

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

BRANT SMITH,

Plaintiff,

and

TWISTED GROWERS LLC,

Proposed Plaintiff-Intervenor,

v.

BRYAN T. CAFFERELLI, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE
CONNECTICUT DEPARTMENT OF
CONSUMER PROTECTION,

Defendant.

Civil Action No.: 25-CV-1728 (VDO)

**MEMORANDUM OF LAW IN SUPPORT OF TWISTED GROWERS LLC'S
MOTION TO INTERVENE AS PLAINTIFF**

I. INTRODUCTION

Proposed Plaintiff-Intervenor Twisted Growers LLC (“Twisted Growers”) seeks to intervene in this dormant Commerce Clause challenge to Connecticut’s cannabis-licensing system. Twisted Growers is a Massachusetts limited liability company that holds a Massachusetts Marijuana Cultivator license and has developed business plans, cultivation policies, security and inventory plans, and other operating materials for its cannabis business.

The challenged licensing system reserves certain cultivation opportunities for Social Equity Applicants. Eligibility for that status depends in part on a qualifying owner’s past or current residence in a disproportionately impacted area, and all such areas are located in Connecticut. Twisted Growers seeks to establish a cultivation business in Connecticut but alleges that it cannot qualify for the licensing pathway it seeks because it cannot qualify as a Social Equity Applicant.

Twisted Growers' interest is therefore direct and distinct. It is an out-of-state market participant alleging that the challenged residency criterion denies it an equal opportunity to compete in Connecticut's regulated cultivation market. The existing plaintiff, by contrast, has resided in Connecticut for more than thirty-one years and alleges that he is disqualified by RERACA's income threshold. He does not share Twisted Growers' out-of-state status or its injury from the residency requirement.

Twisted Growers satisfies each requirement for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). Its motion is timely, it claims an interest relating directly to the challenged licensing system, disposition of the action may impair that interest, and the existing parties do not adequately represent its interests. Alternatively, permissive intervention is warranted because Twisted Growers' claim presents the same central legal and factual questions already before the Court and will not cause undue delay or prejudice. Twisted Growers is able to bring its own independent action, but since such an action would involve the same Defendant and a dormant Commerce Clause challenge to RERACA, the interests of judicial economy favor the granting of Twisted Growers' Motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

Connecticut enacted the Responsible and Equitable Regulation of Adult-Use Cannabis Act ("RERACA") in 2021. The Connecticut Department of Consumer Protection administers the resulting adult-use cannabis market and issues licenses to cannabis establishments.

RERACA establishes cultivation-license pathways that grant preferred access to Social Equity Applicants. Social Equity Applicant status requires satisfaction of both an income criterion and a residency criterion. The residency criterion requires a qualifying individual to have resided in a disproportionately impacted area for a specified period, and the qualifying areas are located

exclusively within Connecticut. As of September 22, 2026, Connecticut had not held a lottery for general cultivator licenses under the relevant provision, and general applicants that did not qualify as Social Equity Applicants had not obtained cultivator licenses through the pathways at issue.

Plaintiff Brant Smith commenced this action on October 14, 2025, seeking declaratory and injunctive relief under the dormant Commerce Clause. On September 22, 2026, the Court dismissed his original complaint without prejudice. The Court concluded that the original allegations did not establish that his inability to obtain a license was traceable to discrimination against interstate commerce or that his asserted injury fell within the dormant Commerce Clause's protection of out-of-state economic interests.

Mr. Smith filed an amended complaint on September 28, 2026. The amended complaint alleges that he has lived in Connecticut for more than thirty-one years and that his income exceeds the statutory threshold for Social Equity Applicant status.

Twisted Growers is organized under Massachusetts law and maintains its business and mailing address at 415 Millennium Circle, Lakeville, Massachusetts. It received Massachusetts Marijuana Cultivator License No. MC281714 on February 16, 2021. Twisted Growers seeks to establish and operate a Connecticut cultivation business. Twisted Growers alleges that, but for RERACA's Social Equity Applicant qualifications tied to residency and income, it would be eligible to pursue a marijuana cultivation license in Connecticut, subject to the remaining lawful and nondiscriminatory requirements.

Twisted Growers seeks declaratory and prospective injunctive relief preventing enforcement of the Social Equity Applicant requirements connected to obtaining a marijuana cultivation license in Connecticut.

III. LEGAL STANDARD

Rule 24(a)(2) requires the Court to permit intervention on a timely motion when the applicant claims an interest relating to the property or transaction at issue, disposition may as a practical matter impair or impede the applicant's ability to protect that interest, and the existing parties do not adequately represent it. Fed. R. Civ. P. 24(a)(2). The Second Circuit accordingly requires a proposed intervenor to establish four elements: timeliness, an interest in the action, possible impairment of that interest through disposition of the action, and inadequate protection by the existing parties. A.H. v. McDonald, 147 F.4th 270, 281 (2d Cir. 2025). Failure to satisfy any one requirement may warrant denial. Id.

