THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL FAIR HOUSING ALLIANCE, *et al.*, *Plaintiffs*, v. BENJAMIN S. CARSON, SR., M.D., in his official capacity as Secretary of Housing and Urban Development, *et al.*, *Defendants*.	Civil Action No. 1:18-cv-1076-BAH

DEFENDANTS' MEMORANDUM IN OPPOSITION TO
THE STATE OF NEW YORK'S MOTION TO INTERVENE

The State of New York moves to intervene, both as of right and by permission, as a plaintiff in this matter, a challenge under the Administrative Procedure Act (APA), 5 U.S.C. § 706, to a decision of the Department of Housing and Urban Development (HUD). The state is not the subject of HUD's decision, which directly applies only to local governments, nor does HUD's decision create a concrete and imminent harm to the state's proprietary interests. Rather, the state hopes to participate in this lawsuit to vindicate its policy preferences through the courts, using the APA as a tool to impose state oversight of the federal government's implementation of federal law. A policy disagreement between state and federal governments is not a justiciable case or controversy, though, and the state thus lacks Article III standing. In any event, the state cannot satisfy the requirements for intervention as of right under Federal Rule of Civil Procedure 24, and intervention by permission is not warranted, either.

Accordingly, the Court should deny the state's motion to intervene.

BACKGROUND

This action concerns HUD's administration of several block-grant programs that provide state and local governments with federal funding for housing, housing affordability, and community activities.[1] Under the Fair Housing Act, it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States," and HUD administers its block-grant programs "in a manner affirmatively to further" fair housing. 42 U.S.C. §§ 3601, 3608(e)(5). In line with this policy, Congress has required recipients of HUD funding to certify that they "will affirmatively further fair housing." *See, e.g.*, *id.* §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15). But in administering the block-grant programs, HUD has required its program participants to do more than simply certify that they will affirmatively further fair housing; to receive federal funds, grantees must conduct independent fair housing planning, beyond general planning requirements otherwise imposed by statute. Specifically, HUD has required program participants to conduct an "analysis to identify impediments to fair housing choice" to guide their planning. *See, e.g.*, 24 C.F.R. §§ 91.225(a)(1), 91.325(a)(1) (2012). This procedural requirement—the analysis of impediments—is known as an AI.

In 2015, HUD promulgated the Affirmatively Furthering Fair Housing (AFFH) Rule, which adopted a new planning process to assist program participants in certifying that they will affirmatively further fair housing. 80 Fed. Reg. 42,272 (July 16, 2015). Importantly, the AFFH Rule did not alter the substantive statutory AFFH requirement for grantees. Rather, HUD adopted a new process—the Assessment of Fair Housing (AFH)—that would, over time, replace

[1] The background of this matter is set forth more fully in Defendants' opposition to Plaintiffs' motion for a preliminary injunction and for expedited summary judgment. Defs.' Mem. 3-14, ECF No. 33.

the AI as the required procedure[2] for grantees seeking to meet their substantive obligations to further fair housing. 24 C.F.R. § 5.150. This new process has been rolled out incrementally, with staggered start dates for various program participants and built-in contingencies. *See, e.g.*, *id.* § 5.160(a)(1)(i). As relevant here, HUD made the AFH submission requirements contingent on the publication of an Assessment Tool, a template that program participants are required to use when conducting an AFH. *Id.* § 5.160(a)(1)(ii). Until a tool is published for a given category of program participant, grantees must continue to conduct an AI in support of their certification that they will affirmatively further fair housing. *Id.* § 5.151.

The AFFH Rule does not impose any particular schedule for the publication of Assessment Tools, leaving that task to HUD's discretion. HUD thus far has published an operative tool for only one category of grantees: local governments. The publication of this tool triggered AFH requirements for covered grantees. The most recent iteration of the Local Government Assessment Tool, known as LG2017, was published in January 2017 after two rounds of notice and comment pursuant to the Paperwork Reduction Act. 82 Fed. Reg. 4373 (Jan. 13, 2017). After receiving an initial round of submissions from local governments using the tool, HUD determined that the tool was defective and created unexpected burdens; accordingly, HUD withdrew LG2017 in May 2018. 83 Fed. Reg. 23,922 (May 23, 2018). Under the AFFH Rule, the withdrawal resulted in an automatic extension of AFH submission requirements pending republication of the tool. 24 C.F.R. § 5.160(a)(1)(ii).

