UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, *et al*.,

Plaintiffs – Appellees,

v.

STEVEN HOBBS, in his official capacity as Secretary of State of Washington, and the STATE OF WASHINGTON,

Defendants – Appellees,

and

JOSE TREVINO, ISMAEL G. CAMPOS, and State Representative ALEX YBARRA,

Intervenor-Defendants – Appellants.

Nos. 23-35595 & 24-1602

D.C. No. 3:22-cv-05035-RSL
U.S. District Court for Western Washington, Seattle Division

MOTION TO INTERVENE ON APPEAL OF SENATOR NIKKI TORRES

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INTRODUCTION & RELIEF REQUESTED

Proposed Intervenor State Senator Nikki Torres respectfully moves to intervene in this appeal, both as of right and permissively, to protect her substantial legal interests in this appeal because the State has abandoned its duty to defend the law, and a panel of this Court has indicated that other parties may lack standing to prosecute this appeal. As Justices Alito and Kennedy and Chief Justice Roberts presciently forewarned,[1] this litigation has been exploited by Plaintiffs and the State to achieve through the courts and the expedient of surrender what they could not obtain through the bipartisan and independent redistricting process or through election: The removal of Senator Torres from the Legislature. After her 2022 landslide victory in Washington's Legislative District 15 ("LD-15"), the district court has now literally removed her from the equation by redistricting her out of her own district.[2]

STATEMENT OF THE CASE

On August 10, 2023, the district court enjoined the State of Washington's State Legislative district map (the "Enacted Plan"), finding that the Plan's LD-15,

[1] *See Cooper v. Harris*, 581 U.S. 285, 335 (2017) (Alito, J., concurring in part and dissenting in part) ("Unless courts 'exercise extraordinary caution' in distinguishing race-based redistricting from politics-based redistricting, they will invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena." (internal citations omitted)).

[2] Plaintiff-Appellees and the State oppose this motion. The Secretary takes no position.

which Senator Torres represents, violated Section 2 of the Voting Rights Act ("VRA"). ECF No. 218, *Soto Palmer v. Hobbs*, No. 3:22-cv-05035 (W.D. Wash. Aug. 10, 2023).[3] By the time of trial, only the intervenors, Jose Trevino, Alex Ybarra, and Ismael Campos, three Hispanic voters from the region, were defending the Enacted Plan. The State and the Secretary declined to defend the map, and the State affirmatively asserted that the Enacted Plan violated §2 of the VRA. ECF No. 212 at 35.

In 2022, Senator Torres was elected to serve a four-year term as the Senator for LD-15 under the now-enjoined map, defeating her White Democratic general election opponent 67.7%-32.1%.[4] Moreover, Senator Torres had already declared her intention to run for reelection in LD-15 in 2026.[5]

[3] District court filings will be short cited as ECF No. __.

[4] Wash. Sec'y of State, *November 8, 2022 General Election – Legislative District 15*, available at: https://results.vote.wa.gov/results/20221108/legislativedistrict15.html (last updated Nov. 29, 2022).

[5] Although declarations of candidacy for state senate races on the 2026 general election ballot may not be filed with the Secretary of State until "the first Monday in May" of 2026, Wash. Rev. Code § 29A.24.050, Senator Torres has already filed a statement of organization with the state Public Disclosure Commission for her reelection campaign on January 12, 2023, *see* Nikki Torres, Statement of Organization (Form C-1) (Jan. 12, 2023), https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/candidates/689072, which must be filed within two weeks of "first ha[ving] the expectation of receiving contributions or making expenditures in any election campaign," Wash. Rev. Code § 42.17A.205(1).

During the remedial process, Plaintiffs submitted five remedial map proposals on December 1, 2023. ECF No. 245. When no other parties submitted remedial proposals, Senator Torres realized it was likely that the district court would adopt one of Plaintiffs' proposals. Each of those proposals injured Senator Torres by effectively eliminating her district and reconstructing it in a manner that it would elect a Democratic candidate. Accordingly, she moved to intervene permissively at that time, submitting a Proposed Response to Plaintiffs' proposals. ECF No. 253. The district court agreed to "consider Senator Torres' submission, Dkt. # 253-1, when selecting a remedy in this case[,]" but did not permit Senator Torres to join the case as a party. ECF No. 259 at 4.

