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25 SUPERIOR COURT OF CALIFORNIA

26 COUNTY OF ALAMEDA, NORTHERN DIVISION

27 LORENZO AVILA, a taxpayer, and as  
28 Guardian Ad Litem for Francisco Ching Avila  
and Pablo Ching Avila, minors,

Plaintiff,

v.

BERKELEY UNIFIED SCHOOL DISTRICT,  
and MICHELE LAWRENCE, in her official  
capacity as Superintendent of Berkeley Unified  
School District; and Does 1-50 inclusive.

Defendants.

Case No. RG 03-1103 97

**BLADES INTERVENORS' REPLY  
BRIEF IN SUPPORT OF MOTION FOR  
LEAVE TO FILE COMPLAINT IN  
INTERVENTION**

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REPLY IN SUPPORT OF MOTION FOR LEAVE  
TO FILE COMPLAINT IN INTERVENTION

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1 *Grutter v. Bollinger*, 539 U.S. 360 (2003) (holding that a public law school has a compelling  
2 interest in obtaining educational benefits that flow from a diverse student body); *Bakke v. Univ.*  
3 *of California Regents*, 438 U.S. 265, 314 (1978) (ethnic diversity is “one element in a range of  
4 factors a university may consider in attaining the goal of a heterogenous student body.”);  
5 *Crawford v. Huntington Beach Union High School Dist.*, 98 Cal. App. 4th 1275, 1286 (2002) (“It  
6 is not our intention to suggest there cannot be any ‘integration plans’ under Proposition 209”);  
7 *San Francisco Unified School Dist. v. Johnson*, 3 Cal. 3d 937, 949 (1971) (describing the  
8 harmful effects of segregation in schools).

9 Plaintiff repeats that the Berkeley Unified School District is the only party that will be  
10 directly affected by the judgment in this case and that is simply not so. Plaintiff’s Opposition at  
11 3. Defendants did develop and implement the school assignment plan that is at issue in this case,  
12 but the students and their parents are the direct beneficiaries of the integration plan. Just as  
13 Plaintiff argues that he has standing to sue as a taxpayer and as a parent of children in the school  
14 district, surely Movants as both taxpayers and parents of children in Defendants’ elementary  
15 schools are directly affected as well. Plaintiff alleges that his children are harmed by  
16 Defendants’ school assignment plan (Complaint at 10-11) in the same way that Blades  
17 Intervenors allege that they are beneficiaries of the plan.

18 Because Blades Intervenors have a direct interest in this case and their involvement in  
19 this litigation will neither prejudice the parties, nor enlarge the issues in this case, they should be  
20 permitted to intervene under Section 387 (a) of the Code of Civil Procedure.<sup>1</sup>

21 **A. The Individual Parent Intervenors Have a Long-Recognized Interest in the**  
22 **Quality of Their Children’s Education.**

23 Movants have demonstrated their direct interest in this litigation as parents of children  
24 who attend Berkeley’s public elementary schools and a community organization whose  
25 membership includes parents of Berkeley public elementary school students. *See generally*,

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26 <sup>1</sup>In fact, Defendants support Blades Intervenors’ Motion for Leave of Court to Intervene.  
27 See Defendants’ Statement of Position Regarding Intervention Motions Brought by the Adkinson  
28 Intervenors and the Blades Intervenors at 4 (Mar. 22, 2004) (hereinafter “Defendants’ Statement”) (“Blades Intervenors ought to be permitted to participate.”)

1 Declaration of Ralph Lorenzo Blades II (hereinafter “Blades Decl.”); Declaration of Roia  
2 Ferrazares (hereinafter “Ferrazares Decl.”); Declaration of Lenore Goldman (hereinafter  
3 “Goldman Decl.”); Declaration of Alexander Papillon (hereinafter “Papillon Decl.”). Movants  
4 also have shown that they and their children will be directly affected by the outcome of this  
5 litigation because the nature and quality of their children’s education is at stake. *See Bustop v.*  
6 *Board of Educ. of the City of Los Angeles*, 69 Cal. App. 3d 66, 71-72 (1977) citing *Johnson v.*  
7 *San Francisco Unified School Dist.*, 500 F. 2d 349, 353 (9<sup>th</sup> Cir. 1974) (“[A]ll students and  
8 parents, whatever their race, have an interest in a sound educational system and in the operation  
9 of that system in accordance with the law. That interest is surely no less significant where, as  
10 here, it is entangled with the constitutional claims of a racially defined class.”); *Rominger v.*  
11 *County of Trinity*, 147 Cal. App. 3d 655, 663 (1983) (“the relevant factor is whether the party is  
12 among ‘those who may be affected by the judgment’”); *see also* Goldman Decl., ¶¶ 4-7;  
13 Ferrazares Decl., ¶¶ 5-6; Blades Decl., ¶¶ 4-6. A decision in favor of Plaintiff would mean that  
14 Blades Intervenors would no longer derive the benefits of racially integrated elementary school  
15 settings and that their children would have to attend schools that are significantly more  
16 segregated.

