UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

WILLIAM WHITFORD, et al.

Plaintiffs,

Case No. 3:15-CV-00421-jdp

v.

BEVERLY R. GILL, et al.,

Defendants.

THE WISCONSIN ASSEMBLY DEMOCRATIC CAMPAIGN COMMITTEE,

Plaintiff,

Case No. 3:18-CV-00763-jdp

v.

BEVERLY R. GILL, et al.,

Defendants.

REPLY TO PLAINTIFFS' BRIEFS IN OPPOSITION TO WISCONSIN STATE ASSEMBLY'S MOTION TO INTERVENE PURSUANT TO FRCP 24(A) AND (B)

INTRODUCTION

The United States Supreme Court has held that a state legislative body is a proper mandatory intervenor in a lawsuit challenging the constitutionality of the body's district lines even when there is another state defendant. It did this first in *Silver*, where the Court summarily affirmed a district court decision granting the

California State Senate mandatory intervention in a reapportionment action.[1] And it did so by decision in *Beens*, where the Minnesota State Senate was held to be a proper mandatory intervenor in a case involving the validity of its district lines.[2] Plaintiffs offer no reason why these cases do not control the issue before the Court; they do not even cite these cases.

Instead, Plaintiffs' opposition rests on the naked assertion that the Wisconsin State Assembly's participation will "derail the proceedings" and delay resolution of the case.[3] (Opp. Br. at 3, 5). But the Assembly has already represented to the Court that it will operate within the time frames established by the Court. (*Whitford* Dkt. # 215, Tr. at 19:6-12; 20:20-21; 23:17-18). In short, the final resolution of this case will not be delayed due to the Assembly's participation.

The Wisconsin State Assembly is the true party at interest in this case. Its participation will assist in the fair resolution of Plaintiffs' claims. For these reasons and those that follow, the Assembly's intervention motion should be granted.

I. The Assembly's Motion for Mandatory or Permissive Intervention Is Timely.

Plaintiffs argue intervention is untimely because the Assembly was aware of the *Whitford* lawsuit three years ago. (Opp. Br. at 3). While true, the Assembly's awareness of the *Whitford* lawsuit does not render its motion to intervene untimely.

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[1] *Silver v. Jordan*, 241 F. Supp. 576 (S.D. Cal. 1964), *aff'd*, 381 U.S. 415 (1965).

[2] *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 190-94 (1972).

[3] The *Whitford* plaintiffs filed an opposition brief (*Whitford* Dkt. # 217 (hereafter "Opp. Br.")) and ADDC joined in those arguments. (*ADCC* Dkt. # 19). The State Defendants do not oppose intervention. (*Whitford* Dkt. # 216; *ADCC* Dkt. # 18). Identical versions of this brief are being filed in both the *Whitford* and *ADCC* dockets.

First, the Assembly's knowledge of the *Whitford* case has no relevance to its intervention in the *ADCC* case, where the Assembly filed its motion to intervene on the same day the Defendants filed their answer. The motion in *ADCC*, filed at the case's inception, is unquestionably timely. (*ADCC* Dkt. ## 8, 11).

Second, with respect to *Whitford*, timeliness depends on consideration of all relevant circumstances, not just how long a proposed intervenor was aware of the case. Those circumstances include "the prejudice to the original parties caused by the delay, the resulting prejudice to the intervenor if the motion is denied, and any unusual circumstances."[4]

Of these, "the 'most important consideration'" is whether intervention will prejudice the existing parties to the case.[5] To render a motion to intervene untimely, such prejudice must result *from the delay* in filing the motion to intervene—not from intervention itself.[6] In other words, any prejudice or inconvenience to a party that would have occurred irrespective of *when* the motion to intervene was filed is not prejudice or inconvenience caused by untimeliness.[7]

The Plaintiffs cannot credibly claim that they will suffer prejudice because of the timing of the Assembly's motion to intervene. The Assembly will adhere to the timelines in the Court's scheduling order. (*Whitford* Dkt. # 215, Tr. at 19:6-12; 20:20-

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[4] *South v. Rowe*, 759 F.2d 610, 612 (7th Cir. 1985) (cleaned up to remove enumerations in list of factors).

[5] *Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 439 (7th Cir 1994) (quoting 7C CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 1916 (2d ed. 1986)).