Timeliness is a flexible inquiry entrusted to the district court's discretion. Relevant considerations include how long the applicant knew or should have known of its interest, prejudice to the existing parties from any delay, prejudice to the applicant if intervention is denied, and unusual circumstances favoring or disfavoring intervention. Id. The Court evaluates timeliness under the totality of the circumstances. Farmland Dairies v. Comm'r of N.Y. State Dep't of Agric. & Mkts., 847 F.2d 1038, 1044 (2d Cir. 1988).

The impairment inquiry is practical. The District of Connecticut considers whether the proposed intervenor's legitimate interest is likely to be impaired by the underlying litigation rather than demanding certainty that impairment will occur. N. River Ins. Co. v. O&G Indus., Inc., 315 F.R.D. 1, 5 (D. Conn. 2016).

The proposed intervenor's burden concerning inadequate representation is minimal; it is enough to show that representation of its interest may be inadequate. United States v. Hooker Chems. & Plastics Corp., 749 F.2d 968, 986 (2d Cir. 1984). Here, where Twisted Growers has its own economic rights that are impacted by this action, balancing may militate in favor of

intervention. Schaghticoke Tribal Nation v. Norton, No. 3:06cv81 (PCD), 2006 U.S. Dist. LEXIS 42643, at *23-24 (D. Conn. June 13, 2006).

Alternatively, Rule 24(b)(1)(B) permits intervention on a timely motion when the proposed intervenor has a claim or defense sharing a common question of law or fact with the main action. A.H., 147 F.4th at 281; Schaghticoke Tribal Nation v. Norton; *supra*. “Permissive intervention is governed by Rule 24(b). Subsection (b)(1)(A) states that, ‘[o]n timely motion, the court may permit anyone to intervene who . . . is given a conditional right to intervene by a federal statute.’ Fed. R. Civ. P. 24(b)(1)(A). Subsection (b)(1)(B) permits intervention by anyone who shows, in a ‘timely motion,’ that he or she ‘has a claim or defense that shares with the main action a common question of law or fact.’ Fed. R. Civ. P. 24(b)(1)(B).” (internal citations omitted). Diesa v. World Wrestling Ent., LLC, No. 3:26-cv-00039-SFR, 2026 LX 530876, at *12 (D. Conn. Sep. 18, 2026).

While this Court enjoys broad discretion on ruling on a request to intervene, the Court must consider whether intervention will unduly delay or prejudice adjudication of the original parties’ rights. John Wiley & Sons, Inc. v. Book Dog Books, LLC, 315 F.R.D. 169, 172 (S.D.N.Y. 2016). See In re Openai, Inc., Copyright Infringement Litig., 2025 U.S. Dist. LEXIS 117811, 2025 WL 1726973, at *1 (quoting High Farms, LLC, 2021 U.S. Dist. LEXIS 56730, 2021 WL 1137995, at *11).

IV. ARGUMENT

A. Twisted Growers Is Entitled to Intervene as of Right.

1. The Motion Is Timely.

Twisted Growers moves at the pleading stage of the amended action. The Court dismissed the original complaint without prejudice on September 22, 2026, and Mr. Smith filed his amended complaint six days later. Twisted Growers files this motion less than three weeks after learning that disposition of the amended action could affect its interest in obtaining access to Connecticut's cultivation market.

The relevant circumstances favor timeliness. Twisted Growers does not seek to reopen completed discovery, disturb any judgment, or introduce an unrelated controversy. Its claim concerns the same licensing system, residency criterion, income rules, constitutional theory, state official, and prospective relief already implicated by the action. Its participation therefore will not cause prejudice attributable to delay.

Denial, however, could materially prejudice Twisted Growers. The case may determine whether the challenged residency criterion can continue to govern access to the cultivation-license pathway Twisted Growers seeks, yet the constitutional issue would be litigated without the participation of the out-of-state business alleging injury from that criterion. Because the motion follows the amended pleading and does not threaten delay-related prejudice, the totality of the circumstances establishes timeliness.

2. Twisted Growers Claims a Direct Interest in the Transaction at Issue.

The transaction at issue is Connecticut's administration and enforcement of a licensing system that conditions access to specified cultivation opportunities under RERACA based on Social Equity Applicant status.

Twisted Growers' claimed interest relates directly to that licensing system. Twisted Growers is a licensed Massachusetts cannabis cultivator seeking to establish a cultivation operation in Connecticut. It alleges that it cannot pursue the licensing pathway it has identified because its qualifying owners reside in Massachusetts and lack the Connecticut residential history demanded by RERACA.

Twisted Growers' interest is more than a generalized interest in the outcome of constitutional litigation. Twisted Growers claims a concrete economic interest in competing for the same cultivation opportunity from which it is excluded by the same Social Equity Applicant criteria under RERACA. Twisted Growers therefore claims an interest relating to the transaction at issue within the meaning of Rule 24(a)(2).

3. Disposition of the Action May Impair Twisted Growers' Ability to Protect Its Interest.

Rule 24(a)(2) asks whether disposition may as a practical matter impair or impede the applicant's ability to protect its interest. Fed. R. Civ. P. 24(a)(2). The District of Connecticut applies that requirement by assessing the practical likelihood that the underlying litigation will impair the proposed intervenor's interest. N. River Ins. Co., 315 F.R.D. at 5.

