

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

CITY OF EL CENIZO, et.al.	§	Civil Action No. 5:17-CV-00404-OLG
	§	(Lead Case)
EL PASO COUNTY; RICHARD WILES,	§	Case No. 5:17-CV-00459-OLG
SHERIFF OF EL PASO COUNTY in his official	§	Consolidated
capacity; and the TEXAS ORGANIZING	§	
PROJECT EDUCATION FUND,	§	
<i>Plaintiffs,</i>	§	
	§	
TEXAS ASSOCIATION OF HISPANIC	§	
COUNTY JUDGES AND COUNTY	§	
COMMISSIONERS,	§	
<i>Proposed Plaintiff/Intervenor</i>	§	
	§	
V.	§	
STATE OF TEXAS	§	
<i>Defendants,</i>	§	

**PLAINTIFF-INTERVENOR TEXAS ASSOCIATION OF HISPANIC COUNTY
JUDGES AND COUNTY COMMISSIONERS, MOTION AND MEMORANDUM IN
SUPPORT OF INTERVENTION**

1. This action raises federal questions under the United States Constitution, particularly Article 1, and the First, Fourth, Fourteenth Amendments. In addition, this Court has jurisdiction over these constitutional claims pursuant to 42 U.S.C. § 1983.

2. This action is brought pursuant to the Fourteenth and Fifteenth Amendments to the United States Constitution, 42 U.S.C. § 1983. This is also an action requesting declaratory and injunctive relief against the State of Texas to challenge Senate Bill 4 of 2017 (“SB 4”).

3. Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 24(a)(2), the TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY

COMMISSIONERS (the “HJ&C,” or “Hispanic Judges and Commissioners”) (“Proposed Plaintiff-Intervenors”) by and through their undersigned counsel, respectfully request that this Court grant their Motion to Intervene as of right as Plaintiff-Intervenors. In the alternative, Proposed Plaintiff-Intervenors request that this Court grant permissive intervention under Fed. R. Civ. P. 24(b)(1)¹

4. Plaintiff-Intervenor TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS is an association of Hispanic elected county officials and seeks intervention to protect their interest in conducting their duties as elected county officials. The HJ&C request for intervention meets all the prerequisites for intervention as a matter of right: the request for intervention is timely; the rights at stake are directly implicated by claims of the Plaintiffs; it cannot effectively protect its interest unless it is part of this action.

5. Plaintiff-Intervenors includes members from South Texas Counties in which over 80% of the population are Latinos who are protected by the United States Constitution, Fourteenth and Fifteenth Amendments to the United States Constitution, and 42 U.S.C. § 1983. This intervention is his behalf of Hispanics of South Texas. SB 4 will have a discriminatory effect on South Texas Counties and their elected officials where over 80% of the population is Latino and whose constitutional rights are implicated.

6. The HJ&C is unique in that it represents most of the Latino Texas Counties including Hidalgo, Cameron, Frio, Webb, LaSalle, Star, Zapata, Zavala Maverick Val Verde and El Paso; SB 4 will impact these counties dramatically.

7. County government is charged with conducting public policy addressed by

¹ Plaintiff-Intervenor’ Complaint in Intervention, which sets forth the claims upon which intervention is sought, is filed simultaneously with this Motion.

SB4; these Proposed Intervenors HJ&C will be impacted uniquely by SB4 and will be able to assist this Court in establishing relevant facts to apply to existing immigration law.

Procedural Posture

8. This case was only recently filed and no discovery or hearings have been held. As far as we can tell no answer has yet been filed. Intervention at this early stage of the litigation will not unduly delay or prejudice the adjudication of any rights of the original parties *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994); *see Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 822 (5th Cir. 2003).

Potential Impact of this Litigation

9. Historically, Texas has been found to pass legislation to discriminate against Latinos, *See: White v. Register*, 412 U.S.755 (1973); *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982); *TexasUnited States*, 785 F. Supp. 201 (D.D.C. 1992); *LULAC v. Perry*, 548 U.S. 399 (2006); *Bush v. Vera*, 517 U.S. 952, 981-82 (1966)(plurality opinion).² If allowed to intervene, Intervenor will be able to protect the specific interest at stake for South Texas Counties; South Texas Counties have a high concentration of Latino voters and SB14 is designed to lessen the influence of South Texas Counties in statewide elections. Also in *Texas*, 888 F. Supp. 2d at 113, a three-judge panel in the District of D.C. denied preclearance of a Texas State Statute under Section 5 of the Voting Rights Act.

