IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIE CONTRERAS, IRVIN FUENTES, ABRAHAM MARTINEZ, IRENE PADILLA, and ROSE TORRES,	)	
Plaintiff,	)	
v.	)	Case No. 21 CV 3139
ILLINOIS STATE BOARD OF ELECTIONS, ET. AL.,	)	
Defendants,	)	
and,	)	
ANGELICA GUERRERO-CUELLAR, in her official capacity as Illinois State Representative for the 22nd District	)	
Petitioner/Defendant-Intervenor.	)	

PETITIONER/DEFENDANT-INTERVENOR'S REPLY IN SUPPORT OF HER MOTION TO INTERVENE PURSUANT TO RULE 24

NOW COMES Petitioner/Defendant-Intervenor, Angelica Guerrero-Cuellar (the "Representative") by and through her attorney Veronica Bonilla-Lopez of Del Galdo Law Group, LLC, and as her reply in support of her motion to intervene as a Defendant in this action pursuant to Federal Rule of Civil Procedure 24(a)(2) or alternatively 24(b)(1) argues:

ARGUMENT

Plaintiffs would have their votes trump those of others. While Plaintiffs purport that their votes are diluted in an alleged malapportioned map, they in turn contend the Representative's protection of the imminent dilution of her constituents'

votes is not sufficient to establish standing. However, as articulated in her motion and herein the Representative has standing. Moreover, the Representative has met all of the Rule 24 requirements for intervention as of right, or alternatively by permission.

Rule 24(c) has been fulfilled

Initially, Plaintiffs argue that the Representative's motion should be denied for failure to comply with 24(c) requiring a pleading to be filed with the filing of her motion. There is some leniency in the requirement of 24(c) such that the requirement of 24(c) is met when the necessary pleading is filed soon after the motion to intervene, and there is no prejudice to the other parties.[1] See *Wildcat Enterprises, LLC v. Weber Jr.*, 2016 WL 8711474, *6, Case No. 11 C 4922 (N.D. Ill. Mar. 4, 2016)(finding compliance with 24(c) where intervenors' attached to their reply brief a joint motion to terminate citation proceedings and a motion to vacate reasoning that courts have routinely declined to dismiss motions to intervene based on mere technical violations of Rule 24(c)); *Louis Berger Group, Inc. v. JP Morgan Chase Bank, N.A.*, 2011 WL 2837462, fn 3, Case No. 11 C 430 (N.D. Ill. Jul. 18, 2011)(declining to deny motion to intervene where intervenor's filing of an answer with its reply brief satisfied the requirement of Rule 24(c)); *Mirfasihi v. Fleet Mortgage Corp.*, 2004 WL 2609184, *4 (N.D. Ill. Nov. 17, 2004)(court declined to reject motion to intervene because

[1] The Representative did indicate her intent to join the pleading of the Defendants in her motion to intervene. Defendants have now filed their motion to dismiss and the Representative has incorporated those arguments by reference to her motion to dismiss, along with the addition of her own argument, which is attached as an exhibit to this reply.

intervenor subsequently filed a pleading and there was no demonstration of prejudice); *Pittman v. Chicago Board of Ed.*, 1992 WL 233903 *1, Case No. 92 C 2219 (N.D. Ill. Sept. 15, 1992)(finding as a preliminary matter fulfillment of Rule 24(c) where movant filed an answer along with their reply brief in support of their motion to intervene); *National Cas. Co. v. Davis*, 1991 WL 101648 *1, Case No. 91 C 01318 (N.D. Ill. Jun. 3, 1991)(ruling that intervenor's filing of two motions to dismiss and motion for summary judgment soon after filing its motion to intervene fulfills the requirement of Rule 24(c)). Nonetheless, Plaintiffs rely on *Shevlin v. Schewe*, wherein the motion to intervene was denied because there was nothing in the record to suggest that the proposed intervenor *at any time* offered a pleading. 809 F.2d 447, 450 (7th Cir. 1997). However, in that very case, the Seventh Circuit opined, "we do not advocate a strict interpretation of the rule in all circumstances…" and held that where the necessary pleading is filed within a reasonable time after the motion and there is no prejudice to the other party a court may grant the motion to intervene. *Id.* at 450.

