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September 13, 2001

VIA MESSENGER

Clerk of Appellate Courts Office
25 Constitution Avenue
Suite 305
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS
SEP 13 2001
FILED

Re: Susan M. Zachman, et al. v. Mary Kiffmeyer, et al.
Special Redistricting Panel, File No. CO-01-160

Dear Clerk:

Enclosed for filing in the above matter are the following documents:

1. Notice of Motion;
2. Motion to Intervene; and
3. Memorandum Support of Motion to Intervene.

Sincerely,

Michelle B. Frazier

Michelle B. Frazier

MBF/sg
cc: All Counsel of Record
Enclosures (3)

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
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,

and

Jesse Ventura,

Plaintiff-Applicant Intervener,

**NOTICE OF MOTION TO
INTERVENE**

v.

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.

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, 400 U.S. Bank Place, 601 Second Avenue South, Minneapolis, MN 55402-4331 and Charles R. Shreffler, 2116 Second Avenue South, Minneapolis, MN 55404-2606; to Defendant Mary Kiffmeyer, Secretary of State and her attorneys, The Honorable Mike Hatch, Attorney General of Minnesota, Alan Gilbert, Chief Deputy Attorney General, and Mark B. Levinger, Deputy Attorney General, 445 Minnesota Street, Suite 1100, St. Paul, MN 55101-2128; to Defendant Doug Gruber, Wright County Auditor and his attorney Brian J. Aleson, Chief Deputy Attorney, Wright County Attorney's Office, Ten Second Street N.W., Buffalo, MN 55313:

OFFICE OF
APPELLATE COURTS

SEP 13 2001

FILED

PLEASE TAKE NOTICE that Plaintiff-Applicant Intervener Jesse Ventura (“Applicant”), pursuant to Rule 24.03 of the Minnesota Rules of Civil Procedure, hereby notifies the parties as follows:

1. Applicant seeks to intervene in the above-captioned action on the grounds set forth in the attached Motion for Intervention and supporting memorandum. Oral argument is requested.

2. In the absence of an objection to Applicant’s intervention by an existing party within thirty (30) days after service of this Notice, such intervention shall be deemed to have been accomplished.

Dated: September 13, 2001

DORSEY & WHITNEY LLP

By Marianne D. Short
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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
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individually and on behalf of all citizens
and voting residents of Minnesota
similarly situated,

Plaintiffs,

and

Jesse Ventura,

Plaintiff-Applicant Intervener,

**MOTION TO
INTERVENE**

v.

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.

Plaintiff-Applicant Intervener Jesse Ventura ("Applicant"), pursuant to Rule 24 of the
Minnesota Rules of Civil Procedure, states as follows:

1. Applicant seeks intervention in the above-captioned action pursuant to Rule 24 of
the Minnesota Rules of Civil Procedure and will move the court for intervention as a matter of
right, or in the alternative, permissive intervention should any party object. Oral argument is
requested.
2. The nature of Applicant's claims and defenses as to which intervention is sought
and the reasons for the claim of entitlement to intervention are:

a. Applicant is a citizen and qualified voter of the United States and the state of Minnesota.

b. Pursuant to the Minnesota Constitution, Applicant plays an indispensable role in the state's redistricting process and, as the representative of the state as a polity, bears the responsibility of ensuring that any redistricting plan furthers the interests of the state and the people of Minnesota.

c. As an indispensable participant in the state's redistricting process, Applicant has substantial interests in the subject matter of the above-captioned action, which include:

i. That any congressional and legislative redistricting of the state of Minnesota be done in accordance with applicable constitutional and statutory standards;

ii. That any congressional and legislative redistricting of the state of Minnesota be done in accordance with traditional redistricting principles;

iii. That any congressional and legislative redistricting of the state of Minnesota be done to achieve political fairness or competitiveness, rather than to achieve only the interests of traditional political parties; and

iv. That any congressional and legislative redistricting of the state of Minnesota be done in furtherance of the constitutional rights of all Minnesota state citizens.

d. Without the ability to intervene, Applicant's ability to protect these interests may be impaired by the disposition of the above-captioned action.

e. Upon information and belief, Plaintiffs will not vigorously pursue or adequately represent Applicant's interests, particularly Applicant's interest in achieving a redistricting plan that achieves political fairness or competitiveness.

f. Applicant's intervention will neither unduly delay nor prejudice the adjudication of Plaintiffs' rights. Indeed, Applicant's participation in the above-captioned matter will aid the court in its inquiry by presenting a redistricting position that represents interests beyond traditional political interests and promotes political fairness or competitiveness among all state districts.

