IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA; ERIC H. HOLDER, JR., in his official capacity as Attorney General of the United States, Defendant, and SENATOR WENDY DAVIS, REPRESENTATIVE MARC VEASEY, JOHN JENKINS, VICKI BARGAS, and ROMEO MUÑOZ, Proposed Defendant-Intervenors.	No. 1:11-cv-01303 (RMC)

MOTION FOR LEAVE TO INTERVENE AS DEFENDANTS

Senator WENDY DAVIS, Representative MARC VEASEY, JOHN JENKINS, VICKI BARGAS and ROMEO MUÑOZ (collectively "Proposed Defendant-Intervenors") respectfully move the Court for leave to intervene as defendants in this action as of right pursuant to Federal Rule of Civil Procedure 24(a)(2). Applicants have a direct interest in the subject matter of this action and are so situated that the disposition of the action may as a practical matter impair or impede their ability to protect their rights. In addition, the existing parties do not adequately represent applicants' interests. In the alternative, movants seek permissive intervention pursuant to Fed. R. Civ. P. 24(b), as the defenses of Proposed Defendant-Intervenors have questions of

law or fact in common with the main action and granting the motion will not unduly delay or prejudice the adjudication of the original parties.

As grounds for this motion, and as more fully explained in the memorandum in support of this motion filed herewith, the Proposed Defendant-Intervenors show the Court the following:

1. The Plaintiff STATE OF TEXAS brought this action to obtain preclearance pursuant to Section 5 of the Voting Rights Act for its congressional, state board of education, and state-legislative redistricting plans.

2. Proposed Defendant-Intervenors seek to intervene as a matter of right pursuant to Fed. R. Civ. P. Rule 24(a)(2), or, in the alternative, to intervene permissively pursuant to Fed. R. Civ. P. 24(b).

3. The Complaint was filed on July 19, 2011. This motion is being filed only two (2) days after the complaint was filed and before Defendant has filed an answer. Proposed Defendant-Intervenors can comply with any discovery deadlines (or any other deadlines to be set in this action) without causing any delay in the litigation. Thus, intervention is timely and will not delay or prejudice the adjudication of the rights of the original parties.

The Proposed Defendant-Intervenors

4. Proposed Defendant-Intervenor Senator WENDY DAVIS resides at 2737 Calder Court in Fort Worth, TX 76107-3077. Senator DAVIS seeks to intervene individually as a voter who resides in Ft. Worth, Texas and as an officeholder in her official capacity as state senator from the 10th District, currently an effective minority opportunity district that will be destroyed if the State of Texas is successful in obtaining preclearance of the state senate plan. Proposed Defendant-Intervenor DAVIS, who is Anglo, resides in current Senate District 10 ("SD 10") and under the State's proposed senate plan would reside in SD 10. Under the State's proposed senate

plan, SD 10 is converted from a district in which minority voters currently have an opportunity to participate effectively in the political process and have elected a candidate of their choice to a district that is Anglo-voter controlled and in which minority voters will no longer have a meaningful opportunity to participate in the political process or elect their preferred candidate to office.

5. Proposed Defendant-Intervenor Representative MARC VEASEY is an African-American voter who resides at 8224 Longfellow Lane in Fort Worth, TX 76120-5067. Rep. VEASEY seeks to intervene individually as a voter and in his official capacity as a member of the Texas State House of Representatives for the 95th District. Proposed Intervenor VEASEY is a resident of Congressional District 26 and Senate District 10 under the existing plans, and will be a resident of Congressional District 12 and Senate District 10 under the proposed plans at issue here. Representative VEASEY, as well as other minority voters in his district, will suffer a retrogression of minority voting strength with respect to their effective use of the electoral franchise as a result of the dismantling and destruction of state senate District 10 under the State's proposed state senate plan.

6. Proposed Defendant-Intervenor JOHN JENKINS is an African-American voter who resides at 6723 Smallwood, Arlington, Texas 76001 in Tarrant County, Texas. Proposed Intervenor JENKINS is a resident of Congressional District 6 and Senate District 10 under the existing plans, and will be a resident of Congressional District 33 and Senate District 9 under the proposed plans at issue here. Proposed Defendant-Intervenor JENKINS seeks to intervene to protect his voting rights and those of other minority voters in the Dallas-Ft. Worth region who will suffer a retrogression of their voting strength if the State's proposed congressional map and state senate map are precleared under the Voting Rights Act.

