UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 17 C 6260**
	)	
CITY OF CHICAGO,	)	**Judge Rebecca R. Pallmeyer**
	)	
Defendant.	)	

ORDER REGARDING THE WILKINS PLAINTIFFS' MOTION TO INTERVENE

On August 29, 2017, the State of Illinois initiated this action against the City of Chicago pursuant to 42 U.S.C. § 1983, the United States Constitution, the Illinois Constitution, the Illinois Civil Rights Act of 2003, the Illinois Human Rights Act, and the *parens patriae* doctrine to enjoin the Chicago Police Department (CPD) "from engaging in a repeated pattern of . . . misconduct that disproportionately harms Chicago's African American and Latino residents." (Compl. [1] ¶ 2.) The State—represented by the Office of the Illinois Attorney General ("OAG")—and the City (collectively, "the Parties") entered into a Consent Decree, which this court adopted on January 31, 2019 (effective March 1, 2019). (*See generally* Consent Decree [703].)

On June 26, 2023, five individuals filed a proposed class action against the City and the CPD challenging what they allege is an unlawful mass traffic stop program that unfairly targets Black and Latino drivers in Chicago, in violation of the rights of these individuals. *See Wilkins v. City of Chicago and Chicago Police Department*, No. 23 C 4072 (N.D. Ill.) Triggered by a concern that the Consent Decree may be amended to include specific requirements related to traffic stops, the plaintiffs in that action, pending before Judge Rowland of this court (hereinafter, the "*Wilkins* Plaintiffs"), now move to intervene in this Consent Decree proceeding. (Mot. [1177].) The State and the City both oppose this motion (*see* State's Resp. [1196], City's Resp. [1197]) and, for the reasons described here, the court denies it. As explained below in more detail, the motion is not timely and the intervention, if allowed, would prejudice the existing parties. Further, the *Wilkins*

Plaintiffs have not met their burden of showing that their interests are likely to be impaired if they are denied party status in this case, or that their interests are not being represented adequately by the State.

The court regularly convenes public hearings at which persons affected by CPD practices are invited to describe their experiences and express their concerns. The *Wilkins* Plaintiffs, like all other members of the public, remain entitled to appear at these hearings, present their views, and advocate for policies that will protect their rights. Moreover, standards that are or will be imposed as a result of the Consent Decree are a floor, not a ceiling. To the extent the provisions of the Consent Decree do not afford the relief that the *Wilkins* Plaintiffs seek, they are entitled to continue to seek that relief in the *Wilkins* case itself or elsewhere.

BACKGROUND

The stated purpose of the Consent Decree is to:

> ensure that the City and the CPD deliver services in a manner that fully complies with the Constitution and laws of the United States and the State of Illinois, respects the rights of the people of Chicago, builds trust between officers and the communities they serve, and promotes community and officer safety.

(Consent Decree ¶ 2.) The Consent Decree broadly prohibits racial discrimination in all of the CPD's practices, including in officers' routine or spontaneous law enforcement decisions. (*See, e.g.*, Consent Decree ¶ 50 ("CPD will provide police services to all members of the public without bias and will treat all persons with the courtesy and dignity which is inherently due every person as a human being without reference to stereotype based on race, color, [or] ethnicity . . . ."), ¶ 53 ("CPD will . . . ensure that its policies and practices prohibit discrimination on the basis of any protected class under federal, state, and local law, including race . . . ."), and ¶ 55 ("CPD will prohibit officers from using race, ethnicity, color, [or] national origin . . . when making routine or spontaneous law enforcement decisions . . . .").) Importantly, for purposes of this motion, nothing in the Consent Decree "will in any way prevent or limit the City's right to adopt future measures that exceed or surpass the obligations" in the Consent Decree, "as long as the terms of [the

Consent Decree] are satisfied." (*Id.* ¶ 705). The Consent Decree also dictates that an independent Monitor, selected by the Parties, will serve as an agent of the court and "will assess and report whether the requirements of this Agreement have been implemented." (*Id.* ¶ 610.)

