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OFFICE OF  
APPELLATE COURTS

SEP 14 2001

FILED

14 September 2001

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

BY MESSENGER

Re: Zachman v. Kiffmeyer, No. C0-01-160 (Minn. Special Redistricting Panel)  
Faegre File No. 57455/240154

Dear Mr. Grittner:

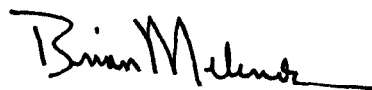
Pursuant to Scheduling Order No. 1 (Aug. 22, 2001), please file the enclosed original and nine copies of the Notice of Intervention and Notice of Hearing & Motion to Intervene, proposed Complaint in Intervention, proposed Order, and Memorandum of Law in Support of Motion to Intervene. By copy of this letter, these papers are being served upon the Parties and the other known Applicants for Intervention.

Grittner: 14 September 2001

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Thank you very much. Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Brian Melendez". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Brian Melendez  
Attorney for Intervenors

enclosures

cc (w/ encs.) (by fax and mail):

Brian J. Asleson  
John D. French  
Alan I. Gilbert  
Thomas B. Heffelfinger  
Charles R. Shreffler  
Alan W. Weinblatt

M1:782566.01

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

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Susan M. Zachman, et al.,

No. C0-01-160

Plaintiffs,

OFFICE OF  
APPELLATE COURTS

vs.

SEP 14 2001

Mary Kiffmeyer, et al.,

**FILED**

Defendants.

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**NOTICE OF INTERVENTION  
AND  
NOTICE OF HEARING & MOTION TO INTERVENE**

Oral Argument Requested

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To: Plaintiffs and their attorneys Thomas B. Heffelfinger, Best & Flanagan LLP, 4000 US Bank Place, 601 Second Avenue South, Minneapolis, MN 55402-4331; and Charles R. Shreffler, Shreffler Law Firm, P.A., 2116 Second Avenue South, Minneapolis, MN 55404-2606.

Defendant Mary Kiffmeyer and her attorney Alan I. Gilbert, Chief Deputy & Solicitor General, Office of the Attorney General, Suite 1100, 445 Minnesota Street, St. Paul, MN 55101-2128.

Defendant Doug Gruber and his attorney Brian J. Asleson, Chief Deputy Attorney, Office of Wright County Attorney, Wright County Government Center, Ten Second Street NW, Buffalo, MN 55313.

Plaintiffs-Intervenors Applicant Patricia Cotlow, Thomas L. Weisbecker, Theresa Silka, Geri Boice, William English, Benjamin Gross, Thomas R. Dietz, and John Raplinger and their attorney Alan W. Weinblatt, Weinblatt & Gaylord PLC, 1616 Pioneer Building, 336 North Robert Street, St. Paul, MN 55101.

### **Notice of Intervention**

Pursuant to Minn. R. Civ. P. 24.03, please take notice that Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar are applying for intervention to become Plaintiffs and assert the accompanying complaint in intervention in this action.

This notice supersedes the Motion to Intervene as a Defendant Under Rule 24 (Aug. 10, 2001).<sup>1</sup>

### **Notice of Hearing & Motion to Intervene**

Pursuant to Minn. R. Civ. P. 24.03 & 7.02, Minn. Gen. R. Prac. 115.04, and Scheduling Order No. 1 (Aug. 22, 2001), please take notice that the Applicant Plaintiffs-Intervenors by their undersigned attorneys will bring the following motion on for hearing on October 3, 2001, at 2:00 p.m. in Courtroom 300, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota:

For an order permitting them to intervene in this action as Plaintiffs.

Pursuant to Scheduling Order No. 1 (Aug. 22, 2001), the Applicant Plaintiffs-Intervenors hereby request an oral argument on this matter.

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<sup>1</sup>The Plaintiffs have served a notice of objection to the Applicants' intervention. (See Notice Objec'n Interven'n (unsigned and undated, served 8/15/01).) The Special Redistricting Panel subsequently entered a scheduling order, which provided "that motions to intervene pursuant to Rule 24 of the Minnesota Rules of Civil Procedure shall be made and served by 5:00 p.m. on Friday, September 14, 2001." (Sched. Order No. 1 (8/22/01).) This notice is made pursuant to that scheduling order and supersedes the Applicants' earlier notice of intervention. The accompanying memorandum responds to the Plaintiffs' objection to the Applicants' intervention.

