

The Honorable Robert S. Lasnik

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

SUSAN SOTO PALMER et al.,  
*Plaintiffs,*

v.

STEVEN HOBBS, in his official capacity as  
Secretary of State of Washington, et al.,  
*Defendants,*

and

JOSE TREVINO, ISMAEL G. CAMPOS, and  
State Representative ALEX YBARRA,  
*Proposed  
Intervenor-Defendants.*

Case No.: 3:22-cv-5035-RSL

MOTION TO INTERVENE

NOTE ON MOTION CALENDAR:  
April 15, 2022

Proposed Intervenor-Defendants Jose Trevino, Ismael G. Campos and State Representative Alex Ybarra (“Intervenors”) respectfully move for leave to intervene in the above-captioned matter, as a matter of right pursuant to Fed. R. Civ. P. 24(a) or, in the alternative, permissively pursuant to Fed. R. Civ. P. 24(b). In accordance with Fed. R. Civ. P. 24(c) and Local Rules W.D. Wash. LCR 7(b)(1), the grounds for intervention and arguments in support thereof are set forth below.

1 Counsel for Intervenors have consulted with counsel for Plaintiffs and Defendants.  
2 Defendants Hobbs, Jinkins and Billig do not object to intervention, but Plaintiffs have indicated  
3 they will oppose the motion.

4 Pursuant to Fed. R. Civ. P. 24(c), Intervenors are filing their Answer to Complaint for  
5 Declaratory and Injunctive Relief in conjunction with this motion. Intervenors further provide  
6 notice of their intent to submit additional filings, including a response in opposition to Plaintiffs’  
7 motion for preliminary injunction<sup>1</sup> and a motion to dismiss. Intervenors do not seek modifications  
8 to the Court’s Minute Order Setting Trial Dates and Related Dates (Dkt. # 46).

9 **INTRODUCTION**

10 This action concerns the decennial apportionment of state legislative districts performed  
11 by the Washington State Redistricting Commission (the “Commission”). In particular, Plaintiffs  
12 have challenged the validity of the Commission’s legislative redistricting plan in the greater  
13 Yakima Valley region under Section 2 of the Voting Rights Act (“VRA”). Intervenors strenuously  
14 dispute Plaintiffs’ legal claims and political aims. They have chosen to intervene, in part, because  
15 the current posture of the case lacks a true “adversarial presentation of the issues.” (Notice That  
16 Def. Hobbs Takes No Position, Dkt. # 40 at 2.)

17 Intervenors, all of whom are Hispanic and registered voters in Central Washington, are:

- 18 • Jose Trevino, a resident of Granger,  
19 • Ismael Campos, a resident of Kennewick, and  
20 • State Representative Alex Ybarra, a resident of Quincy.

21 All three Intervenors are registered to vote in their respective legislative districts and each intends  
22 to vote in future elections. As a voter in Legislative District 15,<sup>2</sup> Mr. Trevino has an obvious stake  
23 in this case. Mr. Campos, who resides in Legislative District 8, just beyond the boundaries of  
24

---

25 <sup>1</sup> In light of significance of the issues presented in this case, Intervenors respectfully request that, if the Court grants  
26 this Motion to Intervene and/or Defendant Hobbs’ Motion to Join Required Parties (Dkt. # 53), it also consider  
27 extending briefing schedules for responses in opposition to Plaintiffs’ Motion for Preliminary Injunction so that the  
Court can benefit from a full adversarial presentation of the issues.

<sup>2</sup> For clarity, references to the legislative districts of each Intervenor refer to the new versions of legislative districts  
under the Commission’s redistricting plan.

1 Legislative District 15, could easily find himself located in a new or significantly redrawn  
 2 legislative district if Plaintiffs' claim is successful. And while Representative Ybarra's hometown  
 3 of Quincy is unlikely to be drawn into a Yakima Valley-centered district, the boundaries of his  
 4 Legislative District 13—where he is currently and actively running for reelection—would almost  
 5 certainly shift to accommodate any Court-mandated change to Legislative Districts 14 or 15.  
 6 Clearly, Intervenors have a significant interest in this case. But the unusual posture of this case<sup>3</sup>  
 7 means that none of the present parties will adequately protect those interests. Thus, not only do  
 8 these factors and others justify intervention as more fully detailed below, but granting this motion  
 9 will also ensure full adversarial presentation of the issues.

