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**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF CALIFORNIA**

**UNITED STATES OF AMERICA**,

Plaintiff,

v.

**STATE OF CALIFORNIA, et al.**,

Defendants.

NO. 2:18–CV–00490-JAM-KJN

**PLAINTIFF'S BRIEF IN OPPOSITION TO INTERVENTION OF THE CALIFORNIA PARTNERSHIP TO END DOMESTIC VIOLENCE AND THE COALITION FOR HUMANE IMMIGRANT RIGHTS**

Judge: Hon. John A. Mendez

This case, as is relevant to the instant motion, raises several purely legal questions about the validity of certain provisions of the California Values Act enacted through Senate Bill 54 ("SB 54"). Specifically, the United States has challenged three provisions of SB 54 that prohibit (1) state and local officials from voluntarily providing to the United States information about the release date from state or local custody of criminal aliens who may be subject to removal and are subject to detention by the United States, or other information relevant to the alien's immigration status, and (2) transferring aliens to the United States when they are scheduled to be released from state or local custody, thus interfering with the United States' ability to carry out its responsibilities under federal law. Two non-profit entities, the California Partnership to End Domestic Violence ("Partnership") and the Coalition for Humane Immigrant Rights ("CHIRLA"), which state that they advance the interests of immigrant survivors of domestic violence and other victims and witnesses of crime, have moved to intervene as defendants pursuant to Federal Rules of Civil Procedure 24(a) and (b) based on their professed support for SB 54 as a whole. As explained below, the Court should deny the motion because California is presumed to adequately represent their interests in this case—a presumption that the non-profits have not, and cannot, overcome.

First, it is undisputed that the non-profits and California share the identical ultimate objective to uphold the legality of SB 54 and, therefore, California's adequate representation is presumed. Indeed, as evidenced by the face of the law itself, which provides that a purpose of SB 54 is to promote a "relationship of trust between California's immigrant community and state and local agencies" so that "immigrant community members [do not] fear approaching police when they are victims of, and witnesses to, crimes," the State shares the same interest as the non-profits in protecting immigrant victims and witnesses of crime who fear seeking police assistance. *See* Cal. Gov't Code §§ 7284.4(b), (c).

Second, the non-profits cannot demonstrate that California, its Governor, and its Attorney General—the parties responsible for the enactment and enforcement of the law at issue, and for defending its legality in this litigation—are inadequate to defend the validity of SB 54. A state defending its own law against a facial challenge has at least as much incentive and ability to defend that law, and to represent the interests of those who support it, as any member of the public. Accordingly, any member of the public who seeks to intervene in defense of a law must first clear a high bar where, as here, the state and the would-be intervenor share the same ultimate objective of defending the challenged law. Because the applicants for intervention here have not—and cannot—clear that bar, and for the additional reasons identified below, the Court should deny their requests for intervention as of right and permissive intervention. To the extent that they wish to participate, however, they may seek leave to file briefs in support of California as *amici curiae*—an option that nearly 100 entities that are similarly situated to the putative intervenors have taken advantage of, consistent with this Court's order governing amicus briefs.

## BACKGROUND

### I. The Parties

The United States filed this action on March 6, 2018, seeking a declaration invalidating and preliminarily and permanently enjoining the enforcement of certain provisions of California law because they are preempted by federal law and impermissibly discriminate against the United States and thus violate the Supremacy Clause of the U.S. Constitution. *See* ECF 1. As is relevant to the putative intervenors' motion, the United States' claims raise pure questions of law: the facial validity of three provisions of SB 54—sections 7284.6(a)(1)(C), 7284.6(a)(1)(D), and 7284.6(a)(4) of the California Government Code—which limit the ability of local law enforcement officers to provide the United States with basic information about criminal aliens who are in their custody and are subject to federal immigration custody, or to transfer such individuals to immigration custody. On March 6, 2018, in order to avoid the ongoing, irreparable harm to the United States and its interests, the United States moved the

Court to preliminarily enjoin enforcement of SB 54, in addition to two other California laws, Assembly Bill 450 and Assembly Bill 103.[1] ECF 2.