Dated: September 13, 2001

DORSEY & WHITNEY LLP

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Attorneys for Plaintiff-Applicant Intervener

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
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,

and

Jesse Ventura,

Plaintiff-Applicant Intervener,

**MEMORANDUM IN SUPPORT
OF MOTION FOR
INTERVENTION**

v.

--Oral Argument Requested

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

By Complaint filed on January 4, 2001 in Wright County District Court, Plaintiffs petitioned Chief Justice Kathleen A. Blatz for appointment of a special three-judge redistricting panel to examine the constitutionality of the state's current districting plans in light of 2000 census data. Order of Chief Justice, Nos. C8-91-85, C0-01-160 (Mar. 2, 2001). The Chief Justice granted the petition, but stayed the appointment of the panel to permit the legislature to reapportion the state's legislative and congressional districts without judicial interference. Id. Thereafter, the Minnesota Senate and the House passed conflicting congressional and legislative

redistricting plans, and adjourned before reaching any resolution on these conflicting proposals. Following the legislature's adjournment, Chief Justice Blatz appointed a five-judge panel to hear all matters in connection with the disposition of the above-entitled action. Order of Chief Justice, No. CO-01-160 (July 12, 2001). Plaintiffs ask this Panel to draw new congressional and legislative districts, which will govern Minnesota's elections and directly affect every Minnesotan's constitutional right to participate in the democratic process.

Applicant for Intervention, Jesse Ventura ("Applicant"), moves the panel to intervene in this lawsuit as a matter of right or, in the alternative, for permissive intervention should any party object. As a citizen of the state of Minnesota, Applicant has a stake in this task and, thus, has standing to bring this motion. See Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974) (noting party has standing to intervene if his/her legitimate interest may be injured in fact); Hanlon v. Towey, 274 Minn. 187, 191 n.6, 142 N.W.2d 741, 743 n.6 (1966) (stating "voter's standing to challenge malapportionment. . . is well established"); see also Johnson v. Mortham, 915 F.Supp. 1529, 1536 (N.D.Fla. 1995) (recognizing that registered voters have standing and substantial interest in action that challenges voting district in which they are registered). Moreover, as an indispensable part of the legislative process, Applicant not only has the responsibility of protecting Minnesotan's rights with respect to any new redistricting law, but also bears the burden of ensuring that such laws further interests beyond those represented by traditional political parties. Given these constitutionally-defined duties, Applicant has a significant interest in the outcome of this matter and is entitled to intervene under Minn. R. Civ. P. 24.

Discussion

I. APPLICANT IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT UNDER MINN. R. CIV. P. 24.01.

Rule 24.01 of the Minnesota Rules of Civil Procedure provides that a party may intervene as a matter of right if:

- A. The party's application is timely;
- B. The party's interest relates to the transaction that is the subject of the parties' action;
- C. Circumstances show that the action's disposition may, as a practical matter, impair the applicant's ability to protect that interest; and
- D. The party's interest is not adequately represented by the existing parties.

Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986).

Recognizing that intervention enhances an efficient use of an overburdened court system, the drafters created this rule to promote more extensive use of intervention. Engelrup v. Potter, 302 Minn. 157, 162, 224 N.W.2d 484, 487 (1974); Snyder's Drug Stores, 301 Minn. at 34, 221 N.W.2d at 166. Rule 24 should be construed liberally, and technicalities should not be invoked to avoid intervention. Engelrup, 302 Minn. at 165, 224 N.W.2d at 488 (citing Clark v. Sandusky, 205 F.2d 915, 918 (7th Cir. 1953)); see Blue Cross/Blue Shield v. Flam, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993) (noting Rule 24 should be applied liberally), review denied (Minn. Feb. 24, 1994); Erickson v. Bennett, 409 N.W.2d 884, 887 (Minn. Ct. App. 1987) (recognizing spirit of Rule 24 is to encourage all legitimate intervention).

