

ORIGINAL

STATE OF MINNESOTA
IN THE SUPREME COURT

No. A120920

OFFICE OF
APPELLATE COURTS

JUN - 8 2012

FILED

League of Women Voters Minnesota;
Common Cause, a District of Columbia
nonprofit corporation;
Jewish Community Action, a Minnesota
nonprofit corporation;
Gabriel Herbers;
Shannon Doty;
Gretchen Nickence;
John Harper Ritten; and
Kathryn Ibur,

Petitioners,

vs.

Mark Ritchie, in his capacity as
Secretary of State of the State of
Minnesota, and not in his
individual capacity,

Respondent.

**MOTION TO INTERVENE, MOTION FOR EXPEDITED
CONSIDERATION, AND MEMORANDUM IN SUPPORT**

Movant Minnesota Majority, Inc. ("Proposed Intervenor"), pursuant to Minn. R. Civ. P. 24.01 and, in the alternative, 24.02, hereby timely moves this Court, pursuant to Minn. R. Civ. App. P. 127 and this Court's scheduling Order dated June 1, 2012, to allow it to intervene as a respondent in this action to protect its interests, which would not be fully and adequately represented by the Respondent, and which may be impaired should this case be resolved without an opportunity for Proposed Intervenor to represent its interests.

In addition, due to the time-sensitive nature of this case, including the facts that the ballots must be printed and distributed no later than mid-September and that the Respondent is

openly opposed to the Amendment, Proposed Intervenor requests expedited consideration of this Motion.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Petitioners commenced this anti-democratic case to stop citizens of Minnesota from voicing their opinion in the electoral process. Petitioners would prevent those citizens from deciding whether to integrate election measures that protect election integrity into the Minnesota Constitution. Petitioners also seek to have this Court usurp the power and right of the Minnesota Legislature to have the people of Minnesota decide whether to amend the Minnesota Constitution.

Respondent is the Minnesota Secretary of State. Respondent has repeatedly opposed voter identification measures, and he opposes the Voter Identification Amendment, as well. He has testified before the Minnesota Legislature in opposition to Chapter 167, House File 2738, of the 2012 Session Laws (the “Voter Identification Amendment”), which is the subject of the Petitioners’ challenge. He is currently traveling across the State of Minnesota in opposition to the Voter Identification Amendment. Respondent’s open opposition to the Voter Identification Amendment undermines his ability to vigorously defend Petitioners’ challenge before this Court.

The Proposed Intervenor, Minnesota Majority, Inc., is an advocate for election integrity in Minnesota. It is a nonprofit corporation that promotes social welfare, including the protection of the election process. It believes the Voter ID requirement encapsulated in the Voter Identification Amendment is essential to ensure that only eligible voters are participating in Minnesota elections, and the people voting are who they say they are.

The Proposed Intervenor satisfies each requirement set forth in Minn. R. Civ. P. 24.01 for intervention as a matter of right: (1) it has timely filed this Motion to Intervene; (2) it has a substantial and direct interest in defending the Voter Identification Amendment and having it appear on the general election ballot; (3) it is situated such that, as a practical matter, it will be unable to protect its interest if it is not a party to this action; and (4) its interest is inadequately represented by the Respondent.

The Proposed Intervenor will suffer substantially if the people of Minnesota are not permitted to vote to enhance the integrity of the Minnesota election process. Given Proposed Intervenor's vital interests regarding intervention in this lawsuit, the Court should grant the present Motion to Intervene because the Proposed Intervenor meets the standards for intervention set forth in Minn. R. Civ. P. 24.01 and, in the alternative, Minn. R. Civ. P. 24.02.

II. BACKGROUND AND FACTS

A. Background

Voter fraud is a recurring problem in Minnesota. It affects all citizens and all political parties. More importantly, it affects the integrity of the system of government of election by the people. If an illegal vote is cast, it dilutes a legitimate vote. Voter fraud erodes the trust of the people and the fairness of the election process. It is for these reasons, among many others, the Minnesota Legislature addressed the issue of voter fraud in its last two sessions and has chosen to permit the people of Minnesota to decide for themselves whether identification should be required of voters at the polls on election day. The people will have the chance to make this decision of self-governance this November, unless Petitioners prevail in stifling their voice.

