UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs, and

MICHAEL ARTEAGA, LENI FERNANDEZ, ANDREA HERSHORIN, JEAN ROBERT LOUIS, MELVA BENTLEY ROSS, DENNY TRONCOSO, BRANDON NELSON, GERALDINE WARE, and NINA WOLFSON,

Intervenor-Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al.,

Defendants.

Case No. 4:22-cv-00109-AW-MAF

**MOTION TO INTERVENE OF PROPOSED INTERVENOR-PLAINTIFFS MICHAEL ARTEAGA, LENI FERNANDEZ, ANDREA HERSHORIN, JEAN ROBERT LOUIS, MELVA BENTLEY ROSS, DENNY TRONCOSO, BRANDON NELSON, GERALDINE WARE, AND NINA WOLFSON**

Michael Arteaga, Andrea Hershorin, Leni Fernandez, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson (collectively, the "Proposed Intervenors"), move this Court to intervene in the above-referenced matter. In support of their motion, Proposed Intervenors state as follows:

1. Proposed Intervenors are registered Florida voters who face the prospect of being forced to cast diluted votes in overpopulated congressional districts in the 2022 election in the very likely event that the Florida Legislature and Governor cannot agree on redistricting maps. Proposed Intervenors have attached a Proposed Complaint to this motion. *See* **Ex. 1**.

2. On March 11, 2022, Proposed Intervenors filed suit in Florida state court alleging that Florida's congressional districts are malapportioned in violation of the U.S. Constitution and 2 U.S.C. § 2. *See* **Ex. 2**, Compl., *Arteaga v. Lee*, No. 2022-CA-000398 (Fla. 2d Cir. Ct. Mar. 11, 2022).

3. Later that day, Plaintiffs in the above-referenced matter (collectively, the "Common Cause Plaintiffs") filed their complaint in this Court. *See* ECF No. 1. The Common Cause Plaintiffs similarly allege that Florida's congressional districts are malapportioned in violation of the U.S. Constitution and 2 U.S.C. § 2. *See id.* ¶¶ 62-71.

4. As explained further in their brief, Proposed Intervenors easily satisfy the conditions for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). First, their motion is timely, as it was filed less than one week after Common Cause Plaintiffs filed their Complaint. Second, Proposed Intervenors have substantial legally protectable interests in the outcome of this litigation—both as voters and as litigants in a parallel suit. Third, their interests will undoubtedly be

affected by whether and how this Court develops a redistricting plan, particularly given that these proceedings could impact the course and resolution of Proposed Intervenors' parallel state court suit. Fourth, neither the Common Cause Plaintiffs nor the Defendants adequately represent Proposed Intervenors' interests. The Common Cause Plaintiffs are not participants in the parallel state court action, and the claims they advance here are on behalf of voters in distinct malapportioned congressional districts. Defendants, meanwhile, are government officials sued in their official capacity in both this case and in Proposed Intervenors' case in state court, and thus cannot represent Proposed Intervenors' interests as plaintiffs.

5. Alternatively, Proposed Intervenors satisfy the criteria for permissive intervention under Federal Rule of Civil Procedure 24(b). Proposed Intervenors' claims involve the same legal issues—whether the current districts are malapportioned and when this Court must act to protect voters—and there is no risk of prejudice at this early stage of litigation.

6. Federal courts throughout the country have repeatedly allowed state-court redistricting plaintiffs to intervene in parallel federal-court proceedings. *See* **Ex. 3**, *Gonidakis v. Ohio Redistricting Comm'n*, 2:22-cv-00773-ALM-EPD, slip op. (S.D. Ohio Mar. 4, 2022); **Ex. 4**, *Toth v. Chapman*, 1:22-cv-00208-JPW, slip op. (M.D. Pa. Feb. 28, 2022); *Hunter v. Bostelmann*, No. 21-cv-512-jdp-ajs-eec, 2021 WL 4206654 (W.D. Wis. Sep. 16, 2021).

7. In accordance with Local Rule 7.1(E), Proposed Intervenors have contemporaneously filed a memorandum in support of this motion.

## LOCAL RULE 7.1(B) CERTIFICATION

Counsel for Proposed Intervenors has conferred with counsel for Common Cause Plaintiffs, who has consented to Proposed Intervenors' motion to intervene. Because counsel for Defendants have not entered notices of appearance, counsel for Proposed Intervenors are not yet able to confer with counsel for Defendants consistent with Local Rule 7.1(B), but will promptly do so upon notice, and update this conferral certification if necessary.

## LOCAL RULE 7.1(F) CERTIFICATION

Undersigned counsel certifies that this motion contains 534 words, excluding the case style and certifications.

Dated: March 16, 2022

Respectfully submitted,

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
**KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.**
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

Abha Khanna*
Jonathan P. Hawley*
**ELIAS LAW GROUP LLP**
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law
jhawley@elias.law

John M. Devaney*
**PERKINS COIE LLP**
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
jdevaney@perkinscoie.com

Christina A. Ford
Joseph N. Posimato*
Graham W. White*
**ELIAS LAW GROUP LLP**
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
gwhite@elias.law

*Counsel for Plaintiffs*

**Pro hac vice application forthcoming*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ *Frederick S. Wermuth*
Frederick S. Wermuth
Florida Bar No. 0184111

# Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs, and

MICHAEL ARTEAGA, LENI FERNANDEZ, ANDREA HERSHORIN, JEAN ROBERT LOUIS, MELVA BENTLEY ROSS, DENNY TRONCOSO, BRANDON NELSON, GERALDINE WARE, and NINA WOLFSON

Intervenor-Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al.,

Defendants.

Case No. 4:22-cv-00109-AW-MAF

**[PROPOSED] COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Intervenor-Plaintiffs Michael Arteaga, Leni Fernandez, Andrea Hershorin, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson, file this Complaint for Declaratory and Injunctive Relief against Defendants Laurel M. Lee, in her official capacity as Florida Secretary of State, Wilton Simpson, in his official capacity as the President of the Florida State Senate, Chris Sprowls, in his official capacity as the Speaker of

the Florida House of Representatives, Ray Wesley Rodrigues, in his official capacity as the Chair of the Florida Senate Reapportionment Committee, Jennifer Bradley, in her official capacity as the Chair of the Florida Senate Select Subcommittee on Congressional Reapportionment, Thomas J. Leek, in his official capacity as the Chair of the Florida House of Representatives Redistricting Committee, Tyler I. Sirois, in his official capacity as the Chair of the Florida House of Representatives Congressional Redistricting Subcommittee, and Ron DeSantis, in his official capacity as Governor of Florida, and hereby state and allege as follows:

## NATURE OF THE ACTION

1. This action challenges Florida's current congressional districts as unconstitutionally malapportioned. Because of Florida's significant population growth over the last decade, its current congressional districts are significantly under- and overpopulated and in need of reapportionment. It is now evident, however, that the Florida Legislature (the "Legislature") and Governor Ron DeSantis (the "Governor") will not reach consensus on a congressional redistricting plan to remedy these population imbalances. Intervenor-Plaintiffs therefore ask this Court to declare Florida's current congressional districting plan unconstitutional; enjoin Defendants from using the current congressional districting plan in any future elections; and implement a new congressional districting plan that adheres to the

constitutional requirement of one person, one vote, should the Legislature and Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President. These data confirmed that population shifts during the last decade have rendered Florida's congressional districts unconstitutionally malapportioned. *Cf. Clark v. Putnam County*, 293 F.3d 1261, 1263–64 (11th Cir. 2002) ("The 1990 census revealed that, as a result of these population shifts, the County's four electoral districts had become seriously malapportioned.").

3. Specifically, the current configuration of Florida's congressional districts, adopted by the Florida Supreme Court in *League of Women Voters of Florida v. Detzner*, 179 So. 3d 258 (Fla. 2015), violates Article I, Section 2 of the U.S. Constitution. Because it is unconstitutional, the current congressional districting plan cannot be used in any upcoming elections, including the 2022 midterms.

4. In Florida, congressional districting plans must be enacted through legislation, which requires the consent of both chambers of the Legislature and Governor (unless both legislative chambers override the Governor's veto by a two-thirds vote). *See* Fla. Const. art. III, § 20(b); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1278 (S.D. Fla. 2002) (per curiam) (three-judge court).

5. There is no reasonable prospect that Florida's political branches will reach consensus and enact a lawful congressional redistricting plan in time for the upcoming 2022 elections. The Governor has threatened to veto any congressional map that contains the configuration of Congressional District 5 ("CD-5") currently present in the Legislature's proposed congressional districting plan, or any similar configuration, on the baseless ground that CD-5 is an unconstitutional racial gerrymander. To make that point, he petitioned the Florida Supreme Court to issue an advisory opinion in support of his claim—an invitation that the court declined to accept. *See Advisory Op. to Governor Re: Whether Article III, Section 20(A) of Fla. Const. Requires Retention of Dist. In N. Fla.*, No. SC22-139, slip op. at 4 (Fla. Feb. 10, 2022).

6. Even still, the very next day the Governor vowed that he "will not be signing any congressional map that has" the configuration of CD-5 proposed by the Legislature. He said so again on February 28, stating, "I've said very clearly that I will veto maps that include some of these unconstitutional districts. And that is a guarantee. They can take that to the bank." And he said so again on March 4, while the Florida House of Representatives debated the state's congressional plan: "I will veto the congressional reapportionment plan currently being debated by the House. [Dead on arrival]." The House and Senate nevertheless approved that congressional districting plan only hours later.

7. There is thus little doubt that the Legislature's proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. The legislative supporters of this plan do not have enough votes to override a veto, and there is not enough time left in the legislative session to bridge the deep division between the state's political branches: the current legislative session ended Monday, March 14. As a result, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

8. Given the high likelihood of impasse, this Court should intervene to protect the constitutional rights of Intervenor-Plaintiffs and voters across the state. This Court should assume jurisdiction now and establish a schedule that will enable it to adopt a remedial congressional districting plan in the near-certain event that the political branches fail to do so.

## JURISDICTION, PARTIES, AND VENUE

9. Intervenor-Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988 to redress the deprivation, under color of state law, of rights secured by the U.S. Constitution. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1343 because certain matters in controversy arise under the Constitution and laws of the United States and involve

the assertion of a deprivation, under color of state law, of a right under the Constitution of the United States.

10. This Court has personal jurisdiction over Defendants, who are sued in their official capacities and reside within this state.

11. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events that gave rise to Plaintiffs' claims occurred in this judicial district.

12. This Court has the authority to enter a declaratory judgment and provide preliminary and permanent injunctive relief pursuant to Federal Rules of Civil Procedure 57 and 65 and 28 U.S.C. §§ 2201 and 2202.

