

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JACOB CORMAN, in his official
capacity as Majority Leader of the
Pennsylvania Senate, MICHAEL
FOLMER, in his official capacity as
Chairman of the Pennsylvania Senate
State Government Committee,
LOU BARLETTA, RYAN COSTELLO,
MIKE KELLY, TOM MARINO,
SCOTT PERRY, KEITH ROTHFUS,
LLOYD SMUCKER, and GLENN
THOMPSON,

Plaintiffs,

v.

ROBERT TORRES, in his official
capacity as Acting Secretary of the
Commonwealth, and JONATHAN M.
MARKS, in his official capacity as
Commissioner of the Bureau of
Commissions, Elections, and Legislation,

Defendants.

No. 18-cv-00443-CCC

Judge Jordan

Chief Judge Conner

Judge Simandle

(filed electronically)

**PLAINTIFFS' BRIEF IN OPPOSITION TO THE NATIONAL
DEMOCRATIC REDISTRICTING COMMITTEE'S MOTION TO
INTERVENE AS DEFENDANT (DOC. 12)**

TABLE OF CONTENTS

I. COUNTER STATEMENT OF HISTORY OF THE CASE3

II. ARGUMENT4

 A. The NDRC Fails To Meet The Test For Intervention As A Matter Of Right Under Rule 24(a)(2).....4

 1. The NDRC Lacks A Sufficiently Protectable Legal Interest In This Litigation.....5

 2. The NDRC’s Interests Will Not Be Impaired If Intervention Is Denied...8

 3. Any Interest The NDRC Does Have Is Adequately Represented by Defendants.10

 B. The Court Should Not Allow Permissive Intervention Under Rule 24(b)..15

 C. The NDRC Lacks Standing To Be A Party-Litigant.17

III. CONCLUSION19

TABLE OF AUTHORITIES

Cases

Agre v. Wolf, No. 17-4392 (E.D. Pa. 2017)12

Allen v. Wright, 468 U.S. 737, 750 (1984)17

American Farm Bureau Federation v. EPA, 278 F.R.D. 98 (M.D. Pa. 2011)7, 8

Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997).....17

Benjamin ex rel. Yock v. Department of Public Welfare of Pennsylvania,
701 F.3d 938 (3d Cir. 2012)..... 7, 8, 9

Benjamin v. Dep’t of Pub. Welfare of Pa., 432 Fed. App’x 94, 98 (3d Cir. 2011) ...8

Bossier Parochial Sch. Bd. v. Reno, 157 F.R.D. 133 (D.D.C. 1994)17

Brody By & Through Sugzdinis v. Spang, 957 F.2d 1108 (3d Cir. 1992) 9, 16

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 344 (2006).....19

Diamond v. Torres, No. 17-5054 (E.D. Pa. 2017).....12

Donaldson v. U.S., 400 U.S. 517, 531 (1971)5

Graham v. Thornburgh, 207 F. Supp. 2d 1280, 1282 (D. Kan. 2002)16

Harris v. Pernsley, 820 F.2d 592, 601 (3d Cir. 1987).....5

In re Cmty. Bank of N. Va. & Guar. Nat’l Bank of Tallahassee Second Mortg. Loan Litig., 418 F.3d 277, 315 (3d Cir. 2005)..... 10, 14

In re Endangered Species Act Section 4 Deadline Litig.,
704 F.3d 972, 976 (D.C. Cir. 2013)17

Lance v. Coffman, 549 U.S. 437, 442 (2007)19

League of Women Voters of Haverford Twp. v. Bd. of Comm’rs of Haverford Twp.,
CIV. A. No. 86-0546, 1986 WL 3868 (E.D. Pa. Mar. 27, 1986)16

Liberty Mut. Ins. Co. v. Treesdale, Inc., 419 F.3d 216, 220 (3d Cir. 2005)4, 5

Lujan v. Def. of Wildlife, 504 U.S. 555, 560–61 & n.1 (1992).....18

Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc., 72 F.3d 361,
366 (3d Cir. 1995)..... 4, 5, 9

Natural Resources Defense Council v. Costle, 561 F.2d 904 (D.C. Cir. 1977)9

PAC for Middle Am. v. State Bd. of Elections,
No. 95 C 827, 1995 WL 571893 (N.D. Ill. Sept. 22, 1995)16

