UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. COMMONWEALTH OF VIRGINIA, Defendant.	Case No. 3:25-cv-01067

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE, FOR EXTENSION OF TIME TO FILE PLEADING, AND TO STAY ADJUDICATION OF JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

I. INTRODUCTION

On December 29, 2025, the United States filed a lawsuit against the Commonwealth of Virginia alleging that Virginia Code §§ 23.1-502 and 23.505.1 ("the Virginia Dream Act") violate the Supremacy Clause and are expressly preempted by 8 U.S.C. § 1623. Dkt. 1. A day later,[1] on December 30, Virginia entered an appearance, and the parties jointly submitted a motion for entry of a consent judgment requesting the Court enter a permanent injunction prohibiting Virginia, "as

[1] The Government's case mirrors recent federal actions in other states, two of which were resolved with effectively no time for meaningful adversarial proceedings. *See United States v. Texas*, No. 7:25-cv-00055, ECF No. 8 (N.D. Tex. June 4, 2025) (order and final judgment declaring Texas law unconstitutional signed same day that parties filed complaint and joint motion); *United States v. Oklahoma*, Case No. 25-cv-00265, ECF No. 11 (E.D. Okla. Aug. 7, 2025) (report and recommendation to grant parties' joint motion for consent order issued two days after complaint and joint motion). The other three actions the Dream Project is aware of in Illinois, Minnesota, and Kentucky, involve active defense by attorneys general or intervenors, and thus adversarial testing of the constitutionality of those states' analogous statutes.

well as its successors, agents and employees from enforcing Virginia Code §§23.1-502 and 23505.1…" Dkts. 2, 3.

Since its passage in 2020, the Virginia Dream Act has guaranteed in-state tuition to all eligible Virginia high school graduates—regardless of their immigration status—at Virginia's public higher education institutions. This law has made education attainable for countless individuals, enriching communities and contributing significantly to Virginia's economy and workforce. As of 2018, there were an estimated 13,000 noncitizen students enrolled in higher education in Virginia, and approximately 5,000 noncitizens graduate each year from Virginia high schools, numbers that are likely larger today. *See* State Council of Higher Education for Virginia, Enrollment Projections and Degree Estimates 2024-25 to 2029-30, available at https://collegeoutcomes.schev.edu/rdPage.aspx?rdReport=Reporting.Projections.2425.HSGraduate_Projections (accessed December 31, 2025). Despite the wide-ranging impact on these students, the United States and Virginia have asked this Court to declare the Virginia Dream Act, on which their futures depend, unconstitutional without any input from those students. *See* Dkt. 3.

Fifteen years ago, the Supreme Court of California concluded that 8 U.S.C. § 1623(a) does not preempt a statute similar to the Virginia Dream Act. *Martinez v. Regents of Univ. of California*, 241 P.3d 855, 863 (Cal. 2010) ("The fatal flaw in plaintiffs' argument concerning section 1623 is their contention that [the] exemption from paying out-of-state tuition is based on residence. It is not. It is based on other criteria . . .".). In three other states, lawsuits almost identical to this one are currently facing challenges based on anti-commandeering under the Tenth Amendment, lack of standing, and that their respective statutes are consistent with 8 U.S.C. § 1623.[2] This Court has

[2] *See U.S. v. Illinois*, 3:25-cv-1691 (S.D. Ill. 2025) (Motion to dismiss filed, United States opposition and cross motion for summary judgment due January 16, 2026), *U.S. v. Walz*, 0:25-CV-02668 (D. Minn. 2025) (Minnesota's motion to dismiss briefed and argued December 10,

had no opportunity to consider these or other arguments in defense of the law, as none were made. Instead, within a day of the filing of the complaint, the Attorney General of Virginia abdicated his duties and entered into a collusive agreement with the United States to abandon this critical protection for Virginia students.