September 14, 2001.

FAEGRE & BENSON LLP



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Attorneys for  
Applicant Plaintiffs-Intervenors

M1:794077.01

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

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

No. C0-01-160

Plaintiffs,

vs.

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

Defendants,

vs.

Roger D. Moe, Thomas W. Pugh, Betty  
McCollum, Martin Olav Sabo, Bill Luther,  
Collin C. Peterson, and James L. Oberstar,

Plaintiffs in Intervention.

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COMPLAINT IN INTERVENTION

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Plaintiffs in Intervention Roger D. Moe, Thomas W. Pugh, Betty McCollum,  
Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar aver that:

## **Parties**

1. The Plaintiffs who commenced this action (not the Plaintiffs in Intervention) are identified in the Complaint (Jan. 4, 2000), ¶ 3 at 2, which averment this pleading adopts by reference (without adopting any other averment in that pleading, except as this pleading explicitly states).

2. The Defendants are identified in the Complaint (Jan. 4, 2000), ¶¶ 5-6 at 3, which averments this pleading adopts by reference (without adopting any other averment in that pleading, except as this pleading explicitly states).

3. Each Plaintiff in Intervention is a natural person who is a citizen and resident of Minnesota, who is qualified and registered to vote in Minnesota, and who has voted and intends to vote again in legislative and congressional elections in Minnesota.

4. Roger D. Moe is a Minnesota Senator representing Senate District 2, where he resides and votes. Senator Moe is the majority leader in the Minnesota Senate.

5. Thomas W. Pugh is a State Representative representing House District 39A, where he resides and votes. Representative Pugh is the minority leader in the Minnesota House of Representative.

6. Betty McCollum is a Representative in Congress representing the Fourth Congressional District, where she resides and votes.

7. Martin Olav Sabo is a Representative in Congress representing the Fifth Congressional District, where he resides and votes.

8. Bill Luther is a Representative in Congress representing the Sixth Congressional District, where he resides and votes.

9. Collin C. Peterson is a Representative in Congress representing the Seventh Congressional District, where he resides and votes.

10. James L. Oberstar is a Representative in Congress representing the Eighth Congressional District, where he resides and votes.

**Count I**  
**Legislative Reapportionment**

11. The Minnesota Constitution, article IV, section 2, provides that “[t]he representation in both houses [of the legislature] shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.” The United States Constitution likewise requires equal apportionment among legislative districts.

12. The Minnesota Constitution, article IV, section 3, provides that “[a]t its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of . . . legislative districts.”

13. The United States took a census pursuant to the United States Constitution, article I, section 2, clause 3, enumerating the inhabitants of Minnesota as of April 1, 2000.

14. The legislative districts prescribed in Minnesota Statutes §§ 2.02-.715, and those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000.

15. The Legislature has not yet apportioned legislative representation pursuant to the Minnesota Constitution, article IV, section 3, as a result of the census taken in 2000.



16. Unless and until the Legislature apportions legislative representation as a result of the census taken in 2000, the Defendants will hold elections for the Legislature according to the legislative districts prescribed in Minnesota Statutes §§ 2.02-.715 or those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), in violation of the federal and state constitutions and 42 U.S.C. § 1983.

17. The Plaintiffs in Intervention are entitled to an equal and timely apportionment among the legislative districts by the Legislature pursuant to the Minnesota Constitution, article IV, section 3.

18. If the Legislature does not equally or timely apportion the legislative districts pursuant to the Minnesota Constitution, article IV, section 3, then the Plaintiffs in Intervention are entitled to a judicial remedy equally apportioning those districts.

## **Count II Congressional Reapportionment**

19. The Plaintiffs in Intervention adopt by reference and reallege the statements in the other paragraphs of this complaint.

20. The Minnesota Constitution, article IV, section 3, provides that “[a]t its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional . . . districts.”

21. The congressional districts prescribed in Minnesota Statutes §§ 2.73-.82, and those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000.

22. The Legislature has not yet apportioned congressional representation pursuant to the Minnesota Constitution, article IV, section 3, as a result of the census taken in 2000.

23. Unless and until the Legislature prescribes the bounds of congressional districts as a result of the census taken in 2000, the Defendants will hold elections for Representatives in Congress according to the congressional districts prescribed in Minnesota Statutes §§ 2.73-.82 or those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), in violation of the federal and state constitutions and 42 U.S.C. § 1983.