Senator Torres, at least, had been successful in presenting to the district court the variety of ways in which Plaintiffs' remedial proposals injured her, including that "Proposal 3" redistricted her entirely out of her own district and into LD-16. The district court, despite considering Senator Torres's submission, adopted a modified version of Proposal 3 ("Remedial Map") on March 15, 2024. ECF No. 290. Intervenor-Defendants, by then the only parties opposing Plaintiffs' contention that the Enacted Plan violated the Voting Rights Act, appealed that remedial decision and moved to stay the Remedial Map. ECF Nos. 291, 292. This Court denied the stay on March 22, stating that "Appellants have not carried their burden to demonstrate that they have the requisite standing to support jurisdiction at this stage

of the proceedings." DktEntry 18.1, No. 24-1602 at 2 (9th Cir. Mar. 22, 2024). The Supreme Court also denied a stay. *Trevino v. Palmer*, No. 23A862, 2024 U.S. LEXIS 1570, at *1 (Apr. 2, 2024).

LEGAL STANDARD

There is no rule that specifically governs appellate intervention. *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1010 (2022) ("No statute or rule provides a general standard to apply in deciding whether intervention on appeal should be allowed."). Instead, courts should consider the "policies underlying intervention," including the legal interest that the party seeks to protect through appellate intervention. *Id*. (citing Fed. R. Civ. P. 24). Similarly (though long before *Cameron*), this Court held that "[i]ntervention on appeal is governed by Rule 24 of the Federal Rules of Civil Procedure." *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). Likewise borrowing from that Rule, the Supreme Court in *Cameron* analyzed the strength of the legal interest asserted, the timeliness of the motion, and the prejudice to existing parties. 142 S. Ct. at 1010–14.

Rule 24(a) authorizes anyone to intervene in an action as of right when the applicant demonstrates that:

> (1) the intervention application is timely; (2) the applicant has a "significant protectable interest relating to the property or transaction that is the subject of the action"; (3) "the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest"; and (4) "the existing parties may not adequately represent the applicant's interest."

Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006); *see also* Fed. R. Civ. P. 24(a)(2). Rule 24(a) is to be construed "broadly in favor of proposed intervenors." *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (quotation marks and citation omitted).

Under Rule 24, a court may also grant permissive intervention "where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996). "An applicant who seeks permissive intervention must prove that it meets three threshold requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims." *Cooper v. Newsom*, 13 F.4th 857, 868 (9th Cir. 2021).

Further, this Court has suggested "the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case" are all relevant factors. *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Even further still, this Court may look to "whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties" (which is required

for intervention as of right under Rule 24(a), but not for permissive intervention under Rule 24(b)), "whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Id*.

ARGUMENT

All relevant factors support granting intervention, both as of right and permissively. Most paramount, Senator Torres has what this Court has already identified as a legally protected interest in not being deprived of her seat through state action, and—due to the State's strategic litigatory surrender—must apparently protect that interest herself.

I. JURISDICTIONAL MATTERS.

Standing. "In general, an applicant for intervention need not establish Article III standing to intervene" unless they advance claims different from those raised by the existing parties. *Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011); *see also Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017).

In any case, Senator Torres has experienced injury sufficiently particularized to establish her independent standing. Senator Torres will be forced to compete for reelection in an electoral environment rendered disadvantageous by the court-

ordered remedy—a "concrete and particularized" injury that only she will suffer. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Specifically, the Remedial Map redistricts Senator Torres out of her own district, moving her from Enacted LD-15 to LD-16 in the Remedial Map. Supplemental Expert Report of Sean P. Trende, Ph.D, ECF No. 273 at 18. Only a small number of Senator Torres's current constituents, about 7.4%, have been moved with her into LD-16. *Id*. at 13. Under Washington law, "[t]he name of a candidate for an office shall not appear on a ballot for that office unless . . . the candidate is, at the time the candidate's declaration of candidacy is filed, properly registered to vote in the geographic area represented by the office." Wash. Rev. Code § 29A.24.075(3). This leaves Senator Torres with nothing but bad options.

First, she could simply accept the injury against her and retire, defeated not by the voters who elected her but by federal judges and a state attorney general who refused to defend state law.