Defendants, 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 (collectively, "the State," "California," or "the State Defendants"), moved to dismiss the Complaint on May 4, 2018, arguing that the challenged laws are neither unconstitutional nor contrary to federal statutory law. ECF 77. On the same day, they filed an opposition to the preliminary injunction motion. ECF 74. The United States' response to the motion to dismiss and its reply in support of its preliminary injunction motion are currently due on June 6, and June 8, 2018, respectively.

**II. The Putative Intervenors**

On May 4, 2018, the California Partnership to End Domestic Violence ("Partnership") and the Coalition for Humane Immigrant Rights ("CHIRLA") ("putative intervenors") together moved to intervene under Rule 24(a) as a matter of right and for permissive intervention under Rule 24(b). ECF 73. They seek to participate as defendants in this matter to defend the legality of SB 54, which they assert protects the interests of their members by encouraging immigrant domestic violence survivors and witnesses to seek police assistance and other public services. ECF 73-1 at 1, 3-4. The putative intervenors argue that they have significant protectable interests in SB 54 that would be affected by this lawsuit and speculated that the State Defendants may not adequately represent their interests because, essentially, the State has broader interests than they do. *Id.* at 11-12. They filed a proposed motion to dismiss, ECF 73-3, and an opposition to the motion for a preliminary injunction, ECF 73-2.

Other entities, individuals, states, counties, and cities have filed motions seeking leave to participate as *amici curiae*, including over 90 entities purporting to represent the interests of immigrant

[1] The putative intervenors seek intervention to defend only SB 54, not the other two laws at issue here, and thus this brief is limited to a discussion of SB 54.

communities similar to those advanced by the putative intervenors. *See* ECF 32, 36, 47-50, 55-57, 96, 98-99, 104-105, 109-116, 120, 122-124.

**ARGUMENT**

Neither intervention as of right under Rule 24(a) nor permissive intervention under Rule 24(b) is warranted in this case with respect to the Partnership or CHIRLA. To the extent that the putative intervenors seek to support California on the public docket before this Court, they may do so via participation as *amici curiae*, which the United States would not oppose. But their desire to defend the state law at issue in this case is an interest that is already represented adequately by the State, its Governor, and its Attorney General.

**I. Intervention as of right is not warranted.**

Pursuant to Federal Rule of Civil Procedure 24(a),

> [a] party seeking to intervene as of right must meet four requirements: (1) the applicant must timely move to intervene; (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 situated such that the disposition of the action may impair or impede the party's ability to protect that interest; and (4) the applicant's interest must not be adequately represented by existing parties.

*Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). Failure to satisfy any one of the requirements is fatal to an application for intervention, 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) (citing *California ex rel. Van de Kamp v. Tahoe Reg'l Planning Agency*, 792 F.2d 779, 781 (9th Cir. 1986)). Because any interest of the putative intervenors will be adequately represented by the State Defendants in this case, the motion for intervention should be denied on that basis alone.[2]

[2] The United States does not concede that the other three requirements for intervention are satisfied, but limits its arguments to the issue of adequate representation because the motion can and should be denied on that basis alone.

The Ninth Circuit has said that it "considers three factors in determining the adequacy of representation: (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." *Arakaki*, 324 F.3d at 1086 (citing *Tahoe Reg'l Planning Agency*, 792 F.2d at 778). In practice, however, "[t]he 'most important factor' to determine whether a proposed intervenor is adequately represented by a present party to the action is 'how the [intervenor's] interest compares with the interests of existing parties.'" *Perry*, 587 F.3d at 950-51 (quoting *Arakaki*, 324 F.3d at 1086). So "[w]here the party and the proposed intervenor 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." *Id.* (quoting *Arakaki*, 324 F.3d at 1086) (citing *League of United Latin Am. Citizens ("LULAC") v. Wilson*, 131 F.3d 1297, 1305 (9th Cir. 1997)); *see also Prete v. Bradbury*, 438 F.3d 949, 957–59 (9th Cir. 2006) (holding that a public interest organization seeking intervention to defend a state constitutional ballot initiative failed to defeat the presumption of adequate representation when the ultimate objective of both the organization and the defendant was to uphold the measure's validity). In addition, "[t]here is also an assumption of adequacy when the government is acting on behalf of a constituency that it represents, which must be rebutted with a compelling showing." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011).

