

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

A21-0243
A21-0546

FILED

September 3, 2021

OFFICE OF
APPELLATE COURTS

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, and
League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane,
Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors,

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,

Defendants,

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION
AND APPLICATION
TO INTERVENE BY
PROPOSED DATA SCIENCE
INTERVENORS**

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

Plaintiffs,

and

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

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

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INTRODUCTION

This Motion to Intervene is brought by 12 Minnesota voters who seek to bring a unique perspective to the challenging task of drawing congressional and legislative districts in this State. Each proposed intervenor works at one of Minnesota's leading colleges or universities as a professor or research scientist in mathematics, statistics, computer science, geography, or an allied field directly relevant to redistricting. Each of the proposed intervenors comes to this proceeding untethered to the agenda of any political party, incumbent officeholder, or demographic or special interest group. And each comes to this Panel with a genuine desire to be helpful—to assist the Members of the Panel in identifying maps that use the best math and science to ensure fair and effective representation for all Minnesotans. These “Proposed Data Science Intervenors” intend, with the assistance of experts, to use highly sophisticated computational methods and algorithmic techniques to present this Panel with proposed congressional and legislative redistricting maps that optimize the nonpartisan objectives that should govern redistricting.

These 12 Minnesota voters learned only recently that their congressional and legislative districts are overpopulated in violation of the “one person, one vote” principle protected by both the United States and Minnesota Constitutions. On August 12, 2021, the U.S. Census Bureau released what is known as the “Redistricting Data Summary File.” Due primarily to the COVID-19 pandemic, the Redistricting Data Summary File was released many months later this year than in prior post-Census years. Thus, it was only as of the August 12 release of this Census data (the “August 12 Census Redistricting Data Release”) that these Minnesota voters first learned whether their current districts are either overpopulated or underpopulated, and thus whether or not their votes will be diluted if future elections are held in those districts.

The Proposed Data Science Intervenors (and their counsel) also learned just days ago that on July 22, 2021, the Panel entered a scheduling order setting August 4, 2021 as the deadline for

seeking to intervene in this proceeding. (July 22, 2021 Order, at 2.) But August 4 was eight days *before* the Census Bureau released the Redistricting Data that conclusively revealed which voters have justiciable interests in the redistricting process. The Proposed Data Science Intervenors, like everyone else in Minnesota, did not have justiciable claims on August 4.

The Proposed Data Science Intervenors should not be barred from intervening because of a deadline that expired before they could know whether or not they had legitimate claims. And it would be inefficient to require the Proposed Data Science Intervenors to file their own separate lawsuit in district court, only to then ask the Panel to consolidate that suit with this one. The existing parties do not adequately represent Proposed Data Science Intervenors' interests because no one else proposes to assist the Panel in preparing redistricting plans based on the cutting-edge data science and computational methods described in this Motion. There also would be no prejudice to allowing intervention at this juncture, as no other substantive deadline has passed, and the Proposed Data Science Intervenors are fully prepared to comply with all upcoming deadlines.

Significantly, counsel for the Proposed Data Science Intervenors have not found a single redistricting case—in state court or federal court, in Minnesota or any of the 49 other States—denying citizens access to court because they failed to file *before* the release of the Census Redistricting Data that gave rise to their claims. Doing so here would not only be unprecedented. It would be manifestly unjust.

Therefore, the Proposed Data Science Intervenors respectfully ask the Panel to grant their Motion and allow them to intervene and participate fully in these proceedings.¹

¹ The Proposed Data Science Intervenors request that the Panel dispense with the lengthy notice procedure of Rule 24.03, which could consume a number of weeks and thus likely defeat the purpose of the proposed intervention. Counsel for the Proposed Data Science Intervenors have made efforts to obtain written consent to intervention from all parties to this case. Two groups of parties indicated they would not consent at this time, the defendant Secretary of State indicated he neither consented nor objected, and other parties have not yet provided written responses. Counsel

