UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACCREDITING COUNCIL FOR INDEPENDENT COLLEGES AND SCHOOLS,
Plaintiff,
v.

JOHN KING, JR., in his official capacity as Secretary of the Department of Education, and the **UNITED STATES DEPARTMENT OF EDUCATION**,
Defendants,
and

COMMONWEALTH OF MASSACHUSETTS
One Ashburton Place
Boston, MA 02108;

STATE OF ILLINOIS
100 West Randolph Street
Chicago, IL 60601;

STATE OF MAINE
6 State House Station
Augusta, ME 04333;

STATE OF NEW YORK
120 Broadway, 3rd floor
New York, NY 10271;

DISTRICT OF COLUMBIA
441 4th Street, N.W., 6th Floor
Washington, DC 20001; and

THE ATTORNEY GENERAL OF MARYLAND
200 St. Paul Place, 16th Floor
Baltimore, MD 21202,

[Proposed] Defendant-Intervenors

Civil Action No. 16-2448 (RBW)

MEMORANDUM IN SUPPORT OF THE STATE MOVANTS' MOTION TO INTERVENE

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INTRODUCTION

The Commonwealth of Massachusetts, the States of Illinois, Maine, and New York, the Attorney General of Maryland, and the District of Columbia, by and through its Attorney General, (the "State Movants") hereby submit the following memorandum of law in support of their Motion to Intervene as defendants as of right under Rule 24(a) of the Federal Rules of Civil Procedure and, alternatively, with the Court's permission under Rule 24(b). The State Movants have important interests in this litigation that would be impaired if ACICS were to prevail and that cannot be represented adequately by Defendants. Accordingly, the State Movants' timely Motion to Intervene satisfies Rule 24(a)'s requirements for intervention as of right.

At issue in this litigation is the Secretary of Education's (the "Secretary") decision to terminate the recognition of the Accrediting Council for Colleges and Schools ("ACICS") as a federally recognized accreditor of postsecondary education institutions and programs. Following a lengthy administrative process that entailed multiple levels of review, the Secretary determined that ACICS was noncompliant with numerous regulatory criteria that are prerequisites for federal recognition. Based on "the nature and scope of ACICS's pervasive noncompliance," the Secretary exercised his discretion to terminate ACICS's federal recognition. *In the matter of: ACICS*, Dkt. No. 16-44-O, Decision of the Secretary (Dec. 12, 2016) at 1 (attached hereto as Exhibit 1); *see generally* 20 U.S.C. § 1099b.

The State Movants participated in the administrative process at issue in this litigation, filing comments with the Department of Education (the "Department") and testifying at ACICS's recertification hearing before the National Advisory Committee on Institutional Quality and Integrity ("NACIQI") opposing ACICS's application for renewal of recognition. *See* Letter of State Attorneys General Opposing the Application for Renewal of Recognition of ACICS (April

8, 2016) ("AG Letter") (attached hereto as Exhibit 2); Testimony of Christopher Madaio, Transcript of NACIQI Hearing pp. 147-158 ("NACIQI Testimony") (attached hereto as Exhibit 3). The State Movants each have ACICS-accredited schools currently operating within their borders, with a total of 63 ACICS-accredited campuses operating in their states.[1] As the State Movants' comments and testimony highlighted, the State Movants are charged with the enforcement of their state consumer protections laws. These laws, amongst other things, protect students from unfair and deceptive conduct by proprietary schools and colleges. In this role, the State Movants became familiar with the practices of ACICS through their investigations of ACICS-accredited institutions. The AG Letter explained:

> [O]ur offices have investigated many ACICS accredited schools based on complaints from students, and found a fundamental lack of substantive oversight for student outcomes by the accreditor. Lapses that we have encountered include a failure to take action when improper job placement statistics are reported, inadequate job placement verification processes, and a lack of transparency and cooperation with investigations into student outcomes.