²Federal intervention has been necessary to eliminate numerous devices intentionally used discriminate against Latinos in Texas. *See, e.g., White*, 412 U.S. at 768 (poll tax); *Terry v. Adams*, 345 U.S. 461 (1953) (private primary); *Smith v. Allwright*, 321 U.S. 649 (1944) (white primary); *Nixon v. Herndon*, 273 U.S. 536 (1927) (exclusion of minorities)

ARGUMENT

I. Intervention Is Proper as a Matter of Right

HJ&C request intervention as a matter of right under Federal Rule of Civil Procedure 24

(a). Intervention as of right should be granted when the following four requirements are met:

(1) the applicant for intervention is timely; (2) the applicant has an interest to the property or transaction that is the subject of the action; (3) the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest; (4) the applicant's interests are inadequately represented by the existing parties to the suit. *New Orleans Public Service, Inc. v. United Gas and Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984)(en banc). Intervention as a matter of right involves a “flexible” inquiry, “which focuses on the particular facts and circumstances surrounding each application [for intervention]”. *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996) (internal quotation marks, ellipses, and brackets omitted). Accordingly, “intervention of right must be measured by a practical rather than technical yardstick.” *Id.*

Federal courts have emphasized that Fed. R. Civ. P. 24's intervention requirements should be construed flexibly and in favor of intervention. *United States v. Perry Cnty. Bd. Of Educ.*, 567 F.2d 277, 279 (5th Cir. 1978) (“Our inquiry is a flexible one, which focuses on the particular facts and circumstances surrounding each application”) (internal citation and quotation marks omitted); *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970) (“[Fed. R. Civ. P. 24(a)] has its permissive aspects, and . . . we must view its exercise in the liberal atmosphere of the Rules of Civil Procedure”); *Diaz v. S. Drilling Corp.*, 427 F.2d 1118, 1126 (5th Cir. 1970) (“[T]he possibility of prejudice [in an untimely filing] is to be evaluated against the liberal treatment that is to be accorded applications for intervention of right”); *see also Turn Key Gaming, Inc. v. Oglala Sioux*

Tribe, 164 F.3d 1080, 1081 (8th Cir. 1999) (“Rule 24 is to be construed liberally, and doubts resolved in favor of the proposed intervenor.”); *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir.1994) (Federal court should allow intervention where no one would be hurt and greater justice could be attained.”).(internal citation and quotation omitted).

A. The Intervention is Timely

This intervention is timely because it acted with all practicable speed after it learned that the Plaintiffs had filed this action. No hearings have been held nor has any discovery been conducted. Timeliness is a flexible requirement that varies from case to case. See *McDonald v. E.J. Lavino Co.* 430 F.2d 1065, 1074 (5th Cir. 1970). Thus “[t]imeliness of intervention depends on a review of all the circumstances, and the Fifth Circuit has identified four factors to consider: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) prejudice to the existing parties resulting from intervenor’s failure to apply for intervention sooner; (3) prejudice to the intervenor if his application for intervention is denied; (4) the existence of unusual circumstances.” *Trans Chemical Ltd. v. China Nat. Machinery Import & Export Co.*, 332 F3d 815, 822 (5th Cir. 2003). Under any standard previously articulated by the Courts, this Motion to Intervene is timely. After receiving notice of the action Intervenor moved to review the pleadings, confer with the attorney for the Plaintiffs.

B. Intervention Will Not Prejudice the Plaintiffs

The Plaintiffs will not suffer any prejudice as a result of the request for intervention. The lawsuit was only recently filed. No answers or discovery have yet been filed. No motions or hearing have yet been heard in this case. The case is at its inception.