[2] The AFFH Rule makes clear that submission of the AFH is only a procedural requirement; HUD determines whether to accept the AFH but does not evaluate whether the grantee will meet any substantive obligations. That is, HUD's "[a]cceptance does not mean that the program participant has complied with its obligation to affirmatively further fair housing" or has otherwise complied with the Fair Housing Act and other civil rights laws. 24 C.F.R. § 5.162(a)(2).

On May 8, 2018, three nonprofit organizations—the National Fair Housing Alliance, Texas Low Income Housing Information Service, and Texas Appleseed—filed this action against HUD. ECF Nos. 1, 2. On May 29, Plaintiffs filed an amended complaint and a renewed motion for a preliminary injunction and for expedited summary judgment, ECF Ns. 18, 19, challenging the withdrawal of LG2017. The government filed its opposition on June 12, ECF No. 33, and Plaintiffs will file any reply by June 26. On June 5, the State of New York ("New York") moved to intervene as a plaintiff. ECF No. 24. Defendants oppose New York's motion to intervene.[3]

ARGUMENT

I. New York Cannot Intervene as a Matter of Right.

New York seeks intervention as of right under Federal Rule of Civil Procedure 24(a). N.Y. Mem. 1-10. Intervention as of right depends on four factors: "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interest." *Deutsche Bank Nat'l Trust Co. v. FDIC*, 717 F.3d 189, 192 (D.C. Cir. 2013) (quoting *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008)). Further, "in addition to establishing its qualification for intervention under Rule 24(a)(2), a party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). "[B]ecause a Rule 24 intervenor seeks to participate on an equal footing with the original parties to the suit, [it] must satisfy the standing requirements imposed on those parties." *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994).

[3] Under Local Civil Rule 7(*o*), the state is entitled to participate as *amicus curiae* regardless, and the Court has granted the state's request that its memorandum of law be considered an *amicus* submission. Minute Order (June 6, 2018).

A. New York Fails to Establish Article III Standing.

New York cannot intervene because it lacks Article III standing to sue. "To establish standing under Article III, a prospective intervenor—like any party—must show: (1) injury-in-fact, (2) causation, and (3) redressability." *Fund for Animals*, 322 F.3d at 732-33 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). New York has not met any of these standards. The state seeks to intervene in this suit because it disagrees with HUD's decisions about how to implement the Fair Housing Act, a federal law, and HUD's administration of its own grant programs. *See, e.g.*, N.Y. Mem. 5 (accusing HUD of an "abdication of responsibility"); N.Y. Att'y Gen., *A.G. Underwood and Gov. Cuomo Move to Intervene in Federal Lawsuit against Federal Government for Failing to Enforce Fair Housing Act* (June 5, 2018), https://ag.ny.gov/press-release/ag-underwood-and-gov-cuomo-move-intervene-federal-lawsuit-against-federal-government. But a state's policy disagreement with the federal government's decisions on how to enforce federal law is not an injury-in-fact sufficient to establish the case or controversy necessary to this Court's jurisdiction. Moreover, any claim of injury the state might proffer in support of its effort to wrest control over HUD's administration of its grant programs is not properly traced to HUD or amenable to redress by this Court.

First and foremost, New York fails to establish a cognizable injury. "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (quoting *Lujan*, 504 U.S. at 560). When considering future injury, the Supreme Court "has repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in fact,' and that '[a]llegations of possible future injury' are not sufficient." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013) (quoting

Whitmore v. Arkansas, 495 U.S. 149, 158 (1990)). After describing in some detail purported injuries to third parties, N.Y. Mem 3-6, New York asserts two theories of its own injury. But neither assertion can meet the settled standards for a cognizable harm.

