



VIA ECF

The Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, N.Y. 10007

Re: *Yi Fang Chen, individually and on behalf of her minor children M.P., Ma.P., and P.P. v. Zohran Mamdani, et al.*, No. 1:26-cv-03355 (ER)

Judge Ramos:

We write on behalf of Plaintiff Yi Fang Chen in response to the Proposed Defendant-Intervenors' June 24 letter seeking to file a motion to intervene, a motion to dismiss, and opposition to Plaintiff's April 27 preliminary injunction motion. Plaintiff opposes these requests—with emphasis on the request to file an opposition to a time-sensitive (and now fully briefed) preliminary injunction motion, and the request to file a motion to dismiss.

I. Intervenors should not be permitted to file an opposition to the preliminary injunction motion or file a motion to dismiss

Plaintiff recognizes, of course, that this Court previously granted a motion for intervention filed by a similarly situated group of Intervenor-Defendants in a related action. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, No. 1:18-cv-11657-ER, 2020 WL 1432213 (S.D.N.Y. Mar. 24, 2020). Plaintiff still respectfully opposes intervention here, for reasons summarized below. But regardless of how the Court rules on intervention, it is critical that the Court deny these Proposed Intervenor's request to file an opposition to the preliminary injunction motion and to file a motion to dismiss.

When the *Christa McAuliffe* Defendant-Intervenors moved to participate in the case, the parties were awaiting resolution of the appeal of the denial of the Plaintiffs' preliminary injunction motion. *Id.* at *3. Those Defendant-Intervenors did not seek to file any extraneous motions, and the Plaintiffs conceded that their motion was timely. *Id.* at *3–4. The situation here is different. As the Court is aware, the preliminary injunction motion seeks an order admitting Ms. Chen's son, M.P., to Stuyvesant for the upcoming school year.

But the Proposed Intervenor's are asking to file an opposition brief to a Preliminary Injunction motion that was fully briefed as of the filing of this letter, and would have been fully briefed by May 18 pursuant to the Court's default rules. The Second Circuit has found that it is appropriate to deny intervention outright when a proposed intervenor's motion is filed on the eve of resolution of a preliminary injunction hearing. *See Mastercard Int'l, Inc. v. Visa Int'l Serv. Ass'n*,



471 F.3d 377, 390 (2d Cir. 2006). It is therefore, of course, within the Court’s discretion to allow intervention while denying the intervenor’s request to file additional motions.¹

“The Second Circuit has recognized that setting conditions on intervention is ‘a well-established practice.’” *Bridgeport Guardians v. Delmonte*, 227 F.R.D. 32, 34–35 (D. Conn. 2005). This is especially true when conditions or limitations are necessary to make proceedings more efficient. *Id.* at 34. District courts use these limitations to allow intervenors to intervene only on certain issues or for certain purposes. *See id.* at 35. Thus, it would be appropriate for the Court to limit Proposed Intervenors’ participation to later proceedings after the timely adjudication of the preliminary injunction motion.

From a practical case-management standpoint, it is also duplicative and unnecessary to address a motion to dismiss, while a preliminary injunction motion addressing the same issues is already fully briefed. Limiting intervention is appropriate to “strike[] an appropriate balance between the Proposed Intervenors’ interests and the parties’ interest in the expeditious determination” of motions.² The pleadings have been closed in this case since June 17. Reopening them now would not serve judicial economy. Accordingly, even if the Court grants intervention, the Proposed Intervenors should not be permitted to file a late opposition to the motion for preliminary injunction, nor should they be permitted to file a motion to dismiss after the pleadings have closed.

II. Proposed Intervenors are not entitled to intervention as of right, and should not be granted permissive intervention

“Intervention as a matter of right requires an applicant to: (1) file a timely motion; (2) show an interest in the litigation; (3) show that its interest may be impaired by the disposition of the action;³ and (4) show that its interest is not adequately protected by the parties to the action.” *Christa McAuliffe*, 2020 WL 1432213, at *3; *See also* Fed. R. Civ. P. 24(a). “Failure to meet any one of these four requirements is grounds for denial.” *Louis Berger Grp., Inc. v. State Bank of India*, 802 F. Supp. 2d 482, 487 (S.D.N.Y. 2011) (quoting *MasterCard Int’l Inc.*, 471 F.3d at 389).

