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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DIVISION

AMERICAN CIVIL RIGHTS FOUNDATION, a non-profit public benefit corporation, on behalf of itself and its members, Plaintiff, -vs- LOS ANGELES UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, Defendant, and MINERVA ALMARAZ as Guardian Ad Litem for Issamar Camacho, a minor, FELISA ARGUETA as Guardian Ad Litem for Carolina Argueta, a minor, HENDERSON THOMAS as Guardian Ad Litem for Yvorn Aswad-Thomas, a minor, SUSAN YAMASAKI as Guardian Ad Litem for Kim Yamasaki, a minor, BARBARA GREENFIELD as Guardian Ad Litem for Jay Greenfield, a minor, UNITED FOR EQUALITY AND AFFIRMATIVE ACTION LEGAL DEFENSE FUND (UEAALDF), COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION & IMMIGRANT RIGHTS, AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (BAMN), Proposed Intervenors.	Case No. BC 341363 Hon. Paul Gutman **PROPOSED ALMARAZ INTERVENORS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT IN INTERVENTION** Date: February 23, 2006 Time: 8:30 A.M. Dept.: 34 Judge: Hon. Paul Gutman Action filed: October 12, 2005 Trial date: None set

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INTRODUCTION

This lawsuit is an attack on the Latino population of California. The Los Angeles Unified School District (LAUSD) student population is 72% Latino. The voluntary busing and magnet programs that the plaintiff would dismantle have allowed a modest but significant number of these Latino youth, together with their black and Asian counterparts, to escape severely overcrowded, underfunded schools where grim conditions often overwhelm the efforts and ambitions of even the most talented and determined students. The programs have also made modest but significant steps toward breaking down the divide between the city and the suburbs and the insularity of many Los Angeles neighborhoods.

Second-class education is a preparation for second-class citizenship. Issamar Camacho and the other young people in the caption above seek to intervene because Latino and other minority students in the LAUSD must not be relegated to the sidelines of this litigation while their basic right to equality is debated by others. Since *Brown v. Board of Education*, 347 U.S. 483 (1954), young people, together with their parents, have struggled for equal educational opportunity as a prerequisite to full democracy. This lawsuit, whatever its outcome, opens a new phase of that struggle.

Los Angeles represents significant trends for the future racial demographics not just of California but of the nation as a whole. Ms. Camacho and her fellow proposed intervenors represent the brightest possibilities of that future: Latino, black, Asian, and white youth learning and growing up together, seizing the opportunity to develop their talents, and standing united against racism.

The magnet schools and voluntary busing under attack in this case have alleviated the harms of segregation identified by the court order mandating them: low achievement, overcrowding, interracial hostility, lack of college access, and low self-esteem. More generally, they have created classrooms that are vibrant, proud, and optimistic. As their declarations show,

students of all races view these classrooms as essential to themselves and to the city. They seek to intervene for that reason.

As is set forth below, their right to do so cannot be debated with any seriousness. The students robustly represent the LAUSD K-12 population of 730,000. Some are in magnet programs, representing 55,000 magnet students around the District; some are participants in the Permit with Transportation (PWT) voluntary busing program, representing many thousands of PWT students; and some are potential participants in either program. They are Latino, black, Asian, and white. They come from neighborhoods throughout the city and attend elementary, middle, and high schools across the city and in the suburbs. The intervening organizations include hundreds more pro-integration LAUSD students and parents.

In school desegregation cases, the courts have routinely granted intervention to individuals and organizations on both sides of the integration/segregation divide. Research has uncovered no exception to the rule, and there is no basis for one here.

ARGUMENT

Intervention is governed by California Code of Civil Procedure section 387. The purpose of intervention is "to promote fairness by involving all parties potentially affected by a judgment." *Simpson Redwood Co. v. State of California*, 196 Cal. App. 3d 1192, 1100 (1987). Allowing intervention also serves judicial economy by preventing multiplicity of actions. *People ex rel. Rominger v. County of Trinity*, 147 Cal. App. 3d 655, 660 (1983). Accordingly, section 387 should be liberally construed in favor of intervention. *Simpson, supra*, 196 Cal. App. 3d at 1200; *Mary R. v. B. & R. Corp.*, 149 Cal. App. 3d 308, 315 (1983); *Fireman's Fund Ins. Co. v. Gerlach*, 56 Cal. App. 3d 299, 302 (1976).[1]

[1] Both subdivisions of section 387 require a timely application. That requirement has been met here. The complaint was filed in October 2005. The answer was filed in December 2005. Neither discovery nor a status conference has yet occurred.

