IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SUE EVENWEL AND EDWARD PFENNINGER,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CAUSE NO. 1:14-CV-00335-LY-CH-MHS
	§	
RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; AND NANDITA BERRY, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE	§	
	§	
Defendants.	§	

MOTION TO INTERVENE OF THE TEXAS SENATE HISPANIC CAUCUS, ARMANDO GARZA, FRANCISCO GUAJARDO, REYNALDO GUERRA, EVELYN JONES, SOFIA REYES MCDERMOTT AND CASSANDRA CHROSTOWSKI, A MINOR, AND MEMORANDUM OF LAW IN SUPPORT

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INTRODUCTION

The Texas Senate Hispanic Caucus, Armando Garza, Francisco Guajardo, Reynaldo Guerra, Evelyn Jones, Sofia Reyes McDermott and Sandra Chrostowski on behalf of Cassandra Chrostowski, a minor, respectfully move to intervene in this case as defendants in order to protect their rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the federal Voting Rights Act, 42 U.S.C. § 1973, *et seq.*

On December 14, 2011, the Fifth Circuit issued its decision in *Lepak v. City of Irving Texas,* affirming the precedent established in *Chen v. City of Houston,* 206 F.3d 502 (5th Cir. 2000), which stated that "equalizing total population, but not CVAP (citizen voting age population), does not violate the Equal Protection Clause." 453 Fed. Appx. 522, 523 (5th Cir. 2011), *cert. denied*, 133 S.Ct. 1725 (2013)). Less than three years later, plaintiffs bring this action challenging the State of Texas' apportionment plan for its state senatorial districts, making the same argument rejected by the Fifth Circuit in *Lepak* and *Chen.*

Plaintiffs seek to overturn fifty years of established precedent on the rule of apportionment of population in redistricting. *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964) ("the fundamental principle of representative government is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state"); *see also Chen*, 206 F.3d at 522 (rejecting claim that "the City, despite being aware that it contained pockets with extremely high ratios of noncitizens, improperly crafted its districts to equalize total population rather than citizen voting age population"). Movants have a direct and personal interest in the outcome of this case that is distinct from the interests of Defendants Governor Rick Perry and Texas Secretary of State Nandita Berry (collectively called "Texas") and seek to defend the Texas Senate redistricting plan -- Plan S172. Plan S172

equalized total population across Senate districts, and this practice has been the norm for many years. *Reynolds,* 377 U.S. at 539. Movants seek intervention as of right under FED. R. CIV. P. 24(a), or, alternatively, by permission under FED. R. CIV. P. 24(b).

FACTS

On March 19, 2012, a three-judge panel of the U.S. District Court for the Western District of Texas ordered an interim senate plan for the districts used to elect members in 2012 to the Texas Senate (Plan S172). Order, *Davis v. Perry*, SA-11-CA-855-OLG-JES-XR (W.D. Tex. March 19, 2012) ECF 147. The court's order became necessary after the senate plan enacted by the Texas Legislature in 2011 failed to gain preclearance under section 5 of the Voting Rights Act prior to the start of the 2012 election cycle. *See* 42 U.S.C. § 1973c. *Id.* Consistent with the U.S. Supreme Court decision in 1964 in *Reynolds, v. Sims*, Plan S172 equalized total population across Senate districts. *See* Compl. at 2. On June 26, 2013, following its passage in the Texas Legislature, Defendant Governor Rick Perry signed Plan S172 into law.

In their Complaint, Plaintiffs claim that the use of total population for state senate redistricting in Plan S172 "violates the 'one-person, one-vote' principle of the Fourteenth Amendment to the United States Constitution." Compl. at 5. Plaintiffs ask the Court to declare Plan S172 unconstitutional and to enter an order enjoining Texas from conducting elections under Plan S172 and to require the state to redistrict its state senatorial voting districts. *Id.* at 1.

Defendants Governor Rick Perry and Secretary of State Nandita Berry (collectively, "State Defendants") have not yet filed their answer but did file a Motion to Dismiss on May 15, 2014 (Doc. 15) which is scheduled to be heard on June 25, 2014. The Court suspended all briefing deadlines regarding Plaintiffs' Motion for Summary Judgment. *See* Doc. 19.

