

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUSAN SOTO PALMER et al.,
Plaintiffs,
v.
STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, et al.,
Defendants,
and
JOSE TREVINO et al.,
Intervenor-Defendants.

Case No.: 3:22-cv-5035-RSL

MOTION TO INTERVENE
OF SENATOR NIKKI TORRES

NOTE ON MOTION CALENDAR:
January 12, 2024

Proposed Intervenor Senator Nikki Torres respectfully moves for leave to intervene in the above-captioned manner permissively pursuant to Fed. R. Civ. P. 24(b). In accordance with Fed. R. Civ. P. 24(c) and Local Rules W.D. Wash. LCR 7(b)(1), the grounds for intervention and arguments in support thereof are set forth below.¹

INTRODUCTION

On August 10, 2023, this Court determined that the State of Washington’s 2021 redistricting map (the “Enacted Plan”) violated Section 2 of the Voting Rights Act with respect to Legislative District 15 (“LD-15”). (See Dkt. # 218 at 32.) On October 4, 2023, the Court ordered

¹ In satisfaction of Fed. R. Civ. P. 24(c), Proposed Intervenor Senator Torres is also filing her Response In Opposition To Plaintiffs’ Remedial Proposals, accompanying this motion.

1 the parties to meet and confer “with the goal of reaching a consensus on a legislative district map
 2 that will provide equal electoral opportunities for both White and Latino voters in the Yakima
 3 Valley regions.” (Dkt. # 230 at 2.) On December 1, 2023, Plaintiffs filed five remedial map
 4 proposals with the Court. (See Dkt. # 245.) No other parties submitted proposals. The Court
 5 ordered any responses be submitted by Friday, December 22. (See Dkt. # 230 at 3.)

6 Proposed Intervenor Nikki Torres is the incumbent state senator representing LD-15, first
 7 elected in 2022 under the Enacted Plan. As the current elected senator for the challenged district,
 8 and who had already declared her intention to run for reelection to the state senate in 2026,² Senator
 9 Torres has a clear and personal interest at stake in this case. Senator Torres has reviewed the five
 10 remedial maps proposed by Plaintiffs, and the enactment of any of them would render her
 11 reelection more difficult—if not impossible. Although Senator Torres expects the Intervenor-
 12 Defendants to also present arguments in opposition to Plaintiffs’ remedial maps, her interest in this
 13 case as the only elected state senator from the challenged district is separate and distinct from the
 14 interests of Intervenor-Defendants, one of whom is a voter (but not elected legislator) in the
 15 challenged district and another of whom is a state representative in an adjacent district.

16 ARGUMENT

17 This Court should grant permissive intervention under Fed. R. Civ. P. 24(b). Rule 24(b)
 18 permits a district court, “[o]n timely motion,” to “permit anyone to intervene who . . . has a claim
 19 or defense that shares with the main action a common question of law or fact.” Courts within this
 20 circuit may grant permissive intervention under Rule 24(b) “where the applicant for intervention
 21 shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant’s
 22 claim or defense, and the main action, have a question of law or a question of fact in common.”
 23 *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th Cir. 1996).

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 26 ² While declarations of candidacy for state senate races on the 2026 general election ballot may not be filed until “the
 27 first Monday in May” of 2026, RCW 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 C1) (Jan. 12, 2023), [https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-
 search-data/candidates/689072](https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/candidates/689072).

