UNITED STATES COURTS OF APPEALS
FOR THE NINTH CIRCUIT

SUSAN SOTO PALMER, *et al.*,

Plaintiffs-Appellees,

v.

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

Defendants-Appellees,

and

JOSE TREVINO, ISMAEL CAMPOS, and ALEX YBARRA,

Intervenors-Defendants-Appellants.

Nos. 23-35595 & 24-1602

D.C. No. 3:22-cv-05035-RSL
United States District Court for the Western District of Washington
Tacoma, Washington

PLAINTIFFS-APPELLEES' OPPOSITION TO MOTION TO INTERVENE OF SENATOR NIKKI TORRES

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I. INTRODUCTION

This Court should deny Proposed Intervenor Senator Torres's motion to intervene in this appeal. After knowing about this suit and its potential impacts for nearly *a year and a half* and doing nothing, Senator Torres now asks this Court to allow her to intervene. But Senator Torres lacks standing because she has no legally protectable interest in the outcome of this appeal, her motion is untimely and procedurally inappropriate, and she is adequately represented by Appellants. Indeed, Senator Torres's motion to intervene appears to be nothing more than a thinly veiled attempt to conjure standing (which Senator Torres lacks) after this Court indicated Intervenor-Appellants (who are represented by the *same attorneys* as Senator Torres) likely do not have standing. This procedural runaround should not be rewarded. The district court was right to deny Senator Torres's motion when she attempted to intervene below, and this Court should do the same.

II. STATEMENT OF THE CASE

Plaintiffs filed the suit below in January 2022 challenging Washington's Legislative District 15 (LD 15) under Section 2 of the Voting Rights Act (VRA) and asked the court to enjoin LD 15 and adopt a remedial district. *See* ECF No. 1, 38. Two months after Plaintiffs filed suit, three individuals, State Representative Alex

Ybarra, Jose Trevino, and Ismael Campos, moved to intervene. ECF No. 57.[1] The district court found that the Intervenors lacked any legally protectable interest but granted them permissive intervention. ECF No. 69. During this suit, Senator Torres was elected to serve as State Senator for LD 15. ECF No. 253 at 2. The Senator had notice of this lawsuit no later than November 2022, when she received and responded to a subpoena served by Plaintiffs. ECF No. 259 at 3.

At the time this case went to trial in June 2023, both the Intervenor-Defendants and the State opposed the Plaintiffs' contention that the Enacted Plan violated the VRA, with the State specifically defending against the Section 2 intentional discrimination claim. ECF No. 191 at 2. On August 11, 2023, the district court rendered its decision in favor of Plaintiffs. ECF No. 218, *Soto Palmer v. Hobbs*, No. 3:22-CV-05035-RSL 2023 WL 5125390 (W.D. Wash. Aug. 10, 2023). On September 8, 2023, Intervenor-Defendants ("Appellants") filed notice of appeal. ECF No. 222. The State of Washington and Secretary Hobbs, both defendants below, did not appeal. In November 2023, Appellants filed a petition for a writ of certiorari before judgment at the U.S. Supreme Court which was denied. *See Trevino v. Soto Palmer,* No. 23-484 (2024).[2]

[1] Intervenor-Defendants-Appellants currently are represented by the same attorneys as Senator Torres.

[2] The same day, the Supreme Court also declined to take jurisdiction in a related case, *Garcia v. Hobbs*, No. 23-467 (2024). That case concerns the appeal in a separate suit filed in the district court two months after Plaintiffs filed this suit,

Senator Torres was well aware of the district court order and remedial process, emailing colleagues on October 12, 2023, that "[t]he judge has ordered the boundaries of the district, which I represent, to be redrawn." ECF No. 252-1. On December 22, 2023, Senator Torres sought to intervene during the remedial process in the district court. ECF No. 253. Her attempted intervention came "more than seven months after the [district] court allowed another elected official from a neighboring legislative district to intervene, four months after judgment was entered in favor of plaintiffs, and two-and-a-half months after the [c]ourt established a schedule for presenting alternative remedial proposals." ECF No. 259 at 2 (Order denying intervention).

