Nos. 23-35595, 24-1602

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,

JOSE A. TREVINO, et al.,

Intervenor–Defendants–Appellants.

(D.C. No. 3:22-cv-05035-RSL)
U.S. District Court for the Western District of Washington

APPELLEE STATE OF WASHINGTON'S OPPOSITION TO SENATOR NIKKI TORRES'S MOTION TO INTERVENE

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I. INTRODUCTION

This Court should deny Senator Torres's motion because she has not shown imperative reasons to intervene at the appellate stage.

First, Senator Torres moved to intervene while the remedial proceedings below were well underway, and the district court denied her motion as untimely. Senator Torres did not appeal that order, but had she done so, this Court would review that order for an abuse of discretion. Senator Torres's fresh motion to this Court seeks to evade that deferential standard of review, which this Court should not countenance.

Second, Senator Torres's proposed intervention, found untimely by the district court, cannot be transformed into a timely motion by simply filing it in this Court. Her motion remains profoundly untimely, coming over two years after the case was filed, more than a year after she was elected to represent the district at issue, and more than four months after the district court entered judgment. To justify this delay, Senator Torres claims that until Plaintiffs proposed remedial maps, there was no reason to suspect that litigation concerning the shape of her district might affect the shape of her district. This argument fails.

Third, Senator Torres does not have a significant protectable interest and thus lacks standing. Incumbent officeholders don't have protectable interests in excluding voters they perceive as making reelection more difficult from their districts. Meaning

Senator Torres, like all other candidates for office in Washington, has no legal entitlement to a district with a particular political composition.

The Court should deny the motion. To the extent Senator Torres has personal concerns about the shape of the remedial district, the State does not oppose her participation as amicus curiae.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Plaintiffs-Appellees Challenge Legislative District 15 under Section 2 of the Voting Rights Act

Shortly after Washington's bipartisan Redistricting Commission adopted and the Legislature approved the state's legislative redistricting plan, Plaintiffs–Appellees brought suit. They alleged that Legislative District (LD) 15 diluted Hispanic votes in violation of Section 2 of the Voting Rights Act. ECF No. 1, *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL (W.D. Wash. Jan. 19, 2022).[1]

Around two months later, three individuals moved to intervene to defend LD 15 against Plaintiffs' Section 2 claims. One intervenor is a voter who lives in the challenged district, the second a voter from LD 8, and the third a state representative for LD 13. The district court allowed Intervenors to permissively intervene and defend the map, despite determining they "ha[d] no right or protectable interest in any particular redistricting plan or boundary lines[.]" ECF No. 69 at 4; *see also id.*

[1] District court filings will be short cited as, "ECF No. __".

at 4–5 ("Intervenors, in keeping with all other registered voters in the State of Washington, may file a petition with the state Supreme Court to challenge a redistricting plan (RCW 44.05.130), but they have no role to play in the redistricting process. Nor is there any indication that a general preference for a particular boundary or configuration is a legally cognizable interest.").

At the same time the district court granted Intervenors' permissive intervention, it also ordered that the State of Washington be joined as a defendant to ensure that, if Plaintiffs were able to prove their claims, the court would have the power to provide all of the relief requested, particularly the development and adoption of a VRA-compliant redistricting plan. ECF No. 68. The State prepared to defend against Plaintiffs' challenge. To that end, the State sought out a highly respected expert, Dr. John Alford, with a history primarily of working for government defendants in VRA cases. *See* Trial Ex. # 601. After carefully reviewing the evidence, Dr. Alford submitted an expert report concluding that the three *Gingles* preconditions appeared to be met. *Id.* Based on Dr. Alford's conclusions, the factual findings in other recent federal and state VRA cases in the Yakima Valley,[2] and other

[2] *See Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014) (concluding Yakima, Washington's at-large voting system for city council elections violated Section 2 of the VRA); *Glatt v. City of Pasco*, No. 4:16-cv-05108-LRS, ECF No. 40 (E.D. Wash. Jan. 27, 2017) (approving consent decree stipulating that Pasco, Washington's at-large voting system for city council elections violated Section 2 of the VRA); *Aguilar v. Yakima County*, No. 20-2-0018019 (Kittitas Cnty.

record evidence, the State notified the parties and court that it had concluded it could no longer "dispute at trial that *Soto Palmer* Plaintiffs have satisfied the three *Gingles* preconditions for pursuing a claim under Section 2 of the VRA based on discriminatory results[,]" or "that the totality of the evidence test likewise favors the *Soto Palmer* Plaintiffs[.]" ECF No. 194 at 10.