A. Applicant's motion to intervene is timely.

"Timeliness" is determined on a case-by-case basis. Engelrup, 302 Minn. at 165, 224 N.W.2d at 488. Here, the Special Redistricting Panel ordered that all motions to intervene

pursuant to Rule 24 of the Minnesota Rules of Civil Procedure shall be made and served by September 14, 2001. Scheduling Order No. 1, No. C0-01-160 (Aug. 22, 2001). Based on this Order, Applicant's Motion To Intervene is timely.

B. As an indispensable part of the state's legislative process, Applicant has an interest in the "transaction" at issue that inevitably will be affected by the outcome of this case.

Under Minn. R. Civ. P. 24.01, an intervener of right must claim an interest relating to the transaction that is the subject matter of the action and demonstrate that this interest invariably will be affected by the outcome of the case. Here, the "transaction" at issue involves the legislature's failure to address the constitutionality of the state's current congressional and legislative districts, and the Special Redistricting Panel's impending creation of new congressional and legislative districts. Typically, such a "transaction" is a law-making function subject to the state's constitutional procedures. See Reynolds v. Sims, 377 U.S. 533, 586, 845 S.Ct. 1362, 1394 (1964) (noting reapportionment primarily is matter for legislative consideration). Specifically, the Minnesota Constitution provides that every bill must pass in conformity with the rules of each house and the joint rules of the two houses be presented to the Governor. MINN. CONST. art. IV, § 23. The Governor must sign the bill for it to become law, or the two houses must both override the Governor's veto by two-thirds of a vote. Id.; see MINN. CONST. art. IV, § 24 (noting all orders, resolutions and votes requiring concurrence of two houses also are subject to Governor's veto power); art. V, § 3 (noting one of Governor's duties is to take care that laws be faithfully executed).

Given the nature of this process, the Governor of Minnesota plays an integral and indispensable role in the transaction at issue. See Smiley v. Holm, 285 U.S. 355, 373, 52 S.Ct. 397, 401 (1932) (holding that Minnesota Constitution requires Governor to be part of redistricting actions); see also Carstens v. Lamm, 543 F.Supp. 68, 79 (D.Col. 1982) (recognizing

Governor's indispensable role in legislative process); State ex rel. Reynolds v. Zimmerman, 126 N.W.2d 551, 558 (Wis. 1964) (stating "[b]oth the Governor and the legislature are indispensable parts of the legislative process"). The Governor not only is obligated by the Minnesota Constitution to approve any new redistricting laws, but he/she also bears the responsibility of ensuring that the legislative process behind the passage of such laws is executed faithfully. MINN. CONST. art V, § 3. Ultimately, the Governor possesses both a constitutionally-defined interest and duty to ensure that any redistricting plan protects the constitutional rights of all Minnesota state citizens, including citizens with interests beyond those represented by the two major political parties. Indeed, because Minnesota's Constitution gives the Governor an indispensable role in the legislative process, "it is reasonable to conclude that the framers of the constitution intended to *require* [Applicant's] participation in all decisions relating to legislative apportionment, a specific issue which obviously affects the legislative process as a whole." Zimmerman, 126 N.W.2d at 559 (emphasis added); cf. State v. City of Oak Creek, 605 N.W.2d 526, 541 (Wis. 2000) (concluding Attorney General lacked standing to challenge constitutionality of statutory exemption where Attorney General's authority is limited to defending, rather than challenging, state's statutes).

