IN THE 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-1067

MEMORANDUM IN SUPPORT OF PROPOSED STUDENT INTERVENORS' MOTION TO INTERVENE AND TO STAY ADJUDICATION OF JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

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INTRODUCTION

On December 30, 2025, only one day after this lawsuit was filed, Plaintiff the United States and Defendant the Commonwealth of Virginia submitted to this Court for approval a consent judgment declaring a provision of Virginia law unenforceable and enjoining its enforcement. Dkt. Nos. 1, 3. The challenged law, known as the Virginia Dream Act, guarantees eligible high school graduates in the Commonwealth in-state tuition at public higher education institutions. The parties provided this Court with no adversarial briefing and, because of the parties' close coordination in pursuit of the same outcome, the parties have not alerted the Court to significant jurisdictional and substantive defects in the joint motion for consent judgment. Indeed, because the parties are aligned, there is no justiciable "case" or "controversy" between them. "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 Pool v. City of Houston*, 87 F.4th 733, 733-34 (5th Cir. 2023) ("It is well settled that, where the parties agree on a constitutional question, there is no adversity and hence no Article III case or controversy."). Through their maneuvering, the parties circumvented both the democratic and judicial processes and purported to undo a Commonwealth law that has helped thousands of students since its passage.

Proposed intervenors Alex Doe and Belinda Doe (Proposed Student Intervenors) are two students who directly benefit from the challenged Virginia law: both currently pay in-state tuition at Virginia public institutions of higher education under the law's provisions. As explained below, both will also be directly harmed by entry of the parties' proposed consent judgment, because they will lose access to in-state tuition at public universities in the

Commonwealth. Because they cannot afford to pay out-of-state tuition rates, they are unlikely to be able to continue with their higher education and career plans.

Since its passage in 2020, the Virginia Dream Act, Va. Code § 23.1-505.1, has guaranteed all eligible Virginia high school graduates—regardless of their immigration status—in-state tuition at higher education institutions in the Commonwealth. This law has made higher education attainable for countless individuals, enriching communities and contributing significantly to Virginia's economy and workforce. And this law creates no conflict with federal law, including 8 U.S.C. § 1623(a). Indeed, fifteen years ago, the Supreme Court of California concluded that section 1623 does not preempt a state statute similar to the Virginia Dream Act. *Martinez v. Regents of Univ. of Cal.*, 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 . . .".).

Absent intervention, this Court will have no opportunity to consider this or other arguments in defense of the law, as Virginia has made none. Instead, in a matter of hours after this suit commenced, the attorney general of Virginia abdicated his duties and entered into a collusive agreement with the United States to abandon this important protection for Virginia students. The United States and Virginia are attempting to circumvent the ordinary judicial process for adjudication of challenges to a state law and deprive those who would be most impacted by the law's recission—and the democratically elected legislators who enacted the act—of a full adjudication of constitutionality.

Proposed Student Intervenors respectfully request that the Court grant them leave to intervene as defendants as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, in the alternative, grant them permissive intervention pursuant to Rule 24(b)(1)(B). Proposed Student Intervenors also request that the Court stay adjudication of the parties' joint motion pending the

resolution of this intervention motion, to allow the constitutionality of the challenged Virginia law to be fully adjudicated.

BACKGROUND

I. The Virginia Dream Act

Virginia enacted the Virginia Dream Act in 2020 to allow certain eligible students to obtain in-state tuition rates at all public higher education institutions in the Commonwealth, regardless of immigration status. The act provides generally that "any student" "is eligible for in-state tuition regardless of citizenship or immigration status" if they "(i) attended high school for at least two years in the Commonwealth and . . . graduated . . . from a public or private high school or program of home instruction in the Commonwealth," or received an equivalent certification; "(ii) ha[ve] submitted evidence" that they, or a parent if they are a dependent, have "filed**,** unless exempted by state law, Virginia income tax returns for at least two years prior"; and "(iii) register[] as an entering student or [are] enrolled in a public institution of higher education or private institution of higher education in the Commonwealth."[1] Va. Code § 23.1-505.1. It further provides that "[a]ll such students shall be afforded the same educational benefits, including access to financial assistance programs . . . , as any other individual who is eligible for in-state tuition." *Id.*

This provision of law has allowed thousands of Virginia students to enroll in college, earn undergraduate and graduate degrees, and enter the workforce in the Commonwealth. Without the Virginia Dream Act, many students in the Commonwealth would not be able to afford higher education, as out-of-state tuition costs are dramatically higher than in-state costs. Indeed, the average out-of-state tuition for a four-year public college in Virginia is two-and-a-

[1] The law lists limited exception for students with certain visas.

half times greater than the average in-state tuition.[2] For example, at the University of Virginia, the out-of-state cost for 2025–26 is approximately $62,923, whereas the in-state cost is approximately $23,897.[3] This significant cost difference is more than enough to prevent many from pursuing higher education.