B. The District Court Enters Judgment in Favor of Plaintiffs and Intervenors Appeal

After a bench trial, the district court issued a Memorandum of Decision on August 10, 2023, finding that LD 15 had the effect of discriminating against Hispanic voters by denying them the right to elect candidates of their choice. *See* ECF No. 218. The court entered judgment for Plaintiffs and ordered the parties to engage in a remedial process to adopt a new legislative map. *Id.* at 32.

Intervenors appealed the district court's decision on the merits in September 2023. ECF No. 222. Nearly three months later, Intervenors moved to stay that order and the remedial process. DktEntry 34-1, *Soto Palmer v. Hobbs*, No. 23-35595 (9th Cir.). This Court denied the motion. DktEntry 45. Intervenors then petitioned the Supreme Court for certiorari before judgment. The Court denied their petition on February 20, 2024. *Trevino v. Palmer*, No. 23-484 (U.S. Feb. 20, 2024).

Super. Ct.) (approving settlement stipulating that Yakima County's at-large voting system violated the Washington Voting Rights Act).

C. The District Court Undertakes the Remedial Process and Denies Senator Torres's Motion to Intervene

The district court established a parallel remedial process in which the Legislature was given approximately five months to adopt a new map, but in the meantime, the parties were directed to prepare and respond to proposed maps in case the Legislature was unable to adopt a new map (they were not.). ECF No. 230.

As part of its parallel process, the district court directed the parties to submit proposed remedial maps by December 1, 2023. *Id.* at 3. On December 1, 2023, Plaintiffs proposed five remedial maps to the district court. ECF Nos. 230, 244, 245. Neither the State nor Intervenors submitted proposed remedial maps. In the State's case, the State explained that article I, section 43 of Washington's Constitution and Wash. Rev. Code § 44.05.120 provide a single mechanism for the State to propose redistricting plans: through a Redistricting Commission appointed by the Legislature. Intervenors chose not to propose a map, but it is unclear why.

Over the following weeks, all parties had an opportunity to fully brief their positions on the proposed remedial maps. ECF Nos. 246, 248–52, 254. Because the State had no basis to "dispute Plaintiffs' assertion that each map 'is a complete and comprehensive remedy to Plaintiffs' Section 2 harms[,]' it "defer[red] to the Court on which remedial map best provides Latino voters with an equal opportunity to elect candidates of their choice while also balancing traditional redistricting criteria and federal law." ECF No. 250 at 1 (quoting ECF No. 245 at 2). However, the State

urged the district court to carefully consider any input from the Yakama Nation, should they choose to be heard on the matter. *Id.* at 2.

On December 22, 2023, after the deadline to propose remedial maps had passed, Senator Nikki Torres—represented by Intervenors' counsel—moved to permissively intervene. Senator Torres is the incumbent senator representing LD 15 under the enacted plan.[3] She asserted the enactment of Plaintiffs' proposed remedial maps "would render her reelection more difficult." ECF No. 253 at 2. On January 22, 2024, the district court denied her intervention motion as untimely. ECF No. 259. As the district court observed, Senator Torres's motion to intervene came almost two years after the case was filed, more than a year after she was elected to represent LD 15, many months after the court allowed another elected official from a neighboring legislative district to intervene, more than four months after judgment was entered in favor of Plaintiffs, and two-and-a-half months after the district court established a schedule for presenting alternative remedial proposals. *Id.* at 2. The district court specifically found that Senator Torres had notice of the lawsuit at least by November of 2022, when she was served with a subpoena. *Id.* at 3. So by that time, she should have known that Plaintiffs were seeking to alter the

[3] Evidence at trial reflected that Senator Torres was not the candidate of choice of Hispanic voters but was elected in spite of Hispanic voter preferences. Plaintiffs' expert found that only 32% of Hispanic voters voted for Senator Torres. ECF No. 208, at 604:6–605:19.

boundaries of the district that had elected her. *Id.* In sum, "the late stage of this proceeding, the length of the delay in seeking to make herself heard, and the lack of justification for the delay militate[d] against granting leave to intervene." *Id.* Senator Torres chose not to appeal.[4]

On March 15, 2024 following an evidentiary hearing and oral argument, the district court ordered a new map, with a redrawn, newly labeled LD 14, in time for the March 25, 2024 deadline. In a detailed order, the court explained the remedy it adopted was necessary to remedy the VRA violation it previously found. ECF No. 290. Based on the evidence presented, the court explained that "the new configuration" remedies the Section 2 violation by "provid[ing] Latino voters with an equal opportunity to elect candidates of their choice to the state legislature . . . ." *Id.* at 4.

