UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA Plaintiff, v. STATE OF NORTH CAROLINA; PATRICK MCCRORY, in his official capacity as Governor of North Carolina; NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; UNIVERSITYOF NORTH CAROLINA; and BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, Defendants.	)	Case No. 1:16-CV-00425

MEMORANDUM IN OPPOSITION TO
CHRIS SEVIER AND ELIZABETH ORDING'S MOTION TO INTERVENE

The United States respectfully submits the following response in opposition to the August 11, 2016 Motion to Intervene filed by Chris Sevier and Elizabeth Ording ("Movants"). ECF No. 130. The United States respectfully requests that the Court deny the motion to intervene because Movants do not meet the requirements for intervention under Fed. R. Civ. P. 24.

INTRODUCTION

On May 9, 2016, the United States filed a Complaint in this Court alleging, among other things, that by complying with and implementing Part I of North Carolina Session Law 2016-3, House Bill 2 ("H.B. 2"), Defendants are violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII"), Title IX of the Education

Amendments of 1972, 20 U.S.C. § 1681, *et seq.* ("Title IX"), and the Violence Against Women Act of 2013, 42 U.S.C. § 13925(b)(13), ("VAWA"). Complaint, ECF No. 1, at 1-2.

H.B. 2 mandates, *inter alia*, that all "[p]ublic agencies . . . require multiple occupancy bathrooms or changing facilities . . . be designated for and only used by individuals based on their biological sex." N.C. Session Law 2016-03, sec. 1.3 § 143-760(b). H.B. 2 defines "biological sex" as "[t]he physical condition of being male or female, which is stated on a person's birth certificate." *Id.* § 143-760(a)(1). On July 5, 2016, the United States filed a Motion for Preliminary Injunction, asking this Court to enjoin Defendants from complying with or implementing Section 1.3 of H.B. 2. ECF No. 73.

Movants seek to intervene as Plaintiffs in the United States' statutory challenge to H.B. 2, allegedly to clarify that "either *all individuals* and UNC employees warrant sexual orientation civil rights based on their self-assertive sexual identity narrative . . . or the federal executive is perpetrating the greatest fraud through the Courts in the History of American Jurisprudence." ECF No. 131 at 13 (emphasis in original). Movants assert that their intervention "will keep the Court, the original plaintiff, and the defendants from having the wrong conversation under the Constitution, which was the fundamental error that took place in *Obergefell* and *Windsor*." *Id.* at 11.

ARGUMENT

Mr. Sevier and Ms. Ording seek to intervene in this case to assert that "laws and policies that codify 'gay marriage,' 'gay rights,' and 'transgender rights' violate the first amendment establishment clause." ECF No. 131 at 12. Alternatively, they claim that "[h]omosexuality, transgenderism, polygamy, zoophilia, and machinism are merely sects of the same religion," and cannot be treated differently. *Id.* at 13. These claims are irrelevant and unrelated to the underlying litigation. *See United States v. Lehigh Valley Co-op. Farmers, Inc.*, 294 F. Supp. 140, 144 (E.D. Pa. 1968) ("Intervention is not proper to litigate an issue or issues which do not exist or are not available in an action between the original parties.").

Not only have Movants failed to identify any basis that would support intervention in this case, their participation would only impede the resolution of the issues before the Court. They seek not only to litigate new constitutional claims,[1] but also attempt to inject completely unrelated matters into this litigation, such as the constitutionality of same-sex marriage,[2] the legality of Internet pornography, and the criminal prosecution of federal

[1] Mr. Sevier wishes to "point out three major Constitutional considerations that are otherwise absent," including the claims that sexual orientation is a religion for purposes of the First Amendment and that, alternatively, the First and Fourteenth Amendment requires segregated bathrooms for members of various sexual orientations. ECF No. 131 at 11-13.

[2] *See, e.g.*, ECF No. 131-3 at 22 (asserting that Mr. Sevier's parallel litigation "must inevitably be to *Obergefell v. Hodge[s]*, 192 L. Ed. 2d 609 (2015) what *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) was to *Plessy v. Ferguson*, 163 U.S. 537 (1896) as a manifest Constitutional injustice that goes to the heart of our National identity"); *id.* (*Obergefell* is a "Constitutional crisis); *id.* at 28 n.28 (referring to *Obergefell* as "judicial malpractice"); *id.* at 42 (seeking a declaration "whether or not *Obergefell v. Hodge[s]*, 192 L. Ed. 2d 609 (2015) and

officials. Their intervention would needlessly delay the adjudication of the original parties' rights by interjecting collateral allegations into the case. Thus, this Court should deny intervention.