## 10 ARGUMENT

11 Intervention is warranted on multiple grounds.

### 12 I. Intervention as of Right under Rule 24(a)

13 Intervenors are entitled to intervene as a matter of right in this case. Fed. R. Civ. P. 24(a)  
 14 requires that “[o]n timely motion, the court must permit anyone to intervene who . . . claims an  
 15 interest relating to the property or transaction that is the subject of the action, and is so situated  
 16 that disposing of the action may as a practical matter impair or impede the movant's ability to  
 17 protect its interest, unless existing parties adequately represent that interest.” That is, Rule 24(a)  
 18 “entitles intervention of right when an applicant: (i) timely moves to intervene; (ii) has a  
 19 significantly protectable interest related to the subject of the action; (iii) may have that interest  
 20 impaired by the disposition of the action; and (iv) will not be adequately represented by existing  
 21 parties.” *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland*, 960 F.3d 603, 620 (9th  
 22 Cir. 2020) (citing *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006)). As discussed below, all

---

23 <sup>3</sup> Plaintiffs chose not to sue the Commission, the “most natural” defendant (Def. Hobbs’ Resp. to Defs. Jinkins and  
 24 Billig’s Mot. to Dismiss, Dkt. # 45 at 1), and thus far, the Commission has declined to intervene itself, *see, e.g.*, Jim  
 25 Brunner, *WA redistricting commission chair resigns after Democrats refuse to defend new maps*, The Seattle Times,  
 26 Mar. 7, 2022, [https://www.seattletimes.com/seattle-news/politics/wa-redistricting-commission-chair-resigns-after-](https://www.seattletimes.com/seattle-news/politics/wa-redistricting-commission-chair-resigns-after-democrats-refuse-to-defend-new-maps/)  
 27 [democrats-refuse-to-defend-new-maps/](https://www.seattletimes.com/seattle-news/politics/wa-redistricting-commission-chair-resigns-after-democrats-refuse-to-defend-new-maps/). Defendants Billig and Jinkins have moved to be dismissed as Defendants (*see*  
 Mot. to Dismiss Defs. Jinkins and Billig, Dkt. # 37), and Defendant Hobbs has “notifie[d] the Court that he intends to  
 take no position on the issue of whether the state legislative redistricting plan violates section 2 of the Voting Rights  
 Act” (Notice That Def. Hobbs Takes No Position, Dkt. # 40 at 2; *see also* Def. Hobbs’ Resp. to Pls.’ Mot. for Prelim.  
 Inj., Dkt. # 50 at 7-8).

1 four elements are satisfied here. (Intervenors also note that, although they have “the burden to  
2 show that these four elements are met, the requirements are broadly interpreted in favor of  
3 intervention” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir.  
4 2011) (citing *Prete*, 438 F.3d at 954)).

5 **A. Timeliness**

6 Intervenor’s application is timely, which is “determined by the totality of the circumstances  
7 facing would-be intervenors, with a focus on three primary factors: ‘(1) the stage of the proceeding  
8 at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for  
9 and length of the delay.’” *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir.  
10 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)).

11 The proceedings are at a very preliminary stage. Plaintiffs filed their Complaint for  
12 Declaratory and Injunctive Relief (Dkt. # 1) on January 19, 2022. Plaintiffs then filed a Motion for  
13 Preliminary Injunction (Dkt. # 38) on February 25, which was noted for consideration by the Court  
14 on March 25. Given that no oral arguments have been heard, or even (to Intervenor’s knowledge)  
15 scheduled, and that the Court has not yet ruled on any substantive motions, a more “preliminary  
16 stage” of litigation could hardly exist than the present stage of this case. *Cf. LULAC v. Wilson*, 131  
17 F.3d 1297, 1303 (9th Cir. 1997) (denying intervention as of right where “the district court has  
18 substantively—and substantially—engaged the issues” involved in the case).