Seneca Res. Corp. v. Twp. of Highland, 863 F.3d 245, 256-57 (3d Cir. 2017).....5

Trbovich v. United Mine Workers, 404 U.S. 528, 539 (2010).....14

Vieth v. Jubelirer, 541 U.S. 267, 297 (2004).....19

Rules

Fed. R. Civ. P. 24(a).....1, 4

Fed. R. Civ. P. 24(b) 1, 15

Constitutional Provisions

U.S. CONST. art. I, § 4 10, 18

U.S. CONST. art. III, § 217

Other Authorities

Governor Wolf Statement on Remedial Congressional Map from PA Supreme Court (Feb. 19, 2018), <https://www.governor.pa.gov/governor-wolf-statement-remedial-congressional-map-pa-supreme-court>13

INTRODUCTION

Proposed Intervenor, the National Democratic Redistricting Committee (the “NDRC”) should not be permitted to intervene in this action because: (1) it cannot satisfy the requisite criteria set forth by Fed. R. Civ. P. 24(a) since it lacks any rights or significantly protectable legal interest in this case and any interest the NDRC has will be adequately represented by the named defendants (“Defendants”); (2) it cannot satisfy Fed. R. Civ. P. 24(b) because it cannot assert any claim or defense related to the sole issue to be determined in this case – whether Pennsylvania’s Supreme Court overstepped its authority under the Elections Clause; and (3) it lacks standing to be a party-litigant.

The NDRC is a self-described “political organization” whose “mission” is to ensure “fair maps” that protect against the dilution of Democratic votes and “combat the deleterious effects of extreme Republican partisan gerrymanders” in order to protect the rights of Democratic voters. NDRC’s Memorandum of Law in Support of Motion to Intervene (Doc. 13) (“Memo. of Law”) at 4-5. But the NDRC’s political interest in replacing Republican maps it views as unfairly partisan does not afford it a legally protectable interest justifying its intervention as a party-litigant. Instead, the NDRC’s interest is no different from that of any other outside political observer who follows these matters and has a rooting interest to support the Pennsylvania Supreme Court’s actions mandating the implementation

of a new congressional districting plan (the “Court Drawn Plan”).¹ And it is hard to imagine parties more prepared, willing, and able to adequately represent the very same political goals of the NDRC than Defendants, Democratic gubernatorial appointees who have already – *in three separate litigations* – argued passionately for the invalidation of the 2011 Plan and in support of the Court Drawn Plan. And these Defendants have already made clear their intention to continue to advance those same political interests in this case – the very interests that the NDRC espouses here as part of its “core mission” – as well as a vigorous defense.

Separately, the Third Circuit has concluded that because the factors considered on a motion for permissive intervention are similar to those considered with respect to a motion for intervention as of right, a finding that a party is not entitled to intervene as of right almost always results in the denial of permissive intervention. Thus, the NDRC’s request for permissive intervention should be denied for all of the same reasons warranting the denial of its intervention as of right, as well as the fact that the NDRC does not have any alleged rights or cognizable legal interest at stake in this case and lacks any concrete and particularized injury affording it independent standing to assert any claim or defense related to the Pennsylvania Supreme Court’s authority under the Elections Clause.

¹ Capitalized terms used herein shall have the meanings afforded such terms within Plaintiffs’ Complaint (“Compl.”; Doc. 1) unless otherwise defined herein.

For each of these reasons, the NDRC's Motion should be denied.

I. COUNTER STATEMENT OF HISTORY OF THE CASE

Plaintiffs present narrow claims that seek specific relief. Contrary to the NDRC's suggestion, Plaintiffs do not challenge the Pennsylvania Supreme Court's ability to declare the 2011 Plan unconstitutional under Pennsylvania's Constitution. Nor do Plaintiffs challenge the Pennsylvania Supreme Court's ability, in appropriate circumstances, to craft a remedial map. Rather, the claims advanced in this action concern only whether the map Defendants seek to implement violates the Elections Clause of the U.S. Constitution in two discrete ways: (1) by relying upon criteria found nowhere within Pennsylvania's Constitution or statutory framework for Congressional districting to invalidate the 2011 Plan; and (2) by ordering the use of its own Court Drawn Plan without first affording Pennsylvania's General Assembly an "adequate opportunity" to enact a remedial plan of its own. On the other hand, this action *does not* concern the claimed gerrymandered nature of the 2011 Plan, *i.e.* the claims at issue in the *League of Women Voters v. Commonwealth* Action before the Supreme Court of Pennsylvania (the "*LWV* Action"). See Compl. ¶¶ 93-117. And the relief sought in this case – a finding that the Pennsylvania Supreme Court's action violates the Elections Clause and enjoining implementation of the Court Drawn Plan for the

2018 elections – is distinct from the relief sought in the *LWV* Action, which sought to (and did) invalidate the 2011 Plan.

