IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAN MCCONCHIE, et al., Plaintiff, v. CHARLES W. SCHOLZ, et al., Defendants, and, ANGELICA GUERRERO-CUELLAR, in her official capacity as Illinois State Representative for the 22nd District and Individually, Petitioner/Defendant-Intervenor	)	Case No. 21 CV 3091

JULIE CONTRERAS, et al., Plaintiff, v. ILLINOIS STATE BOARD OF ELECTIONS, et al., Defendants, and, ANGELICA GUERRERO-CUELLAR, in her official capacity as Illinois State Representative for the 22nd District and Individually, Petitioner/Defendant-Intervenor	)	Case No. 21 CV 3139

PETITIONER/DEFENDANT-INTERVENOR'S REPLY IN SUPPORT OF HER MOTION TO INTERVENE

NOW COMES Petitioner/Defendant-Intervenor, Angelica Guerrero-Cuellar (the "Representative") by and through her attorney Veronica Bonilla-Lopez of Del Galdo Law Group, LLC., and as her reply in support of her motion to intervene states as follows:

ARGUMENT

Reply to Contreras Plaintiffs' Response to the Representative's Amended Motion

The *Contreras* Plaintiffs do not oppose the Representative's alternative request to intervene for a limited purpose and scope "of submitting responses and objections, with respect only to the 22nd District but with respect to no other house of senate district in Plaintiff's proposed revisions to the September Redistricting Plan." The *Contreras* Plaintiffs make no other arguments as to the remainder of the motion except to contend that the Representative mischaracterizes Plaintiffs' claims. The Representative directly quoted the *Contreras* Complaint. (*Contreras* Dkt. #126, p. 5-6). Furthermore, while the Plaintiffs allege their Complaint does not expressly challenge the 22nd District, they admit they seek changes that could result in changes to District 22 and that their challenge to Senate District 11 geographically includes the 22nd District. As such, there is a direct and imminent threat to the 22nd District.

Reply to McConchie Plaintiffs' Response to the Representative's Motion

The *McConchie* Plaintiffs object to the entire motion to intervene. In doing so, they apply incorrect legal standards to almost all the factors for intervention. Plaintiffs further do not assert any prejudice that would result should the motion be

granted and exaggerate the relief requested in the alternative request of permissive intervention for a limited purpose and scope.

I. The Motion is Timely

The *McConchie* Plaintiffs propose an incorrect standard for timeliness. To be exact, for a motion to be timely, it need not be filed immediately upon knowing your interests are at stake as Plaintiffs imply in stating that the Amended Complaint was filed on October 1st. (*McConchie* Dkt. #148, p. 3). Rather, the standard is "reasonably" prompt. *PAC for Middle America v. State Bd. of Elections*, 1995 WL 571893 *3, Case no. 95 C 827 (N.D. Ill. 1995). Plaintiffs fail to cite to a single case that supports their argument that the motion is untimely. (*McConchie* Dkt. #148, p. 3).

Moreover, timeliness involves examining all of the circumstances in a case. *Smith v. Board of Election Com'rs for City of Chgo.*, 103 F.R.D. 161, 163 (N.D. Ill. 1984). There were several significant filings and orders rendered since the Amended Complaint was filed. On October 19, 2021, the Three-Judge-Panel (the "Panel") issued its ruling on the Legislative Defendants' motion to dismiss which was a relevant factor in the Representative's consideration of the responsive pleading that she would file along with her Motion to Intervene in compliance with Rule 24. (*McConchie* Dkt. 131; *Fed.R.Civ.Pro. 24(c)*). In the same order, the Panel granted the Plaintiffs' motion for summary judgment stating the relief that was awarded to Plaintiffs, the Legislative Defendants filed a motion to clarify, and the Panel ruled on that motion on October 25, 2021. Thus, the Representative's Motion is timely under the totality of the circumstances.