Accordingly, the State's representation of the putative intervenors in this case is presumed to be adequate, as a matter of law, for two *independent* reasons: (1) because the State and putative intervenors "share the same 'ultimate objective,'" *Perry*, 587 F.3d at 951 (quoting *Arakaki*, 324 F.3d at 1086), that is, to defend SB 54; and (2) because the defendants are the State, its Governor, and its Attorney General, represented by the California Department of Justice, and the Complaint challenges only the legality of

state law, *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 841 (9th Cir. 2011). To justify intervention in either of these circumstances, Ninth Circuit precedent requires a "'very compelling showing.'"[3] *California ex rel Lockyer v. United States*, 450 F.3d 436, 443-44 (9th Cir. 2006) (quoting *Arakaki*, 324 F.3d at 1086). In this case, however, "[t]he undisputed facts do not even begin to rebut the presumption[;] [o]n the contrary, they bear it out." *LULAC*, 131 F.3d at 1305.

The putative intervenors "seek to intervene to defend the Values Act in particular because of the Act's critical importance for domestic violence survivors and other victims and witnesses of crime throughout the State, many of whom are immigrants or from mixed-status families." ECF 73-1 at 1. But even accepting this interest as a "significant," "legally protectable" one under Rule 24(a), *Lockyer*, 450 F.3d at 441—a debatable proposition given that SB 54 creates no private right of action—there is nothing to suggest that the State Defendants, whose ultimate objective is identical to that of the putative intervenors, will not adequately protect that interest in defending the validity of its own law. The putative intervenors have thus failed to make a "very compelling showing" to overcome either presumption in this case. *Id.* at 443-44.

As an initial matter, it cannot be disputed, and does not appear to be disputed, that the putative intervenors share the same ultimate objective as the State to defend the validity of SB 54 and, indeed, make similar, if not identical, arguments in pursuance of that objective. *Compare* ECF 77 (Defs.' R. 12(b)(6) Mot. Dismiss), *and* ECF 74 (Defs.' Opp. to Prelim. Inj.), *with* ECF 73-3 (Prop. R. 12(b)(6) Mot. Dismiss), *and* ECF 73-2 (Prop. Opp. to Prelim. Inj.). Not only do the putative intervenors and the State

[3] The putative intervenors suggest that their "burden to establish inadequate representation is 'minimal,' and is satisfied whenever representation of their interests 'may be' inadequate." ECF 73-1 at 11 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). This standard, however, changes "when the would-be intervenor shares the same interest as a government entity party," as in this case. *Nooksack Indian Tribe v. Zinke*, 321 F.R.D. 377, 381-82 (W.D. Wash. 2017). In such circumstances, the burden of the proposed intervenor increases to the point of being presumptively unmet "absent a 'very compelling showing to the contrary.'" *Id.* (citations omitted); *see also Stuart v. Huff*, 706 F.3d 345 (4th Cir. 2013).

share the same ultimate objective, seek the same relief, and advance the same arguments, but they also offer much of the same reasoning in support of their arguments. *Compare, e.g.*, ECF 77-1 at 5 (arguing SB 54 does not conflict with 8 U.S.C. § 1373), *with* ECF 73-3 at 2 (same); *compare* ECF 74 at 14 (arguing the Tenth Amendment mandates that "the state must have a legitimate choice to decline to administer the federal program"), *with* ECF 73-2 at 1 (same); *compare* ECF 74 at 22, *with* ECF 73-2 at 19.

