

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 3:25-cv-1067

COMMONWEALTH OF VIRGINIA,

Defendant.

MEMORANDUM ORDER

This matter comes before the Court on the JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT (ECF No. 3) ("JOINT MOTION"), the NOTICE OF WITHDRAWAL OF CONSENT TO ENTRY OF CONSENT JUDGMENT (ECF No. 42) ("NOTICE OF WITHDRAWAL"), the AMENDED ANSWER AND DEFENSES ("AAD") (ECF No. 55), and the several MOTIONS TO INTERVENE (ECF Nos. 9, 18, and 28).

On December 29, 2025, the United States filed a COMPLAINT, alleging Va. Code Ann. §§ 23.1-502 and 23.1-505.1 are expressly preempted by federal law. ECF No. 1, 12. On December 30, 2025, the United States and the Commonwealth of Virginia ("Virginia") filed the JOINT MOTION.

The next day, the Dream Project filed its MOTION TO INTERVENE. (ECF No. 9).¹ On January 7, 2026, the Court issued an ORDER setting a briefing schedule for the Dream Project's MOTION TO INTERVENE. ECF No. 16. There were also two more Motions to Intervene filed (ECF Nos. 18, and 28). On January 20, 2026, before the completion of briefing on the MOTIONS TO INTERVENE, Virginia changed its position by filing a NOTICE OF WITHDRAWAL OF CONSENT TO ENTRY OF CONSENT JUDGMENT (ECF No. 42) ("NOTICE OF WITHDRAWAL"). In its NOTICE OF WITHDRAWAL, Virginia informed the Court that it no longer consented to the JOINT MOTION. ECF No. 42. Thereafter on January 27, 2026, Virginia filed its AAD (ECF No. 55) reflecting its new position contesting the allegations in the COMPLAINT. The AAD was filed within the 21 day period during which an amended answer could be filed under Fed. R. Civ. P. 15(a)(1)(A). Both the filing of the AAD and the NOTICE OF WITHDRAWAL occurred before the briefing on the pending Motions to Intervene were complete.

The United States argues in its RESPONSE TO DEFENDANT'S NOTICE OF WITHDRAWAL OF CONSENT TO ENTRY OF CONSENT JUDGMENT (ECF No. 46), that Virginia was required to file a motion to change its position on the JOINT MOTION, citing Fed. R. Civ. P. 7, which requires that requests for court orders be made by motion. ECF No.

¹ While ECF No. 9 was entered on January 6, 2026, the original Motion to Intervene was filed on December 31, 2025. The Motion to Intervene had to be refiled due to errors in the filing process. ECF No. 4.

46, 2 (citing Fed. R. Civ. P. 7(b)(1)). However, Virginia is not asking for an entry of a court order. Rather, in the NOTICE OF WITHDRAWAL, it is advising the Court of a change in position that would be set out in the AAD which was to be filed the next week. In light of the change of position, as made in the AAD, the JOINT MOTION is no longer joint, and because it does not have the consent of the parties, the JOINT MOTION (ECF No. 3) is denied as moot.

On January 9, 2026, Virginia filed its ANSWER (ECF No. 17), admitting that the statutes at issue were preempted. All three Motions to Intervene (ECF Nos. 9, 18, 28) are based on the premise that Virginia is not defending the constitutionality of the statute at issue in this case. As is evinced by the NOTICE OF WITHDRAWAL and the AAD, that is no longer true. Thus, the following motions are denied as moot:

- MOTION TO INTERVENE by Dream Project (ECF No. 9);
- MOTION TO STAY ADJUDICATION OF JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT by Dream Project (ECF No. 11);
- MOTION FOR EXTENSION OF TIME TO FILE PLEADING (ECF No. 13);
- MOTION TO INTERVENE AND TO STAY ADJUDICATION OF JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT by Alex and Belinda Doe (ECF No. 18);
- MOTION FOR LEAVE TO PROCEED UNDER PSEUDONYMS by Alex and Belinda Doe (ECF No. 20); and

- VIRGINIA STUDENTS FOR AFFORDABLE TUITION'S MOTION TO INTERVENE (ECF No. 28).

The dismissal is without prejudice to seek leave to refile, if, in light of the new conditions in this matter, intervention is thought to be permissible. Such motions, if any, must be filed by March 9, 2026.

It is also ORDERED that the Initial Pretrial Conference in this case is scheduled for 10:00 a.m. Wednesday March 18, 2026.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: February 27, 2026