In recognition of the mutual benefits this kind of policy creates, 25 states have laws similar to the Virginia Dream Act.[4] This law is critical to providing access to higher education for students who have lived and attended high school in the Commonwealth. This increased access is likewise beneficial to the Commonwealth, contributing to its communities and economy.

II. The Parties' Collusive Settlement

In the midst of the winter holidays, on December 29, 2025, the United States filed this action naming Virginia as the defendant. In its complaint, the United States argued that the Virginia Dream Act is preempted by the Illegal Immigration Reform and Immigrant Responsibility Act, resting its claim on 8 U.S.C. § 1623(a), which limits preference for noncitizens on the basis of residence in higher education benefits. Compl. ¶¶ 38, 41, Dkt. No. 1. Section 1623(a) states that "an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit . . . without regard to

[2] *See* Melanie Hanson, *Average In-State vs. Out-of-State Tuition*, Educ. Data Initiative (Feb. 22, 2025), https://educationdata.org/average-in-state-vs-out-of-state-tuition.

[3] *University of Virginia Tuition & Financial Aid: Cost*, U.S. News, https://www.usnews.com/best-colleges/uva-6968/paying.

[4] Chelsie Kramer, *Texas Dream Act: Protecting Undocumented Students' Access to Higher Education Is Economic, Educational Imperative*, Am. Immigr. Council (Mar. 4, 2025), https://immigrationimpact.com/2025/03/04/texas-dream-act-undocumented-students-higher-education/#:~:text=As%20of%20the%20most%20recent%20data%2C%20approximately,Texas'%20workforce.%2 0The%20Economic%20Consequences%20of%20Repeal.

whether the citizen or national is such a resident." 8 U.S.C. § 1623(a). The United States' sole claim asserted that the Dream Act conflicts with section 1623(a) and violates of the Supremacy Clause of the U.S. Constitution. Compl., Dkt. No. 1, ¶ 45.

Virginia was ready and waiting. The Virginia attorney general promptly entered his appearance, and the day after the complaint was filed, the parties filed a joint motion for consent judgment. Joint Mot., Dkt. No. 3 (Dec. 30, 2025). The United States did not even have to serve its complaint on Defendant. Without argument or any proceedings before this Court, the parties agreed that Virginia Code §§ 23.1-502 and 23-505.1, as applied to persons not lawfully present in the United States, are preempted by federal law. *Id.* ¶ 3.[5] The parties asked the Court to enter a declaratory judgment of the law's unconstitutionality and permanently enjoin the Virginia Dream Act "as appl[ied] to aliens who are not lawfully present in the United States." *Id.* ¶ 8. The parties further requested that the Court issue a "permanent injunction prohibiting the Defendant, as well as its successors, agents and employees, from enforcing" the Virginia Dream Act. *Id.* ¶ 9.

This lawsuit follows a pattern that the U.S. Department of Justice has set over the past several months. The United States has recently filed least five similar federal challenges in Illinois, Minnesota, Kentucky, Texas, and Oklahoma. *U.S. v. Illinois*, 3:25-cv-1691 (S.D. Ill. filed September 2, 2025); *United States v. Walz*, 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). It similarly reached an immediate joint settlement with Texas, and Oklahoma defaulted.

[5] As noted above, the Virginia Dream Act appears at Section 23.1-505.1. Section 502 provides that students are alternatively eligible for in-state tuition if they meet certain domicile requirements.

The timing of this lawsuit is also not coincidental: in just a few days, on January 17, 2026, a new governor and attorney general will be sworn into office in Virginia. It appears that the United States Department of Justice and the current Virginia Attorney General sought to dispose of this case in a hurry so that the new administration could not defend a law enacted by the Virginia General Assembly and signed into law by a Virginia Governor.