New York first asserts that it may proceed as *parens patriae*—that is, that it may sue to protect its residents' interests in fair housing. N.Y. Mem. 7-8. Setting aside that New York fails to establish any injury to those interests, it is well established that "a State does not have standing as *parens patriae* to bring an action against the Federal Government." *Md. People's Counsel v. FERC*, 760 F.2d 318, 320 (D.C. Cir. 1985); *see also, e.g.*, *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253, 269 (4th Cir. 2011); *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1178 (9th Cir. 2011); *Kansas v. United States*, 16 F.3d 436, 439 (D.C. Cir. 1994); *Wyoming ex rel. Sullivan v. Lujan*, 969 F.2d 877, 883 (10th Cir. 1992); *Iowa ex rel. Miller v. Block*, 771 F.2d 347, 355 (8th Cir. 1985). In a suit concerning the federal government's implementation of federal law, "it is no part of [a State's] duty or power to enforce [its citizens'] rights in respect of their relations with the Federal Government," because "[i]n that field it is the United States, and not the State, which represents them as *parens patriae*." *Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923); *see also, e.g.*, *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 563 F.3d 466, 477 (D.C. Cir. 2009) (explaining that "only the United States, and not the states, may represent its citizens and ensure their protection under federal law in federal matters"). New York offers no authority to the contrary; indeed, the authority that New York cites holds the same. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 610 n.16 (1982) ("A State does not have standing as *parens patriae* to bring an action against the Federal Government.").

While expressly stating that it seeks to bring a *parens patriae* action, New York also seems to suggest that intervention is required because the state raises quasi-sovereign interests

vis-à-vis the federal government that are distinct from the interests of its residents. N.Y. Mem. 7-8. But the assertion of a quasi-sovereign interest is not itself an assertion of harm, even where the Supreme Court has allowed for "special solicitude" in considering a state's claims of injury.[4] *Massachusetts v. EPA*, 549 U.S. 497, 519-20 (2007). In any event, New York has not raised quasi-sovereign interests beyond those of its residents. Rather, New York dislikes the way the United States is representing the interests of its own citizens and ensuring their protection under federal fair-housing laws. That is precisely the sort of *parens patriae* action that a state may not bring against the federal government. *Md. People's Counsel*, 760 F.2d at 320; *see also, e.g.*, *Pennsylvania ex rel. Shapp v. Kleppe*, 5323 F.2d 668, 677 (D.C. Cir. 1976) (explaining that "the state can not have a quasi-sovereign interest [when] the matter falls within the sovereignty of the Federal Government" because "the federal parens patriae power should not, as a rule, be subject to the intervention of states seeking to represent the same interest of the same citizens").

New York's second theory of injury fares no better. New York asserts that HUD's decision to withdraw LG2017 has harmed the state's proprietary interests as a HUD program participant required to affirmatively further fair housing. N.Y. Mem. 6-7. But New York is not a local government and not required to use LG2017. Because HUD has not published a tool for state government grantees, the AFFH certification requirements for New York have not changed; New York is still required to prepare an AI, not an AFH. *See* 24 C.F.R. § 5.160(a)(1)(ii).

[4] *Massachusetts v. EPA* should not be read too broadly. The Court of Appeals has emphasized the "uniqueness" of the circumstances in *Massachusetts v. EPA* and that the Supreme Court afforded the state "special solicitude" based on its "interests in ensuring the protection of the land and air within its domain." *Ctr. for Biological Diversity*, 563 F.3d at 476–77. Further, the Court of Appeals has made clear that *Massachusetts* "stands only for the limited proposition that, where a harm is widely shared, a sovereign, suing in its individual interest, has standing to sue where that sovereign's individual interests are harmed, wholly apart from the alleged general harm." *Id.* Nothing in *Massachusetts* supports New York's claim to standing here.

Indeed, New York makes no argument for standing based on HUD's requirements for state governments participating in HUD grant programs, nor does New York suggest that its receipt of federal funds is in any way in danger.

