IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

WILLIAM EVERETT WARINNER and
JAMES C. MILLER, SR.,

Plaintiffs, **No. 4:14-cv-00164**

KEN DETZNER, in his official capacity as
Secretary of State of the State of Florida, et al.

Defendant.

CONGRESSWOMAN CORRINE BROWN, MAYOR ANTHONY GRANT, MAYOR BRUCE MOUNT, N.Y. NATHRI, FRANCES SEALEY, JAMES RANDOLPH, PASTOR WILLIE BARNES, MELVIN PHILPOT, REV. HARRY RUCKER, VELMA WILLIAMS, AND REV. LEONARD WILSON'S SECOND AMENDED MOTION TO INTERVENE AS DEFENDANTS AND COUNTER/CROSS-PLAINTIFFS

Congresswoman Corrine Brown ("Congresswoman Brown"), Mayor Anthony Grant, Mayor Bruce Mount, N.Y. Nathri, Frances Sealey, James Randolph, Pastor Willie Barnes, Melvin Philpot, Rev. Harry Rucker, Velma Williams, and Rev. Leonard Wilson (hereinafter "Intervenors") pursuant to Federal Rule of Civil Procedure 24(a)(2), hereby move this Court for leave to intervene in this action as of right as Defendants and Counter/Cross-Plaintiffs. As grounds therefore, Intervenors state as follows:

1. Intervenors' motion is timely because the litigation is in its early stages due to the case being stayed by this court on September 24, 2014 pending resolution of litigation in Florida state appellate courts which has been resolved as of July 9, 2015 resulting in a Special Session of the Legislature due to commence on August 10, 2015. Accordingly, intervention will not create any delay. Thus, intervention by Congresswoman Brown and the other Intervenors at this juncture will

not prejudice the existing parties.

2. Congresswoman Brown is a member of the United States House of Representatives elected from Florida's 5th congressional district ("District 5"). Given the unique and remarkable history of District 5 and the current issues before this Court, it is indisputable that Congresswoman Brown has a material interest in the outcome of this litigation. *See DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1079 (N.D. Fla. 1992); *Johnson v. Mortham*, 926 F. Supp. 1460 (N.D. Fla. 1996); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1307-1309 (S.D. Fla. 2002). Indeed, this district was judicially created and approved of by two different federal courts.

3. Mayor Anthony Grant, Mayor Bruce Mount, N.Y. Nathiri, Frances Sealey are registered African American voters from the Town of Eatonville.

4. Melvin Philpot, Rev. Harry Rucker, Velma Williams, and Rev. Leonard Wilson are registered African American voters from Sanford.

5. Congresswoman Brown believes it is consequential to her constituents that she be involved as a party to help resolve the questions before this Court.

6. Because Intervenors meet the requirements under applicable legal authorities for intervention as a matter of right, they respectfully request that the Court grant this motion.

7. Pursuant to Local Rule 7.1(B), counsel for Intervenors conferred with counsel by email on August 3, 2015 concerning this Motion to Intervene. Counsel for Defendants Florida House of Representatives and Florida Senate consented to this request for intervention as Defendants and Counter-Plaintiffs. Defendant Detzner took no position to this request for intervention as Defendants and Counter-Plaintiffs but opposes this request for intervention as Cross-Plaintiffs. Other counsel did not respond to counsel's inquiry.

WHEREFORE, the court should grant Intervenors' motion to intervene.

MEMORANDUM OF LAW IN SUPPORT OF CONGRESSWOMAN BROWN, ET AL.'S MOTION TO INTERVENE

I. ARGUMENT

A. Intervenors Satisfy the Requirements for Intervention As of Right

Federal Rule of Civil Procedure Rule 24(a) provides that upon timely application, anyone shall be permitted to intervene in an action:

> When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). *Fox v. Tyson Foods, Inc.,* 519 F.3d 1298, 1302-03 (11th Cir. 2008) (quoting *Chiles v. Thornburgh,* 865 F.2d 1197, 1213 (11th Cir. 1989); *see also State v. First Union Corp.,* 371 F. 3d 1305, 1308-09 (11th Cir. 2004).

Here, Intervenors request satisfies the requirements of Rule 24(a)(2) for intervention as of right. Intervenors have a substantial legal interest in the subject matter of the action. Intervenors are timely seeking to intervene in this action, as the case is still in its early stages due to the case being stayed by this court on September 24, 2014, pending resolution of litigation in Florida state appellate courts which has been resolved as of July 9, 2015, and its intervention will not disrupt the proceedings or prejudice either party.