That risk is present here. The action will address whether RERACA's Social Equity Applicant provisions unlawfully discriminate against out-of-state economic interests. Twisted

Growers alleges that the Social Equity Applicant criteria excludes it from the cultivation-license pathway it seeks and materially impedes its planned Connecticut operations.

Practical impairment is not confined to a judgment that would formally preclude a later action. The Second Circuit has held that a substantial likelihood that a judgment will adversely affect a proposed intervenor's interests through stare decisis may support intervention as of right. Oneida Indian Nation of Wis. v. New York, 732 F.2d 261, 265 (2d Cir. 1984). The District of Connecticut likewise has recognized that the stare decisis effect of an adverse decision can impair a proposed intervenor's interest in the subject matter of the action. Associated Gen. Contractors of Conn., Inc. v. City of New Haven, 130 F.R.D. 4, 11 (D. Conn. 1990). Those principles apply with particular force here: a ruling on the validity of the RERACA's Social Equity Applicant criteria would be developed without the allegations and arguments of the out-of-state commercial entity whose alleged injury directly arises from that criterion itself.

Proceeding without Twisted Growers would leave that interest dependent on litigation prosecuted by a plaintiff whose asserted disqualification arises from a different criterion. The Court could resolve the constitutional issues without allegations or argument from an out-of-state commercial grower directly affected by the RERACA's Social Equity Applicant criteria. Twisted Growers' participation is therefore necessary to allow it to protect its distinct economic interest in the litigation where the challenged licensing provisions are already at issue.

4. The Existing Parties Do Not Adequately Represent Twisted Growers' Interest.

Twisted Growers need show only that representation of its interest may be inadequate. Hooker Chems. & Plastics Corp., 749 F.2d at 986. It readily satisfies that burden because its position differs materially from those of both existing parties.

Defendant administers and defends the challenged licensing system. The Department he leads accepts license applications and issues final cannabis-cultivation licenses. Defendant therefore cannot be expected to represent Twisted Growers' interest in invalidating the residency criterion as applied to Twisted Growers.

Nor does Mr. Smith adequately represent that interest. Mr. Smith alleges that he has resided in Connecticut for more than thirty-one years and that his income exceeds RERACA's Social Equity Applicant threshold. Twisted Growers, by contrast, is a Massachusetts business alleging that RERACA's Social Equity Applicant criteria prevents it from competing for the license it seeks. Mr. Smith cannot present Twisted Growers' out-of-state economic injury.

The District of Connecticut has found inadequate representation more likely when a proposed intervenor possesses direct private interests that the existing party does not share and has no specific interest in protecting. Schaghticoke Tribal Nation, *supra*. Twisted Growers' out-of-state business interest is precisely such an interest. Since no existing party shares its status, injury, and requested application of the challenged residency criterion, Twisted Growers has satisfied the adequacy element.

All four requirements of Rule 24(a)(2) are met, and intervention as of right should be granted.

B. Alternatively, the Court Should Permit Intervention Under Rule 24(b)(1)(B).

Permissive intervention is independently warranted. Twisted Growers' proposed claim shares the principal questions of law and fact presented by the existing action: whether the RERACA's Social Equity Applicant criteria which conditions access to preferred cultivation-license pathways discriminates against out-of-state economic interests; and whether Defendant may enforce that criterion against an applicant seeking access to Connecticut's cultivation market.

The factual and legal overlap is substantial. Both the existing action and Twisted Growers' proposed claim arise from RERACA's Social Equity Applicant provisions, concern the same state licensing system, name the same responsible state official, invoke the dormant Commerce Clause, and seek prospective relief concerning enforcement of the challenged provisions.

Intervention also will not unduly delay or prejudice the existing parties. Twisted Growers moved during the amended-pleading stage and does not seek to reopen completed proceedings. Its participation will focus on the same statutory provisions and constitutional question already before the Court.

Although including a new additional party may require some additional time, the District of Connecticut has explained that this does not itself establish the "undue delay" required to deny intervention. Ass'n of Conn. Lobbyists LLC, 241 F.R.D. at 102. The relevant question is whether intervention will unduly delay or prejudice adjudication, which it will not here. John Wiley & Sons, Inc., 315 F.R.D. at 172.

Twisted Growers will also contribute materially to development of the issues. Its proposed complaint supplies the perspective of an existing out-of-state cultivator alleging that RERACA's Social Equity Applicant criteria directly prevents it from competing for a defined licensing opportunity. That distinct interest is not adequately represented by a Connecticut resident.

The shared questions, early procedural posture, absence of undue delay or prejudice, and Twisted Growers' distinct contribution all favor permissive intervention.

V. CONCLUSION

For the foregoing reasons, Twisted Growers LLC respectfully requests that the Court grant its motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) or, alternatively, permit intervention under Rule 24(b)(1)(B).

Dated October 13, 2026

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record.



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