The state thus cannot claim Article III injury in its capacity as a grant recipient. Instead, New York contends that in meeting its obligation to certify that it will affirmatively further fair housing—that is, in preparing an AI—it uses information provided by local governments within the state, and that *those* governments would have been required to use LG2017. *Id.* at 6; *see also* Visnauskas Decl. ¶¶ 8-15, ECF No. 26-1. New York proposes that if local governments are not required to use LG2017 to conduct an AFH, the information available to New York—the local governments' AIs—will be less "robust, complete, and uniform," and the state's "own efforts to comply with the Fair Housing Act will become less efficient, more costly, and less effective." N.Y. Mem. 6. That bare assertion of harm fails to satisfy the requirements for Article III injury.

To the extent New York's theory of standing rests on the contention that HUD is not properly enforcing the Fair Housing Act against local governments, it is well established that an interest in the proper enforcement of the law against third parties is not a cognizable Article III injury. *See, e.g.*, *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 37 (1976); *Sargeant v. Dixon*, 130 F.3d 1067, 1069 (D.C. Cir. 1997). The state must demonstrate harm to its *own* legally protected interest that is both concrete and particularized and actual or imminent. *Spokeo, Inc.*, 136 S. Ct. at 1548. Although the state contends that satisfaction of the fair-housing requirements to receive federal funds will be more "costly" without LG2017 in circulation, HUD has not required New York to spend any additional funds. New York may continue to look to local governments' AIs in meeting its own requirements, just as it had before. *See, e.g.*, Visnauskas Decl. ¶ 16. And to the extent New York is suggesting it voluntarily will increase its

expenditures, those self-imposed costs provide no basis for standing. *See Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (observing that "[n]o State can be heard to complain about damage inflicted by its own hand"); *Nat'l Family Planning & Reproductive Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006) (explaining that "self-inflicted harm . . . does not amount to an 'injury' cognizable under Article III").

Perhaps more importantly, this theory of harm—that New York will expend greater resources meeting its own obligation to affirmatively further fair housing if local governments prepare an AI rather than an AFH—rests on a "speculative chain of possibilities" and is not "certainly impending," as required to establish standing. *Clapper*, 568 U.S. at 414. Both the AFH and the AI are fair-housing planning processes that are procedural in nature; the substantive requirement for local governments remains the same. *See, e.g.*, 24 C.F.R. §§ 5.151, 5.152. New York assumes that local governments would produce substantively different analyses through an AI—less "robust" or "complete" than an AFH—and that these submissions would somehow drive up New York's costs at some uncertain point in the future, N.Y. Mem. 6, but that is little more than conjecture about future events, far from a certainly impending injury. *Williams v. Lew*, 819 F.3d 466, 473 (D.C. Cir. 2016) (rejecting an "entirely conjectural" injury that "follows from an extended chain of contingencies"). Indeed, New York only gestures toward requirements in 2021. Visnauskas Decl. ¶ 10. In any event, the invocation of amorphous "costs" is a conclusory assertion about a federal policy's influence on state budgets that courts have rejected as a basis for injury. *Kleppe*, 533 F.2d at 672-73 (citing "the unavoidable economic repercussions of virtually all federal policies"); *see also, e.g.*, *Wyoming v. U.S. Dep't of the Interior*, 674 F.3d 1220, 1234 (10th Cir. 2012); *Block*, 771 F.2d at 353.