[6] *Nissei Sangyo Am., Ltd.*, 31 F.3d at 439.

[7] *Id.*

21; 23:17-18). Thus, the Assembly's participation will not delay the resolution of the matter.

Nonetheless, Plaintiffs attempt to manufacture prejudice by arguing that "[b]y attempting to file a motion to dismiss, the Proposed-Intervenor has already sought to raise collateral issues" that would "delay and disrupt this action." (Opp. Br. at 4.) Had the Assembly intervened three years ago, it would have filed the same motion to dismiss after the Supreme Court's remand. The same is true with respect seeking to offer additional experts, deposing the brand-new plaintiffs, or *potentially* moving to stay proceedings.[8] If these actions cause prejudice at all, it is not a prejudice caused by untimeliness.

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[8] Were the Assembly to move to stay, its position would be that staying the matter would bring about a final resolution of this case *sooner*, not later than the proposed schedule contemplates. At the scheduling conference, the Court acknowledged that these cases are heading for the Supreme Court, and this Court's order is designed to get them there during the 2019-2020 Term. (*Whitford* Dkt. # 215, Tr. 11:14-17). But now in the Supreme Court is *Rucho v. Common Cause,* No. 18-422 (U.S.) (electronic docket at https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-422.html).

The *Rucho* Petitioners have asked the Court for plenary review of a matter involving the very same equal protection and First Amendment Claims at issue here. *Id.*, Jurisdictional Statement at 1-2 (available at https://www.supremecourt.gov/DocketPDF/18/18-422/65297/20181001123431336_2018-10-01%20Rucho%20v.%20Common%20Cause%20JS%20FINAL.pdf). If plenary review of the *Rucho* direct appeal is granted, then a decision should occur *this* Term (but likely after the scheduled trial here).

Over the past forty years, numerous standards for addressing political gerrymandering have been offered by justices and plaintiffs (if these claims are in fact justiciable), but none have commanded a majority. *Gill v. Whitford*, 138 S.Ct. 1916, 1926-29 (2018). Thus, if these claims are justiciable, it is highly probable that any standard adopted by the Supreme Court in *Rucho* will differ from the standard this Court may apply here, making a remand *and another new trial* likely. *See, e.g., Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 314 (2013) ("[F]airness to the litigants" demands that a case "be considered and judged" under an identified legal standard). A stay would ensure that if another trial in this matter is necessary, there will only be one more, it will be on the proper legal standard, and it will occur on a date before a *third* trial would have occurred absent a stay.

Plaintiffs' concern about "new experts" is particularly unfounded. Plaintiffs themselves have offered new expert opinions to support both their vote dilution and association claims. Professor Chen's report offers an entirely new methodology for supporting Plaintiffs' vote dilution/equal protection claim, both as a statewide matter and as applied to the individual *Whitford* Plaintiff districts.[9] Professor Mayer's new report opines not only on the *ADCC* (and possibly *Whitford*) Plaintiffs' new burden on association claims, but also provides a narrative analysis of district specific "cracking" and "packing" based on his analysis of Chen's new report.[10]

Plaintiffs had to offer these new expert opinions because the First Amendment theories in both *ADCC* and *Whitford* are *brand new*.[11] The Supreme Court's *Gill* decision undermines the statewide partisan gerrymandering theory that was the *Whitford* Plaintiffs' sole focus of the first trial.[12] The newly filed amended complaint thus reformulates the equal protection claim, giving it a new name and adding two

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[9] *See generally* Expert Report of Jowei Chen, Ph.D. (Oct. 15, 2018) (attached hereto as Exhibit A); and *specifically* p. 2 (outlining scope of work) and *compare* with the Reports of Professors Jackman and Mayer submitted in the first phases of this case (*e.g.*, *Whitford* Dkt. ## 54, 62). We note that the Court previously sustained Defendants' objections to admitting exhibits and testimony relating to Professor Chen's work specifically addressing Act 43. *See Whitford v. Gill*, 218 F. Supp.3d 837, 918-19 & n.350 (W.D. Wis. 2016).

[10] Expert Report of Kenneth R. Mayer (October 15, 2018) (attached as Exhibit B).