B. Facts

Prior to the 2008 general election, Proposed Intervenor reviewed Minnesota's voter records and discovered a number of apparent irregularities, including double voting, vacant and non-deliverable addresses used in voter registrations, deceased people remaining on voter registration lists, felons newly registered to vote, duplicate voter registration records, deficient voter registration records and other inconsistencies. (McGrath Aff. ¶ 4.¹) These inconsistencies were communicated to relevant authorities, but little to no action was taken. (McGrath Aff. ¶ 5-6.)

Then, the 2008 Minnesota general election resulted in several recounts and many months of legal maneuvering surrounding the United States Senate race between Al Franken and Norm Coleman. Star Tribune, *A Recounting of Minnesota's Senate Race* (June 2009) available at <http://www2.startribune.com/projects/timeline/recount.html>. Proposed Intervenor subsequently identified numerous instances of voter fraud, including more than 2,800 ineligible felon voters. See Dan McGrath, *Report on Fraudulent Votes Cast by Ineligible Felons in Minnesota's 2008 General Election*, (June 28, 2010), <http://www.minnesotamajority.org/Portals/0/documents/ReportOnFelonVoters.pdf>. Numerous examples of approximately eighteen different types of voter fraud and election irregularities are detailed in the Minnesota Majority's webpage and will be provided as further evidence in subsequent filings. See *The Case for Investigation and Reform in Minnesota's Elections*, (June 7, 2012), available at <http://www.minnesotamajority.org/TheIssues/ElectionIntegrity/tabid/188/Default.aspx>.

Having become aware of voter fraud and deficiencies in the voter and polling systems in Minnesota and recognizing the importance of election integrity, the Minnesota Legislature

¹ Proposed Intervenor is filing the supporting Affidavit of Dan McGrath contemporaneously with the filing of this Motion.

passed legislation in 2011 amending Minnesota voting law. *See* Chapter 69, Senate File 509 of the 2011 Session Laws. Governor Mark Dayton vetoed this legislation, and the legislature did not override his veto. *See* Veto Details, Minnesota Legislature: 1939 – Present, <http://www.leg.state.mn.us/lrl/vetoes/vetodetails.aspx?years=2011> (last visited June 6, 2012). Nearly a year later, on April 4, 2012, the legislature passed the Voter Identification Amendment. *See* Chapter 167, House file 2738, of the 2012 session laws.

While voter ID legislation was pending before the legislature, and again when the Voter Identification Amendment was pending, Respondent publically opposed these Voter ID laws and related requirements.² Respondent testified against the Voter Identification Amendment in the Senate State Government Innovation and Veterans Committee, stating that he believed “there is a more effective and lower cost way to approach the issue of visual verification of voters,” and then urged the committee to “take the cost of various approaches into their consideration.” *See e.g.*, Written Testimony for the Senate State Government Innovation and Veterans Committee; Office of Minnesota Secretary of State Mark Ritchie (February 29, 2012) <http://www.senate.mn/senators/26Parry/committee/Committee%20Documents/February%2022%202012/Written%20Testimony%20for%20SF%201577.pdf>. Beth Fraser, a spokesperson for Respondent, stated in her testimony before the Minnesota Legislature “[t]his proposal is simply a

² *See e.g.*, Written Testimony for the Senate State Government Innovation and Veterans Committee; Office of Minnesota Secretary of State Mark Ritchie (February 29, 2012) (available at <http://www.senate.mn/senators/26Parry/committee/Committee%20Documents/Februar%2022%202012/Written%20Testimony%20for%20SF%201577.pdf>) (last visited June 6, 2012); Secretary of State Mark Ritchie, Op-Ed., *Swift Action Needed to Save Same Day Registration*, Mar. 28, 2012, (available at <http://www.sos.state.mn.us/index.aspx?recordid=607&page=10>); Secretary of State Mark Ritchie’s Statement Regarding House Taking Up Constitutional Amendment On the Floor Today, Mar. 03, 2012, (available at [ww.sos.state.mn.us/index.aspx?recordid=603&page=10](http://www.sos.state.mn.us/index.aspx?recordid=603&page=10)); News Release; *Secretary of State Mark Ritchie Urges Senate Not to Rush to Pass the Amendment to Eliminate Same-Day Registration*, Mar. 21, 2012, (available at <http://www.sos.state.mn.us/index.aspx?recordid=609&page=10>).