Even if New York's decision to engage in a more "costly" approach to fair-housing planning could be considered an injury, any such injury is not properly traced to HUD or redressable by this Court. Like the Plaintiffs in this action, New York is impermissibly seeking to use this lawsuit as a vehicle to compel HUD to use its block-grant programs to alter the behavior of third parties—local governments. As Defendants have explained, Defs.' Mem. 19-22, ECF No. 33, an injury must be properly traced to the agency and "not the result of the independent action of some third party not before the court," *Lujan*, 504 U.S. at 561, particularly where the "agency's action relates to one party but a third party alleges harm." *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 210 F. Supp. 3d 1, 7 (D.D.C. 2016). When a plaintiff is "not 'the object of the government action or inaction [it] challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish.'" *Morgan Drexen, Inc. v. CFPB*, 785 F. 3d 684, 689-90 (D.C. Cir. 2015) (quoting *Lujan*, 504 U.S. at 562)). And "this Court has denied standing 'where the plaintiff seeks to change the defendant's behavior *only as a means* to alter the conduct of a third party, not before the court, who is the direct source of the plaintiff's injury.'" *Fulani v. Brady*, 935 F.2d 1324, 1330 (D.C. Cir. 1991) (quoting *Common Cause v. Dep't of Energy*, 702 F.2d 245, 251 (D.C. Cir. 1983)).

Here, New York's proposed injury is, again, that local governments will provide the state with less "robust, complete, and uniform" information. N.Y. Mem. 6. New York thus "expressly attribute[s] [its] alleged injuries to actions by" third parties, *Menoken v. Miles*, 270 F. Supp. 3d 200, 213 (D.D.C. 2017), which means those injuries "hinge on the independent choices" of parties not before the Court. *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 938 (D.C. Cir. 2004). Grantees are required to affirmatively further fair housing regardless whether they are required to conduct an AI or an AFH, and those local governments'

submissions of information to New York "would remain a matter within the discretion of those [local governments]." *Am. Sports Council v. U.S. Dep't of Educ.*, 850 F. Supp. 2d 288, 300 (D.D.C. 2012). If a local government does not meet New York's own expectations, it is "hard to imagine how any of the defendants [bear] responsibility for that outcome." *Common Cause v. Biden*, 748 F.3d 1280, 1285 (D.C. Cir. 2014). In any event, any assertion of causation and redressability would rest on a chain of speculation, and the Court "may reject as overly speculative those links which are predictions of future events (especially future actions to be taken by third parties)." *Arpaio v. Obama*, 797 F.3d 11, 21 (D.C. Cir. 2015 (quoting *United Transp. Union v. ICC*, 891 F.2d 908, 912-13 (D.C. Cir. 1989)).

B. New York Has Not Met the Rule 24(a) Standards.

Even if New York could demonstrate standing, that does not end the inquiry into intervention as of right. The state still must satisfy the four-factor test of Rule 24(a)(2). *Fund for Animals*, 322 F.3d at 734. Although "a cognizable injury sufficient to establish Article III standing" suffices to demonstrate the "requisite interest," *Jones v. Prince George's Cty.*, 348 F.3d 1014, 1018 (D.C. Cir. 2003), New York still must establish, by timely motion,[5] "(3) impairment of that interest" and "(4) lack of adequate representation by existing parties." *Smoke v. Norton*, 252 F.3d 468, 470 (D.C. Cir. 2001).

As to the third factor—that the action must impair a putative intervenor's proffered interest—New York has not made the requisite showing in part for the same reasons its assertions of injury and causation are too speculative to support standing. New York has not identified any harm to its interests, only hypothetical and ill-defined costs that it might incur if third parties do not act in conformance with New York's expectations. More importantly,

[5] Defendants do not contest the timeliness of New York's motion.

looking to the practical consequences of denying intervention, *Fund for Animals,* 322 F.3d at 735, there is no order this Court could issue that would impair New York's interests; either the status quo will remain or Plaintiffs will obtain a ruling that New York views as favorable.

