STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

Susan M. Zachman, et al.,

Plaintiffs,

vs.

Mary Kiffmeyer, et al.,

Defendants.

No. C0-01-160

MOE APPLICANT PLAINTIFFS-INTERVENORS' REPLY MEMORANDUM

Applicant Plaintiffs-Intervenors Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson, and James L. Oberstar have applied for intervention as Plaintiffs. The Panel will hear that application on October 3, 2001, at 2:00 p.m. The Applicants respectfully submit this memorandum in reply to the Plaintiffs' Memorandum in Opposition to Intervention of Roger D. Moe, et al. (Sept. 21, 2001).

Contents

Reply

I. Intervention is a more liberal and flexible concept than standing.

The Plaintiffs argue against the Applicants' intervention because they "do not have standing."[1] The Plaintiffs' focus on "standing" as the relevant concept, rather than on the standards for intervention that the applicable rule explicitly sets forth, undertakes the wrong analysis. 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 applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.[2]

Intervention is a more liberal and flexible concept than standing. The Supreme Court of the United States—construing the analogous federal rule, which "is substantially the same" as the applicable state rule[3]—has recognized that intervention is "unlike initiation of a separate suit."[4] The Supreme Court cites with approval the following "thoughtful discussion" on "the distinction between intervention and initiation"[5] by Professor David L. Shapiro:

> Perhaps it should go without saying, but it must be understood that there is a difference between the question whether one is a proper plaintiff or defendant in an initial action and the question whether one is entitled to intervene. Thus, to decide whether a particular action may be brought by this

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[1]Pls.' Mem. Opp'n Interven'n Moe, Argument I at 2-3 (9/21/01) ("Applicants do not have standing because they are not voters from under-represented districts."); *id.* II at 4-5 ("Applicants as officeholders do not have standing in redistricting litigation.").

[2]Minn. R. Civ. P. 24.01 (intervention of right).

[3]1 David F. Herr & Roger S. Haydock, *Minnesota Practice* § 24.2 at 514 (1998).

[4]*Trbovich v. United Mine Workers*, 404 U.S. 528, 536 (1972).

[5]*Id.* at 536 n.7.

> plaintiff against this defendant may require a determination of whether the controversy is ripe for adjudication, whether the parties before the court are the real parties in interest, and whether the interests asserted are sufficient to mobilize the judicial machinery. When one seeks to intervene in an ongoing lawsuit, these basic questions have presumably been resolved; the disposition of the request, then, should focus on whether the prospective intervener has a sufficient stake in the outcome and enough to contribute to the resolution of the controversy to justify his inclusion. . . . A may not have a dispute with C that could qualify as a case or controversy, but he may have a sufficient interest in B's dispute with C to warrant his participation in the case once it has begun, and the case or controversy limitation should impose no barrier to his admission.
>
> . . . .
>
> This difference can also exist when the intervention is on the plaintiff's side.[6]

Numerous courts throughout the nation have accordingly held that "[t]he requirements for intervention . . . should generally be more liberal than those for standing to bring suit."[7]

The Minnesota courts favor a "policy of encouraging intervention wherever possible,"[8] and the rule allowing intervention "can be liberally applied because courts encourage intervention."[9] 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

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[6]David L. Shapiro, *Some Thoughts on Intervention Before Courts, Agencies, and Arbitrators*, 81 Harv. L. Rev. 721, 726 (1968), *cited in id.*

[7]*See, e.g., United States v. Bd. of Sch. Comm'rs*, 466 F.2d 573, 577 (7th Cir. 1972) (citing Shapiro, *Some Thoughts on Intervention*); *accord Loyd v. Ala. Dep't of Correc'ns*, 176 F.3d 1336, 1339 (11th Cir. 1999); *Ruiz v. Estelle*, 161 F.3d 814, 829-30 (5th Cir. 1998); *United States v. Imperial Irriga'n Dist.*, 559 F.2d 509, 521 (9th Cir. 1977); *Evans v. Buchanan*, 130 F.R.D. 306, 310 & n.5 (D. Del. 1990).

[8]*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.").

[9]*Luthen v. Luthen*, 596 N.W.2d 278, 281 (Minn. Ct. App. 1999).

existing Parties do not adequately represent the Applicants' interest. The Applicants are therefore entitled to intervention as a matter of right.

II. Some Applicants do have standing as "voters from underrepresented districts."

The Plaintiffs argue that "Applicants do not have standing because they are not voters from under-represented districts,"[10] and support that argument with an analysis showing that each Applicant resides in an overrepresented *legislative* district.[11] But the Plaintiffs' analysis ignores the *congressional* districts in which the Applicants reside, which are equally this action's subject. In fact, two Applicants live in an underrepresented *congressional* district:

- Representative Luther lives in the Sixth Congressional District, which is underrepresented.[12]
- Representative Oberstar lives in the Eighth Congressional District, which is underrepresented.[13]

Furthermore, while the Plaintiffs correctly note that Representative Luther lives in Minnesota House District 56A, which is overrepresented, they neglect mentioning that he also lives in Minnesota Senate District 56—which includes every resident of House District 56A, including Representative Luther—which is underrepresented.[14]

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[10]Pls.' Mem. Opp'n Interven'n Moe, Argument I at 2-3 (9/21/01) .