By filing this motion to intervene, Applicant respectfully asks the Special Redistricting Panel to recognize his constitutionally-defined interest in ensuring that the redistricting plan ultimately adopted by the Panel furthers applicable constitutional and statutory standards, as well as adheres to the fundamental redistricting principle of political fairness or competitiveness. "Political fairness" centers on the basic idea that one person's vote is worth as much as another's and attempts to rid the redistricting process of distracting partisan motivations. Wesberry v. Sanders, 376 U.S. 1, 7-8, 84 S.Ct. 526, 530 (1964); see Reynolds, 377 U.S. at 568, 84 S.Ct. at

1385 (noting overriding concern in redistricting is fair and effective representation for all citizens). Moreover, “political fairness” is the reason behind the emphasis on mathematical equality in constructing redistricting plans. Hastert v. State Bd. of Elections, 777 F.Supp. 634, 643-44 (N.D.Ill. 1991) (citing Chapman v. Meier, 420 U.S. 1, 23, 95 S.Ct. 751, 764 (1975) for proposition that preeminent, if not sole, criterion on which to judge redistricting plan’s constitutionality is mathematical equality). It also provides the foundation for established traditional redistricting principles. See Abrams v. Johnson, 521 U.S. 74, 114-15, 117 S.Ct. 1925, 1948 (1997) (noting protection of voting strength of minority voters and retaining one district in each corner of State are considered traditional redistricting principles); Brown v. Thomson, 462 U.S. 835, 843, 103 S.Ct. 2690, 2696 (1983) (recognizing traditional redistricting principles of contiguity and compactness, respecting municipal boundaries, preserving core of prior districts and avoiding incumbent contests). In fact, the United States Supreme Court has recognized political fairness or competitiveness as the basis for a valid due process claim where a group’s electoral power has been degraded through the redistricting process. See Davis v. Bandemer, 478 U.S. 109, 123-24, 106 S.Ct. 2797, 2806 (1986) (recognizing political gerrymandering as cognizable claim).

Given the focus on political fairness or competitiveness in all redistricting cases, Applicant’s interest in fulfilling his duty of protecting all citizens’ voting rights is central to this action. Specifically, Applicant’s constitutionally-defined interest in ensuring that the redistricting plan approved by this panel adheres to established redistricting principles and, as importantly, achieves political competitiveness is intertwined with this case and differs from the traditional political interests represented by the current parties. Thus, as a practical consequence, Applicant’s interest in the “transaction” at issue inevitably will be affected by the outcome of

this matter. See Nuesse v. Camp, 385 F.2d 694, 702 (D.C. Cir. 1967) (noting court must emphasize practical consequence of denying intervention when considering Rule 24 motion).

C. Applicant's interests are not adequately represented.

A party is deemed able to protect an applicant's interest where the party is vigorously pursuing the arguments sought to be advanced through intervention. State ex rel. Donnell v. Jourdain, 374 N.W.2d 204, 206 (Minn. Ct. App. 1985). To establish inadequate representation, an applicant must show the parties represent interests adverse to those of the proposed intervener. Peterson v. United States, 41 F.R.D. 131, 133 (D.Minn. 1966); Engelrup, 302 Minn. at 164, 224 N.W.2d at 488; see Johnson, 915 F.Supp. at 1537, n.9 (describing showing of inadequate representation as minimal burden). In making this showing, it need not be established that representation will be inadequate; it is sufficient to show that it may be inadequate. United States v. Reserve Mining Co., 56 F.R.D. 408, 414 (D.Minn. 1972) (citing Kozak v. Wells, 278 F.2d 104, 110 (8th Cir. 1960)).

Here, the named Plaintiffs represent the interests of the Republican Party of Minnesota. Moreover, the individuals that have moved to intervene do so on behalf of the Minnesota Democratic-Farmer-Labor party. Although both sets of voters cite to the importance of equal participation, they fail to identify the interest of political fairness or competitiveness as a reason for their involvement in this action. See Reynolds, 377 U.S. at 586, 845 S.Ct. at 1394 (noting overriding concern in redistricting is fair and effective representation of all citizens); see also Gaffney v. Cummings, 412 U.S. 735, 754, 93 S.Ct. 2321, 2332 (1973) (noting courts should favor plans that fairly allocate political power); Hastert, 777 F.Supp. at 643-44 (upholding redistricting plan that achieves population equality, fairness to racial and language minorities and creates politically competitive districts).