24. The Plaintiffs in Intervention are entitled to an equal and timely apportionment among the congressional districts by the Legislature pursuant to the Minnesota Constitution, article IV, section 3.

25. If the Legislature does not equally or timely apportion the congressional districts pursuant to the Minnesota Constitution, article IV, section 3, then the Plaintiffs in Intervention are entitled to a judicial remedy equally apportioning those districts.

#### **Claim of Entitlement to Intervention**

26. The Plaintiffs in Intervention adopt by reference and reallege the statements in the other paragraphs of this complaint.

27. The Plaintiffs in Intervention claim an interest relating to the legislative and congressional reapportionment that are this action's subject.

28. The Plaintiffs in Intervention are so situated that this action's disposition may as a practical matter impair or impede their ability to protect that interest.

29. The existing Parties do not adequately represent the interest of the Plaintiffs in Intervention. Each Plaintiff in Intervention is a member of the Democratic-Farmer-Labor Party of Minnesota, a “major political party” within the meaning of the Minnesota Election Law. On information and belief, each existing Plaintiff is a member of a competing major political party, and not of the Democratic-Farmer-Labor Party of Minnesota.

30. The claims herein have the following common questions of law and fact with the main action: (a) whether the legislative districts prescribed in Minnesota Statutes §§ 2.02-.715, and those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000.; (b) whether the congressional districts prescribed in Minnesota Statutes §§ 2.73-.82, and those ordered in *Cotlow v. Growe*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000; and (c) what judicial remedy will best equally apportion legislative and congressional districts if the Legislature does not equally or timely apportion them pursuant to the Minnesota Constitution, article IV, section 3.

31. The Plaintiffs in Intervention accordingly claim an entitlement to intervention in each claim asserted by the Plaintiffs who commenced this action in their Complaint (Jan. 4, 2000), of the same nature and to the same extent as the Plaintiffs who commenced this action assert.

### **Claim for Relief**

Wherefore the Plaintiffs in Intervention pray for the following relief:

(a) for a judicial remedy equally apportioning legislative and congressional districts if the Legislature does not equally or timely apportion them pursuant to the Minnesota Constitution, article IV, section 3; and

(b) for their attorney's fees pursuant to 42 U.S.C. § 1988(b); and

(c) for such other and further relief as may be just and equitable.

September 14, 2001.

FAEGRE & BENSON LLP

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Attorneys for  
Plaintiffs in Intervention

**Acknowledgment Required Under  
Minn. Stat. § 549.211**

The Plaintiffs in Intervention by their undersigned attorneys hereby acknowledge that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

September 14, 2001.

FAEGRE & BENSON LLP

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Attorneys for  
Plaintiffs in Intervention

M1:794077.01

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

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Susan M. Zachman, et al.,

No. C0-01-160

Plaintiffs,

vs.

Mary Kiffmeyer, et al.,

Defendants.

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**ORDER**

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This Panel heard the motion of Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar for an order permitting them to intervene in this action as Plaintiffs on October 3, 2001. The Plaintiffs appeared by their attorney Charles R. Shreffler, Shreffler Law Firm, P.A.; Defendant Mary Kiffmeyer appeared by her attorney Alan I. Gilbert, Chief Deputy & Solicitor General, Office of the Attorney General; Defendant Doug Gruber appeared by his attorney Brian J. Asleson, Chief Deputy Attorney, Office of Wright County Attorney; and the Applicant Plaintiffs-Intervenors appeared by Brian Melendez, Faegre & Benson LLP. Having read the papers filed in connection with this motion, having heard the arguments of counsel, and being familiar with all the papers and proceedings in this action, it is hereby

*Ordered, That:*

1. Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar are permitted to intervene in this action as Plaintiffs.

2. Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar may assert their complaint in intervention in this action.

Dated \_\_\_\_\_, \_\_\_\_\_.

SPECIAL REDISTRICTING PANEL

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Hon. Edward Toussaint, Jr.  
Presiding Judge

M1:794077.01

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

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Susan M. Zachman, et al.,

No. C0-01-160

Plaintiffs,

vs.

Mary Kiffmeyer, et al.,

Defendants.