FACTUAL AND PROCEDURAL BACKGROUND

I. The Proposed Data Science Intervenors.

The Proposed Data Science Intervenors are twelve Minnesota voters who each reside in a congressional or legislative district that the August 12 Census Redistricting Data Release identified as overpopulated. (Proposed Compl. ¶¶ 3, 6–19.) As detailed more fully in the attached Proposed Complaint in Intervention, they are also professors and academics at leading Minnesota colleges and universities who teach and conduct research in subfields of mathematics and science that are directly relevant to redistricting. (*Id.*) The Proposed Data Science Intervenors include two Past Presidents of the Mathematical Association of America, an Associate Executive Director of the American Mathematical Society, a Member of the National Academy of Sciences, and three research scientists from the Minnesota Population Center, which is the University of Minnesota’s institute for demographic research, including spatial demography. (*Id.* ¶¶ 8–10, 12, 17–19.) Each Proposed Data Science Intervenor believes that high-speed computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, improve the redistricting process, and promote fair and effective representation for all Minnesotans, and they seek to intervene to leverage their experience and knowledge, as well as their team of experts, to assist this Panel for the benefit of all Minnesotans. (*Id.* ¶¶ 3, 6–19.)

II. Proceedings to Date.

This matter is in its early stages. This Panel was appointed on June 30, 2021. (June 30, 2021 Order, at 3.) On July 22, 2021, this Panel entered an order setting August 4, 2021 as the deadline to intervene. (July 22, 2021 Order, at 2.) On August 23, 2021, the Panel granted two

for the Proposed Data Science Intervenors believe the issue of consent can be better addressed with these intervention papers on file and, promptly upon filing, intend to consult further with counsel for the existing parties to determine whether consent can be obtained. Counsel will inform the Panel once they receive the final positions of the existing parties.

motions to intervene, explaining in part that the Panel “has a strong interest in gathering broad and varied input to inform its decision, because the redistricting process affects all Minnesotans.” (Aug. 23, 2021 Order, at 4.) On August 24, 2021, the Panel entered a scheduling order seeking a stipulation on preliminary issues by September 24, and then, as to redistricting principles, a stipulation by October 12, responses on areas of disagreement by October 20, and, if necessary, oral argument on November 3, 2021. (Aug. 24, 2021 Order, at 2–3.) The Panel also has indicated an intent to hold public hearings in October 2021. (July 22, 2021 Order, at 3.) If permitted to intervene, the Proposed Data Science Intervenors intend to comply with all these deadlines.

ARGUMENT

Under Minnesota Rule of Civil Procedure 24.01, the Proposed Data Science Intervenors should be permitted to intervene as of right so long as (1) their application is “timely”; (2) they “claim[] an interest” relating to the redistricting plans that are the subject of this proceeding; (3) they are “situated” so that the disposition of the action “may as a practical matter impair or impede [their] ability to protect [their] interests”; and (4) the existing parties do not “adequately represent[]” the proposed intervenor’s interests. *See* MINN. R. CIV. P. 24.01. Alternatively, permissive intervention is proper where (1) the application is timely, and (2) the proposed claims “have a common question of law or fact” with the existing claims. *See* MINN. R. CIV. P. 24.02.

Because intervention reduces duplicative litigation, courts in this State “encourage intervention whenever possible,” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986), and apply the intervention rules “liberally,” *Blue Cross/Blue Shield of Rhode Island v. Flam*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993), *rev. denied* (Minn. Feb. 24, 1994). As demonstrated below, the Proposed Data Science Intervenors’ Motion should be deemed timely, notwithstanding the Panel’s order setting an August 4 deadline for intervention, and they otherwise amply satisfy the liberal intervention requirements.

I. This Motion to Intervene Should Be Deemed Timely.

The Proposed Data Science Intervenors, and their counsel, were unaware of the Panel’s July 22, 2021 Scheduling Order until well after its August 4 deadline for intervention had passed. More fundamentally, that August 4 deadline expired eight days *before* the August 12 Census Redistricting Data Release, and it was not until that release that the Proposed Data Science Intervenors could determine whether they had claims to bring based on the 2020 Census. Therefore, this Motion should be deemed timely.

A. Standard of Review.

The Panel’s August 4 intervention deadline is a “non-jurisdictional procedural rule[] designed for the orderly transaction of business,” rather than a “jurisdictional time limit[] set forth by statute.” *Cole v. Wutzke*, 884 N.W.2d 634, 637–38 (Minn. 2016). As such, the Panel has ample discretion to relax the August 4 deadline. *See id.* at 638.