19 In part because the case is at such a preliminary stage, there is no discernable prejudice or  
20 delay to either Plaintiffs or Defendants that would result in granting the proposed intervention. As  
21 mentioned, the Court has not yet ruled on the pending Motion to Dismiss Defendants Laurie  
22 Jinkins and Andrew Billig (Dkt. # 37) or Plaintiffs’ Motion for Preliminary Injunction (Dkt. # 38).  
23 Nor do Intervenors seek changes to the dates established in the Court’s Minute Order Setting Trial  
24 Dates and Related Dates (Dkt. # 46).

25 Given the early stage of the proceedings, there is hardly a “delay” for Intervenors to justify.  
26 But even if there were, “[t]he crucial date for assessing the timeliness of a motion to intervene is  
27 when proposed intervenors should have been aware that their interests would not be adequately

1 protected by the existing parties.” *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999) (citing  
2 *Wilson*, 131 F.3d at 1304). For Intervenor, this date was March 21, when Defendants filed their  
3 respective Responses to Plaintiffs’ Motion for Preliminary Injunction (Dkts. # 49-50). While  
4 Intervenor appreciate Defendant Hobbs’ articulation of the *Purcell* principle and his explanation  
5 of all the work his office performs in order to successfully manage Washington’s elections (*see*  
6 Dkt. # 50 at 8-16), as well as Defendants Jinkins and Billig’s summary of VRA jurisprudence (*see*  
7 Dkt. # 49 at 9-14), neither response brief argues that Plaintiffs’ VRA claim is unlikely to succeed  
8 on the merits, or even applies VRA caselaw to Plaintiffs’ allegations. The “delay” to intervene,  
9 then, has been one week. It is eminently reasonable for Intervenor to spend a week (a) assessing  
10 the potential outcomes of the case given the lack of briefing on the merits of Plaintiffs’ VRA claim,  
11 (b) deciding whether to move to intervene as parties themselves and (c) preparing the necessary  
12 court filings to do so. *Cf. Smith v. Marsh*, 194 F.3d at 1052 (noting that prospective intervenors’  
13 “determin[ation] that their interests were inadequately represented only after reviewing closely the  
14 briefs filed . . . could constitute a proper explanation for delay”).

15 Thus, intervention at this early stage is timely because the motion comes just one week  
16 after Intervenor became aware that their interests would not be adequately protected by the  
17 existing parties and intervention will neither delay the proceedings nor prejudice the other parties.

#### 18 **B. Significantly Protectable Interest**

19 There is no doubt that Intervenor have significantly protectable interests related to the  
20 subject matter of this case. “The requirement of a significantly protectable interest is generally  
21 satisfied when ‘the interest is protectable under some law, and that there is a relationship between  
22 the legally protected interest and the claims at issue.’” *Arakaki v. Cayetano*, 324 F.3d 1078, 1084  
23 (9th Cir. 2003) (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). Although “[t]he  
24 ‘interest’ test is not a clear-cut or bright-line rule, because ‘no specific legal or equitable interest  
25 need be established,’” *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002)  
26 (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993)), Intervenor can nonetheless  
27 identify several specific interests they have in these proceedings.

1 First, as registered voters in or near Legislative District 15, Intervenor Trevino and  
2 Campos have an interest in ensuring that any changes to the boundaries of those districts do not  
3 violate their rights to “the equal protection of the laws” under the Fourteenth Amendment to the  
4 Constitution of the United States, which, among other things, “forbids . . . intentionally assigning  
5 citizens to a district on the basis of race without sufficient justification.” *Abbott v. Perez*, 138 S.  
6 Ct. 2305, 2314 (2018) (citing *Shaw v. Reno*, 509 U.S. 630, 641 (1993)). Plaintiffs assert a violation  
7 of Section 2 of the VRA, a statute that the Supreme Court has noted “pulls in the opposite  
8 direction” of the Equal Protection Clause which “restricts the consideration of race in the  
9 districting process.” *Perez*, 138 S. Ct. at 2314. Intervenor Trevino and Campos have an interest  
10 in ensuring that Plaintiffs’ VRA claim does not pull so hard it draws them into a district that  
11 abridges their right to equal protection under law.

