IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WALTER SESSION, *et al.*, *Plaintiffs*,	§	
vs.	§	Civil Action No. 2:03-CV-354
RICK PERRY, *et al.*, *Defendants*.	§	

MOTION TO INTERVENE
OF TRAVIS COUNTY AND THE CITY OF AUSTIN

Under Rules 24(a)(2) and 24(b)(2) of the Federal Rules of Civil Procedure, Movant-Intervenors Travis County, Texas ("Travis County" or "County"), and the City of Austin, Texas ("Austin" or "City"), hereby move to intervene as plaintiffs in the above-referenced action, in order to raise the claims asserted in their Complaint in Intervention, which accompanies this motion.

I. BACKGROUND

These consolidated actions present the question whether the statewide congressional redistricting plan enacted on October, 2003, in the 3rd called session of the 78th Texas Legislature – HB3, establishing Plan 1374C – is valid or whether, instead, it is, either in whole or in part, illegal in light of several federal statutory and constitutional requirements. Also raised is the question whether HB3 should be implemented for use in the upcoming 2004 Texas congressional elections.

Travis County is charged by the legislature with primary local responsibility for the conduct of partisan elections, including those for congressional office. *See, e.g.*, TEX. ELEC.CODE, Chapter 31, Subchapter B, & Chapter 32, Subchapter A. Austin is a home

rule municipality within the meaning of Article XVI, Section 5, of the Texas Constitution, has full power of local self-government, *see* TEX. LOCAL GOV'T CODE § 51.072, and is authorized in Article I, Section 3, of its charter to take such actions as are necessary to advance the interests of its citizens and inhabitants. Through longstanding tradition, the interests and geographical integrity of Texas counties and cities have been a recognized principle in development of congressional and other statewide redistricting legislation.

II. THE COUNTY AND CITY ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Under the Federal Rules, a party is entitled to intervene in a case as of right if: "(1) the motion to intervene is timely; (2) the potential intervener asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene; (3) the disposition of that case may impair or impede the potential intervener's ability to protect her interest; and (4) the existing parties do not adequately represent the potential intervenor's interest." *Doe #1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (citations omitted); *see also* FED.R.CIV.P. 24(a). Intervention should be liberally granted. *See Doe #1*, 256 F.3d at 375 ("'Federal courts should allow intervention where no one would be hurt and the greater justice could be attained.") (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994).

The County and City satisfy these requirements and are entitled to intervene as a matter of right in this case. *Cf. Rogers v. Brockette*, 588 F.2d 1057 (5th Cir.) (recognizing standing of local government to sue state for violation of federal law), *cert.* denied, 444 U.S. 827 (1979); *Cline v. Robb*, 548 F.Supp. 128, 132 (E.D. Va. 1982) (recognizing

county officials' legally protectable interests as plaintiffs in legislative redistricting litigation).

A. The intervention is timely.

Four factors govern the timeliness of a motion to intervene: "(1) how long the potential intervener knew or reasonably should have known of her stake in the case into which she seeks to intervene; (2) the prejudice, if any, the existing parties may suffer because the potential intervener failed to intervene when she knew or reasonably should have known of her stake in that case; (3) the prejudice, if any, the potential intervener may suffer if the court does not let her intervene; and (4) any unusual circumstances that weigh in favor of or against a finding of timeliness." *Doe #1*, 256 F.3d at 376. This intervention being filed only a week after the first status conference in this case, it cannot be seriously contested that the County and City's intervention easily satisfies the timeliness requirement.

B. The County and City have a substantial interest in this litigation.

The County is the principal local unit of government that must conduct the elections under the challenged redistricting plan; and the County and City are entities whose historically recognized interests in redistricting plans have been undermined. Thus, the County and City have a direct interest "related to the property or transaction that forms the basis of the controversy." *Doe #1*, 256 F.3d at 375. "[T]he interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Espy*, 18 F.3d at 1207 (internal citation and quotation omitted); *see also Ford v. Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001) ("[T]he Fifth Circuit has warned against defining 'property or

transaction' too narrowly.") (citation omitted). Here, the County and City's presence in the suit is plainly warranted.

As alleged in the accompanying Complaint in Intervention, HB3's treatment of the County and City is historically unprecedented, performing radical surgery on both these local governmental entities. The County's conduct of the next round of congressional elections is concretely affected in financial and administratively-disruptive ways.

The proprietary operations of both the County and the City are, like most contemporary local governments, intimately linked to federal government programs and budgets. Thus the County and the City are confronted with HB3's fundamental realignment of their congressional lines with a potentially significant diminution in the strength of their federal agency and program relationships. The outcome of the litigation over whether the current redistricting plan controls upcoming elections this decade, whether lines drawn by HB3 are valid, and, if they are not valid, what the new lines will be are of immense importance to the two governments.

C. Disposition of this litigation may impair the County and City's interests.

The disposition of this case "may impair or impede the potential intervener's ability to protect her interest." *Doe #1*, 256 F.3d at 375. Because the County is statutorily charged with administering and overseeing local aspects of partisan elections in Texas, it would be bound to specific action by an interlocutory or final decision in this case. Moreover, a decision in this case could result in an alignment of congressional districts different from those of which the County and City have traditionally been a part. These interests are more than sufficient to meet the impairment test. *See Edwards*, 78

F.3d at 1005 (holding that would-be intervener who in essence would be bound by decision in the case met the "practical impairment" standard, which was a liberalization of the prior test requiring a showing that the intervener would be bound).

D. The existing parties do not adequately represent the County and City's interests.

Finally, existing parties do not adequately represent the County and City's interests. The showing required for this factor is "minimal": "[t]he potential intervener need only show that the representation *may be* inadequate." *Doe #1*, 256 F.3d at 380 (emphasis in *Doe*) (internal quotation and citation omitted). None of the current parties has lodged a challenge seeking to protect the unique interests of local political subdivisions, including those with significant electoral responsibilities. Although the state defendants have broad responsibilities to the public interest, they are inadequate to protect the County and City's particular interests. *See Doe #1*, 256 F.3d at 381 (noting that because USDA had duty to represent broad public interest, not just intervener's more particular interest, the USDA may be inadequate to represent intervener's interest). The state defendants are, in fact, asserting positions directly contrary to those of these two putative government intervenors.

Accordingly, for all the reasons stated above, the County and City are entitled to intervene in this case as a matter of right.

III. ALTERNATIVELY, THE COUNTY AND CITY SHOULD BE GRANTED PERMISSIVE INTERVENTION.

In the alternative, the County and City should be allowed to intervene permissively pursuant to FED. R. CIV. P. 24(b). The County and City's claims and this

case plainly have common questions of law or fact. Therefore, at a minimum, the County should be permitted by this Court to intervene permissively.

IV. THE POSITION OF THE OPPOSING OR OTHER PARTIES IS NOT KNOWN.

On Thursday, November 6th, the below-signed counsel faxed counsel for the other parties a request for their position on the County's intervention. With minor exceptions, no response, pro or con, has been received. Because of the rush of events, including the fact that the city council did not vote to seek intervention until the early hours of Friday, November 7th, and the fact that below-signed counsel was away on other litigation business until mid-afternoon that day, the position of other parties on the City's proposed intervention has not been requested.

V. CONCLUSION

The County and the City urge the Court to grant this motion, permitting their intervention on the plaintiffs' side in this case.

Respectfully submitted,

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