

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2013-009093

03/28/2014

HONORABLE ARTHUR T. ANDERSON

CLERK OF THE COURT
L. Nelson
Deputy

STATE OF ARIZONA, et al.

KEVIN D RAY

v.

MARICOPA COUNTY COMMUNITY
COLLEGE DISTRICT BOARD

LYNNE C ADAMS

NATHAN J FIDEL

RULING

In its Complaint, the State of Arizona (“State”) seeks a declaratory relief ruling (Count 1) that Arizona law prohibits the Defendant, Maricopa County College District (“MCCCD”), from awarding Deferred Action for Childhood Arrivals (“DACA”) eligible aliens in-state tuition or other tuitions reductions. The State also seeks to enjoin MCCCD from charging these reduced rates (Count 2).

The Applicants for Intervention are two Maricopa County residents who attend MCCCD colleges. They have been granted in-state tuition status by MCCCD and its interpretation of Arizona and federal law. If the State prevails in this case, the Applicants would be required to pay significantly higher out-of-state tuitions rates.

The Applicants move to intervene as defendants as a matter of right¹ pursuant to Ariz. R. Civ. P., Rule 24(a)2.

¹ Alternatively, the Applicants request permissive intervention, pursuant to Rule 24(b), Ariz. R. Civ. P.

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Rule 24(a). Intervention of right

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) *when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.*

The State opposes intervention² on several grounds. In particular, the State argues that, while the Applicants may have a financial interest in the outcome, they lack the required “legally protected interest” for intervention. The State argues that *Day v. Sebelius*, 227 F.R.D. 668 (D. Kan. 2005), does not support the Applicants’ position because those intervenors possessed a *statutory right to benefits*. In *Day*, the statutorily granted right was threatened by the pending suit -- a right not present here.

The Court believes that the State characterizes an “interest” in the subject of the action too narrowly. MCCCDC has awarded the Applicants in-state tuition by virtue of its interpretation of Arizona and federal law. If MCCCDC is found to have acted contrary to the law, the Applicants will suffer a significant financial loss. Whether the Applicants receive in-state tuition from the legislature or from an agency’s decision is not determinative. In both scenarios, a benefit has been conferred that is threatened by this lawsuit.

The Court finds that the in-state tuition benefit provided by the MCCCDC constitutes a sufficient interest for intervention purposes.

The Court also agrees with the Applicants that an adverse decision action may, as a practical matter, impair their ability to protect that interest.

Finally, while MCCCDC is steadfast in its opposition to the State’s position, the Applicants pose additional arguments and claims to maintain their entitlement to in-state tuition.

IT IS THEREFORE ORDERED granting the Applicants’ Motion to Intervene and to file an Answer and Counterclaim.

² MCCCDC does not oppose intervention.
Docket Code 926

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IT IS FURTHER ORDERED setting a Status Conference in this matter on **Friday, April 4, 2014 at 11:30 a.m. (30 min.)** in this division.

HON. ARTHUR T. ANDERSON
Maricopa County Superior Court
East Court Building
101 West Jefferson Street
5th Floor, Courtroom 511
Phoenix, AZ 85003
602-506-0341

The parties may appear telephonically. Counsel will need to confer as the Court cannot accept multiple calls. If all parties wish to appear telephonically, Plaintiff's counsel shall initiate the conference call. The Court's phone number is (602) 506-0341. Transmissions over cellular telephones and speaker phones are not clearly received by the Court's phone system and, therefore, are not allowed.

Plaintiff's counsel shall notify this Division whether the parties will be appearing telephonically the day prior to the hearing.

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.