II. ARGUMENT

A. The NDRC Fails To Meet The Test For Intervention As A Matter Of Right Under Rule 24(a)(2).

A non-party is permitted to intervene as of right under Rule 24(a)(2) only if each of the following requirements have been satisfied:

- (1) The application for intervention is timely;
- (2) The applicant has sufficient interest in the litigation;
- (3) The interest may be affected or impaired, as a practical matter by the disposition of the action; **and**
- (4) The interest is not adequately represented by an existing party in the litigation.

Liberty Mut. Ins. Co. v. Treesdale, Inc., 419 F.3d 216, 220 (3d Cir. 2005); *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995) (“Each of these requirements must be met to intervene as of right.”).

As detailed below, the NDRC fails to satisfy the second, third and fourth requirements of this standard because: (1) it lacks a direct and sufficient legal interest in this litigation; (2) it can show no unique interest that may be affected or

impaired if Plaintiffs are afforded the requested relief, and (3) its interests are adequately represented by Defendants.²

1. The NDRC Lacks A Sufficiently Protectable Legal Interest In This Litigation.

Without a sufficiently protectable legal interest in this matter, the NDRC cannot possibly satisfy the requirements of Rule 24(a)(2). In order to have “an interest sufficient to intervene as of right, the interest advanced must be a *legal interest* as distinguished from interests of a general and indefinite character.” *Harris v. Pernsley*, 820 F.2d 592, 601 (3d Cir. 1987) (emphasis added). Furthermore, it must be a “significantly protectable” legal interest. *Mountain Top Condo.*, 72 F.3d at 366 (citing *Donaldson v. U.S.*, 400 U.S. 517, 531 (1971)). As such, the NDRC must demonstrate that there is a “tangible threat” to its legally cognizable interest, and not merely that it has some general interest that may be incidentally affected. *Seneca Res. Corp. v. Twp. of Highland*, 863 F.3d 245, 256-57 (3d Cir. 2017). Stated differently, the asserted interest cannot be speculative or collateral. *Liberty Mut.*, 419 F.3d at 225. This element is satisfied where a proposed intervenor can show that a ruling will have a “significant stare decisis effect on their claims, or if the [proposed intervenors'] rights may be affected by a proposed remedy.” *Seneca Res. Corp.*, 863 F.3d at 257; see also *Mountain Top Condo.*, 72 F.3d at 366.

² Plaintiffs concede that the NDRC’s Motion is timely.

The NDRC argues that it has a “significant and cognizable interest in ensuring fair redistricting plans that will reverse the unconstitutional dilution of Democratic voting strength in Pennsylvania...” Memo. of Law at 7. It argues that “Plaintiffs’ attempt to invalidate the Remedial Plan strikes at the heart of NDRC’s core mission, and its efforts to ensure a fair districting map for Democrats in Pennsylvania.” *Id.* at 9. But these are not legal interests.

Indeed, the NDRC does not have any *legal* interest in this case, let alone one that is a “significantly protectable” legal interest sufficient to permit it the right to intervene as a party-litigant. Its only interest is that of an arm-chair outside observer. In fact, by its own admission, the NDRC is merely a “political organization” with a *political* interest in congressional districting maps which favor Democrats. *See* Memo. of Law at 4. Thus, the NDRC’s interest here is no more specific to the NDRC than it would be to any other interested outside observer who, like the NDRC, is interested in favoring Democrats and fighting against maps which purportedly favor Republicans. This generalized political interest in the outcome of a case falls far short of meeting the standards for intervention as a matter of right.

Furthermore, this particular case is not about the NDRC’s “core mission” relating to the merits of “extreme partisan gerrymandering” or the dilution of Democratic votes. Rather, this case is about the unconstitutional actions of the

Pennsylvania Supreme Court in usurping the legislative authority of the Pennsylvania General Assembly relating to the time, place and manner of congressional redistricting, a power explicitly reserved to the state legislature pursuant to the Elections Clause of the U.S. Constitution. U.S. CONST. art. I, § 4.