7. Proposed Defendant-Intervenor VICKI BARGAS is a Latina voter who resides at 301 E. Drew Street, Fort Worth, TX 76110 in Tarrant County, Texas. Proposed Intervenor BARGAS is a resident of Congressional District 12 and Senate District 10 under the existing plans, and will be a resident of Congressional District 26 and Senate District 10 under the proposed plans at issue here. Proposed Defendant-Intervenor BARGAS seeks to intervene to protect her voting rights and those of other minority voters in the Dallas-Ft. Worth region who will suffer a retrogression of their voting strength if the State's proposed congressional map and state senate map are precleared under the Voting Rights Act.

8. Proposed Defendant-Intervenor ROMEO MUNÕZ is a Latino resident and registered voter who resides at 4157 Astoria in Irving, Texas, in Dallas County, Texas. Proposed Intervenor MUNÕZ is a resident of Congressional District 24 and Senate District 9 under the existing plans, and will be a resident of Congressional District 24 and Senate District 16 under the proposed plans at issue here. Proposed Defendant-Intervenor MUNÕZ seeks to intervene to protect his voting rights and those of other minority voters in the Dallas-Ft. Worth region who will suffer a retrogression of their voting strength if the State's proposed congressional map and state senate map are precleared under the Voting Rights Act.

9. Proposed Defendant-Intervenors have a direct, substantial and legally protectable interest in the subject matter of this litigation. Plaintiff seeks to obtain preclearance for congressional and state senate redistricting plans that violate Section 5 of the Voting Rights Act (VRA), 42 U.S.C. §1973c, because those plans were drawn for the purpose of discriminating against minority voters in Texas and will have a retrogressive effect on minority voting strength. In addition, Proposed Defendant-Intervenors have a direct, substantial and legally protectable interest because the redistricting plans at issue are the result of a process from which minority

voters and their representatives in the state legislature were effectively excluded and thus were denied an opportunity to participate effectively in the political process.

The State of Texas' Proposed State Senate Plan

10. Over the last ten years, the minority population percentage in SD 10 increased significantly. According to the 2010 Census, Anglos make up only 47.6 percent of the population. A clear increase in minority voting strength resulted from the growth of new minority population in senate district 10 from 2000 to 2010. In 2008, when for the first time in the decade a credible and adequately funded candidate sought the support of minority voters in District 10, minorities were able to elect their preferred candidate of choice (Senator Wendy Davis).

11. The emergence of SD 10 as an effective minority opportunity district was forecast by the State of Texas in its submission to the Department of Justice back in 2001. The State explained that minority communities were kept united in districts like SD10 to allow them the opportunity to emerge as an effective voting bloc. The State of Texas explained in their 2001 preclearance submission: *"The voting strength of these minority communities in the future will depend on the cohesion within and between Black and Hispanic voters and the ability of such voters to form coalitions with other racial or ethnic groups in support of their preferred candidate."* (Texas' Voting Rights Act Preclearance Submission, August 15, 2001).

12. Without question, SD 10 met the expectation of the State of Texas by 2008, when the percentage of minority voters in SD 10 had grown and they were able to elect their candidate of choice. Despite demonstrating their united and effective voting strength in 2008, minority voters in SD 10 are being cracked apart and their voting strength destroyed under the State's proposed state senate plan. Under the State's proposed senate map, the African-American and Hispanic

neighborhoods in Senate District 10 are divided into at least four (4) different districts. In none of those four districts is the number or percentage of minority voters sufficiently large enough to elect their preferred candidate of choice to the State Senate. Furthermore, under the State's proposed senate plan, African-American voters in current SD10, including proposed Defendant-Intervenors VEASEY, JENKINS, and BARGAS are fractured—with some African-American voters sheared away and made part of a rural district that extends far into central Texas. Other African-American voters are cracked into Senate District 9 where their voting power will be diminished and their voice ignored, and still others remain in an Anglo-controlled, newly-configured Senate District 10.