III. The Harm to Proposed Student Intervenors

Proposed Student Intervenors are students who are currently enrolled in Virginia public institutions of higher education and who pay in-state tuition under the law's provisions. Both students will incur serious financial and educational harms if the Virginia Dream Act is enjoined.

Alex Doe is a 19-year-old student who has lived in Virginia since she was 14 years old, when she immigrated to Virginia from El Salvador to join her parents. Declaration of Alex Doe ("Decl. A") ¶ 3. She does not have any legal documentation authorizing her presence in the United States. *Id.* Alex attended a Virginia public high school in Prince William County for four years until she graduated in Spring 2025. *Id.* ¶ 5. She is currently enrolled as a freshman at one of Virginia's public universities, where she studies government. *Id.* ¶ 6. Alex is able to attend university because of the Virginia Dream Act, for which she has successfully demonstrated eligibility; without it, she would not be able to afford to go to college. *Id.* ¶¶ 7, 8. Alex currently receives a scholarship that covers the full cost of in-state tuition and fees. *Id.* ¶ 8. But if the Virginia Dream Act is enjoined, Alex will lose eligibility for in-state tuition, and her scholarship will not cover the gap between in-state and out-of-state tuition rates—and she cannot afford the much higher out-of-state tuition out of pocket. *Id.* If the parties' joint motion for a consent judgment is granted, Alex's tuition will skyrocket and she will likely be forced to withdraw from her university with severe consequences for her career prospects. *Id.* ¶ 9. Indeed, without the Virginia Dream Act, she would never have considered attending college in the first place. *Id.*

Belinda Doe is a 21 year-old student who immigrated to Virginia from Bolivia when she was 10 years old. Declaration of Belinda Doe ("Decl. B") ¶ 3. She does not currently have any legal documentation authorizing her presence in the United States. *Id.* She has attended Virginia public schools for the last 11 years and completed her high school education at a public school in Prince William County, Virginia. *Id.* ¶ 5. Belinda is enrolled in a Virginia Community College and is pursuing a certificate in Dental Assistance. *Id.* ¶ 6. She completed the process to demonstrate eligibility under the Virginia Dream Act and currently pays in-state tuition. *Id.* After she completes her Dental Assistance certificate, Belinda plans on pursuing an associate's or bachelor's degree at a Virginia public college or university. *Id.*¶ 8. If she loses eligibility for in-state tuition, she will face much higher tuition fees and does not know where she would obtain the additional funds to pay such tuition. *Id.* ¶ 9. Her options for education and subsequent employment would be severely limited. *Id.* If the parties' joint motion for a consent decree is granted Belinda will face substantial financial costs and her educational goals will be imperiled. *Id.*

ARGUMENT

Proposed Student Intervenors are entitled to intervention as of right under Federal Rule of Civil Procedure 24(a)(2). First, this motion is timely because fewer than three weeks have passed since the filing of this action, and Proposed Student Intervenors have moved as quickly as they could, and no party would be prejudiced by undue delay by intervention at this early stage of litigation. Second, Proposed Student Intervenors have a substantial interest in this litigation: the Virginia Dream Act provides them with a pathway for education at a reasonable cost, and the revocation of their eligibility for in-state tuition will double or even triple the cost of that education, causing them significant hardship. *See infra* pages 12-14. Third, their ability to protect their interests will be impaired f they are not permitted to intervene because the Parties have

entered a collusive agreement that will deprive Proposed Student Intervenors and other students like them of a direct and substantial interest by filing a joint motion for a consent judgment to enjoin the Virginia Dream Act. Finally, no party adequately represents their interests. Virginia has refused to defend the law: one day after Plaintiff United States filed this lawsuit, Defendant Virginia agreed to submit a proposed consent order enjoining the law. As a result, no party adequately represents the Proposed Student Intervenors' interests. Should the Court find Proposed Student Intervenors are not entitled to intervene as of right, the Court should still grant them permissive intervention in this action**.**

I. Proposed Student Intervenors Have Article III Standing

Proposed Student Intervenors have 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, both Proposed Student Intervenors face direct injury from the attack on the Virginia Dream Act: if the Act is enjoined, their tuition will rise dramatically. *Supra* pages 6-7 (citing Decl. A ¶ 8, Decl. B ¶ 9). This will likely force Alex Doe to withdraw from her university, Decl. A ¶¶ 8-9, and prevent Belinda Doe from pursuing her bachelor's degree, Decl. B ¶¶ 8-9.