The NDRC's reliance on *American Farm Bureau Federation v. EPA*, 278 F.R.D. 98 (M.D. Pa. 2011) ("*American Farm*") and *Benjamin ex rel. Yock v. Department of Public Welfare of Pennsylvania*, 701 F.3d 938 (3d Cir. 2012) ("*Benjamin*") is misplaced. In *American Farm*, intervention was permitted because each of the intervenors *would be directly impacted* by the invalidation of the EPA rule at issue in that case. *See* 278 F.R.D. at 104-08 (allowing intervention of members who held permits to discharge nutrients and sediments which would be affected by the EPA rule which was the subject of the litigation and of members who personally used the Bay, educated others on the importance of restoring the Bay, and had undertaken physical efforts towards achieving that goal).³ In *Benjamin*, the Court held that "the claimed interest in the litigation must be one

³ The NDRC relies on *American Farm* in an attempt to likening the interests at stake in *American Farm* to the NDRC's "core mission" of seeking to "more accurately reflect the will of Pennsylvania's voters." Memo. of Law at 7. This reliance is ironic given the NDRC's full-throated support of the Pennsylvania Supreme Court's actions invalidating the 2011 Plan signed into law by Pennsylvania's elected officials *and* its imposition – by judicial fiat – of the Court Drawn Plan without permitting the Legislature an adequate opportunity to enact remedial legislation on its own. There could be no clearer reflection of the "will of Pennsylvania's voters" than the enactment of legislation by its democratically elected representatives, which the NDRC now seeks to wholly ignore.

that is *specific* to those seeking to intervene, is capable of definition, and will be directly affected in a substantially concrete fashion by the relief sought.” 701 F.3d at 951 (citing *Benjamin v. Dep’t of Pub. Welfare of Pa.*, 432 Fed. App’x 94, 98 (3d Cir. 2011)).

The NDRC does not have a property interest in the redistricting process like the permitted groups in *American Farm* or an interest which is *specific* to it like the intervenors in *Benjamin*. In fact, the only claimed interest that the NDRC has articulated is the fact that it has “expended, and continues to invest, significant time and resources into ensuring Pennsylvania’s redistricting plan reflects the will of its voters, and protects the rights of Democratic voters within the state.” Memo. of Law at 5. But, this is tantamount to saying that any political organization which has spent or donated money towards a political cause should have the ability to intervene as a party in any case where those causes are being litigated. This would lead to an absurd result that should not be countenanced by this Court. As the numerous press reports about this case make clear, many third parties across the country are interested in the outcome of this case. This does not mean they are all entitled to become party-litigants.

2. **The NDRC’s Interests Will Not Be Impaired If Intervention Is Denied.**

The NDRC argues that it must be allowed to intervene in this case because if its intervention is not permitted, there “would be no realistic option for NDRC to

vindicate its rights in a separate proceeding, following the resolution of this action, because such action could not be resolved in time for the 2018 primary or general election.” Memo. of Law at 10. This argument misses the point, as the NDRC does not have any cognizable legal interest which could ever be impaired or any legal “rights” at stake in this matter to be vindicated. But, even assuming *arguendo* that the Court finds that the NDRC has a sufficient legal interest in this litigation, it cannot possibly show that it will be “affected in a substantially concrete fashion by the relief” Plaintiffs seek. *See Benjamin*, 701 F.3d at 951.

In addition to the out-of-circuit case of *Natural Resources Defense Council v. Costle*, 561 F.2d 904 (D.C. Cir. 1977),⁴ the NDRC cites to *Mountain Top Condominium Association v. Dave Stabbert Master Builder, Inc.* for the proposition that “proposed intervenors must also demonstrate that their interest might become affected or impaired, as a practical matter, by the disposition of the action in their absence.” Memo. of Law at 9. Plaintiffs agree with this statement of the law, but the NDRC does not, and cannot, show that it has any legal interest at stake in this matter which would be impaired.

The NDRC also cites to *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108 (3d Cir. 1992), to argue that its rights may be affected by the injunctive relief

⁴ This case is easily distinguishable from the instant matter as it involved a settlement agreement obligating the EPA to undertake rule-making which would directly impact the intervenors. *See* 561 F.2d at 908-11. The NDRC has no similar interest here.

requested by Plaintiffs and that it does not need to prove that it would be “barred from bringing a later action or that intervention constitutes the only possible avenue of relief.” Memo. of Law at 9-10. But this rationale, once again, puts the cart before the horse because it presumes the NDRC has significantly protectable legal rights at stake in this litigation when it does not. Moreover, and separately, an injunction preventing the implementation of the unconstitutionally drawn Court Drawn Plan would not pose a “tangible threat” to the NDRC’s self-described “mission” of “combat[ing] the deleterious effects of extreme Republican partisan gerrymanders.” Even if this Court should find in Plaintiffs’ favor and hold that the Court Drawn Plan violates Article I, Section IV of the U.S. Constitution, the NDRC’s mission will no doubt remain fully intact and its interests would not be impacted in any way.

