines and the Army from 1960 to 1963; and Paul Martin of Lyndeborough, NH, who is a Vietnam Veteran who served two tours of duty in the Army between 1968 and 1971. (Ex. C at ¶¶ 1, 4; Ex. D at ¶ 1).

## II. THE MISSING MAN TABLE

In addition to being widely recognized for the iconic POW/MIA flag, the League is well known for the Missing Man Table, also known as the “Fallen Comrade Table,” which serves as a remembrance table set in honor of POW/MIAs and “has special meaning to all service members

and veterans.” (Compl. ¶ 17). The Table’s tradition dates to the Vietnam War and “was started by a group of Vietnam combat pilots.” (Compl. ¶ 18). The Table has become ubiquitous across the nation and is displayed at military and other public forums around the nation, including an Air Force ball in Alaska,<sup>2</sup> the Marines’ Mess Night in Albany Georgia,<sup>3</sup> and at a public library in Athol, Massachusetts.<sup>4</sup> The Missing Man Table is also a permanent fixture at the VA Healthcare Center in Wilmington, Delaware.<sup>5</sup>

Symbolism is embedded in each aspect of the Missing Man Table, and U.S. policy has adopted the Missing Man Table’s symbolism. Along with a prominent display of the POW/MIA flag, the Table is round to reflect citizens’ everlasting concern for the POWs or the missing, the cloth is white to denote the “purity of [the soldier’s] response to our country’s call to arms,” the chair is empty symbolizing the missing soldiers, a Bible represents “faith in a higher power and the pledge to our country,” and several other items provide similar symbolism.<sup>6</sup> (DEP’T OF THE

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<sup>2</sup> In 2015, members of the U.S. Air Force in Alaska, while celebrating the Air Force’s 68<sup>th</sup> birthday, honored America’s POW/MIA at its ball with a featured Table. Angela Webb, *Air Force celebrates 68 years*, Alaska Star (Sept. 30, 2015), available at <http://www.alaskastar.com/2015-09-30/air-force-celebrates-68-years>.

<sup>3</sup> The Marine Corps Logistics Base in Albany, Georgia displayed a Table during Mess Night for service members and family three years ago. Nathan Hanks, *Marines pay homage to fallen comrades, family members during holiday season*, Marines (Nov. 22, 2016), available at <https://www.albany.marines.mil/News/News-Article-Display/Article/1011530/marines-pay-homage-to-fallen-comrades-family-members-during-holiday-season/>.

<sup>4</sup> *‘Missing Man Table’ ceremony presented at Athol Public Library*, Athol Daily News (Nov. 5, 2018), available at <https://www.atholdailynews.com/AN-A1-Missing-man-table-program-21343960>.

<sup>5</sup> The VA Healthcare Center installed a Table as a permanent fixture in the days leading up to Veterans Day in 2016. *Missing Man Remembrance Table unveiled*, WECT (Nov. 8, 2016), available at <https://www.wect.com/story/33660734/missing-man-remembrance-table-unveiled/>.

<sup>6</sup> The Missing Man Table also includes a single red rose to remind observers of the soldier’s families and loved ones, a yellow ribbon that stands for “everlasting hope for a joyous return,” a slice of lemon signifying the soldiers’ “bitter fate,” a pinch of salt which represents the tears of the missing and their families, a candle symbolizing the hope of the soldiers’ return, and an inverted glass signifying the missing’s inability to share a toast. (DEP’T OF THE NAVY, SOC. USAGE AND PROTOCOL HANDBOOK, OPNAVIST 1710.7A, POW/MIA TABLE (2001), excerpted at Ex. E).

A.F., GUIDE TO PROTOCOL, A.F. PAMPHLET 34-1202, POW/MIA CEREMONIES (2019), excerpted at Ex. F, at p. 33; DEP'T OF THE NAVY, SOC. USAGE AND PROTOCOL HANDBOOK, OPNAVIST 1710.7A, POW/MIA TABLE (2001), excerpted at Ex. E, at p. 8-6).

The Network owns and maintains the Table on display in the MVAMC lobby. (Ex. C at ¶ 9; Ex. D at ¶ 4). Consistent with the traditional guidelines outlined above, the Table includes (among the other contents) a Bible donated by U.S. Army Air Corps Technical Sergeant (Ret.) Herman “Herk” Streitburger, a former World War II POW in Germany—one of the Network’s most decorated members. (Ex. C at ¶ 10; Ex. D at ¶ 5).