II. Proposed Student Intervenors Are Entitled to Intervention as of Right under Rule 24(a)(2)

Proposed Student Intervenors moved as quickly as they could to preserve their ability to continue their education once they found out that it was at risk and that Defendant Virginia would not defend its own law. 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). Proposed Student Intervenors should therefore be permitted to defend the Virginia Dream Act if the state will not.

A. This motion is timely.

In considering whether an intervenor's motion is timely, courts consider "how far the suit has progressed, the prejudice that delay might cause other parties, and the reason for [any] 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)," *United States v. Steve's Towing, Inc.*, No. 2:22-cv-157, 2022 WL 22702670, at *2 (E.D. Va. Oct. 4, 2022), and "is committed to the Court's sound discretion which is wide in this context." *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 323 F.R.D. 553, 557 (E.D. Va. 2018) (cleaned up) (citing *Alt v. EPA*, 758 F.3d 588, 591 (4th Cir. 2014)). Here, intervention "should be granted because this case has not surpassed the initial pleadings phase and no party will be prejudiced." *Liberty Mut. Fire Ins. Co. v. Lumber Liquidators, Inc.*, 314 F.R.D. 180, 186 (E.D. Va. 2016).

1. Proposed Student Intervenors have moved expeditiously.

Proposed Student Intervenors moved as quickly as they could, and the case has not yet proceeded so far as to make intervention inappropriate. "Where a case has not progressed beyond the initial pleading stage, a motion to intervene is timely." *United States v. Virginia*, 282 F.R.D. 403, 405 (E.D. Va. 2012) (citing *Scardelletti v. Debarr*, 265 F.3d 195, 203 (4th Cir. 2001)). This case is still in its infancy: Defendant Virginia only just filed its Answer to the Complaint five days ago. Dkt. No. 17. This is thus not a case where litigation has "reached an advanced stage" involving "extensive fact discovery." *Steves & Sons*, 323 F.R.D. at 557. Rather, it is in the class of cases where intervention is considered timely because "litigation remains in its early stages."

Intercept Youth Services, 2019 WL 1810988, at *2 (granting intervention where defendant had filed a motion to dismiss). "The purpose of the timeliness requirement is to prevent a tardy intervenor from derailing a lawsuit within sight of the terminal." *Alt v. EPA*, 758 F.3d at 591 (cleaned up). But this train has barely left the station.

Given the unusual nature of this case—a complaint and proposed consent order all filed within two days—Proposed Student Intervenors have filed this motion expeditiously. Proposed Student Intervenors have filed this motion a mere two weeks after the initiation of the lawsuit—well within the timeframe held to be timely. *See United States v. Virginia*, 282 F.R.D. at 405 (36 days); *Intercept Youth Servs., Inc. v. Key Risk Ins. Co., Inc.*, No. 3:18-CV-901, 2019 WL 1810988, at *2 (E.D. Va. Apr. 24, 2019) (58 days); *Steves & Sons, Inc.*, 323 F.R.D. at 556 (18 months); *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 393 n.14 (1977) (three weeks).

Moreover, the brief time that Proposed Student Intervenors took to prepare this motion reflects the time it took them to become aware of the case, understand the implications of Plaintiff's claims, confer with their families and attorneys, and develop an approach to protect their identities. The parties "did not notify" affected individuals of the lawsuit or what effect it would have. *Penn-Am. Ins. Co. v. White Pines, Inc.*, No. 3:18CV650, 2019 WL 418859, at *3 (E.D. Va. Feb. 1, 2019); *see Intercept Youth Servs.*, 2019 WL 1810988, at *2 (excusing delay of two months based on intervenors' assertion that they only learned of the lawsuit approximately six weeks after it was filed, two weeks before they sought intervention). Indeed, the United States sued, and the parties filed their proposed consent judgment, over the holidays, when universities are closed and when people often pay less attention to the news. Proposed Student Intervenors are not trying to "arrest the momentum of the lawsuit so near to [] final resolution." *Alt v. EPA*, 758 F.3d at 591. They are trying to move as quickly as possible to protect their interests so that this Court may "dispose of as much of a controversy 'involving as many

apparently concerned persons as is compatible with efficiency and due process'" to avoid revisiting the issue later. *Feller*, 802 F.2d at 729 (citation omitted).