3. Any Interest The NDRC Does Have Is Adequately Represented by Defendants.

“[W]hen the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented.” *In re Cmty. Bank of N. Va. & Guar. Nat’l Bank of Tallahassee Second Mortg. Loan Litig.*, 418 F.3d 277, 315 (3d Cir. 2005) (“*In re Cmty. Bank*”) (internal citations omitted). “To overcome the presumption of adequate representation, the proposed intervenor must ordinarily demonstrate adversity of interest, collusion, or nonfeasance on the part of a party to the suit.” *Id.*

The NDRC cannot demonstrate that its primary interest – defense of the Court Drawn Plan – is not and cannot be adequately represented by Defendants. Indeed, it is difficult to fathom any parties better equipped and able to represent this interest than Defendants. For example, Defendants were defendants in the *LWW* Action and fully supported the Petitioners in that case in their efforts to invalidate the 2011 Plan. And the NDRC’s suggestion here that Defendants’ primary concern is merely election administration “whatever the applicable districting plan may be,” *see* Memo. of Law at 12, is wholly disingenuous. Defendants here – appointees of Pennsylvania’s Governor Wolf, who was also represented in these matters by the same counsel who currently represent Defendants – actively participated at trial in the *LWW* Action to the benefit of the Petitioners who sought to overturn the 2011 Plan.

For example, Defendants argued to the Pennsylvania Supreme Court that the 2011 Plan must be deemed unconstitutional. They actually argued for the very remedy being challenged in this case. Defendants’ pre-argument submissions to that court also advanced identical sentiments. *See* January 10, 2018 Supreme Court Brief at 1, a copy of which is attached hereto as **Exhibit A** (“The evidence weighed overwhelmingly in favor of the conclusion that the Congressional map put in place in 2011 (the ‘2011 Plan’) is not only a partisan gerrymander, but is an extreme outlier on the scale of partisan gerrymanders, one of the most excessively

partisan maps that the nation has ever seen.”). Defendants worked hand in glove with the Petitioners to advance precisely the same interests that the NDRC is advancing here.

Additional examples from federal cases also seeking to invalidate the 2011 Plan also show that Defendants will adequately represent the NDRC’s purported interests. In *Agre v. Wolf*, No. 17-4392 (E.D. Pa. 2017), where other plaintiffs sought to invalidate the 2011 Plan, Defendants’ counsel here, Mark Aronchick, delivered an impassioned closing statement in which he criticized the 2011 Plan and stated that the plaintiffs therein presented compelling evidence that the 2011 Plan was unconstitutional, an argument which Defendants reiterated in their post-trial submission. See December 15, 2017 Post-Trial Brief at 3, attached hereto as **Exhibit B**. Furthermore, Defendants’ opposition to a motion to dismiss in *Diamond v. Torres*, No. 17-5054 (E.D. Pa. 2017), provides yet another example of the synchronized interests between Defendants and the NDRC. The motion to dismiss would have terminated all claims, *including those against Defendants*, but they opposed it in an attempt to have the 2011 Plan declared unconstitutional. See *Diamond v. Torres*, No. 17-5054 (E.D. Pa. Jan. 23, 2018) (ECF 83-1 at 6). In fact, so aligned were Defendants’ positions with those advanced by the *Diamond* Plaintiffs, that the legislative defendants in that action filed a motion to realign the parties such that Defendants would be deemed party-plaintiffs. See ECF 83; see

also ECF 83-1 at 6-10 (identifying instances from the *LWV* action, *Agre* and *Diamond* where Defendants aligned themselves with parties seeking to invalidate the 2011 Plan).⁵

Defendants' desire to invalidate the 2011 Plan and preserve the Court Drawn Plan is also already evident in *this* suit. Defendants wrote to the Court requesting, *inter alia*, assignment of a specific judge to the three-judge panel and a deferral of action by this Court while a stay application is pending in the U.S. Supreme Court. ECF No. 10. Defendants recited a laundry list of defenses and perceived factual, legal, and procedural hurdles that they claimed bar Plaintiffs' requested relief. *Id.* These are hardly the actions of a party uninterested or unmotivated in defending the same interests as the NDRC.⁶ Thus, because it is clear that Defendants – *in at least three cases already* – have advanced precisely the same objectives as the NDRC, it is abundantly clear that Defendants are more than capable and fully

⁵ Plaintiffs note that counsel for the NDRC is also counsel for the *Diamond* plaintiffs.