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

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Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar are applying for intervention to become Plaintiffs and assert the accompanying complaint in intervention in this action. They have accordingly moved this Panel for an order permitting them to intervene in this action as Plaintiffs. The Panel will hear that motion on October 3, 2001, at 2:00 p.m. The Plaintiffs-Intervenors Applicant respectfully submit this memorandum in support of their motion, and in response to the existing Plaintiffs' objection to their intervention.<sup>2</sup>

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<sup>2</sup>The Plaintiffs served a notice of objection to the Applicants' intervention. (*See* Notice Objec'n Interven'n (unsigned and undated, served 8/15/01).) The Special Redistricting Panel subsequently entered a scheduling order, which provided "that motions to intervene pursuant to Rule 24 of the Minnesota Rules of Civil Procedure shall be made and served by 5:00 p.m. on Friday, September 14, 2001." (Sched. Order No. 1 (8/22/01).) The accompanying motion is made pursuant to that scheduling order and supersedes the Applicants' earlier notice of intervention. This memorandum responds to the Plaintiffs' objection to the Applicants' intervention.



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**Facts**

Six Plaintiffs—Susan M. Zachman, Maryland Lucky R. Rosenbloom, Victor L.M. Gomez, Gregory J. Edeen, Jeffrey E. Karlson, Diana V. Bratlie, Brian J. LeClair, and Gregory J. Ravenhorst—commenced this action in January 2000 “individually and on behalf of all citizens and voting residents of Minnesota similarly situated.” Those Plaintiffs seek a judicial remedy equally apportioning legislative and congressional districts. The Applicants likewise seek a judicial remedy equally apportioning legislative and congressional districts, if the Legislature does not equally or timely apportion them

pursuant to the Minnesota Constitution, article IV, section 3. The existing Plaintiffs do not adequately represent the Applicants' interest.

Each Applicant is a natural person who is a citizen and resident of Minnesota, who is qualified and registered to vote in Minnesota, and who has voted and intends to vote again in legislative and congressional elections in Minnesota. Roger D. Moe is a Minnesota Senator representing Senate District 2, where he resides and votes; Senator Moe is the majority leader in the Minnesota Senate. Thomas W. Pugh is a State Representative representing House District 39A, where he resides and votes; Representative Pugh is the minority leader in the Minnesota House of Representative. Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar are Representatives in Congress representing the Fourth, Fifth, Sixth, Seventh, and Eighth Congressional Districts respectively, where they reside and vote.

Each Applicant is a member of the Democratic-Farmer-Labor Party of Minnesota, a "major political party" within the meaning of the Minnesota Election Law.<sup>3</sup> On information and belief, each existing Plaintiff is a member of a competing major political party, and not of the Democratic-Farmer-Labor Party of Minnesota.

## **Law**

### **I. The Applicants are entitled to intervention as a matter of right.**

The applicable rule of civil procedure provides that

Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the

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<sup>3</sup>See Minn. Stat. § 200.02, subd. 7.

applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.<sup>4</sup>

The Minnesota courts favor a "policy of encouraging intervention wherever possible,"<sup>5</sup> and the rule allowing intervention "can be liberally applied because courts encourage intervention."<sup>6</sup>

Under the rule, an application for intervention must meet a four-part test:

(1) a timely application for intervention, (2) an interest relating to the property or transaction which is the subject of the action; (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) a showing that the party is not adequately represented by the existing parties.<sup>7</sup>

Here, the Applicants' motion for intervention is timely; the Applicants claim an interest relating to the legislative and congressional reapportionment that are this action's subject; the Applicants are so situated that this action's disposition may as a practical matter impair or impede their ability to protect that interest; and the existing Parties do not adequately represent the Applicants' interest. The Applicants are therefore entitled to intervention as a matter of right.

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<sup>4</sup>Minn. R. Civ. P. 24.01 (intervention of right).

<sup>5</sup>*Blue Cross/Blue Shield of R.I. v. Flam*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1994); accord *Engelrup v. Potter*, 302 Minn. 157, 166, 224 N.W.2d 484, 489 (1974) ("the spirit behind the 1967 amendment to Rule 24—that of encouraging all legitimate interventions—requires a liberal application of the rule"); *BE & K Constr. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn. Ct. App. 1991) ("It is public policy to encourage intervention wherever possible.").

<sup>6</sup>*Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999).

<sup>7</sup>*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986).