13. The State's proposed state senate plan was drawn for the purpose of, and has the effect of, minimizing and reducing the strength of minority populations in Texas. The current state senate plan contains fifteen (15) districts which are majority-minority in population. In twelve (12) of those districts, minority voters (African-Americans and Latinos) enjoy an effective opportunity to elect their preferred candidate to office. Under the State of Texas' proposed state senate plan, there will be only thirteen (13) majority-minority districts and in only (10) ten of those districts will minority voters enjoy an effective opportunity to elect their candidate of choice. Because voting in Texas is racially polarized, with Anglos consistently voting as a bloc to regularly defeat minority candidates of choice and minority voters being politically cohesive, the reduction of majority-minority districts will produce a retrogression of minority voting strength with respect to the effective use of the electoral franchise. Furthermore, after being denied an opportunity to offer meaningful input on behalf of her constituents during legislative consideration of the state senate redistricting plans, Senator DAVIS seeks to intervene here to protect her constituents' interests in preventing the illegal retrogression of their voting

power in the 10th district, the region, and the state. As voters in current Senate District 10, Proposed Defendant Intervenors VEASEY, JENKINS and BARGAS will suffer a retrogression with respect to their effective use of the electoral franchise under the State's proposed state senate plan.

14. Proposed Defendant-Intervenors have a direct and substantial interest in the potential preclearance of the state senate redistricting plan because it will significantly retrogress the voting power of Proposed Defendant-Intervenors DAVIS's and VEASEY's constituents, and the right to vote of Proposed Defendant-Intervenors VEASEY, JENKINS, BARGAS and MUÑOZ and other similarly-situated minority voters. Minority voters in SD 10, who currently have an effective opportunity to participate in the political process and to elect their candidate of choice, will be broken up into other districts, leaving Anglo voters with control of the district. Regionally, minority voting strength significantly retrogresses through the reduction in the number of districts in Dallas and Tarrant Counties with a majority-minority population from four to three, and the number of districts where minority voters have demonstrated their ability to elect the candidate of their choice from two to one. Statewide retrogression would also occur under the proposed state senate plan because, despite a decrease in the Anglo population from 52 percent to 45 percent, the number of Anglo-controlled state senate districts would increase from 52 percent to 65 percent, clear retrogression of minority voting strength.

15. With respect to the proposed state senate plan, alternative plans were proposed during the legislative process that would not have resulted in a retrogression of minority voting strength; but those plans were rejected along party lines, though supported by every single minority state senator in the Texas Senate.

16. Proposed Defendant-Intervenor DAVIS, as the minority voters' candidate of choice from a minority opportunity district that is fractured and split apart under the State's proposed state senate plan, has an additional, personal and representational interest, recognized by federal courts, that warrants her intervention in the instant case. *See League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989); *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995).

The State of Texas' Proposed Congressional Plan

17. The State's proposed congressional redistricting plan was drawn to ensure that population gains in minority communities across Texas from 2000 to 2010 were not reflected in the configuration of the State's proposed congressional districts. As a result, that redistricting plan does not afford minority voters equal opportunities for effective participation in the political process or to elect candidates of their choice commensurate with their share of the population. Though minority communities accounted for 90% of the State's population growth between 2000 and 2010, and Texas received four additional congressional seats because of that explosive population increase, minorities only control one of the four new districts created under the State's plan. Because of other changes made to existing effective minority opportunity congressional districts in Texas, the number of Congressional districts that are controlled by Anglo voters in Texas actually increases from twenty-one (21) to twenty-six (26) under the State's proposed congressional plan. While the State's Anglo population now comprises only 45% of Texas' total population, according to the 2010 census, Anglos control 72% of Texas' congressional districts under the newly-enacted map. Even if the Plaintiff had maintained eleven effective minority districts, which it has not, the State's proposed congressional plan still would be retrogressive. Minority voters in Texas under the pre-2011 plan were able to elect their

preferred candidate of choice in 11 of the 32 districts (or 34.4%) of the districts. Merely holding minorities to that number would result in minorities being able only to elect their preferred candidate of choice in 11 of 36 districts (or 30.5%). The State's proposed congressional plan will lead to a retrogression and dilution of minority voting strength under the Voting Rights Act of 1965, as amended.

18. The State's proposed congressional plan was drawn with the purpose of, and has the effect of, minimizing and reducing the voting strength of minority populations in Texas. While the pre-2011 congressional map contains eleven (11) effective minority opportunity districts, the State's proposed congressional plan contains only ten (10) such districts. Reducing the number of effective minority opportunity districts in both the State's proposed state senate plan and the proposed congressional plan constitutes unlawful retrogression under Section 5 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

19. In addition, Proposed Intervenors VEASEY, JENKINS, VARGAS and MUÑOZ, as well as other minority residents of the Dallas-Ft. Worth region, will be denied an equal and effective opportunity to elect candidates of choice to Congress as a result of the proposed Congressional plan. As a minority voter himself, and as a representative of the majority-minority 95th State House District, Proposed Defendant-Intervenor VEASEY has a vital and important interest in ensuring that Texas implement fair redistricting plans that fully comply with the Voting Rights Act and protect minority voting rights. Similarly, as minority group members protected under the Voting Rights Act of 1965, as amended, Proposed Defendant-Intervenors JENKINS, BARGAS and MUÑOZ have an important interest in bringing about redistricting plans that fully comply with federal law and the United States Constitution.

