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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

THE UNITED STATES OF AMERICA, Plaintiff, **v.** **THE STATE OF CALIFORNIA; EDMUND GERALD BROWN, JR., Governor of California, in his official capacity; and XAVIER BECERRA, Attorney General of California, in his official capacity,** Defendants.	2:18-cv-00490-JAM-KJN **DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO INTERVENE BY PROPOSED INTERVENORS CALIFORNIA PARTNERSHIP TO END DOMESTIC VIOLENCE AND THE COALITION FOR HUMANE IMMIGRANT RIGHTS** Date: June 5, 2018 Time: 1:30 p.m. Dept: 6 Judge: The Honorable John A. Mendez Trial Date: None Set Action Filed: March 6, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

INTRODUCTION

California Partnership to End Domestic Violence and the Coalition for Humane Immigrant Rights (collectively, "Partnership") seek entry into this lawsuit to defend one of the three laws at issue in this litigation—the California Values Act, or Senate Bill 54 (SB 54)—based on their role in enactment of SB 54 and the alleged impact that overturning the statute would have on their work as non-profit organizations. This amorphous interest is indistinguishable from that of scores of entities, many of which have already filed amici curiae briefs with this Court. Were the Court to grant the Partnership's request, it would open the door to requests by a multitude of entities, each with their own specific constituencies, and significantly complicate an already complex and hotly contested case. The Partnership's interests are more than adequately represented by the State of California, and any specific arguments they wish to make can be asserted in an amicus curiae brief.

The Court should also deny the motion to the extent it seeks intervention as of right because disposition of this action without Partnership will not substantively affect its ability to protect its interests through other means, such as by filing an amicus brief, which numerous interested individuals and entities have already done. Further, intervention as of right does not lie because Partnership and the State of California share the same ultimate objective, the successful defense of SB 54. Given this same objective, the Ninth Circuit applies a presumption of adequacy of representation by the existing party that may be rebutted only by a "compelling showing" that Partnership's interests will go unrepresented. Partnership has not, and cannot, make that showing, which is especially difficult where, as here, the existing parties are governmental entities and the case concerns a matter of sovereign interest.

Partnership does not meet the criteria for permissive intervention because its presence as a party would unduly emphasize its special interests, create confusion regarding the more general public purposes behind the three state laws at issue, and unnecessarily prolong the proceedings. Granting any intervention motion is also likely to encourage still more intervention motions by other persons and entities, further protracting the proceedings.

Finally, the timing here does not weigh in favor of intervention. This case has progressed rapidly since the United States filed its Complaint, with substantive discovery by the parties, motion practice, and many amici curiae briefs. Intervention at this stage would prejudice the parties by complicating and protracting the litigation. Because Partnership does not satisfy the requirements for intervention, the Court should deny its motion.

FACTUAL ALLEGATIONS AND BACKGROUND

On March 6, 2018, the federal government filed suit against the State of California, Governor Edmund G. Brown Jr., and Attorney General Xavier Becerra (collectively, "State of California"), and moved to preliminarily enjoin enforcement of certain sections of Senate Bill 54 (California Values Act), Assembly Bill 450, and Assembly Bill 103, alleging that these State laws interfere with the execution of federal immigration law. (Compl., Apr. 20, 2018, ECF No. 1; Mot. for Prelim. Inj., Apr. 20, 2018, ECF No. 2.) Defendants moved to dismiss the Complaint and opposed the preliminary injunction motion on May 4, 2018. (Defs.' Opp'n to Mot. for Prelim. Injun., May 4, 2018, ECF No. 74; Mot. to Dismiss, May 4, 2018, ECF No. 77.)

After considerable litigation activity in this case, Partnership filed the instant motion on May 4, 2018. (*See* ECF No. 73.) California Partnership to End Domestic Violence (CPEDV) is a federally designated, statewide domestic violence coalition that acts as a clearinghouse and resource center for domestic-violence issues in the state. (*Id.* at 5.[1]) Its member organizations serve "heavily immigrant clienteles." (*Id.* at 5:8-19.) The mission of Coalition for Humane Immigrant Rights (CHIRLA) is to advance the human and civil rights of immigrants and refugees, many of whom have been or will be victims of crimes such as sexual assault and domestic violence. (*Id.* at 5:20-27.) Partnership argues that SB 54 was "specifically meant to protect CHIRLA's members and those served by [CPEDV] and its members," and that under the bill "victims and witnesses are able to cooperate with local law enforcement and other state officials "to obtain the justice and services they need." (*Id.* at 7:1-10.)