Following the district court's remedial order, Intervenors again moved to stay the remedial order, which this Court denied. DktEntry 18.1, No. 24-1602 (9th Cir. Mar. 22, 2024). Thereafter, the Supreme Court denied Intervenors' emergency stay application. *Trevino v. Palmer*, No. 23A862 (U.S. Apr. 2, 2024).

Senator Torres has now moved to intervene on appeal.

[4] This Circuit allows for an immediate appeal of a denial of permissive intervention. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1307 (9th Cir. 1997).

III. LEGAL STANDARD

Rule 24 of the Federal Rules of Civil Procedure "appl[ies] only in the federal district courts[,]" though appellate courts recognize that "the policies underlying intervention may be applicable in appellate courts." *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am., AFL-CIO v. Scofield*, 382 U.S. 205, 217, n.10 (1965); *see also Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022). However, "[i]ntervention at the appellate stage is . . . unusual and should ordinarily be allowed only for imperative reasons." *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997) (internal quotation marks omitted); *see also Richardson v. Flores*, 979 F.3d 1102, 1105 (5th Cir. 2020) ("[T]o prevent litigants from using procedural gamesmanship to skirt unfavorable standards of review, there must be a steep threshold for allowing intervention on appeal.").

Had Senator Torres timely appealed the district court's order, "the district court's decision concerning permissive intervention" would be "review[ed] for abuse of discretion." *Nw. Forest Res. Council v. Glickman,* 82 F.3d 825, 836 (9th Cir. 1996); *see also Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978) ("The question of timeliness is addressed to the sound discretion of the trial court[.]"). For permissive intervention, this Court "analyze[s] the timeliness element more strictly than [the court] do[es] with intervention as of right." *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1308 (9th Cir. 1997).

IV. ARGUMENT

A. Senator Torres Cannot Intervene on Appeal to Evade Review of the District Court's Denial of Her Prior Intervention Motion

Senator Torres's motion to intervene on appeal should be denied as an improper effort to circumvent her failure to appeal the district court's order denying her prior motion to intervene. "[B]ecause a district court's decision denying intervention is reviewed only for an abuse of discretion, appellate courts must police against attempts to evade that deferential standard 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) (citation omitted); *see also Richardson*, 979 F.3d at 1105 ("If we analyzed motions to intervene on appeal using the same framework district courts use to address motions to intervene there, litigants would effectively have de novo review of their intervention motion."); *Hutchinson v. Pfeil*, 211 F.3d 515, 519 (10th Cir. 2000) ("[T]he motion is, in effect, an attempt to obtain appellate review lost by [petitioner's] failure to timely appeal the denial of her motion to intervene in district court. Appellate intervention is not a means to escape the consequences of noncompliance with traditional rules of appellate jurisdiction and procedure.").

Below, Senator Torres moved to permissively intervene under Rule 24(b), and the district court denied her motion as untimely. ECF Nos. 253, 259. She did not appeal that order. Yet Senator Torres's motion on appeal would have this Court

ignore the district court ruling and decide the instant motion without any deference to the district court's order. It's not surprising that she'd wish to avoid that deferential standard, but she cites no case that sanctions this end-run. And she does not otherwise show why this is an exceptional case for imperative reasons that would justify intervention now. The Court should reject her attempt to circumvent her failure to appeal.

In an effort to avoid the consequences of her failure to appeal, Senator Torres cites *Association for Education Fairness*, for the proposition that appellate intervention is not foreclosed where a party did not seek appellate review of a district court's order denying intervention. DktEntry 63 at 16. But there, the district court had determined the intervention motion was mooted by its decision to enter a final judgment for the parties whose side the movants supported. *Ass'n for Educ. Fairness*, 88 F.4th at 499. So the organizations were not "aggrieved" by the motion to dismiss and had no reason to seek appellate review. *Id.* And, in any event, the Fourth Circuit *denied* the movants' motion to intervene on appeal. *Id.* at 502.

Senator Torres also tries to excuse her failure to appeal because Intervenors' March 15, 2024 notice of appeal on the remedy divested the district court of jurisdiction. DktEntry 63 at 16–17. But this argument does not hold water. The district court entered its order denying intervention on January 22, 2024—giving ample time for Senator Torres to appeal the order. *See* ECF No. 259.