DESCRIPTION OF MOVANTS

The Texas Legislature's Senate Hispanic Caucus is an association comprised of Latino and non-Latino senators who serve in the Texas State Senate. Senate Hispanic Caucus Bylaws (2011), http://www.senatehispaniccaucus.com/bylaws.html. The Senate Hispanic Caucus seeks, among other goals, to "promote and support the economic development, health, education, and law enforcement issues as they pertain to Hispanics, especially along the border" and to "promote and develop positive perceptions about government to Hispanics and other minority citizens." *Id.* The Senate Hispanic Caucus includes members whose districts would be affected by the relief sought by Plaintiffs in this case.

Armando Garza lives in the City of San Juan and is a registered voter. Mr. Garza is Latino and is a constituent of Texas Senate District 27. Francisco Guajardo lives in the City of Edinburg and is a registered voter. Mr. Guajardo is Latino and is a constituent of Texas Senate District 20. Reynaldo Guerra lives in the City of Houston and is a registered voter. Dr. Guerra is Latino and is a constituent of Texas Senate District 6. Evelyn Jones lives in the City of Arcola and is a registered voter. Ms. Jones is African American and is a constituent of Texas Senate District 13. Sofia Reyes McDermott lives in the City of El Paso and is a registered voter. Ms. Reyes McDermott is Latina and is a constituent of Texas Senate District 29. Cassandra Chrostowski, a minor, is a U.S. citizen who will be eligible to vote when she turns 18. Ms. Chrostowski is Latina and resides in City of Weslaco, which is in Texas Senate District 27.

ARGUMENT

Plaintiffs' complaint raises serious questions of law that are vital to Movants' interests. Plaintiffs in this case seek declaratory and injunctive relief that, if successful, will strike down Texas's Senate redistricting plan, jeopardize the conduct of the 2014 General Election and

substantially alter the electoral districts in which Movants are residents and registered voters. Movants have a direct and personal interest in the outcome of this case that is distinct from the interests of the existing Defendants, and seek to defend a redistricting plan that provides them with an equal opportunity to participate in the political process as well as constitutional political representation.

Invalidating a redistricting plan because it equalizes total population across districts contravenes fifty years of established precedent, *see Chen*, 206 F.3d at 522, and would result in Movants representing and/or residing and voting in state senate districts that contain higher numbers of residents. Eliminating children and non-citizens from apportionment and concentrating a disproportionately high number of individuals into Movants' senate districts would: dilute Movants' political voice; negatively impact the quality of Movants' political representation; and reduce Movants' access to their elected representatives. Moreover, a substantial increase in the population of a state Senate district's population would also severely impair the affected State Senator's ability to fulfill his or her required duties and to meet constituent needs.

The harmful effects of apportionment that depart from the total population standard and is based instead on citizen voting age population ("CVAP") will disproportionately affect senate districts with the higher concentrations of Latino and other minority registered voters and residents. Apportionment based on CVAP would make it more difficult for Latino and others living nearby to elect candidates of their choice. Plaintiffs' complaint raises serious questions of law and fact that are vital to Movants' interests as registered voters or residents of Texas.

Movants' presentation of evidence and argument will assist the Court in rendering a decision on a complete factual and legal record regarding the substantial interests at stake in this

case. Therefore, as further explained below, Movants respectfully urge the Court to grant them intervention in this case either as a matter of right or by permission.

I. MOVANTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT

Upon timely application, anyone shall be permitted to intervene in an action when:

> (2) the applicant claims an interest relating to the property or transaction that is the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the applicant's interest is represented adequately by existing parties.

FED. R. CIV. P. 24(a)(2); *see also Devlin v. Scardelletti*, 536 U.S. 1, 12 (2002). Rule 24(a) was designed to be flexible, focusing "on the particular facts and circumstances surrounding each application [for intervention]" and "measured by a practical rather than technical yardstick." *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) (citing *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 841 (5th Cir. 1975). Under Rule 24(a)(2), Movants must satisfy each of the following requirements:

> (1) the application for intervention must be timely; (2) the applicant must have an interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; [and] (4) the applicant's interest must be inadequately represented by the existing parties to the suit.

New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co., 732 F.2d 452, 463 (5th Cir. 1984) (quoting *Int'l Tank Terminals, Ltd. v. M/V Acadia Forest,* 579 F.2d 964, 967 (5th Cir. 1978)). In this case, Movants fully satisfy the test for intervention as a matter of right under Rule 24(a)(2).