The Dream Project seeks to intervene because no party presently before the Court represents the interests of the students whose access to higher education will be eliminated if the consent decree is enforced. The current parties here are clearly aligned, such that there is no justiciable "case" or "controversy" between Plaintiff and Defendant. "Such a suit is collusive because it is not in any real sense adversary. It does not assume the 'honest and actual antagonistic assertion of rights' to be adjudicated—a safeguard essential to the integrity of the judicial process . . . which . . . [is] indispensable to adjudication of constitutional questions[.]" *United States v. Johnson*, 319 U.S. 302, 305 (1943) (quotation omitted); *see also, Shenandoah Valley Network v. Capka*, 669 F.3d 194, 201 (4th Cir. 2012) ("In order for a suit to be justiciable, and not an advisory opinion, there must be an actual dispute between adverse parties."). The United States and Virginia intend to subvert the judicial process and deprive those most impacted by the law's intended recission—and the democratically elected legislators who have year after year chosen to leave Virginia's in-state tuition laws in place—of a full adjudication of constitutionality.

Pursuant to Federal Rule of Civil Procedure 24(a), the Dream Project requests intervention as of right, to challenge the proposed joint consent decree and defend the validity of the challenged Virginia statutes. Alternatively, the Dream Project requests permissive intervention under Rule 24(b). Intervention is timely, necessary, and essential to ensure that the Court hears from affected

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2025, decision pending); *U.S. v. Beshear*, 25-CV-00028 (E.D. Ky. 2025) (Motion to Intervene granted, extension for 24(c) pleading and to respond to Joint Motion for Consent Judgment by January 9, 2026 granted).

students before approving or enforcing a consent decree that will conclusively determine their rights.

II. BACKGROUND

Since July 1, 2020, Virginia has provided a pathway for eligible students, regardless of immigration status, to obtain in-state tuition rates at all public institutions in the Commonwealth if they meet residency and education criteria. The policy is essential to expanding access to higher education for students who have grown up and attended secondary school in the Commonwealth, and contributed to Virginia's communities and economy.

The United States filed this lawsuit against Virginia on December 29, 2025, alleging that the policy "unconstitutionally discriminates" against U.S. citizens from other states by providing benefits to individuals who are not lawfully present in the United States. At least five similar federal challenges have recently been brought in Illinois, Minnesota, Kentucky, Texas, and Oklahoma, drawing significant controversy over access to affordable higher education and the role of state law in setting tuition policy. *U.S. v. Illinois*, 3:25-cv-1691 (S.D. Ill. filed September 2, 2025); *United States v. Walz et al*., No. 0:25-cv-02668 (D. Minn. filed June 25, 2025); *U.S. v. Beshear*, 25-CV-00028 (E.D. Ky. filed June 17, 2025); *United States v. Oklahoma*, No. 6:25-cv-00265 (E.D. Okla. filed Aug. 5, 2025); *United States v. Texas*, No. 7:25-cv-00055 (N.D. Texas filed June 4, 2025).

The Dream Project is a Virginia-based nonprofit founded in 2010 that supports noncitizen students whose immigration status creates barriers to higher education by providing scholarships, mentoring, family engagement, and advocacy. Access to education is core to the Dream Project's mission. The Dream Project provides students and schools with information about higher education and assists undocumented students and those with Deferred Action for Childhood

Arrivals ("DACA") to understand eligibility for in-state tuition. Many Dream Project scholars come from low-income backgrounds and lack access to federal financial aid, making in-state tuition central to their educational plans. Without access to in-state tuition, students supported by the Dream Project could be forced to pay prohibitively high out-of-state rates, jeopardizing, if not eliminating, their ability to enroll or continue their education. This in turn stretches the resources of the Dream Project itself, as the resources they expend go further and fewer students are able to even access higher education in the first place.

The community the Dream Project serves would suffer material harm if the statute were invalidated. Should this Court enter the parties' consent order, the Dream Project will have to divert resources to support affected students, while working with schools to understand new tuition policies. The Dream Project is directly impacted by the Virginia Dream Act and thus, by the outcome of this case. Because these harms are concrete, imminent, and directly tied to the statutory provisions at issue, the Dream Project has a protectable interest in defending the validity of Virginia Code §§ 23.1-502 and 23.1-505.1.

III. ARGUMENT

The Dream Project is entitled to intervention as of right under Fed. R. Civ. P. 24(a)(2) because the current Parties to this case have entered into a collusive agreement to deprive Virginia students and the Dream Project of a direct and substantial interest, Virginia has disclaimed any intent to defend its law conferring that interest, and no party adequately protects their interest.

