

FILED

June 29, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A21-0243

A21-0546

Peter S. Wattson, Joseph Mansky,
Nancy B. Greenwood, Mary E. Kupper,
Douglas W. Backstrom and James E.
Hougas III, individually and on behalf
of all citizens and voting residents of
Minnesota similarly situated,

Petitioners,

and

Frank Sachs; Dagny Heimisdottir;
Michael Arulfo; Tanwi Prigge; Jennifer
Guertin; Garrison O'Keith McMurtrey;
Mara Lee Glubka; Jeffrey Strand;
Danielle Main; and Wayne Grimmer,

Petitioners,

vs.

Steve Simon, Secretary of State of
Minnesota; and Kendra Olson, Carver
County Elections and Licensing
Manager, individually and on behalf of
all Minnesota county chief election
officers,

Respondents.

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE AS
PLAINTIFFS**

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INTRODUCTION

Minnesota courts have recognized that Minnesota’s intervention rules should be liberally applied to allow all legitimate interventions. This is particularly true in redistricting cases, where the participation of parties representing concerned voters with standing and a diversity of interests will contribute to a fulsome record and the achievement of a fair result.

Consistent with their Complaint in Intervention filed on March 15, 2021, Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt (“Anderson Intervenor-Plaintiffs”) seek to intervene as additional and separate plaintiffs in this action. Their Complaint in Intervention asserts claims sharing common questions of law and fact as those asserted by the existing plaintiffs, but the Anderson Intervenor-Plaintiffs represent interests not yet adequately represented – namely, those of Republicans in Minnesota. The Anderson Intervenor-Plaintiffs’ motion is timely and their yet-unrepresented interests in this action will be impaired by its resolution in their absence. They therefore respectfully request an Order from this Court confirming their intervention as additional plaintiffs in this action or, alternatively, granting their motion to intervene.

FACTUAL AND PROCEDURAL BACKGROUND

A. History of Redistricting in Minnesota

Article IV, § 3 of the Minnesota State Constitution grants the Minnesota Legislature the authority “to prescribe the bounds of congressional and legislative districts” in its first session following the decennial census. The deadline for the drawing of congressional and legislative district boundaries following the 2020 census is February 15, 2022. Minn. Stat. § 204B.14.

In 2001, 2011, and now again in 2021, the Minnesota legislature failed to adopt a plan redrawing congressional and legislative districts prior to the end of the legislative session. Thus, as it did in *Zachman v. Kiffmeyer*, No. C0-01-160, in 2001 and in *Hippert v. Ritchie*, A99-152, in 2011, the task of drawing congressional and legislative district boundaries falls to the Special Redistricting Panel that will be appointed by this Court.

B. Procedural History of This Case

1. February 19, 2021: Wattson Plaintiffs Commence Their Lawsuit in the Minnesota District Court for the First Judicial District

On or about February 19, 2021, Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom, and James E. Hougas III (“Wattson Plaintiffs”) commenced in the Minnesota District Court for the First Judicial District a lawsuit against Steve Simon, Secretary of State, and Kendra Olson, Carver County Elections Manager, in a case captioned *Wattson, et al. v. Simon et al.*,

Court File No. 10-CV-21-127 (“Wattson Action”). The Wattson Action alleges that following the 2020 United States Census, the congressional and legislative districts drawn in *Hippert v. Ritchie* are no longer equally populated and are thus unconstitutional. *Wattson* Complaint ¶¶ 14-16, 40 & 50-53.

Among other things, the Wattson Plaintiffs seek as relief: (1) a declaration that the existing congressional and legislative boundaries violate their constitutional rights; (2) an injunction enjoining the defendants from conducting elections based on the current congressional and legislative districts; and, (3) should the Minnesota Legislature fail to adopt a redistricting plan, the taking and consideration of evidence and issuance of an Order setting forth new and valid plans for Minnesota congressional and legislative districts. *Id.* at pp. 18-19.

2. February 22, 2021: Wattson Plaintiffs Petition for the Appointment of a Special Redistricting Panel

The Wattson Plaintiffs then filed with this Court their Petition for Appointment of Special Redistricting Panel on February 22, 2021, which requested that this Court: (1) assume jurisdiction of its and any other congressional and legislative redistricting actions; and (2) appoint a panel to “hear and decide all matters, including all pretrial and trial motions relative to *Wattson v. Simon* or any other action that may arise relative to congressional and legislative redistricting based on the 2020 Census.” *Wattson* Petition ¶ 19.