[11] *Compare Whitford* Dkt. # 201, ¶¶ 173-178 ("Burden on Right To Association" claim) *with Whitford* Dkt. # 1, ¶¶ 90-96 ("First Amendment Violation").

[12] While the Supreme Court's *Gill* decision was formally about standing, the Court effectively rejected the statewide partisan gerrymandering theory that was the sole focus of the first trial. As the Court noted, the right to vote is individual and personal in nature, and that an individual's vote may only be diluted in the individual's district. *Gill*, 138 S.Ct. at 1929-30. Correspondingly, an individual's legally protectible interest is about his or her vote in his or her district. As *Gill* held, the "fundamental problem with the plaintiffs' case as presented on this record" is that "[i]t is a case about group political interests, not individual legal rights…. The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." *Id*. at 1933.

dozen pages of allegations that, while under the label "Parties," make district-specific cracking and packing allegations and cite Chen's report as providing the foundation.[13]

The Plaintiffs' decision to inject new legal theories and new expert opinions to support them is reason alone to find that the Assembly's motion to intervene will not prejudice the Plaintiffs. To be sure, the *Whitford* case was filed over three years ago, but—in large part due to the Plaintiffs' choices—it is unlike any other case that is three years old. Nothing has been adjudicated.[14] There was no scheduling order in place when the Assembly filed its motion. And since the Assembly filed its motion, Plaintiffs have added brand-new claims, brand-new Plaintiffs, and brand-new expert opinions in support of both new and old claims. (*See Whitford* Dkt. # 199 (ordering Plaintiffs' new expert disclosures by October 15, 2018); # 209 (Motion to Intervene filed on October 4, 2018)).

Surely the existing Defendants have every right to address *for the first time* those new claims and expert opinions. And if the Plaintiffs have the right to enlist new experts, surely Defendants do too. Because the Assembly will comply with the same schedule as the existing Defendants, its participation can cause no timeliness-based prejudice.

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[13] *See Whitford* Dkt. # 201, ¶¶ 16-111 and Count I at p. 48 ("Intentional Vote Dilution"), and *compare with Whitford* Dkt. # 1, ¶¶ 15-27 (lacking district-specific cracking and packing allegations per plaintiff) and Count I at p. 24 ("Fourteenth Amendment Violation").

[14] As we explained in our brief supporting the motion to intervene, neither law of the case nor doctrines of preclusion apply here to the parties, much less a new party. *See Whitford* Dkt. # 210 at 4 & nn.13 & 14. We take the Court's statement that we "are not starting over from scratch" (*Whitford* Dkt. # 215, Tr. at 11:5-17) to mean there are certain efficiencies to be gained from the first trial and pretrial discovery, and the Court has established an expeditious scheduling order accordingly.

Moreover, any complaint of timeliness-based prejudice caused by the addition of a new party rings hollow given the *Whitford* Plaintiffs added dozens of new parties to the case just 3 weeks before the Assembly moved to intervene, and then consented to the consolidation of the *Whitford* and *ADCC* cases. (*Whitford* Dkt. ## 201, 204). These actions necessitate significant new discovery.

What explains the inconsistency in Plaintiffs' position is simply that the new *Whitford* Plaintiffs and *ADDC* are aligned in interest with the original *Whitford* Plaintiffs and the Assembly is not. Plaintiffs are concerned that the Assembly could bring additional compelling argument or evidence to these proceedings. This is the very reason courts *allow* intervention, so that an otherwise absent party's protectable interests are not extinguished by litigation positions they do not control. By contrast, "we could have an increased chance of losing" is not a legitimate argument for denying intervention.

II. Mandatory Intervention: The Assembly Is Entitled to Intervene to Protect Its Unique Interests.

Beyond timeliness, the only objection Plaintiffs offer to mandatory intervention is an argument that the state adequately represents the Assembly's interests in the litigation.[15] Plaintiffs' argument fails because the Supreme Court's decision in *Beens* holds that a state legislative body like the Assembly is entitled to mandatory intervention in the very same circumstances present here: where a state defendant is present, the intervenor is a state legislative body, and the challenge is

[15] Plaintiffs do not argue that the Wisconsin State Assembly lacks an interest in the subject-matter of this action or that those interests will not be impaired by an adverse decision. To that end, Plaintiffs concede these components of mandatory intervention have been met.