This motion is timely because less than two days have passed since the filing of this action, when the proposed intervenor first learned of this case. The Dream Project has a substantial interest in this litigation, as the revocation of in-state tuition will cause significant hardship to the Dream Project and those they serve. The Dream Project's ability to protect their interests will be further

limited if they cannot intervene, as the parties have already submitted a consent order for consideration to this Court. Finally, Virginia has not merely provided no defense of Virginia's Dream Act, it has taken the affirmative step of attempting to nullify the law through its proposed consent order and thus failed to adequately represent the Dream Project's interests. Should the Court find the Dream Project is not entitled to intervene as of right, the Court should still grant them permissive intervention in this action.

a. The Dream Project has Article III Standing.

The Dream Project has standing to proceed and seek relief different from that agreed to by the Parties. Under Article III, a party must demonstrate (1) injury in fact, (2) causation, and (3) redressability. *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 561 (1992). Here, the Dream Project faces direct injury from the attack on the Virginia Dream Act: it will have to divert significant resources to respond to this case, and the students it serves may no longer be able to afford tuition, thus frustrating its core mission. These injuries would all be caused by the Court's approval of the parties' consent order and the United States' suit against the Virginia Dream Act and can be directly redressed through proper defense of the law in this action.

b. This Court Should Grant Intervention as of Right Pursuant to FRCP 24(a).

Under Fed. R. Civ. P. 24(a), intervention as of right is required where the movant's motion is timely, demonstrates a protectable interest in the subject of the action, shows that disposition of the action may impair that interest, and shows that the interest is not adequately represented by existing parties. *Gould v. Alleco, Inc.*, 883 F.2d 281, 284 (4th Cir. 1989). Rule 24 is construed liberally in favor of intervention, particularly where absent parties may be substantially affected by the outcome. *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986). The Dream Project clears this minimal bar for all four elements, warranting intervention.

i. Timeliness

Recent federal litigation in Texas and Oklahoma demonstrates that similar cases can be resolved rapidly, sometimes within days, creating a substantial risk that affected students' interests will be extinguished before any true adversarial process could possibly take place. The Dream Project seeks intervention as promptly as it can to avoid that result. Timeliness is evaluated in light of "how far the suit has progressed, the prejudice that delay might cause other parties, and the reason for the tardiness in moving to intervene." *Gould*, 883 F.2d at 286. In the Fourth Circuit, "the timeliness requirement is generally not strictly enforced under Rule 24(a) . . . [and] [t]he court retains "reasonable discretion" when considering this issue[.]" *United States v. Steve's Towing, Inc*., No. 2:22CV157, 2022 WL 22702670, at *2 (E.D. Va. Oct. 4, 2022).

This action is only two days old, which weighs strongly in favor of granting intervention. Plaintiff filed this action on December 29, 2025, see Dkt. 1. The following day, the parties filed a Joint Motion for Entry of Consent Judgment, see Dkt. 3. This motion follows on December 31, 2025. Given the very recent filing date, no discovery could have been conducted, no scheduling order could have been issued, and no trial date has been set. At the very outset of litigation, intervention is clearly timely.

Further, the Dream Project seeks to intervene at the earliest practicable opportunity after it learned its interests could be impacted by this litigation. The Dream Project is moving for intervention less than 72 hours after Plaintiff filed this action. The expeditious filing of the motion for intervention weighs in favor of granting the intervention. The Fourth Circuit recognizes that the potential stare decisis effect of an adverse ruling may constitute sufficient impairment to warrant intervention. *Teague v. Bakker*, 931 F.2d 259, 261–62 (4th Cir. 1991). Any prejudice to the parties would not be the result of the Dream Project's intervention, but of the parties' attempt to

rush this Court into invalidating the will of the Virginia General Assembly in a matter of days, without opportunity for a true adversarial process to determine the challenged statutes' constitutionality.

Finally, the circumstances of this action are unusual and satisfy timeliness. This action is part of the United States's new nationwide litigation strategy to avoid full judicial scrutiny by entering into consent decrees that prevent undocumented noncitizens from accessing in-state tuition benefits. For example, the federal government filed a simultaneous complaint against and proposed consent order with the state of Texas, where the parties agreed to put an end to a similar two-decades-old Texas law. *United States v. Texas*, No. 7:25-cv-00055, ECF No. 8 (N.D. Tex. June 4, 2025) (order and final judgment declaring Texas law unconstitutional and permanently enjoining its enforcement).