### **III. THE NETWORK’S PROPERTY AND ANTI-DISCRIMINATION INTERESTS IN THE MISSING MAN TABLE**

#### **A. The Network’s Ownership of the Missing Man Table**

The Network may properly display and maintain the Table in the lobby of the MVAMC. Under the VA policy in place when the Network introduced the Table, parties interested in establishing a display in the MVAMC needed to petition the MVAMC facility director for approval. (DEP’T OF VETERANS AFF., MEMORANDUM ON POL’Y GUIDANCE ON RELIGIOUS EXERCISE AND EXPRESSION IN VA FACILITIES AND PROP. UNDER THE CHARGE AND CONTROL OF VA (2016), excerpted at Ex. G.). The VA facility director may authorize any display so long as it will benefit VA patients, beneficiaries, or employees and that the display will not interfere with the facility’s operations. (*Id.*) On or before September 21, 2018, MVAMC Director Alfred Montoya approved the Network’s Missing Man Table in accordance with the Policy. (Martin Aff., Ex. D at ¶ 4). And on July 3, 2019, the VA issued a revised policy allowing for the inclusion of religious symbols, without director approval, in public areas of VA facilities so long as each display is “of the type that follows in the longstanding tradition of monuments, symbols, and practices that simply recognize the important role that religion plays in the lives of many

Americans.” (DEP’T OF VETERANS AFF., VA DIRECTIVE 0022, RELIGIOUS SYMBOLS IN VA FACILITIES (2019), attached as Ex. H). The display continues to meet the VA’s standards under both the new and old guidelines and, as a result, the Network’s property interest in maintaining the Table stands.

**B. The Network’s Anti-Discrimination Interest**

The Plaintiff’s prayer for relief would require the MVAMC to reject the Network’s display *merely because* it contains a religious symbol. (Compl., ¶¶ 21, 28). The Network has a First Amendment interest in avoiding viewpoint discrimination by the federal government against its private display of its traditional Missing Man Table assembled to honor POW/MIA.

**IV. PROCEDURAL HISTORY**

In September 2018, the Network began displaying the Table in the lobby of the MVAMC. (Ex. D at ¶ 3). In accordance with tradition, the display included a Bible. (*Id.*). In May, Plaintiff filed the Complaint seeking, among other relief, injunctive relief requiring the permanent removal of the Bible from the Table. (Compl., ¶ 28). The U.S. Department of Justice moved to dismiss on July 22, on behalf of Alfred Montoya, M.D., the director of the MVAMC. (Dkt. No. 7). The relief Plaintiff seeks would permanently remove the Network’s property by requiring Director Montoya to remove the Bible from the Table solely because the Bible is a Christian symbol. (Compl., ¶¶ 21, 28).

## ARGUMENT

### **I. THE NETWORK’S PROPERTY INTEREST AND ANTI-DISCRIMINATION INTEREST JUSTIFY INTERVENTION AS OF RIGHT**

Under FED. R. CIV. P. 24(a)(2),<sup>7</sup> the four intervention factors are as follows: “(1) a timely application for intervention; (2) a demonstrated interest relating to the property or transaction that forms the basis of the ongoing action; (3) a satisfactory showing that the disposition of the action threatens to create a practical impairment or impediment to its ability to protect that interest; and (4) a satisfactory showing that existing parties inadequately represent its interest.” *Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998). Courts review these factors holistically when analyzing a proposed intervention. *Daggett v. Comm’n on Governmental Ethics and Election Practices*, 172 F.3d 104, 113 (1st Cir. 1999); *see also Patch*, 136 F.3d at 204. Thus, courts have a significant “measure of latitude” in interpreting Rule 24(a)(2). *Daggett*, 172 F.3d at 113.

As shown below, the Network can make this four-factor showing. The timeliness of the POW/MIA’s motion, the POW/MIA’s fundamental interests at stake, and the divergence of the VA’s public interest mission and the Network’s individualized interests justify intervention.

#### **A. The Motion to Intervene is Timely.**

While there is no bright-line rule for timeliness, courts examine the totality of the relevant circumstances case-by-case. *See New Hampshire Lottery Comm’n v. Barr*, 2019 WL 1099715, at \*2 (D.N.H. 2019) (*citing Banco Popular de P. R. v. Greenblatt*, 964 F.2d 1227, 1230

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<sup>7</sup> Fed. R. Civ. P. 24(a)(2) states:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.

