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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

O. John Benisek, et al.,

Plaintiffs

Case No. 13-cv-3233-JKB

Three-Judge Court

vs.

Linda H. Lamone, et al.,
in their official capacities,

Defendants.

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MOTION TO INTERVENE

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Stephen M. Shapiro respectfully moves, pro se, to intervene in the above captioned case. If the motion is granted, movant intends to expeditiously seek representation by counsel. Movant's complaint-in-intervention, which is hereto attached, stems from the same transaction as the above captioned case and alleges facts and claims largely consistent with the plaintiffs' action. Movant seeks intervention to gain remedies for constitutional harms attendant to his and other voters' placement within the Eighth Congressional District enacted by the Maryland General Assembly in 2011. Movant's complaint addresses harms to voters beyond Republicans, and in districts

beyond the Sixth District. This Court's focus in the main action is now limited to the harms to Republican voters who lived in the former Sixth District in 2011.

Counsel for Plaintiffs and for Defendants in the main action have advised movant Shapiro that they intend to oppose this motion.

FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 2013, movant Stephen M. Shapiro filed the original complaint in the main action with Maria B. Pycha and with O. John Benisek, who remains a plaintiff there. On February 16, 2016, movant Shapiro was among the plaintiffs who filed the second amended complaint in the main action. On August 24, 2016, this Court denied Defendants' motion to dismiss the second amended complaint for failure to state a claim pursuant to Rule 12(b)(6). The focus of the Court's current inquiry, pursuant to its Order denying Defendants' motion to dismiss, is now limited to harms to Republican voters who were residents of the Sixth Congressional District immediately prior to the enactment of the current districts in 2011. This focus is narrower than the scope of the second amended complaint. Accordingly, on November 15, 2016, the parties in the main action stipulated the dismissal of movant Shapiro and of Ms. Pycha for lack of standing.

SUBSTANCE OF MOVANT'S COMPLAINT-IN-INTERVENTION

Movant Shapiro alleges constitutional injuries in districts beyond the Sixth Congressional District that is currently the focus of this Court, specifically in the Eighth Congressional District. These ongoing injuries exist due to the General Assembly's design of the Eighth District in a manner that violates the First

Amendment and Article 1 of the United States Constitution. Movant Shapiro claims that the intended design and composition of the Eighth District impermissibly (1) burdens Republican voters by virtue of their past and anticipated future votes; (2) imposes such burden by diluting the votes of the predominantly Republican voters of the Frederick/Carroll segment of the Eighth District, thereby intentionally weighting them to have minimal influence; (3) thereby burdens movant Shapiro and other voters by advancing the General Assembly's intent to dictate the partisan composition of Maryland's Congressional delegation rather than to afford such choice to the voters; and (4) fails to afford effective representation for movant Shapiro and other residents of the Frederick/Carroll and Montgomery segments of the Eighth District.

JUSTIFICATION FOR INTERVENTION UNDER RULE 24

Movant respectfully requests to intervene of right under Rule 24(a)(2), or in the alternative, by permissive leave of the Court under Rule 24(b)(1)(B).

The Fourth Circuit's standards of review for motions to intervene were recently summarized in *Volvo Group North America, LLC v. Truck Enterprises, Inc.*, 16-CV-00025, 2016 WL 1453061 (W.D. Va. Apr. 13, 2016) (citing *Houston General Insurance Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999) (intervention of right); *Hill v. Western Electric Co.*, 672 F.2d 381, 385-86 (4th Cir. 1982) (permissive intervention); *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) ("Liberal 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.")).

A. Intervention of Right

A movant for intervention of right must show (1) timeliness; (2) interest; (3) impairment of the ability to protect the interest; and (4) inadequate representation. *Volvo Group North America*, 2016 WL 1453061 at *2.

This motion is timely. Movant has filed this motion six weeks after the parties in the main action stipulated his dismissal for lack of standing there. Joint Stipulation, ECF 105, Nov. 15, 2016. *See Western Electric Co.*, 672 F.2d at 386 (citing *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977) (noting that intervention is timely when it is moved “as soon as it [is] clear . . . that the interests of [intervenors will] no longer be protected by the [plaintiffs in the main action]).

“The most important consideration [in determining timeliness] is whether the delay has prejudiced the other parties.” *Volvo Group North America*, 2016 WL 1453061 at *2 (quoting *Spring Constr. Co. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980)). Intervention will not prejudice the other parties as the next primary election will not take place until June 26, 2018. There is ample time for the Court to decide the claims in the main action and in the complaint-in-intervention, to order any remedies the Court may find appropriate, and for the General Assembly to implement any remedial order this Court may issue well before June 26, 2018.

In the prior review of Maryland’s Congressional Districts by a three-judge panel of this Court, *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011) *summarily aff’d*, 133 S. Ct. 29 (2012), the plaintiffs there filed their complaint on November 10, 2011, and this Court granted summary judgment on December 23,

2011. Such a compressed resolution is not needed and perhaps not prudent, as the next election here is eighteen months out, but the time frame in *Fletcher* further shows that movant's intervention now will not be prejudicial. A separate action on the District Plan could result in greater prejudice for the parties and for this Court.

