

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

Dr. Bruce Corrie, Shelly Diaz, Alberder  
Gillespie, Xiongpaoo Lee, Abdirizak  
Mahboub, Aida Simon, Beatriz  
Winters, Common  
Cause, OneMinnesota.org, and Voices  
for Racial Justice,

Intervention Petitioners,

vs.

Steve Simon, in his official capacity as  
Minnesota Secretary of State,

Respondents,

**MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION TO INTERVENE**

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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,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder  
Gillespie, Xiongpaoo Lee, Abdirizak  
Mahboub, Aida Simon, Beatriz  
Winters, Common  
Cause, OneMinnesota.org, and Voices  
for Racial Justice,

Intervention Petitioners,

vs.

Steve Simon, Secretary of State of  
Minnesota,

Respondent.

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## INTRODUCTION

Minnesota courts recognize 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 a diversity of interests will contribute to a fulsome record and the achievement of a fair result.

As set forth in their Intervention Petition, Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpaoo Lee, Abdirizak Mahboub, Aida Simon, Beatriz Winters, Common Cause, OneMinnesota.org (“OneMN.org”), and Voices for Racial Justice (“Intervention Petitioners”) seek to intervene as additional and separate petitioners in this consolidated redistricting action. The Intervention Petitioners assert claims that raise common questions of law and fact as those asserted by the existing parties, but the Intervention Petitioners represent interests not yet adequately represented in this action – namely, the interests of Minnesotans who identify as Black, Indigenous, or Persons of Color (“BIPOC”). The Intervention Petitioners’ Motion to Intervene is timely and their yet-unrepresented interests will be impaired by any resolution of this action in their absence. Accordingly, the Intervention Petitioners respectfully request an Order confirming their intervention as additional parties 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 and 2011, the Minnesota Legislature failed to adopt a plan redrawing congressional and legislative districts prior to the end of the legislative session. Accordingly, in the 2001 matter of *Zachman v. Kiffmeyer*, No. C0-01-160, and the 2011 matter of *Hippert v. Ritchie*, A99-152, the task of drawing congressional and legislative district boundaries fell to the Special Redistricting Panel.

To date in 2021, the Minnesota Legislature has failed to adopt a plan redrawing congressional and legislative districts. Thus, the task of drawing congressional and legislative district boundaries following the 2020 Census is again expected to fall to the Special Redistricting Panel that was recently appointed in this case.

**B. Procedural History of This Consolidated Action**

In February 2021, plaintiffs who identify as “redistricting aficionados” (Wattson Compl. ¶ 4) filed an action in Carver County District Court alleging Minnesota’s current legislative and congressional districts are unconstitutional based on the 2020 Census, thus requiring declaratory and injunctive relief. *Wattson v. Simon*, Carver County District Court File No. 10-CV-21-127 (“Wattson Action”). In March 2020, this Court granted a petition filed in the Wattson Action to appoint a Special Redistricting Panel to hear and decide challenges to the validity of state

legislative and congressional districts based on the 2020 Census. *Watson v. Simon*, No. A21-0243. Meanwhile, a group of plaintiffs who identify as members or supporters of the Republican party filed papers seeking to intervene in the Wattson Action. (See Compl. in Intervention dated March 15, 2021, filed in the Wattson Action on behalf of Paul Anderson *et al.*)

In April 2021, parties who identify as supporters of the Democratic-Farm-Labor (“DFL”) party filed a separate action in Ramsey County District Court seeking the same basic relief as requested by the plaintiffs and proposed intervenors in the Wattson Action. *Sachs v. Simon*, Court File No. 62-CV-21-2213 (“Sachs Action”). Specifically, the plaintiffs in the Sachs Action allege Minnesota’s current legislative and congressional districts are unconstitutional based on the 2020 Census, thus requiring declaratory and injunctive relief.

On May 20, 2021, this Court granted a petition to consolidate the Wattson Action, No. A21-0243, with the Sachs Action, No. A21-0546, and it stayed the consolidated action until further order of the Court.

On June 30, 2021, this Court entered an order lifting the stay, appointed members to the Special Redistricting Panel, and authorized the Panel to hear and decide: (1) all matters, including all pretrial and trial motions, in connection with claims asserted in the consolidated action; and (2) any additional challenges filed in state court as to the validity of state legislative and congressional districts based on

the 2020 Census. In this Order, the Court also directed the Panel to rule on pending motions to amend the complaints, add additional parties, and intervene in the consolidated action.

**C. The Intervention Petitioners Motion to Intervene**

On July 15, 2021, the Intervention Petitioners filed and served their Intervention Petition and Motion to Intervene on all of the parties and proposed intervenors in this consolidated action. Through their Petition and Motion, the Intervention Petitioners seek to intervene as additional parties in this action.

As explained in their Petition, the Intervention Petitioners seek to intervene because: (1) they have an interest in the legislative and congressional redistricting process that is the subject of this action and their claims share common questions of law and fact with those asserted by the exiting parties; (2) the existing parties and proposed intervenors do not adequately represent the interests of the Intervention Petitioners and other BIPOC community members in the redistricting process; and (3) the Intervention Petitioners sought timely and early intervention.

**ARGUMENT**

**I. INTERVENTION STANDARD**

Rule 24 of the Minnesota Rules of Civil Procedure recognizes 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 Rule 24.01, which states:

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.

The requirements for permissive intervention are set forth in Rule 24.02, which states:

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.

