IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:16CV425
	)	
STATE OF NORTH CAROLINA, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Acting in their official capacities, Phil Berger, President Pro Tempore of the North Carolina Senate, and Tim Moore, Speaker of the North Carolina House of Representatives (collectively, the "proposed intervenors"), seek to intervene (as of right pursuant to Federal Rule of Civil Procedure 24(a), or, in the alternative, permissive intervention pursuant to Rule 24(b)) in this constitutional and statutory challenge to portions of North Carolina's Public Facilities Privacy & Security Act, 2016 N.C. Sess. Laws 3, commonly known as House Bill 2 ("HB2"). (Doc. 8.) For the reasons set forth below, the motion will be granted, and the legislators will be permitted to intervene permissively.

I. BACKGROUND

The North Carolina General Assembly passed HB2 on March 23, 2016, and Governor Patrick L. McCrory signed the bill into law later that day. 2016 N.C. Sess. Laws 3. Among other things, HB2 states that multiple occupancy bathrooms and changing facilities,

including those managed by local boards of education, must be "designated for and only used by persons based on their biological sex." Id. The law also sets statewide nondiscrimination standards, preempting local and municipal ordinances that conflict with these standards. Id.

Almost immediately, HB2 sparked multiple overlapping federal lawsuits. On March 28, 2016, the American Civil Liberties Union of North Carolina, Equality North Carolina, and several individual plaintiffs (collectively, the "ACLU plaintiffs") filed an action in this court against the State, Governor McCrory (in his official capacity), and the University of North Carolina and its Board of Governors (collectively, "UNC"), alleging that HB2 discriminates against transgender, gay, lesbian, and bisexual individuals on the basis of sex, sexual orientation, and transgender status in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX"), as well as the Equal Protection and Due Process clauses of the Fourteenth Amendment to the United States Constitution. (Doc. 1 in case no. 1:16CV236 (the "236 case").)[1]

On May 9, 2016, the United States filed this action against the State, Governor McCrory (in his official capacity), the North Carolina Department of Public Safety ("NCDPS"), and UNC, seeking

[1] The ACLU plaintiffs filed an amended complaint on April 21, 2016. (Doc. 9 in the 236 case.)

a declaration that compliance with HB2's provisions relating to multiple-occupancy bathrooms and changing facilities constitutes sex discrimination in violation of Title IX, the Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 13925(b)(13) ("VAWA"), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), and requesting an injunction against enforcement of the law. (Doc. 1.)

That same day, State officials filed two separate declaratory actions in the Eastern District of North Carolina. Governor McCrory and NCDPS filed an action against the United States and the United States Department of Justice ("DOJ"), seeking a declaration that HB2 does not violate Title VII or VAWA (case no. 5:16cv238 (the "238 case")). Meanwhile, the proposed intervenors filed their own lawsuit against DOJ, seeking a declaration that HB2 does not violate Title VII, Title IX, or VAWA, as well as declarations that DOJ had violated both the Administrative Procedure Act and various constitutional provisions (case no. 5:16cv240 (the "240 case")). Finally, on May 10, 2016, an organization named North Carolinians for Privacy filed its own action in support of HB2 in the Eastern District of North Carolina, seeking declaratory and injunctive relief against DOJ and the United States Department of Education related to Title IX and VAWA (case no. 5:16cv245 (the "245 case")). As a result, as of this time five separate lawsuits involving HB2 remain pending: two

separate cases before this court, and three cases before the Eastern District.

On May 17, 2016, the proposed intervenors filed the instant motion to intervene. (Doc. 8.) They also filed a motion to intervene in the 236 case eight days later (Doc. 33 in case no. 1:16CV236), which this court granted (Doc. 44 in case no. 1:16CV236). The present motion raises virtually identical considerations as the motion the court granted in the 236 case.

II. ANALYSIS

The proposed intervenors seek to intervene as defendants in this case pursuant to Federal Rule of Civil Procedure 24(a) and (b). (Doc. 8.) Although the existing parties take different positions with regard to intervention as of right under Rule 24(a), none opposes permissive intervention under Rule 24(b). (See Docs. 36, 39, 41.) Because the court concludes that the motion should be granted under Rule 24(b)'s permissive intervention standards, there is no need to address the proposed intervenors' arguments that they are entitled to intervene as a matter of right under Rule 24(a).

Under Rule 24(b) the court may permit anyone who "has a claim or defense that shares with the main action a common question of law or fact" to intervene on timely motion. Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the 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). Thus, where a movant seeks permissive intervention as a defendant, the movant must satisfy three requirements: (1) the motion is timely; (2) the defenses or counterclaims have a question of law or fact in common with the main action; and (3) intervention will not result in undue delay or prejudice to the existing parties. See Wright v. Krispy Kreme Doughnuts, Inc., 231 F.R.D. 475, 479 (M.D.N.C. 2005); Solo Cup Operating Corp. v. GGCY Energy LLC, Civil No. WDQ-12-3194, 2013 WL 2151503, at *2 (D. Md. May 15, 2013); Shanghai Meihao Elec., Inc. v. Leviton Mfg. Co., 223 F.R.D. 386, 387 (D. Md. 2004).[2] Trial courts are directed to construe Rule 24 liberally to allow intervention, where appropriate. Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986) (noting that "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process") (citations and internal quotation marks omitted); Capacchione v. Charlotte-Mecklenburg Bd. of Educ., 179 F.R.D. 505, 507 (W.D.N.C. 1998) (same).

Here, there is no dispute the motion is timely. See, e.g.,

[2] Intervention may also be denied when the intervening party would deprive the court of subject matter jurisdiction. See, e.g., Radchyshyn v. Allstate Indem. Co., 311 F.R.D. 156, 158–61 (W.D.N.C. 2015). This is not an issue in this case because all of Plaintiffs' and proposed intervenors' claims appear to rely on federal question jurisdiction. (See Doc. 1 at 11–2; Doc. 8-1 at 30–41.)

United States v. Virginia, 282 F.R.D. 403, 405 (E.D. Va. 2012) (holding that a motion to intervene is timely where a case has not progressed past the pleadings stage); cf. MacGregor v. Farmers Ins. Exch., No. 2:10–cv–03088, 2012 WL 5380631, at *2 (D.S.C. Oct. 31, 2012) (motion to intervene untimely when filed more than five months after the passage of the court's deadline to join parties and amend the pleadings). Similarly, there is no dispute that the proposed intervenors' defenses and counterclaims share common questions of law and fact with the main action in this case. Indeed, their contemplated pleading raises factual allegations and legal arguments arising out of the same subject matter – passage of HB2 and its application – as the United States' complaint.

Finally, the addition of the proposed intervenors will not cause undue delay or prejudice to the original parties in this case. Because the proposed intervenors' defenses and counterclaims largely overlap with the legal and factual issues that are already present in the main action, the addition of these parties is not likely to significantly complicate the proceedings or unduly expand the scope of any discovery in this case. And because the proposed intervenors have already filed an answer in the 236 case and a proposed answer in this case, their addition should not significantly delay proceedings in this case.

III. CONCLUSION

IT IS THEREFORE ORDERED that the proposed intervenors' motion

to intervene (Doc. 8) is GRANTED. The proposed intervenors shall file their responsive pleading to the complaint forthwith and will be subject to the same schedule as the current parties to the case.

/s/ Thomas D. Schroeder
United States District Judge

June 29, 2016