Rule 24 does not establish any specific deadline for a person to intervene in a proceeding, instead simply requiring intervention applications to be “timely.” MINN. R. CIV. P. 24.01, 24.02. Timeliness under Rule 24 is “considered on a case-by-case basis.” *Blue Cross/Blue Shield of Rhode Island*, 509 N.W.2d at 396. This flexible standard makes sense: By definition, a proposed intervenor is not a “party” to the proceeding and may not be aware of or receive any notice of the proceeding’s existence or developments implicating the intervenor’s interests. Accordingly, timeliness under Rule 24 “depends on factors such as how far the suit has progressed, the reason for the delay in seeking intervention, and any prejudice to the existing parties because of the delay.” *Id.*

The Rules of Civil Procedure contain other timeliness standards when a court-ordered deadline is involved, such as good cause for modifying a scheduling order (Rule 16.02) or “excusable neglect” for altering a deadline after it has passed (Rule 6.02). Counsel for the Proposed Data Science Intervenors have not located a case in which a Minnesota court applied the

“excusable neglect” standard, rather than Rule 24 itself, to determine the timeliness of an attempt to intervene that was made (as here) before judgment was entered. Nonetheless, if the Panel believes such standards are pertinent, the Proposed Data Science Intervenors satisfy the “good cause” and “excusable neglect” standards as well, for the same reasons they satisfy Rule 24’s timeliness requirement. *See, e.g., Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 471 (Minn. Ct. App. 2006) (“excusable neglect” standard also involves inquiry into the reasons for any delay, the party’s diligence, and potential prejudice).

B. The Proposed Data Science Intervenors Have Valid Reasons for Not Having Sought to Intervene by the August 4 Deadline.

As shown below, the Proposed Data Science Intervenors did not file this Motion before August 4 because they were unaware of the Panel’s deadline, had no reason to believe such a deadline would exist before the release of Census Redistricting Data, and—most importantly—did not appreciate, and could not have appreciated, the nature and extent of their claims before the August 12 Census Redistricting Data Release.

1. The Proposed Data Science Intervenors’ Claims—and the Redistricting Process—Depend on Official Census Redistricting Data.

Redistricting claims depend, necessarily, on the Census Redistricting Data that this year was released on August 12. The United States Constitution provides that Representatives in Congress “shall be apportioned among the several States according to their respective numbers,” based on an “actual Enumeration [that] shall be made within every . . . Term of ten Years, in such Manner as [Congress] shall by Law direct.” U.S. CONST. art. I, § 2; *id.* amend. XIV, § 2. The U.S. Census Bureau releases data from the federal decennial census in steps. In the first step—typically in December (but this year on April 26)—the Bureau releases a single number for each State, reflecting the State’s total population. That number is used to determine how many congressional seats (and thus congressional districts) each State will have for the next decade. But because the release

consists of literally a single number for the entire State and lacks any geographic detail, it cannot be used to determine whether existing districts are overpopulated or underpopulated, or to prescribe the bounds of new districts. In the second step—typically in March (but this year on August 12)—the Bureau releases its “Census Redistricting Data (Public Law 94-171) Summary File,” which contains population data for every “census block” in the State. A State the size of Minnesota typically has about 200,000 census blocks. This Redistricting Data Summary File contains the data that citizens need in order to determine whether their districts are overpopulated or underpopulated, and that legislatures (and sometimes courts) need in order to prescribe the bounds of new districts. Thus, redistricting occurs once every decade—*after* the U.S. Census Bureau releases the decennial Redistricting Data Summary File pursuant to Public Law No. 94-171. *See* 13 U.S.C. § 141.

If the Legislature fails to produce congressional and legislative districting plans, courts must step in. But the necessary precursor to this activity—whether by the Legislature or a duly appointed judicial panel—is the release of the decennial Census Redistricting Data on which all redistricting is premised. *See, e.g., Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016) (“Today, all States use total-population numbers from the census when designing congressional and state-legislative districts”); *Karcher v. Daggett*, 462 U.S. 725, 738 (1983) (“[T]he census count represents the ‘best population data available’” for redistricting and “is the only basis for good-faith attempts to achieve population equality”) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969)).

This progression—Census Redistricting Data first, followed by redistricting—is reflected in Minnesota’s Constitution. The Constitution gives the Legislature “the power to prescribe the bounds of congressional and legislative districts,” but only “*after each enumeration of the inhabitants of this state made by the authority of the United States.*” MINN. CONST. art. IV, § 3 (emphasis added). Of course, the “enumeration of the inhabitants of this state” that is “made by the authority of the United States” is the federal decennial Census. The August 12 Census

Redistricting Data Release is what ripened the Minnesota Legislature’s authority, under the Minnesota Constitution, to embark upon the redistricting process.