Moreover, that the putative intervenors might as a policy matter have narrower interests than California is of no moment. Courts have held that a proposed intervenor with more specialized interests than the existing party is nonetheless not entitled to intervene when it and the existing party share the same ultimate goal. *See, e.g., Blake v. Pallan*, 554 F.2d 947, 954-55 (9th Cir. 1997) (adequate representation despite different purposes in litigation and different relief sought and notwithstanding intervenor's specialized knowledge contributing to law and facts); *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 144 (1st Cir. 1982) ("[A]lthough CLF may have a more specialized interest, the state and CLF have the same ultimate goal of upholding and defending the constitutional validity of the [state] statute" and thus their "practical litigation posture" would be identical); *Stuart*, 706 F.3d at 353 ("[S]tronger, more specific interests do not adverse interests make—and they surely cannot be enough to establish inadequacy of representation since would-be intervenors will nearly always have intense desires that are more particular than the state's."). Additionally, this presumption exists "even though a party seeking intervention may have different 'ultimate motivation[s]' from the governmental agency." *Tri-State Gen. & Trans. Ass'n v. New Mexico Pub. Reg. Comm'n*, 787 F.3d 1068, 1072-73 (10th Cir.). The burden is on the would-be intervenor to overcome the presumption with "a concrete showing of circumstances" that would render the government entity's representation inadequate. *Id.* at 1073; *see also NW Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996).

The putative intervenors here do not attempt to make the concrete showing required to overcome the presumption that California will adequately represent their interests. *LULAC*, 131 F.3d at 1307. Instead, through pure speculation, they offer three interrelated reasons for why the State may not adequately represent their interests in defending the State's own law: first, that California is charged with protecting a broader public interest than the putative intervenors; second, that the State has a broader interest in maintaining its relationship with the federal government and with its localities; and third, that the State seeks to defend all three challenged laws whereas the putative intervenors only seek to defend SB 54. ECF 73-1 at 11-12. Although cast as three, they can be boiled down to one argument: it is possible that California may not adequately represent their interests because it may have additional interests to represent as well. Such speculation, without the support of evidence or even reasoning for why the State's interests are such that it will not be an adequate representative *here*, does not amount to a sufficiently concrete or compelling showing to overcome the presumption of adequacy. *See LULAC*, 131 F.3d at 1307 (that the intervenor's interest "might … diverge from the interest of the governor and attorney general is purely speculative, and does not justify intervention"). The putative intervenors offer only abstract arguments that could theoretically be true in any case in which a state defends its own laws, and they fail to connect these theories to the specific circumstances of this case. For instance, it is hard to imagine a case in which it would not be true that California "represents a wide range of constituencies."[4] ECF 73-1 at 11. The proposed intervenors fail to explain why this makes the State an inadequate representative in *this case*, let alone every case as their argument would suggest.

To the contrary, the named defendants in this case, California Governor Brown and Attorney General Becerra, have publicly and ardently supported SB 54 and the interests the putative intervenors state they want to protect in this case. *See, e.g., Attorney General Becerra Issues Law Enforcement*

[4] The putative intervenors' theory would render the presumption of adequate representation by a government entity meaningless. *See, e.g., Prete*, 438 F.3d at 957.

*Bulletins Providing Guidance to California's Public Safety Authorities Under the Values Act*, AG Press Release ("We're in the business of public safety, not deportation."), *available at* https://oag.ca.gov/news/press-releases/attorney-general-becerra-issues-law-enforcement-bulletins-providing-guidance; *compare LULAC*, 131 F.3d at 1305 (Defendant Governor's "forceful, persistent, and proactive support" for the challenged law, and the ardent defense of the constitutionality of the law by Defendant Attorney General since the onset of litigation made them adequate representatives), *with Yniguez v. Arizona*, 939 F.2d 727, 733 (9th Cir. 1991), *vacated sub nom.*, 520 U.S. 43, 117 S. Ct. 1055 (1997) (inadequate representation where Defendant Governor "had publicly opposed the adoption of [the ballot initiative at issue] ... and announced her decision not to appeal the district court's opinion and order"), *and Sagebrush Rebellion v. Watt*, 713 F.2d 525 (9th Cir. 1983).