A. Movants' Motion to Intervene is Timely

In determining whether a motion for intervention is timely filed, courts consider "(1) the length of time applicants knew or should have known of their interest in the case; (2) prejudice to

existing parties caused by applicants' delay; (3) prejudice to applicants if their motion is denied; and (4) any unusual circumstances." *LULAC v. City of Boerne*, 659 F.3d 421, 433 (5th Cir. 2011). The length of time from which timeliness is defined is broad and is not considered to be exact or precisely measureable. *See, e.g., Stallworth v. Monsanto Co.*, 558 F.2d 257, 263 (5th Cir. 1977) ("Timeliness must be determined from all the circumstances in the case."). Interventions filed within two or five months are routinely deemed to have been timely filed. *See, e.g., Espy*, 18 F.3d at 1205 (intervention motion was timely when made within two months of becoming aware that interests were affected); *see also Ass'n of Prof'l Flight Attendants v. Gibbs*, 804 F.2d 318, 320 (5th Cir.1986) (finding that five month lapse was not unreasonable).

In this case, Plaintiffs filed their complaint less than two months ago, on April 21, 2014. Compl. at 15. State Defendants filed their motion to dismiss on May 15, 2014. Defs.' Mot. Dismiss at 13. State Defendants have not otherwise answered Plaintiffs' complaint and briefing on Plaintiffs' motion for summary judgment has been suspended by agreement of the parties. In light of this procedural history, Movants' motion to intervene is timely.

Movants' intervention will not cause prejudice to the existing parties. *See Ford v. City of Hunstville*, 242 F.3d 235, 240 (5th Cir. 2001) (prejudice is only created by "the intervenor's delay in seeking to intervene after it learns of its interest") (citing *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 (5th Cir. 1992)); *see also Stallworth*, 558 F.2d at 265 ("the prejudice to the original parties to the litigation that is relevant to the question of timeliness is only that prejudice which would result from the would-be intervenor's failure to request intervention as soon as he knew or reasonably should have known about his interest in the action"). In this case, Movants are filing their motion to intervene within approximately two months of the filing of this lawsuit. Since

Movants have not delayed their intervention, neither Plaintiffs nor Defendants would be prejudiced by the timing of Movants' intervention.

On the other hand, Movants would be severely prejudiced if the Court denies this motion to intervene. In *Stallworth*, the Fifth Circuit noted that prejudice against proposed intervenors denied intervention "arose out of a concern that a [Rule 24] section (a) intervenor 'may be seriously harmed if he is not permitted to intervene.'" 558 F.2d at 266 (quoting *McDonald v. E. J. Lavino Co.*, 430 F.2d 1065, 1073 (5th Cir. 1970). In this case, distinct from State Defendants, Movants, as registered voters of Texas and an organization whose membership is comprised of state senators, have a direct and personal stake in the outcome of this case. In the event the Court dismantles the redistricting plan that provides Movants with constitutional political access and representation, Movants will be forced to represent, vote and/or reside in districts that are over-populated, and where the quality of their political representation will be substantially reduced when compared with voters living in areas with proportionally fewer children and non-citizens. Cassandra Chrostowski, a minor, seeks to defend against a claim that seeks to apportion her into a district with proportionally higher population simply because she is a minor and lives in a geographic area with proportionally greater numbers of children and non-citizens.

Without the ability to intervene, Movants will be relegated to the sidelines in a case in which their substantial interests will be represented and determined by other parties. As the targets of Plaintiffs' lawsuit, Movants respectfully urge the Court to grant them an opportunity to present their case and protect their interests as Texas elected representatives, residents and/or voters whose electoral and representational rights are protected under the Voting Rights Act and U.S. Constitution. Considering each of the factors above, Movants' intervention is timely because: (1) Movants promptly filed this motion; (2) the existing parties will not be prejudiced if

the Court permits intervention at this juncture; and (3) Movants will be greatly harmed if this motion is denied because they will not be able to protect their interests that are challenged by this litigation.

B. Movants Seek to Vindicate a Protectable Interest

Movants also satisfy the requirements of Rule 24(a)(2), because they have a protectable interest in the subject matter of this litigation that would be otherwise impaired by an adverse decision. Movants' protected interest does not have "to be of a legal nature identical to that of the claims asserted in the main action." *Diaz v. S. Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970). Indeed, "[a]ll that is required by the terms of the rule is an interest in . . . [the] rights that are at issue, provided the other elements of intervention are present." *Id.* Ultimately, "the interest 'test' is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Ross v. Marshall*, 426 F.3d 745, 757 (5th Cir. 2005).