AG Letter. at 2; *see also* NACIQI Testimony at 148:3-20. The AG Letter and NACIQI Testimony described multiple scenarios in which ACICS failed to identify misconduct occurring at ACICS-accredited institutions, and then failed to take any action after such misconduct was brought to light through state and federal investigations—including those conducted by the State Movants—despite vast amount of resources expended in the investigation and information collected often made public by the states. AG Letter at 2-3; NACIQI Testimony at 148, 150.[2]

[1] In Illinois, there are currently 16 ACICS-accredited institutions that operate a total of 20 in-state campuses; in Maryland there are three ACICS-accredited institutions that operate a total of five in-state campuses; in Massachusetts there are five ACICS-accredited institutions that operate a total of 11 in-state campuses; in New York there are 18 ACICS-accredited institutions that operate a total of 25 in-state campuses; in Maine there is one ACICS-accredited institution and campus, and in the District of Columbia there is one ACICS-accredited institution and campus.

[2] The State Movants' NACIQI testimony highlighted ACICS's failure to respond to state investigations: "To even initiate an investigation beyond just bringing a complaint is not something that states take lightly. However ACICS has shown that it does not take substantial action when it knows or should know that either an investigation has been

For example, the AG Letter described ACICS's failure to identify misconduct at schools operated by Corinthian Colleges, whose practice of offering extremely expensive degrees of little value to low-income students and other misconduct has been the subject of investigations by more than twenty state and federal law enforcement agencies and lawsuits by multiple federal and state agencies. *See* AG Letter at 2. ACICS continued to accredit the schools until the day Corinthian declared bankruptcy. ACICS also failed to identify problems or take action against Career Education Corporation ("CEC"), which settled with the New York Attorney General's Office for $10.25 million based on findings that the school fabricated job placement rates. The AG Letter noted that ACICS failed to terminate or suspend accreditation to any of the CEC schools after the misconduct came to light, and did not even request that CEC recalculate inaccurate placement rates for some of the affected cohorts. *Id.* at 3. Similarly, the AG Letter described ACICS's failure to identify compliance problems at Education Management Company ("EDMC"), which settled with thirty-nine State Attorneys General to resolve allegations that the school misled prospective students about program costs, graduation rates, placement rates, and programmatic accreditation. As part of the settlement, EDMC agreed to forgive over $100 million outstanding loan debt.

Despite conceding noncompliance with regulatory criteria, ACICS filed the present lawsuit against the Secretary and the Department (collectively, "Defendants") under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq*., in an effort to enjoin Defendants from enforcing the Secretary's decision to terminate ACICS's recognition and to vacate the Secretary's decision.

initiated, a case is filed or the public inclusion of a case where even without a finding of guilt or an admission of guilt there is still any indication of a problem." NACIQI Testimony 148:8-13.

The State Movants—all of whom participated in the administrative proceedings below—seek to intervene in the present action in order to defend important State interests. This action includes representatives of two members of the long-established "triad" of higher-education authorities—the federal government and accrediting agencies—but currently lacks any participation from the third member group, namely, the States. In the "triad" system, the State Movants rely on the expertise and judgment of federally recognized accreditors in myriad state regulatory and enforcement schemes. While State Attorneys General can and do bring civil enforcement actions against the most abusive institutions, they necessarily rely on accreditors to police the quality of the majority of schools and colleges. Similarly, state regulations that govern which institutions of higher education are permitted to operate within a State's borders and policies that govern institutional eligibility for state financial aid programs rely on the judgments of accreditors. An accreditor's failure to ensure program quality at its accredited educational institutions jeopardizes the effectiveness of state regulations and exposes each State's students to subpar educational programs that provide little value, but for which each student may borrow tens of thousands of effectively non-dischargeable federal student loans.

ACICS's accreditation failures are both systemic and extreme. If ACICS is successful in its efforts to vacate the Secretary's well-founded decision to terminate ACICS's recognition as a federally recognized accreditor, the State Movants' interests in protecting their students, ensuring the effectiveness of state regulations, and preserving finite state resources will be harmed. For these reasons, the State Movants respectfully request that the Court grant their intervention in this lawsuit.

