UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,

Defendant,

and

VIRGINIA STUDENTS FOR AFFORDABLE TUITION,

Proposed Defendant-Intervenor.

Case No.: 3:25-cv-01067

VIRGINIA STUDENTS FOR AFFORDABLE TUITION'S BRIEF IN SUPPORT OF ITS MOTION TO INTERVENE

I. INTRODUCTION

The United States of America ("Plaintiff" or "United States") and the Commonwealth of Virginia ("Defendant" or "the Commonwealth"; collectively "the Parties") agreed to invalidate Virginia Code §§ 23.1-502 and 23.505.1 ("the challenged statutes") as applied to undocumented immigrant students without considering the significant interests of affected third parties. The challenged statutes allow eligible students without lawful immigration status to pay tuition equivalent to the rate paid by most students at Virginia colleges and universities ("regular tuition rates"). This lawsuit is the latest case in which the United States and a state Attorney General have tried to revoke regular tuition rates from immigrant students in a matter of days without adversarial briefing. *See also United States v. Texas*, No. 7:25-cv-00055 (N.D. Tex.); *United States v. Oklahoma*, No. 6:25-cv-00265 (E.D. Okla.). These cases are part of a nationwide effort by the United States to end longstanding tuition laws in Texas and Oklahoma, as well as California, Kentucky, Minnesota, Illinois, and now Virginia.[1] If the Parties succeed, students who sought higher education in Virginia based on a legislated promise that they would pay regular tuition rates will suffer irreparable consequences.

Virginia Students for Affordable Tuition ("VSAT") is an unincorporated association of persons affected by this lawsuit. It is an unincorporated association comprised of college or university students without lawful immigration status who are united for the purpose of advocating for access to affordable higher education in Virginia, including maintaining regular tuition rates for Virginia residents without lawful immigration status. VSAT therefore has a significant interest in the validity of the challenged statutes and is seeking timely intervention.

[1] In Kentucky, the Court granted Kentucky Students for Affordable Tuition's motion to intervene before considering the existing Parties' motion for consent judgement. *See* Dkt. 38, *United States v. Beshear et al.*, No. 3:25-cv-00028 (E.D. Ky.).

VSAT seeks intervention as a matter of right under Federal Rule of Civil Procedure 24(a) for the purpose of defending the validity of the challenged statutes. In the alternative, VSAT respectfully requests permissive intervention under Fed. R. Civ. P. 24(b), as its claims and defenses share common questions of law and fact with the main action, and its intervention on behalf of third parties affected by the outcome of this litigation will significantly contribute to the just and equitable resolution of the important issues at stake.

Accordingly, VSAT respectfully requests that the Court grant its motion to intervene to ensure fair consideration of the validity of the challenged statutes.

II. BACKGROUND

a. Statutory History

In 1996, the United States Congress passed the Illegal Immigration Reform and Responsibility Act. The Act states in relevant part:

> Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.

8 U.S.C. § 1623(a). Virginia was presumably aware of this law when it subsequently enacted pathways for students to establish their eligibility for regular tuition rates.

Under the first, Virginia Code § 23.1-502, students are eligible for regular tuition if they, or the individual through whom they claim eligibility, can show "by clear and convincing evidence [] domicile in the Commonwealth for a period of at least one year." Va. Code Ann. § 23.1-502 (A) (West 2016). Crucially, no student is "ineligible to establish domicile and receive" regular tuition charges "solely on the basis of the immigration status of his parent." Va. Code Ann. § 23.1-503 (West 2020).