**A. The Applicants' motion for intervention is timely.**

**1. The motion is timely under the applicable rules.**

The applicable rules do not define when a motion for intervention is “timely” but “[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.”<sup>8</sup> An intervention may sometimes be “timely” even after trial or judgment.<sup>9</sup> Here, the suit has not progressed far: it is still in the pleadings, and the Defendants have not yet served their answer. The Applicants have not delayed in seeking intervention; indeed, they served their notice of intervention even before the Panel scheduled a deadline for such notice. No existing Party will suffer any prejudice because of the intervention. The Applicants’ motion for intervention is therefore timely under the applicable rules.

**2. The motion is timely under the scheduling order.**

Even if the existing Plaintiffs can argue in good faith that the Applicants’ motion is untimely under the applicable rules of civil procedure (which it is not), the Plaintiffs cannot argue that the Applicants’ motion is untimely under Scheduling Order No. 1 (Aug. 22, 2001), which the Panel entered a week after the Plaintiffs served and filed their objection to the Applicants’ intervention. That order provides “that motions to intervene

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<sup>8</sup>*Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986).

<sup>9</sup>*See, e.g., Avery v. Campbell*, 279 Minn. 383, 157 N.W.2d 42, 46 (1968) (intervention after default judgment); *Erickson v. Bennett*, 409 N.W.2d 884, 886-88 (Minn. Ct. App. 1987) (intervention after default judgment); *see also Brakke v. Beardsley*, 279 N.W.2d 798, 801 (Minn. 1979) (“we have previously

pursuant to Rule 24 of the Minnesota Rules of Civil Procedure shall be made and served by 5:00 p.m. on Friday, September 14, 2001.” The Applicants’ motion is therefore timely under the scheduling order.

**B. The Applicants claim an interest relating to the legislative and congressional reapportionment that are this action’s subject.**

This action’s subject is legislative and congressional reapportionment, and the Plaintiffs’ constitutional interest in equal apportionment among legislative districts and equal protection. The claimed-interest test “is a relatively easy test to meet,”<sup>10</sup> and “requires merely a claimed interest, not a certain one.”<sup>11</sup> The interest that the Applicants claim—the same interest as the original Plaintiffs claim—is an interest of the kind that will support an intervention:

In general, any claim alleging a specific, choate contractual or property interest in property or the subject matter of the action will suffice . . . . The courts are increasingly ready to recognize less tangible interests as being sufficient to support intervention of right. This trend reflects the tendency of courts to deal with broader policy issues in the cases resolved by the judiciary, and recognizes the diverse interests that may be affected by litigation in modern times.<sup>12</sup>

**C. The Applicants are so situated that this action’s disposition may as a practical matter impair or impede their ability to protect that interest.**

This test is “a simple, flexible test intended to broaden the circumstances under which intervention is allowed.”<sup>13</sup> Here, the only other vehicle with which the Applicants

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indicated disfavor for intervention after trial because of the delay involved and potential prejudice to the parties, although we have allowed intervention if made shortly after the trial court proceeding”).

<sup>10</sup>1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 24.6 at 516 (3d ed. 1998).

<sup>11</sup>*Miller v. Astleford Equip. Co.*, 332 N.W.2d 653, 654 (Minn. 1983).

<sup>12</sup>1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 24.4 at 516 (3d ed. 1998).

<sup>13</sup>1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 24.5 at 516 (3d ed. 1998).

can protect their rights is the political process—*if* the Legislature does in fact exercise its “power to prescribe the bounds of congressional and legislative districts” as the Minnesota Constitution contemplates,<sup>14</sup> and *if* that process results in an equal and timely apportionment. But if the Legislature does not equally or timely apportion those congressional and legislative districts, and a judicial remedy is necessary, then the Applicants will have been frozen out of the process unless they can intervene. And “[t]he fact that an intervenor may have another remedy does not preclude intervention . . . to take what appears to be the most direct procedure by which a final disposition of this controversy may be accomplished.”<sup>15</sup> The Applicants are therefore so situated that this action’s disposition may as a practical matter impair or impede their ability to protect their interest relating to the legislative and congressional reapportionment.

**D. The existing Parties do not adequately represent the Applicants’ interest.**

A court must resolve any doubt about whether the existing parties adequately represent a prospective intervenor’s interest in favor of intervention: an applicant “ordinarily should be allowed to intervene unless it is clear that the [existing] party will provide adequate representation for the absentee.”<sup>16</sup> An applicant for intervention need

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<sup>14</sup>Minn. Const., art. IV, § 3.

<sup>15</sup>*Avery v. Campbell*, 279 Minn. 383, 157 N.W.2d 42, 46 (1968).