bad idea. Please . . . vote against this proposed constitutional Voter Identification Amendment.”
Voter Identification Amendment: Hearing on S.F. 1577 Before the S. Comm. on Local Government and Elections, 87th Cong. (2012) (statement of Beth Fraser, Director of Governmental Affairs of the office of the Minnesota Secretary of State).

In short, the sole named respondent in this case has vocally opposed the Voter Identification Amendment since its outset. *See, e.g., Sec. of State Ritchie Steps Into Voter ID Battle*, CBS Minnesota, April 14, 2012, available at <http://minnesota.cbslocal.com/2012/04/14/sec-of-state-ritchie-steps-into-voter-id-battle/> (explaining Respondent’s opposition to voter ID requirements); *see also* n.1, *supra*.

In light of these facts, Proposed Intervenor seeks intervention in the instant dispute based upon legal justifications set forth below.

III. ARGUMENT

A. Proposed Intervenor Is Entitled to Intervene as a Matter of Right

Proposed Intervenor is entitled to intervene as a matter of right under Minn. R. Civ. P. 24.01. Rule 24.01 entitles a party to intervene where (a) the motion to intervene is filed timely, (b) the party has a substantial and direct interest relating to the property or transaction which is the subject of the action, (c) the party is situated such that the disposition of the action as a practical matter may impair or impede the party’s ability to protect its interest, and (d) the party’s interest is not adequately represented by existing parties. *Malmin v. Minn. Mut. Fire & Cas. Co.*, 552 N.W.2d 723, 726 n.3 (Minn. 1996); *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986).

Intervention is intended to allow parties to join a lawsuit to protect their interests regardless of whether a party would gain or lose by direct legal effect of a judgment in the case.

Intervention “is designed to grant to 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 the prejudice of the rights of interested third persons.’” *Avery v. Campbell*, 157 N.W.2d 42, 45 (Minn. 1968) (quoting 4 Moore, Federal Practice (2 ed.) par. 24.03, p. 14). “It is not necessary . . . to establish” that a proposed intervenor would “‘gain or lose by the direct legal effect of the judgment’ . . . if he were not made a party” for him to be entitled to intervention. *Avery*, 157 N.W. at 46 (quoting *Faricy v. St. Paul Inv. & Sav. Soc’y*, 125 N.W. 676, 679 (Minn. 1910)).

“In determining whether intervention is proper, the court will, absent sham or frivolity, accept the allegations in the pleadings as true.” *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (citing *Snyder’s Drug Stores, Inc. v. Minn. St. Bd. of Pharm.*, 221 N.W.2d 162, 164 (Minn. 1974)). This Court “follow[s] the policy of encouraging all legitimate interventions.” *Id.* (citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974); *Avery*, 157 N.W.2d at 46 (Minn. 1968)). Thus, absent extraordinary circumstances, intervention is decided on the pleadings and should be granted unless the factors are clearly not present.

1. The Proposed Intervenor’s Motion Is Timely.

The first factor for intervention as a matter of right is the requirement of a timely-filed motion. Minn. R. Civ. P. 24.01. Timeliness is fact-specific. As explained in *Minneapolis Star & Tribune*, “[t]he timeliness of the application to intervene, as in any case, will be based upon the particular circumstances involved and such factors as how far the suit has progressed, the reason for any delay in seeking intervention, and any prejudice to the existing parties because of a delay.” 392 N.W.2d at 208.

Here, the Court has entered a scheduling Order requiring that proposed intervenors file their motions to intervene by June 8, 2012. This Motion is filed in accordance with that Order and is therefore timely.

2. The Proposed Intervenor Has a Substantial and Direct Interest Relating to the Property or Transaction which Is the Subject of the Action.