13. Intervenor-Plaintiffs are citizens of the United States and are registered to vote in Florida. Intervenor-Plaintiffs intend to vote in the upcoming 2022 primary and general elections. Intervenor-Plaintiffs currently reside in the following congressional districts under the enacted map.

| Intervenor-Plaintiff | County of Residence | Congressional District |
|---|---|---|
| Michael Arteaga | Orange | CD-9 |
| Melva Bentley Ross | Orange | CD-10 |
| Brandon Nelson | Orange | CD-10 |
| Andrea Hershorin | Duval | CD-04 |
| Jean Robert Louis | Hillsborough | CD-15 |
| Leni Fernandez | Pinellas | CD-12 |

| | | |
|---|---|---|
| Denny Troncoso | Marion | CD-11 |
| Geraldine Ware | Lee | CD-19 |
| Nina Wolfson | Hillsborough | CD-15 |

14. As **Exhibit A** demonstrates, Intervenor-Plaintiffs reside in districts that are overpopulated.

15. Defendant Laurel M. Lee is sued in her official capacity as the Florida Secretary of State. Secretary Lee is Florida's chief election officer and is charged with administering and overseeing the state's elections. *See* Fla. Stat. § 97.012.

16. Defendant Wilton Simpson is the President of the Florida State Senate and is named as a Defendant in his official capacity.

17. Defendant Chris Sprowls is the Speaker of the Florida House of Representatives and is named as a Defendant in his official capacity.

18. Defendant Ray Wesley Rodrigues is the Chair of the Florida Senate Reapportionment Committee and is named as a Defendant in his official capacity.

19. Defendant Jennifer Bradley is the Chair of the Florida Senate Select Subcommittee on Congressional Reapportionment and is named as a Defendant in her official capacity.

20. Defendant Thomas J. Leek is the Chair of the Florida House of Representatives Redistricting Committee and is named as a Defendant in his official capacity.

21. Defendant Tyler I. Sirois is the Chair of the Florida House of Representatives Congressional Redistricting Subcommittee and is named as a Defendant in his official capacity.

22. Defendant Ron DeSantis is the Governor of Florida and is named in his official capacity.

## FACTUAL ALLEGATIONS

### I. Florida's current congressional districts were drawn using 2010 Census data.

23. On December 2, 2015, the Florida Supreme Court adopted the state's current congressional district plan, which was drawn based on 2010 Census data.

24. According to the 2010 Census, Florida had a population of 18,801,310. A decade ago, the ideal population for each of Florida's 27 congressional districts was 696,345 persons—the state's total population divided by the number of districts.

25. The current congressional district plan adopted in 2015 has been used in every election cycle since.

### II. As a result of significant population shifts in the past decade, Florida's congressional districts are now unconstitutionally malapportioned.

26. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President,

and on August 12, 2021, census-block results for the 2020 Census were delivered to Florida lawmakers.

27. The results of the 2020 Census report that Florida's resident population, as of April 2020, is 21,538,187—an increase of more than 2.7 million people from the 2010 Census results.

28. As specified in Exhibit A, the 2020 Census data further demonstrate that population shifts since 2010 have rendered Congressional Districts 2, 3, 5, 6, 7, 8, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27 significantly underpopulated, and Congressional Districts 1, 4, 9, 10, 11, 12, 15, 16, and 19 significantly overpopulated.

29. Due to these population shifts, Florida's existing congressional districts are unconstitutionally malapportioned. And because the 2020 Census has now been completed, the 2010 population data used to draw Florida's current congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are inapplicable.

30. If used in any future elections, the current congressional district plan will unconstitutionally dilute the strength of Intervenor-Plaintiffs' votes because Intervenor-Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

31. Moreover, in addition to being malapportioned, Florida's current congressional districting plan contains one fewer district than the number of districts to which Floridians are entitled.

32. Because of the increase in Florida's population, the state has been apportioned an additional congressional district: it now has 28 seats in the U.S. House of Representatives, one more than the 27 it was apportioned following the 2010 Census.[1]

33. Federal law provides that a state should have "a number of [congressional] districts equal to the number of Representatives to which such State is so entitled." 2 U.S.C. § 2c.

34. It is therefore unlawful for any elections to be held under Florida's current 27-seat congressional map.

## III. Florida's political branches will not enact a new congressional districting plan in time for the 2022 midterm elections.

35. The Legislature and Governor have had months to reach agreement on a congressional redistricting plan but have yet to do so. In fact, the Governor has made clear that he has no intention of agreeing to the plan passed by the Legislature.

36. On February 11, 2022, the Governor declared that the Legislature's proposed CD-5 is an unconstitutional racial gerrymander and, as a result, he would

[1] Under a 28-district plan, the ideal population for each of Florida's congressional districts is 769,221.

veto any plan that contains a district with a similar configuration. He reaffirmed this position repeatedly in the weeks that followed, including mere hours before the Legislature voted to approve the proposed congressional districting plan:


37. The Governor's opposition to the Legislature's plan was not limited to press events and social media. To derail the legislative process, he asked the Florida Supreme Court to provide an advisory opinion on the constitutionality of CD-5, which the Court declined to entertain. The Governor submitted several proposed congressional districting plans to the Legislature, all of which included a drastically reconfigured CD-5. And a proxy for the Governor argued during a public redistricting subcommittee hearing that CD-5 is unconstitutional.

38. In the face of the Governor's opposition, the Legislature has steadfastly pressed on with its preferred congressional districting plan. Indeed, the Florida Senate flatly refused to consider the Governor's proposed alternative plans. And while the House paused its redistricting efforts pending the Florida Supreme Court's ruling on the Governor's request for an advisory opinion, its congressional districting plan still contains configurations of CD-5 that the Governor opposes. If any reasonable doubt remained as to the Legislature's rejection of the Governor's

position, the House and Senate extinguished it when they passed a congressional map with the very configuration of CD-5 that, only hours earlier, the Governor said he would veto.

39. The Legislature also has rejected the Governor's view on the merits. During countless hours of committee and floor hearings, the Legislature defended its proposed map as fully compliant with federal and state laws.

40. There is thus little doubt that the Legislature's proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. There is not enough time left in the legislative session even if the state's political branches were able to bridge their deep division: the current legislative session ended Monday, March 14. And the legislative supporters of the Legislature's plan do not have enough votes to override a veto. Consequently, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

## IV. Florida needs a new congressional map, immediately.

41. Voters, candidates, and Florida's election administration apparatus need a lawful congressional districting plan to ensure the orderly administration of the 2022 midterm elections.

42. Florida's new 28-district congressional districting plan must be implemented as soon as possible. Potential congressional candidates cannot make

strategic decisions—including, most importantly, whether to run at all—without knowing the state's new district boundaries, and the filing deadline for the primary election is June 17, 2022.

43. Moreover, without a valid congressional districting plan, voters will be deprived of time to organize and support candidates running in their new districts.

44. Under these circumstances—with political deadlock a near certainty—judicial intervention is needed to ensure that a lawful congressional districting plan is in place ahead of the upcoming midterm elections.

## CLAIMS FOR RELIEF

### COUNT I
### Violation of Article I, Section 2 of the U.S. Constitution
### Congressional Malapportionment

45. Intervenor-Plaintiffs reallege and reincorporate by reference paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. Article I, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives "shall be apportioned among the several States . . . according to their respective Numbers." This provision "intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote," *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that congressional districts must "achieve population equality 'as nearly as is practicable.'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

47. Article I, Section 2 thus "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from exact population equality must be narrowly justified. *See id.* at 731.

48. When Florida's current congressional district plan was implemented in 2015, the deviation in population among districts was no more than one person. Now, the population deviation is as high as 157,000 people.

49. Given the significant population shifts that have occurred since the 2010 Census—and Florida's gain of an additional congressional seat—the current congressional districts are now unlawfully malapportioned. No justification can be offered for deviations among the congressional districts given that these districts were drawn using outdated 2010 population data.

50. Any future use of Florida's current congressional district plan would violate Intervenor-Plaintiffs' constitutional right to an undiluted vote.

**WHEREFORE**, Intervenor-Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the current configuration of Florida's congressional districts violates Article I, Section 2 of the U.S. Constitution;

b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c;

d. Awarding Intervenor-Plaintiffs their costs, disbursements, and reasonable attorneys' fees; and

e. Granting such other and further relief as the Court deems just and proper.

**COUNT II**
**Violation of 2 U.S.C. § 2c**
**Congressional Malapportionment**

51. Intervenor-Plaintiffs reallege and reincorporate by reference paragraphs 1 through 44 of this Complaint as though fully set forth herein.

52. 2 U.S.C. § 2c provides that, in a state containing "more than one Representative," "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled."

53. Florida's current congressional district plan contains 27 districts. But following the 2020 Census, the state was apportioned 28 seats in the U.S. House of Representatives. As a result, the current congressional district plan violates Section

2c's requirement that the number of congressional districts be "equal to the number of Representatives to which [Florida] is so entitled."

54. Any future use of Florida's current congressional district plan would violate 2 U.S.C. § 2c and unlawfully dilute Intervenor-Plaintiffs' votes.

**WHEREFORE**, Intervenor-Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the current configuration of Florida's congressional districts violates 2 U.S.C. § 2c;

b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c;

d. Awarding Intervenor-Plaintiffs their costs, disbursements, and reasonable attorneys' fees; and

e. Granting such other and further relief as the Court deems just and proper.

Dated: March 16, 2022

Respectfully submitted,

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
**KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.**
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

John M. Devaney*
**PERKINS COIE LLP**
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
jdevaney@perkinscoie.com

Abha Khanna*
Jonathan P. Hawley*
**ELIAS LAW GROUP LLP**
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law
jhawley@elias.law

Christina A. Ford
Florida Bar No. 1011634
Joseph N. Posimato*
Graham W. White*
**ELIAS LAW GROUP LLP**
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
gwhite@elias.law

*Counsel for Intervenor-Plaintiffs*

**Pro hac vice application forthcoming*

# EXHIBIT A

| District | 2010 Population | 2020 Population | Percent Deviation |
|---|---|---|---|
| 1 | 696,345 | 807,881 | 1.27% |
| 2 | 696,345 | 727,858 | -8.76% |
| 3 | 696,345 | 766,133 | -3.96% |
| 4 | 696,345 | 871,951 | 9.31% |
| 5 | 696,345 | 748,841 | -6.13% |
| 6 | 696,345 | 796,187 | -0.19% |
| 7 | 696,345 | 787,847 | -1.24% |
| 8 | 696,344 | 783,626 | -1.77% |
| 9 | 696,344 | 955,656 | 19.8% |
| 10 | 696,345 | 874,602 | 9.64% |
| 11 | 696,344 | 820,902 | 2.91% |
| 12 | 696,345 | 807,093 | 1.18% |
| 13 | 696,345 | 727,509 | -8.80% |
| 14 | 696,345 | 787,447 | -1.29% |
| 15 | 696,345 | 819,838 | 2.77% |
| 16 | 696,345 | 884,047 | 10.82% |
| 17 | 696,345 | 779,916 | -2.23% |
| 18 | 696,344 | 794,724 | -0.37% |
| 19 | 696,345 | 834,990 | 4.67% |
| 20 | 696,344 | 776,352 | -2.68% |
| 21 | 696,345 | 787,939 | -1.23% |
| 22 | 696,345 | 785,762 | -1.50% |
| 23 | 696,345 | 769,338 | -3.56% |
| 24 | 696,345 | 742,553 | -6.91% |
| 25 | 696,345 | 771,456 | -3.29% |
| 26 | 696,345 | 787,914 | -1.23% |
| 27 | 696,345 | 739,825 | -7.26% |

# Exhibit 2

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL ARTEAGA, LENI FERNANDEZ, ANDREA HERSHORIN, JEAN ROBERT LOUIS, MELVA BENTLEY ROSS, DENNY TRONCOSO, BRANDON NELSON, GERALDINE WARE, and NINA WOLFSON,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, and ASHLEY MOODY, in her official capacity as Florida Attorney General,

Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs Michael Arteaga, Leni Fernandez, Andrea Hershorin, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson, by and through their undersigned counsel, file this Complaint for Declaratory and Injunctive Relief against Defendants Laurel M. Lee, in her official capacity as Florida Secretary of State, and Ashley Moody, in her official capacity as Florida Attorney General, and allege as follows:

**NATURE OF THE ACTION**

1. This action challenges Florida's current congressional districts as unconstitutionally malapportioned. Because of Florida's significant population growth over the last decade, its current congressional districts are significantly under- and overpopulated and in need of reapportionment. It is now evident, however, that the Florida Legislature (the "Legislature") and Governor Ron DeSantis (the "Governor") will not reach consensus on a

congressional redistricting plan to remedy these population imbalances. Plaintiffs therefore ask this Court to declare Florida's current congressional districting plan unconstitutional; enjoin Defendants from using the current congressional districting plan in any future elections; and implement a new congressional districting plan that adheres to the constitutional requirement of one person, one vote, should the Legislature and Governor fail to do so.

2. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President. These data confirmed that population shifts during the last decade have rendered Florida's congressional districts unconstitutionally malapportioned. *Cf. Clark v. Putnam County*, 293 F.3d 1261, 1263–64 (11th Cir. 2002) ("The 1990 census revealed that, as a result of these population shifts, the County's four electoral districts had become seriously malapportioned.").

3. Specifically, the current configuration of Florida's congressional districts, adopted by the Florida Supreme Court in *League of Women Voters of Florida v. Detzner*, 179 So. 3d 258 (Fla. 2015), violates Article I, Section 2 of the U.S. Constitution. Because it is unconstitutional, the current congressional districting plan cannot be used in any upcoming elections, including the 2022 midterms.

4. In Florida, congressional districting plans must be enacted through legislation, which requires the consent of both chambers of the Legislature and Governor (unless both legislative chambers override the Governor's veto by a two-thirds vote). *See* Fla. Const. art. III, § 20(b); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1278 (S.D. Fla. 2002) (per curiam) (three-judge court).

5. There is no reasonable prospect that Florida's political branches will reach consensus and enact a lawful congressional redistricting plan in time for the upcoming 2022

elections. The Governor has threatened to veto any congressional map that contains the configuration of Congressional District 5 ("CD-5") currently present in the Legislature's proposed congressional districting plan, or any similar configuration, on the baseless ground that CD-5 is an unconstitutional racial gerrymander. To make that point, he petitioned the Florida Supreme Court to issue an advisory opinion in support of his claim—an invitation that the court declined to accept. *See Advisory Op. to Governor Re: Whether Article III, Section 20(A) of Fla. Const. Requires Retention of Dist. In N. Fla.*, No. SC22-139, slip op. at 4 (Fla. Feb. 10, 2022).

6. Even still, the very next day the Governor vowed that he "will not be signing any congressional map that has" the configuration of CD-5 proposed by the Legislature. He said so again on February 28, stating, "I've said very clearly that I will veto maps that include some of these unconstitutional districts. And that is a guarantee. They can take that to the bank." And he said so again on March 4, while the Florida House of Representatives debated the state's congressional plan: "I will veto the congressional reapportionment plan currently being debated by the House. [Dead on arrival]." The House and Senate nevertheless approved that congressional districting plan only hours later.

7. There is thus little doubt that the Legislature's proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. The legislative supporters of this plan do not have enough votes to override a veto, and there is not enough time left in the legislative session to bridge the deep division between the state's political branches: the current legislative session ends today, March 11. As a result, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

8. Given the high likelihood of impasse, this Court should intervene to protect the constitutional rights of Plaintiffs and voters across the state. This Court should assume jurisdiction now and establish a schedule that will enable it to adopt a remedial congressional districting plan in the near-certain event that the political branches fail to do so.

**JURISDICTION, PARTIES, AND VENUE**

9. This Court has jurisdiction over this matter pursuant to Fla. Stat. § 26.012 and Article V, Section 5(b) of the Florida Constitution. Venue is proper pursuant to Fla. Stat. § 47.011. Plaintiffs' action for declaratory and injunctive relief is authorized by Fla. Stat. § 86.011, as well as Fla. Stat. § 26.012(3).

10. Plaintiffs are citizens of the United States and are registered to vote in Florida. Plaintiffs intend to vote in the upcoming 2022 primary and general elections. Plaintiffs currently reside in the following congressional districts under the enacted map.

| Plaintiff | County of Residence | Congressional District |
|---|---|---|
| Michael Arteaga | Orange | CD-9 |
| Melva Bentley Ross | Orange | CD-10 |
| Brandon Nelson | Orange | CD-10 |
| Andrea Hershorin | Duval | CD-04 |
| Jean Robert Louis | Hillsborough | CD-15 |
| Leni Fernandez | Pinellas | CD-12 |
| Denny Troncoso | Marion | CD-11 |
| Geraldine Ware | Lee | CD-19 |
| Nina Wolfson | Hillsborough | CD-15 |

11. As **Exhibit A** demonstrates, Plaintiffs reside in districts that are overpopulated.

12. Defendant Laurel M. Lee is sued in her official capacity as the Florida Secretary of State. Secretary Lee is Florida's chief election officer and is charged with administering and overseeing the state's elections. *See* Fla. Stat. § 97.012.

13. Defendant Ashley Moody is sued in her official capacity as the Florida Attorney General. Attorney General Moody is Florida's chief legal officer. *See* Fla. Const. art. IV, § 4(b); Fla. Stat. § 16.01.

## FACTUAL ALLEGATIONS

### I. Florida's current congressional districts were drawn using 2010 Census data.

14. On December 2, 2015, the Florida Supreme Court adopted the state's current congressional district plan, which was drawn based on 2010 Census data.

15. According to the 2010 Census, Florida had a population of 18,801,310. A decade ago, the ideal population for each of Florida's 27 congressional districts was 696,345 persons—the state's total population divided by the number of districts.

16. The current congressional district plan adopted in 2015 has been used in every election cycle since.

### II. As a result of significant population shifts in the past decade, Florida's congressional districts are now unconstitutionally malapportioned.

17. In 2020, the U.S. Census Bureau conducted the decennial census required by Article I, Section 2 of the U.S. Constitution. On April 26, 2021, the U.S. Secretary of Commerce delivered the results of the 2020 Census to the President, and on August 12, 2021, census-block results for the 2020 Census were delivered to Florida lawmakers.

18. The results of the 2020 Census report that Florida's resident population, as of April 2020, is 21,538,187—an increase of more than 2.7 million people from the 2010 Census results.

19. As specified in Exhibit A, the 2020 Census data further demonstrate that population shifts since 2010 have rendered Congressional Districts 2, 3, 5, 6, 7, 8, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, and 27 significantly underpopulated, and Congressional Districts 1, 4, 9, 10, 11, 12, 15, 16, and 19 significantly overpopulated.

20. Due to these population shifts, Florida's existing congressional districts are unconstitutionally malapportioned. And because the 2020 Census has now been completed, the 2010 population data used to draw Florida's current congressional districts are obsolete, and any prior justifications for the existing map's deviations from population equality are inapplicable.

21. If used in any future elections, the current congressional district plan will unconstitutionally dilute the strength of Plaintiffs' votes because Plaintiffs live in districts with populations that are significantly larger than those in which other voters live.

22. Moreover, in addition to being malapportioned, Florida's current congressional districting plan contains one fewer district than the number of districts to which Floridians are entitled.

23. Because of the increase in Florida's population, the state has been apportioned an additional congressional district: it now has 28 seats in the U.S. House of Representatives, one more than the 27 it was apportioned following the 2010 Census.[1]

24. Federal law provides that a state should have "a number of [congressional] districts equal to the number of Representatives to which such State is so entitled." 2 U.S.C. § 2c.

25. It is therefore unlawful for any elections to be held under Florida's current 27-seat congressional map.

[1] Under a 28-district plan, the ideal population for each of Florida's congressional districts is 769,221.

## III. Florida's political branches will not enact a new congressional districting plan in time for the 2022 midterm elections.

26. The Legislature and Governor have had months to reach agreement on a congressional redistricting plan but have yet to do so. In fact, the Governor has made clear that he has no intention of agreeing to the plan passed by the Legislature.

27. On February 11, 2022, the Governor declared that the Legislature's proposed CD-5 is an unconstitutional racial gerrymander and, as a result, he would veto any plan that contains a district with a similar configuration. He reaffirmed this position repeatedly in the weeks that followed, including mere hours before the Legislature voted to approve the proposed congressional districting plan:


28. The Governor's opposition to the Legislature's plan was not limited to press events and social media. To derail the legislative process, he asked the Florida Supreme Court to provide an advisory opinion on the constitutionality of CD-5, which the Court declined to entertain. The Governor submitted several proposed congressional districting plans to the Legislature, all of which included a drastically reconfigured CD-5. And a proxy for the Governor argued during a public redistricting subcommittee hearing that CD-5 is unconstitutional.

29. In the face of the Governor's opposition, the Legislature has steadfastly pressed on with its preferred congressional districting plan. Indeed, the Florida Senate flatly refused to consider the Governor's proposed alternative plans. And while the House paused its redistricting efforts pending the Florida Supreme Court's ruling on the Governor's request for an advisory

opinion, its congressional districting plan still contains configurations of CD-5 that the Governor opposes. If any reasonable doubt remained as to the Legislature's rejection of the Governor's position, the House and Senate extinguished it when they passed a congressional map with the very configuration of CD-5 that, only hours earlier, the Governor said he would veto.

30. The Legislature also has rejected the Governor's view on the merits. During countless hours of committee and floor hearings, the Legislature defended its proposed map as fully compliant with federal and state laws.

31. There is thus little doubt that the Legislature's proposed congressional districting plan will be vetoed by the Governor. And given this history, there is little hope that the Governor and the Legislature will overcome their differences. There is not enough time left in the legislative session even if the state's political branches were able to bridge their deep division: the current legislative session ends today, March 11. And the legislative supporters of the Legislature's plan do not have enough votes to override a veto. Consequently, Florida will be left without a congressional districting plan to remedy its malapportioned districts.

**IV. Florida needs a new congressional map, immediately.**

32. Voters, candidates, and Florida's election administration apparatus need a lawful congressional districting plan to ensure the orderly administration of the 2022 midterm elections.

33. Florida's new 28-district congressional districting plan must be implemented as soon as possible. Potential congressional candidates cannot make strategic decisions—including, most importantly, whether to run at all—without knowing the state's new district boundaries, and the filing deadline for the primary election is June 17, 2022.

34. Moreover, without a valid congressional districting plan, voters will be deprived of time to organize and support candidates running in their new districts.

35. Under these circumstances—with political deadlock a near certainty—judicial intervention is needed to ensure that a lawful congressional districting plan is in place ahead of the upcoming midterm elections.