ARGUMENT

I. THE STATE MOVANTS ARE ENTITLED TO INTERVENE AS OF RIGHT

The State Movants satisfy the requirements for intervention as of right. Rule 24(a)(2) of the Federal Rules of Civil Procedure, which governs motions for intervention as of right, provides:

> 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.

The District of Columbia Circuit ("D.C. Circuit") has articulated four requirements that a movant must meet to satisfy Rule 24(a)(2): "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). In addition, a movant seeking to intervene as of right must establish standing under Article III of the United States Constitution. *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 732 (D.C. Cir. 2003).[3]

A. The State Movants' Motion is Timely

The State Movants' Motion to Intervene satisfies Rule 24(a)(2)'s timeliness requirement. Determining whether a motion to intervene is timely requires "consideration of all the

[3] The State Movants have enclosed with this motion an Opposition To Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, joining and adopting the arguments set forth in Defendants' Opposition To Plaintiff's Motion For Temporary Restraining Order And Preliminary Injunction. *See* Fed. R. Civ. P. 24(c); D.D.C. Loc. R. 7(j). The State Movants reserve the right to file or join additional pleadings in support of the Defendants' position in this litigation on the same schedule and with the same deadlines as the Defendants. *See Massachusetts v. Microsoft Corp*., 373 F.3d 1199, 1236 n.19 (D.C. Cir. 2004) (rejecting the government's and Microsoft's claim that the putative intervenors "may not intervene because they did not include with their motion to intervene 'a pleading setting forth the claim or defense for which intervention is sought'" and citing with approval the government's concession that "this Court and other courts have not be[en] hypertechnical" when applying Rule 24(c) (quoting Fed. R. Civ. P. 24(c)) (alteration in original)).

circumstances." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (internal quotation marks omitted). The primary goal of this inquiry is to "prevent[] potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." *Id.*

The State Movants' Motion to Intervene has been filed soon after the outset of this litigation; the complaint was recently filed, on December 15, 2016, and Defendants' Answer has not yet been filed. As this lawsuit is still in its early stages, permitting the State Movants to intervene would not unduly disrupt the present litigation. *See Fund For Animals, Inc.*, 322 F.3d at 735 (holding that a motion to intervene was timely when it was filed "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer"); *Safari Club Int'l v. Salazar*, 281 F.R.D. 32, 42 (D.D.C. 2012) (finding that a motion to intervene was timely that was filed "three months after the Complaint was filed, about one month after the [defendant] filed its answer, and before any dispositive motions were filed").

B. The State Movants Have Important Interests in this Action

The State Movants have multiple important interests in this action, meeting the second requirement for intervention under Rule 24(a)(2). To satisfy Rule 24(a)(2), a movant must identify an interest "relating to the property or transaction that is the subject of the action." *Karsner*, 532 F.3d at 885. A movant seeking leave to intervene as of right "need only an 'interest' in the litigation—not a 'cause of action.'" *Jones v. Prince George's Cty., Maryland*, 348 F.3d 1014, 1018 (D.C. Cir. 2003). This requirement is premised on the understanding that "the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972). To that end, the D.C. Circuit treats the interest requirement as "primarily a practical guide to 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). No specific legal or equitable interest is required to satisfy this inquiry. *Id*.

The State Movants have substantial interests in this lawsuit, deriving from the role played by federally recognized accreditors in states' oversight of institutions of higher education. Supervision of higher education in the United States is undertaken by a "triad" of actors—the federal government, state governments, and accreditors. *See generally* Secretary's Procedures and Criteria for Recognition of Accrediting Agencies, 59 Fed. Reg. 22250, 22250 (April 29, 1994) (describing the "shared responsibility among accrediting agencies, States, and the Federal government" to ensure that access to programs under Title IV of the Higher Education Act is only available "to those institutions that provide students with quality education or training worth the time, energy, and money they invest in it").