The second challenged pathway, Virginia Code § 23.1-505.1, does not depend on a student's domicile. Instead, a student is eligible for regular tuition "regardless of [their] citizenship or immigration status" if they: (1) attended two years of high-school in Virginia and either graduated or passed a high school equivalency exam after July 1, 2008; (2) can show that they, or a parent, guardian, or person standing in *loco parentis* filed Virginia income tax for two years, unless exempted by law; and (3) register or enroll in a Virginia institution of higher education. Va. Code Ann. § 23.1-505.1 (West 2022). These statutes allow students who lack lawful immigration status to pursue higher education in Virginia at a cost that they can afford.

b. This Action

On December 29, 2025, the United States filed this lawsuit against the Commonwealth, seeking to end eligibility for regular tuition rates for students without lawful immigration status. *See* Dkt. 1. Specifically, the United States alleges that the challenged statutes are expressly preempted by 8 U.S.C. § 1623(a) as applied to undocumented students. *See id.* at ¶ 41.

The very next day – instead of defending its own laws – the Commonwealth joined the United States in filing a Joint Motion for Entry of Consent Judgment. *See* Dkt. 3. The Parties asked the Court to "enter a final judgment declaring that Virginia Code §§ 23.1-502 and 23.505.1 violate the Supremacy Clause and are therefore invalid insofar as they apply to aliens who are not lawfully present in the United States." *Id.* at ¶ 8. The Parties further requested that the Court "enter a permanent injunction prohibiting the Defendant, as well as its successors, agents and employees, from enforcing Virginia Code §§ 23.1-502 and 23.505.1, insofar as they apply to aliens who are not lawfully present in the United States." *Id.* at ¶ 9.

c. Movant Virginia Students for Affordable Tuition (VSAT)

VSAT is an unincorporated association whose members reside and attend public colleges and universities in Virginia. It is comprised of students without lawful immigration status who rely on paying regular tuition rates to afford their education. VSAT exists for the purpose of promoting, advocating for, and ensuring access to affordable higher education in Virginia, including maintaining the state's regular tuition rates for certain students without lawful immigration status. VSAT's members decided to pursue higher education in Virginia in reliance on the guarantees from the Commonwealth that they would qualify for regular tuition rates. If the judgment sought by the Parties is entered and eliminates those guarantees, VSAT's members will be subject to substantial increases in their education costs with no prior, adequate warning. Those increases in tuition threaten to prevent them from completing their programs.

For example, one of VSAT's members is a student without lawful immigration status pursuing a degree in Computer Science at Northern Virginia Community College (NOVA). She is in her second year and hoped to join the technology industry and develop software after graduation. She relied on regular tuition rates when she decided to attend NOVA. She has paid for her education through state grants and a private scholarship. If the Parties' consent judgment is entered, she will have to pay double her regular tuition rate if she wants to continue her program. This would be a significant financial hardship, and she would have to stop taking classes if she is forced to pay out-of-state tuition rates in the future.

Another member is a student without lawful immigration status pursuing a Bachelor of Science degree in Accounting at George Mason University. He is in the final year of his program. He relied on paying regular tuition rates when he decided to attend George Mason University. He pays for his education out of pocket and through a private scholarship. He

cannot afford to pay out-of-state tuition rates. If the Parties' consent judgment is entered, he would struggle to afford to complete his remaining coursework and may have to stop taking classes altogether.

Accordingly, VSAT files this motion to protect its organizational interests and those of its members who would be harmed if the judgment requested by the Parties is entered.

III. ARGUMENT

VSAT seeks intervention as a matter of right under Fed. R. Civ. P. 24(a) or, in the alternative, permissive intervention under Fed. R. Civ. P. 24(b).

a. Movant VSAT Is Entitled to Intervention as of Right.

The Fourth Circuit has summarized the requirements for intervention as of right under Fed. R. Civ. P. 24(a)(2) as requiring, "[u]pon timely application" that the movant "show, first, an interest sufficient to merit intervention; second, that without intervention, its interest may be impaired; and, third, that the present litigants do not adequately represent its interest." *United Guar. Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc.*, 819 F.2d 473, 474 (4th Cir. 1989) (quoting *Virginia v. Westinghouse Electric. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (internal quotations omitted). Rule 24 is liberally construed in favor of potential intervenors. *See Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) ("liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process) (internal quotations and citations omitted). As described below, VSAT satisfies the elements of Rule 24(a)(2), and the unique circumstances of this action further support granting intervention as of right.

i. Timeliness

When evaluating the timeliness of a motion to intervene, a "reviewing court should look at how far the suit has progressed, the prejudice which delay might cause other parties, and the reason for the tardiness in moving to intervene." *Gould v. Alleco, Inc.*, 883 F.2d 281, 286 (4th Cir. 1989). "The timeliness requirement is generally not strictly enforced . . . 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) (citations omitted).