Senator Torres's motion to intervene was denied by the district court as untimely on January 22, 2024. *Id.* at 3. The district court cited "the length of the delay in seeking to make herself heard, and the lack of justification for the delay."

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challenging LD 15 as a racial gerrymander. Like Plaintiffs, Mr. Garcia sought to invalidate LD 15 and have a new valid plan enacted in its place, and following Plaintiffs' win in this case invalidating LD 15, *Garcia* was dismissed as moot. *Garcia v. Hobbs*, No. 3:22-cv-05152, 2023 WL 5822461 (W.D. Wash. Sept. 8, 2023). The circumstances surrounding Mr. Garcia's case are unusual. He is represented by the same attorneys as Senator Torres and Appellants in this case, despite his desire to invalidate the same district Senator Torres and Appellants are trying to maintain. This contradiction resulted in an ethical inquiry in the district court followed by Appellants and Mr. Garcia filing declarations waiving any conflicts between their contradictory legal arguments. ECF No. 165. It is unclear whether Mr. Garcia and Senator Torres have signed any such waivers.

Id. at 3. After the district court ordered a remedial map on March 15, 2024, Appellants filed a motion for emergency appeal, ECF No. 291, as well as motions for a stay pending appeal before this Court and the U.S. Supreme Court, which were both denied. *See* ECF. No. 295; No.24-1602, Doc. 18.1 at 2 (9th Cir. Mar. 22, 2024); No.24-1602, Doc. 21.1. The Remedial Map ordered in place by the district court will be used for the 2024 elections. LD 15 in the Remedial Map "is not projected to elect a Democrat, and retains around 56% of constituents previously in LD15." ECF No. 254-1.

III. LEGAL STANDARD

"Intervention at the appellate stage is, of course, unusual, and should ordinarily be allowed only for 'imperative reasons.'" *Bates v. Jones*, 127 F. 3d 870, 873 (9th Cir. 1997); *Landreth Timber Co. v. Landreth*, 731 F.2d 1348, 1353 (9th Cir. 1984), *rev'd on other grounds*, 471 U.S. 681 (1985); *Amalgamated Transit Union Int'l, AFL-CIO v. Donovan,* 771 F.2d 1551, 1552 (D.C. Cir. 1985). Indeed, appellate intervention can be "unduly disruptive and places an unfair burden on the parties to the appeal." *Donovan*, 771 F.2d at 1553.

Parties that seek to intervene post judgment for purposes of appeal must "meet traditional standing criteria." *Yniguez v. State of Ariz*., 939 F.2d 727, 731 (9th Cir. 1991) (citing *Legal Aid Soc'y. of Alameda County v. Brennan*, 609 F. 2d 1319, 1328 (9th Cir. 1979)); An order granting intervention as of right is only appropriate if:

> (1) the applicant's motion is timely; (2) the applicant has asserted an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that without intervention the disposition may, as a practical matter, impair or impede its ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties.

U.S. ex rel. McGough v. Covington Techs. Co., 967 F.2d 1391, 1394 (9th Cir. 1992). To permissively intervene, the movant must show timeliness, that they share a common question or law or fact; and that the court has independent jurisdiction over movant's claim. *See Cooper v. Newsom*, 13 F. 4th 857, 868 (9th Cir. 2021) (quoting *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998)). Even if these threshold requirements are met a court has discretion to deny permissive intervention for undue delay or prejudice to existing parties. *Newsom*, 13 F. 4th at 868.

IV. ARGUMENT

Senator Torres's motion to intervene should be denied. Senator Torres does not possess the required Article III standing of a party seeking to intervene for purposes of appeal and her intervention is wholly untimely. Other factors, such as the nature and extent of her interest and whether her interests are represented by other parties, also weigh against intervention. Lastly, Senator Torres's motion is procedurally inappropriate. As such, intervention cannot be granted.

