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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 STATE OF CALIFORNIA, et al.,
16 Plaintiffs,
17 v.
18 WILBUR L. ROSS, JR., et al.,
19 Defendants.

Case No. 3:18-cv-01865-RS

**PROPOSED PLAINTIFF-INTERVENOR
LOS ANGELES UNIFIED SCHOOL
DISTRICT'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO INTERVENE**

Date: August 10, 2018 (Specially Set)
Time: 10:00 a.m.
Judge: Honorable Richard Seeborg
Dept.: 3

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23 Complaint filed March 26, 2018
First Amended Complaint filed May 4, 2018

24 Trial date: None set
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TO THE PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 10, 2018 at 10:00 a.m. in Courtroom 3 of the above-entitled Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, proposed Plaintiff-Intervenor Los Angeles Unified School District (“LAUSD” or “District”) will and hereby does move this Court to permit it to intervene in this matter.

LAUSD brings this motion pursuant to Federal Rule of Civil Procedure 24, and seeks intervention as a matter of right or, in the alternative, permissive intervention. As of the time LAUSD prepared this motion, the City of Fremont had stipulated to LAUSD’s entry to this case; none of the remaining parties expressly supported or opposed LAUSD’s intervention.

District is entitled to intervention as a matter of right because its motion is timely; it has a significantly protectable interest in this action; the disposition of this action will almost certainly impair or impede its ability to protect its interest; and no existing parties will adequately represent its interests. In the alternative, LAUSD should be afforded leave to intervene as LAUSD’s claims share common questions of law and fact and the existing parties will not be prejudiced by LAUSD’s entry to this case at this early stage of the proceedings.

This motion is based on this notice, the attached memorandum of points and authorities, the proposed order and proposed complaint in intervention (attached hereto as Exhibit A) filed and served concurrently herewith, all papers and pleadings on file, and on such further oral and documentary evidence that may be offered at the motion hearing.

DATED: July 6, 2018

DANNIS WOLIVER KELLEY
SUE ANN SALMON EVANS
KEITH A. YEOMANS

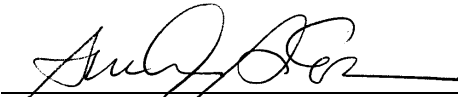
By: 
SUE ANN SALMON EVANS
Attorneys for Proposed Plaintiff-Intervenor
Los Angeles Unified School District

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

LAUSD is the second largest school district in the nation, enrolling approximately 600,000 students in kindergarten through 12th grade, at over 1,300 schools and centers, and overseeing 187 independent public charter schools. LAUSD's boundaries are spread across 720 square miles and serve the City of Los Angeles along with all or part of 26 additional towns/cities. Nearly 90% of the District's student population is comprised of minority students and a disproportionately high number of LAUSD's students are, or have family members who are, non-citizens.

LAUSD receives hundreds of millions of dollars in federal K-12 educational funds that are determined in whole or in part by data from the decennial census. These federal education programs largely target and assist community schools with high percentages of students with disabilities or from low income families, i.e., children with the very highest need. Any underrepresentation reflected in the decennial census would have a direct and immediate impact on LAUSD's federal funding levels and its ability to provide core educational services.

Intervention is governed by Federal Rule of Civil Procedure 24 and is to be liberally construed in favor of intervention. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). A non-party *must* be permitted to intervene in litigation where, upon timely motion, the non-party "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). LAUSD is entitled to intervene as a matter of right in order to preserve its federal K-12 educational funding tied directly to the federal decennial census.

In the alternative, LAUSD's permissive intervention is appropriate. A non-party *may* be permitted to intervene in litigation where, upon timely motion, the non-party "has a claim or defense that shares with the main action a common question of law or fact" and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1)(B) & (b)(3). LAUSD seeks the same ultimate relief pursued by the existing Plaintiffs—

1 a judicial declaration that inclusion of the citizenship question in the decennial census is
 2 unconstitutional and in violation of the Administrative Procedures Act as well as an injunction
 3 prohibiting Defendants from including the citizenship question in the decennial census.
 4 Accordingly, the central legal and factual issues in this case are identical to LAUSD’s proposed
 5 claims and will neither significantly expand nor delay the existing proceedings. LAUSD should
 6 be permitted to intervene.