This suit is in its earliest stages, which favors granting intervention. Plaintiff filed this action on December 29, 2025, *see* Dkt. 1. The Court has yet to rule on the Parties' proposed consent judgment. Furthermore, as of the date of this filing, no discovery has been conducted, and no trial date has been set; the only schedule that has been entered is limited to a separate motion to intervene. Because the suit has not progressed beyond its initial stages, intervention is timely. *See also Steve's Towing, Inc.* 2022 WL 22702670, at *2 (granting a motion to intervene filed after an answer but before a scheduling order or any dispositive motions were filed).

In addition, there is no prejudice to the Parties where VSAT filed its motion for intervention just over two weeks after Plaintiff filed this suit. Timeliness inquiries assess "whether the delay [in moving to intervene] has prejudiced the other parties." *Spring Const. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). As discussed above, VSAT's motion for intervention has not prejudiced the parties, particularly given that VSAT filed its motion just over two weeks after Plaintiff filed its complaint. The Parties cannot reasonably claim any prejudice regarding the timing of the intervention in this case after they decided to seek the invalidation of long-standing Virginia laws one day after the filing of this lawsuit through an agreed judgment. Any prejudice to the Parties would not be the result of VSAT's intervention, but of the Parties'

attempt to rush this Court into entering their proposed consent judgment without considering the interests of third parties.

Furthermore, VSAT rejects the notion that this motion is delayed or tardy in any way; VSAT is moving to intervene expeditiously after this lawsuit began. To the extent the Court deems this motion is delayed, it should note that any delay was caused by the time it took for VSAT to become aware of this suit, identify its members' interests, and file this motion. Because these issues precluded VSAT from filing earlier, the Court should find that the reason for any tardiness weighs in favor of intervention. *Cf. Alt v. U.S. E.P.A.*, 758 F.3d 588, 591-92 (4th Cir. 2014) (affirming denial of motion to intervene where the movant was aware of the lawsuit and made a deliberate, tactical decision not to intervene at an earlier stage).

Finally, the unusual circumstances of this action strongly support a finding of timeliness. As previously noted, the Parties asked this Court to enter a consent judgment to invalidate the challenged statutes the day after the case was filed and without an opportunity for affected third parties to be heard. *See* Dkt. 3. This is an example of the United States' new tactic of working with state Attorneys General to file and immediately seek judgment in challenges to state laws that guarantee regular tuition rates for undocumented students. *See also United States v. Texas*, No. 7:25-cv-00055 (N.D. Tex.) (filed and adjudicated the same day); *United States v. Oklahoma*, No. 6:25-cv-00265 (E.D. Okla.) (case and joint motion for judgment filed the same day). However, there is no reason to expedite this case. Second-semester tuition bills have already been sent to students and paid by many, thus any proper implementation of the consent judgment sought by the Parties would have to wait until the summer or fall terms.[2]

[2] Moreover, implementing higher rates for students who have been already billed or who have already paid tuition for this term would violate the Contracts Clause of the (Continued . . .)

Further, this case was filed as part of Plaintiff's campaign to invalidate state laws and regulations across the country that allow certain students without lawful immigration status to pay regular tuition rates. *See, e.g., United States v. Walz et al.*, No. 0:25-cv-02668 (D. Minn.); *United States v. Beshear et al.*, No. 3:25-cv-00028 (E.D. Ky.). The importance of the constitutional issue being determined by courts in different circuits warrants a finding of timeliness so that this Court and the Fourth Circuit benefit from adversarial briefing to further inform their decisions.