<sup>16</sup>*Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (quoting 7A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1909 at 524 (1972)); *Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999); *Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568, 570-71 (Minn. Ct. App. 1990).

only “carry the ‘minimal’ burden of showing that the existing parties ‘may’ not adequately represent their interests.”<sup>17</sup>

Here, each Applicant is a member of the Democratic-Farmer-Labor Party of Minnesota, a “major political party” within the meaning of the Minnesota Election Law.<sup>18</sup> On information and belief, each existing Plaintiff is a member of a competing major political party, and not of the Democratic-Farmer-Labor Party of Minnesota. The existing Parties do not represent the Applicants’ interest at all: in fact, when drawing political boundaries is at stake, the existing Plaintiffs’ interest is diametrically opposed to the Applicants’ interest.

**II. The Applicants are entitled, in the alternative, to permissive intervention.**

The next rule of civil procedure provides that

Upon timely application anyone may be permitted to intervene in an action when an applicant’s claim or defense and the main action have a common question of law or fact. . . . In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.<sup>19</sup>

Here, the Applicant’s claims and the main action have several common questions of law and fact, and their intervention will not unduly delay or prejudice the adjudication of the rights of the original Parties. The Applicants are therefore entitled to permissive intervention, if they cannot intervene as a matter of right.

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<sup>17</sup>*Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

<sup>18</sup>See Minn. Stat. § 200.02, subd. 7.

<sup>19</sup>Minn. R. Civ. P. 24.02 (permissive intervention).

**A. The Applicants' claims and the main action have common questions of law and fact.**

The Applicants' claims here have the following common questions of law and fact with the main action:

- whether the legislative districts prescribed in Minnesota Statutes §§ 2.02-.715, and those ordered in *Cotlow v. Grove*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000;
- whether the congressional districts prescribed in Minnesota Statutes §§ 2.73-.82, and those ordered in *Cotlow v. Grove*, No. MX 91-1562 (Minn. 4th Jud. Dist.), violate the federal and state constitutions as a result of the census taken in 2000; and
- what judicial remedy will best equally apportion legislative and congressional districts if the Legislature does not equally or timely apportion them pursuant to the Minnesota Constitution, article IV, section 3.

**B. The intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.**

Here, the suit has not progressed far: it is still in the pleadings, and the Defendants have not yet served their answer. The Panel just recently entered its first scheduling order, which schedules a timetable for intervention, so an intervention at this stage cannot possibly delay the proceeding. No existing Party will suffer any prejudice because of the intervention. The Applicants are therefore entitled to permissive intervention, if they cannot intervene as a matter of right.

**III. The Plaintiffs' objection to intervention is insufficient.**

The existing Plaintiffs have objected to the Applicants' intervention on four grounds:



1. Applicants' attempt to intervene as defendants in this matter is improper because Applicants cannot provide Plaintiffs the relief sought by Plaintiffs in this litigation.
2. Applicants' motion is not timely under the Minnesota Rules of Civil Procedure.
3. Applicants have no separate or cognizable right or interest in the subject matter of this action which is different from that of Plaintiffs or Defendants. Applicants, by their Motion, allege a constitutional interest (to "congressional and legislative redistricting in accordance with the legislative process") which interest does not exist in law.
4. Plaintiffs and/or Defendants will adequately represent Applicants' claimed interest.<sup>20</sup>

Each ground for objection is insufficient, either because it is moot or because it is incorrect as a matter of law.

**A. The Applicants have properly applied for intervention as Plaintiffs.**

First, the Plaintiffs object that "Applicants' attempt to intervene as defendants in this matter is improper because Applicants cannot provide Plaintiffs the relief sought by Plaintiffs in this litigation." This objection is well taken and, in the accompanying motion and pleading, the Applicants have therefore realigned themselves as Plaintiffs. The Applicants have thereby discharged the original Plaintiffs' objection, which is now moot.

**B. The Applicants' motion for intervention is timely.**

Second, the Plaintiffs object that "Applicants' motion is not timely under the Minnesota Rules of Civil Procedure." This memorandum has already addressed that issue: the motion is timely under the applicable rules, and the motion is timely under the scheduling order.<sup>21</sup> The objection is incorrect as a matter of law with respect to the

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<sup>20</sup>Notice Objec'n Interven'n (unsigned and undated, served 8/15/01).