2. The parties will not be prejudiced by undue delay if intervention is granted.

The Parties will suffer no undue delay or prejudice from this intervention. "In determining undue delay, 'the Court must balance the delay threatened by intervention against the advantages promised by it.'" *Amazon.com, Inc. v. WDC Holdings LLC*, No. 1:20-CV-484, 2021 WL 12157960, at *2 (E.D. Va. Oct. 21, 2021) (citing *Steves & Sons, Inc.*, 323 F.R.D. at 553).

The Parties are in substantially the same position as they were a mere two weeks ago, when the action was filed and they consented to judgment. The only progress the parties have made is the filing of an Answer by Defendant Virginia. Dkt. No. 17. Nor will adding Proposed Student Intervenors "cause undue delay or prejudice to the original parties in this case" because as discussed *infra* 13-14, their defense will "overlap with the legal and factual issues that are already present," so their addition "is not likely to significantly complicate the proceedings or unduly expand the scope of any discovery in this case." *Carcaño v. McCrory*, 315 F.R.D. 176, 179 (M.D.N.C. 2016). Moreover, with no discovery or evidence produced to date, and only a handful of filings, there is no risk that any materials relevant to the litigation have been altered or discarded in the interim. *See United Airlines, Inc.*, 432 U.S. at 393 n.14 ("There is no reason to believe that in that short period of time United discarded evidence or was otherwise prejudiced."). Accordingly, the Parties have not suffered from the minimal lapse in time between the entry of judgment and the filing of this Motion, and Proposed Student Intervenors have satisfied the second factor to establish timeliness.

B. Proposed Student Intervenors have a substantial interest in this action.

Proposed Student Intervenors' ability to continue their education is at stake. Intervenors need a "significantly protectable interest" in the subject matter of the litigation. *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991). Courts construe that requirement broadly, and recognize a variety of interests without requiring ownership or any specific legal entitlement. *Feller*, 802 F.2d at 729. Proposed Student Intervenors here are in fact entitled to the benefit of in-state tuition. *See* Decl. A ¶ 7 ("I am eligible for in-state tuition under the Virginia DREAM Act, and I completed the process to demonstrate all the eligibility criteria."); Decl. B ¶ 6 ("I am eligible for, and having completed the process for demonstrating eligibility, currently pay in-state tuition."). This Court has the power to preserve that benefit for Proposed Student Intervenors if it finds that the Virginia Dream Act is not preempted by federal law. Alex and Belinda thus have a significantly protectable interest in this litigation.

But it is not just lower tuition rates that are at stake. Proposed Student Intervenors' interest is no less than their interest in their futures—in their careers, their livelihoods, their value, and their ability to contribute to their communities and to society —that is, in all the reasons we encourage young people to invest in education. For these students, in-state tuition is the difference between a GED and a college degree; it is the difference between stagnation and achieving their professional goals; it is the difference between dependence and being able to help support their families. Decl. A ¶ 9 ("Without the Virginia Dream Act, I would not have considered attending college nor had the motivation to graduate high school. I am from a very low income family so without the Dream Act, my career prospects would be unattainable."); Decl. B ¶ 9 ("I could be forced to leave my classes and move further away from my professional goals. I have already invested significant time, money, and effort into my education; removing

this support would mean losing all that progress, as if my hard work does not matter."). Proposed Student Intervenors are deeply invested in the outcome of this case.

C. Proposed Student Intervenors' Ability to Protect Their Substantial Interest Will Be Impaired Absent Intervention.

Proposed Student Intervenors are entitled to participate in the present their lawsuit so long as they can show that its outcome "may as a practical matter impair or impede" their ability to protect their interest. Fed. R. Civ. P. 24(a)(2); *Teague,* 931 F.2d at 260. But if the proposed consent decree is entered, the Virginia Dream Act will be invalidated without any input from the people who were intended to benefit from it. If this Court issues an order finding that the Virginia Dream Act violates the Supremacy Clause because of a purported conflict with 8 U.S.C. § 1623, Virginia's public institutions of higher learning would presumably stop offering in-state tuition to Proposed Student Intervenors. If that happens, thousands of students across Virginia, including Alex and Belinda, will be faced with tuition rates double or triple what they pay now. *See* Compl., Dkt. No. 1, ¶ 31, ("[D]uring the 2025-2026 school year, undergraduate tuition was $23,897 for Virginia residents, and $62,923 for out-of-state students."). As a result, they will have to reconsider their plans for their educations, their careers, and indeed their lives; they may even be forced to withdraw from school entirely. Decl. A ¶¶ 8, 9; Decl. B ¶ 9. They will lose out on the thousands of hours they have already dedicated to improving themselves; hundreds of credit hours will have been for naught as they are stripped of the ability to complete their certificates or degrees.