to that body's district lines. Plaintiffs offer no reason why *Beens* does not control the question before the Court, and there is none.[16]

Beyond *Beens,* Plaintiffs do not address the current context of this case: these are political lawsuits[17] whose defense is controlled by the attorney general, a partisan-elected official. In this phase of the case—unlike when the case was initially filed and appealed—an election will occur before trial. The potential for political realignment exists, and a major-party candidate for attorney general has already declared his intent to downsize the office responsible for defending Act 43 in the Supreme Court and expressed his belief that redistricting is better performed by entities other than legislative bodies. (*See* MTI Br. at 18-19 & nn.65 & 66). In similar cases, partisan officials have not vigorously defended the law or appealed. (*Id.* at 12 & nn.45, 47; 19 & n.69).

Further, Justice Kagan's concurring opinion in *Gill* suggests that "the evils of gerrymandering seep into the legislative process itself."[18] *ADCC's* complaint runs with Justice Kagan's analysis and alleges that state policy has illegitimately shifted rightward as the result of Act 43. (*ADCC* Dkt. # 1, ¶ 31). Separate and apart from

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[16] *See* Fed. R. Civ. P. 24(a)(2) (1971) (intervention as a right requires that "the representation of an applicant's interest is or may be inadequate"). Since *Beens*, Rule 24(a)'s language changed into its current form (in relevant part) by a 1987 amendment. But the Advisory Committee notes indicate that the changes were "technical" and that "[n]o substantive change is intended." *See* Fed. R. Civ. P. 24 (Advisory Committee Notes, 1987 Amendment).

[17] *See Gill*, 138 S.Ct. at 1933 (stating *Whitford* is a "case about group political interests, not individual legal rights" and that Plaintiffs' case was concerned with the effect of gerrymanders no on individual interests, but "the fortunes of political parties"); *ADCC* Dkt. # 1, ¶¶ 8, 9 (identifying *ADCC's* membership as the "thirty-five sitting Democratic representatives in the Wisconsin State Assembly" who have the goal of achieving "a Democratic majority in the Assembly").

[18] *Gill*, 138 S.Ct. at 1940 (Kagan, J., concurring).

defending the constitutionality of Act 43, the Assembly has a unique interest in defending itself against claims that attempt to cast doubt on the democratic legitimacy of its actions.

III. Permissive Intervention Is Appropriate.

In addition to Plaintiffs' "timeliness" arguments (addressed above), Plaintiffs contend that permissive intervention is not appropriate because the Wisconsin State Assembly is adequately represented by the state defendants. (Opp. Br. at 4 & n.4). But this is not the law. One fundamental difference between mandatory intervention under Rule 24(a) and permissive intervention under Rule 24(b) is that adequacy of representation is not a requirement under Rule 24(b).

Courts have allowed legislatures and legislators to permissively intervene under Rule 24(b) to defend the validity of laws passed by the body.[19] And in cases involving the validity of districts, intervention is commonplace, even in the presence of a state defendant. For example, the Virginia House of Delegates was allowed to intervene in a racial gerrymandering case challenging the validity of its district lines in which the State Board of Elections was the party;[20] members of Congress were

[19] *See, e.g., Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106-07 (E.D.N.Y. 1996) (Speaker of New York Assembly permitted to intervene in his official capacity even though state defendants provided adequate representation).

[20] *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S.Ct. 788, 796 (2017) (describing districting court as having granted intervention to Virginia House of Delegates). The district court order in the case does not specify whether intervention in that case was granted as a right or permissively. *See Bethune-Hill v. Virginia State Bd. of Elections*, No. 3:14-cv-852, (E.D. Va., Feb. 3, 2015) (Order granting intervention). Virginia's lower house moved for mandatory intervention, or in the alternative, permissive intervention. *See* Brief of Defendants, Dkt. # 13, *Bethune-Hill v. Virginia State Bd. Of Elections*, No. 3:14-cv-852 (E.D. Va. Jan. 23, 2015).

permitted to intervene in political gerrymandering case involving their districts;[21] and even the chairman of a political party was granted intervention in a political gerrymandering case.[22]

