

Thus, to intervene as of right, an applicant must satisfy the following requirements: (1) the application must be timely; (2) the applicant must have an interest in the subject matter sufficient to merit intervention; (3) the denial of intervention would impair or impede the applicant's ability to protect its interest; and (4) the applicant's interest is not adequately represented by the existing parties to the litigation. *See* Fed. R. Civ. P. 24(a); *Houston General Ins. Co. v. Moore*, 193 F.3d 838, 839 (4th Cir. 1999). Proposed Defendant-Intervenor Texas NAACP satisfies the requirements to intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2).

Federal courts have emphasized that Rule 24's intervention requirements should be construed flexibly and liberally in favor of intervention. *See, e.g., Nuesse v. Camp*, 385 F.2d 694, 702-04 (D.C. Cir. 1967) (recognizing need for liberal application of the rules permitting intervention as of right); *American Horse Prot. Ass'n., Inc. v. Veneman*, 200 F.R.D. 153, 157 (D.D.C. 2001) (noting the "liberal and forgiving" nature of the interest prong of the intervention as of right test); *Wilderness Society v. Babbitt*, 104 F. Supp. 2d 10 (D.D.C. 2000) (recognizing liberal approach to intervention). *See also Tachiona v. Mugabe*, 186 F. Supp. 2d at 394 (S.D.N.Y. 2002) (describing Rule 24 intervention standard as "a flexible and discretionary one"); *Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999) ("Rule 24 should be construed liberally, and doubts resolved in favor if the proposed intervenor."); *German v. Federal Home Loan Mortgage Corp.*, 899 F. Supp. 1155, 1166 (S.D.N.Y. 1995) (noting "liberal construction" of intervention requirements).

The Texas NAACP's motion satisfies Rule 24(a)(2)'s requirements because it is timely, and the proposed intervenors have direct and significant interests in this action that cannot be adequately protected by the current parties to the litigation. *See American Horse Prot. Ass'n.*, 200 F.R.D. at 157 (D.D.C. 2001).

A. As a General Matter, Courts Recognize the Particular Significance of Rule 24 Intervention in Voting Rights Cases

Intervention in voting rights cases by those representing the interests of African-American and other minority voters is often appropriate, recognizing that the interests of the intended beneficiaries of the Voting Rights Act may well add necessary perspectives and arguments to legal proceedings involving interpretations of the Act, or that those interests may diverge from the positions of institutional parties such as the State of Texas or the Texas Democratic Party. Indeed, intervention has been permitted in a broad range of voting rights matters including declaratory judgment actions, Section 2 vote dilution cases and matters challenging the constitutionality of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. *See, e.g., Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (upholding D.C. District Court's grant to private parties' motion to intervene on grounds that intervenors' interests were not adequately represented by the existing parties and finding that, as a general matter, private parties may intervene in § 5 declaratory judgment actions where they meet the requirements of Rule 24); *Smith v. Cobb County Bd. of Elections and Registration*, 314 F. Supp. 2d 1274, 1311 (N.D. Ga. 2002) (African-American voters were entitled to intervene in suit concerning reapportionment of districts since they asserted a legitimate interest that was not adequately represented by any of the parties); *Bossier Parish Sch. Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994) (granting intervention to African-American voters from Texas in declaratory judgment action concerning Section 5 of the Act); *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1478 (11th Cir. 1993) (ruling that voters are entitled to intervene in voting rights suit concerning at-large system); *City of Lockhart v. United States*, 460 U.S. 125, 129 (1983) (noting intervention of Hispanic voters); *County Council of Sumter County v. United States*, 555 F. Supp. 694, 697 (D.D.C. 1983)

(granting intervention to African-American voters in Section 5 declaratory judgment action); *Busbee v. Smith*, 549 F. Supp. 494 (D.D.C. 1982) (acknowledging intervention of African-American voters in Section 5 declaratory judgment action), *aff'd* 459 U.S. 1166 (1983).

District courts have also regularly permitted intervention in other voting rights cases, including those in which the United States or another governmental entity, has been a party. For example, in *Miller v. Blackwell*, 348 F. Supp. 2d 916 (S.D. Ohio 2004), the court permitted intervention in a suit arising under the National Voter Registration Act after determining that claimants' interest in avoiding dilution of their votes was different from the interests of state election officials, thus, reducing likelihood that those officials could adequately represent interests of the intervenors. *See, e.g., Shaw v. Hunt*, 861 F. Supp 408, 420 (E.D.N.C. 1994); *Vera v. Richards*, 861 F. Supp. 1304, 1310 (S.D.Tex. 1994); *Miller v. Johnson*, 515 U.S. 900, 909 (1995); *Abrams v. Johnson*, 117 S. Ct. 1925, 1930 (1997); *see also Meek v. Metropolitan Dade County*, 985 F.2d at 1478 (As proposed intervenors observe, voters have been permitted to intervene in a large number ... of the actions involving a *Shaw v. Reno* claim.)

B. The Texas NAACP's Motion to Intervene is Timely

Timeliness is measured from when the prospective intervener "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). Courts generally assess timeliness by considering other factors including: the applicant's interest in the case, the need for intervention to preserve the applicant's rights, the extent of prejudice to the existing parties, the extent of prejudice to the proposed intervenor if the application is denied, and any unusual circumstances in favor of or opposed to intervention. *See Smoke v. Norton*, 252 F.3d 468, 470-471 (D.C. Cir. 2001) (setting forth timeliness factors); *Hirshon v. Republic of*

Bolivia, 979 F. Supp. 908, 913 n.5 (D.D.C. 1997) (same). Here, the motion is being filed as soon as the proposed Defendant-Intervenors learned of the Plaintiffs' proposed plan and its detrimental impact on African-American voters.