Senator Torres also contends she had no reason to appeal the district court's order denying intervention because she was permitted to participate as an amicus. DktEntry 63 at 8, 16. But even if this were enough to get her out of the frying pan, it lands her right into the fire because if participation as an amicus was good enough there, participation as an amicus is good enough here. There's no need to intervene.

Finally, Senator Torres cannot overcome her failure to appeal by asserting a supposedly "new concern that was not relevant when she moved to intervene below," namely, Intervenors' potential lack of standing to appeal. *Id.* at 20. This "concern" is anything but new. Nearly two full years ago, the district court explained that the "[I]ntervenors ha[d] not identified a significant protectable interest for purposes of intervention under Rule 24(a)." ECF No. 69 at 5. And in briefs filed with the U.S. Supreme Court on December 29, 2023, opposing Intervenors' early petition for certiorari, both the Plaintiffs and the State explained in detail that Intervenors lack standing to appeal. State of Washington's Br. in Opp'n to Pet. for Cert. Before J. at 15–19, *Trevino v. Palmer*, No. 23-484 (Dec. 29, 2023); Br. in Opp. of Resp'ts' Susan Soto Palmer at 12–16, *Trevino v. Palmer*, No. 23-484 (Dec. 29, 2023).[5] These briefs were filed more than three weeks *before* the district court denied Senator Torres's motion to intervene. ECF No. 259. Senator Torres was thus well aware of

[5] Again, Intervenors' counsel represents Senator Torres, so their knowledge is doubtlessly imputable to Senator Torres.

the potential consequences in failing to appeal. She doesn't get a mulligan.

B. Senator Torres's Motion is Untimely

Even ignoring her failure to appeal the district court's denial of her prior motion and show there are imperative reasons supporting intervention, this Court should deny Senator Torres's motion as untimely. Senator Torres's motion to intervene was denied as untimely by the district court; that motion is not suddenly made timely by filing it in this Court.

Under Rule 24(a), intervention as of right is permitted when: (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 dispos[ition] of the action may, as a practical matter, impair or impede the [applicant]'s ability to protect its interest"; and (4) the existing parties do not adequately represent that interest. *See* Fed. R. Civ. P. 24(a)(2). To permissively intervene, Rule 24(b) provides: "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Senator Torres's motion is untimely, and therefore fails at the threshold. *See United States v. State of Oregon*, 913 F.2d 576, 588 (9th Cir. 1990); *see also United States v. State of Washington*, 86 F.3d 1499, 1503 (9th Cir. 1996) ("If the court finds that the motion to intervene was not timely, it need not reach any of the remaining elements of Rule 24.").

This Court "consider[s] three criteria in determining whether a motion to intervene is timely: (1) the stage of the proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene." *Glickman*, 82 F.3d at 836. "A party seeking to intervene must act as soon as [they] know[] or ha[ve] reason to know that [their] interests might be adversely affected by the outcome of the litigation." *Oregon*, 913 F.2d at 589 (quotation omitted). "Although the length of the delay is not determinative, any substantial lapse of time weighs heavily against intervention." *Washington*, 86 F.3d at 1503.

1. The Stage of the Proceedings Is Much, Much Too Late to Permit Intervention

Courts routinely conclude that motions to intervene brought after judgment—let alone on appeal—are untimely. *See, e.g.*, *id.* (upholding denial as untimely of a "[motion] to intervene three months after the district court issued its memorandum opinion[]"); *Alaniz*, 572 F.2d at 659 (denying motion to intervene following entry of consent judgment); *Landreth Timber Co. v. Landreth*, 731 F.2d 1348, 1353 (9th Cir. 1984), *rev'd on other grounds*, 471 U.S. 681 (1985) (denying motion to intervene on appeal); *Pub. Serv. Co. of New Mexico v. Barboan*, 857 F.3d 1101, 1114 (10th Cir. 2017) (same).

Here, there is no reason to depart from the ordinary rule that a motion to intervene brought after judgment is untimely. This case has been pending for over two years, and yet Senator Torres declined to involve herself even after she decided

to run for (in May 2022), was elected to (in November 2022), and ultimately was sworn into (January 2023) her seat. ECF No. 253 at 4. And then, after her prior, untimely effort to intervene was denied by the district court, she declined to appeal that ruling by the jurisdictional deadline of RAP 4(a)(1)(A). Her steadfast inaction dooms her post-appeal effort to intervene.