I. INTERVENTION AS OF RIGHT

A. Legal Standard

Under Federal Rule of Civil Procedure 24(a)(2), intervention is available as a matter of right if, by timely motion, the movant can show (1) an interest relating to the property or transaction that is the subject of the action; (2) that it is so situated that disposing of the action, as a practical matter, may impair or impede its ability to protect its interest; and (3) that its interest is not adequately represented by existing parties to the litigation. Fed. R. Civ. P. 24(a)(2); *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013); *United States v. North Carolina*, No. 13-CV-861, 2014 WL 494911, at *2 (M.D.N.C. Feb. 6, 2014). All of these criteria must be met before intervention of right is appropriate. *See Virginia v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (intervention of right was properly denied because the State of Virginia's interests in the litigation were adequately represented by the plaintiffs); *see also Gould v. Alleco, Inc.*, 883 F.2d 281, 284-85 (4th Cir. 1989) (potential creditors did not have an interest sufficient to justify intervention of right). In addition, "a would-be intervenor bears the burden of demonstrating to the court a right to intervene." *In re Richman*, 104 F.3d 654,

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United States v. Windsor, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013) holdings are Constitutionally sound").

658 (4th Cir. 1997).

To meet the criteria for intervention of right, the movant must demonstrate an interest in the litigation that is "'significantly protectable.'" *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). "[A] general interest in the subject matter of pending litigation does not constitute a protectable interest within the meaning of Rule 24(a)(2)." *Dairy Maid Dairy, Inc. v. United States*, 147 F.R.D. 109, 111 (E.D. Va. 1993). Rather, the interest "must bear a close relationship to the dispute between the existing litigants and therefore must be direct, rather than remote or contingent." *Id.*

This standard is distinct from, but related to, the test for establishing standing pursuant to Article III of the Constitution. *See Stuart*, 706 F.3d at 351 (discussing the "related standing context" in evaluating a request for intervention). To establish Article III standing, a party must demonstrate that it has (1) suffered an injury in fact; (2) which was caused by the conduct at issue; and (3) which will likely be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Similar to the standard for a protectable interest under Rule 24(a)(2), standing doctrine requires a party to show an injury that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id*. at 560 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (citations and internal quotation marks omitted)).

Even if it is able to demonstrate a sufficient interest in the litigation that may be impaired or impeded, a prospective intervenor must further show that its interest is not

adequately represented by existing parties to the litigation. Furthermore, "[w]hen the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented, against which the [movant] must demonstrate adversity of interest, collusion, or nonfeasance." *Westinghouse Elec. Corp.*, 542 F.2d at 216. That presumption is stronger where a government agency represents the interests of the putative intervenors; in such a situation, an "exacting showing of inadequacy" is required. *See Stuart*, 706 F.3d at 352. This Court has recently affirmed this standard, finding that "[w]hen a State statute is challenged and a proposed intervenor shares a common objective with the State to defend the validity of the statute, the proposed intervenor 'must mount a strong showing of inadequacy.'" *North Carolina*, 2014 WL 494911, at *3 (quoting *Stuart*, 706 F.3d at 352).[3]

As discussed further below, Movants cannot demonstrate that they have a significantly protectable interest that would be impaired by the resolution of this case or make the "strong showing of inadequacy" of representation necessary for intervention as of right in this case. *See Stuart*, 706 F.3d at 349; *id.* at 352 (finding no right to intervene for appellants who shared with defendant North Carolina the same ultimate interest in

[3] Though Movants seek to nominally intervene as Plaintiffs, this position appears to be predicated on an elaborate attempt at *reductio ad absurdum* of Plaintiffs' position. Movants' primary position is in defense of H.B. 2. The headings in their motion include "The Dissent and Majority in *Obergefell* were Dead Wrong" and "Homosexuality is a Religion." ECF No. 131 at 18-19. The very first paragraph of their motion claims that their argument that any "laws and policies that legally codify 'gay marriage,' 'gay rights,' and 'transgender rights' violate the first amendment establishment clause . . . ." *Id.* at 12.

upholding the challenged statute); *Westinghouse Elec. Corp.*, 542 F.2d at 216.

B. Movants are not Entitled to Intervention as of Right

Movants do not, and cannot identify any cognizable interest in the subject matter of *this* case, and any interest they purport to have is adequately represented by the existing parties. Therefore, they cannot meet the standard to intervene as of right under Rule 24(a).

Based on the allegations in their motion to intervene, ECF No. 130, and proposed complaint in intervention, ECF No. 130-1, Mr. Sevier and Ms. Ording do not "stand to gain or lose by the direct legal operation" of a judgment in this case and therefore do not have a significantly protectable interest. *See Teague*, 931 F.2d at 261. Indeed, Movants have failed to show how they would be impacted by any judgment in this case, regardless of which party prevails. Their purported interests are either unrelated to the litigation or based on a conflation of the issues being litigated. For example, Movants suggest gender identity is a type of sexual orientation. Gender identity and sexual orientation are separate and distinct,[4] and no party involved in this case—or any related case—seeks to create new bathrooms to accommodate people of different sexual orientations, as Mr. Sevier and Ms. Ording assert. ECF No. 130-1 at 6-8, 14-16; ECF. No. 131 at 27. Their

[4] *See, e.g.*, *Lewis v. High Point Reg'l Health Sys.*, 79 F. Supp. 3d 588, 589 (E.D.N.C. 2015) (noting that gender identity is "different than sexual orientation"); *Schroer v. Billington*, 424 F. Supp. 2d 203, 212 (D.D.C. 2006) (noting that "numerous attempts to broaden Title VII to cover sexual *orientation* says nothing about Title VII's relationship to sexual *identity*, a distinct concept" (emphasis in original)).

purported interests and injuries are irrelevant to the factual and legal issues in this case and provide no basis for intervention.