The Fourth Circuit further recognizes that the potential stare decisis effect of an adverse ruling may constitute sufficient impairment to warrant intervention, even where it remains uncertain whether intervenors have any legal interest at all. *Teague*, 931 F.2d at 261–62. There, the Fourth Circuit recognized that intervenors had a sufficient interest where the parties sought

declaratory judgment that they had no obligation under a separate, pending class action suit by intervenors where their legal entitlement remained at issue. *Id.* It therefore recognized that intervenors have a protectable interest even if it is not yet clear that they are entitled to any benefit. Here, it is clear that Proposed Student Intervenors are entitled to in-state tuition, making their interest even more obvious than that accepted in *Teague. See* Decl. A ¶ 7; Decl. B ¶ 6.

Proposed Student Intervenors thus have direct and personal stakes in the outcome of litigation from which they have been excluded entirely. They stand to face serious, life-altering harms from the collusive agreement of the Parties, in which their interests have gone unheard. Without intervention, they cannot seek reconsideration or appeal. Proposed Student Intervenors seek an opportunity to defend the Virginia Dream Act and their personal stake in its continued operation. With no other avenue to protect their significant interest, they will face extreme prejudice if they are not allowed to intervene.

D. Defendant does not adequately represent the interests of Proposed Student Intervenors.

Defendant has failed to adequately represent the interests of Proposed Student Intervenors, satisfying the final factor. A party seeking intervention bears the "minimal" burden of demonstrating representation of their interests by the existing parties "may be inadequate." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). "When the party on whose side a movant seeks to intervene is pursuing the same result that the movant is urging, a presumption arises that the movant's interest is adequately represented, so that the movant must show 'adversity of interest, collusion, or nonfeasance.'" *JLS, Inc. v. Pub. Serv. Com'n of W. Va.*, 321 Fed.Appx. 286, 289 (4th Cir. 2009) (quoting *Com. of Va. v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976)). Conversely, such a presumption does not arise where the movant and existing party are pursuing different results. *See id.* Here, there is no presumption of

adequate representation because Virginia and the Proposed Student Intervenors seek different results: Virginia has submitted a Joint Motion alongside Plaintiff asking the Court to declare unconstitutional and permanently enjoin the Dream Act, while Proposed Student Intervenors seek to defend the statute's validity. [6]

However, even if such a presumption did exist, Proposed Student Intervenors would easily overcome it because the circumstances demonstrate an "adversity of interest" between Virginia and Proposed Student Intervenors, in addition to "collusion," and even "nonfeasance," by Virginia. *See Westinghouse*, 542 F.2d at 216. Proposed Student Intervenors seek to defend their interest in access to education in Virginia. The State has shown no desire to vindicate that interest. Rather, Virginia has worked hand-in-glove with the Federal Government to quickly dispose of the Virginia Dream Act via their joint motion.

Indeed, courts, including the Fourth Circuit, have held that parties' interests were misaligned in circumstances even less adverse than these. *See, e.g.*, *In re Sierra Club*, 945 F.2d 776, 780 (4th Cir. 1991) (finding divergent interests between Sierra Club and a government agency, even though they "share[d] some objectives," because Sierra Club represented environmental activists, while the agency represented all state citizens); *Texas v. U.S.*, 805 F.3d 653, 663 (2015) (interests of putative defendant-intervenors were adverse to those of the United States even though both parties sought to defend a government program because the defendant-intervenors had divergent interests regarding how program was enforced); *Mille Lacs Band of*

[6] For the same reasons, Proposed Student Intervenors are not required to make "a more exacting showing of inadequacy" simply because they seek "to intervene in the government's defense of a statute." *Stuart v. Huff*, 706 F.3d 345, 351 (4th Cir. 2013). As the Fourth Circuit has explained, the heightened standard that normally exists in such cases does not apply where, as here, the government and proposed intervenor "seek divergent objectives" since the government "is not likely to adequately represent the interests of another [party] with whom it is at cross purposes in the first instance." *Id.* at 351-52.