The Consent Decree establishes procedures for the Parties or the court to modify the document. The State and the City may "jointly agree to make changes, modifications, and amendments" to the Consent Decree, "which will be effective if approved by the Court." (*Id.* ¶ 696.)[1] Either Party may also, at any time, "propose substituting alternative requirements for one or more requirements of [the Consent Decree]." (*Id.* ¶ 697.) "If the Parties and the Monitor cannot agree on the proposed alternative, either Party or the Monitor can submit the matter to the Court for resolution." (*Id.*)

Since the effective date of the Consent Decree on March 1, 2019, the Parties have entered into several stipulations to modify the Consent Decree or clarify its meaning. For example, on June 16, 2023, the Parties moved for court approval of such a stipulation amending the Consent Decree with respect to "policies and practices governing investigatory stops, protective pat downs, and the enforcement of the City of Chicago's Gang and Narcotics-Related Loitering Ordinances." ([1093].)[2] The court approved the stipulation and entered it on June 27, 2023. ([1095].)

On June 26, 2023, the *Wilkins* Plaintiffs filed a class action lawsuit "demanding an end to the [CPD's] practice of racially discriminatory mass traffic stops." (Mot. at 2–3.) The *Wilkins* Plaintiffs—Eric Wilkins, Mahari Bell, Essence Jefferson, José Manuel Almanza, Jr., and Jacquez Beasley—allege that they have been subjected to traffic stops that "are typical of hundreds of

[1] Moreover, the Monitor to the Consent Decree must provide a comprehensive assessment, which may include "whether any modifications" to the Consent Decree are "necessary in light of changed circumstances or unanticipated impact (or lack of impact) of the requirements." (*Id.* ¶ 657). "Where the Parties agree with the Monitor's recommendations, the Parties will move the Court to modify" the Consent Decree. (*Id.* ¶ 659).

[2] The Parties filed a nearly identical, amended stipulation on June 21, 2023. ([1094].)

thousands of discriminatory, pretextual traffic stops of drivers of color by CPD officers every year." (Mot. at 3.) They seek broad injunctive relief from this practice on behalf of themselves and a proposed class of victims of pretextual traffic stops.[3] [4]

On September 29, 2023, this court issued an order setting a public hearing for October 16, 2023, at which community members could provide input for the Monitor's "comprehensive assessment" of progress on the Consent Degree[5] and whether any modifications to the Consent Decree were necessary, including specific provisions regarding traffic stops. ([1115].)[6] This order referenced community feedback from August 9, 2023, related to the then-recent Consent Decree

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[3] As of the date of this order, the *Wilkins* class has not been certified.

[4] The injunctive relief requested includes:

- Banning pretextual traffic stops (stops that are an excuse to search for contraband like weapons or drugs);
- Prohibiting [the City of Chicago and the CPD] from targeting neighborhoods with predominately Black and Latino residents for a high volume of pretextual traffic stops;
- Ending traffic stop quotas;
- Decreasing the total number of traffic stops, frisks and searches by CPD officers;
- Prohibiting officers from making traffic stops for low-level non-moving violations such as equipment and registration issues;
- Eliminating unjustified racial and ethnic disparities in traffic stops citations, frisks and searches;
- Disbanding all teams of CPD officers who primarily conduct aggressive traffic stops, such as tactical units,
- Creating a plan to adequately hire, train, monitor, supervise, and discipline CPD officers who conduct disproportionate numbers of traffic stops, frisks and searches against Black and Latino drivers; and
- Requiring [the City of Chicago and the CPD] to adopt a process of robust, ongoing community engagement with directly impacted community members and organizations.

(Mot. at 3–4.)

[5] The first part of this assessment was filed on November 1, 2023. ([1127].)

[6] The court issued an amended version of this Order on October 6, 2023, which kept the same proposed hearing date but allowed more time for persons to file written comments following the hearing. ([1116] at 1.)

stipulation regarding investigatory stops, protective pat downs, and enforcement of loitering ordinances:

> To conduct this comprehensive assessment, the Monitor is seeking public input on whether the outcomes intended by the Consent Decree are being achieved and whether any modifications to the Consent Decree are necessary. For example, during the last public hearing on the Stipulation to the Consent Decree regarding Investigatory Stops, Protective Pat Downs, and Enforcement of Loitering Ordinances on August 9, 2023, various community members reported that traffic stops should have been included in that Stipulation. Accordingly, the Court and the Monitor welcome feedback from Chicago community members regarding whether traffic stops should now be incorporated into the Consent Decree.

([1116].)

