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Counsel for Legislative Defendants

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity,

Defendants.

LEGISLATIVE DEFENDANTS' OPPOSITION TO MOTION TO INTERVENE BY UTAH DEMOCRATIC PARTY, FRANK BRANNAN, HILARY LAMBERT, AND CAROLINE SMITH

Case No.: 220901712

Honorable Dianna Gibson

INTRODUCTION

The Utah Democratic Party and several Democratic voters (collectively, "the Democratic Party") seek to intervene in this case as additional parties more than two years after Plaintiffs filed their complaint. *See* Mot. to Intervene (Aug. 16, 2024). They ask this Court for a chance to litigate against "the Republican Party" and "Republican legislative defendants," Mot. 11, even though Defendants are the Lieutenant Governor and Utah Legislature. The Court should deny intervention and not allow this case to devolve into political lawfare. The Supreme Court remanded this case back to this Court to decide a discrete constitutional question: whether S.B. 200's changes to Proposition 4 are allowed. *See League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶¶200-27. Plaintiffs have now filed a motion for summary judgment to resolve that question. The Democratic Party's intervention will complicate and decelerate these remanded proceedings and prejudice the existing parties.

The Democratic Party's interests are already adequately represented by the Individual Plaintiffs who are registered Democrats. Proposed intervenors claim the same interests as Plaintiffs. And while proposed intervenors assert they "may" have "different views of the appropriate remedy," Mot. 11, that assertion is speculative and premature. Plaintiffs' now-pending summary judgment motion confirms that Plaintiffs believe the question before this Court is a question of law that can be resolved without discovery. There is no basis to complicate the remaining proceedings with "discovery" at this time. *Contra* Mot. 12. Nor is there any basis to allow the Democratic Party to intervene based on the assumption that Plaintiffs will win and the Democratic Party's participation is needed to redraw district lines for a remedy.

The Court should deny intervention without prejudice to the Democratic Party's re-filing its motion later, should circumstances change and warrant the Party's participation.

BACKGROUND

Plaintiffs filed this lawsuit on March 17, 2022, alleging that the current Congressional maps violate various provisions of the Utah Constitution (Counts I-IV) and that the Legislature unconstitutionally repealed Proposition 4 (Count V). *See* Compl. (Mar. 17, 2022). On May 2, 2022, the Legislative Defendants moved to dismiss the complaint. *See* Mot. to Dismiss (May 2, 2022). On October 24, 2022, this Court issued a summary ruling denying the motion to dismiss as to Counts I-IV but dismissing Count V. *See* Summ. Ruling (Oct. 24, 2022).

On November 14, 2022, the parties cross-petitioned the Supreme Court for leave to file an interlocutory appeal. *See* Notice of Filing (Nov. 14, 2022). Meanwhile, the parties exchanged discovery requests and Plaintiffs issued at least 27 third-party subpoenas, many in violation of the Utah Constitution's Speech or Debate Clause. *See* Leg.-Defs. Renewed Mot. to Stay 2 (Jan. 6, 2023). Then on January 6, 2023, the Supreme Court granted interlocutory review. And this Court stayed its proceedings and deferred ruling on the pending discovery issues. *See* Order Granting Stay (Jan. 18, 2023); Order Deferring Decision on Plaintiffs' SODI (Jan. 18, 2023).

On July 11, 2024, the Supreme Court issued its decision. In it, the Supreme Court remanded Count V to this Court for further proceedings while "retain[ing] jurisdiction over" Counts I-IV. *League of Women Voters*, 2024 UT 21, ¶226. With respect to Count V, the Supreme Court held that "the people's right to alter or reform the government through an initiative is constitutionally protected from government infringement." *Id.* ¶227. The Supreme Court remanded for the parties and this Court to "use the framework outlined" in the Supreme Court's July 1 opinion to determine whether S.B. 200's changes to Proposition 4 were lawful. *Id.* ¶76; *see* ¶¶200-19.

With the case now remanded to this Court, the Democratic Party and several Democratic voters moved to intervene on August 16, 2024. Meanwhile, Plaintiffs moved for summary judgment

on Count V. And while Plaintiffs intend to amend their complaint, they state that their new allegations "necessarily remain encompassed within Count V." Pls.' Mot. for Summ. J. 27 n.8.