[1] All page citations for documents entered by the Electronic Court Filing (ECF) system refer to the page number located at the top, right corner of each page.

Partnership claims to have played "key roles in the passage of SB 54" and to hold a "concrete stake" in this litigation because of the effect it could have on its need to "divert scarce resources to address the resulting erosion of members' and clients' trust in law enforcement and local government." (Mem. P. & A. in Supp. of Mot. to Intervene at 1:24; 4:26-5:1, May 4, 2018, ECF No. 73-1 ("Partnership Mot.").)

ARGUMENT

I. PARTNERSHIP IS NOT ENTITLED TO INTERVENTION AS OF RIGHT

In relevant part, Federal Rule of Civil Procedure 24(a) permits intervention as a matter of right upon satisfaction of a four-part test. Under that test "(1) [t]he application for intervention must be timely; (2) the applicant must have a significantly protectable interest relating to the property or transaction that is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by the existing parties in the lawsuit." *United States v. Sprint Commc'ns, Inc.*, 855 F.3d 985, 991 (9th Cir. 2017) (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001) (internal citation omitted)). The applicant bears the burden of showing compliance with each of the four elements. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011) (citation omitted). "Failure to satisfy any one of the requirements is fatal to the application, and [the court] need not reach the remaining elements if one of the elements is not satisfied." *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

A. Partnership Cannot Rebut the Presumption of Adequate Representation by the State of California

"The most important factor in determining the adequacy of representation is how the interest compares with the interests of existing parties." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (citation omitted). The three factors for evaluating adequacy are: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the

proceeding that other parties would neglect." *Id.* (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)). "Where the party and the proposed intervener share the same 'ultimate objective,' a presumption of adequacy of representation applies, and the intervenor can rebut that presumption only with a 'compelling showing' to the contrary.'" *Perry*, 587 F.3d at 951; *accord Freedom from Religion Found.*, 644 F.3d at 841 (quoting same). "Mere differences in litigation strategy are not enough to justify intervention as a matter of right." *Id.* at 954 (internal brackets and quotation marks omitted) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 402-03 (9th Cir. 2002); *Arakaki*, 324 F.3d at 1087; *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996) ("minor differences in opinion" between parties and proposed intervenor fail to demonstrate inadequacy of representation).

Partnership and the State of California share the same ultimate objective, which is to uphold SB 54. Thus, as an existing party, the State of California is presumed to provide adequate representation of Partnership's interests. *Perry*, 587 F.3d at 951; *accord Freedom from Religion Found.*, 644 F.3d at 841. This presumption is especially strong because the State of California is a sovereign entity whose constituency includes Partnership's members and constituents. And "when one of the parties is an arm or agency of the government, and the case concerns a matter of 'sovereign interest,' the bar [of adequate representation] is raised, because in such cases the government is 'presumed to represent the interests of all its citizens.'" *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996) (quoting *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1000 (8th Cir. 1993)); *Freedom from Religion Found.*, 644 F.3d at 841-43 (determining that the putative intervenor failed to provide "a compelling showing" that either the federal government or the California government would not adequately defend the federal and state laws at issue in the case); *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 987 (2d Cir. 1984) ("[I]t is proper to require a strong showing of inadequate representation before permitting intervenors to disrupt the government's exclusive control over the court of its litigation."). The State of California has more than sufficient means and motivation to defend its own laws. The existing parties in this litigation are government entities representing their "sovereign interests."

The presence of Partnership will not meaningfully add to this litigation or substantially contribute to the resolution of the action on the merits.