The success of this system necessitates cooperation between these actors and is particularly dependent on a strong system of accreditation for institutions of higher education. By design, federally recognized accreditors play a critical role in verifying "the quality of education or training offered by the institutions or programs they accredit." 34 C.F.R. § 602.1. The federal government and state governments depend on accreditors to perform this key gate-keeping function. Within this system of oversight, States, including the State Movants, rely on the assessments of federally recognized accreditors in state regulatory and enforcement schemes, including statutes and/or regulations that govern which institutions of higher education are

permitted to operate within a state's borders[4] and institutional eligibility requirements for state educational financial aid programs.[5]

State Attorneys General play a unique role in this system of oversight, enforcing state consumer protection laws to protect students from unfair and deceptive conduct by educational institutions. While State Attorneys General can and do commence enforcement actions against institutions that violate state law, they must rely on federally recognized accreditors to proactively verify the quality of education that students receive at schools in their states. It would be logistically implausible and financially impracticable for civil enforcement of consumer protection laws to substitute for rigorous accreditation processes. Not only would resource constraints prohibit an enforcement-only scheme, but the retrospective nature of civil

[4] *See, e.g.*, Ill. Admin. Code tit. 23, § 1030.30(a)(14) (listing, as one of the "Criteria for Evaluation of [an institution of higher education's] Application for a Certificate of Approval and/or Authorization to Operate [within Illinois]," that "[n]ew institutions without accreditation from an accrediting authority recognized by the U.S. Department of Education or the Council for Higher Education Accreditation shall provide a clearly defined plan to move from candidate to affiliate status"); *id*., § 1030.30(c)(3) ("The [Illinois] Board [of Higher Education] may deny a continuation of the initial approval or offer a limited extension if the institution . . . [h]as failed to achieve accreditation through a U.S. Department of Education recognized accrediting body for degree granting institutions during the initial five year period. Failure to achieve accreditation shall be grounds for immediate revocation of approval."); Md. Code Ann., Educ. § 11-202(a)(1)(3), Code of Maryland Regulations 13B.02.02.08L, *id*. 13B.02.01.10A (requiring degree-granting institutions of postsecondary education to be accredited by an accrediting body recognized and approved by the United States Department of Education if the primary campus is in Maryland, if the primary campus is outside Maryland, or if the school enrolls Maryland students in a fully online distance education program); 610 Mass. Code Regs. § 2.07(5) (requiring out-of-state independent institutions of higher education operating in Massachusetts to be accredited "by a regional and/or national accrediting agency recognized as such by the United States Secretary of Education"); NY Education Law § 224 (prohibiting educational institutions not registered with the state department of education from offering or advertising college degrees without prior written approval of the department, unless the institution is accredited by an accreditor "recognized by the United States commissioner of education."); 8 NYCRR § 49-2.3 (listing, as one of the criteria for eligibility for an out-of-state educational institution to obtain authorization to offer distance education in New York, institutional accreditation "from an accrediting association recognized by the U.S. Secretary of Education"); 8 NYCRR § 49-1.2 (providing that in-state institutions of higher education must have institutional accreditation by an accrediting body "recognized by the U.S. Secretary of Education" in order to be eligible for approval to operate under a state authorization reciprocity agreement).

[5] *See, e.g.*, COMMONWEALTH OF MASSACHUSETTS, OFFICE OF STUDENT FINANCIAL AID, MASSACHUSETTS NO INTEREST LOAN PROGRAM: POLICIES AND PROCEDURES MANUAL PROGRAM YEAR 2015-2016 at 2, *available at* http://www.mass.edu/osfa/documents/publications/2015/NIL%2015-16.pdf (requiring institutions participating in the Massachusetts No Interest Loan Program, governed by Mass. Gen. Laws ch. 15A, § 9, to "be eligible to participate in Federal Title IV programs and fully accredited").

enforcement actions could never effectively protect students in the same manner as prospective accreditation. As such, the State Movants have an interest in preventing the consumer abuses that result from ACICS's failure to fulfill its oversight duty. Such failures result in financial and personal harm to students, and require the State Movants to commit significant resources to investigating and combatting these abuses.

