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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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10 UNITED STATES OF AMERICA,

No. 2:18-cv-490-JAM-KJN

11 Plaintiff,

12 v.

13 STATE OF CALIFORNIA, et al.,

14 Defendants.

**ORDER DENYING MOTION FOR LEAVE
TO INTERVENE BY CALIFORNIA
PARTNERSHIP TO END DOMESTIC
VIOLENCE AND THE COALITION FOR
HUMANE IMMIGRANT RIGHTS**

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The California Partnership to End Domestic Violence and the Coalition for Humane Immigrant Rights (collectively "Intervenor-Defendants") filed a Motion to Intervene as Defendants in this pending case between the United States and the State of California. ECF No. 73. Intervenor-Defendants seek to intervene in order to defend the California Values Act ("Senate Bill 54" or "SB 54") on behalf of their members and clients. Both the United States and California oppose intervention. ECF Nos. 149 & 151. For the reasons set forth below, Intervenor-Defendants' motion is DENIED.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 5, 2018.

1 I. BACKGROUND

2 The United States filed suit against the State of
3 California, Governor Edmund G. Brown Jr., and Attorney General
4 Xavier Becerra (collectively "California") on March 6, 2018,
5 seeking a declaration invalidating, and a preliminary and
6 permanent injunction enjoining, certain parts of SB 54, Assembly
7 Bill 450, and Assembly Bill 103. Compl., ECF No. 1. It
8 concurrently filed a motion for preliminary injunction. ECF No.
9 2. California filed its opposition to that motion and a motion
10 to dismiss on May 4, 2018. ECF Nos. 74 & 77. Since the United
11 States filed suit, the parties have litigated discovery matters,
12 undertaken expedited discovery, and participated in multiple
13 discovery conferences. ECF Nos. 20, 21, 22, 26, 28, 84, 95, 100,
14 118, & 157. California filed a motion to transfer venue to the
15 Northern District of California, which the Court denied on March
16 29, 2018. ECF Nos. 18 & 39. By consent of the parties or the
17 Court's permission, twenty-two amicus and amici curiae briefs
18 have been filed. ECF Nos. 43, 44, 48, 55-57, 104, 112, & 126-
19 140.

20 Intervenor-Defendants are nonprofit organizations that
21 contend their members and clients will be impacted if provisions
22 of SB 54 are enjoined. The California Partnership to End
23 Domestic Violence ("the Partnership") is a statewide organization
24 comprised of organizations—including direct services providers—
25 and individuals that work to address domestic violence and
26 provide support for victims. Moore Decl., ECF No. 73-4, ¶¶ 2-3.
27 The Partnership's direct service provider members serve immigrant
28 populations and the Partnership provides training and programming

1 related to issues affecting immigrant survivors, witnesses, and
2 their families. Id. ¶¶ 6-7. The Coalition for Humane Immigrant
3 Rights ("the Coalition") is a statewide membership organization
4 whose mission is to advance human and civil rights of immigrants
5 and refugees, promote multi-ethnic and multi-racial human
6 relations, and empower immigrants and their allies. Salas Decl.,
7 ECF No. 73-5, ¶¶ 2-3. The Coalition organizes regional member
8 meetings, educates the community through trainings, workshops,
9 and literature, provides direct legal services, engages in direct
10 political advocacy, and runs a hotline that provides information
11 and referrals. Id. ¶¶ 4-5. Both organizations supported SB 54's
12 passage and believe the laws enacted are important to their
13 members' interests. Mot. at 3-4. They seek to intervene to
14 ensure the challenged provisions of SB 54 are not struck down or
15 enjoined.

17 II. INTERVENTION AS OF RIGHT

18 A. Legal Standard

19 Intervenor-Defendants contend that they are entitled to
20 intervene in this lawsuit as of right. "On timely motion, the
21 court must permit anyone to intervene who . . . claims an
22 interest relating to the property or transaction that is the
23 subject of the action, and is so situated that disposing of the
24 action may as a practical matter impair or impede the movant's
25 ability to protect its interest, unless existing parties
26 adequately represent that interest." Fed. R. Civ. P. 24(a).

27 Courts in the Ninth Circuit apply a four part test to determine

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1 whether such a motion should be granted:

2 (1) the motion must be timely; (2) the applicant must
3 claim a "significantly protectable" interest relating
4 to the property or transaction which is the subject of
5 the action; (3) the applicant must be so situated that
6 the disposition of the action may as a practical
matter impair or impede its ability to protect that
interest; and (4) the applicant's interest must be
inadequately represented by the parties to the action.