ARGUMENT

Rule 24 governs intervention as of right and permissive intervention. Proposed intervenors fall short of Rule 24's requirements in the following three ways. ***First***, the Democratic Party failed to file a timely motion, and intervention will prejudice Defendants. ***Second***, intervention as of right fails because the Democratic Party can't show that its interests are inadequately represented by Plaintiffs and that its interests will be practically impaired or impeded. ***Third***, permissive intervention is also inappropriate because the Democratic Party's belated addition would delay the proceedings and prejudice Defendants.

I. The Democratic Party's motion—filed more than two years after the complaint—is untimely.

Rule 24 requires proposed intervenors to submit a "timely motion." Utah R. Civ. P. 24. A timely motion is required regardless of whether the proposed intervenor seeks intervention as of right, *id.* 24(a)(1), or whether it seeks permissive intervention, *id.* 24(b)(1). The reason for the timeliness requirement is obvious: "[T]he introduction of additional parties inevitably delays proceedings" and will prejudice the existing parties. *Athens Lumber Co., Inc. v. FEC*, 690 F.2d 1364, 1367 (11th Cir. 1982). This is why a nonparty who otherwise may have the right to intervene can lose or "waive its right to intervene by substantially and unjustifiably delaying its motion to intervene," *Supernova Media, Inc. v. Pia Anderson Dorius Renard & Moss, LLC*, 2013 UT 7, ¶24, 297 P.3d 599, for example by moving to intervene when a case is already ripe for summary judgment, *Republic Ins. Grp. v. Doman*, 774 P.2d 1130, 1131 (Utah 1989). Timeliness is "'determined under the facts and circumstances of each particular case, and in the sound discretion of the court.'" *Id.*

Applying those standards here, the Democratic Party's motion to intervene at this stage of this case is untimely. There is no basis for letting the Democratic Party and additional Democrat plaintiffs

intervene two years after the complaint was filed and a limited remand is now back before this Court, with a motion for summary judgment already pending regarding Plaintiffs' remanded claim. Intervention would complicate these proceedings regarding the straightforward question of law posed by the Supreme Court. If the Democratic Party wishes, it can file an amicus brief. But the pending motion for summary judgment confirms that its involvement as a party is not necessary and will only decelerate these proceedings.

Plaintiffs filed their complaint on May 2, 2022. For months, the case was pending in this Court while it considered motions to dismiss and discovery began. The Democratic Party never moved to intervene. Instead, the Democratic Party waited until August 16, 2024. The Democratic Party waited more than two years to seek to intervene even though it had "notice and opportunity to intervene at an earlier stage of the proceeding." *Id.* (affirming denial of intervention given "ripeness of the case for summary judgment"); *see also, e.g.*, *In re John Edward Phillips Fam. Living Tr.*, 2022 UT App. 12, ¶40, 505 P.3d 1127 (finding a motion untimely when the proposed intervenor delayed for "five months" after having notice of settlement "and neglected to act"). The Democratic Party had nearly a year in this Court to intervene before the Supreme Court granted the parties' request for an interlocutory appeal. Rule 24 simply does not tolerate the Democratic Party's delay. *See Weston v. Darko Segota, Bergaz, L.C.*, 1999 WL 33244810, at *1 (Utah Ct. App. May 6) (a motion filed a more than year after complaint was untimely "[g]iven [the proposed intervenor's] apparent notice and opportunity to intervene at an earlier stage of the proceedings and the ripeness of the case for settlement at the time the motion to intervene was made").

Contrary to the Democratic Party's arguments (at 7), its untimely intervention will "undu[ly] interfere[]" with "the orderly processes of the court" and prejudice the existing parties. *Jenner v. Real Estate Servs.*, 659 P.2d 1072, 1074 (Utah 1983). After an interlocutory appeal, the Supreme Court remanded only Count V back to this Court. *League of Women Voters*, 2024 UT 21, ¶227. The Supreme

Court retained jurisdiction on Counts I-IV, *id.*, including the Legislative Defendants' arguments regarding justiciability of claims that a map is too partisan, *id.* ¶52. The parties' and this Court's job on remand is answering a straightforward question of law: whether S.B. 200 was constitutionally enacted. *See id.* ¶¶200-19. Plaintiffs have already moved for summary judgment on that question of law. Adding additional parties like the Democratic Party at this juncture will complicate and decelerate those proceedings.