Her options to remain in the state senate are no more palatable:

Second, she could remain in LD-16 and run for reelection to the state senate from this new district before an almost entirely new electorate. She would have to run in the upcoming August 6, 2024 primary (with a May 10, 2024 filing deadline)

against fellow Republican and incumbent senator from that district, Perry Dozier,[6] because (unlike LD-15) LD-16 is on the presidential year cycle.

Third, she could finish her term as a senator without a constituency pursuant to Washington law,[7] then move forty minutes away to Remedial LD-15, where only a fraction of her current constituents reside, to run for election in that proposed district in 2026.

Fourth, she could move to nearby Remedial LD-14, the Remedial District, and compete to finish in the "top two" of either a 2024 or 2028 primary in order to then compete in a general election in a district which was redrawn pursuant to this litigation to have an approximately 12-point Democratic advantage. Supplemental Expert Report of Sean P. Trende, Ph.D. at 23.

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[6] Senator Dozier filed his statement of organization with the state Public Disclosure Commission on July 28, 2021, *see* Perry Dozier, Statement of Organization (Form C-1) (July 28, 2021), https://apollo.pdc.wa.gov/public/registrations/registration?registration_id=46858, and, as of March 31, 2024, had raised nearly $60,000 for that effort, *see* Perry Dozier, Receipts & Expenditure Summary (Form C-4) (Mar. 31, 2024).

[7] 1981 Wash. Sess. Laws ch. 288 § 64 provided that state senators then "serving the four-year terms to which they were elected . . . may continue to serve out their full terms in the newly created senatorial districts." Each successive legislative redistricting plan, from 1991 through the Enacted Plan, stipulated that "existing state law shall continue to govern . . . the status of 'hold-over' senators." Wash. Rev. Code § 44.07C Section 10 (1991 redistricting plan), *superseded by* Wash. Rev. Code § 44.07D; Wash. Rev. Code § 44.07D Section 8 (2001 redistricting plan), *superseded by* Wash. Rev. Code § 44.07E; Wash. Rev. Code § 44.07E Article 6 (2011 redistricting plan), *superseded by* Wash. Rev. Code § 44.07F; Wash. Rev. Code § 44.07F Article 6 (Enacted Plan).

Fifth, she could move to LD-8 across the Columbia River to Richland or Kennewick and compete in a Republican primary against incumbent Senator Boehnke in a district containing zero of her current constituents.

It goes without saying, but these are not desirable options. Without the intervention by the federal courts, Senator Torres would have sought reelection in 2026 in a district she had previously won by thirty-five points. Now, she is instead forced to choose from the preceding five options. She has been materially (and specifically) disadvantaged through this litigation and the district court's orders.

All these harms are legally cognizable. Primarily, this Court has already recognized that, for purposes of intervention, legislators who would be unseated by a law have a "significantly protectable interest" in their seat "that is subject to impairment" by being unseated. *Bates*, 127 F.3d at 873 n.4. That "impairment" sensibly constitutes Article III injury.

Moreover, Senator Torres faces "harms . . . suffered by individual legislators or candidates," namely, "harms centered on costlier or more difficult election campaigns[.]" *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1956 (2019) (leaving for future adjudication whether such harms are cognizable). And the Supreme Court has indicated that a deprivation of "seats as Members of [a legislature] after their constituents had elected them" would constitute an Article III injury to individual legislators. *See Raines v. Byrd*, 521 U.S. 811, 821 (1997)

(emphasis omitted). Obviously, being redistricted out of one's seat *entirely* implicates *Raines*. Senator Torres faces a singling out that not all "member[s] of the body politic" in Washington share. *Newdow v. United States Cong.*, 313 F.3d 495, 498–99 (9th Cir. 2002); *see also Raines*, 521 U.S. at 821 (describing as harm the singling out of a legislator "for specially unfavorable treatment as opposed to other Members of their respective bodies").

Senator Torres has been redistricted out of her own district by the district court and must now face retirement or a menu of bad options that leave her as an individual legislator worse off than she was before. This was established in the record below and was undisputed by any of the Appellees when Senator Torres moved to intervene at the district court. *See Wittman v. Personhuballah*, 578 U.S. 539, 545 (2016) (looking to "evidence that an alternative to the Enacted Plan (including the Remedial Plan) will reduce the relevant intervenors' chances of reelection"). That injury supplies Article III standing and a protectable interest here.