A. Senator Torres Lacks Article III Standing to Appeal.

Senator Torres lacks the necessary Article III standing to appeal the district court's orders and therefore her motion to intervene should be denied. Parties seeking to intervene for purposes of appeal must possess Article III standing. *See Yniguez v. State of Ariz*., 939 F.2d 727, 731 (9th Cir. 1991) (citing *Legal Aid Soc'y. of Alameda Cnty v. Brennan*, 609 F. 2d 1319, 1328 (9th Cir. 1979). The U.S. Supreme Court has stated that "standing 'must be met by persons seeking appellate review, just as it must be met by persons appearing in court of first instance.'" *Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (internal citation omitted); *see also Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) ("As the [Supreme] Court has repeatedly recognized, to appeal a decision that the primary party does not challenge, an intervenor must independently demonstrate standing") (internal citation omitted). This ensures that "the decision to seek review . . . is not to be placed in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests.'" *Diamond v. Charles*, 476 U.S. 54, 62 (1986) (internal citation omitted). To establish standing, a litigant must demonstrate "an invasion of a legally protected interest" that is "concrete and particularized" and "actual and imminent." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Senator Torres's sole argument for why she has standing to pursue this case is based on her status as a legislator placed into a new district. No. 23-35595, Dkt. 63 at 6-7. Legislators do not have a legally protected interest nor right to the composition of their district. *See City of Philadelphia v. Klutznick*, 503 F. Supp. 663, 672 (E.D. Pa. 1980) ("A [legislator] suffers no cognizable injury, in a due process sense or otherwise, when the boundaries of his district are adjusted by reapportionment … a representative has no like interest in representing any particular constituency."); *Corman v. Torres*, 287 F. Supp. 3d 558, 569-70 (M.D. Pa. 2018); *Toth v. Chapman,* No. 1:22-CV-00208, 2022 WL 821175, at *10 (M.D. Pa. Mar. 16, 2022). The district court here specifically found that an elected official has "no right or protectable interest in any particular redistricting plan or boundary line." ECF No. 259 at 3 n.1; ECF No. 69 at 4. Interest in the boundaries of a district lies with the voters, not the representatives. *Klutznick*, 503 F. Supp at 672.

Senator Torres's list of "bad options" also does not demonstrate a concrete and particularized injury.[3] Running in a district that she alleges is not politically

[3] Many of these options that Senator Torres lists include moving into a new district. This complaint is peculiar given that when deciding to run for LD 15, it was reported that Sen. Torres moved into LD 15 in the first place and changed her voter registration to run. *See* Joel Donofrio, *Nikki Torres Appears Headed to State Senate Representing 15th District*, Yakima Herald-Republic (Nov. 8, 2022), https://www.yakimaherald.com/news/local/government/elections/nikki-torres-appears-headed-to-state-senate-representing-15th-district/article_20065440-5fec-11ed-9135-cb54431fe288.html ("Torres began serving on the Pasco City Council in

advantageous to her is not an injury-in-fact. *See Toth*, 2022 WL 821175, at *10 ("Bashir's assertion that he is harmed by running in his Democratic-leaning district rather than in an at-large election is not an injury-in-fact."). No elected official is guaranteed reelection (let alone an easy one) or particular district lines. *Bethune-Hill*, 139 S. Ct. at 1951 (internal citation omitted). Moreover, individual legislators have "no standing unless their own institutional position, as opposed to their position as a member of the body politic, is affected." *Newdow v. United States Cong.*, 313 F.3d 495, 499 (9th Cir. 2002). If having new constituents established standing, *every legislator* would be able to sue over changes to their district every ten years. And at any rate, the political composition of LD 16 (in which Senator Torres now resides) and LD 15 (into which Senator Torres could move) feature electorates that are *more* favorable than her previous district, based on party composition. *See* ECF No. 254-1. Moreover, the menu of personal political decisions that Senator Torres contends demonstrates her alleged harms is too speculative to support standing. *See Lujan*, 504 U.S. at 560. As Senator Torres concedes, nothing prevents her from finishing her current term in LD 15. *See* No. 23-35595, Dkt.63 at 8 (citing 1981 Wash Sess. Laws ch, 288 permitting senators who are redistricting to serve out their full terms.).

January, but resigned in May after changing her voter registration address to one north of the Pasco city limits and within the 15th Legislative District.").

