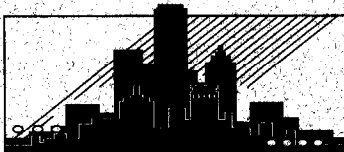


# WEINBLATT & GAYLORD PLC

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Of Counsel

August 15, 2001

Mr. Frederick K. Grittner  
Clerk of Appellate Courts  
305 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

OFFICE OF  
APPELLATE COURTS

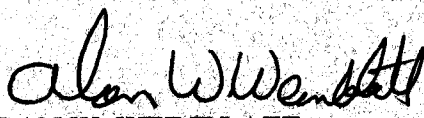
AUG 15 2001

**FILED**

Re: **Zachman v. Kiffmeyer, et al.**  
Case No. C0-01-160

Mr. Grittner:

Please file the enclosed original and five copies of the Notice of Motion and Motion of Patty Cotlow and others to intervene as Plaintiffs and the Intervenors' Memorandum of Law in Support of Motion to Intervene as Plaintiffs.

  
ALAN W. WEINBLATT  
FOR  
WEINBLATT & GAYLORD PLC

AWW:wmf

cc: attached service list

STATE OF MINNESOTA  
IN SUPREME COURT  
C0-01-160

---

Susan M. Zachman, Maryland Lucky R.  
Rosenbloom, Victor L.M. Gomez,  
Gregory G. Edeen, Jeffrey E. Karlson,  
Diane V. Bratlie, Brian J. LeClair and  
Gregory Ravenhorst, individually and on  
Behalf of all citizens and voting residents of  
Minnesota similarly situated,

Plaintiffs,

OFFICE OF  
APPELLATE COURTS

AUG 15 2001

**FILED**

NOTICE OF MOTION

vs.

Mary Kiffmeyer, Secretary of State of  
Minnesota; and Doug Gruber, Wright  
County Auditor, individually and on behalf  
of all Minnesota county chief election  
officers,

Respondents.

---

To: The Honorable Edward Toussaint, Jr., Honorable Thomas J. Kalitowski,  
Honorable Gary J. Pagliaccetti, Honorable Heidi S. Schellhas, Honorable Renee L.  
Worke; to Plaintiffs and their attorneys, Thomas B. Heffelfinger, Best & Flanagan  
LLP and Charles R. Shreffler, Shreffler Law Firm, P.A.; to Defendant, Mary  
Kiffmeyer, Secretary of State and to her Attorneys The Honorable Mike Hatch,  
Attorney General of Minnesota, Allan Gilbert, Deputy Attorney General and Mark  
B. Levinger, Deputy Attorney General; to Defendant, Doug Gruber, Wright Country  
Auditor and to his Attorney Brian J. Asleson, Chief Deputy Wright County  
Attorney;

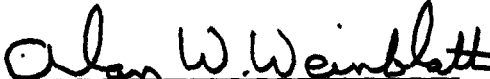
NOTICE is hereby given that Patricia Cotlow, Thomas L. Weisbecker,  
Theresa Silka, Geri Boice, William English, Benjamin Gross, Thomas R. Dietz, John

Raplinger individually and on behalf of all citizens and voting residents of Minnesota similarly situated (Applicants), by and through their undersigned counsel of record, will bring the attached Motion, pursuant to Rule 24.03 of the Minnesota Rules of Civil Procedure, on for hearing before the Special Redistricting Panel on such date, and at such time and place as is fixed by said Panel.

Applicants move to intervene in the above captioned action, pursuant to Rule 24 of the Minnesota Rules of Civil Procedure based on the attached Motion and Memorandum of Law attached hereto. The attached Motion and Memorandum of Law state the nature of the claims entitling Intervenors to intervention.

Dated: August 14, 2001

WEINBLATT & GAYLORD PLC

  
Alan W. Weinblatt

Alan W. Weinblatt, 155332  
Kathleen A. Gaylord, #0033856  
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STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
CO-01-160

OFFICE OF  
APPELLATE COURTS

AUG 15 2001

**FILED**

OFFICE OF  
APPELLATE COURTS

AUG 15 2001

**FILED**

---

Susan M. Zachman, Maryland Lucky R.  
Rosenbloom, Victor L.M. Gomez,  
Gregory G. Edeen, Jeffrey E. Karlson,  
Diane V. Bratlie, Brian J. LeClair and  
Gregory Ravenhorst, individually and on  
Behalf of all citizens and voting residents  
of Minnesota similarly situated,

Plaintiffs,

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

vs.