12 Second, as a state legislator running for reelection in a district that borders Legislative  
13 District 15, Intervenor Representative Ybarra has a heightened interest in not only the orderly  
14 administration of elections, but also in knowing which voters will be included in his district. Any  
15 stay of elections in the region would disrupt this interest, as would any alteration to the boundaries  
16 of Legislative District 15 since such a change would almost certainly result in corresponding  
17 changes his own legislative districts.

18 Lastly, all three Intervenor—like the eight individual Plaintiffs—are registered voters in  
19 either Legislative District 15 or a neighboring district and intend to vote in future elections. (*See*  
20 *Compl.*, Dkt. # 1 at 8-10.) Intervenor have just as strong of an interest as these Plaintiffs in  
21 ensuring that Legislative District 15 and its adjoining districts are drawn in a manner that complies  
22 with state and federal law. And as registered voters, Intervenor also have an interest in orderly,  
23 well-run elections that avoid chaos or delay.

24 These interests are clearly related to the present case. “The relationship requirement is met  
25 ‘if the resolution of the plaintiff’s claims actually will affect the applicant,’” *United States v. City*  
26 *of L.A.*, 288 F.3d 391 at 398 (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)).  
27 As noted above, the resolution of this case will affect Intervenor because Plaintiffs’ VRA claim

1 “pulls in the opposite direction” of their Fourteenth Amendment right to not be assigned “to a  
2 district on the basis of race without sufficient justification.” *Perez*, 138 S. Ct. at 2314. The outcome  
3 of this case will also affect the boundaries of the legislative districts in which each of the  
4 Intervenors are registered and intend to vote and where Representative Ybarra is actively running  
5 for reelection. Clearly, Intervenors possess a significantly protectable interest in this case.

### 6 C. Practical Impairment

7 Intervenors also “must show that they are so situated that the disposition of the action  
8 without [them] may as a practical matter impair or impede their ability to safeguard their  
9 protectable interest.” *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d at 862. And critically, “the relevant  
10 inquiry is whether [the absence of a party seeking intervention] ‘may’ impair rights ‘as a practical  
11 matter’ rather than whether [such absence] will ‘necessarily’ impair them.” *United States v. City  
12 of L.A.*, 288 F.3d 391 at 401 (quoting Fed. R. Civ. P 24(a)(2)).

13 For reasons similar to those described above, this “practical impairment” element is  
14 satisfied here as well. Indeed, the existence of an intervenor’s significantly protectable interest  
15 often goes hand-in-hand with the potential for impairment of that interest. *See, e.g., California ex  
16 rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006) (“Having found that appellants  
17 have a significant protectable interest, we have little difficulty concluding that the disposition of  
18 this case may, as a practical matter, affect it.” (citing *Sw. Ctr. for Biological Diversity v. Berg*, 268  
19 F.3d 810, 822 (9th Cir. 2001))).

20 Intervenors’ ability to safeguard their Fourteenth Amendment interests may be impaired  
21 by their absence from this case. Representative Ybarra’s ability to safeguard his interest in  
22 knowing who his voters will be and when the election will occur may be impaired by his absence.  
23 And the ability for all Intervenors to safeguard their interest in the orderly conduct of elections  
24 (which Plaintiffs seek to enjoin) and in the design of Central Washington legislative districts  
25 (which Plaintiffs seek to redraw) as current and future voters in those districts may be impaired by  
26 being excluded from this case. Thus, Intervenors’ interests will be impaired if this litigation goes  
27 forward without them.