(1st Cir. 1992)). The four factors considered when evaluating a given motion's timeliness are “(1) the length of time the applicant knew or reasonably should have known that its interest was imperilled[sic] before it moved to intervene; (2) the foreseeable prejudice to existing parties if intervention is granted; (3) the foreseeable prejudice to the applicant if intervention is denied; and (4) idiocratic circumstances which, fairly viewed, militate for or against intervention.” *Greenblatt*, 964 F.2d at 1231.

The Network is filing three weeks after the Defendant's initial response to the Complaint.<sup>8</sup> The motion, moreover, will not delay the other parties' ability to proceed in this case or interrupt any ongoing settlement negotiations. *See, e.g., Varsity Wireless, LLC v. Town of Boxford*, 2016 WL 11004357, at \*4 (D. Mass. 2016) (finding no prejudice to existing parties in evaluating the timeliness of the intervention because there was no contemplation for settlement at the time, the scheduling conference had just been held, and the case was in its early stages). Thus, The Network's motion is timely.

**B. The Network's Ownership and Maintenance of the Table Shows a Direct Interest in the Property and its Right to Display the Table.**

“It is black-letter law that an aspiring intervenor's claim ‘must bear a sufficiently close relationship to the dispute between the original litigants.’” *Ungar v. Arafat*, 634 F.3d 46, 51 (1st Cir. 2011) (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 1989)). The interest cannot be “too contingent or speculative,” but “the interest must be direct and

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<sup>8</sup> The First Circuit has noted that “[o]ne highly relevant circumstance implicates the status of the case at the time when intervention is attempted” and that “[t]he more advanced the litigation, the more searching the scrutiny which the motion must withstand.” *Id.*, at 1231 (Cf. *Garrity v. Gallen*, 697 F.2d 452, 455 n. 6 (1st Cir.1983) (holding that “courts ordinarily ‘look with some disfavor’” on intervention motions post-judgment). Here, given the very early stages, with the MVAMC only having responded to the Complaint less than three weeks ago, the Network's motion does not warrant much scrutiny over timeliness.

‘significantly protectable.’” *Ungar*, 634 F.3d at 51-52 (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)).

The Network owns and maintains the Table that is the basis of Plaintiff’s Complaint. And under VA policy, which was drafted to protect the constitutional rights of private citizens who publicly display passive memorial tables, the Network has a constitutional interest to be free from discrimination in its display of the Bible—a key piece of the Missing Man Table. (Ex. G at p. 3) (VA guidance states that “VA must remain neutral regarding the views expressed by the group, to include the use of any religious or secular items in the display”). The relief Plaintiff seeks fundamentally threatens the Network’s interests.

These fundamental interests satisfy the intervention requirements. The Network’s Bible on its Table is the *sole* property on which Plaintiff bases this action. As described above, the Bible was donated to the Network for use on the Table. The Network’s direct ownership of the Bible and Table and its right to publicly display it demonstrates the closest possible relationship to the dispute between the Plaintiff and MVAMC, and therefore satisfies the interest requirements of Rule 24(a)(2).<sup>9</sup>

**C. Removal of the Bible from the Table Would Impair the Network’s Interests.**

Plaintiff seeks a permanent removal of the Bible from the Network’s Missing Man Table on display at the MVAMC. (Compl., ¶¶ 28). The Network’s real property interest in the Bible, and its interests in displaying the Missing Man Table in accordance with guidelines and tradition,

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<sup>9</sup> The First Circuit has rejected a narrow or literal interpretation to the meaning of “property or transaction” interest under Rule 24(a) in favor of a broader interpretation, but the POW/MIA’s direct property and anti-discrimination interests at stake would even satisfy the narrowest of interpretations. *See Daggett*, 172 F.3d at 110 (“Read literally, the ‘property or transaction’ reference of Rule 24(a) might appear to require a specific piece of property or contract, and the drafters may have intended a narrow reading...However, the case law has effectively rejected the narrow reading, although clear outer boundaries have yet to be developed.”) (*internal citations omitted*).

would all be impaired if the court orders a permanent removal of the Bible and thereby enjoins the Network from displaying a complete Missing Man Table. *Cf. B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 548 (1st Cir. 2006) (finding intervenors satisfied the Rule 24(a)(2) interest requirements because one of the proposed remedies included an injunction that would have required specific performance binding the intervenor).