Accordingly, VSAT'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 v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991); *see* Fed R. Civ. P. 24(a)(2). "The Fourth Circuit has found this standard to have been met where a putative intervenor 'stand[s] to gain or lose by the direct legal operation of the district court's judgment on [the plaintiff's] complaint.'" *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, 458 F. Supp. 3d 460, 464 (W.D. Va. 2020) (citing *Teague*, 931 F.2d at 261).

Here, VSAT's members stand to lose if this Court issues a judgment declaring that the challenged statutes violate the Supremacy Clause as applied to undocumented students and permanently enjoining the Commonwealth from enforcing these statutes on behalf of undocumented students. *See* Dkt. 1 at 12. Such a judgment would exclude VSAT's members from eligibility for regular tuition rates. As a result, VSAT's members would be forced to pay

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United States Constitution. *See* U.S. Const. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts").

out-of-state tuition, which may be as high as triple the cost of their current rates.[3] VSAT's members, like many students without lawful immigration status, come from low-income backgrounds, and they are ineligible for federal financial aid. Without access to regular tuition rates, VSAT's members may be forced to drop out of college after investing years of study and substantial financial resources. If the Court were to enter a judgment for the final consent order sought by the Parties, these injuries to VSAT's members would be the direct result.

In sum, VSAT has a "significantly protectable interest" in this action, *Teague*, 931 F.2d at 261, in support of intervention as of right.[4]

iii. Disposition of the Case Will Impair VSAT's Ability to Protect Its Interest

The third intervention factor requires VSAT to show "that the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest." *Teague*, 931 F.2d at 260 (citing Fed. R. Civ. P. 24(a)(2)); *see also Spring Const.*, 614 F.2d at 377 (similar). "In the Fourth Circuit, impairment is met where: (1) disposition of the pending action would put the intervenor at a 'practical disadvantage' in protecting its interest or (2) the *stare decisis* effect of judgment would legally preclude the intervenor from protecting its interest." *Sierra Club v. United States Env't Prot. Agency*, No. CV 3:24-0130, 2024 WL 3625682 at * 11 (S.D.W. Va.

[3] *See* STATE COUNCIL OF HIGHER EDUC. FOR VA., 2025-26 TUITION AND FEES AT VIRGINIA STATE-SUPPORTED COLLEGES AND UNIVERSITIES, 34-35 (August 2025) (finding that the average tuition for the 2025-2026 school year for in-state undergraduates at four-year institutions is $10,521, while the average for out-of-state undergraduates at four-year institutions is $30,737) available here: https://www.schev.edu/home/showpublisheddocument/4500/638895467464330000.

[4] VSAT is not required to establish Article III standing on behalf of its members in order to meet the standard for intervention as of right under Rule 24(a). Nonetheless, to establish standing, a party must show (1) injury in fact, (2) causation, and (3) redressability. *Lujan v. Defs. Of Wildlife,* 504 U.S. 555, 560-61 (1992). Here, VSAT's members' face the imminent injury of loss of regular tuition rates, that would be caused by the approval of the Parties' consent order, and that can be redressed through a proper defense of the challenged statutes.

Aug. 1, 2024) (citing *Francis v. Chamber of Commerce of U.S.*, 481 F.2d 192, 195 n.8 (4th Cir. 1973)).

There is no doubt that the relief Plaintiff seeks in this case—overturning statutes that have granted VSAT's members the ability to pursue higher education—will directly impair VSAT's members' interests. If no party seeks an appeal, the Court's final judgment will be the final word and will cement VSAT's injuries indefinitely. If undocumented students are required to pay higher tuition rates, many of them will be unable to afford the cost of attendance. Many of VSAT's members may have to reduce their coursework, withdraw from their degree programs, or reconsider attending college altogether.