Chippewa Indians v. State of Minn., 989 F.2d 994, 1001 (8th Cir. 1993) (noting that a government's interests may be misaligned with putative-intervenors when a "case is disposed of by settlement rather than by litigation").

III. In the Alternative, Proposed Student Intervenors Should Be Granted Permissive Intervention

If this Court decides that Proposed Student Intervenors are not entitled to intervene as a matter of right, they respectfully ask 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). If those requirements are satisfied, then the court considers whether intervention would cause undue delay and prejudice to the original parties.

As discussed above, *see supra* 9-11, Proposed Student Intervenors' motion is timely. And as discussed *supra* 11, this case has not progressed so far as to make intervention impracticable, and the existing parties would not be prejudiced by allowing Proposed Student Intervenors to join the case now.

As far as whether Proposed Student Intervenors' claims and defenses share questions of law or fact with the Parties, the defenses they would offer are one-to-one with Plaintiffs' claims. The United States argues that the Virginia Dream Act violates the Supremacy Clause because it conflicts with 8 U.S.C. § 1623. Compl., Dkt. No. 1, ¶¶ 15-16, 30, 41. Proposed Student Intervenors would offer legal argument regarding the scope and interpretation of the federal and Virginia statutes, together with a conflict preemption analysis designed to assist this Court in assessing whether any conflict exists, and if so, whether it requires preemption or not. That is precisely the legal question at the core of Plaintiff's case. But as it stands, the Parties have

provided only the cursory summary presented on the face of Plaintiff's complaint, rather than the rigorous analysis that would be produced by a true adversarial proceeding. Proposed Student Intervenors do not attempt to saddle the Court with extraneous or ancillary argumentation; the seek to fully litigate the important legal questions raised by Plaintiff's challenge.

Proposed Student Intervenor's motion is timely; the defense they offer is contiguous with Plaintiff's claim; and there would be no prejudice to the parties if intervention were granted. Permissive intervention is warranted here.

IV. If Granted Intervention, Proposed Student Intervenors Will Defend the Virginia Dream Act

Should Proposed Student Intervenors be allowed to intervene, they are prepared to demonstrate that the Virginia Dream Act is not preempted by 8 U.S.C. § 1623(a). In the alternative, even if the Dream Act were preempted, Proposed Student Intervenors are prepared to show that Section1623(a) is unconstitutional. Proposed Student Intervenors have also attached a proposed answer to the complaint as anticipated by Rule 24.

V. Good Cause Exists to Stay Adjudication of the Pending Joint Motion for Consent Judgment.

Proposed Student Intervenors also respectfully ask the Court to delay adjudication of the Joint Motion for Entry of Consent Judgment filed December 30, 2025, until the Proposed Student Intervenors' Motion to Intervene has been fully adjudicated. Further, if the Motion to Intervene is granted, Proposed Student Intervenors ask the Court to extend the deadline to respond to the Joint Motion for Entry of Consent Judgment until 7 days after the Motion to Intervene is granted.[7]

[7] Proposed intervenor The Dream Project has requested similar relief, asking for 7 days to respond to the primary parties' joint motion from the day the Court grants the Dream Project Project's Motion to Intervene. Dkt. No. 11. Should the Court admit both The Dream Project and Proposed Student Intervenors to the case, Proposed Student Intervenors suggest that all

A short delay would serve the interest of justice and would not prejudice any of the parties. Allowing Proposed Student Intervenors to respond to the Joint Motion for Entry of Consent Judgment will ensure that Proposed Student Intervenors have an opportunity to defend the Virginia Dream Act and apprise the Court of the motion's jurisdictional and substantive defects. Doing so would thus ensure that there is an adversarial process, where there would otherwise be none. *See Johnson*, 319 U.S. at 305 (noting that the adversarial process is "essential to the integrity of the judicial process"). Conversely, neither Plaintiff nor Defendant would be prejudiced by a short delay on their motion to enjoin the Dream Act, which has been in effect for years without challenge or legislative modification.

CONCLUSION

The Court should grant intervention to the Proposed Student Intervenors, stay adjudication of the Parties' motion for entry of consent judgment, and allow Proposed Student Intervenors to file an opposition to the motion for entry of consent judgment.

Defendant-Intervenors file their responses to the primary parties' joint motion 7 days after the Court grants the later of the two motions.

January 14, 2026

Respectfully submitted,

/s/ Joel McElvain
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* Motion for admission *pro hac vice* pending