**D. The MVAMC’s Divergent Interests and Failure to Argue for the Network’s Free Speech Rights Make the MVAMC Inadequate to Represent the Network’s Interests.**

Under Rule 24(a)(2), “an applicant for intervention need only make a minimal showing that the representation afforded by existing parties likely will prove inadequate.” *Patch*, 136 F.3d at 207 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). The standard requires the moving party to demonstrate “some tangible basis to support a claim of purported inadequacy.” *Id.* (citing *Moosehead Sanitary Dist. v. S.G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979)). Possible grounds for inadequacy include divergent interests between the named party and the intervenor. *Kellogg USA, Inc.*, 440 F.3d at 546 (“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”).

***i. The Network’s Strong Interests at Stake Necessarily Require Only a Minimal Showing of Inadequacy.***

Where the proposed intervenor is looking to achieve the same outcome as a governmental agency, the burden of persuasion is “ratcheted upward” to a presumption of adequate representation, requiring a “‘a strong affirmative showing’ that the agency . . . is not fairly

representing the applicants' interests." *Id.*<sup>10</sup> But courts must apply a sliding scale that reduces the adequacy test when there are stronger interests at stake. *Daggett*, 172 F.3d at 113-14.

Here, the Network's strong and direct property interest in the Bible and the Table, as well as its fundamental right to display the Table according to protocol and tradition and free from discrimination by the federal government, evidence such an overwhelmingly strong interest at stake that the court should require only a minimum showing of inadequacy.

***ii. The MVAMC Does Not and Cannot Argue that Plaintiff Seeks Unconstitutional Relief Prohibited by the Network's First Amendment Freedom of Speech Rights.***

The MVAMC's motion to dismiss makes strong arguments that (i) the Plaintiff does not have Article III standing to bring his claim, and (ii) that the Missing Man Table does not violate the Establishment Clause. (Dkt. No. 7). The motion, however, does not include a crucial third ground on which this court should dismiss this action: the Network's private display in the MVAMC's limited public forum is entitled to be free from viewpoint discrimination under the First Amendment's right to free speech. Plaintiff is seeking relief that ignores these fundamental rights. The Network has included this argument in its motion to dismiss filed in conjunction with this motion as Exhibit I.

Inadequacy can be evidenced by actions taken by the existing party. *Daggett*, 172 F.3d at 112. The missing third ground in the MVAMC's motion to dismiss is the type of inadequacy that justifies intervention. And this inadequacy makes sense because, by definition, it is not within the federal government's purview to advance the highly individualized private speech

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<sup>10</sup> The showing that an agency is not fairly representing the applicants' interest can be "discerned from actions that an existing party has already taken," or inadequate representation by the agency "can be reasonably predicted." *Daggett*, 172 F.3d at 112; *see also Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986).

interests of persons or groups, nor should it be. Thus, while the government and the intervenors seek the same outcome, it is essential that the court consider a fully adequate motion to dismiss. The Network, in the end, has the right to intervene to fully defend its personal and fundamental property and anti-discrimination interests at stake.

***iii. The Divergent Missions of the MVAMC and the Network Create Significant Conflicts that Make the MVAMC's Representation Inadequate.***

Inadequate representation of the Network's interests by MVAMC "can be reasonably predicted." *Id.* While both organizations honor our veterans, they do so in very different ways. The Network's interests are in the tradition of a Missing Man Table, symbolic of all who have served, and reserved to honor missing soldiers. (Ex. C at ¶¶ 2-3). These principles complement the Network's ownership interest in the Table inclusive of the donated Bible, as well as the Network's fundamental right to display the Table according to tradition and free from viewpoint discrimination. The MVAMC, on the other hand, honors our veterans "by providing exceptional health care that improves [veterans'] health and well-being." (*About VHA*, U.S. DEP'T OF VETERANS AFFAIRS, <https://www.va.gov/health/aboutVHA.asp> (last visited July 19, 2019)). Thus, while the MVAMC and the Network are presently aligned defending the Table, the MVAMC's mission well could conflict with its defense.