Partnership argues that the presumption of adequacy does not apply here because its interests do not "align precisely" with the interests of the State, considering the State's charge to protect "a broader public interest," as opposed to the special interests of Partnership. (Partnership Mot. at 14:2-15:21.) Yet the applicant for intervention in *Perry v. Proposition 8 Official Proponents* similarly tried to avoid the applicable presumption by distinguishing its interests from those of existing intervenors on the same side. *Perry*, 587 F.3d at 949-51. The court found that the interests of the proposed intervenors "simply circle[d] back" to Proposition 8 and were not "meaningfully distinct" from the existing intervenors' interests in defending the constitutionality of the measure. *Id.* A similar situation exists here. The specific interests identified by Partnership—such as keeping safe immigrant survivors of domestic violence, conserving the organizations' resources, and protecting its immigrant membership (*see* Partnership Mot. at 14:13-15:6)—all "circle back" to defending the constitutionality of SB 54.

Partnership's argument that the State of California cannot provide adequate representation, and the related citations to authority, essentially amount to an argument about differing litigation strategies. (*See* Partnership Mot. 14-15.) But it should not be overlooked that success by the State in defending SB 54 will resolve all of Partnership's proffered claims. Partnership has not and cannot show that the State will abandon potentially meritorious arguments or otherwise veer from its ultimate goal of upholding SB 54. *See, e.g., California ex rel. Lockyer v. United States*, 450 F.3d 436, 444 (9th Cir. 2006) ("In order to make a 'very compelling showing' of the government's inadequacy, the proposed intervenor must demonstrate a likelihood that the government will abandon or concede a potentially meritorious reading of the statute."). At best, Partnership offers a modified litigation strategy in this case. But different strategies are not enough to rebut the presumption of adequacy. *Perry*, 587 F.3d at 954 (citation omitted); *Arakaki*, 324 F.3d at 1087.

Additionally, even if Partnership might bring a unique perspective to this litigation, the issues in this case are purely legal. *See Astiana v. Hain Celestial Group, Inc.*, 783 F.3d 753, 757

(9th Cir. 2015) (whether federal statute preempts state law is "purely legal question"); *Sales Hydro Assocs. v. Maughn*, 985 F.2d 451, 454 (9th Cir. 1993) (whether federal statute preempts state law is "purely legal"). For example, Partnership has not shown that its participation is needed to develop the factual record in some critical way. *See Hotel Emps. & Rest. Emps. Int'l Union v. Nevada Gaming Comm'n*, 984 F.2d 1507, 1513 (9th Cir. 1993) (citing *Pac. Gas & Elec. Co. v. State Energy Res. Conserv. & Dev. Comm'n*, 461 U.S. 190, 201 (1983) for proposition that resolution of preemption issue need not await development of record). As to the legal analysis, Partnership can assist in that analysis by filing an amicus brief with the Court. In any event, counsel for the United States and the State of California are more than capable of assisting this Court as it conducts the required legal analysis. Additional parties, and additional counsel, are not needed to advance this case to resolution.

As for Partnership's suggestion that the State might not be able to provide an adequate defense of SB 54 because it "has a broader interest in maintaining its relationship with the federal government and its own localities" (Partnership Mot. at 15:7-21), the State respectfully disagrees. The State has recently filed numerous lawsuits against the federal government.[2] And disputes between the State and its cities and counties are hardly unusual. Thus, a desire for cooperative relationships with the federal or local governments does not prevent the State from zealously protecting its own interests as well as those of the People.

Based on the foregoing, Partnership cannot make the "compelling showing" needed to rebut the presumption of adequacy of representation of its interests by the State of California. The Court should deny any intervention as a matter of right.

[2] The State has filed over thirty actions against the federal government or its agencies since January 2017, a small number of which include the following cases: *California. v. Ross*, No. 3:18-cv-01865 (N.D. Cal.); *California v. Wright (U.S. Dep't. of Health and Human Servs.)*, No. 17-cv-5783 (N.D. Cal.); *California v. Dep't. of Homeland Sec.*, No. 3:17-CV-05211-WHA (N.D. Cal); *California v. Sessions*, No. 3:17-cv-04701 (N.D. Cal.); *Washington v. Trump*, No. 2:17-cv-00141-JLR (W.D. Wash.); *California v. U.S. Envtl. Prot. Agency*, No. 1:17-cv-01626 (D.D.C.).