7 **II. BACKGROUND**

8 On December 12, 2017, the U.S. Department of Justice (“DOJ”) requested that the Census
 9 Bureau include a citizenship question within the U.S. decennial census. The Department of
 10 Commerce announced on March 26, 2018, that it would include the citizenship question in its
 11 final list of questions to be submitted to Congress. The same day, the State of California filed its
 12 original complaint challenging the inclusion of the citizenship question on the decennial census.
 13 See, *State of California v. Ross*, case no. 3:18-cv-01865 (N.D. Cal. Mar. 26, 2018). The
 14 constitutional apportionment of congressional seats is based upon the “whole Number of free
 15 Persons.” U.S. Const., art. I, § 2, cl. 3. This includes both citizens and non-citizens. *Id*; *Fed’n*
 16 *for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980). California’s
 17 claims allege that inclusion of the challenged citizenship question within the decennial census
 18 would depress response rates among non-citizens and family members of non-citizens who might
 19 reasonably fear their responses would impact their immigration status. Any underrepresentation
 20 resulting from the inclusion of the citizenship questions would disproportionately impact areas
 21 with higher immigrant populations. Federal funds keyed to decennial census data would also be
 22 impacted.

23 A series of related lawsuits followed California’s lead. On April 3, 2018, the State of
 24 New York, along with sixteen other states and several municipalities, filed suit in the Southern
 25 District of New York. See, *State of New York v. U.S. Dept. of Commerce*, case no. 1:18-cv-01041
 26 (S.D.N.Y. Apr. 3, 2018). Two weeks later, a group of individuals filed suit in the District of
 27 Maryland. See, *Kravitz v. U.S. Dept. of Commerce*, case no. 8:18-cv-02921 (D. Md. Apr. 11,
 28 2018). The following week, the City of San Jose and an immigrants’ rights organization filed suit

1 in the Northern District of California. See, *City of San Jose v. Ross*, case no. 5:18-cv-02279
 2 (N.D. Cal. Apr. 17, 2018). Later in May, several immigrants’ rights organizations filed another
 3 suit in the District of Maryland. See, *La Unión Del Pueblo Entero v. Ross*, case no. 8:18-cv-
 4 01570 (D. Md. May 31, 2018.) In early June, the ACLU filed suit in the Southern District of
 5 New York. See, *New York Immigration Coalition v. U.S. Dept. of Commerce*, case no. 1:18-cv-
 6 05025 (S.D.N.Y. June 6, 2018).

7 On May 4, 2018, California filed a first amended complaint (“FAC”) in the present
 8 litigation, adding several California municipalities as additional plaintiffs. In mid-June, the
 9 LAUSD Board of Education authorized the District to intervene in the present litigation. As the
 10 second largest school district in the country serving over 600,000 students, LAUSD has a unique
 11 educationally-focused interest that is not represented by any of the parties to any of the related
 12 suits. LAUSD now properly brings this motion to ensure its interests are advanced and protected.

13 **III. LAUSD MAY INTERVENE AS A MATTER OF RIGHT**

14 Intervention is governed by rule 24 of the Federal Rules of Civil Procedure. Intervention
 15 may be mandatory or permissive. A non-party *must* be permitted to intervene in litigation where,
 16 upon timely motion, the non-party “claims an interest relating to the property or transaction that is
 17 the subject of the action, and is so situated that disposing of the action may as a practical matter
 18 impair or impede the movant’s ability to protect its interest, unless existing parties adequately
 19 represent that interest.” Fed. R. Civ. P. 24(a)(2). LAUSD is entitled to intervene as a matter of
 20 right in order to preserve its federal K-12 educational funding tied to federal decennial census
 21 data. LAUSD’s interests are unique, as no other party to this litigation or any of the related
 22 lawsuits represents the interests of public school students.

23 Mandatory intervention under rule 24(a)(2) involves a four-part test:

- 24 (1) A timely motion by the proposed intervenor;
- 25 (2) Intervenor has a “significantly protectible” interest relating to the existing lawsuit;
- 26 (3) Disposition of the lawsuit may adversely affect intervenor’s interest; and,
- (4) The existing parties do not adequately represent intervenor’s interests.

27 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003). The four-part test must be
 28 “interpreted broadly in favor of intervention.” *Cabazon Band of Mission Indians v. Wilson*, 124

1 F.3d 1050, 1061 (9th Cir. 1997). Here, all four elements support LAUSD’s mandatory
2 intervention.

3 **A. LAUSD’s Present Motion Is Timely**

4 Over the course of the last several months, numerous states, municipalities, organizations,
5 and individuals have initiated or joined claims challenging the inclusion of the proposed
6 citizenship question on the decennial census. LAUSD’s present motion to intervene is temporally
7 consistent with all of the foregoing parties’ challenges to the inclusion of the citizenship question
8 on the decennial census.