For the Proposed Data Science Intervenors, the August 12 Census Redistricting Data Release is also what revealed to them, in concrete and unarguable terms, the fact that they live in overpopulated districts and thus have viable “one person, one vote” claims. Although there were ways of *projecting* or *estimating* which districts would be overpopulated or underpopulated prior to the release of the Census Redistricting Data, those projections and estimates necessarily rely on sampling and lack the kind of substantial (and costly) federal, state, and local outreach that facilitates full participation among the population. Only the Census Redistricting Data Summary File shows the actual *enumerated* population counts by district.

The August 12 Census Redistricting Data Release reveals that prior estimates, such as the 2019 data estimates from the Minnesota State Demographic Center on which other parties to this proceeding have relied, are not accurate or reliable for purposes of redistricting. For example, the August 12 Census Redistricting Data Release confirms that each of the 12 Proposed Data Science Intervenors lives in at least one overpopulated district. (Proposed Compl. ¶¶ 8–19.) Living and residing in an overpopulated district is what gives a person a viable “one person, one vote” claim. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“[A]n individual’s right to vote . . . is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living [i]n other parts. . . .”); *Baker v. Carr*, 369 U.S. 186, 205–06 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue”); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) (“A plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district, asserts only a generalized grievance against governmental conduct of which he or she does not approve.” (quotation marks and citation omitted)). But the 2019 data estimates from the Minnesota Demographic Center

incorrectly labeled as overpopulated the legislative districts where nine of the twelve Proposed Data Science Intervenors reside and vote.²

Thus, the Proposed Data Science Intervenors were able to confirm only *after* the August 12 Census Redistricting Data Release whether and to what extent they have valid claims and are proper parties to this proceeding. This is because right up until Census Redistricting Data is released, “States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned” under the data from the prior Census. *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2002). Any other result would lead to continuous efforts to redraw district maps as the population shifts. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 421 (2006) (plurality op.) (Kennedy, J.) (the “legal fiction” is “necessary to avoid constant redistricting, with its accompanying costs and instability”); *cf. Reynolds*, 377 U.S. at 583–84 (reapportionment every ten years meets “the minimal requirements for maintaining a reasonably current scheme of legislative representation” under the Equal Protection Clause). Thus, the release of the Census Redistricting Data every ten years is what kicks off the entire cycle of redistricting and, inevitably, redistricting litigation. That release did not happen until eight days after the Panel’s intervention deadline.

2. The Pandemic Delayed the Release of Census Data and Thus Delayed the Proposed Data Science Intervenors in Confirming Their Claims.

The timing of the present redistricting process based on the 2020 Census differs from prior redistricting cycles in one crucial respect: The COVID-19 pandemic caused a five-month delay in the release of Census Redistricting Data. The data was due in March 2021, *see* 13 U.S.C. § 141,

² These are Senate Districts 20, 64, 62, and 66, and House Districts 42A and 61B. *See* 2019 Minn. House Dist. Population, Minn. Legis. Coordinating Comm’n Geographic Info. Servs. (Jan. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019HousePopEst.pdf> (last visited Sept. 1, 2021); 2019 Minn. Senate Dist. Population, Minn. Legis. Coordinating Comm’n Geographic Info. Servs. (Feb. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019SenatePopEst.pdf> (last visited Sept. 1, 2021).

but was not released until August 12, 2021.

The COVID-related delay has compressed the time available for the Legislature or this Panel to adopt new, constitutional redistricting plans. The statutory deadline for the Legislature and Governor to complete redistricting is February 15, 2022, *see* MINN. STAT. § 204B.14, subd. 1a (2020); but if they fail, this Panel must act at that point. Recognizing the time pressure, the Chief Justice of the Minnesota Supreme Court appropriately appointed this Panel six weeks before the 2020 Census Redistricting Data was released. (June 30, 2021 Order, at 3.)