On May 14, 2024, this court issued an order setting another public hearing for June 11, 2024, to hear "additional community input on what specific traffic-stop-related requirements should be added to the Consent Decree, if any." ([1167].)[7] Just days before that hearing, on June 7, 2024, the *Wilkins* Plaintiffs filed the motion now before the court. They seek leave "to intervene in this matter as of right, under Federal Rule of Civil Procedure 24(a)(2), or permissively, under Rule 24(b)(1), to ensure that their claims and demands for injunctive relief in *Wilkins*, a putative class action that challenges Defendants' unlawful mass traffic stop program, are not compromised or abandoned without the *Wilkins* Plaintiffs' direct participation and consent, and for any further appropriate relief." (Mot at. 1). In addressing this motion, the court observes, preliminarily, that the *Wilkins* action remains pending, and that the undersigned judge has no authority to direct that any claim presented in the *Wilkins* action be compromised or abandoned, nor any inclination to do so. In short, intervention in this case is not necessary to protect the *Wilkins* Plaintiffs in their own litigation. For this reason, in addition to those discussed below, the motion is denied.

[7] The court issued an amended version of this order a few days later to clarify that the hearing would consist of a virtual session in the morning of June 11, and an in-person session in the afternoon. ([1168] at 1.)

LEGAL STANDARD

Federal Rule of Civil Procedure 24 provides for intervention as of right or by permission of the court. FED. R. CIV. P. 24. The Rule requires, first, that the court "permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." FED. R. CIV. P. 24(a)(2).

As the Seventh Circuit has explained, this rule imposes four requirements for intervention as of right: "(1) timeliness, (2) an interest relating to the subject matter of the main action, (3) at least potential impairment of that interest if the action is resolved without the intervenor, and (4) lack of adequate representation by existing parties." *Reid L. v. Ill. State Bd. of Educ.*, 289 F.3d 1009, 1017 (7th Cir. 2002); *accord Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 773 (7th Cir. 2007). "The burden is on the party seeking to intervene of right to show that all four criteria are met." *Reid L.*, 289 F.3d at 1017. "A failure to establish any of these elements is grounds to deny the petition." *Ligas*, 478 F.3d at 773.

In ruling on a motion to intervene, the court "must accept as true the non-conclusory allegations of the motion." *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995). A district court's denial of a motion to intervene as of right on timeliness grounds is reviewed for abuse of discretion. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 945 (7th Cir. 2000). Review of the court's application of the other requirements is *de novo*. *Reich*, 64 F.3d at 321.

If intervention as of right is not warranted, the court may nevertheless "[o]n timely motion . . . permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." FED. R. CIV. P. 24(b)(1). The decision to permit intervention is "wholly discretionary." *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 803 (7th Cir. 2019). Nevertheless, "in exercising its discretion, the court must consider whether

the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3).

DISCUSSION

For the reasons explained below, the court concludes that the *Wilkins* Plaintiffs have not met their burden to intervene as of right under Rule 24(a)(2) and declines to grant permissive intervention under Rule 24(b).

I. Intervention as of Right

As referenced above, one who seeks to intervene in a court proceeding as of right must (1) request intervention in a timely manner, (2) have an interest relating to the subject matter of the action; (3) show that such interest may be impaired without the participation of the intervenor; and (4) demonstrate that existing parties will not adequately protect that interest. *Reid L.*, 289 F.3d at 1017. The City contends the *Wilkins* Plaintiffs' motion is (1) untimely, and the court agrees. The proposed intervenors' interest in banning excessive, pretextual, and race-based traffic stops does (2) relate to the subject matter of the Consent Decree. But the movants have not demonstrated (3) potential impairment of any interest if the action is resolved without them and (4) have not demonstrated a lack of adequate representation by existing parties.

A. Timeliness

In determining whether a motion to intervene is timely, courts consider "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances." *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019). The movants have not pointed to any "other unusual circumstances" present here. And the first three factors confirm the court's conclusion that the *Wilkins* Plaintiffs' motion is not timely.

1. Intervenor's Knowledge

Courts measure timeliness from the time the movant "has reason to know its interests *might* be adversely affected, not from when it knows for certain that they will be." *State v. City of*

Chicago, 912 F.3d at 985. In arguing that their motion is timely, the *Wilkins* Plaintiffs contend that they were not put on notice of their interests in this case until entry of the court's May 14, 2024 order setting a hearing to solicit input on whether traffic stop-related requirements should be added to the Consent Decree. (Mot. at 9.) But as the City points out, the *Wilkins* Plaintiffs had reason to know that traffic stops were (or could be) implicated by the Consent Decree at least as early as September 29, 2023, when this court issued a notice of hearing for October 16, 2023. (City Resp. at 7.) The City reads the September 29, 2023 order (amended, non-substantively, on October 6, 2023) as announcing that the purpose of the hearing was to consider modifications to the Consent Decree and specifically to seek input "on the addition of traffic stops." (*Id.*) Finally, the City notes that during the October 2023 public hearing, at which counsel for the *Wilkins* Plaintiffs attended and spoke, the Monitor reported that the addition of traffic stops to the Consent Decree was under consideration. (*Id.* at 7–8.) Thus, the City urges, the *Wilkins* Plaintiffs had reason to know that traffic stops might be added to the Consent Decree by October 16, 2023 at the latest. (*Id.* at 8.)