The second factor of the test for intervention as of right is that the moving party must have a substantial and direct interest relating to the property or transaction which is the subject of the action. Minn. R. Civ. P. 24.01; *Costley*, 313 N.W.2d at 28. Proposed Intervenor has a substantial and direct interest relating to this matter.

In *Costley*, the proposed intervenor was a potential resident of a group home for “six or fewer mentally retarded persons” and their house-parents. *Id.* at 27. Neighbors sued to keep the home from opening, arguing the home violated a restrictive covenant on the property that required the homes in the neighborhood be single-family dwellings. *Id.* at 23. Defendant Caromin House, Inc.—the company seeking to open the group home—had interests similar to those of the movant resident. The company had procured all licenses as well as a Certificate of Need from the Minnesota Department of Health and an approval of the location by the Minnesota Department of Public Welfare. *Id.* at 23. It was seeking to open the home in that particular neighborhood, the neighborhood “near friends and family” of the residents. *Id.* at 28.

Nevertheless, this Court reversed the trial court’s denial of the resident’s motion to intervene. *Id.* The resident was attempting to ensure the group home was in his neighborhood. Caromin House was a corporation seeking to open and operate a residential group home, and had merely chosen that neighborhood. The *Costley* Court concluded, “Caromin House has no duty to the Residents before the home is in operation and they reside in it. In contrast, the Residents have a vital interest in being able to live in and participate in this community.” *Id.* Even though

Caromin House and the residents all wanted the home opened in the same location, their reasons were different. The residents were therefore entitled to intervene as of right.

Proposed Intervenor has a substantial and direct interest relating to the property or transaction which is the subject of the action. Proposed Intervenor has focused time, attention and money to the enactment of the Voter Identification Amendment and facilitated the coalition of organizations and individuals who seek to reduce voter fraud and enhance election integrity in Minnesota. (*See* McGrath Aff. ¶ 8-12.) Proposed Intervenor was actively involved in successfully placing this Voter Identification Amendment on the ballot. (McGrath Aff. ¶ 12-13.) Representatives of Minnesota Majority testified before the Minnesota legislature regarding the evidence of voter fraud and regarding legislative solutions. (McGrath Aff. ¶ 10-12.)

Even if Respondent defends the Voter Identification Amendment before this Court, his stated interests, rationales and goals in so doing are different from those of Proposed Intervenor. Proposed Intervenor has a vested interest in the success of this Voter Identification Amendment, having pursued it for nearly four years. (McGrath Aff. ¶ 4-13.) The same cannot be said of Respondent.

3. Disposition of this Action May as a Practical Matter Impair and Impede Proposed Intervenor's Ability to Protect Its Interests in the Case.

The third factor for intervention as of right is that the movant be situated such that disposition of the action may as a practical matter impair or impede its ability to protect that interest. Minn. R. Civ. P. 24.01; *Malmin* 552 N.W.2d at 726 n.3; and *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 207. Proposed Intervenor is so situated. Given that Proposed Intervenor has a vested interest in the subject matter and outcome of this case as described above, resolution of the case may impair or impede its ability to protect its interest in enhancing election integrity.

A party need not establish that it would “gain or lose by the direct legal effect of the judgment’ . . . if he were not made a party” to the action in order that the party to be entitled to intervention. *Avery*, 157 N.W.2d at 45. at 46 (*quoting Faricy*, 125 N.W. at 679). Nor is it enough for the current parties to object and argue that Proposed Intervenor would not be bound by a judgment in this case.

As the coalition leader, the Proposed Intervenor will be affected by the outcome of the case. The Proposed Intervenor has devoted significant time and treasure toward helping craft the Voter Identification Amendment. (McGrath Aff. ¶ 4-13.) Research conducted by Proposed Intervenor has informed the structure of the Voter Identification Amendment. (McGrath Aff. ¶ 4, 12.) In short, placement of the Voter Identification Amendment on the ballot has been one of Proposed Intervenor’s primary goals and purposes, and the Proposed Intervenor is conversant in the justifications and language used in the Voter Identification Amendment. (McGrath Aff. ¶ 2-12.) Granting any of Petitioner’s relief without the Proposed Intervenor having an opportunity to be heard would impair and impede Proposed Intervenor’s interest in this case.