The federal government has also sued Minnesota and Oklahoma over state laws that allow undocumented people to qualify for regular tuition rates in limited circumstances. *See United States v. Walz et al*., No. 0:25-cv-02668 (D. Minn. filed June 25, 2025); *United States v. Oklahoma*, No. 6:25-cv-00265 (E.D. Okla. filed Aug. 5, 2025). Given that the Texas action was filed and adjudicated in one day, and the Oklahoma consent decree was signed without argument on the legality of the consent agreement, , Movant seeks to intervene now—and to stay the Court's decision on the Joint Motion for Entry of Consent Judgment—to ensure that the interests of its affected members are adequately represented. Accordingly, Movant's motion is timely.

ii. Interest in action

"The second intervention factor requires that the movant have a 'significantly protectable interest' in the subject matter of the litigation." *Teague*, 931 F.2d at 261. The interest requirement

is construed broadly and does not require a showing of ownership or a specific legal entitlement. *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986).

The Dream Project is a leading organization in Virginia focused on expanding educational opportunities for students with DACA, Temporary Protected Status (TPS), undocumented, or similar status. The Dream Project scholars include Virginia high school graduates who rely on affordable in-state tuition to enroll, remain, and succeed in college. The outcome of this litigation will have a direct and immediate impact on these students and the Dream Project's ability to fulfill its mission with the limited resources it has, including but not limited to greatly reducing the effectiveness of scholarship funds it distributes and impacting its organizing and mentoring efforts.

iii. Disposition of the case will impair the Dream Project's ability to protect its interests and the interests of the students and communities it serves

To satisfy the third element of intervention, a would-be intervenor must show only that disposition of the action "may as a practical matter impair or impede" its ability to protect its interest. Fed. R. Civ. P. 24(a)(2); *Teague*, 931 F.2d at 261. Keeping with the general theme of Rule 24(a), this burden is minimal. If the proposed consent decree is entered, the challenged statutes will be invalidated without meaningful input from the Dream Project or its students, or really anyone else who will be affected. As a direct consequence, the effectiveness of scholarship funds paid out by the Dream Project will be slashed, as the same money will now have to cover tuition costs that may be as much as double, or even higher, what they were last semester. The Dream Project's scholars will face immediate financial harm, including dramatically higher tuition costs, as well as life-changing, long-term harm based on the loss of access to degree programs they are already pursuing. Many of the students that the Dream Project serves may have to reduce their coursework, withdraw from their degree programs, or reconsider attending college altogether.

These injuries are particularly acute now, as students and their families will be required to pay tuition for the Spring 2026 semester in the coming weeks.

The Dream Project cannot wait until after the litigation concludes to protect these interests; absent intervention now, the consent decree may eliminate the very conditions that enable its students to afford higher education. Such an outcome would irreparably harm students who have already enrolled or are preparing to enroll under the existing law. Because the relief sought is facial and statewide, the interests of the Dream Project and the community it serves would be conclusively impaired.

The Dream Project cannot wait until the Court rules on the parties' Joint Motion to vindicate their interests. An adverse outcome here will hinder its ability to litigate the validity of the challenged statutes in subsequent proceedings. The Fourth Circuit recognizes that the potential stare decisis effect of an adverse ruling constitutes sufficient impairment to warrant intervention. *Teague*, 931 F.2d at261–62. Because the outcome of this litigation would render its mission futile and substantially divert the resources it devotes to that mission, its interests would be impaired if Plaintiff prevails.

iv. The Parties Before the Court Do Not Adequately Represent Movant's Interests

In seeking intervention, the movant has the burden of demonstrating inadequate representation, but this burden is "minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). This minimal burden is satisfied where the existing parties seek the same outcome and do not represent the intervenor's more particularized interests. *Stuart v. Huff*, 706 F.3d 345, 350–53 (4th Cir. 2013).

Like in Oklahoma and Texas, the parties have submitted a proposed consent judgment almost simultaneously with filing to jointly declare §§ 23.1-502 and §§ 23.505.1 preempted and

enjoin their enforcement. *See* Dkt. 2 at 7-9. In contrast, the Dream Project's position, like the Attorneys General of Illinois and Minnesota, and intervenors in Kentucky, is that the challenged statutes are valid. This is not "a mere disagreement over litigation strategy." *Id.* Defendants cannot represent the Dream Project's interests because their interests are adverse.

