

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(Miami Division)

Case No. 97-7175-Civ-Jordan/Seltzer

MARC DAVID LEVITON,)
)
)
 Plaintiff,)
)
 vs.)
)
 HOLLYWOOD ART & CULTURE)
 CENTER, INC.,)
)
 Defendant.)

**MEMORANDUM IN SUPPORT OF MOTION BY THE
UNITED STATES TO INTERVENE IN ORDER TO DEFEND THE
CONSTITUTIONALITY OF THE VISUAL ARTISTS RIGHTS ACT OF 1990**

The Court has informed the United States that defendant Hollywood Art & Culture Center, Inc., has challenged the constitutionality of the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. § 101, *et seq.* Certification of Constitutional Challenge, filed June 13, 2000. The United States now seeks to intervene in this action to defend the constitutionality of this federal statute.

ARGUMENT

Congress has granted the United States an unconditional right to intervene in suits where

the constitutionality of a federal statute is challenged. Section 2403(a), 28 U.S.C. provides:

In any action, suit or proceeding to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn into question, the court shall . . . permit the United States to intervene for . . . argument on the question of constitutionality.

Accord Heckler v. Edwards, 465 U.S. 870, 882-83 & n.18 (1984); International Ladies' Garment Union v. Donnelly Garment Co., 304 U.S. 243, 249 (1938)(per curiam)(discussing predecessor statute to 28 U.S.C. § 2403).

This lawsuit meets the criteria set forth in § 2403. First, neither the United States nor any agency, official, or employee is a party to the suit. Second, this lawsuit calls into question the constitutionality of an Act of Congress. See Court's Order of June 13, 2000.

Finally, this lawsuit also satisfies § 2403(a)'s "public interest" requirement. The VARA is designed to protect the public's interest in preserving the rights of visual artists and protection of art works of recognized statute. Because this statute has an impact on the public and because, as the Supreme Court has stated, "declarations of unconstitutionality have ramifications beyond the interests of litigants in the particular case," Heckler, 465 U.S. at 882, intervention under § 2403 is appropriate.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that its motion to

intervene be granted. The United States' memorandum on the constitutionality of VARA is filed concurrently with this motion.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

THOMAS E. SCOTT
United States Attorney

THEODORE C. HIRT
CAROLE A. JEANDHEUR
Attorneys, Department of Justice
Civil Division, Room 958
901 E Street, N.W.
Washington, D.C. 20530
(202) 514-5437
Fax: (202) 616-8202

Attorneys for the United States