Senator Torres badly misconstrues this Court's precedent to argue that her "'motion is timely as a matter of law.'" DktEntry 63 at 21 (quoting *Alaska v. Suburban Propane Gas Corp.*, 123 F.3d 1317, 1320 (9th Cir. 1997) (emphasis removed)). In *Suburban Propane*, this Court recognized "timeliness for general intervention in the typical case" is analyzed under the three-part test discussed above (that Intervenors flunk). 123 F.3d at 1319. But this Court acknowledged a limited exception, explaining that the ordinary "three-part test does not apply" in cases "involv[ing] intervention for the limited purpose of appeal *from denial of class certification*." *Id.* at 1320 (emphasis added). Instead, "[f]or the limited purpose of intervention to appeal *from denial of class certification*,"[6] a motion to intervene is timely if "filed within the time within which the named plaintiffs could have taken an appeal." *Id.* (emphasis added). This exception makes sense, because a putative class member would be acting within the time period in which the named plaintiffs

[6] Intervenors' motion quotes the first part of this clause, but omits the italicized language. DktEntry 63 at 21.

would take an appeal. Here, because this case does not involve denial of class certification, Senator Torres's selective and misleading quotation of *Suburban Propane* is flatly irrelevant.

Senator Torres next tries to explain away her earlier decision(s) not to intervene by claiming that, although this lawsuit was pending at the time she took office, she did not "realize" that her interests might be affected until "LD-15 [was] invalidated and remedies proposed that" altered the shape of the district. DktEntry 63 at 22. This argument—that she could not have known a lawsuit involving the shape of her district might affect the shape of her district—is untenable. And the upshot of the argument is untenable as well. Because a potential intervenor basically never knows for certain whether their interests are affected until the court decides the issue in suit. So by Senator Torres's logic, an intervenor could always wait until after judgment, see whether their interests were affected by the court's ruling, and only then intervene. Avoiding that absurdity is precisely why this Court requires that "[a] party seeking to intervene must act as soon as he knows or has reason to know that his interests might be adversely affected by the outcome of the litigation," not wait until the adverse effect has been cast in stone. *Oregon*, 913 F.2d at 589 (internal quotation omitted); *see also Orange County v. Air California*, 799 F.2d 535, 538 (9th Cir. 1986) (upholding denial as untimely where a proposed intervenor "should have realized that the litigation might be resolved" in a way that affected their

interests); *Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.*, 309 F.3d 1113, 1120 (9th Cir. 2002) ("While [proposed intervenors] were not certain that the consent decree would be adverse to their interests, they had reason to know that negotiations might produce a settlement decree to their detriment.").

The same reasoning dooms her argument that she could not have known the Intervenors might lack standing until this Court's denied their most recent motion to stay. DktEntry63 at 23 (citing DktEntry 18.1, No. 24-1602 at 2 (9th Cir.)). To repeat, Intervenors' lack of a protectable interest has been clear since the district court denied their motion for mandatory intervention (allowing only permissive intervention) in May 2022, and both the State and Plaintiffs highlighted Intervenors' lack of standing to bring this appeal before the district court denied Senator Torres's prior motion to intervene. *Supra* at 11. Having sat on her hands (and failed to appeal the district court's prior ruling), Senator Torres is now too late to intervene.

2. The Parties Will be Prejudiced by Senator Torres's Untimely Intervention

Senator Torres tries to save her untimely motion by claiming that none of the existing parties will be prejudiced by her intervention because "intervention will not delay any proceedings." DktEntry 63 at 24. But the prejudice is twofold. First, as detailed above, granting her motion to intervene here rewards her procedural gamesmanship by giving her the benefit of a more favorable standard of review than she would have had if she had done the right thing and appealed the district court's

prior denial of her motion to intervene. Second, Senator Torres seeks to inject new, personal concerns into the remedial process for the first time on appeal. *Id.* at 11–14. Moreover, her claims of personal inconvenience from having a harder reelection campaign are irrelevant under the VRA and very much tangential to the issues on appeal. Any remedial district obviously must provide Hispanic voters the opportunity to elect candidates of their choice to comply with the VRA. Yet in criticizing Plaintiffs' proposals, *id.* at 8, 22, Senator Torres fails to explain how or even whether it is possible to draw a VRA-compliant district that offers her the smooth path to reelection she desires. Her proposed intervention is thus not constructive, but merely serves to throw up obstacles to prevent or delay relief. *See United States v. Alisal Water Corp.*, 370 F.3d 915, 922 (9th Cir. 2004) ("[A] party's seeking to intervene merely to attack or thwart a remedy rather than participate in the future administration of the remedy is disfavored.").