3. March 15, 2021: Anderson Intervenor-Plaintiffs Serve and File Their Notice of Intervention and Complaint in Intervention in the Wattson Action

On March 15, 2021, the Anderson Intervenor-Plaintiffs filed and served on the Wattson Plaintiffs their Notice of Intervention and Complaint in Intervention. Forde Dec., Exs. 1-2. Defendants Steve Simon and Kendra Olson were served on March 16, 2021. Forde Dec., Exs. 3-4. Pursuant thereto, the Anderson Intervenor-Plaintiffs sought to intervene as additional plaintiffs in the Wattson Action.

As set forth in their Complaint in Intervention, the Anderson Intervenor-Plaintiffs sought and are entitled to intervene because: (1) they have an interest in the legislative and congressional reapportionments that are the subject of the Wattson Action; (2) the Wattson Plaintiffs do not identify themselves as Republicans and do not adequately represent, in whole or in part, the interests of the Anderson Intervenor-Plaintiffs; (3) the claims of the Wattson Plaintiffs and the Anderson Intervenor-Plaintiffs share common questions of law and fact; and (4) intervention was sought timely and early in the action.

To date, no party has objected to the Anderson Intervenor-Plaintiffs' Notice of Intervention.

4. March 22, 2021: Supreme Court Order Granting Petition for Appointment of Special Redistricting Panel

On March 22, 2021, this Court issued its Order granting the Wattson Plaintiffs' petition for appointment of a special redistricting panel, but staying the

appointment of that panel and all further proceedings in the Wattson Action until further order of the Chief Justice. The Court did not address the Anderson Plaintiffs' Notice of and Complaint in Intervention.

5. April 26 and 27, 2021: The Sachs Plaintiffs Commence a Separate Action and seek Consolidation with the Wattson Action

On April 26, 2021, Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer ("Sachs Plaintiffs") commenced in the Minnesota District Court for the Second Judicial District their lawsuit captioned *Sachs, et al. v. Simon*, Court File No. 62-CV-21-2213 ("Sachs Action"). The Sachs Plaintiffs identify themselves as registered voters in the State of Minnesota who "intend to advocate and vote for DFL candidates in the upcoming 2022 primary and general elections." *Sachs* Complaint ¶ 3. As does the Wattson Action, the Sachs Action alleges that, following the 2020 United States Census, the congressional and legislative districts drawn in *Hippert v. Ritchie* are no longer equally populated and are thus unconstitutional. *Id.* at ¶¶ 47, 50 & 55-57.

On April 27, 2021, the Sachs Plaintiffs filed with this Court their Petition for Assumption of Jurisdiction and Consolidation before Special Redistricting Panel.

6. May 20, 2021: Order Consolidating the Wattson Action and Sachs Action

On May 20, 2021, this Court granted the Sachs Plaintiffs' Petition, consolidated the Wattson Action and Sachs Action, and extended the stay imposed in the Wattson Action to the Sachs Action. That stay remains in place.

ARGUMENT

I. INTERVENTION STANDARD

Rule 24 of the Minnesota Rules of Civil Procedure governs intervention in the state of Minnesota. That rule provides for two types of intervention – (1) intervention as a matter of right and (2) permissive intervention. The requirements for intervention as a matter of right are set forth in Minn. Stat. § 24.01, which states as follows:

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Minn. Stat. § 24.02, which governs permissive intervention, states as follows:

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a common question of law or fact . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 24 "is designed to grant one who is left out of a suit a right to become a party despite objection by the parties to the action in order to prevent judicial

processes ‘from being used to prejudice the rights of interested third persons.’” *Avery v. Campbell*, 279 Minn. 383, 387-88, 157 N.W.2d 42, 45 (1968). This Court has “followed the policy of encouraging all legitimate interventions.” *Costley v. Caromin*, 313 N.W.2d 21, 28 (Minn. 1981) (citations omitted). Thus,

“[i]f [the movant’s] interest is similar to, but not identical with, that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but [the movant] ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.”

