

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

MATTHEW A. PEQUIGNOT,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:07-cv-00897-LMB-TCB
)	
SOLO CUP COMPANY)	
)	
Defendant.)	

**NOTICE OF INTERVENTION BY THE UNITED STATES
AND SUGGESTED BRIEFING SCHEDULE**

In conformity with the Court’s Order dated September 2, 2008, the United States hereby gives notice that it has decided to intervene in this civil action to defend the constitutionality of 35 U.S.C. § 292, and as a result, respectfully requests that the Court, pursuant to 28 U.S.C. § 2403, permit the United States to intervene to address the question of the statute’s constitutionality.

The constitutionality of section 292 has been addressed by the parties through defendant Solo Cup Company’s Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(1) and supporting Memorandum, Docket Nos. 33 and 34, filed March 21, 2008; plaintiff’s Opposition thereto, Docket No. 45, filed April 9, 2008; and defendant’s Reply brief, Docket No. 48, filed April 17, 2008.

The United States notes that this issue involves at least three important constitutional provisions and, as a result, several components of the Department of Justice will carefully review the brief of the United States prior to filing. Moreover, the United States today is also filing similar Notices of Intervention in two additional civil actions where defendants have challenged

the constitutionality of section 292, *Harrington v. CIBA Vision Corp.*, No. 3:08cv00251 (W.D. N.C.) and *North Carolina Farmers' Assistance Fund, Inc. v. Monsanto Co., et al.*, No. 1:08-cv-409 (M.D. N.C.), and will be preparing and filing similar briefs in those cases as well.

Consequently, the United States will need more time to prepare its brief in this case than it would for more routine issues. Finally, the upcoming federal holidays of Veterans Day and Thanksgiving will likely impact the time needed to compose and review the brief.

Thus, the United State respectfully suggests that its brief defending the constitutionality of section 292 be filed within 45 days, *i.e.*, on or before December 22, 2008; that plaintiff and defendant be permitted to file responsive briefs by January 22, 2009, and that any reply brief by the United States be filed by February 6, 2009.

To that end and for the convenience of the Court, a proposed Order is attached.

Respectfully submitted,

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DATED:

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SOLO CUP COMPANY)	
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Defendant.)	

**[PROPOSED]
ORDER**

This matter having come before the Court on the Notice of Intervention by the United States and Suggested Briefing Schedule, and the Court being fully apprised in the matter,

IT IS NOW ORDERED that, pursuant to 28 U.S.C. § 2403(a), the United States is permitted to intervene in this civil action to address the question of the constitutionality of Title 35, United States Code, Section 292, and

IT IS FURTHER ORDERED that the United States shall file on or before December 22, 2008 its brief defending the constitutionality of the statute; that plaintiff and defendant shall file any responsive briefs by January 22, 2009, and that any reply brief by the United States shall be filed by February 6, 2009.

DATED this _____ Day of November, 2008.

UNITED STATES DISTRICT JUDGE