9 As with the other requirements under Rule 24, the determination of proposed intervenor’s
10 timeliness must be construed broadly in favor of the party seeking intervention. *Smith v. Los*
11 *Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) [permitting intervention 20 years
12 after suit filed]. Courts generally consider three factors relevant to the issue of timeliness: (1) the
13 stage of the proceedings; (2) any prejudice to the existing parties; and (3) the reason for any delay
14 in seeking leave to intervene. *Id.* Mere delay or expansion of issues is not a sufficient basis to
15 deny intervention as the proper focus is only on the “prejudice caused by the applicants’ delay,
16 not that prejudice which may result if intervention is allowed.” *Edwards v. City of Houston*, 78
17 F.3d 983, 1002 (5th Cir. 1996); accord, *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th
18 Cir. 1995).

19 Here, this case is still early in the pleading stage. Defendants have filed a motion to
20 dismiss set for hearing August 10th.

21 LAUSD’s proposed complaint in intervention largely mirrors the allegations and claims
22 presented in Plaintiffs’ FAC. It is only the underlying interests at stake which distinguish
23 LAUSD’s claims from the existing Plaintiffs. Correspondingly, LAUSD’s entry will not
24 significantly expand the issues before this Court. Given the nearly identical allegations in
25 LAUSD’s proposed complaint in intervention, LAUSD acknowledges that Defendants’ pending
26 motion to dismiss Plaintiffs’ FAC is no less applicable to LAUSD’s proposed complaint in
27 intervention. Correspondingly, LAUSD’s entry to this case will neither expand the scope of the
28 issues in this litigation nor delay these proceedings in any material respect.

1 As for the reason for LAUSD’s delay, there is no delay to speak of as Plaintiff’s FAC was
 2 only filed two months ago. Still, it is noteworthy that LAUSD’s 2017-18 school year ends June
 3 8th and its fiscal year ends June 30th. Correspondingly, the months of May and June are
 4 inordinately busy for all school districts as they close the books on 2017-18 and begin
 5 preparations for 2018-19.

6 Given the early stages of this case, the lack of any meaningful prejudice from LAUSD’s
 7 entry to this case, and the lack any delay by LAUSD, LAUSD’s motion to intervene must be
 8 regarded as timely.

9 **B. LAUSD Has a Significantly Protectable Interest in This Suit**

10 The Constitution mandates that all persons, citizens and non-citizens, be included in the
 11 decennial census. U.S. Const., art. I, § 2. All of the suits challenging the citizenship question
 12 generally allege that inclusion of the challenged citizenship question in the decennial census will
 13 depress responses from non-citizens and relatives of non-citizens, which will, in turn, depress
 14 political representation and the allocation of federal resources keyed to the skewed census data.
 15 The present suit points, in part, to the potential impact on federal K-12 educational funding likely
 16 to result from depressed census responses—particularly in areas with a disproportionately high
 17 number of immigrants such as Los Angeles. See, e.g., First Amended Complaint (Dckt. no. 12) at
 18 ¶ 42, p. 11. Despite the direct impact to our public schools, none of the parties to this suit, or any
 19 of the related suits, represent the interests of school districts and/or the tudents/families they
 20 serve.

21 Although no definitive standard exists, the requirement for “significantly protectable
 22 interest is generally satisfied when ‘the interest is protectable under some law, and that there is a
 23 relationship between the legally protected interest and the claims at issue.’” *Arakaki v. Cayetano*,
 24 *supra*, 324 F.3d at 1084, citing *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir.1993). The
 25 Ninth Circuit has rejected the notion that rule 24(a)(2) requires a specific legal or equitable
 26 interest. Instead, “a party has a sufficient interest for intervention purposes if it will suffer a
 27 practical impairment of its interests as a result of the pending litigation.” *California ex rel.*
 28 *Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006).

1 The “interest” test is not a clear-cut or bright-line rule, because no specific legal or
 2 equitable interest need be established. Instead, the “interest” test directs courts to
 3 make a practical, threshold inquiry, and is primarily a practical guide to disposing
 of lawsuits by involving as many apparently concerned persons as is compatible
 with efficiency and due process.

4 *In re Est. of Ferdinand E. Marcos Human Rights Litig.*, 536 F.3d 980, 984–85 (9th Cir. 2008),
 5 citing *S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir.2002). Intervention is particularly
 6 warranted where, as here, the interest at stake is of public significance. See, *Brumfield v. Dodd*,
 7 749 F.3d 339, 344 (5th Cir. 2014).