20. Proposed Defendant-Intervenors have a direct and substantial interest in the potential preclearance of the proposed congressional redistricting plan because that plan will retrogress the voting power of Proposed Defendant-Intervenors, as well as Senator DAVIS's and Representative VEASEY's constituents. In addition, despite the significant increases in the African-American and Latino population in the Dallas-Ft. Worth region and the substantial decrease in the Anglo population of that area, the proposed congressional plan creates only one effective minority opportunity district in that region and retrogresses the voting power of minority voters in Dallas and Tarrant counties and throughout the State of Texas.

Intervention Is Necessary To Protect the Intervenors' Unique and Particularized Interests

21. If Plaintiff STATE OF TEXAS is successful in obtaining preclearance, Proposed Defendant-Intervenors' ability to protect their interests will be significantly impaired as they will be forced to participate in the political process under an apportionment scheme that limits the voting rights of minorities in violation of the Voting Rights Act of 1965, as amended, as well as the United States Constitution. If preclearance of the proposed state senate plan and the proposed congressional plan is granted, Proposed Defendant-Intervenors only recourse will be to either bring more litigation or wait until the next opportunity to reapportion electoral districts, both of which impose significant burdens on them.

22. The Defendant cannot adequately represent the interests of Proposed Defendant-Intervenors in light of the nature of the complaint in this action. The Defendant is bound by institutional constraints and an interest in the general public interest that are likely to affect the Defendant's strategy in litigation, including the arguments proffered or the type of evidence presented. This Court has recognized that government entities cannot adequately represent the

interests of private parties, even where they may share some of the same interests. *E.g., Friends of Animals v. Kempthorne,* 452 F. Supp. 2d 64, 70 (D.D.C. 2006).

23. This Court has routinely granted intervention to minority voters, including officeholders, in Section 5 preclearance cases such as this one. *See, e.g., Georgia v. Ashcroft*, 195 F. Supp. 2d 25 (D.D.C. 2002); *County Council of Sumter County, South Carolina v. United States*, 555 F. Supp. 694 (D.D.C. 1983); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *City of Port Arthur, Tex. v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982), *aff'd* 459 U.S. 1166 (1983); and *City of Richmond, Va. v. United States*, 376 F. Supp. 1344, 1349 n.23 (D.D.C. 1974). See also, *Northwest Austin Municipal Utility District Number One v. Gonzales*, No. 1:06-cv-1384 (D.D.C., Order Granting Intervention November 9, 2006) (three-judge court); *Shelby County, Alabama v. Holder,* No. 1:10-cv-00651 (D.D.C., Order Granting Intervention); and *Laroque v. Holder*, No. 1:10-cv-00561 (D.D.C., Order Granting Intervention August 25, 2010).

24. In the alternative, Proposed Defendant-Intervenors seek to intervene permissively pursuant to Fed. R. Civ. P. Rule 24(b) on the grounds that their defense against Plaintiff's request for preclearance, to the extent that it seeks to prevent the adoption of redistricting plans that have the illegal effect of retrogressing the ability of minority voters on account of race or color or membership in a language minority group to elect preferred candidates of choice, has issues of law and fact in common with the claims and defenses of the main action.

25. The grounds for this motion are set forth more fully in the memorandum of law filed today with this motion.

Statement Pursuant to Local Rule 7(m)

Counsel for Proposed Defendant-Intervenors contacted counsel for the Plaintiff and counsel for the Defendants in a good faith effort to determine whether there is any opposition to this motion. Counsel for the Defendants United States and Holder stated that Defendants do not oppose permissive intervention, but oppose intervention as of right. Counsel for plaintiff did not respond to inquiries from undersigned counsel regarding the State's position on this motion to intervene.

WHEREFORE, applicants request that their Motion for Leave to Intervene as Defendants be granted.

Respectfully submitted,

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UNITED STATES OF AMERICA;
ERIC H. HOLDER, JR., in his official
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Defendant,

and

SENATOR WENDY DAVIS,
REPRESENTATIVE MARC VEASEY,
JOHN JENKINS, VICKI BARGAS,
and ROMEO MUÑOZ,

Proposed Defendant-Intervenors.