## CLAIMS FOR RELIEF

### COUNT I
### Violation of Article I, Section 2 of the U.S. Constitution
### Congressional Malapportionment

36. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. Article I, Section 2 of the U.S. Constitution provides that members of the U.S. House of Representatives "shall be apportioned among the several States . . . according to their respective Numbers." This provision "intends that when qualified voters elect member of Congress each vote be given as much weight as any other vote," *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964), meaning that congressional districts must "achieve population equality 'as nearly as is practicable.'" *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry*, 376 U.S. at 7–8).

38. Article I, Section 2 thus "permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." *Karcher*, 462 U.S. at 730 (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969)). Any variation from exact population equality must be narrowly justified. *See id.* at 731.

39. When Florida's current congressional district plan was implemented in 2015, the deviation in population among districts was no more than one person. Now, the population deviation is as high as 157,000 people.

40. Given the significant population shifts that have occurred since the 2010 Census—and Florida's gain of an additional congressional seat—the current congressional districts are now

unlawfully malapportioned. No justification can be offered for deviations among the congressional districts given that these districts were drawn using outdated 2010 population data.

41. Any future use of Florida's current congressional district plan would violate Plaintiffs' constitutional right to an undiluted vote.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the current configuration of Florida's congressional districts violates Article I, Section 2 of the U.S. Constitution;

b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c; and

d. Granting such other and further relief as the Court deems just and proper.

**COUNT II**
**Violation of 2 U.S.C. § 2c**
**Congressional Malapportionment**

42. Plaintiffs reallege and reincorporate by reference paragraphs 1 through 35 of this Complaint as though fully set forth herein.

43. 2 U.S.C. § 2c provides that, in a state containing "more than one Representative," "there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled."

44. Florida's current congressional district plan contains 27 districts. But following the 2020 Census, the state was apportioned 28 seats in the U.S. House of Representatives. As a result, the current congressional district plan violates Section 2c's requirement that the number of

congressional districts be "equal to the number of Representatives to which [Florida] is so entitled."

45. Any future use of Florida's current congressional district plan would violate 2 U.S.C. § 2c and unlawfully dilute Plaintiffs' votes.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment:

a. Declaring that the current configuration of Florida's congressional districts violates 2 U.S.C. § 2c;

b. Enjoining Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing enforcing, or giving any effect to Florida's current congressional districting plan;

c. Adopting a new congressional districting plan that complies with Article I, Section 2 of the U.S. Constitution and 2 U.S.C. § 2c; and

d. Granting such other and further relief as the Court deems just and proper.

Dated: March 11, 2022

Respectfully submitted,

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
**KING, BLACKWELL, ZEHNDER & WERMUTH, P.A.**
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

John M. Devaney*
**PERKINS COIE LLP**
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
jdevaney@perkinscoie.com

Abha Khanna*
Jonathan P. Hawley*
**ELIAS LAW GROUP LLP**
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law
jhawley@elias.law

Christina A. Ford
Florida Bar No. 1011634
Joseph N. Posimato*
Graham W. White*
**ELIAS LAW GROUP LLP**
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
gwhite@elias.law

*Counsel for Plaintiffs*

**Pro hac vice application forthcoming*

**EXHIBIT A**

| District | 2010 Population | 2020 Population | Percent Deviation |
|---|---|---|---|
| 1 | 696,345 | 807,881 | 1.27% |
| 2 | 696,345 | 727,858 | -8.76% |
| 3 | 696,345 | 766,133 | -3.96% |
| 4 | 696,345 | 871,951 | 9.31% |
| 5 | 696,345 | 748,841 | -6.13% |
| 6 | 696,345 | 796,187 | -0.19% |
| 7 | 696,345 | 787,847 | -1.24% |
| 8 | 696,344 | 783,626 | -1.77% |
| 9 | 696,344 | 955,656 | 19.8% |
| 10 | 696,345 | 874,602 | 9.64% |
| 11 | 696,344 | 820,902 | 2.91% |
| 12 | 696,345 | 807,093 | 1.18% |
| 13 | 696,345 | 727,509 | -8.80% |
| 14 | 696,345 | 787,447 | -1.29% |
| 15 | 696,345 | 819,838 | 2.77% |
| 16 | 696,345 | 884,047 | 10.82% |
| 17 | 696,345 | 779,916 | -2.23% |
| 18 | 696,344 | 794,724 | -0.37% |
| 19 | 696,345 | 834,990 | 4.67% |
| 20 | 696,344 | 776,352 | -2.68% |
| 21 | 696,345 | 787,939 | -1.23% |
| 22 | 696,345 | 785,762 | -1.50% |
| 23 | 696,345 | 769,338 | -3.56% |
| 24 | 696,345 | 742,553 | -6.91% |
| 25 | 696,345 | 771,456 | -3.29% |
| 26 | 696,345 | 787,914 | -1.23% |
| 27 | 696,345 | 739,825 | -7.26% |

# Exhibit 3

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

| | | |
|---|---|---|
| **MICHAEL GONIDAKIS, *et al.*,** | : | |
| | : | |
| **Plaintiffs,** | : | **Case No. 2:22-cv-0773** |
| | : | |
| **v.** | : | **Chief Judge Algenon L. Marbley** |
| | : | |
| **OHIO REDISTRICTING COMMISSION, *et al.*,** | : | **Magistrate Judge Elizabeth P. Deavers** |
| | : | |
| **Defendants.** | : | |

**ORDER ON MOTIONS TO INTERVENE**

This matter is before the Court on five Motions to Intervene (ECF Nos. 3, 6, 7, 12, 34) filed by a variety of Ohio voters, legislators, and advocacy groups. For the reasons that follow, the Motions to Intervene are **GRANTED**. The Simon Parties' Motion to Object *Instanter* (ECF No. 51) is **DENIED**.



## I. BACKGROUND

Plaintiffs allege that Ohio's state legislative map is unconstitutionally malapportioned, in violation of the Fourteenth Amendment to the United States Constitution, because it has not been updated to reflect population changes in the 2020 Census; and that the resultant delay and uncertainty in the state's redistricting process has deprived Plaintiffs of First Amendment associational freedoms. (ECF No. 8). The Amended Complaint asks the Court to declare the current legislative districts unconstitutional; permanently enjoin the Ohio Secretary of State from conducting elections and related activity under the current legislative districts; implement the second proposed map of the Ohio Redistricting Commission (hereinafter, the "Commission") that the Ohio Supreme Court recently rejected; stay any election-related deadlines; and retain jurisdiction while such plans are enacted. (*Id.* at 15).

Five groups have moted to intervene, summarized as follows:

1. The League of Women Voters of Ohio and the A. Philip Randolph Institute of Ohio (the "LWVO Parties") moved to intervene as Defendants on February 20. (ECF No. 3). These organizations challenged the Commission's maps in state court, and their lawsuit is one the consolidated cases now before the Ohio Supreme Court.
2. Vernon Sykes and Allison Russo moved to intervene as Defendants, also on February 20. (ECF No. 6). Sykes and Russo are Democratic state legislators and members of the Commission, and they have opposed the Commission's maps in litigation before the Ohio Supreme Court.
3. Kenneth Simon, Lewis Macklin, and Helen Youngblood (the "Simon Parties") moved to intervene as Plaintiffs on February 21. (ECF No. 7). These individuals filed an older, separate case in the Northern District of Ohio (Case No. 4:21-cv-2267), challenging the Commission's redistricting plans on grounds of racial gerrymandering.
4. Bria Bennett, Regina Adams, Kathleen M. Brinkman, Martha Clark, Susanne Dyke, Meryl Neiman, Holly Oyster, Constance Rubin, and Everett Totty (the "Bennett Parties") moved to intervene as Plaintiffs on February 22. (ECF No. 12). These individuals challenged the Commission's maps in state court, and their lawsuit is one the consolidated cases now before the Ohio Supreme Court.
5. The Ohio Organizing Collaborative; the Council on American-Islamic Relations, Ohio; the Ohio Environmental Council; Samuel Gresham, Jr.; Ahmad Aboukar; Mikayla Lee; Prentiss Haney; Pierrette Talley; and Crystal Bryant (the "OOC Parties") moved to intervene as Plaintiffs on February 24. (ECF No. 34). These individuals challenged the

Commission's maps in state court, and their lawsuit is one the consolidated cases now before the Ohio Supreme Court.

Plaintiffs have opposed intervention by the Simon Parties (ECF No. 20) and by Sykes and Russo (ECF No. 50). The remaining intervenors are unopposed. The Court will consider these Motions together.

## II. LAW AND ANALYSIS

The Motions seek either intervention as of right under Federal Rule of Civil Procedure 24(a)(2), or, in the alternative, permissive intervention under Rule 24(b). Intervention as of right requires a timely motion by a movant 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). Movants must establish all elements of the four-part test: "1) the application was timely filed; 2) the applicant possesses a substantial legal interest in the case; 3) the applicant's ability to protect its interest will be impaired without intervention; and 4) the existing Parties will not adequately represent the applicant's interest." *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011) (citing *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999)). "Each of these elements is mandatory, and therefore failure to satisfy any one of the elements will defeat intervention under the Rule." *Id.* (citing *United States v. Michigan*, 424 F.3d 438, 443 (6th Cir. 2005)).

Permissive intervention under Rule 24(b)(1) enables a court, in its discretion, to allow intervention on a timely motion by a movant who "has a claim or defense that shares with the main action a common question of law or fact." If the motion is timely and there is at least one common question of law or fact, the Court considers whether intervention would cause undue delay or

prejudice to the original Parties, and any other relevant factors. Fed. R. Civ. P. 24(b)(3); *J4 Promotions, Inc. v. Splash Dogs, LLC*, 2010 WL 1839036, at *1 (S.D. Ohio May 3, 2010) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997)).

A second variety of permissive intervention under Rule 24(b)(2) applies to "a federal or state governmental officer or agency," where their "claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order." Again, the Court must consider delay or prejudice before granting this type of intervention. Fed. R. Civ. P. 24(b)(3).[1]

**A. Motions by State-Court Plaintiffs**

Of the five sets of proposed intervenors, Plaintiffs oppose only two. The other three sets—the LWVO Parties, Bennett Parties, and OOC Parties—include non-profits groups and individual Ohio voters, all of whom are Parties in the state redistricting cases currently before the Ohio Supreme Court. (ECF Nos. 3, 12, 34). *See also League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, 2022 WL 110261 (Ohio Jan. 12, 2022); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n.*, 2022 WL 354619 (Ohio Feb. 7, 2022). While these Motions are unopposed, the Court nonetheless will evaluate their merits.



Each intervenor alleges it is entitled to intervention as of right under Federal Rule of Civil Procedure 24(a), or, in the alternative, permissive intervention under Rule 24(b). The grounds presented, however, plainly favor permissive intervention. In light of this conclusion, the Court need not consider the alternative motion for intervention as of right. *Ohio Democratic Party v. Blackwell*, 2005 WL 8162665, *4 (S.D. Ohio Aug. 26, 2005) ("When a party has moved for intervention as of right, but the facts more appropriately suggest that permissive intervention might

[1] Only Sykes and Russo move to intervene under this rule, as an alternative ground to Rules 24(a)(2) or (b)(1). (ECF No. 6 at 3).

be granted . . . the Court is free to consider [] permissive intervention[.]"); *see also Buck v. Gordon*, 959 F.3d 219, 222–23 (6th Cir. 2020).