New York also has not demonstrated the fourth factor, that Plaintiffs do not adequately represent its interests. The state acknowledges that it shares with Plaintiffs the same "ultimate objective," N.Y. Mem. 9, and that concession weighs heavily against intervention. *Cobell v. Jewell*, No. 96-cv-1285 (TFH), 2016 WL 10704595, at *2 & n.1 (D.D.C. Mar. 30, 2016) ("[A] presumption of adequate representation exists if both the intervenor and existing party have the same ultimate objective[.]"); *see also, e.g.*, *Sevier v. Lowenthal*, No. 17-cv-570 (RDM), 2018 WL 1472495, at *8 (D.D.C. Mar. 26, 2018); *Solenex v. Jewell*, No. 13-cv-993 (RJL), 2014 WL 2586938, at *2 (D.D.C. June 10, 2014). Yet New York contends that it has "unique sovereign and public interests" warranting intervention—in other words, that it has a different claim of standing. But a putative sovereign interest in identical claims under the Administrative Procedure Act (APA), 5 U.S.C. § 706, does not affect the litigation of those claims. In APA cases, judicial review proceeds on an administrative record through a motion for summary judgment. *Remmie v. Mabus*, 898 F. Supp. 2d 108, 115 (D.D.C. 2012). Regardless whether New York brings purported sovereign interests to the table, the Court reviews the record under the familiar standards. Accordingly, New York's shared objective with Plaintiffs—reinstatement of LG2017—belies any argument that Plaintiffs are not adequately representing New York's interests in the litigation because New York does not argue that Plaintiffs will fail to make any necessary arguments to that outcome.

Similarly, New York suggests it can contribute to factual development in the case, N.Y. Mem. 9-10, but this argument misunderstands APA review. It is well established that because

APA review proceeds on an administrative record, "the reviewing court generally will not resolve factual disputes, but instead reviews the [agency's] decision as an appellate court addressing issues of law." *Henry v. Sec'y of Treasury*, 266 F. Supp. 3d 80, 86 (D.D.C. 2017). In other words, by the very nature of APA review, the only difference in representation New York can offer in support of its identical claims is purely legal argument, which New York can provide (and has already provided) in the form of an amicus brief in support of Plaintiffs. *See* Minute Order (June 6, 2018). New York has no basis for intervention as of right.

II. New York's Request for Permissive Intervention Should Be Rejected.

Absent intervention as of right, New York seeks intervention by permission under Federal Rule of Civil Procedure 24(b). N.Y. Mem. 10-11. For permissive intervention, "the putative intervenor must ordinarily present: (1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). "In determining whether permissive intervention is appropriate, a court 'must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.'" *Garcia v. Vilsack*, 304 F.R.D. 77, 81 (D.D.C. 2014) (quoting Fed. R. Civ. P. 24(b)(3)). "Permissive intervention is 'inherently discretionary,' and a court may deny a motion for permissive intervention even if the movant has met all of the requirements." *Id.* (quoting *Nat'l Children's Ctr., Inc.*, 146 F.3d at 1046 (D.C. Cir. 1998)).

New York's failure to establish standing is fatal to its request for permissive intervention. *Deutsche Bank Nat'l Trust Co.*, 717 F.3d at 193; *see also, e.g.*, *Keepseagle v. Vilsack*, 307 F.R.D. 233, 245-46 (D.D.C. 2014) (explaining that movants' "lack of standing renders them ineligible for permissive intervention"). Without standing, New York cannot establish the requisite

"independent ground for subject matter jurisdiction." *Nat'l Children's Ctr., Inc.*, 146 F.3d at 1046; *see also, e.g.*, *Abulhawa v. U.S. Dep't of Treasury*, 239 F. Supp. 3d 24, 38 (D.D.C. 2017). Regardless, New York's intervention will not "significantly contribute to . . . the just and equitable adjudication of the legal question presented" and should be denied. *Sierra Club v. McCarthy*, 308 F.R.D. 9, 12 (D.D.C. 2015) (quoting *Ctr. for Biological Diversity v. EPA*, 274 F.R.D. 305, 313 (D.D.C. 2011)). Intervention would accomplish little more than doubling down on arguments that Plaintiffs already are making, and this Court already has confirmed it would consider New York's arguments as an amicus submission in support of Plaintiffs' motion. Minute Order (June 6, 2018). This Court may properly exercise its discretion to deny intervention under these circumstances.

CONCLUSION

For the foregoing reasons, the Court should deny New York's motion to intervene.

Date: June 19, 2018

Respectfully submitted,

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