7 Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th
8 Cir. 2011) (quoting Sierra Club v. U.S. E.P.A., 995 F.2d 1478,
9 1481 (9th Cir. 1993)). "Failure to satisfy any one of the
10 requirements is fatal to the application, and [the Court] need
11 not reach the remaining elements if one of the elements is not
12 satisfied." Perry v. Proposition 8 Official Proponents, 587 F.3d
13 947, 950 (9th Cir. 2009).

14 Both the United States and California (collectively "the
15 Parties") oppose intervention, primarily arguing that California
16 will adequately represent Intervenor-Defendants' interests.

17 In determining the adequacy of representation, district
18 courts consider "whether the interest of a present party is such
19 that it will undoubtedly make all the intervenor's arguments;
20 whether the present party is capable and willing to make such
21 arguments; and whether the intervenor would offer any necessary
22 elements to the proceedings that other parties would neglect."
23 People of State of Cal. v. Tahoe Reg'l Planning Agency, 792 F.2d
24 775, 778 (9th Cir. 1986). "The 'most important factor' to
25 determine whether a proposed intervenor is adequately represented
26 by a present party to the action is 'how the [intervenor's]
27 interest compares with the interests of existing parties.'" Perry,
28 587 F.3d at 950-51 (quoting Arakaki v. Cayetano, 324 F.3d

1 1078, 1086 (9th Cir. 2003)). A presumption of adequacy arises
2 when the applicant and an existing party have the same ultimate
3 objective. Perry, 587 F.3d at 951; see also League of United
4 Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1305 (9th Cir. 1997)
5 (“Under well-settled precedent in this circuit, where an
6 applicant for intervention and an existing party have the same
7 ultimate objective, a presumption of adequacy of representation
8 arises.”). Additionally, courts presume adequacy of
9 representation when the existing party is a government body
10 acting on behalf of its constituency. Arakaki, 324 F.3d at 1086
11 (“There is also an assumption of adequacy when the government is
12 acting on behalf of a constituency that it represents.”). With
13 each presumption, the applicant must make a compelling showing—
14 and in the case of government representation, a very compelling
15 showing—that its interests are not adequately represented. Id.

16 B. Application

17 At the outset, the Parties assert that California adequately
18 represents Intervenor-Defendants’ interests in this litigation.
19 They argue that the heightened standard applies to Intervenor-
20 Defendants’ motion because Intervenor-Defendants share the “same
21 ultimate objective” as California. Pl. Opp. at 5-7; Def. Opp. at
22 4-5. They further argue that California’s status as a
23 “government body acting on behalf of its constituency” reinforces
24 this presumption. Pl. Opp. at 8-11; Def. Opp. at 5-6.

25 Intervenor-Defendants argue that adequate representation
26 cannot be presumed unless their interests and California’s
27 interests “align precisely.” Mot. at 11 (citing Brumfield v.
28 Dodd, 749 F.3d 339, 345 (5th Cir. 2014) (“Although both the state

1 and the parents vigorously oppose dismantling the voucher
2 program, their interests may not align precisely.")). That is
3 not the case here, they argue, because (1) California has broader
4 interests to protect than Intervenor-Defendants, (2) California
5 has an interest in maintaining relationships with entities—the
6 Federal Government and certain localities—that oppose SB 54, and
7 (3) California seeks to defend each law subject to this lawsuit
8 and not just SB 54. Id. at 11-12.

9 Precise alignment of interests is not the legal standard in
10 the Ninth Circuit. Rather, the Court is bound to presume
11 adequate representation if Intervenor-Defendants and California
12 share the same "ultimate objective." See Perry, 587 F.3d at 951.

13 Intervenor-Defendants have not shown that they have an
14 objective distinct from that of California. Both seek to defend
15 the constitutionality of SB 54 and ensure that the law is upheld.
16 See Perry, 587 F.3d at 951 ("[I]t is apparent to us that the
17 ultimate objective of the Campaign [(proposed intervenor)] and
18 the Proponents is identical—defending the constitutionality of
19 Prop. 8 and the principle that the traditional definition of
20 marriage is the union of a man and a woman."); Prete v. Bradbury,
21 438 F.3d 949, 957 (9th Cir. 2006) ("Here, the ultimate objective
22 for both defendant and intervenor-defendants is upholding the
23 validity of Measure 26. Thus, a presumption arises that
24 defendant is adequately representing intervenor-defendants'
25 interests."). The Court finds Intervenor-Defendants' ultimate
26 objective is identical to California's and therefore a
27 presumption of adequacy applies. Additionally, a "second
28 presumption" applies because California is a government entity

1 representing a constituency that includes Intervenor-Defendants.
2 See Prete, 438 F.3d at 957 (“While it is unclear whether this
3 ‘assumption’ rises to the level of a second presumption, or
4 rather is a circumstance that strengthens the first presumption,
5 it is clear that ‘[i]n the absence of a “very compelling showing
6 to the contrary,” it will be presumed that’ the Oregon government
7 adequately represents the interests of the intervenor-
8 defendants.”) (citations omitted).

