

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DAWN CURRY PAGE, et al., <i>Plaintiffs,</i> v. VIRGINIA STATE BOARD OF ELECTIONS, et al., <i>Defendants.</i>))))))))))	Civil Action No. 3:13cv678
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**REPLY IN SUPPORT OF MOTION TO INTERVENE
OF THE VIRGINIA STATE CONFERENCE
OF NAACP BRANCHES**

The Virginia State Conference of NAACP Branches (“Virginia NAACP”) respectfully submits the following reply in support of its motion for limited intervention as of right or, alternatively, for permissive intervention.

Defendant-Intervenors primarily argue in their opposition to the Virginia NAACP’s motion that (1) the Virginia NAACP has not established a “significantly protectable” interest in the litigation; and (2) that the motion is “premature.” Both arguments are legally and logically untenable.

With regard to satisfying the “interest” requirement for Rule 24(a) intervention, the Virginia NAACP has amply satisfied this element under Fourth Circuit precedent. The Virginia NAACP has members who reside in districts that surround, and are undeniably impacted by, a congressional district deemed by this Court to be an unconstitutional racial gerrymander.

Corrected Compl, ¶4. None of the current plaintiffs live in those districts---districts 1, 2, 4, and

7. The existing plaintiffs thus will not suffer any harm, regardless of how the remedy affects those adjacent districts, and cannot legally represent the interests of residents in those districts.

United States v. Hays, 515 U.S. 737, 745 (1995).

Furthermore, Rule 24(a) does not demand that an applicant's interest be "crystallize[d]" or that an applicant delay seeking intervention until there is "no doubt" that his or her interests will be impacted. *Floyd v. City of New York*, 302 F.R.D. 69 (S.D.N.Y. 2014); see also, *Fleming v. Citizens for Albemarle, Inc.*, 577 F.2d 236, 238 (4th Cir. 1978) (allowing intervention by citizen groups in suit challenging refusal of rezoning for development because citizen groups' fears regarding development's effect on water quality were "not without reason"), cert. denied, 439 U.S. 1071 (1979). Indeed, if that were the case in order to satisfy the "interest" requirement, putative intervenors would be hard pressed to avoid the delay and prejudice to existing parties and the undermining of orderly administration of justice that is usually fatal to intervention motions.

Rather, the Virginia NAACP's motion to intervene at this time guarantees that timeliness element of Rule 24(a) is satisfied. Were the Virginia NAACP to delay in its attempt to intervene, when it knows that existing parties cannot adequately represent its interests, such a delayed motion would undoubtedly be subject to opposition on a timeliness basis. Indeed, court proceedings surrounding the approval or modification of a remedy plan are likely to be rushed, given the timeline for the 2016 elections. The legislature has until September 1, 2015, to develop a remedial plan. Order, Doc. 137, Feb. 23, 2015, at p. 5. If the redistricting plan submitted by the legislature by September 1, 2015, "is not acceptable," this Court will have to act quickly to "craft a plan in sufficient time to allow elections to proceed in 2016." *Id.* at p. 5. Given that tight timeframe,

timeliness and judicial economy considerations under Rule 24(a) weigh strongly in favor of intervention now.

Even more significantly, Defendant-Intervenors fail to explain how the Virginia NAACP does not satisfy the requirements for permissive intervention under Rule 24(b). The Virginia NAACP, with its history in voting rights litigation and its statewide membership, has a strong interest in the subject matter of this litigation, but such a showing is not necessary under Rule 24(b). *See North Carolina Growers' Ass'n, Inc. v. Solis*, No. 1:09CV411, 2009 WL 4729113, at *1 (M.D.N.C. Dec. 3, 2009). Indeed, even Defendant-Intervenors acknowledge that in order to qualify for permissive intervention under Rule 24(b), movants only need to show that they have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(2). Defendant-Intervenors do not, and cannot, claim that the Virginia NAACP does not meet that minimal requirement.

"[L]iberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process."

Feller v. Brock, 802 F.2d 722, 729 (4th Cir. 1986).

In fitting with this approach, this Court just granted the intervention of two of the Defendant-Intervenors who now oppose the intervention of the Virginia NAACP. Order Granting Intervention by David Brat and Barbara Comstack, Doc. 165, May 11, 2015.

Beyond the judicial economy reasons that favor liberal intervention, intervention in election cases is generally favored and routinely allowed because of the importance of the rights at stake. *See, Nw. Austin Mun. Util. Dist. No. One v. Holder*. 573 F. Supp. 2d 221,230 (D.D.C. 2008) (granting multiple motions to intervene of African-American and Latino voters in case seeking bailout under Section 4(a)

of the Voting Rights Act and challenging the constitutionality of Section 5 of the Act); *Johnson v. Mortham*, 915 F.Supp. 1529, 1536 (N.D. Fla. 1995) (registered voters had "a sufficiently substantial interest to intervene" in a suit challenging congressional redistricting); *Clark v. Putnam County*, 168 F.3d 458,462 (l1th Cir. 1999) ("black voters had a right to intervene" in action challenging county redistricting, and recounting recent voting cases allowing intervention); *Burton v. Sheheen*, 793 F. Supp 1329, 1338 (D. S.C. 1992).