Mary Kiffmeyer, Secretary of State of  
Minnesota; and Doug Gruber, Wright  
County Auditor, individually and on behalf  
of all Minnesota county chief election  
officers,

Defendants,

---

**INTRODUCTION**

Patricia Cotlow, Thomas L. Weisbecker, Theresa Silka, Geri Boice, William English, Benjamin Gross, Thomas R. Dietz, John Raplinger on their own behalf and on behalf of all citizens and voting residents of Minnesota similarly situated (Applicants), hereby submit this Memorandum of Law in support of their motion to

intervene in the within action as plaintiffs pursuant to Rule 24.01, or in the alternative, pursuant to Rule 24.02 of the Minnesota Rules of Civil Procedure.

This case commenced January 4, 2001 in Wright County District Court. Plaintiffs Zachman et. al alleged that the current legislative and congressional districts are unconstitutional based upon the 2000 census. Plaintiffs petitioned Chief Justice Blatz to appoint a special three-judge redistricting panel ("Panel") to hear testimony regarding re-districting plans. Chief Justice Blatz stayed appointment of the panel in order to allow the legislature time to utilize the 2000 census data and re-apportion the legislative and congressional districts without interference by the judiciary.

The 2000 regular legislative session and the special session ended without adoption of any plan for Congressional or legislative redistricting. Plaintiffs again petitioned Chief Justice Blatz to appoint a panel to hear the re-apportionment claims. On July 12, 2001, Chief Justice Blatz appointed The Honorable Edward Toussaint, Jr., Honorable Thomas J. Kalitowski, Honorable Gary J. Pagliaccetti, Honorable Heidi S. Schellhas, Honorable Renee L. Worke, to hear this case. The above named Applicants now move the panel to allow them to intervene as plaintiffs in the above captioned case.

Pursuant to Rule 24.03 of the Minnesota Rules of Civil Procedure, Applicants have served Notice of Motion and a Motion to Intervene upon the original parties, this Court, the Minnesota Attorney General and the Wright County Attorney.

Applicants have an interest in the transaction that is the subject matter of this action. Since Plaintiffs have asked this court to draw new congressional and legislative districts, the interests that the Applicants represent, as citizens and voters aligned with the Minnesota Democratic-Farmer-Labor Party, will be profoundly affected by the outcome of this panel's deliberations. Re-districting affects every voting resident of the State of Minnesota. This panel should have all available petitioners, plans, opinions and interests represented. If this panel should fail to apportion the districts fairly and accurately, it will fail to adequately protect the democratic process. It is therefore critical that the Applicants intervene to protect their personal and public interests. If they are not allowed to intervene, they will have to file their own separate suit.

Applicants have requested consent of Plaintiffs to their intervention, but were denied such consent.

### **ARGUMENT**

#### **I. APPLICANTS ARE ENTITLED TO INTERVENTION OF RIGHT UNDER RULE 24.01.**

"The right of a third person to intervene in an action is recognized in equity as well as in law cases." Faricy v. St. Paul Inv. & Sav. Soc., 125 N.W. 676 (1910). Intervention of Right under Rule 24.01 of the Minnesota Rules of Civil Procedure states that:

[u]pon 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. (Emphasis added)

Minn. R. Civ. P. 24.01. The rule is designed to encourage more extensive use of intervention. Avery v. Campbell, 279 Minn. 383, 157 N.W.2d 42 (1968). It is public policy to encourage intervention whenever possible. Id. Courts encourage legitimate interventions and apply the rule liberally. BE&K Constr. Co. et al. v. Peterson et al., 464 N.W.2d 756, 758 (Minn. Ct. App. 1991); Luthen v. Luthen, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999).

Minnesota has endorsed a four-part test to determine when an intervention of right should be granted. Applicants must demonstrate: 1) timely application; 2) an interest that relates to the transaction which is the subject matter of the action; 3) circumstances indicating that an improper disposition of the case will impair that interest; and 4) that Applicants' interest is not adequately represented by the existing parties. Id.; Minneapolis Star Tribune v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986); Erickson v. Bennett, 409 N.W.2d 884 (Minn. Ct. App. 1987).