In the court's view, the *Wilkins* Plaintiffs should have been on notice that their interests might be affected even earlier than the October 2023 hearing or the September 2023 order. The Consent Decree, effective as of March 1, 2019, is expressly aimed at putting an end to a repeated pattern of misconduct by CPD officers disproportionately harming Chicago's Black and Latino residents. Meanwhile, the misconduct that the *Wilkins* Plaintiffs allege is an unlawful program of mass traffic stops by CPD specifically targeting Chicago's Black and Latino residents. While the Consent Decree contains no explicit references to "traffic stops," it is difficult to understand how the *Wilkins* Plaintiffs could discount the possibility that the misconduct they complained of was implicated by the Consent Decree. Indeed, the Monitor's Plan for Year Three of the Consent Decree, a public document filed on October 29, 2021, repeatedly mentions "traffic stops" as an example of a "routine interaction" with law enforcement that falls within the Consent Decree.

([979] at 1, 7.) Finally, the Parties stipulated to amend the Consent Decree with specific regards to "investigatory stops" on June 21, 2023.

At the latest, the *Wilkins* Plaintiffs should reasonably have known that their interests might be affected by the Consent Decree by June 21, 2023. Their intervention motion was filed nearly a year after that. *See Illinois v. City of Chicago*, No. 17-CV-6260, 2018 WL 3920816, at *6 (N.D. Ill. Aug. 16, 2018), *aff'd*, 912 F.3d 979 (7th Cir. 2019) (holding that the Fraternal Order of Police's (FOP) motion to intervene in this case was not timely where the FOP delayed its motion for nine months after it should have known of its interest in the case.)

2. Prejudice to the Original Parties

Both Parties have argued they would be prejudiced by potential intervention at this stage. The *Wilkins* Plaintiffs discount this concern, arguing that the language of the court's May 14, 2024 order confirms that the Parties have not yet identified what traffic stop practices may be addressed through an expansion of the Consent Decree, much less specific terms and appropriate remedies. (Mot. at 9–10.) True, but as the City emphasizes, the *Wilkins* Plaintiffs' motion for leave to intervene comes in the midst of complex settlement negotiations on the issues of investigatory stops, including traffic stops—circumstances that militate against intervention. (City's Resp. at 8 (citing *Ragsdale v. Turnock*, 941 F.2d 501, 504 (7th Cir. 1991)). The fact that the Parties have not yet settled on *which* traffic stop practices should be added to the Consent Decree does not mean that their efforts toward settlement would not be prejudiced by the sudden introduction of a third party making its own demands.

3. Prejudice to the Proposed Intervenors

The *Wilkins* Plaintiffs argue that they will be prejudiced if not allowed to intervene because they will not be able to ensure that their claims and the injunctive relief that they are seeking in the *Wilkins* case are not abandoned or compromised. (Mot. at 10.) As noted earlier, however, intervention is not necessary to protect the *Wilkins* Plaintiffs' right to proceed with that litigation. The *Wilkins* case against the City is ongoing. And to the extent that the Consent Decree does

not include the relief the *Wilkins* Plaintiffs seek, nothing in the Consent Decree will prevent or limit adoption of measures that exceed or surpass the obligations in the Consent Decree, "as long as the terms of [the Consent Decree] are satisfied." (Consent Decree ¶ 705.) The *Wilkins* Plaintiffs point out that the City moved to dismiss or stay that case based on the pending Consent Decree—but that effort was unsuccessful; Judge Rowland denied the motion. *Wilkins*, No. 23 C 4072 [76], 2024 WL 2892840 (N.D. Ill. June 10, 2024).

