

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

---

Paula M. Overby,

Plaintiff,

v.

Steve Simon, *in his official capacity as  
Minnesota Secretary of State*, and Timothy  
Walz, *in his official capacity as Governor  
of Minnesota*,

Defendants.

---

Civil No. 0:20-cv-02250-WMW-TNL

**MEMORANDUM IN SUPPORT OF  
UNOPPOSED MOTION TO  
INTERVENE AS DEFENDANTS**

RETRIEVED FROM DEMOCRACYDOCKET.COM

**TABLE OF CONTENTS**

	<b>Page</b>
I. BACKGROUND .....	1
II. ARGUMENT .....	3
A. Representative Craig and Ms. Davies Have Article III Standing. ....	3
B. Intervention as of Right Is Proper Pursuant to Federal Rule of Civil Procedure 24(a). ....	5
C. Alternatively, Permissive Intervention Should Be Granted Pursuant to Federal Rule of Civil Procedure 24(b). ....	6
CONCLUSION .....	7

RETRIEVED FROM DEMOCRACYDOCKET.COM

**TABLE OF AUTHORITIES**

**CASES**

*Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1093 (8th Cir. 2011)..... 8

*City of Clarkson Valley v. Mineta*, 495 F.3d 567 (8th Cir. 2007) ..... 7

*Craig v. Simon*, No. 20-3126, 2020 WL 6253445 (8th Cir. Oct. 23, 2020) ..... 6

*Craig v. Simon*, No. 20-CV-2066, 2020 WL 5988497 (D. Minn. Oct. 9, 2020) ..... passim

*Curry v. Regents of Univ. of Minn.*, 167 F.3d 420 (8th Cir. 1999) ..... 7

*Kistner v. Craig*, No. U.S. 20A73 (Oct. 27, 2020) ..... 6

*Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)..... 7

*Nat’l Parks Conservation Ass’n v. U. S. Env’t Prot. Agency*, 759 F.3d 969 (8th Cir. 2014) ..... 9

*South Dakota v. Ubbelohde*, 330 F.3d 1014 (8th Cir. 2003) ..... 7

*United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829 (8th Cir. 2009) ..... 7

**STATUTES**

2 U.S.C. § 7 ..... 5, 8, 9

Minn. Stat. § 204B.13..... 5, 8

Minn. Stat. § 204C.33..... 6, 8, 10

**OTHER AUTHORITIES**

Fed. R. Civ. P. 24(a) ..... 5, 9, 11

Fed. R. Civ. P. 24(b)..... 10, 11

## TABLE OF AUTHORITIES

Plaintiff Paula Overby seeks to overturn the preliminary injunction *already entered* by this Court in proceedings brought by Proposed Intervenor-Defendants Angela Craig and Jenny Winslow Davies (“Intervenors”). The Court’s injunction enjoined Defendant Secretary of State Steve Simon (the “Secretary”) from enforcing Minnesota Statute § 204B.13 (the “Minnesota Statute”), which purports to move the date of a federal election due to the of death Adam Weeks, the Legal Marijuana Now (“LMNP”) candidate. *See Craig v. Simon*, No. 20-CV-2066 (WMW/TNL), 2020 WL 5988497 (D. Minn. Oct. 9, 2020). This is the same statute that Plaintiff now asks this Court to enforce.

Intervention is necessary because Plaintiff seeks to postpone Minnesota’s 2nd Congressional District election from November 3, 2020—the date specified by 2 U.S.C. § 7—to February 9, 2021. If granted, the relief Plaintiff seeks would harm Intervenors’ interests in having the election proceed on the date set by Congress and in ensuring that the 2nd Congressional District has representation in the U.S. House of Representatives on January 3, 2021. Intervention should be permitted as of right or, in the alternative, Intervenors should be granted permissive intervention. *See Fed. R. Civ. P. 24(a)–(b)*.

### I. BACKGROUND

Representative Craig is the U.S. Representative for Minnesota’s 2nd Congressional District. She is running for re-election and is the Democratic nominee. Representative Craig has an interest in ensuring that the election proceeds on November 3, 2020, the date prescribed by federal law, 2 U.S.C. § 7, and that the results from the election are certified. If the election is postponed, it will impact Representative Craig’s candidacy and campaign.

Ms. Davies is a registered voter in the 2nd Congressional District. She has voted for a candidate in the 2nd Congressional District in the November general election. Ms. Davies wants that vote to count and for her district to be represented in the U.S. House of Representatives in January 2021, when members are sworn in. If the election is postponed, it will impact Ms. Davies' interests in having her vote count and in being represented in the House.