⁶ Plaintiffs also note for the Court that Governor Wolf has vocally supported the Pennsylvania Supreme Court's actions in drawing the Court Drawn Plan. *See, e.g., Governor Wolf Statement on Remedial Congressional Map from PA Supreme Court* (Feb. 19, 2018), <https://www.governor.pa.gov/governor-wolf-statement-remedial-congressional-map-pa-supreme-court> ("I applaud the court for their decision and I respect their effort to remedy Pennsylvania's unfair and unequal congressional elections."). Defendant Secretary of the Commonwealth and Defendant Commissioner of the Bureau of Commissions, Elections, and Legislation of Pennsylvania serve at the pleasure of Governor Wolf, and it can safely be assumed that they will aggressively fight in favor of the Supreme Court's Court Drawn Plan – in the same manner sought by the NDRC.

willing to adequately represent the NDRC's interests here too. *See In re Cmty. Bank*, 418 F.3d at 315 (“When the party seeking intervention has the same ultimate objective as a party to the suit, a presumption arises that its interests are adequately represented.”).⁷

The NDRC cites *Trbovich v. United Mine Workers*, 404 U.S. 528, 539 (2010), for the proposition that “a proposed intervenor’s interests are not adequately represented where current defendant is obligated to serve two distinct interests, which, are related, but may not always dictate precisely the same approach to the conduct of the litigation.” Memo. of Law at 13. In *Trbovich*, the Secretary of Labor had two roles imposed upon him by statute: (1) to effectively serve as the lawyer for the union member seeking to enforce union election rights; and (2) to protect the public interest in assuring free and democratic union elections. 404 U.S. at 538-39. Pennsylvania has no statute imposing similar conflicting roles on Defendants.

The NDRC also argues that, even if Defendants have the same or overlapping interests as the NDRC, Defendants “cannot prioritize the interests of

⁷ In addition, it is disingenuous to suggest that a national political organization represented by a group of lawyers from Chicago and Washington, D.C., can better protect Pennsylvania voters than the named Defendants, Pennsylvania’s own Secretary of the Commonwealth and Commissioner of the Bureau of Commissions, Elections, and Legislation, particularly when these officials were heavily involved in the underlying litigation in the Pennsylvania state courts.

Democratic voters whose votes were unconstitutionally diluted in the prior redistricting plan.” Memo. of Law at 13. This argument is misdirected. First, as demonstrated above, Defendants can (and have) adequately represented these interests in no less than three very aggressively fought litigations to date. Second, the NDRC does not have a *legal* interest in this case to be prioritized; it merely has a generalized *political* interest. As such, it should not have its interests elevated above all others. Finally, if “interests of Democratic voters” are prioritized over all others, it would result in the very type of extreme partisanship that the NDRC professes to stand against.

The NDRC has failed to show that Defendants will not adequately represent its interests. Therefore, its Motion must be denied.

B. The Court Should Not Allow Permissive Intervention Under Rule 24(b).

The NDRC argues that if it is not entitled to intervene as a matter of right, the Court should nevertheless permit its intervention pursuant to Federal Rule of Civil Procedure 24(b). This Court may grant permissive intervention under that Rule where the proposed intervenor “has a claim or defense that shares with the main action a common question of law or fact.” *See* Fed. R. Civ. P. 24(b)(1)(B). But, because the factors considered on a motion for permissive intervention are similar to those considered for a motion for intervention as a right, a finding that a party is not entitled to intervene as a right almost always results in a denial of

permissive intervention. *Brody*, 957 F.2d at 1124. The NDRC's request should be denied here.