Further, Senator Torres's reference to *Bates v. Jones*, 127 F. 3d 870 (9th Cir. 1997) is unavailing. This Court in *Bates* found that legislators who are completely barred from running for reelection due to a state law have standing. *See Bates*, 127 F. 3d at 873. As Senator Torres concedes, she is not barred from running for reelection. *See* Dkt. 63 at 7-8. Nor does *Raines* support Senator Torres's claimed standing.[4] The Court in *Raines* found that the member of Congress did *not* have Article III standing based on a claim of a loss of political power. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). Senator Torres's standing argument is based on just such a claim.[5] As such, *Raines* supports finding a *lack* of standing.

Senator Torres has no other concrete interest in the appeal. Senator Torres has not been ordered to do or not do anything. *See Hollingsworth*, 570 U.S. at 705-06 (finding that proponents of a ballot initiative lacked standing to appeal because the individuals seeking appeal were not state officials ordered to do or refrain from acting.) She has not made any claims, crossclaims, or counterclaims related to the

[4] Senator Torres's citation to *Raines* is misleading. The quote cited is directly referencing *Powell v. McCormack,* 395 U.S. 486, 496 (1997), where a duly elected congressman was not seated to his elected position for the entirety of a congressional term resulting in the total loss of his salary. In that case, the congressman's challenge to the constitutionality of his exclusion from Congress was an Article III controversy because he was entitled to his term after meeting all the constitutional requirements for eligibility and being legally elected. Senator Torres is not barred from serving out the remainder of her term.

[5] Even this argument is shaky however, as Senator Torres retains the right to serve out her full term in the legislature as the Senator from LD 15. No. 23-35595, Dkt. 63 at 8 ("*Third,* she could finish her term as a senator…").

redrawing of the district due to a Section 2 VRA violation (nor could she plausibly do so to intervene for the limited purpose of appeal). Senator Torres does not live in the remedial LD 14 nor LD 15. Her only demonstrated interest in this litigation is to reverse the district court's decision, which is a generalized grievance that does not confer standing. *Id.* at 706.

Finally, Senator Torres cites *Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011), and *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017), to argue that she need not demonstrate standing, but these cases do not help her. When Senator Torres claims that Appellants' lack of standing is a reason she must intervene, she cannot also say that she need not demonstrate standing in order for her to intervene. Senator Torres lacks standing to intervene in any capacity and her motion should be denied.

B. Senator Torres's Motion to Intervene Is Untimely.

Senator Torres's motion to intervene to appeal either the liability determination or the remedial order is untimely. A finding of untimeliness defeats intervention as of right and by permission. *See United States v. State of Or.,* 913 F.2d 576, 588 (9th Cir. 1990); *United States v. Wash.*, 86 F.3d 1499, 1507 (9th Cir. 1996). If a motion is untimely, the court "need not reach any remaining elements of Rule 24." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997).

1. Senator Torres's Motion to Intervene for Purposes of Challenging the Merits is Untimely.

Senator Torres's motion to intervene is untimely for challenging the merits of this case. "[A] post-judgement motion to intervene [for purpose of appeal] is timely filed within the time allowed for the filing of an appeal." *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992) (citation and alteration omitted). A notice of appeal "must be filed with the district clerk within 30 days of entry of judgment or order appealed from." Fed. R. Civ. P. 4(a)(1)(A).

Senator Torres has missed the time period to intervene. This case was filed two years ago, and the district court rendered its liability decision on August 11, 2023. ECF No. 219. The deadline to file a merits appeal would have been September 12, 2023. Yet Senator Torres waited *seven months* to attempt to intervene instead. Senator Torres does not explain her delay in filing nor why it would be appropriate for her to intervene to appeal the merits of this case. She cannot claim lack of knowledge of the case nor the deadline for appealing the merits decision. *See*, *e.g.*, ECF No. 259 at 3. And her own counsel filed a notice of appeal on behalf of their other clients—Jose Trevino, Alex Ybarra, and Ismael Campos—within the required time period. ECF No. 222. The time to file an appeal of the merits ruling of this litigation has come and gone. Senator Torres's attempt to intervene to challenge the merits must be denied as untimely.