In the post-2000 and post-2010 redistricting cycles, the Chief Justice also appointed a special redistricting panel in the summer months (July 2001 and June 2011, respectively). (July 12, 2001 Order, at 2; June 1, 2011 Order, at 2–3.³) In both instances, however, that appointment occurred *after* the decennial Census Redistricting Data had been released (on March 28, 2001 and March 15, 2011, respectively) *and after* the Legislature had several months to attempt to adopt redistricting plans based on that Census Redistricting Data.⁴ Even with that extra time, motions to intervene in the 2001 redistricting case were not due until September 14, 2001 (2001 Special Redistricting Panel, Aug. 22, 2001 Order, at 2)—nearly *six months after* the 2000 Census Data was released on March 28, 2001. In the 2011 redistricting cycle, motions to intervene were due on July 29, 2011. (2011 Special Redistricting Panel, July 18, 2011 Order, at 2.) While that date is

³ The orders of or associated with the 2001 Special Redistricting Panel are available at <https://www.mncourts.gov/Media/Historic-High-Profile-Cases/Special-Redistricting-Panel-2001.aspx> (last visited Sept. 1, 2021). The orders of or associated with the 2011 Special Redistricting Panel are available at <https://www.mncourts.gov/Media/Historic-High-Profile-Cases/Special-Redistricting-Panel-2011.aspx> (last visited Sept. 1, 2021).

⁴ *See* Census Bureau Delivers Minnesota’s Census 2000 Population Totals, U.S. Census Bureau (Mar. 28, 2001), *available at* https://www.census.gov/newsroom/releases/archives/census_2000/cb01cn29.html (last visited Sept. 1, 2021); Census Bureau Ships Local 2010 Census Data to Minnesota, U.S. Census Bureau (Mar. 15, 2011), *available at* https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn88.html (last visited Sept. 1, 2021).

effectively within a week (and ten years) of the August 4, 2021 date that this Panel set for these proceedings, there is one crucial difference: By the end of July 2011, the 2010 Census Redistricting Data had been available for more than four months, and thus it was clear at that point which districts were overpopulated. In contrast, the 2020 Census Redistricting Data was not available this year until eight days *after* the August 4, 2021 intervention deadline.

The Chief Justice’s Order appointing this Panel implicitly acknowledges this year’s timing considerations, as the Order gave the Panel authority to hear both already-filed claims and all “additional” redistricting challenges filed in state court “*based on the 2020 Census.*” (June 30, 2021 Order, at 3 (emphasis added).) The Proposed Data Science Intervenors had no claims “based on the 2020 Census” until, at a minimum, the August 12 Census Redistricting Data Release.

3. The Proposed Data Science Intervenors Acted Promptly and Efficiently Once Their Claims Ripened.

This Motion thus should be deemed timely, despite the August 4 deadline. That is so because, as just explained, the Proposed Data Science Intervenors’ claims did not ripen until August 12. And that is so because, once those claims ripened and counsel identified the August 4 deadline, the Proposed Data Science Intervenors promptly brought this Motion. In similar circumstances, courts have favored intervention. *See, e.g., Matter of Welfare of Child. of M.L.S.*, No. A20-1644, 2021 WL 2640559, at *11 (Minn. Ct. App. June 28, 2021) (reversing denial of intervention because the proposed intervenor acted diligently once she learned of the case and her right to participate); *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 446 (Minn. Ct. App. 2013) (reversing denial of intervention where proposed intervenor sought intervention promptly after learning of the case); *Halverson ex rel. Halverson v. Taflin*, 617 N.W.2d 448, 450-51 (Minn. Ct. App. 2000) (reversing denial of intervention filed a month after entry of order of protection, concluding the intervenor’s interests were strong and she had not understood the need to act

earlier); *Erickson v. Bennett*, 409 N.W.2d 884, 887 (Minn. Ct. App. 1987) (reversing denial of post-judgment intervention where intervenor had no notice of hearing implicating its interests).

Fairness and efficiency dictate that conclusion with particular force because, undoubtedly, the Proposed Data Science Intervenors could file a separate action in a Minnesota district court, and then seek to consolidate that case with this one. But that approach would be far less efficient than permitting intervention now. *See, e.g., Norman*, 383 N.W.2d at 678 (reversing denial of intervention, reasoning it made “little sense” to “force[]” the intervenors “to bring a separate lawsuit and then attend numerous motion hearings brought for consolidation”).

C. This Proceeding Is in Its Early Stages, and Permitting Intervention Now Would Not Prejudice the Parties or the Panel’s Work.