II. The Representative Meets the Remaining Factors of Intervention as of Right

a. The Representative has a Substantial Legal Interest in the Case

As the Motion to Intervene states, where the Representative may lose her base electorate and her own right to vote is at issue, she has a substantial interest to intervene in the litigation both in her official and individual capacity. The *McConchie* Plaintiffs dispute this and assert that the 22nd District is not challenged in the Amended Complaint. (*McConchie* Dkt. #148, p. 3). The assertion is false. The *McConchie* Complaint contends that "discrimination and dilution of voting power for Latino voters … is most evident in three specific geographic areas" which includes Southwest Chicago and thus contains the 22nd District. (*McConchie* Dkt. #116, ¶6). Moreover, the express proposal to cut through the 22nd District is a challenge. (*McConchie* Dkt. #116, ¶¶ 75-76).

In their flawed attempt to dispute the Representative's interest in the case, the *McConchie* Plaintiffs rely on inapplicable cases. In *Corman v. Torres*, the court determined the plaintiffs, who were not petitioner-intervenors, lacked standing to bring the cause of action where they failed to allege an interest specific to them but instead usurpation of the general assembly's rights which was a harm "borne equally by all members of the legislature." 287 F.Supp.3d 558, 567 (M.D. Pa. 2018). In other words, the plaintiffs in that case alleged an institutionalized injury. The premise of institutionalized injury is an injury that cannot be divided or particularized to any individual but rather is shared by all of the legislature. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). In the 1971 case of *City of Philadelphia v. Klutznick*, the court similarly

held that the elected officials did not have standing in their official capacity in alleging that the undercount of population would result in an inaccurate reapportionment of "Congressional and legislative Districts." 503 F.Supp. 663, 672. However, the court found the elected officials had standing in their individual capacity as voters. *Id*. Here, the Representative has an individualized injury where the 22nd District is challenged and her voting rights are implicated in addition to her right to election as an incumbent. It is more significant than an interest in retaining a boundary, which is the interest Plaintiffs claim the Representative asserts.

Finally, while the 22nd District is being challenged, even if it were not, the reasoning that led to the denial of intervention to the elected officials in *Johnson v. Mortham*, is not applicable. The court there specifically found as to two congress persons, "since their districts are not being challenged the possibility of a remedy that would impair their interests … is no more than speculative." 915 F.Supp. 1529, 1538 (N.D. Fla. 1995). Contrary to *Johnson*, a change to the 22nd District is actual and definite. This is evident from the *Contreras* Plaintiffs not opposing the Representative's alternative request to submit objections to the proposed changes to the 22nd District and in the expressed amendment to the 22nd District found in the *McConchie* Complaint. The Representative has demonstrated a substantial interest and intervention as of right should be granted.

b. Impairment of the Legal Interest is Possible if Intervention is Denied

The *McConchie* Plaintiffs again misstate the standard. Plaintiffs contend that the Representative fails to provide facts on how her interest "would be" impaired as

if the impairment must be certain. (*McConchie* Dkt. #148, p. 5). Instead, the burden is one of establishing "at least *potential* impairment" of the interest. *Zurich Capital Markets Inc. v. Coglianese*, 236 F.R.D. 379, 386 (N.D. Ill. 2006)(emphasis added). The Representative has sufficiently articulated how her interest could potentially be impaired. As stated in her Motion, a disposition that changes the configuration of the 22nd District is imminent and would implicate her continued incumbency, her relationship with her constituents as the elected representative, and her own voting rights should the change dilute Latino votes. The Representative has demonstrated possible impairment to her legal interests if the motion to intervene were to be denied.