After Mr. Weeks' death, the Secretary announced on September 24 that he was postponing the election for the 2nd Congressional District House seat to February 2021, pursuant to the Minnesota Statute. On September 28, Intervenor filed a lawsuit against the Secretary to protect their interests. *See Craig*, 2020 WL 5988497. Intervenor sought and received a preliminary injunction from this Court that allows the election to proceed on November 3, 2020. *Id.* The Court permitted Tyler Kistner, the Republican Party candidate for the 2nd Congressional District, to intervene in those proceedings. After the Court entered the injunction, Kistner sought a stay from this Court pending his appeal to the Eighth Circuit. The Court denied that request. *See Craig v. Simon*, No. 20-CV-2066 (WMW/TNL), Dkt. 57. The Eighth Circuit subsequently denied Kistner's request for stay finding that he was unlikely to succeed on the merits of his appeal. *See Craig v. Simon*, No. 20-3126, 2020 WL 6253445 (8th Cir. Oct. 23, 2020). Additionally, Justice Gorsuch, acting as Circuit Justice for the Eighth Circuit, denied Kistner's emergency application for a stay of this Court's preliminary injunction, without seeking a response from Intervenor or referring the matter to the full Court. *Kistner v. Craig*, No. U.S. 20A73 (Oct. 27, 2020).

Merits briefing is now underway in the Eighth Circuit on an accelerated basis, with briefing completed by November 9.

Plaintiff filed this lawsuit on October 29, 2020, naming the Secretary and Timothy Walz, Governor of Minnesota (“Defendants”) as Defendants. Dkt. 1. Neither Plaintiff nor Defendants object to Intervenors’ request to intervene in this case.

## II. ARGUMENT

### A. Representative Craig and Ms. Davies Have Article III Standing.

“Article III standing is a prerequisite for intervention in a federal lawsuit.” *Craig*, 2020 WL 5988497, at \*2 (quoting *Curry v. Regents of Univ. of Minn.*, 167 F.3d 420, 422 (8th Cir. 1999)). For standing, the litigant must “(1) have suffered an injury in fact, (2) establish a causal connection between the injury and the challenged action, and (3) show that the injury would be redressed by a favorable decision.” *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992), and *City of Clarkson Valley v. Mineta*, 495 F.3d 567, 569 (8th Cir. 2007)).

Here, the elements of Article III standing are plainly satisfied. First, Intervenors would be injured in fact if Plaintiff’s relief were granted. An injury must be “concrete, particularized, and either actual or imminent.” *Id.* (quoting *United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 834 (8th Cir. 2009)). “A prospective intervening defendant may establish an imminent injury sufficient for the purpose of standing by demonstrating that the remedies sought by the plaintiff, if granted, would threaten the prospective intervenor’s interests.” *Id.* (citing *South Dakota v. Ubbelohde*, 330 F.3d 1014, 1025 (8th Cir. 2003)). Intervenors have an interest in ensuring that the election for the 2nd Congressional District

is held on the date prescribed by federal law. *See* 2 U.S.C. § 7. In fact, Intervenor’s interests are so strong that they have already brought a lawsuit to protect those interests. *See Craig v. Simon*, Case No. 20-cv-2066 (WMW/TNL). And, in that litigation, this Court entered an injunction, among other things, enjoining the enforcement of the Minnesota Statute, thereby allowing the November 3 election to proceed and votes in that race to be counted and certified. *See Craig*, 2020 WL 5988497. Any change to the election date or date for certifying vote totals would impact Representative Craig’s campaign and candidacy, and it would affect Ms. Davies’ interest in ensuring that her vote is counted and that she has federal representation in January 2021. *Id.* at \*8 (holding that Intervenor’s “have demonstrated that they will suffer irreparable harm” if Minnesota Statute § 204B.13 were enforced). Plaintiff’s requested relief would thus cause a concrete, particularized, and imminent injury because it would “personally impact[]” Intervenor’s interests. *Id.* at \*2.

Causation is also satisfied. An intervenor “satisfies the traceability requirement if the defendant would be compelled to cause the alleged injury to the intervenor if the plaintiff prevails.” *Id.* at \*3. Here, Plaintiff asks the Court to order Defendants to hold a special election in February 2021 and to enjoin them from certifying the results of the November election. Such an order would compel Defendants to injure Intervenor’s interests.

Finally, Intervenor’s injuries would be redressed by a judicial determination that the election must go forward on the date specified by federal law. *Id.* at \*3 (citing *Am. Civil Liberties Union of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1093 (8th Cir. 2011)).