A. The proposed intervenors meet the requirements of permissive intervention under California Code of Civil Procedure section 387, subdivision (a).

Section 387(a), governing permissive intervention, provides that in the court's discretion "any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding." Under 387(a), a proposed intervenor must demonstrate that she possesses a sufficient interest in the litigation; that intervention will not impermissibly enlarge the issues in the litigation; and that the reasons for intervention outweigh the right of the original parties to litigate in their own manner. *See, e.g., Reliance Insurance Co. v. Superior Court*, 84 Cal. App. 4th 383, 386 (2000); *Rominger, supra*, 147 Cal. App. 3d at 664.

1. The proposed intervenors' interests are far more than sufficient for permissive intervention.

It is not necessary that an intervenor possess any specific legal, equitable, or pecuniary interest in the subject matter of the litigation. *Rominger, supra*, 147 Cal. App. 3d at 661. Rather, he simply must stand to either "gain or lose by the direct legal operation and effect of the judgment." *Id* at 660 (citation omitted). Further, it is not necessary that his interests "will *inevitably* be affected by the judgment. It is enough that there be a substantial *probability* that his interests will be so affected." *Timberidge Enterprises, Inc. v. City of Santa Rosa*, 86 Cal. App. 3d 873, 881 (1978) (emphasis in original).

Accordingly, the courts have granted permissive intervention to parties with a broad range of interests. For example, in *Rominger, supra*, the Court of Appeal reversed a trial court ruling that had denied the Sierra Club intervention into an action by the state alleging preemption of county ordinances controlling the use of certain herbicides. Because the Sierra Club's members might be harmed if use of the herbicides resumed, its interest was adequate, and the refusal of the trial court to allow it to intervene was an abuse of discretion. *Rominger, supra*, 147 Cal. App. 3d at 663-663. In *Highland Development Company v. City of Los Angeles*, 170 Cal.

App. 3d 169 (1985), the Court of Appeal found the intervention had been properly granted to a homeowner's association in a district abutting the construction zone at issue in the litigation; the contiguous physical relationship alone gave rise to a sufficient interest under section 387, subdivision (a). 170 Cal. App. 3d at 179.

Intervention has consistently been allowed into school desegregation litigation. To begin with a case that is immediately related to this one, in *Bustop v. Superior Court*, 69 Cal. App. 3d 66 (1977), an organization of white parents opposed to integrationist busing sought to intervene in the *Crawford* litigation that ultimately gave rise to the court-ordered voluntary desegregation programs at issue here. *See generally Crawford v. Board of Education*, 458 U.S. 527, 529-535 (1982).

In *Bustop*, both the plaintiff and the LAUSD opposed intervention, and the trial court denied the motion. *Bustop, supra,* 69 Cal. App. 3d at 70. The Court of Appeal reversed and issued a peremptory writ of mandate directing the trial court to grant the petition, finding that the "direct social, educational, and economic impact" of school reassignment gave rise to a sufficient interest. *Id.* at 71.

Intervention was also granted in the Stockton Unified School District desegregation litigation, *see Hernandez v. Board of Education of the Stockton Unified School District*, 126 Cal.App.4th 1161, 1165-1166 (2004); the San Diego Unified School District desegregation litigation, *see Board of Education, San Diego Unified School District v. Superior Court*, 61 Cal.App.4th 411, 414 (1998); and litigation challenging the Berkeley Unified School District's voluntary integration plan, *Avila v. Berkeley Unified School District*, 2004 WL 793295 (Cal.Superior).[2]

[2] In *Avila*, the intervenors included the two organizations that propose to intervene here: United for Equality and Affirmative Action Legal Defense Fund (UEAALDF) and the Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN). Both organizations were represented by Michigan counsel.