9 California’s responsibility to protect the “broader public
10 interest” does not, by itself, thwart the applicable
11 presumptions. See Mot. at 11. A government entity is
12 necessarily charged with representing interests beyond those
13 attributable to individual members or groups of its constituency.
14 If this breadth alone were sufficient to show inadequate
15 representation, the presumption applied to government entities
16 would be hollow. Indeed, the Ninth Circuit has presumed, and
17 found, adequate representation in similar circumstances. See,
18 e.g., Prete, 438 F.3d at 957 (presuming, and finding, adequate
19 representation where the Oregon government and Intervenor-
20 Defendants shared the same ultimate objective in upholding the
21 validity of a ballot measure); Freedom from Religion Found., Inc.
22 v. Geithner, 644 F.3d 836, 841 (9th Cir. 2011) (presuming, and
23 finding, adequate representation where the federal defendants
24 shared Intervenor-Defendants ultimate objective of upholding the
25 constitutionality of the challenged statutes).

26 For similar reasons, the Court does not find inadequate
27 representation based on California’s interest in maintaining its
28 relationship with the federal government and its own localities.

1 All government entities have a variety of relationships to
2 maintain and this attribute alone does not establish inadequacy.
3 See League of United Latin American Citizens, 131 F.3d 1297
4 (finding adequate representation where California's governor had
5 shown unwavering support for the challenged law). Nor is
6 representation inadequate just because California will defend
7 each law subject to this litigation and not only SB 54.
8 Intervenor-Defendants have not demonstrated how defending the
9 entire action might constrain or impede California's defense of
10 SB 54. It is uncontroverted that California will vigorously
11 defend SB 54 in pursuit of their shared goals. Cf. Yniguez v.
12 State of Ariz., 939 F.2d 727, 737 (9th Cir. 1991) (finding
13 inadequate representation where the defendant-Governor had
14 decided not to appeal the district court's adverse decision and
15 had adopted a narrower construction of a ballot initiative than
16 the supporters of the initiative who sought to intervene);
17 Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525 (9th Cir. 1983)
18 (finding possibility of inadequate representation where the
19 defendant Secretary of the Interior was previously the head of
20 the organization representing the plaintiffs in the action).
21 Without more, the traits cited in Intervenor-Defendants' motion
22 are inconsequential.

23 In their Reply brief, Intervenor-Defendants argue they
24 should be allowed to intervene because they raise arguments in
25 their Proposed Opposition to the Preliminary Injunction that
26 California failed to make. Rep. at 3; compare Proposed Opp. to
27 PI, ECF No. 73-2, with Def. Opp. to PI, ECF No. 74. Although
28 courts consider, *inter alia*, "whether the interest of a present

1 party is such that it will undoubtedly make all of a proposed
2 intervenor's arguments," "the most important factor in
3 determining the adequacy of representation is how the interest
4 compares with the interests of existing parties." Arakaki, 324
5 F.3d at 1086. Once the presumptions apply, a very compelling
6 showing is required. Id. Here, while Intervenor-Defendants
7 might have authored California's Opposition differently, the
8 thrust of their arguments are substantially the same as is the
9 ultimate relief that they seek. See Def. Opp. to PI at 10-22;
10 Proposed Opp. to PI at 4-23. Intervenor-Defendants have not
11 adequately demonstrated that their distinct arguments—or case
12 citations—are tied to interests unique to their members and
13 divergent from those of California. They also have not shown,
14 and cannot show, that California is unwilling or incapable of
15 making any arguments that would advance their shared interest.

16 Finally, Intervenor-Defendants argue that their
17 interpretation of SB 54 differs from California's in two ways.
18 First, they "do not share the State's view that the SB 54 allows
19 localities to share release dates and addresses with DHS simply
20 by making them public." Rep. at 3. Second, they do not "agree
21 that localities can share addresses with DHS through the CLETS
22 database." Id. Thus, they contend, intervention is necessary
23 "to allow [them] to defend [SB 54] without relying on legal
24 interpretations that, if accepted, would reduce the protection
25 [SB 54] provides to their members and clients. Rep. at 3.