1 Furthermore, “[i]f the trial court determines that the initial conditions for permissive
 2 intervention . . . are met, it is then entitled”—but not required—“to consider other factors in making
 3 its discretionary decision on the issue of permissive intervention.” *Spangler v. Pasadena City Bd.*
 4 *of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Such factors include “the nature and extent of the
 5 intervenors’ interest, their standing to raise relevant legal issues, the legal position they seek to
 6 advance, and its probable relation to the merits of the case.” *Id.* Other potentially relevant factors
 7 include “whether changes have occurred in the litigation so that intervention that was once denied
 8 should be reexamined” (not relevant here as this is Senator Torres’s first motion); “whether the
 9 intervenors’ interests are adequately represented by other parties” (which is required for
 10 intervention as of right under Rule 24(a), but not for permissive intervention under Rule 24(b));
 11 “whether intervention will prolong or unduly delay the litigation, and whether parties seeking
 12 intervention will significantly contribute to full development of the underlying factual issues in
 13 the suit and to the equitable adjudication of the legal questions presented.” *Id.*

14 The Ninth Circuit “interprets the rule broadly in favor of intervention.” *Forest*
 15 *Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995).

16 **A. Independent Grounds for Jurisdiction.**

17 Federal courts generally require “independent jurisdictional grounds” to discourage the use
 18 of permissive intervention intended “to gain a federal forum for state-law claims” or “to destroy
 19 complete diversity in state-law actions.” *Freedom From Religion Found v. Geithner*, 644 F.3d
 20 836, 843 (9th Cir. 2011). However, “[w]here the proposed intervenor in a federal-question case
 21 brings no new claims, the jurisdictional concern drops away.” *Id.* at 844 (citing 7C Charles Alan
 22 Wright et al., *Federal Practice Procedure* § 1917 (3d ed. 2010)).

23 This is a federal-question case (*see* Dkt. # 70 ¶ 35 (citing 28 U.S.C. § 1331)) and Senator
 24 Torres does not raise any new claims or defenses. Thus, the “independent jurisdictional grounds”
 25 is thus satisfied or inapplicable.
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1 **B. Timeliness.**

2 “In determining timeliness under Rule 24(b)(2), we consider precisely the same three
3 factors—the stage of the proceedings, the prejudice to the existing parties, and the length of and
4 reason for the delay [as] considered in determining timeliness under Rule 24(a)(2).” *LULAC v.*
5 *Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997).

6 These proceedings are certainly at an advanced stage in some senses—a judgment was
7 entered by the Court in August (*see* Dkt. # 219) and the parties are now engaged in remedial
8 proceedings (*see, e.g.*, Dkt. # 230). This case is not, however, advanced with regard to those
9 remedial proceedings and their relation to Senator Torres, whose interests were not definitively
10 affected by this action until Plaintiffs filed their remedial map proposals on December 1. (*See* Dkt.
11 # 245.) Given these changed circumstances, and Senator Torres’s prompt attempt to intervene in
12 light of them, this motion is timely. *See Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854
13 (9th Cir. 2016) (“Where a change of circumstances occurs, and that change is the ‘major reason’
14 for the motion to intervene, the stage of proceedings factor should be analyzed by reference to the
15 change in circumstances, and not the commencement of the litigation.”).

16 At the time this suit was initiated in January 2022 (*see* Dkt. # 1), and even later when the
17 Court granted an earlier motion to intervene (*see* Dkt. # 69), Senator Torres was not yet even a
18 *candidate* for state senate. She filed her declaration of candidacy for state senate on May 20, 2022,
19 was elected on November 8, 2022, and assumed office on January 9, 2023. Senator Torres had no
20 reason to seek intervention prior to her election because she had no stake in the contours of a
21 district that she did not yet represent. Even after her election, it was not clear to her that this action
22 would affect her interests at all. Although this lawsuit was pending at the time she took office, it
23 was not obvious that the Court would find a Section 2 violation, considering LD-15 was already a
24 majority Hispanic citizen voting age population district, nor was it obvious in the event a violation
25 was found that the remedy implemented would leave Senator Torres in a more precarious electoral
26 position. However, once Plaintiffs submitted their five proposed remedial maps and no other
27 parties submitted a proposed remedial map, Senator Torres realized that one of these five maps

1 would likely be the remedy ordered by the Court, and that the enactment of any of these five maps
2 would render her reelection campaign more difficult.³