Independent Grounds of Jurisdiction. Federal courts primarily require "independent jurisdictional grounds" to discourage use of permissive intervention "to gain a federal forum for state-law claims" or "to destroy complete diversity in state-law actions." *Freedom From Religion Found. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011). But "[w]here the proposed intervenor in a federal-question case

brings no new claims, the jurisdictional concern drops away." *Id.* at 844 (citing 7C Charles Alan Wright et al., *Federal Practice & Procedure* § 1917 (3d ed. 2010)).

Procedural Appropriateness of Appellate Intervention. Senator Torres seeks intervention on appeal because that seems to be the most appropriate procedural path considering the district court's actions below. Senator Torres submitted a proposed response to Plaintiffs' expert, explaining the ways in which Proposed Map 3 (later adopted, with relatively minor changes, as the Remedial Map) would be detrimental to her interests. *See generally* ECF No. 253-1. The district court ruled that it would "consider Senator Torres' submission, Dkt. # 253-1, when selecting a remedy in this case." ECF No. 259 at 4. Although Senator Torres is disappointed—and injured—by the later actual outcome, she did receive relief in that form at the remedial stage and so did not appeal. *See Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, 88 F.4th 495, 499 (4th Cir. 2023) (holding that direct appellate intervention was appropriate where proposed intervenors sought intervention in the district court, did not forgo any meaningful opportunity to obtain review of an adverse district court ruling, and "had no reason to seek appellate review" because they had not been "aggrieved" by the district court's decision).

Second, this Motion is rightly in this Court because Intervenor-Defendant-Appellants filed a notice of appeal on March 15, 2024, divesting the district court of any jurisdiction over this case. A motion to intervene for purposes of appeal would

more typically be filed in the district court, so that the party seeking intervention could also file a notice of appeal in that court. That is not possible here, however, because the notice of appeal has "divest[ed] the district court of its jurisdiction ... to entertain [a] motion to intervene." *Bryant v. Crum & Forster Specialty Ins. Co.*, 502 Fed. Appx. 670, 671 (9th Cir. 2012). Because jurisdiction over the entire case has now been transferred to this Court, Senator Torres is filing her motion to intervene for purposes of appeal in the only court with jurisdiction to entertain it.

For those reasons, the correct procedure is for Senator Torres to "file an appropriate motion in the appeal" at this Court. *See Elorreaga v. Viacomcbs Inc.*, No. 23-80056, 2023 U.S. App. LEXIS 18864, at *1 (9th Cir. July 24, 2023).

II. FACTORS SUPPORTING INTERVENTION.

A. Senator Torres's Substantial Legal Interest.

This Court follows a "liberal policy in favor of intervention," including looking at "practical and equitable considerations," but does require an "irreducible minimum" requirement that the proposed intervenor assert a legally protected interest that is related to the claims at issue. *Cal. Dep't of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th 1078, 1088 (9th Cir. 2022). Senator Torres asserts a number of legally protected interests in this litigation, which could obviously be impaired by the outcome of this appeal.

Interest in not being redistricted out of her own district. As explained above, Senator Torres is injured by the Remedial Map. This Court has already recognized that a legislator who would be "termed out" by a law has a "significantly protectable interest that is subject to impairment" by that law, for purposes of intervention. *Bates*, 127 F.3d at 873 n.4. This logic applies with the same force to a legislator who would be redistricted out by a legal judgment. On this ground alone, Senator Torres has an interest in contesting the Remedial Map.

Representative interest in enacted boundaries and constituents. Similarly, Senator Torres has an interest in the boundaries of her district as drawn by the Commission and enacted by the Legislature. The interest of elected officials in redistricting litigation "is different than that of [a State]'s citizenry at large or its Secretary of State." *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018). Although "[t]he contours of [Washington]'s district maps do not affect [Secretary Hobbs] directly," the same cannot be said of Senator Torres: "In contrast, the contours of the maps affect the [Senator] directly and substantially by determining which constituents the [Senator] must court for votes and represent in the legislature." *Id.* Under the Remedial Map, Senator Torres represents a radically different district than the one she was elected to represent less than two years ago. Likewise, neither the Secretary nor the State, nor Intervenor-Defendants and Plaintiffs as Washington voters, share Senator Torres's "representative interest"

in "[s]erving constituents and supporting legislation that will benefit the district and individuals and groups therein." *Id*. (quoting *McCormick v. United States*, 500 U.S. 257, 272 (1991) (cleaned up)). That interest is unique to the elected representative of the district, and no representative of LD-15 is currently a party to this case.