The Proposed Intervenor's motion satisfies the timeliness standard. Specifically, the motion is being submitted in advance of the court's hearing on the preliminary injunction motion and well before commencement of discovery. Moreover, the Texas NAACP seeks to participate in the case on the same schedule as the other parties. *Cf. Nationwide Mut. Ins. Co. v. Nat'l REO Mgmt., Inc.*, 205 F.R.D. 1, 6 (D.D.C. 2000) (memorandum opinion) (intervention motion six months after filing of action is timely); *Nationwide Wildlife Fed'n v. Burford*, 676 F. Supp. 271 (D.D.C. 1985) (intervention motion three months after filing of suit is timely). Under these circumstances, this motion is timely and granting intervention pursuant to Rule 24(a)(2) would not prejudice the existing parties or alter the court's discovery or pre-trial schedule.

C. The Texas NAACP has an Interest in the Claims and Defenses Raised in this Case

The Texas NAACP seeks to intervene in this matter to ensure that the current method used to apportion delegates to the Democratic Party's state and national conventions remains in place, in compliance with Sections 2 and 5 of the Voting Rights Act and the Equal Protection clause of the Fourteenth Amendment. Courts have recognized the significance and impacts of voting rights cases on the exercise of fundamental rights, and routinely grant intervention to minority voters in such cases. The standard to determine the sufficiency of intervenors interest is not stringent, and it "is primarily a practical guide to 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). Failure to allow Intervenor to address these issues now will irrevocably affect the rights of African-American

voters to exercise their right to elect a candidate of their choice. Here, the Texas NAACP has a direct, substantial, and legally protectable interest in this action. Proposed Intervenors seek to retain the protections against vote dilution and discriminatory changes that they enjoy under Sections 2 and 5 of the Voting Rights Act.

D. Intervenor's Interests May Not Be Adequately Represented by the Present Parties

African-American voters who reside within the area that lies at the heart of Plaintiff's Complaint inevitably bring to the litigation a "[l]ocal perspective on the current and historical facts at issue" which could not otherwise be presented and which could benefit the court's understanding of the claims. *See Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) (granting individual voters' motion to intervene in HAVA suit); *Commack Self-Service Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93 (E.D.N.Y. 1996) (noting that intervenors would bring a different perspective to case that might assist court, and intervention came early in the action); *Fiandaca v. Cunningham*, 827 F.2d 825, 835 (1st Cir. 1987) (likelihood that applicants would introduce additional evidence favors intervention). While the present Defendants' obligation is to represent the broad interests of the State of Texas and the Texas Democratic Party, the Texas NAACP is concerned specifically with the interests of minority voters. Although Defendants would likely take these concerns into account, the cases cited above make clear that the interests of intended beneficiaries, here minority voters, and the state agencies responsible for complying with the statutes designed to protect them are not coextensive and this divergence often affects the course of litigation.

II. In the Alternative, Permissive Intervention is Appropriate in this Case.

Rule 24(b) of the Federal Rules of Civil Procedure provides an alternative basis for the Texas NAACP's intervention in this action. Rule 24(b) provides that permissive intervention

may be granted “when an applicant’s claim or defense and the main action have a question of law or fact in common.” Fed. R. Civ. P. 24(b)(2). When assessing a motion for permissive intervention, the primary consideration is “whether the intervention will unduly delay or prejudice the existing parties.” *Commack Self-Service Kosher Meats*, 170 F.R.D. at 106. Courts do not interpret this provision strictly. *Nuesse*, 385 F.2d at 704. The decision to allow permissive intervention is within the discretion of the court, and the court is to consider whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Fed. R. Civ. P. 24(b)(2). *Huron Env’tl. Activist League v. United States Env’tl. Protection Agency*, 917 F. Supp. 34, 43 (D.D.C. 1996) (permissive intervention was granted where plaintiffs’ claims have both questions of law and fact in common with the main action and the court concluded that the intervention would not unduly delay the adjudication of the rights of the original parties).

Here, given the unique perspective of the Texas NAACP with respect to the experience of minority voters, their intervention in this matter would very likely aid or enhance the Court’s understanding of the underlying legal and factual issues and, thereby, assist in the efficient resolution of this action. As a result, there will be commonality between the questions of law and fact presented in the Complaint, and the claims and defenses presented by the Proposed Intervenor. In addition, intervention will not delay the litigation, as the action has just commenced. These considerations plainly demonstrate the propriety of the Texas NAACP’s permissive intervention request. This Court should, therefore, grant this request for permissive intervention in the event that the Court declines to grant intervention as of right.

I. CONCLUSION

For the foregoing reasons, the Texas NAACP respectfully requests that the Court grant its Motion to Intervene in this matter under Federal Rule of Civil Procedure 24.

Respectfully submitted by,

/s/ Robert Notzon

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the above and foregoing instrument was served via electronic delivery on May 22, 2008, to all counsel of record.

/s/ Robert Notzon

Robert Notzon

W/P
Robert Notzon