*1. Timeliness*

The unopposed intervenors assert their motions are timely, particularly given the minimal time elapsed between their filings and Plaintiffs' Complaint—four business days at the longest. (*See* ECF No. 3 at 8; No. 12 at 8; No. 34 at 6). Moreover, they emphasize that, at the time of filing, no responsive pleadings had been filed. (*Id.*).

Courts in this Circuit look to the "totality of the circumstances" in determining timeliness. *Davis v. Lifetime Cap., Inc.*, 560 F. App'x 477, 490 (6th Cir. 2014). While there is no absolute amount of time that makes a motion untimely, permissive intervention is inappropriate where the circumstances show the proposed intervenor should have filed earlier. *Bay Mills Indian Cmty. v. Snyder*, 720 F. App'x 754, 759 (6th Cir. 2018). No such concern exists here. As detailed above, these intervenors filed their respective motions within one week of Plaintiffs initiating this action. Courts in this District have viewed similar motions as timely. *See, e.g.*, *Blankenship v. Blackwell*, 341 F. Supp. 2d 911, 918 (S.D. Ohio 2004) (motion filed one day after action began was timely). Moreover, as detailed below, there is little risk of undue delay or prejudice.



*2. Common Question of Law or Fact*

Pursuant to Rule 24(b), permissive intervention is appropriate if the motion is timely and the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." The unopposed intervenors propose to raise claims they contend will squarely address the factual and legal premise of this case, namely the constitutionality of Ohio's existing legislative map and those proposed by the Commission. (*See* ECF No. 3 at 11; No. 12 at 11–12; No. 34 at 8). Furthermore, these intervenors argue they share a common question of law

with the existing Plaintiffs as to the appropriate remedy in this case and the necessity of a three-judge panel. (*Id.*). In support of this position, the unopposed intervenors highlight the Wisconsin case, *Hunter v. Bostelmann*, where Parties in the state-court redistricting cases were granted permissive intervention in the accompanying federal action. 2021 WL 4206654, at *1 (W.D. Wis. Sept. 16, 2021).

Upon review of the unopposed intervenors' proposed Complaints (ECF Nos. 3-1, 12-1, 34-1), the Court finds sufficiently common questions of both law and fact to merit permissive intervention. Plaintiffs ask this Court to declare Ohio's current legislative maps unconstitutional and to adopt the Commission's second plan. (ECF No. 8 ¶ 6). A common question of law surrounds the constitutionality of this second plan, as the unopposed intervenors argued in the ongoing state-court action. Further, a common question of fact exists as to whether the state-court proceedings have reached an impasse, with Plaintiffs and the unopposed intervenors taking opposite positions. Accordingly, as the unopposed intervenors are not seeking to litigate an issue "entirely tangential to the relevant question in the original lawsuit," common questions of both law and fact exist, and permissive intervention is appropriate. *Kirsch v. Dean*, 733 F. App'x 268, 279 (6th Cir. 2018).



*3. Undue Delay or Prejudice*

While the decision to allow intervention is committed to the Court's discretion, it must consider "whether the intervention will unduly delay or prejudice the adjudication of the original Parties' rights." Fed. R. Civ. P. 24(b)(3). The unopposed intervenors argue there is no such risk, given the nascent stage of this litigation as well as their involvement in the ongoing state-court litigation. (*See* ECF No. 3 at 12; No. 12 at 12; No. 34 at 8). To the latter point, these intervenors argue it is *they* who will suffer prejudice absent intervention, as they will be denied the opportunity to vindicate interests which are common to both sets of cases. (*Id.*).

The Court concurs there is no risk of undue delay or prejudice. The unopposed intervenors are "not attempting to inject wholly [] unnecessary, or irrelevant issues into this litigation[,]" nor are they raising unseen or unanticipated defenses. *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 765 (E.D. Mich. 2020); *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018). Further, these intervenors filed their respective motions at the earliest possible stage of litigation—no more than four business days after the Complaint was filed. Ultimately, the Court finds the unopposed intervenors are "in a strong position to participate in all stages of this litigation, virtually from inception." *Id*.

Given the foregoing analysis, this Court finds the LWVO Parties, Bennet Parties, and OCC Parties all are entitled to permissive intervention under Rule 24(b)(1). Accordingly, their unopposed Motions (ECF Nos. 3, 12, 34) are **GRANTED**.



**B. Motion by Racial Gerrymandering Plaintiffs**

The Simon Parties move to intervene as of right under Rule 24(a)(2), or permissively under Rule 24(b)(1). (ECF No. 7 at 4, 6). The Court analyzes this Motion under intervention as of right. Given its ruling, as will be discussed, "the Court need not consider the alternative motion for permissive intervention under Rule 24(b)." *Blankenship*, 341 F. Supp. 2d at 918.

The Simon Parties argue that their Motion is timely; that they have a significant interest in the litigation; that their interest might be impaired by this Court's disposition of the case; and that their interest is inadequately represented by existing parties. (ECF No. 7 at 5–6). As to the latter three factors, the Simon Parties assert that they alone have raised the issue of "the racially discriminatory impact of the proposed plans." (*Id.*).

Plaintiffs respond by attacking just one of the required factors for intervention as of right: that the Simon Parties do not "have a substantial legal interest in the subject matter of the case."

(ECF No. 20 at 6). Specifically, because the Simon Parties' claims concern the *first* map approved by the Ohio Redistricting Commission, Plaintiffs maintain there is no overlap with their own grievances of having *no* approved map. (*Id.*). This is true, according to Plaintiffs, even though Senate District 33 (the subject of the Simon Parties' Northern District case) is the same under the Commission's first and second plans. (*Id.*). Plaintiffs argue that the Simon Parties challenged the procedures for adopting Senate District 33 under the first map, but not the second—which Plaintiffs seek to have this Court institute. (*Id.*). Therefore, Plaintiffs state, the legal claims of the Simon Parties are necessarily distinct from theirs. (*Id.*).

It should be noted that "[i]n the Sixth Circuit, the standard for intervention as a matter of right is lenient. An intervenor does not need the same standing to intervene as is required to initiate a lawsuit." *Zeeb Holdings, LLC v. Johnson*, 338 F.R.D. 373, 376 (N.D. Ohio 2021) (citing *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991)). Additionally, an intervenor "need not have a 'specific legal or equitable interest' to qualify for intervention under Rule 24(a)(2)," which is "'broadly construed in favor of potential intervenors.'" *Id.* (quoting *Purnell*, 925 F.2d at 948, 950). With this standard in mind, the Court will consider the four factors for intervention as of right.



*1. Timeliness*

The Sixth Circuit has held that "[t]imeliness is to be determined from all the circumstances," including:

> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his or her interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

*United States v. City of Detroit*, 712 F.3d 925, 930–31 (6th Cir. 2013) (citing *Grubbs v. Norris*, 870 F.2d 343, 345–46 (6th Cir.1989)).

The Simon Parties argue this point unopposed, asserting they meet all five timeliness considerations. (ECF No. 7 at 5). The Simon Parties focus on just two considerations: the point to which the suit has progressed, and the prejudice inquiry. First, they note that they filed their Motion to Intervene a mere three days after Plaintiffs initiated this case. (*Id.*). Second, they argue that the original parties will not be prejudiced because the case is in such an early stage. (*Id.*).

The Court finds that the timeliness requirement is satisfied. First, as the Simon Parties note, this case was filed only a few days before their Motion. While "[t]he mere passage of time . . . is not particularly important to the progress-in-suit factor," here, the amount of time passed speaks to the heart of the inquiry: "the stage of the proceedings." *City of Detroit*, 712 F.3d at 931. Generally, "an examination of the timing of the intervenor's motion in light of the point to which the suit has progressed is most relevant when the motion arrives at a point in time that would require reopening discovery, delaying trial, or some other prejudicial delay to the Parties." *Shy v. Navistar Int'l Corp.*, 291 F.R.D. 128, 133 (S.D. Ohio 2013) (internal quotation marks omitted). Allowing the Simon Parties to intervene at this stage—within days of filing of the complaint and before a preliminary injunction is heard or decided—would not result in the prejudicial delay described in *Shy*. This consideration—as well as the third, dealing with how long intervenors knew about the case before filing their motion—weighs heavily in favor of timeliness.



The remaining considerations likewise favor intervention. The Simon Parties have a legitimate purpose for intervention: namely, they object to Plaintiffs' requested remedy, Court-ordered implementation of the Commission's second map. The fourth consideration—prejudice to the original parties—is not opposed. Finally, no unusual circumstances are present to militate against intervention. Taken together, all considerations are that the Court should not block the Simon Parties' Motion on grounds of timeliness.

*2. Substantial Legal Interest*

The Simon Parties also assert they have a substantial legal interest that may be affected by the outcome of this litigation, as they are the only litigants to raise the issue of racial gerrymandering. (ECF No. 7 at 6). Notably, this is the only factor opposed by Plaintiffs. (*See* ECF No. 20 at 6).

The Sixth Circuit requires that "intervenor(s) . . . have a 'direct, substantial interest in the litigation, which must be significantly protectable.'" *Zeeb Holdings*, 338 F.R.D. at 378 (quoting *Purnell*, 925 F.2d at 947). Accordingly, "[a] generalized interest or concern will not suffice." *Id.* (citing *Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 782 (6th Cir. 2007)). That said, this Circuit has adopted "'a rather expansive notion of the interest sufficient to invoke intervention of right.'" *Id.* (quoting *Miller*, 103 F.3d at 1245); *see also Oakland Cty. v. Fed. Nat'l Mortg. Ass'n*, 276 F.R.D. 491, 498 (E.D. Mich. 2011). For example, an intervenor need not meet the requirements of Article III standing required to "initiate a lawsuit." *Miller*, 103 F.3d at 1245 (citing *Purnell*, 925 F.2d at 948). Finally, "close cases should be decided in favor of recognizing an interest under Rule 24(a)." *Zeeb Holdings*, 338 F.R.D. at 378 (citing *Miller*, 103 F.3d at 947).



While the Plaintiffs say otherwise, it is difficult to argue that the Simon Parties do not have substantial interests at stake. Particularly, they oppose the very remedy Plaintiffs ask this court to order. Put differently, if this Court grants what Plaintiffs seek—implementation of the second map—the Simon Parties argue that their statutory and constitutional rights will be violated. And although Plaintiffs urge this Court to focus solely on whether malapportionment exists in light of the 2020 census, the Court cannot set aside their requested remedy. At a higher level of generality, each contingent is asking this Court to remedy Ohio's electoral map. But there can be only one map. In alleging that the remedy Plaintiffs seek is constitutionally infirm, the Simon Parties clearly

are attempting to protect a "direct, substantial interest in the litigation, which [is] significantly protectable." *Zeeb Holdings*, 338 F.R.D. at 378. Thus, the Court finds that this element is satisfied.