No. 1:11-cv-01303 (RMC)

PROPOSED DEFENDANT INTERVENORS' MEMORANDUM
IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

I. Introduction

This action was brought by the State of Texas on July 19, 2011, to obtain preclearance pursuant to Section 5 of the Voting Rights Act (VRA), 42 U.S.C. § 1973c, of its congressional redistricting plan, its state-legislative redistricting plans, and its State Board of Education plan. The proposed Defendant intervenors are: WENDY DAVIS, individually and as State Senator for the 10th District of the Texas State Senate; MARC VEASEY, individually and as State Representative for the 95th District of the Texas State House of Representatives; JOHN JENKINS, an African-American registered voter in Tarrant County; VICKI BARGAS, a Latina

registered voter in Tarrant County; and ROMEO MUÑOZ, a registered Latino voter in Dallas County. The Defendant-Intervenors seek to intervene as defendants to protect their interest as elected officials and minority voters in guaranteeing redistricting plans that do not deny or abridge minority voting rights by diminishing the effective opportunity for minority voters to elect candidates of their choice. In the accompanying motion, applicants for intervention have moved the Court for leave to intervene as of right and for permissive intervention pursuant to Federal Rules of Civil Procedure 24(a)(2) and (b). Rule 24 controls application for intervention suits concerning Section 5 of the Voting Rights Act. *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003).

II. Intervention as of Right is Warranted

Intervention as of right is warranted when an intervenor, upon timely application:

> claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). Thus, an applicant must meet four requirements to intervene as of right: (1) the applicant must have filed a timely application; (2) the applicant must have an interest in the subject matter of the action; (3) the applicant must be so situated that the disposition of the case could impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest must not adequately represented by the existing parties to the litigation. *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998). Proposed Defendant-Intervenors satisfy all four requirements to intervene as of right.

This Court has routinely granted intervention to minority voters in Section 5 preclearance cases such as this one. *See, e.g., Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003); *County Council of Sumter County, South Carolina v. United States*, 555 F. Supp. 694 (D.D.C. 1983); *City of*

Lockhart v. United States, 460 U.S. 125, 129 (1983); *City of Port Arthur, Tex. v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); and *City of Richmond, Va. v. United States*, 376 F. Supp. 1344, 1349 n.23 (D.D.C. 1974). See also, *Northwest Austin Municipal Utility District Number One v. Gonzales*, No. 1:06-cv-1384 (D.D.C., Order Granting Intervention, November 9, 2006)(three-judge court); and *Shelby County, Alabama v. Holder,* No. 1:10-cv-651 (D.D.C., August 25, 2010, Order Granting Intervention).

A. Application is Timely

The Court measures timeliness from the time when applicants "knew or should have known that any of its rights would be directly affected by the litigation." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003), *cert denied*, 542 U.S. 915 (2004). While there are multiple factors to consider in determining timeliness, this Court has held that the "critical factor" is whether a delay in intervention will prejudice the existing parties. *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 5 (D.D.C. 2008) (other factors include time elapsed since the first filing in the suit, purpose of intervention, and need for intervention in preserving applicants' rights).

Proposed Defendant-Intervenors' motion plainly satisfies the timeliness standard. Plaintiff filed its complaint on July 19, 2011. Applicants have filed their motion only 2 days later, and before Defendants have filed an answer or responsive pleading. Applicants are, therefore, timely. This Court and the DC Circuit Court have both found motions to intervene that were filed significantly later in the litigation process to be timely. *See Karsner v. Lothian*, 432 F.3d 876, 886 (D.C. Cir. 2008) (motion filed one month after plaintiff filed suit and before the court took any action did not prejudice existing parties and was timely); *Akiachak*, 584 F. Supp. 2d at 5-6 (motion filed on same day as defendant's answer was timely); *Nat'l Wildlife*

Fed'n v. Buford, 676 F. Supp. 271, 273 (D.D.C. 1985) (motion filed three months after initial complaint was timely). As it is so early in the litigation process and discovery has not yet commenced, applicants' intervention will not prejudice the existing parties and their motion is timely.