With respect to timing, the Proposed Intervenors’ motion is *not* timely when read in conjunction with their request to file an untimely brief and motion to dismiss as discussed above. *See Mastercard Int’l, Inc.*, 471 F.3d at 390. Proposed Intervenors were presumably aware of this case no later than April 28, when the Court accepted this case as related.⁴ Given the time-sensitive nature of the preliminary injunction motion, the late filings of both the motion to dismiss, and the opposition to the motion for preliminary injunction will substantially prejudice the Plaintiff, who

¹ *See also Chevron Corp. v. Donziger*, 2011 WL 2150450, at *5 (S.D.N.Y. May 31, 2011) (courts have full discretion to “limit the scope of any intervention”).

² *See United States v. NYC Hous. Auth.*, 326 F.R.D. 411, 418 (S.D.N.Y. 2018) (granting permissive intervention for the limited purpose of opposing the Proposed Consent Decree); *Kirkland v. New York Dep’t of Corr. Servs.*, 711 F.2d 1117, 1121 (2d Cir. 1983) (permitting intervention for the limited purpose of objecting to a proposed settlement).

³ For purposes of this Letter, Plaintiff will assume *arguendo*, that proposed intervenors have an interest in the litigation that may be impaired by the disposition of the action. Plaintiff reserves the right to further explore those issues in opposition to the Motion to Intervene, and in discovery.



will suffer irreparable harm but for the grant of a preliminary injunction. In the absence of those requests, Plaintiff would be willing to concede timeliness. *See Christa McAuliffe*, 2020 WL 1432213, at *4 (“No one contests that Proposed Intervenors have filed a timely motion.”).

In any event, Proposed Intervenors cannot overcome the strong presumption that the government Defendants will adequately represent their interests. The Second Circuit has “demanded a more rigorous showing of inadequacy in cases where the putative intervenor and a named party have the same ultimate objective[.]” *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001). The Proposed Intervenors carry the burden of rebutting the presumption of adequate representation here. The Defendants in this case have competently and vigorously defended the constitutionality of their admissions changes, and they will continue to do so. Accordingly, Proposed Intervenors must make a strong showing that Defendants will not continue to adequately represent their interests in this litigation. *See Butler*, 250 F.3d at 180 (Although not exhaustive, a proposed intervenor typically must show “evidence of collusion, adversity of interest, nonfeasance, or incompetence” to rebut the presumption of adequate representation.).

Proposed Intervenors fail to rebut the presumption of adequate representation. Specifically, Proposed Intervenors argue that Defendants are “disincentivized from raising factual and legal arguments that would cast it in an unfavorable light, including potential evidence of past intentional discrimination.” Doc. 34, Proposed Intervenors’ Letter at 2. The Court previously found in favor of the *Christa McAuliffe* intervenors on this point. *See Christa McAuliffe*, 2020 WL 1432213, at *7. But this argument is unpersuasive here because Defendants have already shown no reluctance to aver to alleged past discrimination in their recent opposition brief. *See* Doc. 31, Def. Opp’n at 15.⁵ Coupled with Proposed Intervenors’ failure to identify any specific arguments Defendants would not be willing to make (aside from speculation that it is “plausible that the DOE’s position on the importance of diversity in the Specialized High Schools may change,” Proposed Intervenors’ Letter at 2), there is no reason to believe that the government Defendants will fail to adequately represent Proposed Intervenors’ interests, including by addressing past discrimination against Black and Hispanic students.

Alternatively, Proposed Intervenors should not be permitted to intervene in this action pursuant to Fed. R. Civ. P. 24(b)(3). The Proposed Intervenors’ entry into this case would nearly quadruple the number of defendants and significantly prejudice the existing parties’ rights. Because Plaintiff filed a preliminary injunction motion and time is of the essence, Proposed Intervenors’ additional briefing will unduly delay the Plaintiff’s right to prompt resolution of the legal issues in this case. Without prompt adjudication, Plaintiff will suffer irreparable harm that cannot be remedied later on. Plaintiff suggests that Proposed Intervenors contribute to this case by presenting *amicus curiae* briefs to the Court, which would allow them to share their perspectives on this case without causing undue delay or prejudice.

⁵ “For decades, Defendants have faced public outcry—as well as an investigation by the U.S. Department of Education Office for Civil Rights—regarding concerns that admission to the SHSs is unattainable for a range of otherwise qualified students who fall short of the SHSAT cutoff score, and about a lack of racial, socioeconomic and geographic diversity in SHSs’ student bodies.” Wallack Decl. ¶¶ 8, 13.



Respectfully Submitted,

/s/ Dean McGee

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