Notably, courts have granted intervention to parties seeking to protect their interests in political access cases. *See, e.g.*, Order, *Perez v. Perry*, 5:11-cv-00360-OLG-JES-XR (W.D. Tex. 2011) (allowing several interventions into challenge to the Texas redistricting plans after the 2010 Census); Minute Order, *State of Texas v. Holder*, 1:12-cv-00128-RMC-DST-RLW (D.D.C. 2012); *Nw. Austin Mun. Utility Dist. No. One v. Holder* ("*MUD*"), 129 S. Ct. 1695 (2009) (registered voters' motions to intervene granted by the district court in Dkt No. 33); *see also Shaw v. Hunt*, 861 F. Supp. 408, 420 (E.D.N.C. 1994) (noting intervention of "twenty-two persons registered to vote in North Carolina, both African-American and white . . . in support of the [redistricting] Plan," and "eleven persons registered to vote as Republicans in North Carolina . . . challeng[ing] [ ] the Plan")). Like the intervenors in these cases who sought to defend their

political rights, Movants have a strong and legally cognizable interest in this case. Movants' interests in political access and representation are real, protected by the Voting Rights Act and U.S. Constitution, and are at risk of being compromised in this case. Movants have a direct and personal interest in defending and preserving the electoral plan that was the result of a successful challenge under the Voting Rights Act and that complies with the U.S. Constitution.

Furthermore, Movants' interests diverge from the broader interests that Defendant pursues: State Defendants are responsible for implementing the enacted redistricting plan, but Defendants – as officials of a state entity – are not voters or elected officials who will ever be personally affected by the redistricting plan. Therefore, Movants respectfully ask the Court to provide them with an opportunity to defend their interests in the current redistricting plan.

C. Movants' Interests Would be Impaired if Intervention Were Denied

Movants are "so situated that the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest." FED. R. CIV. P. 24(a)(2). Here, the advisory committee notes to Rule 24(a) are instructive: "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." FED. R. CIV. P. 24 advisory committee's note to 1966 Amendment. To demonstrate "impairment," a prospective intervenor "must show only that impairment of its substantial legal interest is possible if intervention is denied." *Grutter v. Bollinger*, 539 U.S. 306, 399 (2003) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)). This burden is minimal. *See Grutter*, 188 F.3d at 399 (rejecting the notion that Rule 24(a)(2) requires a specific legal or equitable interest).

There is no doubt that the relief Plaintiffs seek in this case – which would force apportionment of residents across state senate districts based on CVAP instead of total

population (or some unspecified combination of CVAP and total population) – will dilute Movants' political strength; negatively impact the quality of Movants' political representation; reduce Movants' access to their elected representatives or reduce Movants' ability to represent their constituents. Because this lawsuit targets senate districts with lower CVAP, it also targets Latino opportunity districts and threatens to reduce the ability of Latinos to elect their candidates of choice in senate districts such as Senate Districts 6, 13 and 27. Such effects will undoubtedly impact the viability and strength of the Senate Hispanic Caucus and the ability of its members to respond to the needs of their constituents. Movants have a direct and personal interest in preventing the dilution of their voting strength and political representation.

Movants should not be required to wait until the conclusion of the litigation to vindicate their interests. Courts have recognized that parties seeking intervention would face a "practical disadvantage" in asserting their rights once a court has rendered a decision. *Chiles v. Thornburgh*, 865 F.2d 1197, 1214 (11th Cir. 1989). The Fifth Circuit has recognized that a prospective intervenor's interest may be practically "impaired by the *stare decisis* effect" of a court's rulings in subsequent proceedings. *Espy*, 18 F.3d at 1207 (quoting *Ceres Gulf*, 957 F.2d at 1204) (italics in original); *Martin v. Travelers Indem. Co.*, 450 F.2d 542, 554 (5th Cir. 1971) ("stare decisis . . . would loom large" in any attempt by prospective intervenors "to achieve a favorable resolution of the coverage issue" on their own); *Black Fire Fighters Ass'n of Dallas v. City of Dallas*, 19 F.3d 992, 994 (5th Cir. 1994) (to the extent that a lawsuit involves common legal issues, potential adverse effects on the prospective intervenors favor intervention). Therefore, Movants respectfully request that the Court grant their intervention at the earliest time possible in order to protect their substantial interests.

D. The Existing Defendants Will Not Adequately Represent Movants' Interests

The burden under this prong is "satisfied if Movant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Courts have recognized that "[i]nadequate representation is most likely to be found when the applicant asserts a personal interest that does not belong to the general public." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995) (quoting 3B JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 24.07[4] (2d ed. 1995)). Intervention is warranted when the proposed intervenors "occup[y] a different position and [have] different interests" than the existing defendants. *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. 07-0608, 2008 U.S. Dist. LEXIS 47405, at *18-19 (S.D. Tex. June 11, 2008).