As the State Movants described in their Letter to the Department and NACIQI Testimony, ACICS has exhibited a fundamental lack of substantive oversight of the schools it accredits and has repeatedly failed to take action in response to public enforcement actions by state law enforcement. *See* AG Letter at 2; NACIQI Testimony at 147-148, 150-151. For example, ACICS's decision to extend accreditation to several dozen schools operated by Corinthian Colleges is particularly instructive of its failure to fulfill its quality assurance responsibilities. Corinthian College's practice of offering expensive degrees of little value to low-income students has been the subject of investigations by more than twenty state and federal agencies. Nonetheless, ACICS continued to provide accreditation to Corinthian College's schools until the day Corinthian College declared bankruptcy. *Id.*

Accreditors that fail to comply with federal regulations and fail to provide adequate oversight of educational institutions harm students and damage state systems that rely on these accreditors' judgments. The State Movants' interests in protecting students from abuse, preserving the continued functioning of complex regulatory and enforcement schemes, and safeguarding resources intended to provide financial assistance to students readily satisfy Rule 24(a)(2)'s interest requirement.

C. The State Movants' Interests May Be Impaired Absent Intervention

The State Movants satisfy the Rule 24(a)(2) requirement that an intervenor must be "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest" in the litigation. *Karsner*, 532 F.3d at 885. The "impairment of interest" inquiry of Rule 24(a)(2) "is not a rigid one." *Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10 (D.D.C. 2016). In determining whether this requirement is met, courts consider "the practical consequences of denying intervention." *Fund For Animals, Inc.*, 322 F.3d at 735 (citing *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 911 (D.C. Cir. 1977)). Moreover, "the interest of a prospective defendant-intervenor may be impaired where a decision in the plaintiff's favor would return the issue to the administrative decision-making process." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010).

ACICS's complaint seeks to have the Secretary's decision to terminate ACICS's recognition as an accrediting agency vacated despite having conceded that it is out of compliance with regulatory criteria. *See* NACIQI Testimony at 78:3-4. As the foregoing discussion illustrates, ACICS's success in this lawsuit would: (1) place the State Movants' residents at risk of abuse from predatory institutions, (2) damage the ability of the State Movants to effectively regulate which institutions of higher education operate within their borders, and (3) jeopardize state funds that are currently made available to students attending accredited institutions in the form of financial assistance. Accordingly, the State Movants satisfy the "impairment of interest" requirements for intervention as of right.

D. Existing Parties Do Not Adequately Represent The State Movants' Interests

The State Movants' interests cannot be adequately represented by the existing parties to this litigation. As such, the State Movants satisfy the final prong of the Rule 24(a)(2) test for

intervention as of right. This prong, which requires a putative intervenor to show that no party to the action can be an adequate representative of its interests, poses only a "minimal" burden on putative intervenors. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972); *see also Forest Cty. Potawatomi Cmty.*, 317 F.R.D. at 11 ("[T]he putative intervenor's burden here is *de minimis*, and extends only to showing that there is a possibility that its interests may not be adequately represented absent intervention."). In fact, the D.C. Circuit has described this requirement as imposing "a burden on those opposing intervention to show the adequacy of the existing representation." *Nuesse*, 385 F.2d at 702. Accordingly, putative intervenors "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee." *Fund For Animals, Inc.*, 322 F.3d at 735 (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)).

While the ultimate objective of both the State Movants and the Defendants is to defend the Secretary's decision not to renew ACICS's recognition, their specific interests are not the same. The Department does not share the State Movants' interest in the protection of state resources expended in the form of enforcement of state consumer protection statutes and student financial assistance or in defending the functioning of complicated state regulatory schemes. The interests of the Department therefore may "diverge during the course of litigation" from those of the State Movants. *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 19-20 (D.D.C. 2010) ("[A]lthough there are certainly shared concerns . . . , [t]he mere fact that other defendants might hypothetically take [the State's] interests into account when shaping their arguments does not mean that they would afford the same primacy to [the State's] interests in, for instance, . . . its financial and social economic interests in the development of coal mining operations within its

borders.") (internal citations and quotation marks omitted). Consequently, the Defendants cannot be expected to adequately represent the State Movants' specific interests in this matter.