*3. Impairment*

A proposed intervenor has "a minimal burden [of] show[ing] that the ability to protect its interest may be impaired without intervention." *Oakland Cty.*, 276 F.R.D. at 498 (citing *Pride v. Allstate Ins. Co.*, 2011 WL 692299, at *3 (E.D. Mich. Feb. 18, 2011)). Indeed, "[c]ourts generally allow intervention if a party *might* be practically disadvantaged by the disposition of the action." *Zeeb Holdings*, 338 F.R.D. at 379 (emphasis in original). Moreover, "[p]roposed intervenors 'need not show that substantial impairment of their interest will result, nor from the language of Rule 24(a), that impairment will inevitably ensue from an unfavorable disposition.'" *Ark Encounter, LLC v. Stewart*, 311 F.R.D. 414, 423 (E.D. Ky. 2015) (quoting *Purnell*, 925 F.2d at 948).

The Simon Parties are challenging the very map that Plaintiffs ask this court to instate. Although they need not show impairment in any definite terms, the Simon Parties' ability to protect that interest almost certainly would be impaired by an unfavorable disposition of this case. The Simon Parties have met and exceeded this prong.



*4. Inadequate Representation*

In this Circuit, adequate representation is presumed "[w]hen a proposed intervenor and an existing party to the suit share the same ultimate objective in the litigation." *Ohio v. United States Envtl. Prot. Agency*, 313 F.R.D. 65, 69 (S.D. Ohio 2016). Assuming this presumption attaches, the intervenor must show more than "a mere disagreement over litigation strategy." *Ark Encounter*, 311 F.R.D. at 425 (internal quotation marks omitted). When a movant seeks to overcome the presumption of adequate representation, several considerations are reviewed: "(1) whether there is collusion between the representative and an opposing party; (2) whether the representative fails in the fulfillment of its duty; and (3) whether the representative has an interest adverse to the proposed

intervenor." *Ohio v. United States Envtl. Prot. Agency*, 313 F.R.D. at 68–69 (citing *Purnell*, 925 F.2d at 949–50). "'[W]hile the respective interests do not need to be wholly adverse in order to support intervention, they must at least be different.'" *Ark Encounter*, 311 F.R.D. at 425 (alteration in original) (quoting *Reliastar Life Ins. Co. v. MKP Invs.*, 565 F. App'x. 369, 374 (6th Cir. 2014)).

As a threshold matter, it does not appear that the presumption of adequacy would attach here. Generally, the presumption applies when an intervenor and the relevant existing party (*i.e.*, Plaintiffs) seek the same outcome. Although the Simon Parties and the Plaintiffs each purport to seek a constitutional map, they are deeply at odds about what that means. In short, this is not a situation where the proposed intervenor and the relevant litigant share the same objective but quibble about litigation strategy. Rather, this is the extreme scenario alluded to in *Ark Encounter*, where the parties are almost wholly adverse. 311 F.R.D. at 425. As such, the Simon Parties' interest is not adequately represented. This prong is satisfied.

In conclusion, the Court finds that the Simon Parties are entitled to intervene as of right under Rule 24(a)(2). Because the Simon Parties expressly seek limited intervention, the Court next must address the propriety of this specific request.



*5. Limited Intervention*

Importantly, the Simon Parties only request intervention to the extent "the Court is inclined to deny the pending motions to stay or dismiss." (ECF No. 7 at 2). Further, the Simon Parties communicate their intent to protect their interests "under the first-to-file rule and to vindicate their federal right [to] be free from racially-based vote dilution in redistricting." (*Id.*).

The concept of limited intervention saves courts from facing the prospect of "an all-or-nothing choice between grant or denial." *City of Detroit*, 712 F.3d at 931. *See also* Fed. R. Civ. P. 24 Advisory Committee Note, 1966 Amendments ("Intervention of right . . . may be subject to appropriate conditions or restrictions responsive among other things to the requirements of

efficient conduct of the proceedings."). In line with these principles, the district court "retains broad discretion in setting the precise scope of intervention." *City of Detroit*, 712 F.3d at 933.

Here, the Court will exercise its discretion by granting the Simon Parties' request and permitting them to intervene "in the event this Honorable Court does not stay or dismiss this action." (ECF No. 7 at 2). This necessarily will limit the role of the Simon Parties in the early stages of litigation.[2] If this Court denies any motions to stay or dismiss, the Simon Parties should seek leave to file supplemental briefing, whether on the first-to-file rule or any other issues they wish to raise at that time. The Simon Parties' Motion (ECF No. 7) is **GRANTED**, consistent with the foregoing.

### C. Motion by Sykes and Russo

The final Motion to Intervene is brought by Senator Vernon Sykes and House Minority Leader Allison Russo, who are Democratic state legislators and members of the Commission. (ECF No. 6). Sykes and Russo move to intervene as Defendants, both as of right (Rule 24(a)(2)) and permissively (Rules 24(b)(1) and (2)). (*Id.*). Plaintiffs oppose on four grounds (ECF No. 50), and Sykes and Russo filed a reply brief addressing each. (ECF No. 52).[3] As with the other state-court litigants, the Court determines that the facts most readily support permissive intervention under Rule 24(b)(1). The Court relies chiefly on *League of Women Voters of Michigan v. Johnson*, which held that the denial of permissive intervention to legislators in a redistricting case was an abuse of discretion. 902 F.3d 572 (6th Cir. 2018). Therefore, the Court will consider the permissive



[2] Nevertheless, the Court determines that the Simon Parties may participate in the scheduled Local Rule 65.1 conference, consistent with its "informal" and "preliminary" nature. *See* S.D. Ohio Loc. R. 65.1(a).

[3] The Simon Parties also moved to object *instanter* to a portion of Plaintiffs' opposition brief regarding appointment of a three-judge panel. (ECF No. 51). The Simon Parties' Motion is **DENIED**. The Court will hear their arguments at the appropriate time, but the Motion underlying this briefing only concerns Plaintiffs, Sykes, and Russo.

intervention elements in turn and will not reach Sykes and Russo's arguments for intervention under Rules 24(a)(2) or (b)(2).

*1. Timeliness*

Plaintiffs do not challenge Sykes and Russo's Motion as untimely. Similar to other proposed intervenors, Sykes and Russo filed their Motion within two days of the Complaint and before any responsive pleadings. *Cf. Blankenship*, 341 F. Supp. 2d at 918. Moreover, the case has not yet progressed beyond its early stages. For substantially the same reasons discussed for the other proposed intervenors, the Court views Sykes and Russo's Motion as timely.

*2. Common Question of Law or Fact*

Plaintiffs also do not challenge that Sykes and Russo raise common questions of law or fact. As stated in their Motion, Sykes and Russo propose to contest issues of standing and ripeness relevant to the appointment of a three-judge panel (ECF No. 6 at 2–3), a matter on which Plaintiffs are urging prompt consideration. In *League of Women Voters of Michigan*, the Sixth Circuit viewed a similar standing challenge as a "clear" indicator that the legislators "intended to raise common questions of law and fact." 902 F.3d at 577. So too here.



*3. Undue Delay or Prejudice*

Plaintiffs directly contest delay and prejudice, arguing that "[p]ermitting the Sykes and Russo intervention would unnecessarily delay resolution of this time-sensitive case and waste taxpayer money advancing redundant interests." (ECF No. 50 at 1). Tellingly, the former argument was addressed head-on in *League of Women Voters of Michigan*, with the court finding "there was little risk that allowing the Congressmen to intervene would have interfered with the court's ability to reach an expeditious resolution," and that the district court abused discretion in holding otherwise. 902 F.3d at 578. The issues Sykes and Russo intend to raise, including justiciability,

are certain to come before the Court in some form. While Sykes and Russo's presence may require Plaintiffs to address distinct arguments and perspectives on those issues, it will not cause the sort of redundant motions practice that would lead to actual delay.

Plaintiffs' subsidiary argument, regarding waste of taxpayer resources, fares no better. Plaintiffs cannot claim that the spending of tax revenues prejudices *them* in any manner that is distinct from the taxpaying public at large. Those sorts of generalized grievances are not judicially cognizable. *See, e.g.*, *Massachusetts v. Mellon*, 262 U.S. 447 (1923) (rejecting taxpayer standing). Additionally, this use of tax dollars may well prove to be efficient. A correct resolution of this case in the first instance could obviate further litigation that quickly would eclipse the cost of Sykes and Russo's counsel. And correct resolution is most probable when the Court is apprised of all pertinent interests.



*4. Other Arguments*

Plaintiffs raise three other arguments against intervention. First, Plaintiffs contend that "[a] single judge lacks authority to grant or deny a motion to intervene before complying with 28 U.S.C. § 2284." (ECF No. 50 at 1). Section 2284 provides that "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." 28 U.S.C. § 2284(a). Citing that statute, Plaintiffs formally have requested a three-judge panel. (ECF No. 8 at 1). The requirement of a three-judge panel is a matter the Court intends to take up more fully at the Local Rule 65.1 conference. For present purposes, however, the Court will note that "[a] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts." *Gonzalez v. Automatic Emps. Credit Union*, 419 U.S. 90, 100 (1974) (quoted with approval by *Shapiro v. McManus*, 577 U.S. 39, 44–45 (2015)).

Sykes and Russo note in their Motion that they intend to raise issues of jurisdiction and justiciability, arguing that the Court should "defer consideration of the case by entering a stay, as required by *Growe v. Emison*, 507 U.S. 25 (1993), to allow proceedings before the Ohio Supreme Court to continue." (ECF No. 6 at 1–2).

Plaintiffs' opposition to the Motion to Intervene relates to the language in Section 2284(b)(3), which states that "[a] single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as [enumerated]";[4] provided, however, that "[a]ny action of a single judge may be reviewed by the full court at any time before final judgment." Plaintiffs reason that if the Court were to rule on the Motions to Intervene before a panel is designated, "the right of any party to have that action reviewed by the full three-judge court would be denied." (ECF No. 50 at 3). Yet if the case is deemed nonjusticiable, then there can be no right to panel review because no panel is required. On the other hand, if the case is deemed justiciable, then a panel will be appointed promptly; and Plaintiffs cite no authority that would preclude the panel from reviewing actions taken prior to its formation. The plain language of the statute provides that the single judge's action "may be reviewed by the full court *at any time* before final judgment." 28 U.S.C. § 2284(b)(3) (emphasis added). Accordingly, the Court determines that it may rule on the Motions to Intervene, subject to a panel's possible revisiting of that ruling if and when one should be convened. It would be illogical for the Court to reserve its ruling until a panel is named, given that the proposed intervenors intend to be heard on that threshold question of whether a panel is proper as the case stands today.

Second, Plaintiffs argue that "[t]he Sykes and Russo Motion to Intervene fails to attach a proper pleading as required by Civil Rule 24." (ECF No. 50 at 1). This argument is at odds with

[4] Specifically, a single judge cannot "appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits." *Id.*

the Sixth Circuit's "'lenient approach to the requirements of Rule 24(c).'" *League of Women Voters of Mich.*, 902 F.3d at 580 (quoting *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314 (6th Cir. 2005); and finding the district court abused discretion in denying intervention even where intervenors failed to attach a pleading). Plaintiffs argue they have been prejudiced, as they "have not yet had the opportunity to consider and formulate a response to any fully developed arguments from Senator Sykes and Leader Russo, despite the time-sensitive nature of this case." (ECF No. 50 at 3). In that respect, however, Sykes and Russo are no different from *the named Defendant*, Ohio Secretary of State LaRose, who has yet to answer. Sykes and Russo's Motion discusses their justiciability argument (ECF No. 6 at 1–2), which is enough to "set[] out the claim or defense for which intervention is sought," Fed. R. Civ. P. 24(c), and to permit Plaintiffs to formulate their response.