In a recent case cited in the Assembly's opening brief (and ignored entirely by Plaintiffs), the Sixth Circuit *reversed* a district court's denial of permissive intervention in a political gerrymandering case. There, like here, the proposed-intervenors (members of Congress) had a direct interest in defending the law, different than the state defendants' interests. This fact weighed in favor of permissive intervention.[23] And there, like here, an impending election had the potential of upsetting the adequacy of representation. This potential also augured in favor of intervention and showed why prompt intervention would promote the fair and efficient resolution of the case:

> [A]ny delay attributable to allowing the Congressmen to intervene now is surely less than the delay that will occur if the Congressm[e]n must intervene in January 2019 [after a new Secretary of State takes office]. Under these unique circumstances, where timeliness [of resolving the gerrymandering dispute] is a particularly weighty concern, allowing intervention now may very well prove more efficient for all involved.[24]

While plaintiffs feign ignorance as to how intervention "would contribute to a fair and efficient resolution of this lawsuit," (Opp. Br. at 4) this Sixth Circuit decision

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[21] *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 575 (6th Cir. 2018).

[22] *See Gaffney v. Cummings*, 412 U.S. 735, 739 (1973). The defendants in *Gaffney* were "officials of the State of Connecticut responsible for enforcing its laws." *Cummings v. Meskill*, 341 F. Supp. 139 (D. Conn. 1972), *rev'd sub nom. Gaffney v. Cummings*, 412 U.S. 735 (1973).

[23] *League of Women Voters of Mich.*, 902 F.3d at 579-80.

[24] *Id.* at 580.

shows why intervention would enhance efficiency, as was explained in the moving papers. (MTI Br. at 22-24).

Nor do plaintiffs offer any serious argument that it would be *inefficient* to allow intervention, relying instead on bald assertions the case would be "derailed." (Opp. Br. at 3, 5). For example, Plaintiffs complain that allowing intervention might enable Defendants to "tag-team" depositions or make different legal arguments. (Opp. Br. at 5). But contrary to Plaintiffs' argument, these are reasons *for* granting intervention, as they will result in a proceeding that is both more efficient and fairer.

Intervention that enables "tag teaming" depositions has the potential to make these proceedings more efficient. If the Court permits intervention, Defendants will have more lawyers available take 40 plaintiff depositions in *Whitford*, new expert depositions, and the depositions required in *ADCC* while adhering to this Court's relatively compressed schedule.[25]

As to fairness, Act 43's constitutionality should not rise or fall on the limits the state defendants may place on this matter, whether due to litigation strategy, substantive choices to not make arguments with a more robust view of the proper scope of legislative power, or limited resources. As explained in the Assembly's moving papers, the state defendants have not demonstrated a commitment to make the various arguments asserted by the Assembly in its proposed Motion to Dismiss: "Whether and to what degree the legislature is subject to court oversight [in

[25] Three lawyers have appeared in this matter for the state defendants. Three attorneys have now appeared in this matter for the Assembly. Plaintiffs, by our count, have 10 lawyers on this case. Simply put, the more lawyers there are, the more lawyers are available to conduct any deposition and the easier it will be to find dates to conduct depositions.

exercising is textually committed responsibility of redistricting] should not be determined exclusively by the arguments that disinterested officials *might* (but have not yet) set forth." (MTI Br. at 17.)

Plaintiffs try to use the fact the Assembly proposed a motion to dismiss when the state did not as something that would cause delay, characterizing the motion as "rais[ing] collateral issues." But those issues are not collateral; they are front and center in this case. And as the Sixth Circuit held in *League of Women Voters of Mich.*, raising affirmative defenses such as non-justiciability that are "common in redistricting cases" cannot prejudice a plaintiff.[26]

In sum, permissive intervention is appropriate.

IV. The Court Should Not Impose Any Special Limitations on the Assembly's Participation.

Plaintiffs argue that the Court has the authority to place additional limitations on the Assembly's participation if the intervention is granted. (Opp. Br. at 6-7). Among other restrictions, the Plaintiffs propose that the Assembly be barred from bringing unilateral motions, raising any collateral issue or relitigating issues already decided, attending depositions where the state Defendants are also present, or moving to modify the scheduling order. (Opp. Br. at 6.) None of these proposed limitations is warranted.