B. Applicants Have a Direct Interest in the Preclearance of Texas' State Senate and Congressional Redistricting Plans

The requirement that proposed intervenors have a legally protected interest is a "practical guide for disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Cook v. Boorstin*, 763 F.2d 1462, 1466 (D.C. Cir. 1985) (internal citations omitted). Proposed Defendant-Intervenors seek to intervene in this matter to ensure that the State of Texas does not implement redistricting plans that: are the result of a process in which the interests of minority voters were not properly represented and protected; and diminish or retrogress the voting power of racial or language minorities so as to deny or abridge their right to vote within the meaning of Section 5. Proposed Intervenors are "concerned persons" who are "situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest" because they have a direct, substantial, and legally protectable interest in this action. See *id.*; Fed. R. Civ. P. 24(a)(2).

In the instant case, the congressional and state senate redistricting plans for which Texas is seeking preclearance have district, regional, and statewide retrogressive effects on minority voting power that Proposed Defendant-Intervenors, as duly elected representatives of minority voters or minority voters themselves, have a direct and significant interest in preventing. The congressional redistricting plan significantly retrogresses minority voting power by failing to add any additional minority opportunity districts, despite the fact that the addition of four

congressional districts to the Texas delegation is due almost entirely to minority population growth. Regionally, retrogression is especially egregious in Tarrant and Dallas counties where the African-American and Latino population increased to 2.1 million, enough for two new minority opportunity districts. Although this population growth meant that minorities now make up over half of the population in the region, the redistricting plan in front of the Court essentially maintains only one minority opportunity district already in place and leaves seven of the eight districts in the region largely under the control of Anglo voters, despite a decreased Anglo population as reflected in the 2010 census.

The state senate redistricting map at issue in the instant case also has severe retrogressive effects at the district, regional and statewide level. At the district level, State Senate District 10 ("SD 10") is currently a combined majority-minority district in which minority voters were able to elect their candidate of choice for the first time in 2008. Under the proposed State Senate plan, minority communities in SD 10 are cracked and split into four other districts leaving the 10th District under the control of Anglo voters. Regionally, within Tarrant and Dallas counties, the number of state senate districts in which minority voters have an effective opportunity to participate in the political process and to elect their preferred candidate of choice will be reduced from four to three, and the number of effective minority opportunity districts in that Tarrant and Dallas counties region will be reduced from two to one. Finally, statewide, the number of majority-minority state senate districts is reduced under the enacted plan from fifteen to eleven, and the number of districts in which minority voters will be able to elect candidates of choice in the state senate plan is reduced from twelve to ten. The number of Anglo-controlled State Senate districts increases from 52 percent of all districts to 65 percent under the proposed redistricting scheme for which the State of Texas seeks preclearance approval in this Court. The reduction in

minority opportunity districts and the increase in Anglo-voter controlled districts occurs in spite of significant minority population growth in the State and a reduction in the Anglo population statewide from 52 percent to 45 percent.

With considerable retrogressive effects on minority voting strength present in the congressional and state senate redistricting plans at issue, Proposed Defendant-Intervenors, as minority voters and representatives of minority voters, have a significant interest in opposing their approval. Indeed, this Court has consistently recognized the distinct and important interest minority voters have in protecting their voting rights by granting intervention to minority voters in suits concerning Section 5 preclearance of redistricting plans or other electoral changes. See, *e.g., Georgia v. Ashcroft*, 539 U.S. at 477 (2003); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983); *City of Port Arthur, Tex. v. United States*, 517 F. Supp. 987, 991 n.2 (D.D.C. 1981); *City of Richmond, Va. v. United States*, 376 F. Supp. 1344, 1349 n.23 (D.D.C. 1974). In the instant case, Proposed Defendant-Intervenors VEASEY, JENKINS, BARGAS and MUÑOZ, as minority citizens and voters from Tarrant and Dallas County, have a direct and substantial interest in the subject matter of the litigation because they are members of a racial or language minority group who have been historically discriminated against in the political process. It is essential that Proposed Defendant-Intervenors VEASEY, JENKINS, BARGAS and MUÑOZ be parties to this action so that they can defend against the State of Texas' effort to retrogress minority voting strength. Proposed Defendant-Intervenor DAVIS also has a direct and substantial interest because, as the State Senator from the 10th District, she represents an effective minority opportunity district that will be destroyed by the proposed state senate plan and represents minority voters who will also see their voting power retrogressed under the proposed congressional plan. Proposed Defendant-Intervenor VEASEY also has a direct and

substantial interest because he is a member of the State House of Representatives from a district within Tarrant County and resides within SD 10, along with voters in minority communities within Tarrant County who have historically been denied an opportunity to elect their candidate of choice in state and federal elections, and will continue to be denied under the proposed plans.