Id. (quoting 7A Charles A. Wright & Arther R. Miller, *Federal Practice & Procedure*, § 1909, at 524 (1972). Rule 24 should, therefore, “be applied liberally.” *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 446 (Minn. App. 2013) (citation omitted).

Moreover, as was recognized by the Special Redistricting Panel in *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Aug. 18, 2011) (Order Granting Motions for Intervention) for those parties who have standing to intervene, “judges in redistricting cases ‘should take a more permissive approach to intervention . . . and should open up participation . . . to incorporate more of the diverse interests that have a stake in the outcome.’” *Id.* (quoting Note, *Federal Court Involvement in Redistricting Litigation*, 114 Harv. L. Rev. 878, 900 (2001)).

II. THE INTERVENTION OF THE ANDERSON INTERVENOR-PLAINTIFFS SHOULD BE CONFIRMED

In setting forth the procedure for intervention, Minn. R. Civ. P. 24.03 provides that:

A person desiring to intervene shall serve on all parties to the action and file a notice of intervention which shall state that in the absence of objection by an existing party to the action within 30 days after service thereof upon the party, such intervention shall be deemed to have been accomplished. The notice of intervention shall be accompanied by a pleading setting forth the nature and extent of every claim or defense to which intervention is sought and the reasons for the claim of entitlement to intervention.

On March 15, 2021, the Anderson Intervenor-Plaintiffs filed their Notice of Intervention and Complaint in Intervention and served those documents on the Wattson Plaintiffs. Forde Dec., Exs. 1-2. On March 16, 2021, the Anderson Intervenor-Plaintiffs' Notice of Intervention and Complaint in Intervention were served on Respondents Steven Simon and Kendra Olson. Forde Dec., Exs. 3-4. Having received no objection from any existing party to the Wattson Action, the Anderson Intervenor-Plaintiffs' intervention was effective as of April 16, 2021.

The Anderson Intervenor-Plaintiffs therefore respectfully request an Order from this Court confirming their intervention as additional plaintiffs in this case pursuant to the procedure set forth in Minn. R. Civ. P. 24.03.

III. ALTERNATIVELY, THE ANDERSON INTERVENOR-PLAINTIFFS' MOTION FOR INTERVENTION SHOULD BE GRANTED

A. The Anderson Intervenor-Plaintiffs are Entitled to Intervene as a Matter of Right

Under Minn. R. Civ. P. 24.01, there are four requirements that must be met for a party to intervene as a matter of right:

(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties.

Miller v. Miller, 953 N.W.2d 489, 493 (Minn. 2021) (quoting *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012)). The Anderson Intervenor-Plaintiffs satisfy each of these four requirements.

1. The Anderson Intervenor-Plaintiffs' application for intervention is timely

“‘Timeliness’ of an application to intervene is determined on a case-by-case basis and depends on factors such as (1) how far the subject suit has progressed; (2) the reason for delay in seeking intervention; and (3) any prejudice to the existing parties because of the delay.” *Westfield Ins. Co.*, 840 N.W.2d at 446 (citing *Halverson ex rel. Halverson v. Taflin*, 617 N.W.2d 448, 450 (Minn. App. 2000)).

This suit has not progressed far. The Court's stay of proceedings remains in place and a Special Redistricting Panel has not yet been appointed. Moreover, the Anderson Intervenor-Plaintiffs acted promptly and served and filed their Notice of Intervention and Complaint in Intervention in the Wattson Action only twenty-four

days after that action was commenced and before either Defendant had answered the Wattson Plaintiffs' Complaint. Any intervening delay in seeking to confirm that intervention or otherwise moving to intervene was the result of this Court's March 22, 2021 Order staying all further proceedings, and despite that stays continuation, the Anderson Intervenor-Plaintiffs now make their motion to avoid any delay upon the appointment of the Special Redistricting Panel.

Given the promptness with which the Anderson Intervenor-Plaintiffs have moved in seeking to intervene as additional plaintiffs, no party will be prejudiced by their intervention. Indeed, no party has objected to the intervention.

2. The Anderson Intervenor-Plaintiffs have an interest in the subject of this action

As set forth in their Complaint in Intervention, the Anderson Intervenor-Plaintiffs are citizens and qualified voters of the United States of America and the State of Minnesota who reside in various counties, legislative districts, and congressional districts in Minnesota. Ex. 2 at ¶ 1. Moreover, those Intervenor-Plaintiffs reside in certain congressional and/or legislative districts that are disproportionately highly-populated. *Id.* ¶¶ 22-23 & 41-42.