B. Inadequacy of the Representation of Existing Parties.

The inadequacy of representation factor "is satisfied if the applicant shows that representation of his interest *may* be inadequate—a 'minimal' burden." *Kalbers v. United States DOJ*, 22 F.4th 816, 828 (9th Cir. 2021) (quoting *Legal Aid Soc'y of Alameda Cnty. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980)); *see also Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 195 (2022) ("[T]his Court has described the Rule's test as presenting proposed intervenors with only a minimal challenge."). Although the Supreme Court did not analyze this factor in *Cameron*, it did suggest that the factor is triggered when existing parties stop being able or willing to protect the interests of the proposed intervenor. *Cameron*, 142 S. Ct. at 1012. This Court, meanwhile, also compares the interests of the proposed intervenor to those of the existing parties. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) ("The most important factor in determining the adequacy of representation is how the interest compares with the interests of existing parties.") (citing 7C Charles Alan Wright et al., *Federal Practice & Procedure* § 1909 (1986)).

And when assessing the adequacy of representation by existing parties, this Court considers "three factors":

> (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.

Id.

None of the existing parties face the particularized harm of losing their seat, as Senator Torres does. At the appellate stage, however, Senator Torres has a new concern that was not relevant when she moved to intervene below: This Court has stated (albeit without prejudice) that intervenor-defendant "Appellants have not carried their burden to demonstrate that they have the requisite standing to support jurisdiction at this stage of the proceedings." DktEntry 18.1, No. 24-1602 at 2. This issue arose because the State has abandoned any defense of the Enacted Plan, instead strategically surrendering to Plaintiffs in order to use this litigation to achieve through the courts what the Attorney General's co-partisans could not achieve through the independent and bipartisan mechanism of the Commission. *See Cooper*, 581 U.S. at 335 (Alito, J., concurring in part and dissenting in part) (warning that "losers in the redistricting process [may] seek to obtain in court what they could not achieve in the political arena").

Should this Court never reach the merits because the State is not defending its own law,[8] Senator Torres's interests will not be adequately represented. Indeed, those significant interests will not be represented *at all*, were this Court to accept the errant view of the State that, where it declines to defend its laws, intervenor voters have no standing to protect their individual interests in the same lawsuit. *See* DktEntry 11.1, No. 24-1602 at 14–15 (9th Cir. Mar. 20, 2024).

C. The Timeliness of This Motion.

As noted above, this request is "[f]or the limited purpose of intervention to appeal," and this Court treats such requests as conclusively timely so long as they are filed within the time to appeal: "so long as the motion to intervene is filed within the time within which the named plaintiffs could have taken an appeal, *the motion is timely as a matter of law*." *Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) (emphasis added). That is just so here: this motion is filed within the 30-day window to take an appeal from the district court's March 15

[8] Plaintiffs initially sued only Secretary Hobbs, the Speaker of the House, and the Senate Majority Leader. The Secretary warned the district court below that "[t]his case urgently needs a proper and adverse defendant[,]" because the originally named defendants "did not adopt the challenged redistricting plan, nor do they have the power to adopt a new redistricting plan[.]" ECF No. 53 at 1. The Secretary assumed—wrongly it turned out—that "the State of Washington would certainly seem to have an interest in defending a redistricting plan that was duly adopted pursuant to the process set forth in its state constitution." *Id.* at 7.

judgment. As a result, this Court treats such a motion to intervene for purpose of appeal as "timely as a matter of law." *Id.*

In any case, timeliness is important but not the end-all-be-all factor, and the current procedural posture is not solely dispositive. *Cameron*, 142 S. Ct. at 1012. The Supreme Court has suggested that a motion to intervene on appeal is timely if it is filed "as soon as it became clear" that a non-party's interests "would no longer be protected by the parties in the case." *Id.* (quotation omitted). Similarly, this Court has held that "we focus on the date the person attempting to intervene should have been aware his interest[s] would no longer be protected adequately by the parties, rather than the date the person learned of the litigation." *Chamness v. Bowen*, 722 F.3d 1110, 1121 (9th Cir. 2013) (citing *Bates*, 127 F.3d at 873). At the district court, Senator Torres moved to intervene as soon as she realized that one of Plaintiffs' maps—all of which injured her in some way—was likely to become the remedial map. Only at that time[9] had LD-15 been invalidated and remedies proposed that inevitably impaired her interests as explained above. ECF No. 257 at 3–4. For