Third, Plaintiffs state that Sykes and Russo's "official capacity interests are already adequately represented by existing parties." (ECF No. 50 at 1). This element is properly analyzed for intervention of right; but in any event, the Court recognizes that Sykes and Russo's interests diverge significantly from both Plaintiffs and Defendant LaRose. Plaintiffs urge the Court to adopt a map that Sykes and Russo opposed, and which LaRose supported. As Sykes and Russo note in their Motion, "[t]he Ohio Supreme Court has recognized their divergent interests not only by allowing them to file their own briefs, but by allotting them argument time to be shared with the petitioners—not the Commission." (ECF No. 6 at 2). Though Plaintiffs observe that Sykes and Russo's interests have been aligned momentarily with LaRose's, regarding scheduling matters (ECF No. 50 at 4), it cannot be said that LaRose will continue to protect Sykes and Russo's interests adequately if and when this case reaches its remedies stage. Relatedly, in *League of Women Voters of Michigan*, the Sixth Circuit recognized several divergent interests between

intervenor legislators and the Secretary of State, including the "direct[] and substantial[]" ways in which the "contours of the map affect the [legislators]," and the "representative interest" in serving constituents and advancing legislation. 902 F.3d at 579.

In summary, the Court concludes that Sykes and Russo are entitled to intervene permissively under Rule 24(b)(1). Sykes and Russo's Motion to Intervene (ECF No. 6) is **GRANTED**.

## III. CONCLUSION

For the reasons thus stated, the several Motions to Intervene (ECF Nos. 3, 6, 7, 12, 34) are **GRANTED**. The Simon Parties' Motion to Object *Instanter* (ECF No. 51), regarding the Sykes and Russo briefing, is **DENIED**. The LWVO Parties, Sykes and Russo, the Simon Parties, the Bennett Parties, and the OOC Parties may join this case.

**IT IS SO ORDERED.**

**ALGENON L. MARBLEY**
**CHIEF UNITED STATES DISTRICT JUDGE**

**DATED: March 4, 2022**

# Exhibit 4

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| WILLIAM C. TOTH JR., *et al.*, | : | Civil No. 1:22-CV-00208 |
| Plaintiffs, | : | |
| v. | : | |
| LEHIGH M. CHAPMAN, in her official capacity as Acting Secretary for the Commonwealth, *et al.*, | : | |
| Defendants. | : | Judge Jennifer P. Wilson |

**ORDER**



Before the court is a motion to intervene as Defendants filed by Carol Ann Carter, Monica Parrilla, Rebecca Poyourow, William Tung, Roseanne Milzaao, Burt Siegel, Susan Cassanelli, Lee Cassanelli, Lynn Wachman, Michael Guttman, Maya Fonkeu, Brady Hill, Mary Ellen Balchunis, Tom Dewall, and Stephanie McNulty (the "Carter Petitioners"). (Doc. 14.) For the reasons that follow, the motion will be granted.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This declaratory action was initiated via complaint on February 11, 2022. (Doc. 1.) On February 20, 2022, Plaintiffs William C. Toth Jr., William J. Hall, James Bognet, Aaron Bashir, and Alan M. Hall (collectively, "Plaintiffs") filed a first amended complaint alleging violations of the Elections Clause and requesting that the court enter declaratory and injunctive relief against Defendants Lehigh M. Chapman, Acting Secretary of the Commonwealth of Pennsylvania ("Secretary

Chapman"); Jessica Mathis, Director of the Pennsylvania Bureau of Election Services and Notaries ("Director Mathis"); and Tom Wolf, Governor of Pennsylvania ("Governor Wolf") (collectively, "Defendants"). (Doc. 7.)

Therein, Plaintiffs allege that due to the 2020 census results, Pennsylvania went from eighteen to seventeen seats in the United States House of Representatives, requiring the drawing of a new congressional map. (*Id.* ¶¶ 12–13, 15.) The Pennsylvania General Assembly passed a new congressional map, which was vetoed by Governor Wolf on January 26, 2022. (*Id.* ¶ 16.) Meanwhile, on December 17, 2021, the Carter Petitioners,[1] a group of Pennsylvania voters, initiated a lawsuit in the Commonwealth Court of Pennsylvania requesting that the judiciary impose a congressional map for the 2022 elections. (*Id.* ¶ 17.) The Pennsylvania Supreme Court granted the Carter Petitioners' application to exercise extraordinary jurisdiction over the congressional map litigation in the Commonwealth Court on February 2, 2022. (*Id.* ¶¶ 26–28.) Per the Pennsylvania Supreme Court's instructions, the Commonwealth Court, acting as Special Master, issued findings and a recommendation that the map passed by the General Assembly be used as the 2022 congressional map. (*Id.* ¶¶ 29, 31.) The



[1] The Carter Petitioners note in their motion that the proposed intervenors here are identical to the petitioners who initiated the Pennsylvania Supreme Court action with exception to one voter who is not seeking intervention in this action. (Doc. 15, p. 5, n.1.)

Pennsylvania Supreme Court permitted the filing of exceptions to the findings and recommendation, scheduled oral argument for February 18, 2022, and suspended the General Primary Election calendar pending the Court's decision.[2] (*Id.* ¶¶ 32–33.)

Ultimately, in this litigation, Plaintiffs request that the court: (1) "declare that the Elections Clause and 2 U.S.C. § 2a(c)(5) require the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map;" and (2) "enter a preliminary and permanent injunction that compels the defendants to hold at-large elections for the Pennsylvania congressional delegation, unless and until the General Assembly enacts a new congressional map." (Doc. 7, p. 13.)[3]



On February 20, 2022, Plaintiffs also filed an emergency motion for temporary restraining order or preliminary injunction. (Doc. 8.) The following day, the court issued a scheduling order requiring expedited briefing on Plaintiffs' request for a three-judge district court and scheduling an on-the-record telephone conference to discuss procedural and scheduling considerations regarding Plaintiffs' motion for temporary restraining order. (Doc. 9.) Thereafter, on

[2] On February 23, 2022, the Pennsylvania Supreme Court issued an order wherein, among other things, the Court adopted the "Carter Plan" as the congressional map, lifted the suspension of the General Primary Election calendar and set modified deadlines for the General Primary Election. (Doc. 31-1.)

[3] For ease of reference, the court utilizes the page numbers from the CM/ECF header.

February 22, 2022, the Carter Petitioners filed the pending motion to intervene and brief in support. (Docs. 14, 15.) The court subsequently ordered expedited briefing on this motion. (Doc. 21.) Plaintiffs timely filed a brief in opposition on February 24, 2022, and the Carter Petitioners docketed a reply on February 25, 2022. (Docs. 38, 41.) Thus, the motion to intervene is ripe for disposition.

## DISCUSSION

In support of their motion to intervene, the Carter Petitioners argue that they should be granted leave to intervene because, generally, this case is "a collateral attack on litigation pending in the Pennsylvania Supreme Court" initiated by the Carter Petitioners as Pennsylvania voters. (Doc. 15, p. 5.) The Carter Petitioners assert that their interests are not adequately represented by Defendants in this case, who do not share their rights and interests as voters in Pennsylvania, thus, entitling the Carter Petitioners to intervene in this action as of right under Federal Rule of Civil Procedure 24(a)(2) or, alternatively, by permission under Rule 24(b)(1)(B).



### A. Intervention as of Right

Federal Rule of Civil Procedure 24 provides that:

> [T]he court must permit anyone to intervene who:
>
> (2) 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). The Court of Appeals for the Third Circuit has held that:

> [A] non-party is permitted to intervene under Rule 24(a)(2) only if: (1) the application for intervention is timely; (2) the applicant has a sufficient interest in the litigation; (3) the interest may be affected or impaired, as a practical matter by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation.

*Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 365–66 (3d Cir. 1995). Each of these requirements must be met to permit a party to intervene as of right. *Id.* at 366. The court will discuss these intervention elements seriatim.

**1. Timeliness**[4]

Courts consider "the totality of the circumstances" when conducting a timeliness analysis. *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005). "Among the factors to be considered are: (1) the stage of the proceeding; (2) the prejudice that delay may cause the parties; and (3) the reason for the delay." *Id.* (citing *Mountain Top*, 72 F.3d at 369).



The Carter Petitioners moved to intervene two days after Plaintiffs filed their amended complaint and motion for temporary restraining order and preliminary injunction ("PI motion"). (*See* Docs. 7, 8, 14.) At that time, the court had not yet established a briefing schedule for the PI motion and no telephone conference or hearings had been held. To avoid any delay by their intervention, the Carter

[4] The court notes that Plaintiffs do not set forth any arguments regarding the timeliness of the motion to intervene. (*See* Doc. 38.)

Petitioners assert that they are prepared to follow any briefing schedules set by the court. (Doc. 15, p. 11.) Indeed, the Carter Petitioners requested leave to file a letter brief regarding Plaintiffs' request for a three-judge district court within the timeframe ordered by the court for Defendants to respond.[5] (*See* Docs. 9, 37.)

Accordingly, the court finds that the Carter Petitioners timely requested to intervene in this action.

**2. Interest in Litigation**

Rule 24(a)(2) requires an intervenor to establish "an interest relating to the property or transaction which is the subject of the action." *Mountain Top*, 72 F.3d at 366. Such interest must be "significantly protectable," meaning that the lawsuit in which the party seeks to intervene must present "a tangible threat to a legally cognizable interest." *Id.* As the Third Circuit noted in *Kleissler v. U.S. Forest Service*:

> [T]he polestar for evaluating a claim for intervention is always whether the proposed intervenor's interest is direct or remote. Due regard for efficient conduct of the litigation requires that intervenors should have an interest that is specific to them, is capable of definition, and will be directly affected in a substantial concrete fashion by the relief sought. The interest may not be remote or attenuated. The facts assume overwhelming importance in each decision.

157 F.3d at 972.



[5] Because the motion was unopposed, the court granted the Carter Petitioners' request and accepted their letter brief. (Doc. 40.)

The Carter Petitioners argue that this action threatens their interests "in voting in properly apportioned congressional districts and protecting the ongoing state court litigation" brought by them. (Doc. 15, pp. 11–12.) They further submit that their interest in this litigation is substantial because the relief Plaintiffs seek would essentially nullify the Pennsylvania Supreme Court's ruling in litigation brought by the Carter Petitioners to protect their constitutional and statutory rights. (*Id.* at 12–13.) According to the Carter Petitioners, "[t]here can be no greater evidence of that 'significant' legal interest at stake than the fact that Plaintiffs are attempting to change the outcome of the Carter Petitioners' state court lawsuit by attempting to override the forthcoming state court remedy." (*Id.* at 13.)



Plaintiffs vigorously contest that the Carter Petitioners have any significantly protectable interest in this case. (Doc. 38, pp. 3–6.) They argue that the Carter Petitioners' only interest is "subverting the Constitution of the United States." (*Id.* at 3.) According to Plaintiffs, simply because the Carter Petitioners have "induced the Pennsylvania Supreme Court to impose the congressional map that they want," that "unconstitutional judicial edict" does not afford the Carter Petitioners a significantly protectable interest in this case. (*Id.* at 3–4.) Nonetheless, Plaintiffs concede that the Carter Petitioners "will undoubtedly be affected if the implementation of their preferred congressional map is enjoined." (*Id.* at 4.) Plaintiffs continue by arguing the merits of their claim but skirt the question of

how any action by this court would impact the litigation pursued by the Carter Petitioners before the Pennsylvania Supreme Court. (*Id*. at 4–6.)