8 The public interest in education cannot be overstated. Public education “is perhaps the
 9 most important function of state and local governments.” *Brown v. Board of Education*, 347 U.S.
 10 483, 493 (1954). It “is the very foundation of good citizenship. Today it is a principal instrument
 11 in awakening the child to cultural values, in preparing him for later professional training, and in
 12 helping him to adjust normally to his environment. In these days, it is doubtful that any child may
 13 reasonably be expected to succeed in life if he is denied the opportunity of an education.” *Id.*

14 We indulge in no hyperbole to assert that society has a compelling interest in
 15 affording children an opportunity to attend school. This was evidenced more than
 16 three centuries ago, when Massachusetts provided the first public school system in
 1647. [Citation.] And today an education has become the *sine qua non* of useful
 existence.

17 *Serrano v. Priest*, 5 Cal.3d 584, 608 (1971).

18 As LAUSD’s vast student body is comprised of a disproportionately high number of non-
 19 citizens or have family members that are non-citizens, LAUSD will likewise be disproportionately
 20 affected by Defendants’ inclusion of the citizenship question and the resulting decennial
 21 undercount. Specifically, the District’s federal education funding for the 2017-18 school year that
 22 was determined primarily or in part upon the decennial census data includes:

- 23 • Title I, Part A funds (approx. \$328,000,000)
- 24 • Title II funds (approx. \$27,065,075)
- 25 • Title IV, Part A funds (approx. \$7,000,000)
- 26 • Child Care and Development Block Grant (approx. \$5,086,650)¹
- 27 • Children’s Health Insurance Program (approx. \$673,250)

28 ¹ For the 2016-17 school year.

1 In addition, LAUSD receives millions in federal aid to support special needs students
 2 under the Individuals with Disabilities Education Act. These funds are also indirectly tied to the
 3 decennial census data. Many of these federal programs, including Titles I, II, and IV, are driven
 4 by census poverty data. These programs target and assist schools with high percentages of low
 5 income families including students with disabilities, i.e., children with the very highest need, to
 6 help ensure that all children meet challenging state academic standards. Underrepresentation
 7 from the decennial census would have a direct and immediate impact on LAUSD’s federal
 8 funding levels and its obligation to provide core educational services.

9 **C. LAUSD’s Interest May Be Affected in This Litigation**

10 For purposes of Federal Rule of Civil Procedure 24(a)(2), it need only be shown that the
 11 underlying lawsuit may, “as a practical matter impair or impede the movant’s ability to protect its
 12 interest.” *SEC v. Navin*, 166 F.R.D. 435, 440 (N.D. Cal. 1995). As reflected in Plaintiffs’ FAC,
 13 “[a]t least four former Bureau directors share the view that inquiring about citizenship status on
 14 the census ‘would likely exacerbate privacy concerns and lead to inaccurate responses from non-
 15 citizens worried about a government records of their immigration status.’” FAC ¶ 5, p. 3. Local
 16 families with one or more non-citizens are understandably frightened in the current political
 17 climate. The Census Bureau’s own research acknowledges that inclusion of a citizenship
 18 question will “inevitably jeopardize the overall accuracy of the population count.” *Fed’n for Am.*
 19 *Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980).

20 For the purposes of LAUSD’s intervention, LAUSD is not required to demonstrate that
 21 inclusion of the citizenship question will ultimately lead to suppression of response rates. The
 22 required showing under rule 24(a)(2) is “minimal,” as the “would-be intervenor must show only
 23 that impairment of its substantial legal interest is *possible* if intervention is denied.” *Michigan*
 24 *State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997) (emphasis added); *WildEarth*
 25 *Guardians v. National Park Service*, 604 F.3d 1192, 1199 (10th Cir. 2010). While LAUSD
 26 maintains that response rates from non-citizens and family members of noncitizens will be
 27 depressed if the challenged citizenship question is included in the decennial census, there can be
 28 no doubt that it is, at the very least, a realistic possibility. Accordingly, LAUSD’s interest in

1 preserving federal education funding may be impaired by this suit.

2 **D. LAUSD’s Interest in Preserving Educational Funding Is Not Adequately**
 3 **Represented by the Existing Parties**

4 The burden of showing inadequacy of representation is not a heavy one; a minimal
 5 showing is all that is required. *Arakaki v. Cayetano, supra*, 324 F.3d 1078, 1086; accord,
 6 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). “If an absentee would be
 7 substantially affected in a practical sense by the determination made in an action, he should, as a
 8 general rule, be entitled to intervene.” *Arakaki v. Cayetano, supra*, 324 F.3d 1078, 1086. “The
 9 most important factor in determining the adequacy of representation is how the interest compares
 10 with the interests of existing parties.” *Id.*, citing 7C Wright, Miller & Kane, § 1909, at 318
 11 (1986). Even when the existing parties share common general objections, a proposed intervenor’s
 12 interests are not adequately represented when the proposed intervenor’s interests are “more
 13 narrow and parochial than the interests of the public at large.” *Californians for Safe Dump Truck*
 14 *Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir.1998).