[9] Although one of Plaintiffs' experts presented three "demonstrative maps" at trial, these were not complete redistricting maps, but only presented possible configurations of the remedial district. *See* Trial Ex. 001 at 22-24. In one of the demonstrative maps, Senator Torres would have been moved into LD-14, but incumbent Senator Curtis King would have been moved out of that configuration of LD-14. In the other two demonstrative maps, Senator Torres would not have moved into LD-14. Thus, none of the maps presented prior to December 1, 2023, would have impaired her interests in the way that Plaintiffs' five proposed remedial maps would have (and ultimately, the court-ordered Remedial Map did).

individual legislators in redistricting cases at the trial court level, it makes sense that the "point in time" in relation to which motions to intervene must be assessed, *see Cameron*, 142 S. Ct. at 1012, should be when the injury that legislator is asserting has been sufficiently concretized by adopted or likely to be adopted remedial maps in the district court. Accordingly, Senator Torres moved to intervene at the district court to present that court with her perspective on potential remedial maps.

But on appeal (having learned that the district court adopted the Remedial Map), Senator Torres became aware that her interests may not be defended *at all* on March 22, 2024, when this Court indicated that "Appellants have not carried their burden to demonstrate that they have the requisite standing to support jurisdiction at this stage of the proceedings." DktEntry 18.1, No. 24-1602 at 2. This is certainly a relevant "change[] . . . in the litigation so that intervention that was once denied should be reexamined." *Spangler*, 552 F.2d at 1329. Considering the State and Secretary are not defending the Enacted Plan, enacted LD-15 or Senator Torres's interests, Senator Torres has decided to intervene to protect her own. Therefore, "as soon as it became clear" to Senator Torres that this Court *may* find that Appellants lack standing and that her interests might well not be "protected by the parties in the case[]" on appeal, she set to move to intervene and has proceeded expeditiously. *Cameron*, 142 S. Ct. at 1012.

D. No Prejudice or Delay.

As this case proceeds in this Court in the normal course, Senator Torres's intervention will not delay any proceedings. (Indeed, the Court only announced the definitive briefing schedule for the consolidated appeals on April 3.) Her entry at this juncture will not prejudice any Appellee.

E. Other Relevant Factors.

For the reasons set forth above, Senator Torres has satisfied all four requirements for intervention as of right, and this Court should therefore grant intervention for purposes of this appeal on that basis alone. In addition, all of the remaining requirements for permissive intervention as satisfied here:

Common Questions of Law or Fact. A Rule 24(b) intervenor must "have a question of law or a question of fact in common" with the main action. *Nw. Forest Res. Council*, 82 F.3d at 839 (quoting Fed. R. Civ. P. 24(b)(2)). Here, Senator Torres seeks to present arguments in opposition to Plaintiffs' proposed remedial maps in defense of LD-15 based on her unique perspective as the elected senator representing LD-15. That will not add a question of law or fact to this case.

Relevance to Merits / Just and Equitable Adjudication. This Court also looks to the "relation to the merits" of the legal positions that an intervenor may raise and asks whether intervention "will significantly contribute to . . . the just and equitable adjudication of the legal questions presented." *Spangler*, 552 F.2d at 1329. First,

Senator Torres is one of only three individuals who currently represent all the citizens of LD-15. She won that position in a landslide election, a fact that the district court did not even mention in its opinion, in apparent contravention of this Court's guidance that elections like the one electing Senator Torres by over thirty-five points are the "most probative evidence" in analyzing the equal opportunity of minority voters to elect candidates of their choice. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 553 (9th Cir. 1998). Quite literally, no one is better situated than she to explain how changes to LD-15 will affect the area. A favorable exercise of discretion is thus warranted here for that reason and those explained above.

CONCLUSION

For these reasons, Senator Torres's Motion to Intervene on Appeal should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) and Circuit Rule 27-1(1)(d) because this motion contains 4,905 words spanning 20 pages, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Times New Roman size 14-point font with Microsoft Word.

Dated: April 12, 2024

/s/ Jason Torchinsky
Jason Torchinsky

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system, which will notify all registered counsel.

/s/ Jason Torchinsky
Jason Torchinsky