Moreover, the State Defendants are particularly well-suited to defend the putative intervenors' interests in this case, in light of SB 54's stated purpose to protect "immigrant community members [who] fear approaching police when they are victims of, and witnesses to, crimes." *Compare* SB 54, ch. 17.25, § 7284.2(c) (preamble), *with* ECF 73-1 (requesting intervention to defend SB 54 "because of the Act's critical importance for domestic violence survivors and other victims and witnesses of crimes throughout the State, many of whom are immigrants or from mixed-status families"). It is Defendant Attorney General Becerra, not the Partnership or CHIRLA, who is charged by the State Legislature with the responsibility of defending state laws. *See* Cal. Gov't Code §§ 12510, 12511, 12512; Cal Const. art. 5, § 13. There is nothing to indicate, nor have the putative intervenors offered anything to indicate, that the Attorney General will not faithfully execute his duties in defending SB 54.

Further, while the putative intervenors theorize that the State may be an inadequate representative because it represents a broader public interest, they fail to "make[] a showing of *distinct* 'parochial interests'" to overcome the presumption that the State will adequately represent them. *Nooksack Indian*

*Tribe*, 321 F.R.D. at 381-82 (quoting *Citizens for Balanced Use*, 647 F.3d at 899) (emphasis added). Nowhere do they explain how California's interests are specifically "distinct" or adverse to their own in seeking to uphold SB 54; to the extent that the State has "broader" interests, which the putative intervenors have alleged exist only in theory, they fail to explain how such interests overcome the presumption that their shared ultimate objective with the State makes the State an adequate representative. *Cf.* ECF 73-1 at 13 (acknowledging their defense of SB 54 "shares numerous questions of law and fact in common with the [State's] claims"). The test is not, as the putative intervenors would have it, whether the State has the same narrow policy interests in the law that it shares exclusively with the Partnership and CHIRLA. Rather, courts have consistently focused on the *ultimate objective* in litigation. *See LULAC,* 131 F.3d at 1301 & 1305 (rejecting intervention of public interest group who had participated in drafting and sponsorship of challenged California law because it sought same ultimate objective as the state to defend the constitutionality of the challenged law); *Prete*, 438 F.3d at 957-58 (denying intervention where "the ultimate objective for both defendant and intervenor-defendants is upholding the validity of [challenged law]"); *NW Forest Res. Council*, 82 F.3d at 838 ("Because [intervenor] alleges only minor differences in opinion with the Secretaries, it fails to demonstrate inadequacy of representation" where they seek the same interpretation of the law at issue).

Moreover, the putative intervenors can point to nothing demonstrating "a likelihood" that the State will "abandon or concede a potentially meritorious" interpretation of SB 54. *Lockyer*, 450 F.3d at 444; *Dep't of Fair Emp't & Hous. v. Lucent Tech., Inc.*, 642 F.3d 728, 740-41 (9th Cir. 2011) (rejecting as falling "'far short of a 'very compelling showing'" an applicant's "'vague speculation'" that government "'will abandon or concede a potentially meritorious position'"). This is presumably because the State's 41-page preliminary injunction opposition and 13-page memorandum in support of its motion to dismiss already show that it has *not* conceded any argument that the putative intervenors consider

meritorious. *See* ECF 74 & 77-1. Thus, whether the putative intervenors' speculation as to whether the State would offer a less than zealous defense due to "broader interest[s]" (ECF 73-1 at 11-12) was ever justified, it has now proven to be misguided. California has moved to dismiss the Complaint in its entirety and that motion included every overarching substantive argument advanced in the proposed motion to dismiss filed by the putative intervenors. Accordingly, as to the "ultimate objective" of this litigation—that is, a successful legal defense of SB 54—there is no daylight between the State and the putative intervenors. *Perry*, 587 F.3d at 951. That alone is sufficient reason for the Court to conclude that the State's representation is adequate, and that intervention is unwarranted.