The Representative has met the requirement as she has filed a motion to dismiss. Further, there is no prejudice to the parties as this Court has ordered that the motions to dismiss filed by the defendants in this case "remain under advisement" and that to the extent an amended redistricting plan still raised viable legal challenges, "the parties should expect to update their pleadings and motions." (Dkt. #67).

The Representative has Standing

In response to the Representative's motion to intervene, Plaintiffs contend that the Representative lacks Article III standing. *Resp*., p. 3. Contrary to Plaintiffs' assertion, the Representative has articulated two cognizable injuries which are concrete and particularized. As a result of the failure to maintain the status quo of the 22nd District, it would 1) dilute the Latino/a/x votes; and 2) violate the right of the voters to elect candidates of their choice which includes by implication the election of the Representative. *Mot*., p. 4. Thus, the right of the Representative to maintain her electoral base is among the interests she seeks to protect. Plaintiffs contend the harm alleged is too speculative, not concrete.

Plaintiffs argue that as legislator, the Representative must assert that she has been deprived of something she is personally entitled to. *Resp*., p. 3. A personal interest in maintaining incumbency is a protectable interest - the right of the voters of the 22nd District to elect the Representative. See *Williams v. State Board of* Elections, 696 F. Supp. 1563, 1571-72 (N.D. Ill. 1988)(elected officials whose electoral districts are challenged as unlawful have "personal interests in their office," "equitable interests" in the timing and form of relief, and interests in their continued incumbency); *PAC for Middle America v. State Bd. of Elections*, 1995 WL 571893, *2, Case no. 95 C 827 (N.D. Ill. 1995)(concession by plaintiffs that congressman who may lose his base electorate as a result of an adverse ruling, may intervene as of right); *Texas Democratic Party v. Benkiser*, 459 F. 3d 582, 586-588 (5th Cir. 2006)(an injury

in fact exists when a candidate's election prospects and campaign coffers are threatened).

Plaintiffs contend that future harm is not sufficient. *Resp*., p. 4. Still, they recognize that standing is established when the harm is "impending." Resp., p. 4. The very nature of Plaintiffs' cause of action seeks "the [re]creation of representative and legislative plans…" and thus reconfiguration of the map. *Dkt*. 37, ¶2. Such harm is imminent and not as simplistic as representing "particular boundaries". *Resp*., p. 5.

Plaintiffs lastly assert that the Representative does not have standing to sue on behalf of Latino voters in her district. *Resp*., p. 5. The Representative's interests are inextricably linked with her constituents. In *League of Woman Voters of Mich. v. Johnson*, a congressman's interest in intervening in a suit included the relationship between constituent and representative. 902 F. 3d 572, 579 (6th Cir. 2018). While the court did not reach a determination as to whether the relationship was a substantial legal interest for intervention as of right, the Sixth Circuit still analyzed the congressman's interest in finding that it was not adequately represented by the parties in the action. *Id*. The court reasoned that the contours of the maps affect the congressman directly and substantially by determining which constituents the Congressman must court for votes and represent. *Id*. The Sixth Circuit further held that, as elected representatives, the Congressman serves constituents and supports legislation that will benefit the district and individual groups within the district. *Id*. The protection of the Representative's constituents' voting rights in this case and any avoidance of dilution of same is equally particularized. This is not a case of

institutionalized injury as Plaintiffs imply by referencing *Radogno v. Ill. State Bd. of Elections*. *Resp*., p. 4; 2011 WL 5025251, Case No. 11 C 04884 (N.D. Ill. October 21, 2011). The premise of institutionalized injury is an injury that cannot be divided or particularized to any individual but rather is shared by all of congress. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). The injury here is personalized. Nor is *Kucinich v. Def. Fin. & Acc. Serv*., relevant to bar the Representative's motion based on separation of power concerns. *Resp*., p. 5, fn2; 183 F. Supp. 2d 1005 (N.D. Ohio 2002). In *Kucinich*, a suit brought by a congressman alleging that the award of a contract by the Defense Finance and Accounting Service ("DFAS") violated federal law and the U.S. Constitution was dismissed for lack of jurisdiction. *Id*. at 1006. The court noted that employees and unions lack standing to bring bid protest actions in federal court because they are not "interested parties" that are "within the zone of interest" of the pertinent statute. *Id*. at 1011. The court found that there existed "some persuasive force" in Kucinich's claim that it is unjust that employees possess "only a limited administrative appeal" while the statute authorizes "disappointed bidders" the ability to go to the federal courts and appeal further. *Id*. However, the court in dismissing the case reasoned it was already determined by Congress and appointed administrative bodies that aggrieved employees cannot bring their claims to the court and thus Kucinich's concerns rested with his colleagues in Congress. *Id*. at 1011-1012. Here, there are no separation of power concerns as this does not involve the constitutionality of a statute or law and the Representative has a significant interest in maintaining the current configuration of the map in order to protect her

constituents' rights to a fair and reasonable opportunity to elect candidates of their choice and avoid dilution of votes.