The Anderson Intervenor-Plaintiffs' Complaint in Intervention, like the Wattson Plaintiffs' Complaint and the Sachs Plaintiffs' Complaint, thus seeks (1) a declaration that the existing congressional and legislative boundaries violate their constitutional rights; (2) an injunction enjoining defendants from conducting

elections based on the current congressional and legislative districts; and (3) the taking and consideration of evidence and issuance of an Order setting forth new and valid plans for Minnesota congressional and legislative districts. *Id.* pp. 12-13. The Anderson Intervenor-Plaintiffs therefore have an interest in the legislative and congressional reapportionments that are the subject of this action. *Id.* ¶ 9.

3. The disposition of this action will impair and impede the Anderson Intervenor-Plaintiffs' ability to protect their interest

As the Minnesota Legislature failed before the end of the 2021 legislative session to adopt a plan redrawing congressional and legislative districts, the Special Redistricting Panel appointed by this Court will now draw those districts. Thus absent intervention, the Anderson Intervenor-Plaintiffs' ability to protect their interest in the reapportionment of Minnesota's congressional and legislative districts will be impaired.

4. The Anderson Intervenor-Plaintiffs' interest is not adequately represented by the existing parties

The Anderson Intervenor-Plaintiffs are Republicans residing and voting in Minnesota. Ex. 2 at ¶ 10. They thus seek in this action to represent and advance the interests of Republicans in Minnesota. *Id.*

The Anderson Intervenor-Plaintiffs seek to intervene as additional plaintiffs in this action because the existing plaintiffs do not adequately represent their interests. The Wattson Plaintiffs do not identify themselves as Republicans, and it is

the Anderson Intervenor-Plaintiffs' understanding and belief that the Wattson Plaintiffs do not seek in this action to represent or advance the interests of Republicans in Minnesota. *Id.* The Sachs Petitioners are members and/or supporters of the DFL Party in Minnesota and expressly allege that they "intend to advocate and vote for DFL candidates in the upcoming 2022 primary and general elections." *Sachs* Complaint ¶ 6. Thus no existing plaintiff in this action will adequately represent the interests of the Anderson Intervenor-Plaintiffs.

As recognized in previous redistricting cycles in Minnesota, a permissive approach to intervention should be taken to allow for the participation of a diversity of interests with a stake in the outcome. The Anderson Intervenor-Plaintiffs have interests diverse from those of the Wattson Plaintiffs and the Sachs Plaintiffs, have a stake in the outcome of this redistricting litigation, and thus have a right to intervene as petitioners in this action.

B. Alternatively, the Anderson Intervenor-Plaintiffs Should Be Permitted to Intervene

Even if the Anderson Intervenor-Plaintiffs did not satisfy the requirements for intervention as a matter of right under Minn. R. Civ. P. 24.01, which they do, they should be permitted to intervene pursuant to Minn. R. Civ. P. 24.02. That rule requires only that: (1) an application be timely; (2) intervention will not prejudice the rights of the existing parties; and (3) the claims or defenses of the proposed

intervenor share a common question of law or fact with the existing claims in the action. *Id.*

For the reasons set forth above, the Anderson Intervenor-Plaintiffs' request to intervene is timely and will not unduly delay the action or prejudice the rights of the existing parties. And it is further undeniable that their claims and those of the Wattson Plaintiffs and the Sachs Plaintiffs share common questions of law and fact – namely, (1) the constitutionality of the current plan of congressional districts and legislative districts established by the Special Redistricting Panel in *Hippert*, and (2) the reapportionment of congressional and legislative districts in conformity with the United States Constitution and the Minnesota Constitution – but that the Anderson Intervenor-Plaintiffs interests are not yet represented by another party in this action.

The Anderson Intervenor-Plaintiffs must therefore be permitted to intervene as additional plaintiffs in this action.

CONCLUSION

Because the Anderson Intervenor-Plaintiffs satisfy all of the requirements for intervention under Rule 24, their motion should be granted.

Dated: June 29, 2021

Respectfully submitted,

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LLP

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