Finally, it is an error to urge that intervention is needed to protect the interests of victims of and witnesses to crime. Here, the United States challenges only certain provisions of SB 54 that restrict local law enforcement from sharing basic information about aliens already in local custody *because they were arrested for criminal violations*, and from transferring custody of those aliens *arrested for or convicted of a crime* to federal immigration authorities. The challenged provisions of SB 54 do not serve to protect victims or witnesses to crime, but the criminals who harmed those victims. *See* § 7284.6(1)(C) (prohibiting the sharing of a "release date" of a criminal or person arrested for a crime). The putative intervenors go a step further and state that they have an interest, which they suggest may be narrower than California's, in protecting domestic violence perpetrators because if those violent criminals are not protected from the immigration consequences of their actions, their abuse might go unreported. ECF 73-1 at 3. It is not clear how their interests diverge from the State's on this score – in both cases, SB 54's operative provisions work the same to prevent, in certain circumstances, immigration enforcement against aliens who have engaged in criminal activity, like domestic violence perpetrators.[5] Additionally,

[5] SB 54 does not protect certain perpetrators of domestic violence when there has been a prior conviction. *See* § 7282.5(a)(3)(B) (excluding felony and some misdemeanor batteries from the cooperation restrictions, including domestic abuse under Cal. Penal Code § 273.5). The fact that SB 54 does not prevent local authorities from

this is a very limited aspect of SB 54, and while it would warrant amicus participation to share views on the issue, it does not warrant intervention in a challenge to the law – which broadly applies to prevent cooperation with respect to all criminals in state custody, not just those accused of domestic violence.

Taking a step back, the putative intervenors' theory – whereby perpetrators of domestic violence must be protected from the immigration consequences of their violent criminal activity – is fundamentally flawed. First, the argument proves too much: under this theory, the potential criminal penalties themselves would work to discourage reporting in difficult situations, but states still properly treat domestic violence as a serious crime. Moreover, domestic violence is a horrible evil, and a deportation risk would serve an important incentive to reduce incidents of that crime in the first place. Congress was certainly entitled to conclude that aliens who are violent perpetrators of domestic violence could be subject to removal from the country, and that the discretionary enforcement judgments with respect to those issues belong to DHS, not California. In any event, to the extent SB 54 protects perpetrators of domestic violence from the immigration consequences of their heinous actions, the State is situated to vigorously defend the law and protect the interests cited by the putative intervenors.

**II. Permissive intervention is not warranted.**

The putative intervenors have alternatively moved for permissive intervention under Federal Rule of Civil Procedure 24(b). ECF 73-1 at 13-15. Pursuant to Rule 24(b), a court may grant permissive intervention where the 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." *LULAC*, 131 F.3d at 1308. "Even if an applicant satisfies those threshold requirements, the district court has discretion to deny permissive intervention." *Donnelly*, 159 F.3d at

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cooperating with federal immigration authorities for these domestic violence perpetrators weakens the putative intervenors' theory that, without SB 54, domestic violence survivors will be discouraged from reporting their abuse to local police. ECF 73-1 at 3-4.

412. In exercising its discretion, the Court is "require[d]" to "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Perry*, 587 F.3d at 955. It may also consider relevant factors such as "the nature and extent of the intervenors' interest, their standing to raise the relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case," as well as "whether the intervenors' interests are adequately represented by other parties," and "whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Spangler v. Pasadena City Bd. of Ed.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

The Court should deny permissive intervention for many of the same reasons intervention as of right is not warranted in this case – most importantly because the interests of the non-profits can be fully and adequately vindicated by the State. The Ninth Circuit has upheld the denial of permissive intervention "based on the identity of interests of the [intervenors] and the [existing parties] and the [existing parties'] ability to represent those interests adequately." *Perry*, 587 F.3d at 955.