This Motion also should be deemed timely because this proceeding is in its early stages, with the merits not having been briefed, argued, or decided, and allowing intervention at this juncture would not prejudice the existing parties or the Panel’s work more broadly. *See Blue Cross/Blue Shield of Rhode Island*, 509 N.W.2d at 396. The first substantive submission from the parties—a stipulation about a few preliminary issues arising from the 2020 Census data—is not due until September 24, 2021. (Aug. 24, 2021 Order, at 2.) Thereafter, a stipulation on redistricting principles is due October 12, 2021, briefs on disputes about redistricting principles are due October 20, 2021, and oral argument on redistricting principles (if needed) is scheduled for November 3, 2021. (*Id.* at 3.) The Proposed Data Science Intervenors are fully prepared to comply with all these deadlines, and any others the Panel will set. There is no prejudice in allowing intervention at this point. *See, e.g., BE & K Const. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn. Ct. App. 1991) (reversing denial of intervention where “no rights ha[d] been adjudicated” and “no new issues ha[d] been introduced” that would prejudice the parties).

The unique considerations involved in redistricting also support the timeliness of this

Motion, as prior Special Redistricting Panels have taken a broad approach to intervention. For example, in 2011, the panel held that its own “interest in gathering information from various sources outweigh[ed] the possible inconvenience to the parties of considering and responding to the arguments of the two groups of intervenors.” (2011 Special Redistricting Panel, Aug. 18, 2011 Order, at 4.) The panel cited commentary highlighting the importance of taking a “permissive approach to intervention” in redistricting proceedings, to “open up participation . . . [and] 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))). It would do a disservice to the Panel and Minnesota voters to prevent the Proposed Data Science Intervenors from participating in this proceeding because of a deadline that expired before they possessed the data on which both their claims and this State’s redistricting process are premised.

II. The Proposed Data Science Intervenors Satisfy the Other Requirements to Intervene as of Right (Rule 24.01) or for Permissive Intervention (Rule 24.02).

The Proposed Data Science Intervenors also satisfy the other requirements for intervention under Rule 24. *See* MINN. R. CIV. P. 24.

A. The Proposed Data Science Intervenors Have a Strong Interest in This Proceeding and Seek to Assist This Panel.

The Proposed Data Science Intervenors have a strong interest in the validity of the congressional and legislative districts that are the subject of this proceeding. The Proposed Data Science Intervenors are United States citizens and qualified voters in the State of Minnesota who seek to preserve their ability to exercise their undiluted right to vote for their preferred candidates in primary and general elections. (Proposed Compl. ¶ 4.) But they are also professors and academics in subfields of science and mathematics who care deeply about using rigorous computational methods and analytics to improve the redistricting process in this State. (*Id.* ¶¶ 3, 6–19.) The Proposed Data Science Intervenors ask to participate in this proceeding to ensure that

science and technology have a seat at the redistricting table, and to provide the Members of this Panel the benefit of the cutting-edge methodologies that will allow them to adopt maps that maximally comply with whatever districting principles and criteria the Panel chooses to adopt.

In prior decades, judicial redistricting panels have grappled with the need, as a matter of good redistricting, to adhere to multiple criteria—such as population equality, contiguity, compactness, respect for county boundaries, and compliance with the Voting Rights Act—along with the reality that each criterion at some point conflicts with the others. Satisfying all these principles simultaneously is the core challenge for anyone seeking to redistrict in the public interest.

The Proposed Data Science Intervenors bring a unique and important perspective to this problem. Through experts, they can offer cutting-edge computational methods and resources to develop maps that approach being “Pareto optimal,” which means that they are so strong on each redistricting criterion that improving the map on one criterion necessarily worsens it on another. These ideal, or nearly ideal, maps cannot be devised by hand, even with the best commercial redistricting software and weeks or months to draw them. But these maps can be discovered through “computational redistricting,” which is the use of algorithms designed to optimize maps across multiple criteria simultaneously by generating “chains” of thousands or millions of maps, each one better than its predecessor.

The Proposed Data Science Intervenors and their experts can assist this Panel by applying these computational methods to Minnesota’s congressional and legislative maps, dutifully deploying whatever redistricting principles and criteria this Panel ultimately chooses to articulate and prioritize. So far as the Proposed Data Science Intervenors and their counsel are aware, none of the existing parties to this proceeding can provide this Panel with those sorts of computational resources and maps. And the Proposed Data Science Intervenors and their experts will perform this work not in service of a political party or a set of incumbent officeholders or a particular

demographic group, but rather in service of the common interest that all Minnesotans share in having fair and effective representation in Congress and in the Legislature.