4. Proposed Intervenor’s Interests Are Not Adequately Represented by the Existing Parties.

The final factor for intervention of right is the requirement that the movant’s interest not be adequately represented by the parties. Minn. R. Civ. P. 24.01; *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 207. There are some cases where “this factor should not be difficult to meet.” *Minneapolis Star & Tribune Co.*, 392 N.W.2d at 208. The Respondent’s opposition to the Voter Identification Amendment satisfies this final factor.

In *Minneapolis Star & Tribune Co.*, the newspaper moved to intervene and attempted to obtain court documents detailing settlement distributions. The case involved an airplane manufacturer and the heirs of five wrongful death victims in an attempt to obtain court

documents related to distributions of settlements. *Id.* at 200. The trial judge sealed the files “in order to protect the families of the deceased crash victims from public intrusion into their private lives and also to protect against influencing settlements of other suits against the manufacturer involving the same air crash.” *Id.* The parties opposed both the newspaper’s intervention in the case and the unsealing of the documents related to settlement. *Id.* These facts alone, this Court suggested, established that the intervenor’s interest was not represented by the parties. *Id.* at 208 (“In cases such as this one, where the existing parties are opposed to [the intervenor’s substantive claim], this factor should not be difficult to meet.”).

Proposed Intervenor is working to support the Voter Identification Amendment. Respondent has made it widely known that he opposes the Voter Identification Amendment being placed on the ballot. *See Facts, supra*; (McGrath Aff. ¶ 15.) Likewise, Petitioners, having brought this lawsuit to challenge the Voter Identification Amendment, oppose the Voter Identification Amendment being placed on the ballot. Proposed Intervenor seeks to defend what the Legislature of Minnesota approved.

B. Proposed Intervenor’s Permissive Intervention Is Also Appropriate.

In the alternative, the Court should grant the Proposed Intervenor permission to intervene as described in Minn. R. Civ. P. 24.02. The Court may grant permissive intervention when (a) the motion is timely; (b) the defense of the intervening party’s interests necessarily involves questions of law and fact that are common to questions of law and fact involved in the existing action; and (c) intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

These standards are met here. First, as explained above, this motion is timely.

Second, as described above, by giving full consideration to the merits as to whether the Voter Identification Amendment should remain on the ballot and whether to enjoin Respondent

from placing said Voter Identification Amendment on the ballot, this Court will be addressing questions of law and fact that are common to the same questions surrounding the interests of Proposed Intervenor. Simply, the important issues in this case deserve full and robust legal advocacy so this Court may carefully consider all arguments.

Third, granting the Proposed Intervenor leave to intervene will not delay resolution of this matter. Indeed, Proposed Intervenor is prepared to contribute to the full development of the factual and legal issues already presented, explaining the adverse impact that removing the Voter Identification Amendment from the 2012 general election ballot would have on the state budget, the office of the Secretary of State, interest groups including Proposed Intervenor, and the public as a whole. The Proposed Intervenor is also prepared to comply with this Court's already-established briefing schedule.

C. This Motion Should Be Considered Expeditiously.

Due to the time-sensitive nature of this case, including the facts that the ballots must be printed and distributed no later than mid-September, and that the Respondent is openly opposed to the Voter Identification Amendment, Proposed Intervenor requests expedited consideration of this Motion. Minn. R. Civ. App. P. 127 allows for a five-day response window by other parties, followed by a 2-day reply by Proposed Intervenor. However, because the Response Brief is due on June 25, 2012, Proposed Intervenor requests that this Court grant this Motion as soon as practicable.

III. CONCLUSION

Proposed Intervenor is therefore entitled to intervene as a matter of right, or, alternatively to intervene by permission of this Court. Furthermore, under the circumstances and procedural posture of this case, Proposed Intervenor requests expedited consideration of this Motion.

WHEREFORE, Proposed Intervenor respectfully requests that the Court expeditiously consider and grant this Motion.

This 8th day of June, 2012.

Respectfully submitted,



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