Intervention as of Right has been Established

The Representative has met all four factors for intervention as of right: (1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action. *Shea v. Angulo,* 19 F.3d 343, 346 (7th Cir.1994).

The Motion is Timely

The motion to intervene is timely. Plaintiffs contend that the motion is untimely because the Representative allegedly became aware of the lawsuit in July. They premise the assertion on a letter dated July 2, 2021 from the Representative addressed to counsel for the Plaintiffs. In the letter the Representative implores counsel to "refrain from taking *any* legal action…" *Resp*., p. 9, Ex. 1 (emphasis added). As such, the letter expressly states the opposite. This motion was filed just one month after the letter. The Representative did not drag her feet or file the motion after an adverse ruling as found in the cases cited by the Plaintiffs. *Resp*., pp. 9-10 citing *Libertarian Party v. Pritzker*, 2020 WL 6600960, Case No. 20 C 02112, (N.D. Ill. Sept. 10, 2020)(motion to intervene filed after unfavorable ruling); and *Fraternite Notre Dame, Inc. v. City of McHenry*, 2019 WL 1595872, Case No. 15 C 50312 (N.D. Ill. Apr. 15, 2019)(waiting to intervene after case worked its way to settlement and where complaint was filed in 2015 but motion was filed in 2018). Moroever, the standard is

one of reasonableness, specifically: "potential intervenors need to be reasonably diligent in learning of a suit that might affect their rights, and upon so learning they need to act reasonably promptly." *PAC*, 1995 WL 571893 *3 citing *Nissei Sangyo Am., Ltd. v. United States,* 31 F.3d 435, 438 (7th Cir.1994). The Representative acted "reasonably promptly."

Plaintiffs also contend that they will be prejudiced by the Representative intervening in the matter and claim that delay in the litigation can result. Plaintiffs are engaging in complete speculation that if the issues raised by the Representative "are actually relevant" to the malapportionment claim, there "may need to be" additional discovery or a renewed motion for summary judgment. *Resp*., pp. 10-11. As discussed above, the motion for summary judgment has only been taken under advisement, and, regardless of this Court's ruling on the Representative's motion, there is a strong possibility the motion will need to be amended. Thus, the Plaintiffs will not be prejudiced.

In contrast, the Representative will be prejudiced if her motion is denied. The Representative has articulated a viable interest in joining this litigation to ensure that those interests are protected. Lastly, bringing those concerns to the General Assembly after injury from injunctive relief has already occurred, as suggested by Plaintiffs, would be futile. *Resp*., p. 11.

The Representative has a Substantial Legal Interest

The Representative has asserted a substantial legal interest unique to her as an elected official protecting the rights of her constituents and her personal right to

be re-elected. Plaintiffs contend the interest is political. *Resp*., p. 6. The entire nature of the case is political. Plaintiffs further reiterate the notion that the Representative is not entitled to a certain shaped district or a legislative preference, which simply misstates the Representative's interests. *Resp*., p. 6. Nor is the Representative's interest akin to "personal support of a piece of legislation" as in the *One Wisconsin Institute* case 310 F.R.D. 394, 397 (W.D. Wis. 2015)(finding support for challenged legislation not a sufficient interest to support granting legislators to intervene). That type of interest is a general interest that would be equal to all legislators coined as an "institutional injury" or diminution of legislative power. *Raines v. Byrd*, 521 U.S. 811, 821 (1997). The Representative's interest is particular to her representation of her constituents from the 22nd District, protection of the Latino/a/x vote, right to vote for a particular candidate such as the Representative and thus protection of her base electorate. See *League of Women Voters of Mich. v. Johnson*, 902 F. 3d 572, 579 (6th Cir. 2018); *Williams v. State Board of Elections*, 696 F. Supp. 1563, 1571-72 (N.D. Ill. 1988).

