

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMMON CAUSE FLORIDA, et al.,

Plaintiffs, and

MICHAEL ARTEAGA, LENI
FERNANDEZ, ANDREA
HERSHORIN, JEAN ROBERT
LOUIS, MELVA BENTLEY ROSS,
DENNY TRONCOSO, BRANDON
NELSON, GERALDINE WARE, and
NINA WOLFSON,

Intervenor-Plaintiffs,

v.

LAUREL M. LEE, in her official
capacity as Florida Secretary of State, et
al.,

Defendants.

Case No. 4:22-cv-00109-AW-MAF

MOTION TO INTERVENE OF PROPOSED INTERVENOR-PLAINTIFFS
MICHAEL ARTEAGA, LENI FERNANDEZ, ANDREA HERSHORIN,
JEAN ROBERT LOUIS, MELVA BENTLEY ROSS, DENNY TRONCOSO,
BRANDON NELSON, GERALDINE WARE, AND NINA WOLFSON

Michael Arteaga, Andrea Hershoin, Leni Fernandez, Jean Robert Louis, Melva Bentley Ross, Denny Troncoso, Brandon Nelson, Geraldine Ware, and Nina Wolfson (collectively, the “Proposed Intervenors”), move this Court to intervene in the above-referenced matter. In support of their motion, Proposed Intervenors state as follows:

1. Proposed Intervenors are registered Florida voters who face the prospect of being forced to cast diluted votes in overpopulated congressional districts in the 2022 election in the very likely event that the Florida Legislature and Governor cannot agree on redistricting maps. Proposed Intervenors have attached a Proposed Complaint to this motion. *See Ex. 1.*

2. On March 11, 2022, Proposed Intervenors filed suit in Florida state court alleging that Florida's congressional districts are malapportioned in violation of the U.S. Constitution and 2 U.S.C. § 2. *See Ex. 2, Compl., Arteaga v. Lee*, No. 2022-CA-000398 (Fla. 2d Cir. Ct. Mar. 11, 2022).

3. Later that day, Plaintiffs in the above-referenced matter (collectively, the "Common Cause Plaintiffs") filed their complaint in this Court. *See* ECF No. 1. The Common Cause Plaintiffs similarly allege that Florida's congressional districts are malapportioned in violation of the U.S. Constitution and 2 U.S.C. § 2. *See id.* ¶¶ 62-71.

4. As explained further in their brief, Proposed Intervenors easily satisfy the conditions for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). First, their motion is timely, as it was filed less than one week after Common Cause Plaintiffs filed their Complaint. Second, Proposed Intervenors have substantial legally protectable interests in the outcome of this litigation—both as voters and as litigants in a parallel suit. Third, their interests will undoubtedly be

affected by whether and how this Court develops a redistricting plan, particularly given that these proceedings could impact the course and resolution of Proposed Intervenor's parallel state court suit. Fourth, neither the Common Cause Plaintiffs nor the Defendants adequately represent Proposed Intervenor's interests. The Common Cause Plaintiffs are not participants in the parallel state court action, and the claims they advance here are on behalf of voters in distinct malapportioned congressional districts. Defendants, meanwhile, are government officials sued in their official capacity in both this case and in Proposed Intervenor's case in state court, and thus cannot represent Proposed Intervenor's interests as plaintiffs.

5. Alternatively, Proposed Intervenor satisfies the criteria for permissive intervention under Federal Rule of Civil Procedure 24(b). Proposed Intervenor's claims involve the same legal issues—whether the current districts are malapportioned and when this Court must act to protect voters—and there is no risk of prejudice at this early stage of litigation.

6. Federal courts throughout the country have repeatedly allowed state-court redistricting plaintiffs to intervene in parallel federal-court proceedings. *See Ex. 3, Gonidakis v. Ohio Redistricting Comm'n*, 2:22-cv-00773-ALM-EPD, slip op. (S.D. Ohio Mar. 4, 2022); *Ex. 4, Toth v. Chapman*, 1:22-cv-00208-JPW, slip op. (M.D. Pa. Feb. 28, 2022); *Hunter v. Bostelmann*, No. 21-cv-512-jdp-ajs-eec, 2021 WL 4206654 (W.D. Wis. Sep. 16, 2021).

7. In accordance with Local Rule 7.1(E), Proposed Intervenors have contemporaneously filed a memorandum in support of this motion.

LOCAL RULE 7.1(B) CERTIFICATION

Counsel for Proposed Intervenors has conferred with counsel for Common Cause Plaintiffs, who has consented to Proposed Intervenors' motion to intervene. Because counsel for Defendants have not entered notices of appearance, counsel for Proposed Intervenors are not yet able to confer with counsel for Defendants consistent with Local Rule 7.1(B), but will promptly do so upon notice, and update this conferral certification if necessary.

LOCAL RULE 7.1(F) CERTIFICATION

Undersigned counsel certifies that this motion contains 534 words, excluding the case style and certifications.

Dated: March 16, 2022

/s/ Frederick S. Wermuth
Frederick S. Wermuth
Florida Bar No. 0184111
Thomas A. Zehnder
Florida Bar No. 0063274
**KING, BLACKWELL, ZEHNDER
& WERMUTH, P.A.**
P.O. Box 1631
Orlando, Florida 32802
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com
tzehnder@kbzwlaw.com

Respectfully submitted,

Abha Khanna*
Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law
jhawley@elias.law

John M. Devaney*
PERKINS COIE LLP
700 Thirteenth Street N.W., Suite 600
Washington, D.C. 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
jdevaney@perkinscoie.com

Christina A. Ford
Joseph N. Posimato*
Graham W. White*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
cford@elias.law
jposimato@elias.law
gwhite@elias.law

Counsel for Plaintiffs

**Pro hac vice application forthcoming*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 16, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Frederick S. Wermuth

Frederick S. Wermuth

Florida Bar No. 0184111