Here the interests of the proposed intervenors are plainly more than sufficient to satisfy section 387(a).

a. Students

Latino, black, and Asian PWT and magnet students have the right to equal educational opportunity. If the plaintiff succeeded in dismantling the District's desegregation programs, that right would be nullified. The neighborhood demographics of Los Angeles and the experience of other districts across the country make it clear that without the programs, the LAUSD would undergo increasing segregation and fragmentation. Black, Latino, and Asian-American students would be relegated to sharply racially isolated, inferior, and inadequate schools. *See* Chungmei Lee, *Denver Public Schools: Resegregation, Latino Style* 3-4, 9-12, 15-16 (The Civil Rights Project, Harvard University, 2006) (available at www.civilrightsproject.harvard.edu); Gary Orfield and Chungmei Lee, *Racial Transformation and the Changing Nature of Segregation* 1-6, 9-12 (The Civil Rights Project, Harvard University, 2006) (same website). It was true in 1954 and it is true now: "[s]eparate educational facilities are inherently unequal." *Brown, supra*, 347 U.S. at 495.

In their declarations in support of the motion to intervene, the students and their parents have described the stark inequality between neighborhood schools and integrated schools in Los Angeles. The former are characterized by overcrowding, physically deteriorating facilities and materials, tense social relations among students, depressed expectations and even openly disrespectful treatment on the part of teachers, low morale, and sharply reduced prospects of postsecondary education. *See* Declaration of Yvorn Aswad-Thomas, ¶¶ 3-10; Declaration of Jose Miguel Camacho, ¶9; Declaration of Minerva Almaraz, ¶7; Declaration of Kim Yamasaki ¶¶ 2, 9-10.

Educational equality makes democracy and freedom possible. Consequently, the legal interest in equal, integrated education has been recognized as primary for 50 years:

> Today, education is perhaps the most important function of state and local governments. It is required in the performance of our most basic public responsibilities…. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Brown, supra, 347 U.S. at 493.

Under the California Constitution, education is a fundamental right. *Butt v. State of California*, 4 Cal. 4th 668, 683 (1992); *Serrano v. Priest*, 18 Cal. 3d 728, 767-768 (1977). Indeed, the Equal Protection Clause of the California Constitution goes beyond its federal counterpart to mandate that school districts take affirmative steps to dismantle school segregation even when it is not the product of state discrimination. *See, e.g., Crawford v. Board of Education of the City of Los Angeles*, 17 Cal. 3d 280 (1976). The intervenors must be allowed to present their case on this most basic, urgent interest in equal educational opportunity.

Related to but distinct from the intervenors' interest in equality is their right to attend an integrated, diverse school. The Supreme Court of the United States has confirmed that the state has a compelling interest in racial integration and diversity in higher education. *Grutter v. Bollinger*, 539 U.S. 306 (2003). Much more compelling is a student's own interest in integration and diversity in primary and secondary education, as the intervenors have made clear in their declarations. Declaration of Carolina Argueta, ¶8; Declaration of Jay Greenfield, ¶4; Declaration of Kim Yamasaki, ¶11.

The interest in attending an integrated school is possessed by students of all races. In Los Angeles, in addition to the benefits of integration traditionally recognized for black and white students, or more broadly for non-white and white students, there are distinct and increasingly important benefits of Latino-black integration. The magnet programs have succeeded in maintaining significant levels of white enrollment in city schools, despite reports to the contrary. *See* Mixed Results for Magnet Schools, *Los Angeles Times*, Jan. 20, 2006 (article arguing that

programs have failed to preserve white enrollment, but providing contrary statistic that 20% of magnet students are white, twice the percentage of the LAUSD as a whole). However, given demographic trends in the city and state, gains for Latino and black students independently possess great significance, as is demonstrated by the declarations submitted in support of the intervenors' motion. *See* Declaration of Carolina Argueta, ¶8; Declaration of Jennifer Gutierrez, ¶¶8, 15.

b. Parents

The parents who seek to intervene as members of United for Affirmative Action and Equality Legal Defense Fund (UEAALDF) have a substantial interest in their children's access to integrated and equal educational conditions:

> The injury [the plaintiffs, black parents,] identify—their children's diminished ability to receive an education in a racially integrated school—is, beyond any doubt, not only judicially cognizable, but … one of the most serious injuries recognized in our legal system.