1           **D.     Adequate Representation**

2           None of the present parties can adequately protect Intervenor’s interests in this case. The  
3 adequacy of a prospective intervenor’s representation by existing parties is based on “(1) whether  
4 the interest of a present party is such that it will undoubtedly make all of a proposed intervenor’s  
5 arguments; (2) whether the present party is capable and willing to make such arguments; and (3)  
6 whether a proposed intervenor would offer any necessary elements to the proceeding that other  
7 parties would neglect.” *Arakaki*, 324 F.3d at 1086 (citing *California v. Tahoe Reg’l Planning*  
8 *Agency*, 702 F.2d 775, 778 (9th Cir. 1986)). This requirement “is satisfied if the applicant shows  
9 that representation of his interest ‘may be’ inadequate; and the burden of making that showing  
10 should be treated as minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)  
11 (quoting 3B James Moore, *Federal Practice* § 24.09-1[4] (2d ed. 1969)).

12           Certainly the Plaintiffs do not represent Intervenor’s interest. As noted above, Plaintiffs’  
13 VRA claim “pulls in the opposite direction” of Intervenor’s Fourteenth Amendment rights to not  
14 be assigned “to a district on the basis of race without sufficient justification.” *Perez*, 138 S. Ct.  
15 at 2314. And Plaintiffs’ requested relief of “enjoin[ing] Defendants from administering, enforcing,  
16 preparing for, or in any way permitting the nomination or election of members of the Washington  
17 State Legislature” would interfere with Representative Ybarra’s interest in maintaining a  
18 consistent schedule of elections. (Compl., Dkt. #1 at 41.)

19           As for the Defendants, not only do none of the present Defendants have an interest such  
20 that they will “undoubtedly” make “all” of Intervenor’s arguments, but the record already contains  
21 evidence that these Defendants are unwilling to make such arguments. Defendant Hobbs has  
22 “notifie[d] the Court that he intends to take no position on the issue of whether the state legislative  
23 redistricting plan violates section 2 of the Voting Rights Act.” (Notice That Def. Hobbs Takes No  
24 Position, Dkt. # 40 at 2; *see also* Def. Hobbs’ Resp. to Pls.’ Mot. for Prelim. Inj., Dkt. # 50 at 7-8.)  
25 Defendants Billig and Jinkins have moved to be dismissed as defendants. (Mot. to Dismiss Defs.  
26 Jinkins and Billig, Dkt. # 37.) Of course, if such motion is granted, they would no longer be present  
27 to make any arguments in this case. But even if the Court denies their motion, they do not have

1 the same interests as any of the Intervenors, so cannot be expected to make Intervenors' arguments.  
2 Nor do they appear willing to do so. For example, in their Response to Plaintiffs' Motion for  
3 Preliminary Injunction (Dkt. # 49), Defendants Billig and Jinkins admit that "neither [of them] is  
4 in a position to support or oppose the merits of Plaintiffs' vote dilution claim." (Dkt. # 49 at 9.)  
5 And while their Response briefs the Court on some of the "legal standards" applicable to VRA  
6 cases, it does not present any arguments as to why Plaintiffs' claim fails to meet those standards.  
7 (See Dkt. # 49 at 9-14.) In contrast, Intervenors wish to vigorously oppose Plaintiffs' VRA claim  
8 on the merits.

9 Intervenors would also offer additional "elements to the proceeding that other parties  
10 would neglect." *Arakaki*, 324 F.3d at 1086. As alluded to above, Intervenors can offer this Court  
11 a perspective regarding the tension between the VRA and the Equal Protection Clause. As a state  
12 representative who lists "Republican" as his party preference on the ballot and who is a member  
13 of the House Republican Caucus in the Legislature, Representative Ybarra can offer the Court a  
14 valuable perspective on the close interaction between race and partisanship, a perspective currently  
15 missing since all three present Defendants list the "Democratic" as their party preference on the  
16 ballot and are current or former members of Democratic caucuses in the Legislature. *See, e.g.,*  
17 *Perez*, 138 S.Ct. at 2314 ("[B]ecause a voter's race sometimes correlates closely with political  
18 party preference, it may be very difficult for a court to determine whether a districting decision  
19 was based on race or party preference." (internal citations omitted)); *Easley v. Cromartie*, 532 U.S.  
20 234, 242 (2001) ("Caution is especially appropriate in this case, where the State has articulated a  
21 legitimate political explanation for its districting decision, and the voting population is one in  
22 which race and political affiliation are highly correlated.").