Because Defendants fail to represent the Dream Project's interests in any way, the Dream Project is entitled to intervene as of right.

c. Permissive Intervention

Should the Court determine that it is not entitled to intervene as a matter of right, the Dream Project asks the Court to exercise its discretion to allow permissive intervention under Fed. R. Civ. P. 24(b). A proposed permissive intervenor must establish the motion for intervention is timely and that the intervenor has a claim or defense with at least one common question of law or fact. *Hill v. Western Elec. Co.,* 672 F.2d 381, 386 (4th Cir. 1982). Once these two requirements are satisfied, the district court must then balance undue delay and prejudice to the original parties to determine whether, in the court's discretion, intervention should be permitted.

The Dream Project's claims and defenses share many questions of law and fact with the action as a whole. The United States argues the challenged statutes violate the Supremacy Clause and are preempted by 8 U.S.C. § 1623. The Dream Project seeks to defend the validity of the challenged statutes. It is hard to conceive how intervention could be prejudicial or constitute undue delay in an action filed only two days before the proposed intervention. Finally, as discussed above, the Dream Project's motion is timely.

Accordingly, Movant requests the Court allow permissive intervention under Fed. R. Civ. P. 24(b).

d. Good cause exists to allow an extension of time to file an accompanying pleading under Fed. R. Civ. P. 24(c) and to stay adjudication of the pending Joint Motion for Entry of Consent Judgment

Fed. R. Civ. P. 24(c) requires that "[a] motion to intervene must… be accompanied by a pleading that sets out the claim or defense for which intervention is sought." However, the Fourth Circuit has long held that defects such as failure to attach pleadings do not defeat a motion to intervene unless those defects are prejudicial. *Spring Constr. Co., Inc. v. Harris*, 614 F.2d 374, 376-77 (4th Cir. 1980); *see also Marshall v. Meadows*, 921 F. Supp. 1490, 1492 (E.D. Va. 1996).

In *Spring*, the Fourth Circuit found no prejudice in part because the intervenor filed its pleadings shortly after the motion to intervene. 614 F.2d at 377. Based on the logic of *Spring*, the Dream Project seeks the Court's permission to cure the non-prejudicial defect of failing to attach pleadings per Fed. R. Civ. P. 24(c) by allowing a short extension of time to supplement its Motion with the required pleadings.

The default deadline to file a responsive pleading under the Federal Rules of Civil Procedure is 21 days after service. Fed. R. Civ. P. 12(a)(1)(A)(i). The Dream Project respectfully requests to be granted at least that amount of time to supplement their Motion to Intervene with a proposed pleading, starting from December 30, 2025, when they first became aware of this action (i.e. due January 21, 2025). However, the Dream Project also believes that given the weighty interests at stake, and the lack of advance notice inherent in a collusive action such as this one, additional time is necessary and proposes a date of **January 30, 2025** for submission of their proposed pleading.

Under the current circumstances, it is also in the interests of justice to delay adjudication of the Joint Motion for Entry of Consent Judgment filed December 30, 2025, until the Dream Project's Motion to Intervene has been fully adjudicated. The Dream Project therefore requests that the Court stay its decision on the Joint Motion for Entry of Consent Judgment at least until it

rules on the Motion to Intervene, and if the Motion to Intervene is granted extend the deadline to respond to the motion until 7 days afterwards.

Neither party would be prejudiced by the timelines proposed in this motion. The law that both parties wish to summarily nullify, without the benefit of a true adversarial process, has been in effect for years without challenge or legislative modification. The Dream Project is not aware of any exigency that would justify extinguishing a policy that benefits thousands of Virginians without an adequate opportunity to fully defend the interests of students and communities whose very future depends on it.

IV. CONCLUSION

For the foregoing reasons, the Dream Project respectfully requests that the Court grant its Motion to Intervene as of right under Rule 24(a), or in the alternative permit intervention under Rule 24(b); to extend its time to file the pleading required by Rule 24(c); and to stay adjudication of the proposed consent decree pending full adjudication of the Motion to Intervene.

Respectfully submitted,

Date: December 31, 2025

_____/S/_____

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