By contrast, Applicant seeks intervention in an attempt to further the goal of political fairness or competitiveness. Indeed, Applicant bases his motion to intervene on his constitutionally-defined duty as Governor to ensure that interests beyond those represented by the traditional political parties are represented in any new, redistricting efforts. Plaintiffs and the current Plaintiff-Interveners have no incentive to achieve politically competitive districts. Defendants also are not constitutionally required to challenge any state laws that fail to further interests beyond those represented by the traditional political parties. See City of Oak Creek, 605 N.W.2d at 536 (recognizing Attorney General has duty to defend, not challenge, state laws). Given these facts, Applicant's interests are not currently represented, and his motion for intervention should be granted as a matter of right under Rule 24 of the Minnesota Rules of Civil Procedure. See Clinton Co-op Farmers Elevator Ass'n v. Farmers' Grain Terminal Union, 223 Minn. 253, 259-60, 26 N.W.2d 117, 121 (Minn. 1946) (noting participation of parties representing conflicting interests allows for full presentation of issues to court).

II. IN THE ALTERNATIVE, APPLICANT IS ENTITLED TO PERMISSIVE INTERVENTION UNDER MINN. R. CIV. P. 24.02.

Under Minn. R. Civ. P. 24.02, a party who cannot intervene as a matter of right may still intervene if:

- A. The party's application is timely;
- B. There is a common question of fact and law between the applicant's claim and the main action; and
- C. Intervention does not unduly prejudice the original parties.

In furtherance of Minn. R. Civ. P. 24's general purpose of encouraging extensive use of intervention, this rule liberalizes case participation by granting persons, who do not have a direct interest in a case, access and a vehicle to express their unique perspectives. See Johnson, 915 F.Supp. at 1538-39 (permitting NAACP to intervene where its participation aided court and

brought unique perspective to case); see also Engelrup, 302 Minn. at 162, 224 N.W.2d at 487 (recognizing Rule 24's purpose of encouraging wide use of intervention); Snyder's Drug Stores, 301 Minn. at 34, 221 N.W.2d at 166 (recognizing intervention enhances efficient use of overburdened judicial system).

Under the Minnesota Constitution, Applicant is responsible for reviewing all new redistricting plans with the intent of protecting the constitutional rights of all state citizens. Zimmerman, 126 N.W.2d at 558-59. Ideally, this gubernatorial obligation is fulfilled by considering interests beyond those represented by the traditional political parties and with the sole objective of ensuring political fairness and competitiveness among districts. Because the current parties to this action have no incentive to achieve this goal, Applicant's intervention will provide the court with a unique and different approach to redistricting. In fact, Applicant has appointed a Citizens' Advisory Commission on Redistricting that is composed of members from diverse political backgrounds to review all redistricting options and make recommendations to the Governor. Because this Commission's proceedings will generate invaluable redistricting ideas and proposals that address a variety of political interests, Applicant's participation undoubtedly will aid the Special Redistricting Panel in approving and/or devising a redistricting plan that adheres to basic redistricting principles, with political fairness rather than political one-sidedness as its primary objective. Given this fact, Applicant is entitled to permissive intervention under Minn. R. Civ. P. 24.03. See Johnson, 915 F.Supp. at 1538-39 (permitting intervention where NAACP brought unique perspective to court and thus promoted judicial efficiency); see also Snyder's Drug Stores, 301 Minn. at 34, 221 N.W.2d at 166 (noting that, in broad public policy cases, it is essential that all interested and affected parties participate through intervention).

CONCLUSION

For the foregoing reasons, Applicant respectfully requests an Order granting him intervention of right as Plaintiff pursuant to Minn. R. Civ. P. 24.01 or, alternatively, permissive intervention pursuant to Minn. R. Civ. P. 24.02.

Dated: September 13, 2001

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