Impairment of the Legal Interest is Possible

The Representative has demonstrated that impairment of her legal interest is possible. Changes in configuration of the 22nd District is possible and would impair the Representative's interests as described in her motion. Plaintiffs do not fully address this argument. Rather in a footnote they dispute the existence of a legal interest to impair. *Resp*., p. 7, fn. 3. Plaintiffs in addition rely again on *One Wisconsin Institute* which is inapplicable as discussed above.

The Representative's Interests are Not Adequately Represented

This requirement is satisfied. The Representative has personal stake in the outcome of the case as she is an elected State Representative and would be the only Illinois State Representative for the 22nd District of Illinois representing the particular interest of her constituents and their ability to elect her again. Plaintiffs claim that the Representatives interest are adequately represented simply because the current Defendants are defending the map. They cite to *Planned Parenthood of Wis., Inc. v. Kaul*, however, the legislature seeking to intervene in that case was doing so as an agent of the state and the attorney general, who was in the case, provided adequate representation for the state's interest. 942 F.3d 793, 798 (7th Cir. 2019). Moreover, the rebuttable presumption Plaintiffs allege to be applicable when the proposed intervenor and named party have the same goal is not the standard that should dictate the analysis. The Representative's goal is not to defend the map as a whole but to defend the 22nd District. The parties could very well conflict on the determination of the 22nd District which is more than "different political considerations," as asserted by Plaintiffs but a true potential adverse position. *Resp*., p. 8. As such, the default standard should be applied which provides the factor of inadequate representation is met, "if the applicant shows that representation of [her] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Lake Investors*, 715 F.2d at 1261 citing *Trbovich v. United Mine Workers of America,* 404 U.S. 528, 538 n. 10 (1972). This standard has been met.

Alternatively, the Representative has Demonstrated Permissive Intervention

The Representative has met the criteria for deciding whether to grant permissive intervention: (1) the petition was timely; (2) a common question of law or fact exists; and (3) granting the petition to intervene will not unduly delay or prejudice the adjudication of the rights of the original parties. *Southmark Corp.,* 950 F.2d 416, 419 (7th Cir. 1991).

First, as discussed in the preceding section, the petition is timely. Second, there are common questions of law and fact. Plaintiffs claim that the Representative has not identified the common questions of law and fact or identified a claim or defense. That is inaccurate. In her motion, the Representative has stated that the Plaintiffs purport that the map is malapportioned and seek to enjoin use of the map, and that the Representative seeks to protect the status quo of the configuration of the 22nd District, among other interests. *Mot*., p. 4. Certainly, a common question of fact and law is whether the map is malapportioned as to receive the relief sought and implicate the 22nd District. Third, prejudice or delay will not result. Allowing the Representative to intervene will not alter or extend any previously set deadlines or briefing schedules. Plaintiffs contend that they would be prejudiced should the Representative be allowed to intervene permissively but fail to elaborate as to how they would be prejudiced. *Resp*., p. 13.

CONCLUSION

The Illinois State Representative should be granted leave to intervene in this matter as of right. She has a substantial interest in the matter and has met all the

criteria for intervention under Federal Rule of Civil Procedure 24(a)(2). In the alternative, the Court should allow permissive intervention under 24(b)(1).

WHEREFORE, the Representative prays this Court enter an order granting leave to intervene as of right pursuant to 24(a)(2) or, alternatively, permissively pursuant to 24(b)(1), and grant any such other relief this Court deems just and equitable.

Respectfully Submitted,

ANGELICA GUERRERO-CUELLAR

By: */s/ Veronica Bonilla-Lopez*
Veronica Bonilla-Lopez
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Plaintiff,	)	
v.	)	Case No. 21 CV 3139
ILLINOIS STATE BOARD OF ELECTIONS, ET. Al.,	)	
Defendants,	)	
and,	)	
ANGELICA GUERRERO-CUELLAR, in her official capacity as Illinois State Representative for the 22nd District	)	
Petitioner/Defendant-Intervenor.	)	

PETITIONER/DEFENDANT-INTERVENOR'S 12(b)(1) MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