Courts have further recognized that governmental representation of private, non-governmental intervenors may be inadequate. For example, in *Dimond v. District of Columbia*, the court held that because the government was responsible for representing a broad range of public interests rather than the more narrow interests of intervenors, the "application for intervention . . . falls squarely within the relatively large class of cases in this circuit recognizing the inadequacy of governmental representation of the interests of private parties in certain circumstances." 792 F.2d 179, 192 (D.C. Cir. 1986); *see Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 331 (1980) (granting individual aggrieved party's motion to intervene in order to protect their personal interests, which may at times be in conflict with those of the EEOC); *see also Natural Res. Def. Council v. Costle*, 561 F.2d 904, 910-911 (D.C. Cir. 1977) (government does not adequately represent private organizations because intervenors' interests are different). Finally, the burden is on those opposing the intervention to show that representation of Movants'

personal interests will be sufficient. *See* 7C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1909 (3d ed. 2007).

This case is similar to *Lepak*, in which the district court granted intervention to voters and a child living in the Latino-majority city council district that was the target of the lawsuit. Order, *Lepak v. City of Irving*, 3:10-cv-00277-P (N.D. Tex. 2010) ECF 15 (granting motion to intervene). In this case, Defendant Texas has an institutional interest in preserving its current redistricting plan but that interest includes balancing the cost to taxpayers of defending the redistricting plan against the institutional harms associated with losing or settling the case. If Plaintiffs are successful and obtain their requested relief, Defendants will, at worst, be required to redraw the state senate redistricting plan and pay Plaintiffs' legal fees. By contrast, Movants seek to protect their individual interests as voters and/or constituents of Texas. A victory by Plaintiffs would result in a substantial alteration in the district lines within which Movants reside, vote and are represented and the resulting loss by Movants of their rights under the Voting Rights Act and U.S. Constitution.

In addition to these differing interests, Defendants face strong pressure from groups and constituents that may have ideological objections to the current redistricting plan. Defendants may also face pressure from a broader constituency – residents of Texas and other parts of the country – that has been divided on minority voting rights for decades. *See, e.g.*, David Yates, *Lawsuit Alleges Texas Senate Districts are Unconstitutional,* Legal Newsline (Apr. 22, 2014) available at http://legalnewsline.com/news/248718-lawsuit-alleges-texas-senate-districts-are-unconstitutional (noting the role of the Project on Fair Representation in this case); *see also* David Lee, *Texas Senate Districts Challenged*, Courthouse News Service (Apr. 22, 2014) *available at* http://www.courthousenews.com/2014/04/22/67220.htm (same). Even assuming

Defendants' best intentions, Texas may be hesitant to advance relevant arguments for apportionment based on total population – regardless of age or citizenship – because it would expose them to severe public scrutiny and criticism. Defendants may also ultimately settle with Plaintiffs on an apportionment plan that does not rely on total population, as Defendants have argued that they have complete discretion in apportioning districts. *See, e.g.,* Mot. to Dismiss at 5 ("States have discretion to decide what data to use for reapportionment purposes"). The possibility that Defendants may not advocate for an apportionment standard based on total population, as opposed to a standard of their choosing, is sufficient to satisfy Movants' minimal burden that Defendants representation "may be" inadequate. *Trbovich*, 404 U.S. at 538 n.10.

Aside from these significant pressures, Movants and Defendants may have different objectives. Defendant has no specific incentive to defend the use of a particular population base for apportionment in a redistricting plan; its stake in the litigation is limited to defending this redistricting plan enacted by the Legislature and approved by Governor Rick Perry. By contrast, Movants have a specific personal interest in defending the challenged redistricting plan and the apportionment standard upon which it is based. Indeed, Movants' ability to live and vote in a system that provides fair political representation depends on their ability to defend the redistricting plan. Defendants' objective and interest in the outcome of this case does not match Movants' concrete interest in defending and maintaining the redistricting plan that enforces their rights under the Voting Rights Act and the Constitution.

Furthermore, Movants are entitled to intervention because they would bear the greatest cost in the event of a favorable ruling for Plaintiffs. An unfavorable decision for the State Defendants will upset Defendants' current political arrangement and may impose a financial and

administrative burden. At the same time, such a decision will substantially alter the political climate in which Movants live, vote, represent and are represented.