3 Senator Torres's interest is in the preservation of the existing boundaries of LD-15 (or at
4 least in minimizing any changes to the geographic and partisan makeup of the district), including
5 ensuring LD-15 continues to encompass her residence, and that interest did not arise until after
6 liability had been assessed *and* a remedy proposed. Intervention should be "analyzed in relation to
7 the current stage of proceedings," and in some cases intervention may only become appropriate at
8 the remedial stage. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983); *see also*
9 *Reudiger v. U.S. Forest Serv.*, 2005 U.S. Dist. LEXIS 43019, at *17 (D. Ore. Feb. 9, 2005)
10 (applying Ninth Circuit caselaw holding that third-party intervention in NEPA actions is only
11 permitted at the remedial stage). Hence, Senator Torres's intervention in this case only became
12 appropriate once it became clear that these remedial proceedings would inevitably impair her
13 interests by resulting in the enactment of a district map that is less favorable to her.

14 None of the existing parties will suffer prejudice from granting the proposed intervention
15 either. Senator Torres's objective in seeking leave to intervene is to ensure that whatever remedy
16 is ultimately ordered by the Court will not adversely affect her interests as the incumbent senator
17 representing the district in question. Nothing about the Court's adopted schedule for remedial
18 proceedings (*see* Dkt. # 230 at 3) would be required to change if her intervention was granted.

19 Finally, as discussed above, the relevant delay in this case was, at most, twenty-one days.
20 There was no reason for Senator Torres to seek intervention before December 1 because it was not
21 obvious that she would inevitably be harmed until Plaintiffs submitted their five remedial maps,
22 four of which would render her reelection in LD-15 impossible if adopted by the Court, and any
23 of which would render her next election campaign more difficult. As soon as Senator Torres
24 reviewed the proposed maps and realized the implications of their enactment, she moved quickly
25 to obtain counsel and intervene in defense of her interests.

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27 ³ This remains true after the Court's retention of Karin Mac Donald, who will not propose her own map but rather will
assist "in assessing [Plaintiffs'] proposed remedial plans and making modifications." (Dkt. # 243 at 1.)

1 **C. Common Questions of Law or Fact.**

2 To advance the interests of judicial economy, all claims and defenses presented by a Rule
3 24(b) intervenor must “have a question of law or a question of fact in common” with the main
4 action. *Nw. Forest Res. Council*, 82 F.3d at 839. Here, this element is clearly satisfied because
5 Senator Torres seeks to present arguments in opposition to Plaintiffs’ proposed remedial maps in
6 defense of LD-15 based on her unique perspective as the elected senator representing LD-15.
7 Those legal and factual arguments could hardly be more connected to the issues presented in these
8 remedial proceedings.

9 **D. The Nature and Extent of Proposed Intervenor’s Interest.**

10 Moving on to the additional factors that the Ninth Circuit has held trial courts may consider
11 when granting permissive intervention, Senator Torres’s interest in this case is distinct from the
12 interests of all existing parties, including existing Intervenor-Defendants. Specifically, Senator
13 Torres is the incumbent elected senator representing the legislative district that has been ordered
14 to be changed through these remedial proceedings; none of the existing parties can say the same.

15 The interest of elected officials in redistricting litigation “is different from that of [a State]’s
16 citizenry at large or its Secretary of State.” *League of Women Voters of Mich. v. Johnson*, 902 F.3d
17 572, 579 (6th Cir. 2018). While “[t]he contours of [Washington]’s district maps do not affect
18 [Secretary Hobbs] directly,” the same cannot be said of Senator Torres. *Id.* “In contrast, the
19 contours of the maps affect the [Senator] directly and substantially by determining which
20 constituents the [Senator] must court for votes and represent in the legislature.” *Id.* If any of
21 Plaintiffs’ proposed maps are implemented, Senator Torres would represent a radically different
22 constituency than the one she was elected to represent one year ago.