For these reasons, Intervenor has Article III standing.

**B. Intervention as of Right Is Proper Pursuant to Federal Rule of Civil Procedure 24(a).**

Intervention as of right is warranted when a proposed intervenor: “(1) files a timely motion to intervene; (2) claims an interest relating to the property or transaction that is the subject of the action; (3) is situated so that disposing of the action may, as a practical matter, impair or impede the movant’s ability to protect that interest; and (4) is not adequately represented by the existing parties.” *Id.* (quoting *Nat’l Parks Conservation Ass’n v. U. S. Env’t Prot. Agency*, 759 F.3d 969, 975 (8th Cir. 2014)).

Each factor is present. First, the motion to intervene is “unquestionably” timely, as Intervenors are moving to intervene just two days after Plaintiff filed her complaint, there is no delay, and the litigation is at an early stage. *id.* (citing *Tarek ibn Ziyad Acad.*, 643 F.3d at 1094).

Second, Intervenors have an interest in the subject matter and outcome of the litigation. Plaintiff asks the Court to postpone the election in the 2nd Congressional District until February 2021 and to enjoin Defendants from certifying the results of the November election. Representative Craig is running for reelection in the 2nd Congressional District and Ms. Davies is a voter in that district. Thus, Intervenors are directly interested in this case.

Third, the Court’s disposition of the case could impair or impede Intervenors’ ability to protect their interests in ensuring that the election occurs on the date set by federal law and that all lawfully cast votes are counted. *See* 2 U.S.C. § 7. This case was filed days before the general election, and less than a month before election results will be certified.



Minn. Stat. § 204C.33. Intervenors have only a “limited window of time” to protect their interests. *Craig*, 2020 WL 5988497, at \*3. Their ability to protect these interests would be impaired and impeded if Intervenors were not allowed to intervene.

Finally, Intervenors’ interests would not be adequately represented by the existing Defendants. Intervenors are a candidate for the U.S. House of Representatives in the 2nd Congressional District and a voter in that district. Their interests are “separate and distinct” from Defendants’ interests, and they should be allowed to intervene. *Id.* at \*4 (recognizing that Kistner, the Republican candidate, “holds interests in this litigation that may be separate and distinct from the interests of” the Secretary).

**C. Alternatively, Permissive Intervention Should Be Granted Pursuant to Federal Rule of Civil Procedure 24(b).**

In the alternative, the Court should exercise its discretion pursuant to Federal Rule of Civil Procedure 24(b) and allow intervention. “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Permissive intervention is more than appropriate here. First, as explained above, the motion is timely, and intervention will not unduly delay the proceedings or prejudice the original parties. *See* Fed. R. Civ. P. 24(b)(1), (3). Second, Plaintiff’s claims relate to the timing of the election in the 2nd Congressional District. Intervenors are a major party candidate and a voter in the district, and they will raise defenses “that share[] with the main

action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Specifically, Intervenor’s argue that the election must proceed on the date set by federal law, and that the state law Plaintiff relies on is preempted and unconstitutional.

In sum, if the Court declines to allow Intervenor’s to intervene as of right, they should be granted permissive intervention under Federal Rule of Civil Procedure 24(b).

### CONCLUSION

For the reasons above, Intervenor’s motion to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a)(2) should be granted or, in the alternative, permissive intervention should be granted pursuant to Federal Rule of Civil Procedure 24(b).

Dated: October 31, 2020

**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

s/Charles N. Nauen

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Rachel A. Kitze Collins (#0396555)

100 Washington Avenue S, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnnauen@locklaw.com

djzoll@locklaw.com

rakitzecollins@locklaw.com

**PERKINS COIE LLP**

Marc E. Elias (*pro hac vice* pending)  
Joel J. Ramirez (*pro hac vice* pending)  
700 Thirteenth Street NW, Suite 800  
Washington, DC 20005-3960  
Telephone: 202.654.6200  
Facsimile: 202.654.6211  
MElias@perkinscoie.com  
JoelRamirez@perkinscoie.com

Kevin J. Hamilton (*pro hac vice* pending)  
Holly M. Simpkins (*pro hac vice* pending)  
Laura C. Hill (*pro hac vice* pending)  
Nitika Arora (*pro hac vice* pending)  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
(206) 359-8000  
KHamilton@perkinscoie.com  
HSimpkins@perkinscoie.com  
LHill@perkinscoie.com  
NArora@perkinscoie.com

*Attorneys for Proposed Intervenors-Defendants*