Nor have the *Wilkins* Plaintiffs been denied the opportunity to express their views here. The Parties, and this court, have sought input from community members. Dozens of individuals and groups have accepted the invitation to speak up, including counsel for the *Wilkins* Plaintiffs and some of the *Wilkins* Plaintiffs themselves. In particular, the *Wilkins* Plaintiffs have alleged before this court that the CPD's traffic stop practices have done harm to Black and Latino drivers across Chicago. They are welcome to continue that advocacy, together with all members of the public. The *Wilkins* Plaintiffs' views are valuable, and their interests are certainly implicated by the Consent Decree. But they have not explained why they or their attorneys should have greater rights or influence over the Consent Decree than the larger population of Black and Latino Chicagoans impacted by CPD misconduct, including traffic stops. Indeed, to date the *Wilkins* Plaintiffs have not yet been certified to represent other victims of the allegedly unlawful traffic stops.

B. Interest Relating to the Subject Matter of the Main Action

The second element the *Wilkins* Plaintiffs must show to intervene as of right is that their interest is related to the subject matter of the Consent Decree litigation. "Intervention as of right requires a direct, significant, and legally protectable interest in the question at issue in the lawsuit." *Wis. Educ. Ass'n Council*, 705 F.3d at 658 (quoting *Keith v. Daley*, 764 F.2d 1265, 1268 (7th Cir. 1985)) (quotation marks omitted). The proposed intervenor's interest must be "unique," but only in the sense that it is "a personal stake that is not dependent on the interests of an existing party." *Bost v. Ill. Bd. Of Elections*, 75 F.4th 682, 687 (7th Cir. 2023). The Seventh Circuit has "never

required a right that belongs *only* to the proposed intervenor, or even a right that belongs to the proposed intervenor *and not to* the existing party"—the question is whether the intervenor's interest is "exclusively derived" from the existing party's rights. *Id.* at 687 & n. 2.

On this issue, the *Wilkins* Plaintiffs appear to be on solid ground. The Parties and the public generally have an interest in the elimination of "unjustified racial and ethnic disparities in traffic stops citations, frisks, and searches"; the creation of "a plan to adequately hire, train, monitor, supervise, and discipline CPD officers who conduct disproportionate numbers of traffic stops, frisks, and searches against Black and Latino drivers"; and a requirement for the CPD "to adopt a process of robust, ongoing community engagement with directly impacted community members and organizations." (Mot. at 3–4.) The *Wilkins* Plaintiffs are five individuals who claim direct harm from CPD traffic stops that were impermissibly based on race; they seek injunctive remedies that go beyond existing legal and Consent Decree requirements. The addition to the Consent Decree of any additional requirements touching on policy, training, or practices for traffic stops based on probable cause will at least relate to the *Wilkins* Plaintiffs' claims.

The City argues that the *Wilkins* Plaintiffs have not explained how their claims are sufficiently distinct from those of the general public in having the CPD's traffic stop policies and practices covered in the Consent Decree. (City's Resp. at 10.) The State, meanwhile, argues that the *Wilkins* Plaintiffs' interest in eliminating racially discriminatory traffic stop practices in the City of Chicago are not unique to the *Wilkins* Plaintiffs or different from those of many other members of the public who testified at the October 2023 and June 2024 public hearings addressing traffic stops. (State's Resp. at 12.) But as explained above, the fact that the *Wilkins* Plaintiffs' interests are shared with the interest of the State in this case is not a barrier to their motion to intervene. These arguments are better addressed to the question, examined below, of whether the *Wilkins* Plaintiffs' interests will be adequately protected by the existing Parties to the Consent Decree.

C. Potential Impairment of an Interest if the Action is Resolved Without the Intervenor

The *Wilkins* Plaintiffs have not satisfied the court that a decision to add to the Consent Decree specific requirements related to traffic stops based on probable cause—or a decision not to make such additions—without their intervention will impair their interests. In arguing that their interests are at stake, the *Wilkins* Plaintiffs point out that the City moved to stay the *Wilkins* case based on the notion that modifications to the Consent Decree might render the case moot. (Reply [1209] at 7.) Judge Rowland promptly denied that motion, but the *Wilkins* Plaintiffs insist that because the City could renew its motion to stay in *Wilkins* in future, their interests remain at risk if they are not allowed to intervene here. (*Id.*)

It is true that the City could renew its motion to stay in *Wilkins*, but the *Wilkins* Plaintiffs' reliance on this possibility is misplaced. The movants offer that because "the decision of a legal question" in the Consent Decree litigation could "as a practical matter foreclose" their rights in the *Wilkins* case, their interests would be impaired without intervention. (Mot. at 11–12 (quoting *Meridian Homes Corp. v. Nicholas W. Prassas & Co.*, 683 F.2d 201, 204 (7th Cir. 1982). But as established above, if any modifications to the Consent Decree do not go as far as the *Wilkins* Plaintiffs would like, they are not prevented from pursuing more rigorous requirements through their own lawsuit. And to the extent that any issue in the *Wilkins* case is "mooted" as a result of modifications to the Consent Decree, it will be because the judge presiding over *Wilkins* has decided that the new requirements achieve the same result as some part of the injunctive relief the *Wilkins* Plaintiffs seek in that case.