In response to these claims, the Carter Petitioners identify two significantly protectable interests in this action: (1) their "rights to vote in constitutionally apportioned districts under the Free and Equal Elections Clause of the Pennsylvania Constitution;" and (2) their "compelling interest in protecting the relief" obtained with the Pennsylvania Supreme Court, particularly because they initiated the state court litigation and prepared and submitted the plan adopted by the Pennsylvania Supreme Court. (Doc. 41, p. 8–9.)



The court finds that the Carter Petitioners have a significant protectable interest in this litigation. The Carter Petitioners initiated the action that resulted in the Pennsylvania Supreme Court adopting a congressional map for the 2022 elections. While that litigation is still ongoing, the Supreme Court selected a map that Defendants are charged with implementing and will govern the upcoming election cycle. (*See* Doc. 31-1.) The litigation before this court requests specific relief that, if granted, would eviscerate the ruling obtained by the Carter Petitioners before the Pennsylvania Supreme Court – specifically, Defendants would be ordered to ignore the Pennsylvania Supreme Court's ruling and hold at-large elections unless and until the General Assembly enacts a new congressional map. Consistent with *Kleissler*, this interest is direct, specific to the Carter Petitioners as

the moving party in the Pennsylvania Supreme Court action, clearly defined, and concretely impacted if this court grants the relief sought by Plaintiffs.

**3. Protection of Interests**[6]

Next, the court must determine whether the Carter Petitioners' interest, as a practical matter, may be affected or impaired by the disposition of this litigation. *See Mountain Top Condo. Ass'n.*, 72 F.3d at 365–66. Courts should "consider the practical consequences of the litigation," which "is not limited to consequences of a strictly legal nature . . . [but] may consider any significant legal effect on the applicant's interest." *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987) (quoting *Nat'l Res. Def. Council, Inc. v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)). To intervene as of right, however, "the applicant must do more than show that his or her interest may be affected in some incidental manner. Rather, the applicant must demonstrate that there is a tangible threat to a legally cognizable interest to have the right to intervene." *Id.* (citing *United States v. Perry Cnty. Bd. of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978)).



The Carter Petitioners argue that the Pennsylvania Supreme Court will approve a new congressional district map, which has now occurred, "thus remedying the Carter Petitioners' constitutional and statutory injuries in time" for

[6] The court notes that Plaintiffs do not set forth any arguments regarding this element of the intervention standard. (*See* Doc. 38.)

primary elections in May. (Doc. 15, p. 15.) However, Plaintiffs' litigation puts the remedy obtained by the Pennsylvania Supreme Court at risk and "threatens to force" the Carter Petitioners to vote in an at-large election. (*Id.*)

The court agrees with the Carter Petitioners in that the Carter Petitioners' interest will be impacted by this litigation. Practically and legally, the Carter Petitioners have demonstrated that the result of their litigation before the Pennsylvania Supreme Court will be rendered moot if Plaintiffs are successful in the case before this court. Thus, the Carter Petitioners have met this element for intervening as of right.



**4. Representation of Interests**

The final element the Carter Petitioners must show is that their interest in this litigation is not adequately represented by Defendants in this case. *Mountain Top Condo. Ass'n*, 72 F.3d at 365–66. This burden, which varies with each case, has been described as "minimal." *Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc.*, 54 F.3d 156, 162 (3d Cir. 1995) (quoting *Brody v. Spang*, 957 F.2d 1108, 1123 (3d Cir., 1992)); *Kleissler*, 157 F.3d at 972. Generally, potential intervenors can satisfy this burden in three ways: (1) by demonstrating "that its interests, though similar to those of an existing party, are nevertheless sufficiently different" that the defendants cannot give the potential intervenor's interests "proper attention;" (2) by establishing "collusion" between the parties in the litigation; or

(3) by indicating that the defendants "have not been diligent in prosecuting the litigation." *Hoots v. Pennsylvania*, 672 F.2d 1133, 1135 (3d Cir. 1982) (citations omitted); *see also Del. Valley Citizens' Council for Clean Air v. Pennsylvania*, 674 F.2d 970, 973 (3d Cir. 1982) (setting forth the same factors for consideration). In the context of this case where Defendants represent the interests of the Commonwealth of Pennsylvania, the Third Circuit has provided additional guidance:

> A government entity charged by law with representing a national policy is presumed adequate for the task, particularly when the concerns of the proposed intervenor, *e.g.*, a "public interest" group, closely parallel those of the public agency. In that circumstance, the "would-be intervenor [must make] a strong showing of inadequate representation." But the presumption notwithstanding, when an agency's views are necessarily colored by its view of the public welfare rather than the more parochial views of the proposed intervenor whose interest is personal to it, the burden is comparatively light.



*Kleissler*, 157 F.3d at 972 (citations omitted); *see also Mausolf v. Babbitt*, 85 F.3d 1295, (8th Cir. 1996) ("when the proposed intervenors' concern is not a matter of 'sovereign interest,' there is no reason to think the government will represent it").

The Carter Petitioners argue that they clearly satisfy this burden because Defendants' arguments in the state court litigation "illustrate that Defendants to not adequately represent the Carter Petitioners as Pennsylvania voters." (Doc. 15, pp. 16–17.) They submit, based on documents submitted in the state court litigation, that Secretary Chapman and Director Mathis' interest is in the administration of

elections. (*Id.* at 17.) Specifically, their "roles are two-fold: (1) to provide the Court with information where necessary; and (2) to minimize disruption of the 2022 elections by keeping the Court and the other parties appraised of election schedules and potential alterations to those schedules." (*Id.*; Doc. 15-2, p. 3.) Similarly, Governor Wolf describes that his "legally enforceable interest" in the state court litigation is "by virtue of his constitutional role in the redistricting process." (Doc. 15, p. 17; Doc. 15-3, p. 8.) Therefore, the Carter Petitioners assert that Defendants interests are distinct from "their constitutional and statutory right as voters." (Doc. 15, p. 17.)

In further support of this element, the Carter Petitioners submit that no party in this case has any interest in defending the litigation and remedy pursued by the Carter Petitioners before the Pennsylvania Supreme Court. (*Id.* at 17–18.) Intervention is required, according to the Carter Petitioners, in order to protect this collateral attack to their Pennsylvania Supreme Court litigation. (*Id.* at 18.)

Conversely, citing *Pennsylvania v. Rizzo*, 530 F.2d 501 (3d Cir. 1976), Plaintiffs assert that "the burden of showing inadequate representation is *much* more substantial when a would-be intervenor alleges that a government office or agency is an inadequate representative of its interests." (Doc. 38, p. 7.) Plaintiffs submit that the Carter Petitioners must show one of following to overcome this presumption: (1) "collusion" between the parties in this case; (2) that Defendants'

interest is "adverse" to the Carter Petitioners' interest; or (3) that Defendants' have not been "diligent" in prosecuting this case. (*Id.* at 8 (citing *Del. Valley Citizens' Council for Clean Air*, 674 F.2d at 973).) Plaintiffs walk the court through this standard and submit that the Carter Petitioners cannot meet their burden. (*Id.* at 8–9.)

Although Plaintiffs attempt to enhance the Carter Petitioners' burden by applying *Rizzo*, the Third Circuit applied the same standard in that case as in *Kleissler*. In *Rizzo*, the court stated that the burden "should be treated as minimal" and "remains on the proposed intervenor." 530 F.2d at 505 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 528 n.10 (1972)). Like in *Kleissler*, the court noted that "a presumption of adequate representation generally arises when the representative is a governmental body or officer charged with representing the interests of the absentee." *Id.* (citing 7A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1909 (1972)). Thus, the court is satisfied that the standards set forth in *Rizzo* and *Kleissler* are consistent.



The court agrees with Plaintiffs that the Carter Petitioners cannot establish that there is collusion between the parties in this action or that Defendants have been dilatory in prosecuting this case. Nevertheless, the court finds that the Carter Petitioners have demonstrated that Defendants' interests are sufficiently different to satisfy this element of intervention as of right. The Carter Petitioners' interests

are those of individual Pennsylvania voters' constitutional and statutory rights, as well as protecting the remedy they requested, and were awarded, before the Pennsylvania Supreme Court. In contrast, Defendants are tasked with overseeing the 2022 elections and implementing any orders from the Pennsylvania Supreme Court and, if Plaintiffs succeed in this litigation, this court. While these interests are similar, they are distinguishable, thus fulfilling the element that the Carter Petitioners interests are not adequately represented by Defendant in this case.[7] Accordingly, the court finds that the Carter Petitioners meet the standard for intervention as of right and their motion will be granted.



**B. Permissive Intervention**

Alternatively, the Carter Petitioners argue that the court should grant them permission to intervene under Rule 24(b). Although the court finds that the Carter Petitioners meet the standard for intervention as of right, the court will address the permissive intervention standard as well.

Permissive intervention under Rule 24(b)(2) is allowed on timely application "when an applicant's claim or defense and the main action have a question of law

[7] Plaintiffs and the Carter Petitioners refer the court to the similar 2018 congressional district map case from this District, *Corman v. Torres*, 287 F. Supp. 3d 558 (M.D. Pa. 2018). There, following a ruling stated on the record at the close of a hearing, the court issued an order permitting the individual Pennsylvania voters to intervene. *Corman v. Torres*, No. 1:18-cv-00443, Doc. 85 (M.D. Pa. Mar. 2, 2018). While the court takes note of this ruling, because there is no reasoning for the court to review, it will not rely on *Corman* in ruling on the present motion to intervene.

or fact in common." Fed. R. Civ. P. 24(b)(2). In deciding whether to permit intervention under Rule 24(b), "courts consider whether the proposed intervenors will add anything to the litigation." *See Kitzmiller v. Dover Area Sch. Dist.*, 229 F.R.D. 463, 471 (M.D. Pa. 2005). Courts should also consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Nat'l Collegiate Athletic Ass'n v. Corbett*, No. 1:30-cv-457, 296 F.R.D. 342, 350 (M.D. Pa. Oct. 15, 2013).

As previously discussed, while the Carter Petitioners have different interests from Defendants with respect to the issues presented in this case, they share common defenses to the legal questions at issue in this case. As such, the Carter Petitioners will add a different perspective to the litigation that Defendants will not adequately present. *See Kitzmiller*, 229 F.R.D. at 471. Further, there is no undue delay or prejudice by permitting the Carter Petitioners to intervene. Lastly, the Carter Petitioners have complied with Federal Rule of Civil Procedure 24(c), which requires a potential intervenor to file a pleading "that sets out the claim or defense for which intervention is sought." (Docs. 14-2, 14-3.)

## CONCLUSION

Accordingly, for the reasons stated herein, **IT IS ORDERED THAT** the Carter Petitioners' motion to intervene, Doc. 14, is **GRANTED**.

s/Jennifer P. Wilson
JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania

Dated: February 28, 2022