23 Likewise, Intervenor-Defendants as Washington voters do not share Senator Torres’s
24 “representative interest” in “[s]erving constituents and supporting legislation that will benefit the
25 district.” *Id.* (quoting *McCormick v. United States*, 500 U.S. 257, 272 (1991)). That interest is
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1 unique to the elected representative of the district, and no representative of LD-15 is currently a
2 party to this case.⁴

3 **E. Standing to Raise Relevant Legal Issues.**

4 “In general, an applicant for intervention need not establish Article III standing to
5 intervene” unless they advance claims different from those raised by the existing parties. *Perry v.*
6 *Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011); *see also Town of Chester v. Laroe Estates,*
7 *Inc.*, 581 U.S. 433, 440 (2017). Nevertheless, if the Court orders the enactment of one of Plaintiffs’
8 remedial maps, or a map similar to or that is a modification of one of these proposals, Senator
9 Torres will clearly experience an injury that is sufficiently particularized to establish her own
10 independent Article III standing. Senator Torres will be forced to compete for reelection in 2026
11 in an electoral environment rendered disadvantageous by the court-ordered remedy—a “concrete
12 and particularized” injury that only she will suffer. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,
13 560 (1992). That injury will be directly traceable to the remedy ordered in this case, rather than to
14 this Court’s initial determination of liability. *Id.* And finally, that injury will be redressed by a
15 favorable decision at this stage of the proceedings. *Id.* It may sound axiomatic, but the enactment
16 of a remedy map that does not put Senator Torres in a worse-off electoral position will not injure
17 Senator Torres.

18 It is also worth noting that Senator Torres’s standing as an intervenor is not precluded by
19 *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019), which solely addressed the
20 question of *institutional* standing for legislative bodies. The *Bethune-Hill* Court specifically
21 reserved for another day the question whether “harms centered on costlier or more difficult election
22 campaigns are cognizable,” but explained that if such harms are sufficient for Article III standing,
23 “those harms would be suffered by *individual legislators or candidates*”—in other words, by
24 individuals like Senator Torres. *Id.* at 1955–56 (emphasis added).

25 _____
26 ⁴ Intervenor-Defendant Alex Ybarra represents an adjacent district in the Washington House of Representatives. While
27 he has a similar “representative interest” as Senator Torres, only “the boundaries of LD 15” were found by the Court
to violate Section 2. (Dkt. # 218 at 32.)

1 That makes sense: If redistricting leaves one particular legislator more vulnerable, that
2 unfavorable treatment constitutes concrete and individualized injury unique to that individual
3 legislator as opposed to impacting all legislators equally (or the Legislature itself). Another
4 legislator from the same chamber, for example, could face better reelection chances post-
5 redistricting. Line-drawing affects each incumbent member's reelection chances differently,
6 because all districts are different. The Supreme Court has implied that a deprivation of "seats as
7 Members of [a legislature] after their constituents had elected them" would constitute an Article
8 III injury to individual legislators. *See Raines v. Byrd*, 521 U.S. 811, 821 (1997) (emphasis
9 omitted). Reduction in a legislator's reelection chances is a reduction in the chance for that
10 legislator to keep his or her seat after election. Moreover, being redistricted out of one's seat
11 entirely by redistricting (meaning the legislator's home address is moved to a different district or
12 two districts are collapsed into one, forcing a primary between two incumbents) would obviously
13 qualify as a deprivation of one's seat. Senator Torres faces these situations under the proposed
14 remedial maps. *See Wittman v. Personhuballah*, 578 U.S. 539, 545 (2016) (looking to "evidence
15 that an alternative to the Enacted Plan (including the Remedial Plan) will reduce the relevant
16 intervenors' chances of reelection.")