<sup>21</sup>See *supra* Law I.A at 5-6.

motion's timeliness under the applicable rules, and moot in light of the subsequent scheduling order.

**C. The Applicants have stated the same claims as the Plaintiffs.**

Third, the Plaintiffs object that

Applicants have no separate or cognizable right or interest in the subject matter of this action which is different from that of Plaintiffs or Defendants. Applicants, by their Motion, allege a constitutional interest (to "congressional and legislative redistricting in accordance with the legislative process") which interest does not exist in law.

But the Applicants have stated precisely the same claims as the Plaintiffs: a constitutional interest in equal apportionment among legislative districts and equal protection. The Applicants accordingly claim an entitlement to intervention in each claim asserted by the Plaintiffs, of the same nature and to the same extent as the Plaintiffs assert. If that "interest does not exist in law," then neither are the Plaintiffs' claims ones upon which relief can be granted.

This objection is simply incorrect as a matter of law: the Plaintiffs have stated a claim, and so have the Applicants. This memorandum has already argued that the Applicants' claimed interest is an interest of the kind that will support an intervention.<sup>22</sup>

**D. The existing Parties do not adequately represent the Applicants' interest.**

Finally, the Plaintiffs object that "Plaintiffs and/or Defendants will adequately represent Applicants' claimed interest." This memorandum has already argued that the

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<sup>22</sup>See *supra* Law I.B at 6.

existing Parties do not adequately represent the Applicants' interest.<sup>23</sup> This objection is incorrect as a matter of law.

### Conclusion

The Applicants are entitled to intervention as a matter of right. The Plaintiffs' objection to intervention is insufficient. Therefore, this Panel ought to order that the Applicants be permitted to intervene in this action as Plaintiffs, and that they may assert their complaint in intervention in this action.

September 14, 2001.

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<sup>23</sup>See *supra* Law I.D at 7-8.

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

Susan M. Zachman; et al.,

No. C0-01-160

Plaintiffs,

vs.

Mary Kiffmeyer, Secretary of State; et al.,

Defendants.

**AFFIDAVIT OF SERVICE**

State of Minnesota, )  
 ) SS.  
County of Hennepin )

The undersigned, being first duly sworn, deposes and says that on September 14, 2001, he or she served the Notice of Intervention and Notice of Hearing & Motion to Intervene, proposed Complaint in Intervention, proposed Order, and Memorandum of Law in Support of Motion to Intervene upon the other Parties by delivering a copy to their attorneys at the following addresses:

**Party**  
Plaintiffs Susan M. Zachman,  
Maryland Lucky R. Rosenbloom,  
Victor L.M. Gomez, Gregory J.  
Edeen, Jeffrey E. Karlson, Diana V.  
Bratlie, Brian J. LeClair, and  
Gregory J. Ravenhorst

**Attorney**  
Mr. Thomas B. Heffelfinger  
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Mr. Charles R. Shreffler  
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Defendant Mary Kiffmeyer

Mr. Alan I. Gilbert  
Chief Deputy & Solicitor General  
Office of the Attorney General  
Suite 1100  
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St. Paul, MN 55101-2128

Defendant Doug Gruber


Mr. Brian J. Asleson  
Chief Deputy Attorney  
Office of Wright County Attorney  
Wright County Government Center  
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Buffalo, MN 55313

Plaintiffs-Intervenors Applicant  
Patricia Cotlow, Thomas L.  
Weisbecker, Theresa Silka, Geri  
Boice, William English, Benjamin  
Gross, Thomas R. Dietz, and John  
Raplinger

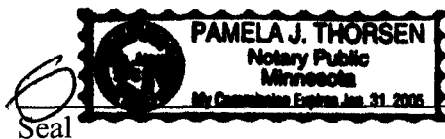
Mr. Alan W. Weinblatt  
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Suite 1616  
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St. Paul, MN 55101

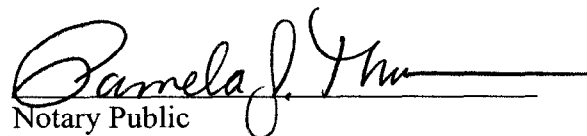
To the best of his or her knowledge, information, and belief; and further affiant saith not.

September 14, 2001.

  
Signature  
Dawn Revenaugh  
Name (please print)

The foregoing was sworn to before me and subscribed in my presence this day, September 14, 2001:



  
Notary Public

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