Nor have Defendant-Intervenors claimed that the Virginia NAACP's motion to intervene should be denied because it will prejudice the existing parties cause undue delay in the proceedings of this Court. The Virginia NAACP has willingly acceded to only limited intervention in order to ensure that there is no prejudice to the existing parties or delay in the implementation of a constitutional congressional redistricting plan. Memorandum in Support of Virginia NAACP's Motion for Limited Intervention, Doc. 158, at 3-5. Moreover, the perspective and insights that the Virginia NAACP will be able to offer this Court are beneficial, rather than prejudicial, and are different from the perspective of any current party to the litigation. And should the motion to intervene be denied at this time, it is the Virginia NAACP and its members who are likely to suffer the prejudicial effects, as they will be excluded from the remedial process, denied the ability to appeal, and risk any later motion to intervene being deemed untimely. Thus, concerns about prejudice do not weigh in favor of denying intervention.

Finally, neither Defendants nor Plaintiffs in this action oppose the Virginia NAACP's invention. The Virginia NAACP consulted with Defendant-Intervenors—Republican members of Congress—regarding its motion to intervene, and Defendant-Intervenors represented to the

Virginia NAACP that they took no position on the Virginia NAACP's motion. *See Exhibit A* (April 27, 2015, email between John Gore, counsel for Defendant-Intervenors, and Allison Riggs, counsel for the Virginia NAACP). The Virginia NAACP accurately represented that position in its motion to intervene made on May 5, 2015. Yet on May 19, 2015, Defendant-Intervenors filed an opposition to that intervention motion, contradicting the position it stated to the Virginia NAACP. Defendant-Intervenors' last-minute change in position and intentions is not well founded on the facts or the law.

Thus, the Virginia NAACP respectfully requests that the Court grant its motion to intervene as of right under Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b).

Respectfully submitted this 26th day of May, 2015.

/s/ David O. Prince

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Attorneys for the Virginia State Conference
of NAACP Branches

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2015, a true and correct copy of the foregoing Reply was delivered to Plaintiffs, Defendants and Defendant-Intervenors via the United States District Court, Eastern District of Virginia, Richmond Division, CM/ECF system.

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EXHIBIT A

Allison Riggs

From: John M Gore <jmgore@JonesDay.com>
Sent: Monday, April 27, 2015 1:43 PM
To: Allison Riggs
Subject: RE: Page case - intervention of the VA NAACP

Allison:

Glad we were able to connect. Some language for your motion is below. Thanks.

Intervenor-Defendants state that they are unable to take a position on this proposed intervention unless and until they know the remedy that the proposed intervenors will be seeking and whether a remedial phase, if any, will occur in this case.

John M. Gore ([Bio](#))

Partner

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From: Allison Riggs <AllisonRiggs@southerncoalition.org>
To: John M Gore <jmgore@JonesDay.com>
Date: 04/17/2015 06:26 PM
Subject: RE: Page case - intervention of the VA NAACP

I should be. The morning is pretty open. Just give me a call—my direct line is 919-323-3909.

Have a good weekend,

Allison Riggs
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message without disclosing it. Thank you.

From: John M Gore [<mailto:jmgore@JonesDay.com>]
Sent: Friday, April 17, 2015 6:24 PM
To: Allison Riggs
Subject: RE: Page case - intervention of the VA NAACP

Thanks. I have another call then. Are you available around 11?

John M. Gore ([Bio](#))

Partner

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From: Allison Riggs <AllisonRiggs@southerncoalition.org>
To: John M Gore <jmgore@JonesDay.com>
Date: 04/17/2015 06:22 PM
Subject: RE: Page case - intervention of the VA NAACP

Sure. Morning would be best. Would 10 AM work?

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From: John M Gore [<mailto:jmgore@JonesDay.com>]
Sent: Friday, April 17, 2015 6:21 PM
To: Allison Riggs
Subject: Re: Page case - intervention of the VA NAACP

Allison:

I have spoken with Mike Carvin, and we have some questions about your proposed intervention. Is there a convenient time on Monday when we could talk? Thanks.

John M. Gore ([Bio](#))

Partner

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From: Allison Riggs <AllisonRiggs@southerncoalition.org>
To: "jmgore@jonesday.com" <jmgore@jonesday.com>,
Date: 04/13/2015 12:40 PM
Subject: Page case - intervention of the VA NAACP

Hi John,

Thanks for chatting with me. My contact information is below. My direct line is 919-323-3909. Let me know if you have any other questions!

Sincerely,

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