Allen v.Wright, 468 U.S. 737, 756 (1984).

Many of the parents themselves experienced conditions of segregation as young people and are determined to stand for integration and to prevent the repetition of history. *See* Declaration of Minerva Almaraz, ¶7**;** Declaration of Susan Yamasaki, ¶¶4, 7**.**

The parents also have interests as taxpayers commensurate with those of the putative members of the organizational plaintiff: if the plaintiff prevails, their money will be spent on segregated, inadequate schools.

c. Organizations

UEAALDF is an umbrella organization including the LAUSD students and parents who have personally submitted declarations in support of this motion to intervene; hundreds of additional students and parents, including those listed in the attachment to the Declaration of Hoku Jeffrey; and other supporters of integration and equality in Los Angeles, elsewhere in California, and in other states. UEAALDF was formed for the purpose of defending race-

conscious admissions policies in higher education in *Grutter v. Bollinger, supra,* and was a named intervenor in that case. UEAALDF also intervened in *Avila v. Berkeley Unified School District, supra.* UEAALDF's interest derives from its representation of its members. *See Rominger, supra,* 147 Cal. App. 3d at 664 (concluding that the Sierra Club was entitled to intervention as representative of its members, whose interests were threatened by the underlying litigation).

The Coalition to Defend Affirmative Action, Integration & Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN) was founded in Berkeley in 1995 in response to the elimination of affirmative action policies at the University of California. BAMN has since led the effort to win reversal of that policy, resulting in a unanimous vote by the U.C. Regents in May 2001, and was the driving force behind the national March on Washington in April 2003. Like UEAALDF, BAMN was an intervening defendant in *Grutter v. Bollinger* and in *Avila v. Berkeley Unified School District*. Michigan counsel in this case represented the intervening student defendants in *Grutter* before the district court, the Sixth Circuit, and the United States Supreme Court.

BAMN members have made in-class presentations about this litigation to thousands of LAUSD students. BAMN has organized a public hearing on magnet schools and busing in Los Angeles that was attended by more than 300 students on official field trips. BAMN continues to work with students, teachers, and parents throughought the LAUSD on the challenge to maintain integration and to limit the reach of Proposition 209. *See* Declaration of Hoku Jeffrey, ¶¶1-15. *See also Highland, supra,* 170 Cal. App. 3d at 180 (prior involvement of homeowners' association in activities relating to the underlying litigation sufficient to trigger *mandatory* intervention); *see also Simac Design v Alciati,* 92 Cal. App. 3d 146, 157 (1979).

2. Intervention will not impermissibly enlarge the issues in the litigation.

The proposed intervenors' participation in the case will not impermissibly enlarge the issues. Like the LAUSD, the students assert that the plaintiff's claim is meritless. The pleadings demonstrate that this lawsuit involves the mechanics of the magnet and PWT programs, the benefits of integration, the status of the court order mandating the programs at issue here, and the status of Proposition 209—Article I, section 31 of the California Constitution—in relation to other provisions of state and federal law. The attached proposed complaint in intervention shows that the applicants do not seek to raise any issues not already implicated. *See Simpson, supra*, 196 Cal. App. 3d at 1202 (intervenor's new causes of action turned on essentially same facts as existing causes of action and would not cause undue delay, confusion, or enlargement of the scope of the litigation).

3. The proposed intervenors' interests outweigh the right of the original parties to litigate in their own manner.

Because the proposed intervenors are the direct beneficiaries of the programs being challenged, and because what is at stake is the character and quality of their education, their future, and their community, their interests are exceptionally intense and compelling. The original parties' interest in litigating in their own manner is incapable of outweighing those interests. *See Rominger, supra*, 147 Cal. App. 3d at 665 (interests of direct beneficiaries of challenged ordinance sufficiently compelling to overcome interest of original parties in litigating on their own terms).

Because the proposed intervenors substantially surpass the standards for permissive intervention pursuant to section 387, subdivision (a), the Court should grant them leave to file the attached proposed complaint in intervention.

B. The proposed intervenors meet the requirements of mandatory intervention under California Code of Civil Procedure section 387, subdivision (b).