The *Wilkins* Plaintiffs further argue that "in practice, courts have permitted intervention where a given outcome in the underlying litigation would be incompatible with the intervenor's desired relief." (Mot. at 12). In other words, the movants intimate that their interests are necessarily prejudiced if *any* of the particular injunctive relief they seek in *Wilkins* would be incompatible, as a practical matter, with a new requirement in the Consent Decree. This is a

rather broad contention, and in support, the movants cite only one unpublished decision of this court, *Cabrini-Green Loc. Advisory Council v. Chi. Hous. Auth.*, 13 C 3642, 2014 WL 683710 (N.D. Ill. Feb. 21, 2014). In *Cabrini-Green*, the plaintiffs sought to ensure that a city-owned housing site, the Frances Cabrini Rowhouses, would be rehabilitated from a mixed-housing development into a "100 percent public housing enclave." *Id.* at *1. The proposed intervenors, plaintiffs in a different lawsuit, wanted the site to remain mixed-income public housing. *Id.* This court found that the intervenors' interests would be impaired if they were not involved in the *Cabrini-Green* case. *Id.* at *4.

The intervention decision in *Cabrini-Green* is not binding and arises in a context that differs importantly from this one. The plaintiffs and the intervenors in *Cabrini-Green* were completely at odds on a substantive outcome: whether the housing site should be 100% public (low-income) or mixed-income. By contrast, the *Wilkins* Plaintiffs appear to seek intervention because potential modifications to the Consent Decree designed to reduce or eliminate unlawful traffic stops—the same outcome the movants desire—might involve implementation of policies or procedures that are different than the ones the *Wilkins* Plaintiffs would write.

Finally, the *Wilkins* Plaintiffs counter that even if modifications to the Consent Decree *do* impose the remedies they seek in their separate case, the fact that the State—and not the *Wilkins* Plaintiffs—would have the authority to seek enforcement of those remedies is problematic. (*See* Reply at 10 ("Consideration of enforcement rights is critically important here.").) The court believes this argument is better addressed to the issue of whether the State adequately represents the *Wilkins* Plaintiffs' interests, but in any case, the argument is not persuasive. The movants do not tailor their argument to the connection between their case and the Consent Decree litigation. Instead, they effectively propose that in all cases where a state acts *parens patriae*, any subset of citizens with private claims that overlap with the state's must be allowed to intervene and stake out separate enforcement rights. Far from supporting such a sweeping proposition, the single case the movants cite on this score—*United States v. Michigan*, a nearly

40-year-old opinion from another district court—points in the opposite direction. (*See* Reply at 7 (citing 680 F. Supp. 928 (W.D. Mich. 1987)).)

In *United States v. Michigan*, the federal government filed an action against the state in January 1984 following a two-year investigation into conditions in three Michigan prisons. 680 F. Supp. at 930. The district court entered a consent decree between the two governments in July 1984. *Id.* Three sets of prisoners with separate class action lawsuits regarding the conditions in at least one of the prisons sought to intervene in the consent decree litigation. *See id.* at 935, 949–50.

The district court granted only one of the motions to intervene. The successful intervenors, plaintiffs in a case called *Hadix*, had filed suit against one of the Michigan prisons at issue some four years *before* the federal government had sued the state, and two years before the federal investigation had even begun. *Id.* at 936. The *Hadix* case had been scheduled for trial in early 1983, about a year before the federal case was filed, but the *Hadix* plaintiffs and the State of Michigan had requested to delay trial in favor of court-supervised settlement discussions. *Id.* Those discussions were productive and had been ongoing for many months by the time the federal government filed its separate lawsuit against Michigan. *Id.* The *Hadix* plaintiffs cited those negotiations as the chief reason that their interests would be impaired if they were not allowed to intervene. *Id*. at 939. The district court granted the *Hadix* plaintiffs' motion to intervene in March 1984. *Id.* at 942.