Proposed Defendant-Intervenors' interest is especially strong in the instant case because the process by which the plans at issue in this case were adopted were the product of a racially discriminatory purpose: minority voters and their duly elected representatives in the State Legislature were largely excluded from having any meaningful input into the development and adoption of the proposed redistricting plans. Proposed Defendant-Intervenors DAVIS and VEASEY, as representatives of minority communities in the state legislature, were improperly excluded from deliberations and purposely denied input concerning the interests of their minority constituents. This exclusion and denial of meaningful input are especially grievous, inasmuch as Defendant-Intervenor VEASEY was a member of the Texas House Redistricting Committee. Further, the committees responsible for redistricting in the State Senate and House of Representatives did not give minority citizens, like Proposed Defendant-Intervenors JENKINS, BARGAS and MUÑOZ and those similar situated, the proper opportunity to participate effectively in the political process or to have any meaningful input into the development of any of the redistricting plans at issue in this case. Applicants for Intervention did not have an opportunity to defend the interests of minority voters during the redistricting plans' creation and consideration. I f they are unable to intervene in the present suit, their unique perspective on the racially discriminatory purpose underlying the plans, as well as the plans' retrogressive effects, will have failed to be considered at any point in the redistricting process.

Proposed Defendant-Intervenor DAVIS has an additional, individual and representational interest in the suit as an elected official. Federal courts have recognized that elected officials have a personal interest in their elected position and their continued tenure. *See League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 884 F.2d 185, 188 (5th Cir. 1989); *Johnson v. Mortham*, 915 F. Supp. 1529, 1538 (N.D. Fla. 1995). Senator DAVIS currently represents a state senate district where minority voters have an effective opportunity to participate in the political process and to elect their preferred candidate to office. If Plaintiff obtains preclearance for the proposed state senate redistricting plan, the minority communities in SD 10 will be divided into at least four other districts, obliterating any effective opportunity that minority voters enjoyed under the current plan. Thus, Proposed Defendant-Intervenor DAVIS has a personal and representational interest in ensuring that the retrogressive redistricting plans do not receive preclearance and that the effective voting strength of minority voters in SD 10 is not destroyed.

C. Applicants' Ability to Protect Their Interests will Be Impaired or Impeded if Intervention is Denied

In determining whether the outcome of the litigation may impair proposed intervenors' ability to protect their rights, courts only look to the "practical consequences" of denying intervention. *E.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003); *Natural Res. Def. Council v. Costle*; 561 F.2d 904, 909 (D.C. Cir. 1977); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 13 (D.D.C. 2010). In addition, the ability of a potential intervenor to bring suit later to vindicate her interests is not sufficient for a finding of no impairment. *Natural Res. Def. Council*, 561 F.2d at 910. If Plaintiff is successful in obtaining preclearance, Proposed Defendant-Intervenor DAVIS's and VEASEY's minority constituents and Proposed Defendant-

Intervenors VEASEY, JENKINS, BARGAS and MUÑOZ, individually, as well as those similarly situated, will be left to vote in districts that will harm their ability as minority voters, to elect candidates of their choice. Proposed Defendant-Intervenors would be left with little recourse other than the burden of bringing subsequent litigation or living under the retrogressive redistricting schemes until the next decade brings another opportunity for redistricting. This outcome clearly represents an impairment and impediment of Proposed Defendant-Intervenors' ability to protect their rights and reinforces the appropriateness of intervention in this matter. In fact, such a result would fly in the face of the purpose of Section 5 of the Voting Rights Act, which was to place the burden of time and inertia on those, like the State of Texas, who have perpetrated voting discrimination, and not on the victims of that discrimination. *South Carolina v. Katzenbach, 383 U.S. 301 (1966).*

D. Applicant's Interests Cannot Be Adequately Represented by the Existing Parties

The burden of showing that the existing parties cannot adequately represent the proposed intervenors' interests is minimal and should not be onerous. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *Fund for Animals, supra*, 322 F.3d at 735; *Hardin v. Jackson*, 600 F. Supp. 13, 16 (D.D.C. 2009). Applicants need only show that there is a possibility their interests will not be fully represented without intervention. *Id.* Further, even if a "partial congruence of interests" exists, it does not guarantee adequate representation by an existing party. *Fund for Animals*, 322 F.3d at 737. Importantly for the instant case, courts have often found that government entities do not represent the interests of private individuals, even where their interests may coincide in some respects. E.g., *Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986); *Natural Res. Def. Council*, 561 F.2d at 912; *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 70 (D.D.C. 2006). Especially where government

entities have two distinct duties, one to a protected class of individuals and one to the broader public interest, intervention by the protected class is appropriate and warranted. *See Trbovich,* 404 U.S. at 538-39 (union member allowed to intervene in a suit brought by the Secretary of Labor to set aside union elections for violating the law because the Secretary was required to serve both the public interest and union members).