NOW COMES Petitioner/Defendant-Intervenor, Angelica Guerrero-Cuellar (the "Representative") by and through her attorney Veronica Bonilla-Lopez of Del Galdo Law Group, LLC, and moves to dismiss Plaintiffs' Amended Complaint pursuant to Rule 12(b)(1) and in support thereof states as follows:

Legal Standard

"Because standing is an essential ingredient of subject-matter jurisdiction, it must be secured at each stage of the litigation." *Bazile v. Finance System of Green Bay, Inc.*, 983 F.3d 274, 278 (7th Cir. 2020). In other words, standing can be raised at any time during the course of a proceeding. *Browner v. American Eagle Bank*, 2019

WL 10378333, *1, Case No. 18 C 1494, (N.D. Ill. 2019); *Wiley v. Paul Mason & Assoc., Inc.*, 237 B.R. 677, 686 (N.D. Ill. 1999). If a plaintiff cannot establish standing to sue, dismissal under Rule 12 (b)(1) is the appropriate disposition. *Pierre v. Midland Credit Mgmt., Inc.*, 2019 WL 4059154, *2, Case No. 16 C 2895 (N.D. Ill. 2019). This defense of subject-matter jurisdiction can take the form of a facial or a factual attack on the plaintiff's allegations. *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443–44 (7th Cir. 2009). A facial attack tests whether the allegations, taken as true, support an inference that the elements of standing exist. *Id.* In this way, a facial attack does not challenge the alleged facts themselves. In contrast, a factual challenge lies where "the complaint is formally sufficient but the contention is that there is in fact no subject matter jurisdiction." *United Phosphorus, Ltd. v. Angus Chem. Co.,* 322 F.3d 942, 946 (7th Cir.2003).

The United States Supreme Court in *Ashcroft, et al. v. Iqbal*, 129 S. Ct. 1937 (2009) clarified the civil pleading standards governing federal claims. Where a plaintiff has not pled facts which would permit the Court to infer more than the mere possibility of actionable misconduct, a plaintiff has alleged, but not demonstrated, that he is entitled to relief, and therefore his complaint will fail. *Id.*, at 1949. A claim has facial plausibility when the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.* A plaintiff can also plead himself out of court if he pleads facts that preclude relief. *Edwards v. Snyder*, 478 F.3d 827, 830 (7th Cir. 2007).

The Seventh Circuit has held that when evaluating a facial challenge to subject matter jurisdiction under Rule (b)(1), a court should use *Twombly–Iqbal's* "plausibility" requirement, which is the same standard used to evaluate facial challenges to claims under Rule 12(b)(6). *Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015). As such, the *Twombly–Iqbal* facial plausibility requirement for pleading a claim is incorporated into the standard for pleading subject matter jurisdiction. *Id.* citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

Argument

Plaintiffs have failed to sufficiently plead standing in the Amended Complaint. The Representative fully incorporates the arguments found in Defendants Welch, Office of the Speaker, Harmon, and Office of the President of the Illinois Senate's Motion to Dismiss (Dkt. #55) as though fully stated herein. The Representative further provides that the Plaintiff's Amended Complaint should be dismissed. While the right to vote is "individual and personal in nature," a voter must allege facts showing disadvantage to themselves as individuals in order to have standing to sue. *Reynolds v. Sims,* 377 U.S. 533, 561, 84 S.Ct. 1362 (1964); *Baker v. Carr*, 369 U.S. 186, 204, 82 S. Ct. 691 (1962). Plaintiffs fail to assert with plausibility that they reside in a malapportioned district so as to allege statewide dilution and nonetheless boldly request that the entire map be redrawn thereby creating an imminent threat to the Representative's 22nd District, the dilution of her own constituents' votes, and her ability to hold office, without having any specific injury in relation to Plaintiff's

alleged vote's dilution. And without standing to challenge the legislative map they themselves may be the ultimate cause of dilution of votes in violation of the Equal Protection. *Reynolds v. Sims*, 377 U.S. 533 (1964).

Wherefore, for the reasons articulated herein and in the motion to dismiss filed by Defendants Welch, Office of the Speaker, Harmon and Office of the President (Dkt. #55), the Representative prays this court dismiss Plaintiffs' Amended Complaint with prejudice and any such other relief this Court deems just and equitable.

Respectfully Submitted,

ANGELICA GUERRERO-CUELLAR

By: */s/ Veronica Bonilla-Lopez*
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