In general, 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,

"If [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).

In redistricting cases, the Special Redistricting Panels appointed by this Court have recognized that that “a more permissive approach to intervention” should be taken in order to “open up participation” and “incorporate more of the diverse interests that have a stake in the outcome.” *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Aug. 18, 2011) (Order Granting Motions for Intervention) (quoting Note, *Federal Court Involvement in Redistricting Litigation*, 114 Harv. L. Rev. 878, 900 (2001)).

## **II. THE INTERVENTION PETITIONERS’ MOTION TO INTERVENE SHOULD BE DEEMED EFFECTIVE IF NO OBJECTIONS ARE RAISED**

The procedure for intervention is set forth in Rule 24.03, which states:

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 July 15, 2021, the Intervention Petitioners filed and served their Notice of Intervention, Intervention Petition, and Motion to Intervene on the parties and proposed intervenors. Absent any objection to the Notice of Intervention, the

Intervention Petitioners' intervention in this action should be deemed effective as of August 13, 2021 under Rule 24.03.

**III. ALTERNATIVELY, THE INTERVENTION PETITIONERS' MOTION TO INTERVENE SHOULD BE GRANTED**

**A. The Intervention Petitioners are Entitled to Intervene as a Matter of Right**

Under Rule 24.01, the following requirements 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 Intervention Petitioners satisfy each of these requirements.

**1. The Intervention Petitioners timely filed their Motion to Intervene**

“‘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 action has not progressed far. The Court only recently appointed members of the Special Redistricting Panel, and the Panel has to make any substantive decisions. A motion to amend the complaint and to add a party is pending. So, too, is a motion to intervene filed by another group of proposed intervenors.

Given the promptness with which the Intervention Petitioners moved to intervene as additional parties, no party will be prejudiced by their intervention.

**2. The Intervention Petitioners have an interest in the subject of this action**

As set forth in their Intervention Petition, the Intervention Petitioners include 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. (Intervention Petition ¶ 2.) Through their Petition, the Intervention Petitioners seek the same basic relief as the other parties and proposed intervenors in this consolidated action—namely, (1) a declaration that Minnesota’s existing congressional and legislative boundaries in violate their constitutional rights; (2) an injunction enjoining respondents from conducting elections based on the current congressional and legislative districts; and (3) the taking and consideration of evidence and the ultimate issuance of an Order establishing new and valid boundaries for Minnesota congressional and

legislative districts. The Intervention Petitioners therefore have an interest in the legislative and congressional reapportionments that are the subject of this action.

**3. The disposition of this action will impair and impede the Intervention Petitioners' ability to protect their interests**

Because the Minnesota Legislature has thus far failed to adopt a plan for redrawing congressional and legislative districts consistent with the 2020 Census, the Special Redistricting Panel appointed by this Court is now charged with drawing the district boundaries. Absent intervention, the Intervention Petitioners' ability to protect their interests and the shared interests of Black, Indigenous, and all Minnesotans of Color in the redistricting of Minnesota's congressional and legislative districts will be impaired.

**4. The Intervention Petitioners' interest is not adequately represented by the existing parties**

The Intervention Petitioners proudly identify as members of Minnesota's BIPOC communities and nonprofit advocacy organizations that share an interest in making sure the rights and interests Black, Indigenous, and all Minnesotans of Color are adequately represented in the redistricting process. (Intervention Petition ¶¶ 2 and 6-16.) They seek to intervene in this action in order to represent and advance their interests as Black, Indigenous, and Minnesotans of Color, as well as the interests of BIPOC communities throughout the State of Minnesota. (*Id.*)

The Intervention Petitioners seek to intervene as additional parties in this action because the existing parties do not adequately represent and do not seek to represent or advance the interests of BIPOC communities and community members. (Intervention Petition ¶¶ 24-28.) Accordingly, none of the existing parties or proposed intervenors represent the interests of the Intervention Petitioners. (*Id.*)

As recognized in previous redistricting cycles in Minnesota, a permissive approach to intervention in redistricting cases should be taken to allow for the participation of diverse interests with a stake in the outcome. The Intervention Petitioners have an interest in this matter that is different from those of the existing parties and proposed intervenors and thus have a right to intervene as parties in this action.

**B. Alternatively, the Intervention Petitioners Should Be Permitted to Intervene**

Even assuming the Intervention Petitioners do not satisfy the requirements for intervention as a matter of right under Rule 24.01 (they do), they should be granted permissive intervention under Rule 24.02. That rule requires only that: (1) an application for intervention be timely; (2) intervention will not prejudice the rights of the existing parties; and (3) the claims or defenses of the proposed intervenors share a common question of law or fact with the existing claims in the action. *Id.*

As explained above, the Intervention Petitioners' Motion to Intervene is timely and will not unduly delay the action or prejudice the rights of the existing parties. And it is undeniable that the claims of the Intervention Petitioners share common questions of law and fact with those of the existing parties. Because Minnesotans of color and their interests are not adequately represented by the existing parties, and because Minnesota law favors a permissive approach to intervention in order to incorporate diverse interests with a stake in the outcome of redistricting cases, the Intervention Petitioners should be permitted to intervene as additional parties.

### CONCLUSION

For the foregoing reasons, the Intervention Petitioners respectfully request that the Special Redistricting Panel grant their Motion to Intervene and allow them to participate as parties in this consolidated action.

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Dated: July 15, 2021

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