c. The Parties do not Adequately Represent the same Interests

As stated in the Motion, the Representative's interest is particular to the 22nd District. Plaintiffs claim that the Representative's interest are adequately represented simply because the current Defendants are defending the map. (*McConchie* Dkt. #148, p. 6). They cite to *Planned Parenthood of Wis., Inc. v. Kaul* in support. However, the legislature seeking to intervene in that case was doing so as an agent of the state and the attorney general, who was in the case, provided adequate representation for the state's interest. 942 F.3d 793, 798 (7th Cir. 2019). Further, the rebuttable presumption Plaintiffs allege to be applicable when the proposed intervenor and named party have the same goal is not the standard that should dictate the analysis. The Representative's goal is not to defend the map as a whole, but to defend the 22nd District. Furthermore, the Plaintiffs assertion that the Representative seeks a blank canvas where her opportunity to influence her district

was through the legislative process is without merit. (*McConchie* Dkt. #148, p.7). The Representative used the legislative process, twice, and still, now Plaintiffs seek to threaten the 22nd District leaving her with this final option to intervene to protect it and her interests.

III. The Representative has Established Permissive Intervention

The *McConchie* Plaintiffs claim that "there are not sufficient" common questions of law or fact as if there is a threshold number that must be met to grant permissive intervention. (*McConchie* Dkt. #148, p. 7). Yet, the question is "*whether* a common question of law or fact exists" - not how many. *PAC* 1995 WL 571893 *3; *HHB Ltd. Partnership v. Ford Motor Co.,* Case No. 92 C 3287, 1992 WL 348870, *1 (N.D.Ill.1992)(emphasis added). Plaintiffs also claim that the Representative seeks to raise her own issues of law and fact. However, raising separate questions does not eliminate the fact that the issues are common. In fact, the constitutionality of the June and September Plan are common questions with whether the 22nd District is constitutionally configured even though the 22nd District is a specific consideration for the Representative. The motion to permissively intervene should be granted.

IV. Permissive Intervention Should be Granted for a Limited Purpose

The Representative alternatively requests to permissibly intervene for a limited purpose and scope. Contrary to the assertion of the *McConchie* Plaintiffs, the Representative has sufficiently asserted her interest and established that her interests are not adequately represented by the parties in the case. (*McConchie* Dkt. #126, p. 10). The *McConchie* Plaintiffs also contend that "[b]ecause she fails both

[tests for intervention of right and permission]," she fails to satisfy "limited purpose exception." (*McConchie* Dkt. #148, p. 8). This is yet an additional example of Plaintiffs imputing requirements that do not exist.

In *Reynolds v. LaSalle County*, the Fraternal Order of Police (the "FOP") sought to intervene to raise objections to a consent decree. 607 F.Supp. 482 (N.D. Ill. 1985). The Court denied the FOP's request to intervene as of right finding that the FOP failed to establish that their legitimate interests were not adequately represented in the case. *Id*. at 483. However, the Court still, allowed the FOP to intervene by permission and for the limited purpose of objecting to the promotion of two individuals in the consent decree. *Id*. Thus, even when intervention as of right is denied and interests are adequately represented, permissive intervention may be granted, and it can be limited to a particular purpose.

Lastly, the Representative's request is not "improper." The Court can and should grant her request. (*McConchie* Dkt. #148, pp. 1). It is disingenuous to assert that she seeks to unilaterally draw her own district. *Id*. The Representative seeks to have her voice heard which is the remedy that has already been granted to all the parties in the *McConchie* and *Contreras* litigation. Specifically, Plaintiffs have been allowed to submit their proposed changes to the map and the Defendants have been permitted to provide their responses and objections to those proposed revisions. As the *McConchie* Plaintiffs concede, the Representative has cited to several cases. Each of them supports granting her permissive intervention for the limited purpose.

CONCLUSION

The Illinois State Representative should be granted leave to intervene in this matter as of right. She has met all the factors for intervention under Federal Rule of Civil Procedure 24(a)(2). The Panel should otherwise allow permissive intervention under 24(b). Alternatively, the Representative should be permissively granted leave to intervene for a limited purpose.

WHEREFORE, the Representative prays this Panel enter an order granting leave to intervene as of right or as permitted and further grant any and all such other relief this Panel deems just and equitable.

Respectfully Submitted,

ANGELICA GUERRERO-CUELLAR

By: */s/ Veronica Bonilla-Lopez*
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