Further, even if they had a protectable interest, Movants cannot and do not show that their alleged interests will be "impeded" or "impaired" by a denial of intervention. *Com. of Va. v. Westinghouse Elec. Corp.*, 542 F.2d 214, 216 (4th Cir. 1976). As Movants' complaint purports to seek remedies that would not follow from or relate to the resolution of this case, Movants' alleged interests are not impaired by this action. Indeed, Mr. Sevier claims that his litigation in another court, *Sevier v. Davis*, No. 16-080 (E.D. Ky. filed July 1, 2016), will be dispositive of the issue of "the codification of the church of postmodern individual relativism," and that he will then be "content." ECF No. 130-1 at 9 n.7, 10 n.8. Because Mr. Sevier and Ms. Ording do not seek to bring any of the same claims or counterclaims as the parties to this action, their claims will not be foreclosed or impaired by the outcome of this action.

Finally, Movants' allegations consist of mere assertions that the existing parties' understanding of federal statutes and constitutional law is incorrect. ECF No. 131 at 11-13. This does not signal diverging interests or inadequate representation, but rather that Mr. Sevier and Ms. Ording's claims are simply unrelated to the substance of this litigation and the particular legal claims at issue. Intervention is not appropriate when a movant seeks to bring completely unrelated legal claims. *See Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 498 (1944) (the purpose of intervention is not to "enlarge . . . issues or compel an alteration of the nature of the proceeding").

II. PERMISSIVE INTERVENTION

A. Legal Standard

A movant may also seek permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). A court may permit intervention upon timely motion when an applicant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). Although permissive intervention is discretionary, a court "must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). This Court should not permit Movants to intervene under Rule 24(b), as their alleged claims do not share a common question of law or fact with those that the parties bring here, and their intervention would unduly delay the proceedings.

B. Movants are not Entitled to Permissive Intervention

The motion to intervene and the proposed complaint share little to no common questions of law and fact with the case at hand and thus this Court should also deny permissive intervention under Rule 24(b). Mr. Sevier and Ms. Ording's conflation of sexual orientation with gender identity throughout their motion indicates a desire to use this case as an opportunity to "appeal" the Supreme Court's decision in *Obergefell* and mount a general attack on laws and legal precedents that provide protections based on sexual orientation, which is not at issue in this case. *See, e.g.*, ECF No. 130-1 at 43 (seeking a declaration "whether or not *Obergefell v. Hodge[s]*, 192 L. Ed. 2d 609 (2015) and *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013) holdings are

Constitutionally sound"). Movants do not seek to address a single question of law currently at issue in this case, such as the claims that the United States has brought under Title IX, Title VII, and VAWA, but instead propose introducing new questions of law, some of which have been recently settled by the Supreme Court.

Movants' contentions would necessitate additional discovery and briefing on legal issues unrelated to those present in this case. Permitting Movants to intervene with separate and unrelated claims would complicate discovery and delay resolution of this case to the detriment of existing parties. *See, e.g., Stuart*, 706 F.3d at 350 (affirming denial of intervention when "intervenors would necessarily complicate the discovery process and consume additional resources of the court and the parties"). This fact is even more salient now that the Court has ordered an expedited discovery schedule and trial on the merits. ECF No. 93.

Finally, a court may deny both intervention as of right and permissive intervention if the proposed intervenor's claims are "frivolous on their face." *Turn Key Gaming, Inc. v. Ogala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999). This motion and complaint mount a conspiracy-theory riddled attack on the federal government and judiciary, complete with volleyball analogies, ECF No. 131 at 12 n.4, allegations of a "sexual holocaust," *id.* at 19, and references to the criminal prosecution of Supreme Court Justices for treason, *id.* at 23. This Court should deny intervention because Movants, in addition to failing to meet the relevant legal standards, present facially frivolous claims.

III. CONCLUSION

For the foregoing reasons, the Court should deny Proposed Intervenors' Motion to Intervene.

Respectfully submitted this 29th day of August, 2016,

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:16-CV-00425
	)	
STATE OF NORTH CAROLINA; PATRICK MCCRORY, in his official capacity as Governor of North Carolina; NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; UNIVERSITYOF NORTH CAROLINA; and BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA,	)	
	)	
Defendants.	)	

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using CM/ECF and mailed to the following non-CM/ECF participants:

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