Plaintiffs cite numerous cases for the proposition that courts have the ability to limit an intervenor's participation. (Opp. Br. at 6 & n.7). We do not question that

[26] *League of Women Voters of Mich.*, 902 F.3d at 577-78.

the Court has considerable discretion to manage this litigation, and this may include imposing appropriate limitations on the original parties and intervening parties alike. But none of the cases cited by Plaintiffs involves preventing parties from filing appropriate motions or accelerating appeal deadlines. The one case Plaintiffs cite that involved an express limitation on pretrial discovery *reversed* a district court order that limited an intervenor's opportunity for discovery, noting that "[w]hile the efficient administration of justice is always an important consideration, fundamental fairness to every litigant is an even greater concern."[27]

Plaintiffs' proposal that the Court should prevent the Assembly from "raising any collateral issues or from re-litigating any issue already decided in this suit" rests on a fundamental misunderstanding about what has been decided in this suit. (Opp. Br. at 7). *Nothing* has been conclusively decided. This Court's judgment was vacated because its decision was issued without jurisdiction.[28] Thus, there is no law of the case, and there is no issue or claim preclusion as it relates to the state defendants or to any other party. (MTI Br. at 4 & nn.12 & 13). We recognize that the proceedings to date will enable increased economy moving forward, but factual findings and legal conclusions issued by a Court without jurisdiction are a nullity.[29]

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[27] *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 974 F.2d 450, 470 (4th Cir. 1992).

[28] *Gill*, 138 S.Ct. at 1934.

[29] *See, e.g., Orff v. United States*, 358 F.3d 1137, 1149–50 (9th Cir. 2004) ("If jurisdiction was lacking, then the court's various orders were nullities." (cleaned up)); *Tobin v. Gluck*, 11 F. Supp. 3d 280, 291 n.4 (E.D.N.Y. 2014) ("[A]ny factual findings made by the civil court operating without proper jurisdiction should not be relied upon by either party."). Plaintiffs argue that in *League of Women Voters of N.C. v. Rucho*, 1:16-cv-1164 (M.D.N.C. July 18, 2018) (Dkt. # 135), the district court did not revisit merits determinations after the remand. This has no relevance here. In *Rucho*, there was never been a finding that the district court

Depriving the Assembly of the opportunity to take depositions alongside the state defendants would significantly curtail the Assembly's ability to develop a record on items at central to *ADCC* and *Whitford*. This would undermine the purpose of intervention. And it would do so without justification. The Federal Rules of Civil Procedure limit the *length* of depositions absent leave of court, not the attorneys who may take those depositions. Fed. R. Civ. P. 30(a)(2). Plaintiffs may thus be deposed for up to 7 hours—splitting those hours between the state defendants' attorneys and the Assembly's attorneys would cause no additional prejudice and would not delay the resolution of this case. By comparison, depriving the Assembly the opportunity to develop and test the critical issues these cases present would be highly prejudicial to the Assembly.

The Plaintiffs' proposal that the Court prohibit the Assembly from moving to modify the scheduling order is unnecessary. The Court made it absolutely clear that it expects the parties to meet the schedule it set. The Assembly has every intent to meet the schedule and expects that the Court is unlikely to look favorably on any requested modifications. At the same time, good cause for a modification might arise for reasons beyond the Assembly's control: Plaintiffs might not make witnesses available, personal tragedy may befall a lawyer or witness, a blizzard may make travel impossible, and so forth. In sum, a prophylactic order preventing a *request* that the Assembly knows would be disfavored and the Court is under no obligation to grant is both unnecessary and could, in some circumstances, work an injustice.

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lacked jurisdiction over the *Rucho* plaintiffs that would vacate what had previously been done by the Court.

More broadly, there is no need to address any of the issues raised by Plaintiffs' proposed limitations in a vacuum with a prophylactic order. Should good cause exist to limit the scope, timing, or manner of discovery, Plaintiffs can simply move for a protective order and the court may address the issues within a proper factual context.[30] And of course, before doing so, Plaintiffs would confer with the Assembly and the state defendants, which may obviate the need for the Court's intervention.[31]

CONCLUSION

The Assembly has affirmed its intent to operate within the Court's scheduling Order. The Supreme Court has held a legislative body is a proper mandatory intervenor in cases involving the district lines of that body. This motion is timely. Respectfully, intervention should be granted.

[30] Fed. R. Civ. P. 26(c).

[31] *Id*.

Respectfully submitted this 26th day of October, 2018.

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