23 The present Defendants have also acknowledged the problematic posture of this case.  
24 Defendants Billig and Jinkins noted that "this case currently lacks a proper party to defend the  
25 redistricting plan on its merits" (Reply in Supp. of Mot. to Dismiss Defs. Jinkins and Billig, Dkt.  
26 # 47 at 6) and that "[t]he current structure of the case . . . will not lead to a full and fair adjudication  
27 on the merits" (Def. Jinkins and Billig's Resp. to Pls.' Mot. for Prelim. Inj., Dkt. # 49 at 2).

1 Defendant Hobbs stated that “[p]articipation by other interested intervenors may also ensure that  
 2 the Court can promptly and clearly resolve” this case (Notice That Def. Hobbs Takes No Position,  
 3 Dkt. # 40 at 2) and that he “continues to believe this litigation must include additional proper  
 4 parties, whether through intervention or involuntary joinder, to allow thorough consideration of  
 5 the issues and complete relief” (Def. Hobbs’ Resp. to Pls.’ Mot. for Prelim. Inj., Dkt. # 50 at 8).<sup>4</sup>

6 For these reasons, Intervenors will not be adequately represented by any of the existing  
 7 parties, and their intervention will ensure a more complete adversarial presentation of the issues.

8 \* \* \*

9 Therefore, Intervenors are entitled to intervene as a matter of right pursuant to Fed. R. Civ.  
 10 P. 24(a). They have moved to intervene in a timely fashion, they have multiple significantly  
 11 protectable interests related to the subject of the action, those interests may be impaired by the  
 12 disposition of this case, and their position will not be adequately represented by existing parties.  
 13 The Court should thus grant their motion.

14 **II. Permissive Intervention under Rule 24(b)**

15 Even if the criteria for intervention of right were not satisfied, the Court should grant  
 16 permissive intervention under Fed. R. Civ. P. 24(b), pursuant to which, “[o]n timely motion, the  
 17 court may permit anyone to intervene who . . . has a claim or defense that shares with the main  
 18 action a common question of law or fact.” Courts may grant permissive intervention under Rule  
 19 24(b) “where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the  
 20 motion is timely; and (3) the applicant’s claim or defense, and the main action, have a question of  
 21 law or a question of fact in common.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 839 (9th  
 22 Cir. 1996) (citing *Greene*, 996 F.2d at 978).

---

23  
 24 <sup>4</sup> As this motion was being drafted, but shortly before it was filed, Defendant Hobbs filed a Motion to Join Required  
 25 Parties (Dkt. # 53), requesting that the Court “join the Redistricting Commission, members of the Redistricting  
 26 Commission in their official capacities, and/or the State of Washington” pursuant to Fed. R. Civ. P. 19(a)(2). (Dkt.  
 27 # 53 at 1.) Intervenors do not oppose this motion, but neither do they believe their right to intervene under Fed. R.  
 Civ. P. 24(a) is diminished by joinder of any of those parties. Intervenors do not believe that (a) the interest of the  
 State, the Commission, or the Commissioners is such that they will undoubtedly make all of Intervenors’ arguments,  
 (b) such additional parties are capable and willing to make such arguments, or (c) such additional parties would offer  
 the same elements to the case that Intervenors can offer but that the present parties are neglecting.