Movant Shapiro has a significant interest in the success of the main action. His claims rely heavily on the facts and legal theories at issue in the main complaint. Also, success in the main action will almost certainly result in revisions to the current Eighth District, in which movant lives, in order to implement remedies that may be ordered by this Court with respect to the former Sixth District. Likewise, movant's claims will be negatively impacted if the claims supporting the main action are not validated. Therefore, he "stand[s] to gain or lose by the direct legal operation of th[is Court's] judgment [in the main action]. *Volvo Group North America*, 2016 WL 1453061 at *3 (quoting *Teague v. Bakker*, 931 F.2d 259, 261 (4th Cir. 1991)).

Denial of the motion would impair Movant's ability to protect his interests in the proceeding. Movant is most concerned to achieve redress of injuries within the Eighth District in which he resides. Such redress may only be tangentially or indirectly achieved within the course of the main action, as the focus there is now limited to the former Sixth District. Indeed, movant Shapiro was dismissed from the main action due to his lack of standing there. Therefore, by definition, his injuries were not and are not directly before this Court in the main action. Further, movant Shapiro—in the course of opposing dismissal of his first amended complaint

in the main action—had to refute Defendants’ defense of res judicata with respect to this Court’s prior judgment in *Fletcher*. While movant does not concede that res judicata would necessarily bar him from filing this complaint-in-intervention as a separate action, since he was dismissed from the main action without prejudice, he would nevertheless be subject to Defendants raising such a defense after this Court’s judgment in the main action. This potential explicitly augurs for granting intervention. *See Volvo Group North America*, 2016 WL 1453061 at *3.

Finally, movant Shapiro’s interests are not adequately represented in the main action. While the second amended complaint prayed for redress of injuries in the Sixth, Seventh, and Eighth Districts, the main action is now limited to seeking the redress of injuries to Republicans of the former Sixth District—where movant lacks standing. Relief with respect to his and other Eighth District-specific injuries may be overlooked or inherently limited if intervention is denied. Thus Movant’s situation is distinguished from that in *Virginia v. Westinghouse Electric Corp.*, 542 F.2d 214, 216 (4th Cir. 1976) (denying intervention where “[v]irginia seeks no relief other than that which VEPCO seeks for itself”). The Fourth Circuit has further guided District Courts in applying *Westinghouse* to “heed the Supreme Court’s determination that the burden on the applicant of demonstrating a lack of adequate representation ‘should be treated as minimal.’ *Teague v. Bakker*, 931 F.2d 259, 262 (4th Cir. 1991) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

B. Permissive Intervention

Pursuant to Rule 24(b), the court may, “[o]n timely motion,” allow an applicant to intervene who “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b).

Movant’s claims share many common questions of law and fact with those of the main action. They stem from the same transaction, specifically the enactment of Maryland’s Congressional districts in 2011. While the main action is now focused only on the former Sixth District, the second amended complaint in the main action did allege significant facts regarding all other districts, including the Eighth. Movant Shapiro supplements these now with allegations from the first amended complaint in the main action that relate to these districts. Similarly, the legal theories relied upon by movant includes those previously considered by this Court to have stated a claim in the main action, specifically Article 1 and the First Amendment. The theories are largely based on the same Supreme Court case law. Movant does expand upon the protections of Article 1 that he claims are violated, to include the state’s failure to provide for his effective representation, based on the same facts. Facts and claims particularly dovetail on the proof of intent, where the cumulative showing of intent with respect to the Sixth District in the main action, the Eighth District in movant’s complaint, and the similarly constructed Fourth and Seventh Districts on facts alleged both here and in the main action, can be best considered as a whole by this Court. Prejudice to parties in the main action, complication of the proceedings, and undue expansion of discovery are unlikely as


movant Shapiro's claims so "largely overlap with the legal and factual issues that are already present in the main action." *Norfolk Southern Ry. Co. v. City of Roanoke*, 16-CV-00176, 2016 WL 6126397 at *2 (W.D. Va. Oct. 19, 2016).

If this motion is granted, the Court will be able to consider and, as appropriate, redress the claims and injuries of movant Shapiro and similarly situated voters concurrently with those of the plaintiffs in the main action. If this motion is denied, the Court would address the constitutional injuries stemming from the dilution of Republican voters who lived in the former Sixth District in the main action, but could bifurcate consideration of the injuries to movant Shapiro and those similarly situated, based on the General Assembly's same intent and enacted particulars of the other districts in which they now reside, in a separate action. Concurrent consideration of all of the closely related claims of movant Shapiro and of main action plaintiffs stemming from the 2011 Congressional redistricting will support efficiency both in this Court as well as in foreseeable subsequent proceedings in the United States Supreme Court.

CONCLUSION

For the reasons noted above, this Court should grant the motion.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I certify that I have served by electronic mail on December 30, 2016, a copy of the foregoing Motion to Intervene, with its attached Complaint-in-Intervention, to the electronic mail address listed in the docket for each attorney listed to be noticed for the plaintiffs, defendants, and amici curiae:

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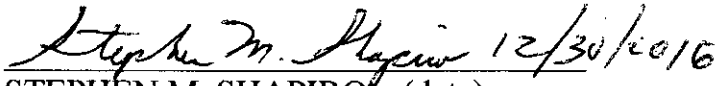
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