#### **1. Applicant's Intervention Is Timely.**

Timeliness of a motion to intervene must be determined on a case by case basis considering all the circumstances in a particular case. SST, Inc. v. City of Minneapolis, 288 N.W.2d 225 (Minn. 1979). The factors to be considered are how far the case has progressed, reason for delay in seeking intervention, and the possible prejudice of delay on the existing parties. Id.; Accord Blue Cross/Blue Shield of Rhode Island v. Flam by Strauss, 509 N.W.2d 393 (Minn. Ct. App. 1993).

Intervention is untimely only where the original parties will be substantially prejudiced such as where adjudication of the party's rights has already taken place. BE&K Construction v. Peterson, 464 N.W.2d 756, 759 (Minn. Ct. App. 1991).

In the present case, no adjudication has taken place. This motion is timely filed as it is served before any hearings have been held and before any adjudication on the merits has taken place. The rights of the existing parties will not be prejudiced. Applicants' intervention is made without any delay. Additionally, it is reasonable and causes no prejudice to the existing parties.

**2. Applicant's Have an Interest Relating to the Transaction which is the Subject Matter of this Case.**

Intervenors must claim an interest relating to the property or transaction that is the subject matter of the action. Tierney v. American Group Services, Inc., 406 N.W.2d 579, 580 (Minn. Ct. App. 1987). A transaction is more than a contract. It is an act, agreement, or several acts or agreements between or among parties whereby a cause of action or alteration of legal rights occur. See BLACK'S LAW DICTIONARY (6TH ED. 1990) AT PAGE 1496. It is something which has taken place, whereby a cause of action has arisen. Id.

If the applicant'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 applicant ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.



Luthen v. Luthen, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999) (quoting Costley v. Caromin House, Inc., 313 N.W.2d 21 (Minn. 1981)).

In the present case, the Applicants have interests that directly relate to the subject matter. The constitutionality of the current legislative and congressional districts presents one such interest. The creation of new legislative and congressional districts presents another interest. If not allowed to intervene, Applicants' interests in both issues will not be represented. The following is demonstrative of the Applicants' interests:

**A. Applicants' Political Association**

Applicants are individual citizens associated with the Minnesota Democratic-Farmer-Labor Party. As such, they represent a substantial voting block. However, the present parties to this action do not represent that block. The existing Plaintiffs represent solely the interests of the Independent Republican Party of Minnesota and their interests are substantially different from those of Applicants as evidenced by the Minnesota Legislature's failure to implement either the House of Representative's Plan or the Senate's Plan for redistricting. Partisan legislative wrangling has failed to produce a plan.

The United States Supreme Court has given effect to the legal rights of political parties and their supporters in redistricting disputes. Davis v. Bandmeer, 478 U.S. 109 (1986). Davis held that when redistricting cases present potential political gerrymandering they are properly justiciable under the equal protection

clause. Id. at 118. Additionally, the court stated that in multimember district cases where districting cases might “operate to minimize or cancel out the voting strength of . . . political elements of the voting population would raise a constitutional question. Id. at 119. See also Smith v. Boyle, 959 F. Supp. 982 (D. Ill. 1997) (citing that a proper reading of Davis “reveals that the only group voting rights claims which are justiciable are those . . . brought by political parties regarding gerrymandering claims in legislative elections.” Id. at 988) and Fletcher v. Golder, 959 F.2d 106 (8th Cir. 1992) (where gerrymandering was rejected as irrelevant but where both the Democratic and Republican parties had submitted their own redistricting plan).

In each of the last three redistricting conflicts based on new census data, Minnesota has recognized the importance of participation by political party supporters. Republican supporters were granted intervention in 1972, See Beens v. Erdahl, 336 F. Supp. 715 (D.Minn.1972) (Civ.4-71-51); in 1982, See LaComb v. Growe, 541 F. Supp. 145 (D.Minn 1982) (Civ. 4-81-414); and again in 1992, See Cotlow v. Growe, No. C8-91-985; temporarily suspended by Emison v. Growe, 782 F. Supp. 427 (D. Minn. 1992) overturned by Grove v. Emison, 507 U.S. 25 (1993). Hence, there exists substantial precedent in Minnesota’s recognition of the importance of intervention by political party supporter in redistricting cases. The present parties to the present action will not protect the interests of citizen voters (not office holders) aligned with the Democratic-Farmer-Labor Party. Without intervention,

these interests will go unrepresented. Applicant Cotlow's 1991 suit resulted in the districts presently incorporated into Minnesota Law.