In particular, the Democratic Party suggests that it would want "discovery." *See* Mot. 7, 12. That's a reason to deny intervention, not to grant it. The parties have already exchanged discovery requests with substantial back-and-forth about why Plaintiffs' requests for legislative discovery transgress legislative privilege. *Supra* 2. *See* Leg.-Defs. Renewed Mot. to Stay 2 (Jan. 6, 2023); Order Deferring Decision on Plaintiffs' SODI (Jan. 18, 2023). Since then, the Supreme Court's limited remand likely avoids those discovery disputes. Plaintiffs' pending summary judgment motion confirms that Plaintiffs believe it is possible to resolve the constitutionality of S.B. 200—the only question the Supreme Court remanded—without further discovery. There is now no basis for allowing the Democratic Party to insert itself into these remaining proceedings so that proposed intervenors can obtain discovery from their self-described political opponents. *See* Mot. 11-12 (describing Legislative Defendants as "Republican legislative defendants" and framing this case as one against "the Republican Party"). Plaintiffs have insisted this case is one to adjudicate a justiciable controversy about individual rights and not group rights. *See, e.g.*, LWV-Resp.-Br. 14 in *League of Women Voters of Utah v. Utah State Legislature*, No. 20220881-SC (Utah May 12, 2023) (case is about "individual rights"). They have framed it as one that is resolvable without further discovery. *See* Pls. Mot. for Summ. J. at 27 n.8 (confirming that any added allegations are still "encompassed within Count V"). With a summary judgment motion pending that is poised to resolve the remanded issue of law, there's simply no need for intervention

to allow the Democratic Party's discovery requests when the question to be answered on remand is a question of law about the nature of S.B. 200 and the nature of Proposition 4.

Because the Democratic Party's motion to intervene is untimely and will prejudice the existing parties, the Court should deny it.

II. The Democratic Party fails to satisfy the remaining requirements for intervention as of right.

The Court should also deny the Democratic Party intervention as of right because it cannot satisfy other requirements under Rule 24(a)(2). The Democratic Party cannot show that Plaintiffs will inadequately protect their interest or "that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Utah R. Civ. P. 24(a)(2).

A. Plaintiffs, many of whom are Democrats, adequately represent the Democratic Party's claimed interests.

The Democratic Party cannot show that Plaintiffs, who include self-described Democrats, do not adequately represent its claimed interests. Intervention as of right is permitted only if the proposed intervenor's interests are "not 'adequately represented by existing parties.'" *Supernova*, 2013 UT 7, ¶22. Proposed intervenors bear the burden to present evidence that the representation is inadequate. *Id.* ¶49. Adequacy of representation generally turns on "'whether there is an identity or divergence of interest between the potential intervenors and an original party and on whether that interest is diligently represented.'" *Id.* ¶48. Proposed intervenors must present "evidence" that "'the representative party has an interest adverse to the applicant, has colluded with the opposing party, or is otherwise unable to diligently represent the applicant's interest.'" *Id.* ¶49 (quoting *Beacham v. Fritzi Realty Corp.*, 2006 UT App. 35, ¶9, 131 P.3d 271). Mere speculation about how proposed intervenors' interests would diverge from the existing parties' interests—without any evidence—warrants a denial of the motion to intervene. *Beacham*, 2006 UT App. 35, ¶12; *see also id.* ¶9 (requiring "specific reasons or a concrete showing of circumstances"). Importantly, "when the interest of one of the parties and the interest of the applicant are identical, there arises a presumption of adequacy." *Id.* ¶9. The relevant

inquiry is whether "the existing party and would-be intervenor both aim[] to achieve the same outcome through litigation." *Kodiak Am. LLC v. Summit County*, 2021 UT App. 47, ¶21, 491 P.3d 962. If the "object of the applicant for intervention is identical to that of one of the parties," then the representation is "adequate." 59 Am. Jur., *Parties*, §168 (2d ed. 2024).

The interests of the Democratic Party and putative individual Democrat intervenors are identical to those of the existing Democrat Plaintiffs. *Compare* Mot. 9 (alleging that "Utah's congressional map … dilutes their voting strength and electoral power on the basis of their partisan affiliation"), *with* Compl. ¶29 (alleging that the map "dilutes her voting power"); *accord* Compl. ¶¶31-33. Their desired outcome of this litigation is also the same. *See* Mot. 3 (challenge S.B. 200), *with* Compl. ¶37 (same). The identity of interests and desired outcome create the presumption of adequacy. *See, e.g.*, *Skylark Airport Ass'n, LLC v. Jensen*, 2011 UT App. 230, ¶5, 262 P.3d 432 (denying intervention when the proposed intervenors and defendants have the same interest of "hav[ing] the restrictive covenants declared unenforceable"); *Beacham*, 2006 UT App. 35, ¶ (denying an insurer's motion to intervene when the insurer and the plaintiff had the same goal of seeking maximum compensation from the defendant); *RNC v. Wetzel*, 2024 WL 988383, at *3 (S.D. Miss. Mar. 7) (denying the Democratic National Committee intervention when it "had the same ultimate objective" as the state defendants "of upholding" the state law challenged by the Republican National Committee).