C. Intervenor Will Suffer Significant Prejudice If Intervention is Denied

Intervenor could well suffer significant harm if intervention is not permitted. The allegations of the Plaintiffs implicate the Civil Rights of Latinos. The allegations relate the bedrock of Constitutional Rights. The proposed Intervenor in this case are members of Association of Hispanic Judges and Commissioners whose duties as elected officials will suffer greatly if SB4 is implemented.

D. Interest of the Intervenor

E.

Because of the impending enforcement of SB4, this case must be tried on an extremely expedited basis. Important distinctions in the interests of the elected officials and the Hispanic electorate could become a very serious problem later in the litigation and intervention at that point would necessarily delay the litigation and prejudice the rights of the Intervenor. Unless intervention is granted the Intervenor will be substantially impaired in the ability to insure that the harms of SB4 are vitiated.

E. Unusual Circumstances Exist that Would Militate Against Intervention.

Proposed Intervenor knows of no circumstances that would operate to work against its intervention.

F. Proposed Intervenor Has a Substantial and Legally Protected Interest in the Case That It Cannot Protect Without Intervention and Is Inadequately Protected by the Named Plaintiffs

Proposed Intervenor has a substantial and legally protected interest that the law recognizes in the matters raised by this action. The Courts have recognized that state laws can be fashioned to compromise the constitutional rights of Latinos. See *LULAC v. Perry*, 548 U.S. 399 (2006). The history of racial discrimination in the State of Texas in the past four decades allow intervention where no one would be hurt and greater justice could be attained.) (internal citation and quotation omitted). Texas statutes have often been struck down by federal courts because they have been found violate the Fourteenth Amendment to the US Constitution and various other Federal Civil Rights statutes including 42 USC Sec. 1983. See e.g. . *White v. Register*, 412 U.S.755 (1973); *Terrazas v. Clements*, 537 F. Supp. 514 (N.D. Tex. 1982); *Texas v. United States*, 785 F. Supp. 201 (D.D.C. 1992); *LULAC v. Perry*, 548 U.S. 399 (2006).

II. ALTERNATIVELY, INTERVENOR SHOULD BE ALLOWED TO PERMISSIVELY INTERVENE

Alternatively, the Proposed Intervenors satisfies the requirements for this Court to permit intervention. Permissive intervention, which is a matter of discretion for the Court, is appropriate when the intervention is timely, the intervenor's "claim or defense and the main action have a question of law or fact in common," and granting the intervention will not unduly delay or prejudice the original parties in the case. Fed. R. Civ. P. 24(b)(2).

As discussed above, this intervention is timely. The Claims of the Proposed Intervenors have common questions of law and fact. The State of Texas has acted often contrary to the interests of Latinos. In the past four decades the Federal Court has stood at this important litigation juncture. In each event, the Intervention of Latino named individuals and Hispanic elected officials such as Proposed Intevenors have been allowed.

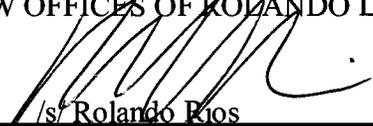
PRAYER

Plaintiff respectfully prays that this Court enter Judgment granting this Intervention and allow TEXAS ASSOCIATION OF HISPANIC COUNTY JUDGES AND COUNTY COMMISSIONERS to fully participate in this litigation.

DATED: June 22, 2017

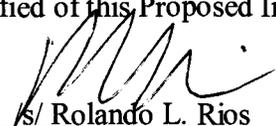
Respectfully Submitted,

ROLANDO L. RIOS
115 E. Travis, Suite 1645
San Antonio, Texas 78205
Ph: (210) 222-2102
Fax: (210) 222-2898
E-mail: rios@sbcglobal.net
LAW OFFICES OF ROLANDO L. RIOS

By:  /s/ Rolando Rios
ROLANDO L. RIOS
Attorney for the TEXAS ASSOCIATION OF
HISPANIC COUNTY JUDGES AND COUNTY
COMMISSIONERS

CERTIFICATE OF SERVICE

I hereby certify that all the parties to this Cause have been notified of this Proposed Intervention through the electronic filing system used by the federal courts.


/s/ Rolando L. Rios
Rolando L. Rios