3. Senator Torres Makes No Serious Effort to Justify Her Delay

Senator Torres has not given any satisfactory reason for her delay. She first suggests that she didn't delay at all, but that argument makes no sense. She also claims that she could not have known previously that her interests might be affected, but as explained above, that argument is factually incorrect and contrary to binding caselaw. Her failure to credibly explain her delay cuts sharply against intervention here. See *LULAC*, 131 F.3d at 1304 ("Even more damaging to [proposed

intervenor's] motion than the . . . delay itself, however, is its failure adequately to explain . . . the reason for its delay.") (emphasis in original).

C. Senator Torres Lacks a Significant Protectable Interest and Thus Lacks Standing to Appeal

Senator Torres has no significant protectable interest in excluding voters from her district that she views would make her reelection more difficult.

As the district court noted in denying her motion to intervene below, an elected official has "no right or protectable interest in any particular redistricting plan or boundary lines. The legislative district map must be redrawn after each decennial census: change is part of the process." ECF No. 259 at 3 n.1 (quoting ECF No. 69 at 4). As an incumbent, Senator Torres holds office "as trustee for [her] constituents, not as a prerogative of personal power." *Raines v. Byrd*, 521 U.S. 811, 821 (1997).

Senator Torres does not have a protectable interest in a particular boundary for the legislative district she represents. For example, in *City of Philadelphia v. Klutznick*, 503 F.Supp. 663 (E.D. Pa. 1980), certain state and federal legislators challenged the 1980 decennial census conducted in the City of Philadelphia. *Id.* at 669. The legislators claimed that an undercounting of the city's population could lead to inaccurate congressional and legislative reapportionment. *Id.* at 672. The court disagreed that the legislators had a basis for complaint, holding that elected officials suffer no cognizable injury when their district boundaries are adjusted and

had no interest in representing a particular constituency. *Id.* Interests in boundaries lie with voters. *Id.* The Supreme Court emphasized this principle in *Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 824 (2015), in stating a "core principle of republican government" is "that the voters should choose their representatives, not the other way around." *Id.* at 824 (citation omitted).

Senator Torres cites no case to support the proposition that she has a protected interest in excluding people in her district based on their political affiliation or in maintaining a particular political boundary. Her reliance on *Bates v. Jones* and *Raines v. Byrd* is unavailing. In *Bates*, legislators sought to intervene on the side of plaintiffs-appellees challenging a state initiative that imposed a lifetime legislative term limit. The legislators would be "termed out" by the initiative and unable to seek office, though they wished to run for re-election. 127 F.3d at 873 n.4. And in *Raines*, the Court rejected six individual Congress members' assertion of legislative standing premised on an institutional injury from the Line Item Veto Act. 521 U.S. at 829–30. The Court pointed out that the members "[did] not claim that they have been deprived of something to which they *personally* are entitled[.]" *Id.* at 811.

Wittman v. Personhuballah doesn't establish a legally protectable interest either. There, the Supreme Court "assum[ed], without deciding" that two U.S. Representatives had a "legally cognizable" injury-in-fact based on their claim that a court order striking down a redistricting plan would "reduc[e] the likelihood" that

voters would reelect them. *Wittman*, 578 U.S. 539, 545 (2016). The Court concluded that the Representatives failed to establish standing because they had "not identified record evidence establishing their alleged harm." *Id.*

To step into the shoes of an original party, an intervenor must independently fulfill the requirements of Article III. *Id.* at 543–44. Because Senator Torres lacks a "significant protectable interest" that would allow her to intervene under Rule 24, "it necessarily follows that [she] lack[s] Article III standing to appeal . . . ." *Perry v. Schwarzenegger*, 630 F.3d 898, 906 (9th Cir. 2011). Because Senator Torres lacks a significant protectable interest and standing, her motion must be denied.[7]

V. CONCLUSION

Senator Torres does not show imperative reasons that would render case exceptional to justify intervention on appeal. The Court should deny Senator Torres's motion to intervene. The State does not oppose Senator Torres's participation as amicus curiae in these appeals.

[7] Because Senator Torres' motion is untimely and she fails to establish a protectable interest, the State need go no further. Nonetheless, Senator Torres cannot seriously contend the existing parties do not adequately represent her interests when she is represented by the same counsel as existing parties.

RESPECTFULLY SUBMITTED this 20th day of March 2024.

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