In cases of broad public policy concerning citizens in need of protection, the Minnesota Supreme Court has long recognized the importance of intervention. See Snyder's Drug Stores, Inc. v. Minn. Board of Pharmacy, 221 N.W.2d 162 (Minn. 1974). In Hamre v. City of Thief River Falls, a taxpayer was entitled to intervene in an action to enjoin the city from paving another taxpayer's land. Hamre v. City of Thief River Falls, 184 N.W. 225, (1910). Surely the right to have your vote counted fairly in an election is tantamount with the right to influence how your taxes are disposed of. Few scenarios could provide a broader public policy concern than redistricting. The future of Minnesota's fair election process demands that Applicants' application be granted.

**3. Circumstances Indicate that an Improper Disposition May Impair the Applicant's Ability to Protect Their Interest.**

Failure to grant the application to intervene may have the effect of precluding the Applicant's ability to protect their interests. A challenge by non-intervening applicants to rulings of this panel will surely come after it is too late to challenge the redistricting plan. Since the legislature failed to act during this last legislative session, the responsibility is upon the court to craft the fairest plan. The fact that Applicants have another possible remedy, such as challenging the panel's ruling or submitting an amicus brief does not preclude intervention. See generally Avery v.

Campbell, 157 N.W.2d 421 (Minn. 1968). Intervention in the present action is the most direct procedure available to accomplish a final disposition of this controversy.

Id.

Additionally, concerns over judicial economy should be considered. This intervention will not complicate any issues for decision by the court, but, in all events, complication of issues is not a concern for the court under the intervention of right analysis. Norman v. Refsland, 383 N.W.2d 673 (Minn. 1986). By allowing intervention, this panel can most easily consider all the evidence, plans and facts, making the most comprehensive decision possible. Failure of Applicants to intervene will only open the door to further use of judicial time and resources. Commencement of a separate action to protect their rights will likely result in joinder. This panel can most efficiently resolve this action by allowing the intervention of Applicants. Failure to so act may, as a practical matter, impair Applicants' ability to protect their interest in time for the 2002 election. In the alternative, denial of the instant motion will require applicants to bring on separate suit with its attendant risk of inconsistent rulings.

**D. The Applicants' Interests Are Not Adequately Represented by the Existing Parties.**

The existing parties will not adequately represent the Applicants' interests. In the present action, the existing parties not only do not represent the Applicants' interests but, in fact, actually represent interests directly adverse to the Applicants.

The existing Plaintiffs will undoubtedly propose plans that represent the interests of the Independent Republican Party of Minnesota. See Lacomb v. Growe, 541 F.Supp. 145 (D. Minn. 1982) (Civ. 4-81-414) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982), LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152). Additionally, the first named Defendant in this action, Mary Kiffmeyer, also represents the interests of the Independent Republican Party. Allowing both Plaintiffs and Defendants to proceed without the intervention of the citizens who support the policies and candidates of the Democratic-Farmer-Labor Party will not adequately (or indeed, at all) represent the Applicants' interests.

II. **IN THE ALTERNATIVE, APPLICANTS ARE ENTITLED TO PERMISSIVE INTERVENTION UNDER RULE 24.02.**

Alternatively, Applicants seek permissive intervention under Rule 24.02 of the Minnesota Rules of Civil Procedure, which provides in pertinent part:

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 question of law or fact in common . . . In excising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Minn. R. Civ. P. 24.02.

The three criteria for permissive intervention are: 1) timely application; 2) a common question of fact or law between applicant's claim or defense and the main action; and 3) that intervention not unduly prejudice the original parties. Heller v. Schwan's Sales Enterprises, Inc., 548 N.W.2d 287, 292 (Minn. Ct. App. 1996).

The above argument has stressed much of these same criteria. The timeliness of this application is proper. Applicants' intervention comes at a time when the Minnesota Legislature has ended its session without agreeing on a new redistricting plan. Furthermore, Applicants' motion to intervene is made to this Panel without delay. This panel has not yet been presented with any evidence, documentation, reports or plans that it has considered. The Panel has not yet commenced hearings in this matter.

The constitutionality of the current legislative and congressional districts are at issue. So, too, is the issue of a proper remedy. Without Applicants' participation as Intervenors in this action, they will not be represented adequately by the existing parties. Furthermore, the existing parties advance interests in direct opposition to Applicants' interests. The plaintiffs' political affiliation must be countered by the participation of other, equally representative residents and voters who are not devoted solely to the interests of the Independent Republican Party. The public's view of the fairness of any plan depends on the impartiality of the litigation.