2. Senator Torres's Motion to Intervene for Purpose of Appealing the Remedial Order is Untimely.

Similarly, Senator Torres's intervention to appeal the remedial order is also untimely. Courts weigh three factors in determining whether a motion to intervene is timely: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.,* 309 F.3d 1113, 1119 (9th Cir. 2002). Timeliness for intervention is based on the "date that the applicant should have been aware that its interests would no longer be adequately represented by one of the existing parties." *Pac. Coast Fed'n of Fishermen's Assn's. v. Gutierrez*, 2008 WL 4104257, at *5 (E.D. Cal. Sept. 2, 2008).

Here, Senator Torres is moving to intervene on appeal to challenge the remedial order *three months* after having her motion to intervene in the remedial process denied by the district court as untimely. ECF No. 259. The district court stated that "[t]he Senator had notice of this lawsuit no later than the time she was served with a subpoena in November 2022. She knew or should have known at that time that plaintiffs were seeking to alter the boundaries of the district that had elected her…" *Id.* at 3. Indeed, one of Senator Torres's attorneys' other clients, Representative Ybarra, testified that he told Senator Torres in November 2022 that this litigation could impact the boundaries of her district and that "things could

change for you and me." ECF No. 191-15 at 102:9-103:5 (Ybarra Dep.). Senator Torres's response was "Yeah…That's what people are saying." *Id*.

Senator Torres now argues that the point in time at which she should have known that her interests would no longer be protected was either when she believed one of Plaintiffs' maps may be adopted by the Court as a remedial map, No. 23-35595, Dkt. 63 at 17, or when she believed that her attorneys' other clients would not possess standing to support jurisdiction. *Id.* at 18. But neither of these explanations are plausible. First, Senator Torres filed a motion three months ago in the district court to intervene and argued then that no party adequately represented her interests. *See* ECF No. 253. Instead of appealing the denial of her intervention to this Court to allow her to represent her alleged interests, she did nothing, content to allow other parties to litigate.[6] Second, Senator Torres cannot now claim that she did not realize until twenty-one days ago that Appellants may not have standing to support jurisdiction, giving rise to her renewed intervention. A possible indication that Appellants lack standing cannot be a surprise to Senator Torres given that both parties share the same counsel, and this argument has been made repeatedly in

[6] The point at which her own attorneys failed to submit remedial maps on behalf of their other clients is also not the first time Senator Torres became concerned that her district might change. Dkt. 63 at 3. Over two months earlier, in her email to her colleagues, she discussed "[m]aps submitted by plaintiffs" in this suit and her concern that the district court had "ordered the boundaries of the district, which I represent, to be redrawn." ECF No. 252-1. Senator Torres's attorneys attached this email to a filing made on behalf of Appellants in the district court.

multiple motions in this case going back months. *See e.g.*, No. 23-33595, Dkt. 35-1; No. 23-33595, Dkt. 36-1; No. 24-1602, Doc. 12.1; No. 24-1602, Doc. 11.1.

As the district court found here, the date on which Senator Torres should have been aware that her interests, to the extent she has any, would not be represented was in November of 2022 or, most charitably, seven months ago when the State indicated it would not take a position during the remedial process nor appeal the district court's ruling. ECF No. 225. At no stage of this litigation did Senator Torres act "as soon as it became clear" that the State may not represent her interests. *Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267, 280 (2022).

Senator Torres invokes *Cameron* and *Chamness v. Bowen,* 722 F. 3d 1110, 1121 (9th Cir 2013) to support her contention that intervention is timely, but neither do so. In *Cameron,* the Supreme Court found that the Kentucky Attorney General's motion to intervene on appeal was timely where it was filed *two days* after he became aware that the Kentucky Secretary of Health and Family Services would no longer defend state law. *Id.* at 280. Senator Torres waited *twenty-one days* after this Court denied Appellants' stay motion to file her motion to intervene for the purpose of appeal, and provided no explanation for this delay.[7] *Chamness* supports a denial of intervention as the Court there found that the trial court did not abuse its discretion

[7] As noted above, Senator Torres knew about this litigation and its implications at least as of November 2022, and also knew the State was not taking a position on the remedial process or appeal seven months ago.

in denying intervention as untimely when a proposed intervenor waited sixteen days to file their motion after becoming aware their interests would be harmed. 772 F. 3d 1110, 1121-22.