17 **B. The Berkeley NAACP Has a Direct Interest in This Litigation.**

18 Plaintiff relies on *Socialist Workers 1974 Cal. Campaign Comm. v. Brown*, 53 Cal. App.  
19 3d 879 (1975) for the proposition that the NAACP has no interest in this litigation; however,  
20 such reliance is misplaced. In *Socialist Workers*, Plaintiffs brought an action to enjoin  
21 enforcement of a campaign finance law against Plaintiffs as it would have required them to  
22 disclose their donors. *Socialist Workers*, 53 Cal. App. 3d at 885. The proposed intervenors were  
23 Common Cause, a “good government” group, who desired enforcement of the act and disclosure  
24 of Plaintiffs’ donor information. *Id.* at 886. The court, in vacating the order granting leave to  
25 intervene, found that the members of Common Cause would not be directly affected by a  
26 judgment that the statute was unconstitutional because it would only mean that Plaintiffs would  
27 not have to disclose its donor lists. *Id.* at 891-892.

1 In the case at bar, a judgment that Defendants' school assignment plan were  
2 unconstitutional would mean that the children of members of the NAACP might be forced to  
3 leave their currently racially integrated schools and attend segregated schools. See Papillon  
4 Decl. at ¶ 2 (members of the Branch are parents of children in the Berkeley Unified School  
5 District); Defendants' Statement at 3 ("The Berkeley NAACP has a long history of working on  
6 the desegregation plan at issue in this litigation."). Due to the level of involvement that the  
7 Berkeley NAACP has had on the issue of desegregation in Berkeley since 1954 and the fact that  
8 its members include parents in the school district, it is difficult to see a more direct effect from a  
9 judgment. Accordingly, intervention is proper under Cal. Code Civ. Proc. § 387 (a) and (b)  
10 because the Berkeley NAACP does indeed have a direct interest in this litigation which cannot  
11 be protected by the existing parties, and any judgment in this case will have a direct impact on  
12 the NAACP's membership.<sup>2</sup>

13 Plaintiff, for understandable reasons, does not cite *Rominger v. County of Trinity*, 147  
14 Cal. App. 3d 655 (1983) which is more analogous to the instant case than *Socialist Workers*. In  
15 *Rominger*, Plaintiff alleged that Defendants' county ordinance banning the use of certain  
16 pesticides and herbicides was preempted by state law. *Rominger*, 147 Cal. App. 3d at 659.  
17 Defendants, however, argued that they enacted the ordinance in order to protect County residents  
18 from the harms associated with exposure to pesticides. *Id.* at 659. The Sierra Club, an  
19 environmental organization, sought to intervene on behalf of its members who would be affected  
20 by a judgment in the case. *Id.* at 658-659. The Sierra Club argued that its members would be  
21 harmed if pesticide use were allowed to continue and the court agreed, thereby permitting the  
22 Sierra Club to intervene in the case. *Id.* at 663 ("the Sierra Club, as a representative of its  
23 members who reside in and use the resources of Trinity County, has a direct and immediate,  
24 rather than consequential and remote, interest in this litigation").

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26 <sup>2</sup>State and federal courts have long identified the NAACP's interest as a party in cases  
27 involving desegregation of school districts. See e.g. *NAACP v. San Bernardino City School Dist.*,  
28 17 Cal. 3d 311, 314 (1976) (finding segregated schools and the obligation of the school district to  
take reasonable steps to alleviate such segregation); *San Francisco NAACP v. San Francisco Unified  
School Dist.*, 965 F. Supp. 2d 1021 (N.D. Cal. 1999) (concerning desegregation consent decree).

1 Not unlike the Sierra Club in *Rominger*, the Berkeley NAACP is a public interest  
2 organization which seeks to intervene on behalf of its members who reside in Berkeley and who  
3 will be affected by a judgment in this case. Papillon Decl. at ¶¶ 2-3, 5. Berkeley’s voluntary  
4 desegregation plan has a direct effect on all students and parents in the school district, including  
5 those who are members of the Berkeley NAACP; therefore intervention by the Berkeley NAACP  
6 is appropriate here. See *Rominger*, 147 Cal. App. 3d at 661 citing *Bustop v. Superior Court*, 69  
7 Cal. App. 3d 66, 71 (1977) (holding that an organization of parents in a school district had  
8 sufficient interest to intervene in a school desegregation case where a school district’s  
9 desegregation plan “would have a ‘direct social, educational and economic impact’ on all the  
10 students and parents in the district.”).

11 **II. Although They Share a Similar Goal of Defeating Plaintiff’s Claims, Defendants**  
12 **Cannot Adequately Represent Blades Intervenors’ Interests.**

13 A party who claims the requisite interest, and whose interests cannot be adequately  
14 protected by an original party, must be allowed to intervene as a matter of right. Cal. Code Civ.  
15 Proc. 387 (b). Here, Blades Intervenors cannot be adequately represented by Defendants in this  
16 case due to the direct and personal nature of the interests involved in this litigation. Even  
17 Defendants recognize that their interest in the litigation differs from the interests of parents and  
18 community members who wish to intervene in this matter. Defendants’ Statement at 3 (“The  
19 interests that . . . Blades. . . intervenors seek to represent – in particular those of children in the  
20 BUSD and their parents – may differ in many material ways from the interest represented by the  
21 BUSD.”). Additionally, parents and their children have certain constitutional rights – that  
22 Defendants surely cannot assert – which may be implicated here. Accordingly, intervention as  
23 of right is appropriate here under Section 387 (b) of the Code of Civil Procedure.