By contrast, the two unsuccessful sets of intervenors had filed their cases (*Janssen* and *Knopf*) *after* the consent decree litigation had commenced, as have the *Wilkins* Plaintiffs here. *Id.* at 950. Nevertheless, the *Janssen* and *Knopf* plaintiffs urged that they should be allowed "to intervene in the enforcement" of the consent decree litigation. *Id.* The district court denied the *Janssen* and *Knopf* plaintiffs' motions to intervene, explaining that the concern of impacting existing settlement negotiations was not present in those cases, and that the

Knop and *Jansson* plaintiffs were "free to continue to pursue the remedies they deem appropriate in spite of the entry of [the] consent decree," just as the *Wilkins* Plaintiffs are here. *Id.*

The *Wilkins* Plaintiffs—along with other community members—will have an opportunity to be heard at a future hearing on the issue regarding any modifications to the Consent Decree regarding traffic stops, which the court will hold to ensure any such changes are "lawful, fair, reasonable, and adequate." *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985).[8] The court expects and welcomes robust comment from the public, including from the *Wilkins* Plaintiffs and others who have been impacted by allegedly discriminatory traffic stops.

D. Lack of Adequate Representation by Existing Parties

That leaves the question whether the *Wilkins* Plaintiffs' interests are adequately represented by the State, the Plaintiff in this Consent Decree litigation. The "default rule" on this issue "is a liberal one": the applicant must merely show that representation of their interests "may be" inadequate. *Planned Parenthood of Wis., Inc. v. Kaul*, 942 F.3d 793, 799 (7th Cir. 2019). Where the prospective intervenor and the named party have "the same goal," however, there is "a rebuttable presumption of adequate representation" that requires a showing of "some conflict" to warrant intervention. *Id.* Finally, the aforementioned presumption of adequacy "becomes even stronger when the representative party is a governmental body charged by law with protecting the interests of the proposed intervenors; in such a situation the representative party is presumed to be an adequate representative unless there is a showing of gross negligence or bad faith." *Id.*

Rather than claiming they can make a showing of gross negligence or bad faith, the *Wilkins* Plaintiffs retreat to an argument that the intermediate standard identified in *Kaul*, which merely requires a showing of "some conflict," should apply. (Mot. at 16 (citing *Bost v. Ill. Bd. of*

[8] The Independent Monitoring Team filed *Comprehensive Assessment, Part II* on October 11, 2024, which included several recommendations to modify the Consent Decree, including a recommendation to add requirements related to traffic stops based on probable cause. ([1226].) As of the date of this order, the Parties have not moved for the court to modify the Consent Decree in response to any recommendations from the Independent Monitoring Team.

Elections, 75 F.4th 682, 688 (7th Cir. 2023) and *Hanover Ins. Co. v. L&K Dev.*, No. 12 C 6617, 2013 WL1283823, at *3 (N.D. Ill. Mar. 25, 2013)).) In support of their argument about the correct standard, the movants highlight the fact that this court did not apply the "gross negligence/bad faith" standard when it previously determined that neither the State nor the City adequately represented the interests of the Fraternal Order of Police ("FOP"), who sought leave to intervene several months into the negotiations that led to the Consent Decree.[9] (Mot. at 17 (citing *State of Ill. v. City of Chicago*, No. 17 C 6260, 2018 WL 3920816, at *10 (N.D. Aug. 16, 2018), *aff'd*, 912 F.3d 979, 985 (7th Cir. 2019).)

The court is not persuaded by the movants' attempt to place themselves in the same posture vis-à-vis the State that the FOP occupies with respect to the City: consequently, the court will apply the "bad faith/gross negligence" standard here. The City is not "charged by law" with protecting the FOP's interests in this case;[10] by contrast, the State's *parens patriae* standing in this case stems from its "quasi-sovereign" interest in the "health and well-being" of a "substantial segment of its population"— namely, the Black and Latino residents of Chicago, a segment that includes the *Wilkins* Plaintiffs. *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982); *see also State of Ill. v. City of Chicago*, 2018 WL 3920816, at *10. Indeed, as Judge Dow's previous ruling explained, the City's and the FOP's interests regarding the Consent Decree overlap to some degree, but the two entities are often "diametrically oppos[ed]," particularly regarding the discipline of police officers, a topic that is highly relevant to the Consent Decree. *State of Ill. v. City of Chicago*, 2018 WL 3920816, at *10.