It follows that the MVAMC's responsibility to advocate for the broader public interest in general—and the health and wellness interests of veterans more specifically—diverges from the POW/MIA's fundamental and individualized interest in owning and displaying the Table consistent with tradition. If the VA finds itself dedicating resources that would otherwise be dedicated to its core mission confronting the healthcare challenges of veterans in New Hampshire, the MVAMC's initial interest in staunchly defending the Bible and the display may veer to a more general interest in avoiding lawsuits so that it may focus on its mission—saving

the lives of those who served our country. The MVAMC does not have a property interest at stake here, nor is it facing the threat of relief that would lead to discrimination against the MVAMC. Indeed, “a governmental entity charged by law with representing the public interest of its citizens might shirk its duty were it to advance the narrower interest of a private entity.” *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992).<sup>11</sup> The MVAMC will zealously defend its broad public interest, we can anticipate, which includes avoiding litigation so that it can focus on its mission to provide the best healthcare to veterans. Were the MVAMC to focus on the particularized property and anti-discrimination interests of the Network, it could well shirk its own fundamental duty to that broader public interest central to its mission. Thus, the MVAMC’s representation cannot adequately represent the Network’s highly individualized property interest in the Table and the Bible—and its right to display them according to tradition—that is the very subject of this action.

## **II. THE NETWORK, IN THE ALTERNATIVE, SHOULD BE GRANTED PERMISSIVE INTERVENTION.**

If the Court were to find that the Network does not satisfy the requirements for intervention as of right, the common questions of law and fact relating to the Network’s defenses of the Table would allow the Court to grant the motion permissively. Under Rule 24(b), the

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<sup>11</sup> *Cf. Trbovich*, 404 U.S. 528 (finding that the Secretary of Labor could not adequately represent a union member’s interest because he had the duty to serve two unique interests: the individual union member’s interest as well as the public’s interest); *Coal. of Arizona New Mexico Counties for Stable Econ. Growth v. Dep’t. of the Interior*, 100 F.3d 837 (10th Cir. 1996) (finding that a wildlife photographer could intervene in challenge to the Department of the Interior’s decision to protect the Mexican spotted owl under the Endangered Species Act because the photographer’s interest differs from the public interest that the agency must represent); *Sierra Club v. Espy*, 18 F.3d 1202, 1207-08 (5th Cir. 1994) (finding that the government could not adequately represent the timber industry because “[t]he government must represent the broad public interest, not just the economic concerns of the timber industry”); *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 776, 779-80 (4th Cir. 1991) (finding that the state environmental agency must represent the interests of all citizens and not just those in favor of its regulations, and therefore allowing an environmental group to intervene).

court may grant permissive intervention if the “applicant’s claim or defense and the main action have a question of law or fact in common,” so long as it would not “unduly delay or prejudice the adjudication of the original parties’ rights.” *Daggett*, 172 F.3d at 112-13; FED. R. CIV. P. 24(b)(1), (3). When the requirements of Rule 24(b) have been met, “the district court can consider almost any factor rationally relevant but enjoys very broad discretion in granting or denying the motion.” *Daggett*, 172 F.3d at 113.

The Network’s property interest and anti-discrimination interest surround the main common fact: the maintenance of the Table (inclusive of the Bible and according to tradition) in the main lobby of the MVAMC. And the same question of law that is central to the main action here—whether the Constitution requires the donated Bible to be permanently removed from the Table—is core to both the Network’s property and anti-discrimination interests. Because this motion to intervene comes at the very beginnings stages of this case, moreover, there is no indication that intervention by the Network would unduly delay or prejudice the original parties’ rights, especially where, for the time being, the Network’s interest and MVAMC’s interest in the outcome of this action are converged. Given the common questions of fact and law with the main action and the early stage at which this case stands, the court should find that POW/MIA has satisfied the threshold requirements under Rule 24(b)(1).

Assuming the Network has satisfied the Rule 24(b)(1) requirements, the Court may grant permissive intervention by considering any “rationally relevant” factor. Together with the factors outlined in the Network’s argument for intervention as of right, one additional factor is to consider the practical implications of permitting intervention based on the “interest test,” in which the court engages “disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700

(D.C. Cir. 1967). The Network's tremendous property interest and anti-discrimination interest in the outcome means that any decision in favor of the Plaintiff will have a profound impact on the Network's rights (and the rights of POW/MIA organizations and other veterans groups across the country). Due process and efficiency justify permissive intervention.

**CONCLUSION**

For the stated reasons above, the court should grant the Intervenor's Motion to Intervene.

Dated: August 15, 2019

Respectfully submitted,

/s/ Jeremy Eggleton  
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[REDACTED]

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon all counsel of record through the ECF system on August 15, 2019.

/s/ Jeremy Eggleton  
Jeremy Eggleton

**CONCURRENCE**

I hereby certify that, pursuant to Local Rule 7.1(c), a good faith attempt has been made to obtain concurrence in the relief sought.

/s/ Jeremy Eggleton  
Jeremy Eggleton