17 **F. Relevance of Legal Position to Merits of Case.**

18 Understanding that a remedy map will be entered, Senator Torres seeks to ensure that the
19 map ultimately adopted does not impair her interests as the current elected senator representing
20 LD-15. Specifically, four of Plaintiffs' proposed remedy maps place Senator Torres's residence
21 *outside* of LD-15 and inside proposed LD-16, thereby separating her from her current constituents
22 and forcing her to compete in a primary election against another incumbent senator immediately
23 in 2024, or requiring her to move a substantial distance to any of the proposed LD-15
24 configurations (which would only contain a fraction of her current constituents under Plaintiffs
25 proposals). (*See* Expert Report of Sean P. Trende, Ph.D., Dkt. # 251 at 39, 60.) Even assuming the
26 correctness of the Section 2 violation finding, it is not necessary to remove Senator Torres from
27 LD-15 to fix any alleged Section 2 issues inherent in the current design.

1 **G. Adequacy of Existing Representation.**

2 As an initial matter, inadequacy of representation is only a requirement of Rule 24(a) and
 3 is not mentioned in Rule 24(b), which may explain why the Ninth Circuit considers it only as a
 4 third-tier factor for permissive intervention. *See Spangler*, 552 F.2d at 1329. Most importantly,
 5 Senator Torres offers a unique perspective as an elected official representing the very district that
 6 is subject to alteration in these remedial proceedings that other parties do not possess. Moreover,
 7 none of the existing parties share Senator Torres’s interest in running for reelection in the district
 8 that she currently represents. *See Callahan v. Brookdale Senior Living Cmty., Inc.*, 42 F.4th 1013,
 9 1020 (9th Cir. 2022) (When assessing the adequacy of representation by existing parties, the Ninth
 10 Circuit considers “three factors”: “(1) whether the interest of a present party is such that it will
 11 undoubtedly make all of a proposed intervenor’s arguments; (2) whether the present party is
 12 capable and willing to make such arguments; and (3) whether a proposed intervenor would offer
 13 any necessary elements to the proceeding that other parties would neglect.”) (quoting *Arakaki v.*
 14 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)).

15 **H. Intervention Will Not Prolong This Litigation.**

16 Senator Torres has reviewed the Court’s scheduling order of October 4, 2023 (*see* Dkt. #
 17 230) and does not object to any of the deadlines contained therein. She is capable of filing
 18 responses to the remedial proposals by the current deadline of December 22 and hereto attaches
 19 her [Proposed] Response In Opposition To Plaintiffs’ Remedial Proposals. Thus, granting her
 20 intervention will not unduly prolong the proceedings.

21 **I. Intervention Will Contribute to an Equitable Resolution.**

22 Finally, Senator Torres’s intervention in these remedial proceedings “will significantly
 23 contribute to . . . the just and equitable adjudication of the legal questions presented.” *Spangler*,
 24 552 F.2d at 1329. Only one contested election has been conducted so far under the current iteration
 25 of LD-15, and Senator Torres won that election in a landslide. That means that Senator Torres is
 26 one of only three individuals who currently represent all the citizens of LD-15, and the only one
 27 who faced a general election opponent under the Enacted Plan, so a change in the boundaries of

1 that district will necessarily result in a change to Senator Torres’s constituency—and, by extension,
2 to her prospects for reelection.

3 No one is better situated to explain how specific changes to LD-15 will affect her
4 representation of her constituents than is Senator Torres, and none of the existing parties to this
5 action can offer the Court similar expertise. Her intervention should be granted if for no other
6 reason than to allow a complete judicial evaluation of the impact of those changes and thereby
7 avoid the enactment of a remedial map that leaves the citizens of LD-15 worse off.

8 **CONCLUSION**

9 For the foregoing reasons, Proposed Intervenor Senator Torres respectfully requests that
10 this Court enter an order granting her Motion to Intervene in this action.

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1 DATED this 22nd day of December, 2023.

2 Respectfully submitted,

3 s/ Andrew R. Stokesbary

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I certify that this memorandum contains 3,243 words, in compliance with the Local Civil Rules.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court's CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 22nd day of December, 2023.

Respectfully submitted,

s/ Andrew R. Stokesbary _____
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Counsel for Proposed Intervenor Sen. Torres

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