1. Intervenors' Motion is Timely

The Eleventh Circuit has identified several factors relevant to determining whether a request for intervention is timely:

> (1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor's failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Engineers, 303 F.3d 1242, 1259 (11th Cir. 2002) (quoting *Chiles,* 865 F.2d at 1213).

The Supreme Court has emphasized that "[t]imeliness is to be determined from all the circumstances." *NAACP v. New York,* 413 U.S. 345, 366 (1974). The Eleventh Circuit has also recognized that the requirement of timeliness "must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice." *U.S. Army Corps of Engineers,* 302 F.3d at 1259 (citing *McDonald v. E.J. Lavino Co.,* 430 F.2d 1065, 1074 (5th Cir. 1970)).

In *Chiles v. Thornburgh,* a motion to intervene was held to be timely where the motion "was filed only seven months after [the plaintiff] filed his original complaint, three months after the government filed its motion to dismiss, and before any discovery had begun." *Chiles,* 865 F.2d at 1213; *see also Diaz v. Southern Drilling Corp.,* 427 F.2d 1118, 1125-26 (5th Cir. 1970)[1] (finding motion to intervene more than a year after the action was commenced was timely when there had been no legally significant proceedings other than the completion of discovery and intervention

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[1]In *Bonner v. City of Prichard,* 601 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

would not cause any delay in the process of the overall litigation). Applying these factors to the instant case, Intervenors' application is timely.

2. Intervenors have a Substantial Legal Interest in this Litigation and the Disposition of the Instant Litigation May Impair their Ability to Protect their Interest

For an applicant's interest in the subject matter of the litigation to be cognizable under Rule 24(a)(2), it must be "direct, substantial and legally protectable." *U.S. Army Corps of Engineers,* 302 F.3d at 1249. *See also Chiles*, 865 F.2d at 1212-13 (noting that the focus of a Rule 24 inquiry is "whether the intervenor has a legally protectable interest in the litigation.") The inquiry on this issue "is 'a flexible one, which focuses on the particular facts and circumstances surrounding each [motion for intervention].'" *Chiles,* 865 F.d at 1214 (quoting *United States v. Perry County Bd. Of Educ.,* 567 F.2d 277, 279 (5th Cir. 1978)).

Intervenors have a legally protectable interest in this litigation. *See* Complaint in Intervention attached hereto as Exhibit A. Intervenors will likely suffer significant harm if intervention is denied and this court fashions another remedy that negatively impacts the voters of District 5. They cannot effectively protect their own rights, both as citizens and candidates, to a fair redistricting process unless they are formally part of this litigation. Thus, Intervenors' interest in the pending litigation merits intervention as of right.

3. The Existing Parties Do Not Adequately Represent Intervenors' Interests

The fourth and final element to justify intervention of right is inadequate representation of the proposed intervenor's interest by existing parties to the litigation. This element is satisfied if the proposed intervenor "shows that representation of his interest 'may be' inadequate." *Chiles,* 865

F.2d at 1214 (citing *Trbovich v. United Mine Workers of America,* 404 U.S. 528, 538 n.10 (1972). The burden on the proposed intervenor to show that existing parties cannot inadequately represent its interest is "minimal." *Stone*, 371 F.3d 1311; *U.S. Army Corps of Engineers,* 302 F.3d at 1259 (citing *Trbovich,* 404 U.S. at 538 n.10). Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action. *Lloyd v. Alabama Dep't of Corrections,* 176 F.3d 1336, 1341 (11th Cir. 1990); *Federal Sav. And Loan Ins. Corp. V. Falls Chase Special Taxing Dist.,* 983 F.2d 211, 216 (11th Cir. 1993). Congresswoman Brown is uniquely positioned to protect the interests of her constituents and provide information relating to District 5. Furthermore, Intervenors have a substantial and legally protected interest in this case that cannot be adequately addressed by the parties in this case.

B. Intervenors Meet the Requirements for Permissive Intervention

Rule 24(b) of the Federal Rules of Civil Procedure provides an alternative basis for Congresswoman Brown's intervention in this action. Rule 24(b) states in relevant part:

> (1) *In General*. On timely motion, the court may permit anyone who
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> (A) is given a conditional right to intervene by a federal statute; or
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> (B) has a claim or defense that shares with the main action a common question of law or fact.