VSAT thus cannot wait until the conclusion of the litigation to vindicate their interests. As explained above, the United States and the Commonwealth currently agree that the challenged statutes are preempted and have asked this Court to enjoin their enforcement.[5] Such an adverse outcome here would impair VSAT's ability to litigate the validity of the challenged statutes. As the Fourth Circuit has recognized, "*stare decisis* by itself may furnish the practical disadvantage required under 24(a)." *Francis*, 481 F.2d at 195 n.8. Because the outcome of this case may put VSAT at a "practical disadvantage" or could "legally preclude" it from asserting the validity of the challenged statutes in a further proceeding, *Sierra Club,* 2024 WL 3625682 at * 11, VSAT's interest would be impaired if the Parties prevail.

[5] The incoming Attorney General may change the Commonwealth's position after he is sworn in this month. If this Court signs the Parties' proposed consent order before the new Attorney General is sworn in, he may move to alter the judgment in accordance with Fed. R. Civ. P. 59.

iv. The Parties before the Court Do Not Adequately Represent VSAT's Interests.

When seeking to intervene, the movant has the "minimal" burden of demonstrating that the "representation of its interest 'may be' inadequate." *United Guar. Residential*, 819 F.2d at 475 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). "[A]n existing party is not likely to adequately represent the interests of [a proposed intervenor] with whom it is at cross purposes." *Stuart v. Huff*, 706 F.3d 345, 352 (4th Cir. 2013).

Here, the Parties have submitted a proposed consent order to declare the challenged statutes preempted and enjoin their enforcement. *See* Dkt. 3-1. Accordingly, Defendant Commonwealth of Virginia failed to represent VSAT's interests when it willingly entered into an expedited agreement to have its own laws declared unconstitutional and to be enjoined from enforcing them. *See id*. Defendant also did nothing to inform this Court of the devastating effect on third parties, such as VSAT's members, or the federalism issues that the Court's final judgment present. Defendant cannot represent VSAT's interests because its interests are averse to VSAT's interests. While Defendant willingly agreed to have its own laws declared unconstitutional, VSAT seeks to defend the laws. Further, because Defendant jointly requested that this Court enter the proposed consent order, it is not going to appeal. Accordingly, because VSAT does not "share the same ultimate objective as the existing defendant[]," they are "at cross purposes." *Stuart*, 706 F.3d at 352. The Commonwealth is thus an inadequate representative of VSAT's interest, and VSAT is entitled to intervene as of right.[6]

[6] Should this case continue and the Commonwealth changes its position in this litigation after the new Attorney General is sworn in, VSAT will re-evaluate its motion to intervene. If VSAT still seeks to intervene at that time, it will seek to file a short supplemental brief on the adequacy of the Commonwealth's representation of VSAT's interest.

b. Alternatively, VSAT Requests Permission to Intervene

Should the Court determine that VSAT is not entitled to intervene as of right, VSAT asks the Court to exercise its discretion to allow permissive intervention under Fed. R. Civ. P. 24(b). To intervene permissively, a proposed intervenor must establish that their motion to intervene is timely and that their "claim[s] or defense[s] . . . have a question of law or fact in common" with the "main action." *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991) (citing Fed. R. Civ. P. 24(b)). Once these two requirements are satisfied, "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*

VSAT's claims and defenses share many questions of law and fact with the action as a whole. The United States argues that the challenged statutes violate the Supremacy Clause. VSAT seeks to validate the same statutes, and VSAT would file an appeal of the Parties' proposed consent order if it were entered by this Court. VSAT's interests in this action therefore directly align with the ultimate question of law that the Court must answer in this case. Any prejudice claimed by the Parties pertaining to lengthening the case is of their own creation by hurrying forward a consent judgment without providing an opportunity for consideration of the interests of third parties. *See supra* Section III.a.i. Finally, as discussed above, VSAT's motion is timely. *See supra id.*

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

IV. CONCLUSION

For the foregoing reasons, VSAT respectfully requests that the Court grant its motion to intervene.

Date: January 15, 2026.

Respectfully submitted,

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**Motion for pro hac vice forthcoming*
^Admitted in California only

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document and attachments with the Clerk of the Court using the CM/ECF system, which will send an electronic notice of filing to all parties of record on this 15th day of January 2026.

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