1           **A. Independent Grounds for Jurisdiction**

2           Federal courts generally require “independent jurisdictional grounds” to prevent  
3 permissive intervention from being used “to gain a federal forum for state-law claims” or “to  
4 destroy complete diversity in state-law actions.” *Freedom From Religion Found. v. Geithner*, 644  
5 F.3d 836, 843 (9th Cir. 2011). But “[w]here the proposed intervenor in a federal-question case  
6 brings no new claims, the jurisdictional concern drops away.” *Id.* at 844 (citing 7C Charles Alan  
7 Wright et al., *Federal Practice Procedure* § 1917 (3d ed. 2010)). In their Answer to Complaint  
8 filed in conjunction with this motion, Intervenors assert several affirmative defenses and ask the  
9 Court for certain relief (convening a court of three judges pursuant to 28 U.S.C. § 2284(a),  
10 dismissing Plaintiffs’ Complaint, awarding Intervenors’ reasonable attorneys’ fees, and granting  
11 other relief the Court deems just and proper) but are not raising new claims in any of their pleadings  
12 or motions filed today. Thus, the “independent jurisdictional grounds requirement” does not apply,  
13 because this is a “federal-question case” where the Intervenors “are not raising new claims.” *Id.*

14           **B. Timeliness**

15           “In determining timeliness under Rule 24(b)(2), we consider precisely the same three  
16 factors—the stage of the proceedings, the prejudice to existing parties, and the length of and reason  
17 for the delay [as] considered in determining timeliness under Rule 24(a)(2).” *Wilson*, 131 F.3d at  
18 1308 (citing *County of Orange v. Air California*, 799 F.2d 535, 539 (9th Cir. 1986)). Thus, a  
19 motion for permissive intervention is timely for the same reasons explained with respect to  
20 intervention as of right in Part A.1 above.

21           **C. Common Questions of Law or Fact**

22           Out of concerns for judicial economy, the claims and defenses of a Rule 24(b) intervenor  
23 must “have a question of law or a question of fact in common” with the main action. *Nw. Forest*  
24 *Res. Council*, 82 F.3d at 839. This element is plainly satisfied because, as set forth in their Answer  
25 to Complaint filed in conjunction with this motion, Intervenors seek to assert affirmative defenses  
26 that squarely address the factual and legal premise of Plaintiffs’ claims, including but not limited  
27 to whether Plaintiffs’ Complaint states a claim upon which relief can be granted, whether Plaintiffs

1 have standing, whether this Court has subject matter jurisdiction over Plaintiffs' VRA claim,  
2 whether Defendants have any lawful remedy and whether any Defendants can even grant Plaintiffs  
3 the relief they request.

4 **D. Undue Delay or Prejudice**

5 Fed. R. Civ. P. 24(b)(3) cautions that "[i]n exercising its discretion, the court must consider  
6 whether the intervention will unduly delay or prejudice the adjudication of the original parties'  
7 rights." As noted above, the Court has not yet ruled on the pending motions to dismiss (*see* Dkt. #  
8 37) or for preliminary injunction (*see* Dkt. # 38), nor do Intervenors seek to change to the Court's  
9 current scheduling order (*see* Dkt. # 46) (which they have communicated to the other parties  
10 through respective counsel). Thus, there is no discernable prejudice or delay to any of the present  
11 parties that would result in granting intervention.

12 \* \* \*

13 Therefore, even if Court determines Intervenors are not entitled to intervene as a matter of  
14 right, the Court should exercise its broad discretion to grant permissive intervention.

15 **CONCLUSION**

16 For the foregoing reasons, Intervenors respectfully requests that this Court enter an order  
17 granting their Motion to Intervene in this action.

18 DATED this 29<sup>th</sup> day of March, 2022.

19 Respectfully submitted,

20 s/ Andrew R. Stokesbary  
21 Andrew R. Stokesbary, WSBA #46097  
22 STOKESBARY PLLC  
23 1003 Main Street, Suite 5  
24 Sumner, WA 98390  
25 T: (206) 486-0795  
26 [dstokesbary@stokesbarypllc.com](mailto:dstokesbary@stokesbarypllc.com)

27 *Counsel for Proposed Intervenor-Defendants*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court’s CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 29<sup>th</sup> day of March, 2022.

Respectfully submitted,  
s/ Andrew R. Stokesbary  
Andrew R. Stokesbary, WSBA #46097  
*Counsel for Proposed Intervenor-Defendants*