Fed. R. Civ. P. 24(b). The Eleventh Circuit has established a two-part test to guide the Court's discretion as to whether a party may intervene pursuant to Rule 24(b)(2); the applicant must show that "(1) his application to intervene is timely; and (2) his claim or defense and the main action have a question of law or fact in common." *Chiles*, 865 F.2d at 1213 (citing *Sellers v. United States* 709

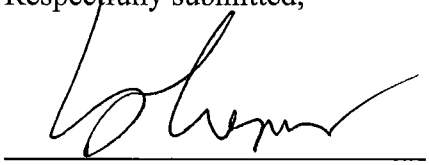
F.2d 1469, 1471 (11th Cir. 1983)).

As discussed above, Intervenors' application for intervention in this litigation is timely and their participation would neither unduly delay the proceedings nor prejudice the adjudication of the rights of the original parties. Additionally, Intervenors' claims share common questions of law and fact.

II. CONCLUSION

For the foregoing reasons, the Court should grant Intervenors' motion to intervene (i) as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, (ii) permissively pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

Respectfully submitted,



Wm. J. Sheppard, Esquire
Florida Bar No.: 109154
Elizabeth L. White, Esquire
Florida Bar No.: 314560
Matthew R. Kachergus, Esquire
Florida Bar No.: 503282
Bryan E. DeMaggio, Esquire
Florida Bar No.: 055712
Amanda J. Woods, Esquire
Florida Bar No.: 112296
Sheppard, White, Kachergus & DeMaggio, P.A.
215 Washington Street
Jacksonville, Florida 32202
Telephone: (904) 356-9661
Facsimile: (904) 356-9667
Email: sheplaw@att.net
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I CERTIFY that on August 6, 2015, I electronically filed the foregoing with the Clerk of the Court by using CM/ECF System which will send a notice of electronic filing to the following:

John Michael Devaney
Perkins Coie LLP – Washington DC
700 13th St. NW, Suite 700
Washington, DC 20005
Email: jdevaney@perkinscoie.com

Marc E. Elias
Perkins Coie LLP – Washington DC
700 13th St. NW, Suite 700
Washington, DC 20005
Email: melias@perkinscoie.com

Robert John Telfer, III
Messer Caparello & Self PA
2618 Centennial PL
Tallahassee, Florida 32308
Email: rtelfer@lawfla.com

Thomas Marshall Findley
Messer Caparello & Self PA
2618 Centennial PL
Tallahassee, Florida 32308
Email: tfindley@lawfla.com

Mark Herron
Messer Caparello & Self PA
2618 Centennial PL
Tallahassee, Florida 32308
Email: mherron@lawfla.com

Ashley E. Davis
Florida Department of State
R. A. Gray Bldg.
500 S. Bronough St.
Tallahassee, Florida 32399
Email: Ashley.Davis@myfloridalegal.com

J. Andrew Atkinson
Florida Department of State
R. A. Gray Bldg.
500 S. Bronough St.
Tallahassee, Florida 32399
Email: jandrew.atkinson@dos.myflorida.com

Adam Scott Tanenbaum
Attorney General – State of Florida
PL 01 The Capitol
400 S. Monroe St.
Tallahassee, Florida 32399
Email: adam.tanenbaum@dos.myflorida.com

George Ty Levesque
Florida Senate – Office of General Counsel
404 S. Monroe St.
305 Senate Office Building
Tallahassee, Florida 32399
Email: levesque.george@flsenate.gov

Raoul G. Cantero
White & Case LLP
Wachovia Financial Ctr – Suite 4900
200 S. Biscayne Blvd.
Miami, Florida 33131
Email: raoul.cantero@whitecase.com

Jason Nelson Zakia
White & Case LLP
Wachovia Financial Ctr – Suite 4900
200 S. Biscayne Blvd.
Miami, Florida 33131
Email: jzakia@whitecase.com

Andy V. Bardos
Gray Robinson PA
301 S. Bronough St., Suite 600
Tallahassee, Florida 32301
Email: andy.bardos@gray-robinson.com

Charles Talley Wells
Gray Robinson PA
301 S. Bronough St., Suite 600
Tallahassee, Florida 32301
Email: charles.wells@gray-robinson.com

Daniel Elden Nordby
Shutts & Bowen LLP
215 S. Monroe St., Suite 804
Tallahassee, Florida 32301
Email: dnordby@shutts.com

George N. Meros, Jr.
Gray Robinson PA
301 S. Bronough St., Suite 600
Tallahassee, Florida 32301
Email: george.meros@gray-robinson.com

Matthew J. Carson
General Counsel
Florida House of Representatives
Office of the General Counsel
Suite 422, The Capitol
402 South Monroe Street
Tallahassee, Florida 32399
Email: matthew.carson@myfloridahouse.gov

ATTORNEY

swp[brown.corrine.motion.intervene3]