B. Intervention as a Matter of Right Is Not Warranted Because Partnership Has Other Means to Protect Its Interests

If a proposed intervenor "would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24 advisory committee's note to 1966 amendment; *Sw. Ctr. For Biological Diversity*, 268 F.3d at 822 (quoting same). But a proposed intervenor's interests will not be practically impaired where it has "other means" for protecting their interests. *Lockyer v*, 450 F.3d at 442 (citing *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

Here, Partnership speaks at length about the "devastating consequences if the United States prevails in this litigation"—consequences the State is also diligently working to avoid—but does not sufficiently address why intervention is the only means by which to protect its interests. (Partnership Mot. at 12:21-13:26.) It asserts an inability to vindicate its interests in subsequent litigation because another court would not be able to reinstate SB 54, if overturned. (*Id.* at 13:22-24.) Partnership also argues that it "can only advance [its] arguments against the United States' claims in *this* case." (*Id.* at 13:23-26.) Yet, these very objectives can be met through amicus briefing, which will allow Partnership to address the alleged impact of SB 54 on its membership. *See McHenry v. C.I.R.*, 677 F.3d 214, 227 (4th Cir. 2012) (denying intervention and noting that any views of IRS's interpretation of the tax code could be expressed in an amicus brief); *Elec. Data Sys. Fed. Corp. v. Gen. Servs. Admin.*, 629 F. Supp. 350, 353 (D.D.C. 1986) (shortfalls in presentation of proposed intervenor's interests can be "cured" by permitting an amicus brief); *cf. Ctr. for Biological Diversity v. Brennan*, 571 F. Supp. 2d 1105, 1129 (N.D. Cal. 2007) (noting that Congressional leaders who are intervenor-applicants may draw and release "political arrows" at any time to protect their interests). In fact, seventeen amici curiae briefs already have been filed in this case. (ECF Nos. 43, 44, 48, 55-57, 136-140.) If there is merit to Partnership's arguments about its "key role[]" in the events leading up to the passage of SB 54 and its "significant interests in its survival," any amicus brief it files is likely to provide information "beyond the help the lawyers for the parties are able to provide." (Minute Order, Apr. 11, 2018,

ECF No. 52; *see also* Minute Orders, Mar. 27 and 29, 2018, ECF Nos. 37, 42.[3]) There are also legislative options available to Partnership, such as the initiative process. Because Partnership has ready access to other means to protect its interests, the Court should deny its motion.

C. The Partnership Does Not Show that Timing Weighs in Its Favor

Timeliness "is determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: '(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to the other parties; and (3) the reason for and length of the delay.'" *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quoting *Alisal*, 370 F.3d at 921). The crucial date in assessing timeliness is "when the proposed intervenors should have been aware that their interests would not be adequately protected by the existing parties." *Id.* (quoting *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999)).

Although Partnership contends that it filed this action "shortly after the commencement of this case" (Partnership Mot. at 8:24-25), this high-profile case has progressed rapidly since its inception. This is no ordinary civil action, and while the Partnership waited for two months to file its motion, the parties conducted substantive discovery related to the federal government's motion for preliminary injunction, and litigated discovery issues before Magistrate Judge Newman. The docket also amassed over seventy entries, including joint briefs by nearly forty amici at the time of the motion to intervene (Amici Briefs, filed between Mar. 30, 2018 and Apr. 6 & 12, 2018, ECF Nos. 43, 44, 48, 55-57), with many more briefs being filed since (Amici Briefs, May 21, 2018, ECF Nos. 126-140). Moreover, the parties are now deep into briefing on both a motion to dismiss and a preliminary-injunction motion, with hearings on those matters scheduled soon. And Partnership has provided no explanation about why it did not seek intervention in the preceding before all of these developments, despite serious concerns about "devastating consequences if the United States prevails in this litigation." (*See id.* at 4:26-28, 12:22-23.)

[3] Participation through the amicus process makes sense as several local governments and non-profit organizations have already asserted their interests in this case through amicus briefs.