15 Here, Plaintiffs and LAUSD generally seek the same, or substantially the same, final
 16 objective—to bar inclusion of the challenged citizenship question on the 2020 census. But
 17 Plaintiffs’ interests are quite general, seeking to preserve “the States’s fair share of congressional
 18 seats and Electoral College electors” and to preserve “billions of dollars in federal funding over
 19 the next decade.” FAC ¶ 6, pp. 3-4. By contrast, LAUSD’s interest is more narrowly focused
 20 and directly related to the potential impact of this litigation on the hundreds of millions of dollars
 21 of federal k-12 education funds received by LAUSD every year—funds which are keyed to the
 22 decennial census results. LAUSD has a far better understanding of the educational funds at issue
 23 and how such funds will likely be impacted by the inclusion of the challenged citizenship
 24 question on the decennial census. As a result, LAUSD’s specific interests are not adequately
 25 represented in this litigation.

26 Additionally, there is the symbolic interest LAUSD has in demonstrating its commitment
 27 to preserving its schools as a safe and welcoming environment for its students/families, regardless
 28 of immigration status. None of the existing parties fairly represent this interest.

1 Plaintiffs' FAC was filed only two months' ago. LAUSD brings this timely motion to
 2 intervene in order to preserve hundreds of millions of dollars in federal K-12 educational funds, a
 3 significantly protectable interest. Inclusion of the challenged citizenship question is certain to
 4 have a negative impact on LAUSD's allocation of federal funds, the only question is the degree to
 5 which LAUSD is harmed. As LAUSD's interests are more narrowly drawn than the existing
 6 Plaintiffs, intervention is warranted.

7 **IV. IN THE ALTERNATIVE, LAUSD SHOULD BE PERMITTED LEAVE TO**
 8 **INTERVENE**

9 A non-party *may* be permitted to intervene in litigation where, upon timely motion, the
 10 non-party "has a claim or defense that shares with the main action a common question of law or
 11 fact" and intervention will not "unduly delay or prejudice the adjudication of the original parties'
 12 rights." Fed. R. Civ. P. 24(b)(1)(B) & (b)(3). Unlike mandatory intervention, permissive
 13 intervention does not require any showing of any particular interest that is inadequately
 14 represented by the existing parties. *UMG Recordings, Inc. v. Bertelsmann AG*, 222 F.R.D. 408,
 15 412 (N.D. Cal. 2004). All that is required is a common question of law or fact and a lack of
 16 undue prejudice to the existing parties. *Id.*

17 LAUSD seeks the same ultimate relief pursued by the existing Plaintiffs—a judicial
 18 declaration that inclusion of the citizenship question in the decennial census is unconstitutional
 19 and in violation of the Administrative Procedures Act as well as an injunction prohibiting
 20 Defendants from including the citizenship question in the decennial census. Accordingly, the
 21 central legal and factual issues in this case are identical to LAUSD's proposed claims.

22 LAUSD seeks leave to intervene to assert substantially identical claims only two months
 23 after Plaintiffs' FAC was filed. The underlying suit is still early in the pleading stage. And the
 24 overlapping legal and factual issues significantly reduces any additional burden associated with
 25 the inclusion of LAUSD as an additional party. LAUSD recognizes that the Court's
 26 determination of Defendants' pending motion to dismiss will similarly impact LAUSD's claims
 27 in invention; correspondingly, it will not be necessary to rehash the parties' arguments re same.
 28 The existing parties will not be prejudiced by LAUSD's entry to this case because LAUSD's

1 claims will neither expand the scope of the issues in this litigation nor delay these proceedings in
2 any material respect.

3 Intervention promotes judicial economy by preventing a multiplicity of duplicitous
4 lawsuits. *Washington Elec. Co-op., Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d
5 92, 97 (2d Cir. 1990). Indeed, here, it would serve no purpose to compel LAUSD to file yet
6 another lawsuit challenging Defendants' citizenship question.


7 In light of the early stages of this case, the lack of any meaningful prejudice from
8 LAUSD's entry to this case, and the lack of any delay by LAUSD, LAUSD should be permitted
9 to intervene.

10 **V. CONCLUSION**

11 The requirements of Federal Rules of Civil Procedure 24 are interpreted broadly in favor
12 of intervention. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Here, the State's suit
13 is still young. LAUSD's proposed claims will neither expand the issues before this Court nor
14 delay these proceedings. Whether as a matter of right or with the Court's discretion, LAUSD
15 should be permitted to intervene.

17 DATED: July 6, 2018

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