Furthermore, a more liberal timeliness standard does not apply here. In *United States v. State of Wash*, the Ninth Circuit declined to apply the timeliness analysis that would otherwise apply to an intervention limited to appeal where the party had not appealed an earlier denial of intervention and where their intervention was seeking to have their day in court. 86 F. 3d 1499, 1505-1507. Similarly, Senator Torres did not appeal the earlier denial of intervention for the purpose of participating in the remedial proceedings. She has known for months that her alleged interests would be threatened, filed a motion stating as such, and did not litigate her interests in a timely fashion. This intervention is just an attempt by Senator Torres to have her day in court to which she otherwise would not have been entitled. Because her motion is untimely, her intervention both as of right and by permission fail and should be denied.

C. Other Factors Support Denial of Intervention

Other factors considered when assessing intervention as of right or by permission support the denial of intervention.

1. Senator Torres Does Not Have Any Substantial Legal Interest

For the same reasons that Senator Torres lacks standing, she also does not have any substantial legal interest in the configuration of her district nor in what persons make up her constituency. Washington law does not give legislators a protected legal interest in the configuration of their district. *See* ECF No. 259 at 3 n. 1; ECF No. 69 at 4. As stated *supra*, *Bates* applies only to legislators who were barred completely from running for office, not those who are redistricted but can run again. *See Bates*, 127 F. 3d at 873; *see also Klutznick*, 503 F. Supp at 672.

If there is no legal right to the boundary or configuration of a district, there is also no legal interest in the composition of the constituency of one's district. The only support Senator Torres provides to suggest as much is an out-of-circuit case where the court declined to address whether the relationship between constituent and representative amounted to a legal interest sufficient to support intervention as of right. *See League of Women Voters of Mich. v. Johnson*, 902 F. 3d 572, 579 (6th Cir. 2018). But this Court has not found that there is any substantial legal interest in one's constituency and regardless, Senator Torres is able to represent her current constituency for the remainder of her term and thus does not have any substantial legal interest that would support intervention as of right or by permission.

2. Senator Torres's Interests are Adequately Represented by Appellants

Senator Torres's interests are adequately represented by the Appellants in this appeal. Courts consider the following factors when deciding whether a present party adequately represents a proposed intervenor's interests:

> (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.

Callahan v. Brookdale Senior Living Communities, Inc., 42 F.4th 1013, 1020 (9th Cir. 2022) (citing *Arakaki v. Cayetano*, 324 F. 3d 1078, 1086 (9th Cir. 2003)). When a party and a proposed intervenor share a similar "ultimate objective" there is a presumption of adequacy that can only be rebutted with a "compelling showing" to the contrary. *Arakaki*, 324 F. 3d at 1086 (citing 7C Fed. Prac. & Proc. Civ. Wright, Miller & Kane, § 1909, at 318-19 (3d ed.)).

Senator Torres's objective of reversing the district court's remedial order is shared by a party in this present case—Appellants Trevino, Campos, and Ybarra who share the same counsel as Senator Torres. Given their same objectives, Senator Torres must make a compelling showing that her interests are not adequately represented. She has not done so. Senator Torres's motion does not make any legal or factual claim related to liability or anything specifically related to the remedial order that demonstrates that she has arguments a present party is unable to make. On

appeal, she cannot raise factual issues not already covered below. Thus, there is no substantive difference between Senator Torres and the Appellants in this litigation.

Speculating that this Court may find that another party lacks standing does not demonstrate that a current party cannot or has not made and adequately represented all of the proposed intervenor's arguments. As of the filing of Senator Torres's motion, there is an existing party that can and does adequately represent her interests. This factor weighs against permitting intervention.

3. Intervention at This Stage Prejudices Plaintiffs-Appellees

Senator Torres's intervention at this stage of the litigation prejudices Plaintiffs-Appellees and warrants a denial of intervention. Courts evaluate prejudice based on whether actions would unnecessarily prolong litigation or if relief from long-standing inequities would be delayed. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 922 (9th Cir. 2004). Intervention "to merely attack or thwart a remedy rather than participate in the future administration of the remedy is disfavored." *Id.* (citing *State of Or.*, 913 F.2d at 588).