The NDRC does not have a separate claim or defense that shares with the main action a common question of law or fact. The sole issue in dispute in this case is whether the Supreme Court of Pennsylvania's actions violate the Elections Clause of the U.S. Constitution by usurping legislative authority reserved for the General Assembly. The NDRC's interest in seeing that the 2011 Plan is invalidated and the Court Drawn Plan is implemented in time for the 2018 primary is not being litigated in this action. And the NDRC has failed to assert, nor could it, any claim or defense it has relating to the Elections Clause. Moreover, the NDRC's stated interest is *identical* to that of Defendants – upholding the invalidation of the 2011 Plan and the implementation of the Court Drawn Plan.

Furthermore, the cases cited to by the NDRC in support of its application for permission to intervene are inapposite. *See* Memo. of Law at 14-15 (citing cases which the NDRC claims support for the proposition that “Courts have specifically permitted intervention by parties whose interest are affected by the implementation of a districting plan.”).⁸ Each of the cases cited involved a challenge to the actual

⁸ Specifically, the NDRC cites to *League of Women Voters of Haverford Twp. v. Bd. of Comm'rs of Haverford Twp.*, CIV. A. No. 86-0546, 1986 WL 3868 (E.D. Pa. Mar. 27, 1986); *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1282 (D. Kan. 2002); *PAC for Middle Am. v. State Bd. of Elections*, No. 95 C 827, 1995 WL

districting plans. This is not the case here. In this case, Plaintiffs are not seeking to reargue the merits of the 2011 Plan, but are instead challenging the Pennsylvania Supreme Court's authority to impose new requirements regarding congressional redistricting and its failure to afford the Legislature an adequate opportunity to develop and implement a new plan. Accordingly, the NDRC finds no support in its cited cases, and the Court should deny its request to permissively intervene.

C. The NDRC Lacks Standing To Be A Party-Litigant.

The NDRC also lacks standing and therefore should not be permitted to intervene. Article III of the U.S. Constitution limits the jurisdiction of federal courts to actual cases or controversies. *See* U.S. CONST. art. III, § 2; *Allen v. Wright*, 468 U.S. 737, 750 (1984). The most important aspect of the case and controversy requirement is the doctrine of standing, which prevents litigants from “raising another person’s legal rights,” and prohibits the adjudication of generalized grievances “more appropriately addressed in the representative branches.” *Allen*, 468 U.S. at 750-51. “Standing to sue *or defend* is an aspect of the case or controversy requirement.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) (emphasis added). A party seeking to intervene must therefore establish standing to be a party-litigant. *See In re Endangered Species Act Section 4 Deadline Litig.*, 704 F.3d 972, 976 (D.C. Cir. 2013).

571893 (N.D. Ill. Sept. 22, 1995); and *Bossier Parochial Sch. Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994).

To establish standing, a party, including a defendant, bears the burden of demonstrating that it has suffered an injury to a legally protected interest that is both concrete and particularized. *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560–61 & n.1 (1992). The Supreme Court has “consistently held that a plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.” *Id.* at 573-74.

The NDRC fails to show that its alleged injuries are to a legally protected interest that is both concrete and particularized. Specifically, the NDRC’s stated interest is to “remedy the deliberate and extreme partisan gerrymandering and the dilution of Democratic votes.” Memo. of Law at 4. Its purported interest centers on the fact that it seeks to “increase voter engagement in the redistricting process, enact fairer redistricting plans, and challenge unconstitutional redistricting plans in court.” *Id.* This is nothing more than a general grievance with the redistricting process.

The Court Drawn Plan and this lawsuit alleging violations of Article I, Section IV of the U.S. Constitution involve interests which are not concrete or particularized to the NDRC, but instead generally implicates the interests of all

voters in Pennsylvania.⁹ *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (taxpayer standing rejected because the alleged injury was a grievance suffered in common with people in general). Accordingly, the NDRC does not have independent standing as it can only plead a generalized grievance, a grievance felt by all Pennsylvania voters equally. *See Lance v. Coffman*, 549 U.S. 437, 442 (2007) (rejecting generalized standing under the Elections Clause).

III. CONCLUSION

For the foregoing reasons, the NDRC's Motion should be denied.

⁹ The fact that the NDRC purports to represent Democratic voters is of no consequence as "Democratic voters" are no more an identifiable group of people than voters at large. *See Vieth v. Jubelirer*, 541 U.S. 267, 297 (2004) (plurality op.) ("Political affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line.").

February 27, 2018

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing brief complies with the word-count limitation set forth in LR 7.8(b). Based on the word count feature of the word-processing system used to prepare this brief, I certify that it contains 4622 words, exclusive of the cover page, tables, and the signature block.

Dated: February 27, 2018

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