Partnership also underestimates how its intervention would prejudice the existing parties by complicating and protracting this litigation in other ways. Partnership argues that because it lodged its proposed opposition to the motion for preliminary injunction and motion to dismiss on the same date that the State of California's answer or other response was due, "no modification to the existing schedule is required in order to give the United States a full opportunity to address [its] arguments in reply." (Partnership Mot. at 6:5-18.) But this argument does not account for the fact that because Partnership has not yet been granted intervention, no party has any obligation to respond to its filings. The federal government's opposition to the State's motion to dismiss is currently due on June 6, 2018, the day after the hearing on this intervention motion, while the reply in support of the motion for preliminary injunction is due only two days later, on June 8, 2018. (Order at 2, Mar. 29, 2019, ECF No. 41; Minute Order, May 7, 2018, ECF No. 79.) And if the court were to grant intervention and continue the June 20 hearing on the motion for preliminary injunction and motion to dismiss, then the delay would prejudice the State, which is deeply interested in having its dispositive motion resolved expeditiously and as properly noticed.

Permitting intervention at this stage would unnecessarily complicate and protract this litigation. Indeed, allowing Partnership to intervene would encourage other interested non-parties to seek intervention as well, adding a level of complexity to the proceedings that would be unnecessary to properly resolve the issues in the case. Partnership fails to explain why it waited two months, despite full knowledge of the facts and questions of law relevant to its asserted claims. For each of these reasons, Partnership fails to show that the timing weighs in its favor.

II. PERMISSIVE INTERVENTION SHOULD BE DENIED

Courts have discretion to deny permissive intervention for reasons similar to intervention as of right. *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998). Permissive intervention may be granted where an applicant shows "(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Perry* 587 F.3d at 955 (quoting *Nw. Forest Res. Council*, 82 F.3d at 839). If these requirements are met, the court may also consider other factors, "including 'the

nature and extent of the intervenors' interest' and 'whether the intervenors' interests are adequately represented by other parties.'" *Id.* (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Rule 24(b)(3) also requires that the court "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3); *Perry*, 587 F.3d at 955.

Here, as explained above, Partnership cannot show that its motion is timely, given the rapidly progressing litigation in this case.

As also discussed above, intervention on any basis will complicate and protract this litigation. It will surely encourage other proposed intervenors to attempt to intervene. In that event, the parties and the Court will have to respond to those motions, and if intervention is granted, the parties will have to respond accordingly, depending on the nature of the intervention, which will result in further delay. And because the primary issue in this case is a purely legal one, still more parties are unnecessary for a full and fair adjudication of the case on the merits. *See, e.g., Sales Hydro Assocs.*, 985 F.2d at 454 (whether federal statute "occupies the field" and preempts state law is "purely legal").

Finally, if this Court were to grant the intervention motion, it is apparent that it will be called to consider special issues beyond the federal preemption question that is central to this case. In particular, Partnership has made clear that it seeks intervention based on SB 54's "critical importance for domestic violence survivors and other victims and witnesses of crime throughout the United States." (Partnership Mot. at 4:9-13.) Victims and witnesses of any crime of course are entitled to appropriate protections. But Partnership's focus on its constituency, while understandable, demonstrates that it is primarily concerned with SB 54 as it relates to only a portion of the California citizenry, as opposed to the citizenry as a whole. (*Id.* at 4:9-19, 5:2-3 (arguing that "their perspective on behalf of the directly affected communities will substantially contribute to the Court's consideration of this case).) If allowed to intervene, Partnership's concern could unfairly overshadow the interests of other important groups simply because they do not happen to be represented by an intervenor. And it would detract from the State's presentation of the issues as it works to defend the broader public interests implicated by all three state laws at

issue in this case, such as those concerning the allocation of scarce public-safety resources, the protection of the workplace, and safeguarding the rights of all California residents. For these additional reasons, permissive intervention should be denied.

Intervention could also lead to duplicative discovery because Partnership shares substantially similar interests with the federal government. Given the similarity of interests, the State can develop a factual record encompassing Partnership's interests. *Perry*, 587 F.3d at 955 (finding intervention unnecessary as "each group would need to conduct discovery on substantially similar issues."). Accordingly, to avoid delay and prejudice to the parties, the Court should deny permissive intervention.

CONCLUSION

Partnership has failed to show that it is entitled to intervention as a matter of right or permissive intervention. Accordingly, the Court should deny its motion.

Dated: May 22, 2018

Respectfully Submitted,

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