24 The Defendant school district does not have a personal interest in the outcome of this  
25 litigation. If Defendants’ school assignment plan is found unconstitutional under California law,  
26 Defendants will merely cease to continue the plan and will go about their business of providing  
27 educational services in the School District. It is the parents and their children, namely Blades  
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1 Intervenor, who will suffer the consequences of the rollback to a pre-*Brown* era where schools  
2 may become, for all practical purposes, “all-white” or “all students of color.” The ills of  
3 segregation as described in *Brown v. Board of Education* and subsequent school desegregation  
4 cases will befall Blades Intervenors in a very direct and personal way, different from the impact  
5 that such adverse judgment would have on the Berkeley School Board or the Berkeley School  
6 Superintendent.

7 Blades Intervenors have a personal interest in their children’s education and also have  
8 state and federal constitutional rights that they wish to protect. Defendants can neither assert nor  
9 protect these rights for the parents of children and the children themselves who attend their  
10 schools. Therefore, under Section 387 (b) of the California Code of Civil Procedure, Movants  
11 must be allowed to intervene in order to assert and protect those rights.

12 **III. Neither Original Party Has Alleged That Blades Intervenors Will Enlarge the Issues**  
13 **or Infringe Upon Their Rights to Conduct the Lawsuit on Their Own Terms.**

14 In their responses to Blades Intervenors’ motion, neither Plaintiff nor Defendants has  
15 alleged that Movants’ involvement in the case would prejudice the parties or interfere with their  
16 ability to litigate this case in their own manner. *See* Plaintiff’s Opposition; Defendants’  
17 Statement at 4. Instead, Plaintiff only argues, fallaciously, that Blades Intervenors do not have  
18 the requisite interest in the litigation, that Defendants can adequately represent whatever interests  
19 movants have, and that because “Movants have stated that their only interest in this matter is to  
20 further an illegal agenda, permitting them to intervene in this case would only lead to greater  
21 inefficiency.”<sup>3</sup> Plaintiff’s Opposition at 6. Defendants, on the other hand, welcome Blades  
22 Intervenors’ participation in the litigation because they recognize the wide impact that this  
23 litigation has – and that any judgment might have – on Berkeley parents and their children.  
24 Defendants’ Statement at 4-5.

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26 <sup>3</sup>Plaintiff also argues that intervention by Ralph Lorenzo Blades II, Roia Ferrazares, and  
27 Lenore Goldman on behalf of their children is not proper because they have not received Guardian  
28 Ad Litem status from the Court. Plaintiff’s Opposition at 4. Blades Intervenors have prepared such  
papers, but have been informed by the Clerk of the Court that they can not file Guardian Ad Litem  
papers until such time as the Court grants them leave to intervene.

1 The silence of Plaintiff and Defendants on the issue of prejudice to the original parties  
2 and enlargement of the issues in the case is illustrative of the fact that involvement in the case by  
3 Blades Intervenors will only properly serve to involve an interested party who will be affected  
4 by the judgment in this case. Therefore, Movants' intervention is prescribed by Section 387 of  
5 the California Code of Civil Procedure.

6 **IV. Contrary to Plaintiff's Bizarre Allegation, Blades Intervenors Are Not Furthering**  
7 **an Illegal Agenda.**

8 Plaintiff's assertion that Blades Intervenors' "only interest in this matter is to further an  
9 illegal agenda" is preposterous and disingenuous. First, Blades Intervenors have stated their  
10 interest in this litigation, that is "ensuring that their children can continue to receive an education  
11 in racially and ethnically integrated schools." Blades Intervenors' Memorandum of Points and  
12 Authorities in Support of Motion for Leave to Intervene at 1. Second, state and federal courts,  
13 including the United States Supreme Court, have long recognized this as a legal and legitimate  
14 interest. *See supra*, at 2-3; *Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Bustop*, 69 Cal. App.  
15 3d at 71. Lastly, this Court has yet to make a determination on the legality or constitutionality of  
16 Defendants' school assignment plan. Therefore, Plaintiff's contention that Movants seek only to  
17 pursue an "illegal agenda" is self-serving rhetoric that has no bearing on the motion before this  
18 Court.

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**CONCLUSION**

For the foregoing reasons, the Court should grant leave of court for Blades Intervenors to file their Complaint in Intervention.

DATED: March \_\_, 2004

Respectfully submitted,

NAACP LEGAL DEFENSE  
AND EDUCATIONAL FUND, INC.  
  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN CALIFORNIA  
  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
OF THE SAN FRANCISCO BAY AREA  
  
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