The Democratic Party cannot overcome this presumption, which it doesn't even mention. It simply speculates that its interests are not adequately represented by the Democrat Plaintiffs because Plaintiffs' politics might be different and thus their views on a remedy might be different. *See* Mot. 11 (asserting that the Democrat plaintiffs would have to "balance and attend to the interests of its Republican and nonpartisan" plaintiffs); *id.* (speculating proposed intervenors "may" have "different views of the appropriate remedy"). That speculation is not enough. *Beacham*, 2006 UT App. 35, ¶12. The Democratic Party doesn't give any "specific reasons," *id.*, why League of Women Voters of Utah,

Mormon Women for Ethical Government, and the two Republican-voter Plaintiffs would detract from the Democrat-voter Plaintiffs' goals of challenging S.B. 200. More fundamentally, the notion that the Democratic Party must be involved in this case because of politics contradicts what Plaintiffs have said about this suit—that it is a justiciable controversy about individual rights and not group rights. *See, e.g.*, LWV-Resp.-Br. 14 in *League of Women Voters of Utah v. Utah State Legislature*, No. 20220881-SC (Utah May 12, 2023) (case is about "individual rights"). At bottom, the Democratic Party's argument boils down to the *possibility* that it "may" have "different views" on remedy. That argument stacks assumption upon assumption—that Plaintiffs will win and that a remedy will be a new map drawn by the judiciary with the Democratic Party's input. Not even Proposition 4 purported to take that power away from the Legislature. *See* Utah Stat. Ann. §20A-19-301(2), (8). Proposed intervenors' speculation that they might have a different litigation strategy than Plaintiffs is not enough. *See, e.g.*, *Skypark*, 2011 UT App. 230, ¶6 (finding the desire to "pursue additional causes of action" and make "alternative argument" insufficient because they could be raised in a separate suit).

B. The Democratic Party's claimed interests won't be practically impaired or impeded.

The Democratic Party has no interest that will be practically impaired or impeded if it doesn't participate in this case as intervenors. The Democratic Party itself hasn't alleged actual impairment; it has said only that it "may" have "different views of the appropriate remedy." Mot. 11. There is no reason to allow the Democratic Party to intervene based on that speculation about its desire to be involved in future remedial proceedings—an argument that, again, assumes Plaintiffs will win and that parties will be redrawing district lines. The Democratic Party's arguments are too speculative and, even if they weren't, too premature. To the extent the Court believes the Democratic Party should be involved in any remedial proceedings, the Court should deny the motion without prejudice and allow them to refile it should circumstances change.

III. The Democratic Party fails to satisfy the requirements for permissive intervention.

Permissive intervention is also unwarranted. Permissive intervention is allowed only if the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." Utah R. Civ. P. 24(b)(1)(B). But the Court must also "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." *Id.* 24(b)(3). And even if Rule 24(b)'s requirements are met, the Court retains discretion to deny permissive intervention. *See, e.g.*, *Bishop v. Quintana*, 2005 WL 3131587, at *2 (Utah Ct. App. Nov. 25); *cf. Turner v. Cincinnati Ins. Co.*, 9 F.4th 300, 317 (5th Cir. 2021). As detailed above, allowing the Democratic Party to intervene this late in litigation will "only serve to complicate and decelerate the resolution" of the straightforward question of law on limited remand from the Supreme Court. *Wetzel*, 2024 WL 988383, at *4; *see supra* 4-6. Plaintiffs have already moved for summary judgment. Defendants will be prejudiced by the Democratic Party's efforts to obtain discovery and decelerate proceedings when neither is warranted. *Supra* 4-6. Adding the Democratic Party at this stage would show this case to be one really about the Democratic Party's quest to obtain a congressional district for itself, not one—as Plaintiffs contend—about any individual right. *Supra* 8. The Court should deny permissive intervention.

CONCLUSION

For these reasons, the Court should deny the Democratic Party's motion to intervene without prejudice.

Dated: August 30, 2024

Respectfully submitted,

/s/ Tyler R. Green

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CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: August 30, 2024 */s/ Tyler R. Green*