Like the Secretary of Labor in *Trbovich, supra,* the Attorney General of the United States represents multiple interests. He is charged with enforcing the Voting Rights Act to protect minority voters, but also has institutional interests and an obligation to represent the broad interests of the American public. Senator DAVIS's and Representative VEASEY's minority constituents, including Defendant Intervenors JENKINS and BARGAS, as well as Proposed Intervenor MUNÕZ, are the intended beneficiaries of the Voting Rights Act and, while perhaps sharing some interests, may have divergent views from those of the Attorney General of what constitutes the proper protection of minority voting rights under Section 5. In fact, there have been numerous cases in which minority voters' interests significantly diverged from those of the Attorney General in a voting rights case. *See, e.g., City of Lockhart*, 460 U.S. at 130; *Blanding v. Dubose*, 454 U.S. 393, 398-99 (1982); *County Council of Sumter County v. United States*, 555 F. Supp. 694, 696 (D.D.C. 1983). Further, Proposed-Defendant-Intervenors represent a unique local perspective that this Court has found beneficial and important, a perspective that cannot be adequately represented by the United States. *See County Council of Sumter County, supra*, 555 F. Supp. at 696.

For the foregoing reasons, Applicants for Intervention clearly meet the requirements to intervene as of right, and the Court should grant their motion.

III. Permissive Intervention is Also Appropriate

In the alternative, Proposed Defendant-Intervenors meet the requirements for permissive intervention under Fed. R. Civ. P. 24(b). The Defendant United States has consented to the Proposed Intervenors intervening permissively in this action. Permissive intervention is warranted when, upon timely motion, proposed intervenors demonstrate they have a claim or defense sharing common questions of law or fact with the main action and when intervention does not "unduly delay or prejudice the adjudication of the rights of the original parties." *Bossier Parish Sch. Bd. v. Reno,* 157 F.R.D. 133, 135 (D.D.C. 1994) (internal citations omitted). This Circuit is flexible in its application of these requirements, *see E.E.O.C. v. Nat'l Children's Ctr., Inc.*, 146 F.3d. 1042, 1045-46 (D.C. Cir. 1998), and this Court has found it sufficient to establish the existence of common questions of law or fact when the same facts give rise to both the main action and the proposed intervenor's claim or defense, *Nationwide Mutual Ins. Co. v. Nat'l REO Mgmt., Inc.*, 205 F.R.D. 1, 6 (2000).

Proposed Defendant-Intervenors will bring a unique perspective with respect to the experience of minority voters in Texas that will only enhance the Court's understanding of the underlying legal and factual issues and promote an efficient resolution of this action. In addition, Proposed-Defendant Intervenors DAVIS and VEASEY, as representatives of minority communities in the state legislature, will be able to provide a unique perspective on the deficiencies in the legislative process by which the proposed redistricting plan was adopted. This perspective will supplement and not duplicate any presentation of evidence by the Attorney General. Proposed Defendant-Intervenors' defense concerns the same congressional and state senate redistricting plans at issue in the main suit and thus arises from the same facts. Further,

the main action has only just commenced and thus intervention will not delay or prejudice the litigation. This Court has previously allowed the permissive intervention of minority voters and elected officials in voting rights cases, *see Georgia v. Holder*, 748 F. Supp. 2d 16, 18 (D.D.C. 2010), and should thus similarly grant the motion to intervene here as Proposed Defendant-Intervenors meet all requirements.

Conclusion

For the foregoing reasons, the Proposed Defendant-Intervenors respectfully request that the Court grant their Motion to Intervene in this matter under Fed. R. Civ. P. 24(a)(2) or, alternatively, grant permissive intervention under Rule 24(b).

This 21st day of July, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2011, I served a copy of the foregoing motion to intervene, memorandum, proposed answer and proposed order on counsel for the State of Texas and counsel for the United States via email and also transmitted these legal documents to the clerk of this Court for ECF filing.

/s/J. Gerald Hebert
J. GERALD HEBERT