Section 387, subdivision (b) provides for mandatory intervention when

"the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties."

See also Coalition for Fair Rent v. Abdelnour, 107 Cal. App. 3d 97, 114 (1980).

1. The proposed intervenors' interests are sufficient for mandatory intervention.

The intervenors' interest in equal educational opportunity and integrated schools are clearly sufficient for mandatory intervention. UEAALDF's interest follows from the interests of its student and parent members. BAMN's interest is established by its substantial history of engagement with the subject matter of the litigation, as well as its broader commitment to the cause of integration. *Highland, supra,* 170 Cal. App. 3d at 180.

2. The proposed intervenors are situated such that the litigation may as a practical matter impair their ability to protect their interests.

This case will determine whether successful desegregation programs are maintained in the intervenors' school district. It is therefore plain that they are situated in such a way that any negative outcome would not merely impair but eliminate their ability to protect their compelling and immediate interests. *See Rominger, supra,* 147 Cal. App. 3d at 664 (reversing trial court's denial of intervention on partial grounds that "if the prohibition against [the] herbicides is invalidated, it is invalidated as to *all* persons in the County…") (emphasis in original).

3. The existing parties do not adequately represent the proposed intervenors' interests.

Finally, the proposed intervenors' interests are not adequately represented by the LAUSD.

First, the students' interests differ from those of the District, being of necessity deeper and simpler. The intervenors are the direct beneficiaries of the magnet and busing programs. Unlike the LAUSD, they are not charged with the duty of managing the schools, and they are not subject to the pressures attendant on public administration, such as cost pressures and competing political pressures. In this regard it must be remembered that the programs the intervenors seek to preserve were only achieved after years of litigation against the District.

Differences and potential conflicts in role and position between an existing party and a proposed intervenor *with an identical view of the merits* militate in favor of granting intervention. In *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates*, 43 Cal. App. 4th 1188 (1996), the Court of Appeal reversed the trial court's negative rulings on both permissive and mandatory intervention, holding that the proposed intervenor, the Department of Finance, should have been allowed to intervene because in light of the relationship between the two entities, "the Commission cannot be said to have adequately represented all the interests of DOF, even though its staff agreed with DOF's position on the merits." *Id.* at 1198.

Further, even when a proposed intervenor seeks the same result as an existing party, the possibility that the latter will settle can be a "telling factor" in favor of granting intervention. *Simpson, supra,* 196 Cal. App. 3d at 1203. In *Simpson*, the intervenor and the State of California sought the same outcome in a quiet title action brought against the State: the defeat of the plaintiff's claim and the maintenance of the status quo. But in part because there was a risk that the State might choose to settle the lawsuit, and even though the risk was hypothetical, the Court of Appeal reversed the trial court's denial of the intervenor's application so that the intervenor could itself represent its interest in the property in question. *Id.* at 1196-1200, 1203-1204.

In this case there are several early indicators that the students' position may differ from that of the LAUSD in concrete ways. First, Mayor Villaraigosa has announced his intention to

take over the District. Because the LAUSD extends beyond the boundaries of the city, that is, into suburbs whose residents do not have the right to vote for the Los Angeles mayor, a takeover might entail the restriction of the District to the boundaries of the city. This outcome would end the PWT program altogether. *See* Mayor Maps Plans to Run LA Unified, *Los Angeles Times*, Jan. 27, 2006. Second, Superintendant Romer has expressed the view that magnets may phase out over time and that students and parents may prefer neighborhood schools—whereas the students take the position that going to school outside of their neighborhoods and meeting students from across the city is part of what they love about magnets. *See* Mixed Results for L.A.'s Magnet Schools, *supra*; *cf.* Declaration of Jose Miguel Camacho, ¶3; Declaration of Kim Yamasaki, ¶14.

CONCLUSION

For the above reasons, the proposed intervenors Minerva Almaraz, *et al.* respectfully request that the Court grant them leave to file the attached proposed complaint in intervention pursuant to California Code of Civil Procedure section 387, subdivisions (a) and (b).

By Attorneys for Proposed Intervenors,

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Dated: January 31, 2006

** Admitted to practice in Michigan. Motion to admit pro hac vice filed this date.*