Senator Torres's intervention is an attempt to thwart Plaintiffs-Appellees' right to a legal district that complies with Section 2 of the Voting Rights Act. Plaintiffs-Appellees are individual Latino voters whose voting strength has been diluted in state legislative elections under the invalidated map per federal anti-discrimination law. None of Senator Torres's alleged interests supersede Plaintiffs-

Appellees' right to a legal district. Her intervention would serve only to prolong this litigation for no legitimate reason. Intervention must be denied.

D. Senator Torres's Motion is Procedurally Inappropriate.

Senator Torres's motion to intervene on appeal is inappropriate because she has already filed a motion to intervene that was denied and not timely appealed. "[A]ppellate courts must police against attempts to evade that deferential standard [abuse of discretion] by declining to seek review of an adverse district court decision and then filing a fresh motion to intervene on appeal." *Ass'n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, 88 F.4th 495, 499 (4th Cir. 2023) (citing *Richardson v. Flores*, 979 F.3d 1102, 1105 (5th Cir. 2020); *Hutchinson v. Pfeil*, 211 F.3d 515, 519 (10th Cir. 2000)).

Senator Torres's attempts to demonstrate the appropriateness of her appellate intervention leave out an important fact—that she filed a motion to intervene in the district court that was denied for untimeliness. ECF No. 259. She cannot claim that she received relief from the district court at the remedial stage—somehow relieving her of the need to appeal the denial of her intervention—only now to say that she continues to be injured and that no party can provide relief to her at the appeals stage. In arguing that she should be allowed intervention to appeal the remedial order, Senator Torres by definition must have been "aggrieved" by the district court's initial decision to deny her intervention. *See Ass'n for Educ Fairness*, 88 F. 4th at

499-500 (finding that the proposed intervenors were not aggrieved by the district court's decision because the district court rendered final judgment for the side the proposed intervenors sought to join).[8]

Further, it is not the correct procedure for Senator Torres to file a new intervention motion instead of an appeal. In *Elorrega,* the intervening party filed their motion to intervene before the court granted permission of the defendant to appeal. *Elorreaga, et al. v. ViacomCBS Inc.,* Order, No. 23-16041 (9th Cir. July 24, 2023), at DktEntry 3. The Court there required refiling of intervention once the appeal was granted. *Id.* at Order, No. 23-16041. That is not the procedural posture here, where Senator Torres is seeking to intervene in the same case that she was denied intervention in at a different stage. Indeed, this motion is simply an attempt by lawyers already representing a party in this case to add another party to hedge their bets on standing and use this appeal as a vehicle to vindicate their own interests. Such actions are disallowed. *See Diamond*, 476 U.S. at 62. This Court should decline to be a part of this ploy to needlessly prolong this litigation.

V. CONCLUSION

For these reasons, the Court should deny the motion to intervene on appeal.

[8] Senator Torres's desire to inform this Court about her "landslide victory" over the Latino candidate of choice in LD 15 also does not support intervention. *See* Dkt. 63 at 20. Her attorneys can (and have) made this argument on behalf of Appellants.

April 22, 2024

Respectfully submitted,

/s/ Chad W. Dunn
Chad W. Dunn
Sonni Waknin
UCLA Voting Rights Project
3250 Public Affairs Building
Los Angeles, CA 90095
(310) 400-6019
chad@uclavrp.org
sonni@uclavrp.org

Thomas A. Saenz
Ernest Herrera
Mexican American Legal Defense and Education Fund
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
(213) 629-2512
tseanz@maldef.org
eherrera@maldef.org

Edwardo Morfin
Morfin Law Firm, PLLC
2602 N. Proctor St., Ste. 205
Tacoma, WA 98407
(509) 380-9999

Mark P. Gaber
Aseem Mulji
Simone Leeper
Benjamin Phillips
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegal.org
amulju@campaignlegal.org
sleeper@campaignlegal.org
bphillips@campaiginlegal.org

Annabelle E. Harless
Campaign Legal Center
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
aharless@campaignlegal.org

Counsel for Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(B) and Circuit Rule 27-1(1)(d) because it contains 5,159 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 22, 2024

/s/Chad W. Dunn
Chad W. Dunn

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 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/ Chad W. Dunn
Chad W. Dunn