Through this case, Plaintiffs seek to unravel and thwart the limited political progress made by Latino voters in Texas. Movants' focused evidence and argument on the constitutional and Voting Rights Act issue, among others, will assist the Court in rendering a decision in accordance with well-established precedent, and based on a full record developed by all parties.

For these reasons, Movants seek to participate in this case as defendant intervenors and respectfully request that the Court grant them intervention as a matter of right.

II. MOVANTS ARE ENTITLED TO PERMISSIVE INTERVENTION

Should the Court determine that Movants are not entitled to intervene as a matter of right, Movants urge the Court to exercise its broad discretion and allow intervention under FED. R. CIV. P. Rule 24(b). Under Rule 24(b):

> On timely application, the court may permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact. . . (3) In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Rule 24(b). Similar to the burden under Rule 24(a), permissive intervention is to be granted liberally under Rule 24(b). *See* 7C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1904 (3d ed. 2007). "Permissive intervention is wholly discretionary with the court . . . even though there is a common question of law or fact, or the requirements of Rule 24(b) are otherwise satisfied." *New Orleans Pub. Serv.*, 732 F.2d at 470-471 (internal quotation marks and citation omitted). The Fifth Circuit has recognized that permissive intervention may be granted in the Court's discretion if: (1) the motion is timely; (2)

an applicant's claim or defense has a question of law or fact in common with the existing action; and (3) intervention will not delay or prejudice the adjudication of the rights of the original parties. *See Howse v. S/V*, 641 F.2d 317, 320 n.4 (5th Cir. 1981); *see also United States v. LULAC*, 793 F.2d 636, 644 (5th Cir. 1986) (noting the court may have granted permissive intervention under Rule 24(b) because the intervenors raise common questions of law and fact).

As a threshold matter, Movants' motion to intervene is timely. *See supra* § I(A). Second, Movants' defenses will share substantial questions of law and fact with the main action: Movants seek to preserve the redistricting plan that provides them with fair political representation and vindicates their federal and constitutional rights. *See, e.g.*, *Bossier Parish Sch. Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994) (granting intervention in school board's preclearance action under Rule 24(b) to a group of African-American voters challenging school board redistricting plan as discriminatory), *aff'd sub nom. Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 323-24 (2000). Third, as discussed above, intervention will not create delay or prejudice the existing parties. *See supra* § I(A). Adding Movants as defendant-intervenors at this juncture of the lawsuit will not needlessly increase cost, delay disposition of the litigation, or prejudice the existing parties.

Importantly, Movants' participation in this lawsuit will offer evidence from the perspective of state senators, registered voters and constituents of Texas, including voters and residents of districts that have high numbers of children and non-citizens. At a minimum, Movants ask the Court to exercise its broad discretion and grant them permissive intervention.

CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court grant their motion to intervene, and enter their proposed Answer which is attached as Exhibit A to this motion.

Dated: June 30, 2014

Respectfully Submitted,

MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

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COUNSEL FOR DEFENDANT-INTERVENORS

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel for the parties by email communication on June 24, 2014. Erika Kane for the State Defendants and Meredith Parenti for the Plaintiffs both informed me that their respective clients have no position on the intervention at this time.

/s/ David G. Hinojosa
David G. Hinojosa

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SUE EVENWEL AND EDWARD PFENNINGER,	§	
Plaintiffs,	§	
vs.	§	**CAUSE NO. 1:14-CV-00335-LY-CH-MHS**
RICK PERRY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF TEXAS; AND NANDITA BERRY, IN HER OFFICIAL CAPACITY AS TEXAS SECRETARY OF STATE	§	
Defendants.	§	

ORDER

Pending before the Court is the Motion to Intervene as Defendants and Memorandum in Support filed by the Armando Garza, Francisco Guajardo, Reynaldo Guerra, Evelyn Jones, Sofia Reyes McDermott and Sandra Chrostowski on behalf of Cassandra Chrostowski, a minor. The Court has reviewed the Motion and related arguments and authorities and finds that it should be granted.

Accordingly, IT IS HEREBY ORDERED that the Motion to Intervene as Defendants is GRANTED. IT IS FURTHER ORDERED that the Clerk of the Court shall ENTER Defendant-Intervenors' proposed Answer which is attached to their motion as Exhibit A.

SIGNED this _____ day of _____, 2014.

_____
Honorable Lee Yeakel
United States District Judge