E. The State Movants Have Standing to Pursue This Action

In addition to satisfying the requirements of Rule 24(a)(2), the State Movants have standing under Article III of the United States Constitution. To establish standing under Article III, a prospective intervenor must show: (1) injury-in-fact, (2) causation, and (3) redressability. *Fund For Animals, Inc.*, 322 F.3d at 733.

The D.C. Circuit has noted that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003); *see also, Akiachak Native Cmty. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 7 (D.D.C. 2008) (describing the standing inquiry in the assessment of intervention as of right as "repetitive" of the Rule 24(a) analysis). Generally, therefore, "when a putative intervenor has a 'legally protected' interest under Rule 24(a), it will also meet constitutional standing requirements, and *vice versa*." *Forest Cty. Potawatomi Cmty.*, 317 F.R.D. at 11 n.4.

As described above, the State Movants have significant and concrete interests in this litigation, and these interests would be harmed if ACICS prevails. States rely on the assessment of federally recognized accreditors in myriad regulatory and enforcement schemes. The continued federal recognition of a noncompliant accreditor that accredits failing educational institutions places these regulatory and enforcement schemes in jeopardy and threatens state resources expended in the form of financial assistance to students. Furthermore, ACICS's continued operation harms the State Movants' interest in protecting students from abuse—ACICS's failure to fulfill its oversight duty has already resulted in financial and personal harm to students and required the State Movants to commit significant resources to investigating and

combatting these abuses. *See Crossroads Grassroots Policy Strategies v. Fed. Election Com'n*, 788 F.3d 312, 317 (D.C. Cir. 2015) ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit.").

The concrete injuries facing the State Movants, which are traceable to ACICS's success in this litigation, would be prevented by a decision favorable to the State Movants upholding the Secretary's termination of ACICS's recognition. Accordingly, the State Movants satisfy Article III's standing requirements and meet the requirements for intervention as of right under Rule 24(a)(2). The State Movants, therefore, should be permitted to intervene as of right in this matter.

II. IN THE ALTERNATIVE, THE COURT SHOULD EXERCISE ITS DISCRETION TO GRANT PERMISSIVE INTERVENTION

In the alternative, the State Movants respectfully request that this Court grant them permission to intervene in this suit pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. Under Rule 24(b)(1)(B), the court may grant permissive intervention to anyone who "has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention requires a showing of: "(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *Sierra Club v. Van Antwerp,* 523 F. Supp. 2d 5, 10 (D.D.C. 2007). Additionally, when exercising its discretion, the court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1045 (D.C. Cir. 1998). The "force of precedent" in the D.C. Circuit "compels a flexible reading of Rule 24(b)." *Id*. at 1046. Courts allow intervention even "where the existence of any nominate 'claim' or 'defense' is difficult to find." *Nuesse*, 385 F.2d at 704 (internal quotation marks omitted).

The State Movants satisfy the requirements for permissive intervention. First, the State Movants seek to enter this litigation in order to defend the administrative action of the Department of Education. Since this case involves a review of a federal administrative action based on federal law, the requirement for independent subject matter jurisdiction is met pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Second, as set forth above, the State Movants' motion is timely and will not delay this litigation. Third, the State Movants' defenses will share common questions of both law and fact with the Parties' claims and defenses, as the State Movants' and the Defendants' defenses will both involve consideration of the factors and procedures resulting in the Secretary's termination of ACICS's recognition. And, finally, as the State Movants will be litigating defenses that share common questions of law and fact with the Parties' claims and defenses, the State Movants' intervention will not unduly delay or prejudice the rights of the original parties.

CONCLUSION

For the above-stated reasons, the State Movants respectfully request that their Motion to Intervene be granted.

SUBMITTED this 24th day of January, 2017.

FOR THE COMMONWEALTH OF MASSACHUSETTS

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