26 This argument, too, falls short of compelling. Although
27 Intervenor-Defendants cite pages of California's brief that
28 contain the contested interpretations of California Government

1 Code § 7284.6, Rep. at 3, they have not shown that their
2 allegedly distinct interpretations of the statute have merit.
3 See California ex rel. Lockyer v. United States, 450 F.3d 436,
4 444 (9th Cir. 2006) ("In order to make a 'very compelling
5 showing' of the government's inadequacy, the proposed intervenor
6 must demonstrate a likelihood that the government will abandon or
7 concede a potentially meritorious reading of the statute."). Nor
8 does such support appear in their Proposed Opposition. See
9 Proposed Opp. to PI, ECF No. 73-2. Furthermore, the Court finds
10 that these alleged distinctions are not material to the outcome
11 that both California and Intervenor-Defendants seek. Cf.
12 Lockyer, 450 F.3d at 445 (finding inadequate representation where
13 differences in construction of a statute "go to the heart of the
14 defense").

15 Given the absence of a compelling argument to the contrary,
16 the Court finds California will adequately represent Intervenor-
17 Defendants' interests in this litigation. Because the "failure
18 to satisfy any one of the requirements is fatal to the
19 application," the Court need not, and does not, address the
20 remaining elements. Perry, 587 F.3d at 950. Intervenor-
21 Defendants' motion to intervene as of right is denied.

22 23 III. PERMISSIVE INTERVENTION

24 A. Legal Standard

25 Alternatively, Intervenor-Defendants request permissive
26 intervention under Federal Rule of Civil Procedure 24(b). "On
27 timely motion, the court may permit anyone to intervene who is
28 given a conditional right to intervene by a federal statute; or

1 has a claim or defense that shares with the main action a common
2 question of law or fact." Fed. R. Civ. P. 24(b). "[A] court may
3 grant permissive intervention where the applicant for
4 intervention shows (1) independent grounds for jurisdiction; (2)
5 the motion is timely; and (3) the applicant's claim or defense,
6 and the main action, have a question of law or a question of fact
7 in common." Nw. Forest Res. Council v. Glickman, 82 F.3d 825,839
8 (9th Cir. 1996).

9 "Even if an applicant satisfies those threshold
10 requirements, the district court has discretion to deny
11 permissive intervention." Donnelly v. Glickman, 159 F.3d 405,
12 412 (9th Cir. 1998). In doing so, the Court may again "evaluate
13 whether the movant's 'interests are adequately represented by
14 existing parties.'" Venegas v. Skaggs, 867 F.2d 527, 530 (9th
15 Cir. 1989) aff'd sub nom. Venegas v. Mitchell, 495 U.S. 82
16 (1990).

17 B. Application

18 The Court is compelled to deny Intervenor-Defendants' motion
19 for permissive intervention for the same reasons they may not
20 intervene as of right, i.e., there is no reason to doubt that
21 California will not fully, vigorously and adequately represent
22 their interests in this litigation.

23 Furthermore, the Court finds the addition of Intervenor-
24 Defendants to this lawsuit will contribute little to resolution
25 of the claims. This lawsuit fundamentally concerns the
26 relationship between two sovereign entities: the United States
27 and the State of California. The claims turn on legal questions.
28 See Astiana v. Hain Celestial Grp., 783 F.3d 753, 757 (9th Cir.

1 2015) (describing preemption as a "purely legal question"). This
2 litigation presents complex constitutional issues that are more
3 likely to be complicated by the introduction of litigants such as
4 Intervenor-Defendants who seek to advance interests that are not
5 necessary to the determination of whether SB 54 is facially
6 lawful. Under these circumstances, the Court agrees with the
7 United States and the State of California that the proper role
8 for Intervenor-Defendants is as amici. See Blake v. Pallan, 554
9 F.2d 947, 955 (9th Cir. 1977) (while litigation might benefit
10 from proposed intervenor's knowledge of law and facts, "such
11 benefits might be obtained by an amicus brief rather than bought
12 with the price of intervention").

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14 IV. ORDER

15 For the reasons set forth above, Intervenor-Defendants'
16 Motion to Intervene is DENIED. Intervenor-Defendants may file
17 amici curiae brief by Tuesday, June 12, 2018.

18 IT IS SO ORDERED.

19 Dated: June 4, 2018

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE