Document Number: 92 (No document attached)

Docket Text:

ORDER granting [36] Motion to Intervene; finding as moot [87] Motion for Order. The only seriously contested issue with regard to the proposed intervenors (PIs) motion to intervene as of right under Fed. R. Civ. P. 24(a) is whether they have overcome the presumption that their interests are adequately represented by the existing defendants. I conclude that the presumption has been overcome. Inadequacy of representation may be established when a would-be defendant seeks to raise a defense that will not be raised otherwise. *See Meriwether v. Trustees of Shawnee State Univ.*, No. 1:18-cv-753, 2019 WL 2052110, *12 (S.D. Ohio May 9, 2010) (in suit by professor challenging colleges antidiscrimination policy, intervention granted to transgender student and LBTG student advocacy group because they intended to assert arguments based on the Equal Protection Clause, Title IX and the ADA that the college was required to treat transgender students in accordance with their gender identity, an argument the college had not made in its motion to dismiss and was unlikely to make, thus overcoming the presumption of adequacy of representation). Here, the PIs seek to raise a defense that the relief sought by the complaint would constitute impermissible discrimination against them in violation of Title IX and the Equal Protection Clause. Based on the defendants written submissions and the comments of defense counsel during the recent telephone conference, none of the defendants adequately represents the interests of the PIs in defending the action on this basis. CIAC intends to defend on the ground that it is not subject to suit under

Title IX, that state law controls, and that the definition of sex in Title IX is ambiguous. Bloomfield and Cromwell intend to defend on the ground that they owe no Title IX obligations to students, like the plaintiffs, who do not attend their schools. The remaining defendants, Danbury, Glastonbury and Canton, have disclaimed any interest in advocating for the rights of students, like the PIs, who do not attend their schools. Bloomfield and Cromwell may argue that the relief sought would violate Title IX but they will not argue that it would violate the Equal Protection Clause. Nor will any of the other defendants. Accordingly, I find that the interests of the PIs are not so similar to those of the existing defendants that adequate representation of their interests is assured. *See id.; cf. Christa McAuliffe Intermediate School PTO v. de Blasio*, No. 18 Civ. 11657(ER), 2020 WL 1432213, *5 (S.D.N.Y. March 24, 2020) (in action by Asian-American groups challenging changes to program governing admission to Citys selective high schools, intervention as of right granted to students seeking to defend changes based on the programs history of discrimination, a defense the existing defendants would not make). Permissive intervention is proper in any event because the PIs have a strong personal interest in the subject matter of the case and they are in a position to make a valuable contribution to the Courts understanding of the case. *See New York v. U.S. Dept. of Health and Human Services*, 2019 WL 3531960, *4 (S.D.N.Y. Aug. 2, 2019) (in action by states challenging HHS rule allowing medical personnel to abstain from providing services due to religious beliefs, motion for intervention as of right by medical personnel seeking to defend the rule denied but permissive intervention granted); *United States v. New York City Housing Authority*, 326

F.R.D. 411, 417-18 (S.D.N.Y. 2018) (in action against to redress health and safety violations by Housing Authority, motion to intervene as of right by tenant organizations denied but permissive intervention granted). Moreover, they have expressed a willingness to accept conditions on their participation that will avoid unduly burdening the existing the parties or the Court. Accordingly, the motion is hereby granted. So ordered. Signed by Judge Robert N. Chatigny on 4/22/2020. (Gazzola, Mario)