Nothing in this record suggests that the State is guilty of gross negligence or bad faith. (*See* City's Resp. 11 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10

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[9] Ultimately, Judge Dow denied the FOP's motion on timeliness grounds. *Id.* at *9.

[10] The City may have some obligation to protect the interests of individual CPD officers, but the FOP itself is a national labor organization which is the designated representative of CPD officers "for the purpose of negotiating with the City of Chicago for wages, hours and working conditions." *State of Ill. v. City of Chicago*, 2018 WL 3920816, at *3.

(1972)); State's Resp. at 6.) The *Wilkins* Plaintiffs urge that the State's representation is suspect in that it has not operated with what the *Wilkins* Plaintiffs believe is an appropriate level of transparency, citing the lack of disclosure of the details of any agreement or any articulation of how the Consent Decree will end the CPD's mass traffic stop program. (Mot. at 15.) But there have already been two public court hearings specifically seeking public input regarding traffic stops—and many others that have permitted members of the public to comment on traffic stops. Further, at least for now, there is no substantive agreement to disclose.

On a final note: even if the *Wilkins* Plaintiffs' preferred, intermediate standard applied, it is not clear that they have identified a material conflict between themselves and the State. The movants begin by urging that the State's "responsibility to routinely defend convictions resulting from CPD traffic stops in innumerable appellate and post-conviction proceedings" creates a public perception that the State has "conflicted interests here." (Mot. at 16.) Perhaps, but one could as easily conclude that the State has an interest in cracking down on unlawful stops in part *because* those stops tend to create litigation costs and put the State in the awkward position of defending suspect conduct. In their reply brief, the *Wilkins* Plaintiffs further contend that their goal of eliminating the City's alleged "mass traffic stop program, *full stop*" is incompatible with the State's responsibility to "bear in mind broader public-policy implications" and "a diverse array of constituencies, and obligations, including its law-enforcement responsibilities." (Reply at 15.) But the movants do not actually explain why those two interests are in conflict.

The motion for intervention as of right is denied.

II. Permissive Intervention

The *Wilkins* Plaintiffs have argued in the alternative for permissive intervention, as authorized under Rule 24(b). In support, they reiterate their contention that their request is timely and argue that any expansion of the Consent Decree would raise questions of law or fact in common with those presented in their case before Judge Rowland. (Mot. at 17–18.) As in the analysis of a claim for intervention as of right, a court considering permissive intervention must,

in the exercise of discretion, "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3). "Permissive intervention under Rule 24(b) is wholly discretionary and will be reversed only for abuse of discretion." *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000).

Contrary to the City's contention, the court believes the Wilkins Plaintiff have made more than a "vague assertion" that their petition to intervene raises questions that are common to those being considered in the Consent Decree proceedings. (City's Resp. at 12 (citing *White Eagle Coop. Ass'n v. Conner*, 553 F.3d 467, 476 n.4 (7th Cir. 2009)). More persuasively, the State argues that permissive intervention should be denied because the State adequately represents the *Wilkins* Plaintiffs' interest in its *parens patriae* capacity, such that any minimal benefit from allowing intervention would be outweighed by the inherent complications in permitting an additional party to join the case. (State's Resp. at 15–16.) Allowing permissive intervention here would, the State contends, "risk opening the floodgates to a swarm of would-be intervenors, making the case unwieldy." (*Id.* at 16.)

The *Wilkins* Plaintiffs downplay such a risk; they deem it unlikely that other parties may emerge who have pending class litigation that seeks injunctive relief that implicates a potential Consent Decree modification. (*Id.* at 17.) The court is less certain of this, but even if the *Wilkins* Plaintiffs were the *only* potential intervenors, their addition to the case would still likely complicate or prejudice ongoing negotiations between the parties, or still further delay those negotiations.

The movants face other hurdles, too. For reasons already explained, the court concludes that this motion was not timely. And most importantly, the *Wilkins* Plaintiffs have not satisfied the court that they will be unfairly harmed if unable to intervene. The Consent Decree need not interfere with the *Wilkins* litigation itself and, if any aspects of the *Wilkins* Plaintiffs' claims are mooted, it will be because their interests have been adequately addressed. Finally, the *Wilkins* Plaintiffs, along with all other members of the public, will continue to have the opportunity to be heard before any modifications to the Consent Decree are made regarding traffic stops.

CONCLUSION

For the reasons above, the *Wilkins* Plaintiffs' motion to intervene [1178] is respectfully denied.

ENTER:

Dated: December 19, 2024

REBECCA R. PALLMEYER
United States District Judge