Further, the putative intervenors have no "claim or defense" that is "in common" with either Plaintiff or Defendants. Fed. R. Civ. P. 26(b). They have no affirmative "claim" at all, as they seek to intervene only as defendants and have not otherwise asserted any counterclaim. And they have no "defense" that is common to the State, as the United States could not could bring, for example, constitutional preemption claims against any entity other than the state government. Indeed, neither the United States – nor Orange County if it is permitted to intervene – has a cause of action to challenge the legality of a state law against anyone other than the state and its officials or representatives. In these circumstances, the proper role for the putative intervenors is as *amici*. Moreover, the litigation is likely to be complicated by the introduction of litigants who seek to advance interests that are not necessary to the determination of whether SB 54 is facially lawful. And because the putative intervenors take positions

on the legal issues actually at stake in this case that are identical to the existing party-defendants, their participation would only add unnecessary redundancy. *See United States v. California*, No. 2:18-cv-490-JAM-KJN, 2018 WL 1993937, at *3 (E,D, Cal. April 27, 2018) (J. Mendez).

Finally, the Court should refrain from exercising its discretion to permit the Partnership and CHIRLA to intervene because adding them as defendants does nothing to further judicial efficiency. The putative intervenors suggest that they have important interests that are implicated by litigation over SB 54, but their proposed arguments seek to advance the interests of *California*, not their own, and, as explained, those interests are described in SB 54 and adequately protected by the State. *See* ECF 73-1 at 10 (acknowledging they cannot litigate their interests related to SB 54 in a separate case). In contrast, Orange County has separate interests that it has put forth because it is directly regulated by SB 54, it is concerned about the impact of SB 54 on public safety in its local community, it is concerned about a potential loss of federal grant funds due to SB 54, and it has faced enforcement threats from the State Attorney General – interests that are notably distinct from those presented by the United States.

The non-profits, on the other hand, do not present a unique case for participation as intervenor-defendants. They express concerns about State recourse expenditures – but that interest is identical to what the State itself will have an interest in addressing. *See* ECF 73-2 at 4 (intervenor arguing that "state officers must divert limited time, energy, and jail space away from pressing local needs"). And they advocate for "California's constitutional prerogative to decline to help administer federal programs," under the Tenth Amendment, noting that the State is an "'independent political entit[y]' who 'represent[s] and remain[s] accountable to [its] own citizens.'" *Id.* But these are obviously interests identical to those protected here by the State. And the non-profits would not, as they concede, have a cause of action to assert the State's interests or advance the arguments they attempt to make here. *See Armstrong v.*

*Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1383 (2015) (holding the Supremacy Clause does not create a private cause of action). Permissive intervention is thus not warranted as a discretionary matter.

In sum, the Court does not need the putative intervenors—who raise no necessary element to the issue of whether SB 54 is facially valid and would otherwise not be able to litigate the issues at stake here—to decide this case, and it is not otherwise assisted by their proposed participation.

**III. The United States would consent to motions for leave to file briefs as *amici curiae*.**

Although they advance the same substantive arguments in their proposed briefings as the State, to the extent that the Partnership or CHIRLA wish to offer views on the issues presented by this case, those views can be provided to the Court through an amicus brief. The "Ninth Circuit has held that 'a district court has broad discretion in the appointment of *amici curiae*.'" *California v. U.S. Dep't of Labor*, 2014 WL 12691095, at *1 (E.D. Cal. Jan. 14, 2014) (citations omitted). The "classic role of *amicus curiae*" is to "assist[] in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration." *Id.* Amicus is the proper role here – just as is the case with the over 90 similarly-situated organizations who have sought leave to file amicus briefs. The United States would consent to amicus participation here, as it has with the other organizations.

**CONCLUSION**

For the foregoing reasons, the motion for intervention should be denied.

DATED: May 22, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the U.S. District Court for the Eastern District of California's Electronic Document Filing System (ECF), which will serve a copy of this document upon all counsel of record.

By: */s/ Kathryne M. Gray*
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