Finally, neither this panel, nor the existing parties will be prejudiced by the Applicants' intervention. The intervention is timely and does not enlarge, confuse, or protract the present action. In fact, Applicants' intervention is necessary to properly provide all the attendant facts and plans and to explore all issues pertaining to an appropriate remedy in depth.

Intervention will allow the court to make a more informed decision. See Snyder's Drug Stores, Inc. v. Minn. Board of Pharmacy, 221 N.W.2d 162 (1974). A panel fully apprised of all the facts and legal arguments is of vast importance particularly in a case with such broad public policy considerations and electoral and constitutional ramifications.

Past redistricting actions have had the representation of both the Republican and Democratic-Farmer-Labor parties as original parties or intervenors. See Beens v. Erdahl, 336 F.Supp. 715 (D.Minn. 1972) (Civ. No. 4-71-151) (Order dated October 14, 1971) rev'd on other grounds sub nom. Sixty-Seventh Minnesota State Senate v. Beens, 406 U.S. 187 (1972); LaComb v. Growe, 541 F.Supp. 145 (D.Minn. 1982) (Civ. No. 4-81-414) (Order dated October 8, 1981) aff'd sub nom. Orwoll v. LaComb, 456 U.S. 966 (1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982) (Civ. 4-81-152) (Order dated June 8, 1981); Cotlow v. Growe, No. C8-91-985; temporarily suspended by Emison v. Growe, 782 F. Supp. 427 (D. Minn. 1992) overturned by Growe v. Emison, 507 U.S. 25 (1993).

Applicants in this case are similarly entitled to intervention as a matter of right or, in the alternative, permissive intervention.

## CONCLUSION

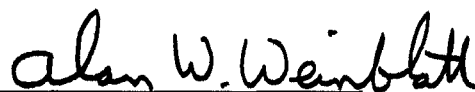
Applicants representing the interests of citizens who support the policies and candidates of Minnesota Democratic-Farmer-Labor Party, individually and on behalf of all citizens and voting residents of Minnesota similarly situated must be

allowed to intervene in the present action. The importance and significance of this matter to the Applicants and the similarly situated residents of the State of Minnesota is without question. The only way to protect the fairness of the litigation, provide all proper evidence and legal arguments, and to lend the requisite credibility and finality to this panel's decision, is to allow Applicants to intervene. It would be a miscarriage of justice and uncharacteristic of our democratic system to break precedent by failing to allow intervention.

Applicants respectfully request an Order granting them intervention of right pursuant to Rule 24.01 of the Minnesota Rules of Civil Procedure, or, in the alternative, permissive intervention pursuant to Rule 24.02.

Dated: August 15, 2001

Weinblatt & Gaylord PLC



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STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
CO-01-160

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Susan M. Zachman, Maryland Lucky R.  
Rosenbloom, Victor L.M. Gomez, Gergory G.  
Edeen, Jeffrey E. Karlson, Diana V. Bratlie,  
Brian J. LeClair and Gregory J. Ravenhorst,  
individually and on behalf of all citizens and  
voting residents of Minnesota similarly situated  
Plaintiffs,

AFFIDAVIT OF  
SERVICE

vs.

Mary Kiffmeyer, Secretary of State of Minnesota  
and Doug Gruber, Wright County Auditor,  
individually and on behalf of all Minnesota  
county chief election officers,


Defendants,

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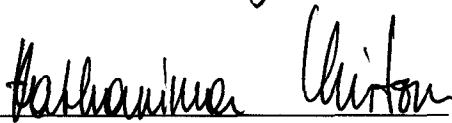
Alan W. Weinblatt, being first duly sworn, deposes and says that on August 15, 2001, I served by United States Mail and by facsimile the following documents in the above referenced matter:

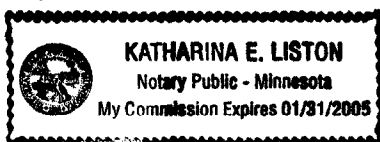
1. Notice of Motion to Intervene by Applicants Cotlow, et al.
  2. Motion to Intervene as Plaintiffs by Applicants Cotlow, et al.
- Applicants' Memorandum of Law in Support of Motion to Intervene

Upon each of the persons listed Exhibit A attached hereto.

  
Alan W. Weinblatt

Subscribed and sworn to before me  
this 15<sup>th</sup> day of August, 2001.

  
Notary Public



## EXHIBIT A

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