B. The Proposed Data Science Intervenors Cannot Protect Their Interests Without Participating in This Proceeding.

The Proposed Data Science Intervenors' interests in the redistricting process will be adjudicated in this proceeding, and if they are not allowed to participate in this proceeding, they effectively will have no other way to guarantee those interests will be protected. *See, e.g., State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 501-02 (Minn. Ct. App. 2005) (reversing denial of intervention where the proposed intervenor was unable to protect its interest without intervention). Federal court likely would not be an option under *Grove v. Emison*, 507 U.S. 25, 34–37 (1993), if this Panel timely completes its redistricting work. And although the Panel intends to hold public hearings in October 2021, participation in a public hearing is no substitute for a seat at the table. Indeed, in connection with the 2010 Census, parties to the redistricting proceeding in this Court were permitted to submit their own proposed maps, along with accompanying briefing, and to present their proposals (and challenges to others' proposals) at oral argument. (Nov. 4, 2011 Order, at 9–14, 2011 Special Redistricting Panel.) The Proposed Data Science Intervenors seek that same opportunity to participate here and to submit, as a group, proposed maps generated through the advanced algorithmic techniques and high-speed computing described above.

C. The Proposed Data Science Intervenors Have Unique Interests That the Existing Parties Do Not Adequately Represent.

Proposed intervenors need carry only a “minimal burden” to show inadequacy of representation. *Jerome Faribo Farms v. Cty. of Dodge*, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990) (reversing denial of intervention) (quotation marks and citation omitted). And here, the existing parties do not adequately represent the interests of the Proposed Data Science Intervenors.

The existing Plaintiffs are supporters of the Minnesota Democratic-Farmer-Labor Party

(Sachs, et al. Compl. ¶ 6); supporters of the Republican Party (Anderson, et al. Compl. Intervention ¶ 10); claimed “redistricting aficionado[s]” (Wattson, et al. Compl. ¶ 4); and persons who identify as Black, Indigenous, or Persons of Color (“BIPOC”) (Corrie, et al. Intervention Pet. ¶ 2).

By contrast, the Proposed Data Science Intervenors do not come to this Panel to advance the interests of any political party, incumbent officeholder, or demographic group. They come to the Panel as mathematicians and data scientists, as well as Minnesota voters, and they offer the Panel sophisticated technical assistance in creating the best maps possible under the circumstances—maps that fulfill and balance, to the greatest extent possible, all the criteria that this Panel may adopt for the redistricting process. And they can assist the Panel in translating qualitative principles into quantitative metrics, and in assessing the inevitable tradeoffs between competing criteria. No other party to this proceeding comes with the ability to provide such resources, knowledge, and expertise. Intervention by the Proposed Data Science Intervenors “would, if anything, be a beneficial addition allowing for a more informed decision by the [Panel].” (See Aug. 23, 2021 Order, at 4 (granting intervention) (quoting *Snyder’s Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974)).

D. In the Alternative, Permissive Intervention Is Appropriate.

For the same reasons, permissive intervention is also proper. There can be no question that there are “common question[s] of law or fact” between the Proposed Data Science Intervenors’ complaint and the complaints filed by the existing parties. See MINN. R. CIV. P. 24.02. Like the existing plaintiffs, the Proposed Data Science Intervenors also “assert an interest in the constitutionality of the existing congressional and legislative districts and the appropriate remedy for any constitutional infirmity.” (Aug. 23, 2021 Order, at 3.) Moreover, as shown above, permitting the Proposed Data Science Intervenors to participate in this action will not “unduly delay or prejudice the adjudication of the rights of the original parties.” MINN. R. CIV. P. 24.02;

see, e.g., Engelrup v. Potter, 224 N.W.2d 484, 488 (Minn. 1974) (reversing denial of intervention where the pleadings were closed and only limited discovery had been taken to date). To the contrary, the Proposed Data Science Intervenors submit that their assistance will be extraordinarily helpful as the Panel undertakes its challenging task of redistricting.

CONCLUSION

For the foregoing reasons, the Proposed Data Science Intervenors respectfully ask that this Panel grant their Motion and Application to Intervene and allow them to file their proposed Complaint in Intervention.

Dated: September 3, 2021

Respectfully submitted,

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