[11]*Id.* at 3.

[12]Compl. Interven'n [Cotlow], Ex. B at 22 (undated, unsigned).

[13]*Id.*

[14]Shreffler Aff., Ex. D at 2 (9/21/01).

III. The Applicants will all "be directly affected by the decree of this court," which is the correct standard for measuring the right of intervention.

The Plaintiffs' focus on who lives in an underrepresented or an overrepresented district is unduly rigid and legalistic. The Plaintiffs are seeking a remedy—statewide legislative and congressional reapportionment—that will affect every voter throughout Minnesota. Whether or not such a voter enjoys the standing to commence an action seeking reapportionment, each such voter must live with the result, and intervention is the proper means of protecting that interest.

This Panel can grant the relief that the Plaintiffs are seeking only by reapportioning voters from underrepresented districts *into overrepresented districts*, whose voters can protect their interests against excessive dilution in that reapportionment only by means of intervention. If a voter in an overrepresented district cannot intervene before the Panel fashions its remedy, then that voter will be bound by an outcome in which he or she was denied any voice until it was too late. Each such voter can claim an interest relating to the legislative and congressional reapportionment that are this action's subject, and each such voter is so situated that this action's disposition may as a practical matter impair or impede his or her ability to protect that interest. Each such voter who has timely applied for intervention is therefore entitled to intervention.

The Supreme Court of the United States has held, in a case arising out of Minnesota's legislative reapportionment after the 1970 census, that "a substantially interested party" "had the right to intervene" as long as the party "would be directly

affected by the decree of [the] court."[15] That standard likewise applies in this case. Each Applicant "would be directly affected by the decree of this court," and therefore "has the right to intervene," regardless of whether he or she lives in an underrepresented district.

IV. The Applicants represent institutional interests that are entitled to representation in this proceeding, and that are otherwise unrepresented.

The Supreme Court of the United States has held in *Sixty-Seventh Minnesota State Senate v. Beens*[16] that the Minnesota State Senate "is an appropriate legal entity for purpose of intervention" and, as such, was entitled to intervention in a case arising out of Minnesota's legislative reapportionment after the 1970 census.[17] According to the Supreme Court, "[a] group of senators thus had the right to intervene."[18]

Here, the majority leader in the Minnesota Senate, Senator Moe, and the minority leader in the Minnesota House of Representatives, Representative Pugh, are likewise entitled to intervention because they represent "substantially interested parties" who "would be directly affected by the decree of this court."[19] Senator Moe and Representative Pugh are present not only as individual voters and as officeholders, they are present as the elected leaders of their party's caucuses in the Legislature's two

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[15] *67th Minn. State Senate v. Beens*, 406 U.S. 187, 194 (1972) (upholding intervention by State Senate) (quoting *Silver v. Jordan*, 241 F. Supp. 576, 579 (S.D. Cal. 1964), *aff'd*, 381 U.S. 415 (1965)).

[16] 406 U.S. 187 (1972).

[17] 406 U.S. at 194 (upholding intervention by State Senate).

[18] *Id.; see* R. Lawrence Dessem, *Congressional Standing to Sue: Whose Vote Is This, Anyway?*, 62 Notre Dame L. Rev. 1, 27 n.162 (1986) ("there well may be situations in which a 'controlling block' of legislators, not constituting an absolute majority of legislature, may be able to establish an injury sufficient for article III purposes").

[19] *Id.*

chambers.[20] They represent significant institutional interests that are entitled to representation in this proceeding, on the same basis as the Minnesota State Senate in *Beens*, and that are otherwise unrepresented.[21] They are the only ones among the existing parties and the applicants for intervention with a strong, direct stake in arguing for a legislative solution to malapportionment, for which the Minnesota Constitution[22] and the Order establishing this proceeding[23] both explicitly provide. If a judicial solution is necessary, then they will bring to this process a wealth of knowledge from the legislative process that no existing party and no other applicant for intervention can offer.

Likewise, the other five applicants—Representatives McCollum, Sabo, Luther, Peterson, and Oberstar—are entitled to intervention not only as individual voters, but also as their party's congressional delegation from this state. Together they comprise the state's entire Democratic-Farmer-Labor delegation in the House of Representatives. They are uniquely situated to represent the interests of the voters throughout the state—in fact, the *majority* of voters throughout the state, in the last federal election[24]—who support their party's legislative program at the national level.

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[20]*See* Dessem, *Congressional Standing to Sue: Whose Vote Is This, Anyway?*, 62 Notre Dame L. Rev. at 27 n.162 ("there well may be situations in which a 'controlling block' of legislators, not constituting an absolute majority of legislature, may be able to establish an injury sufficient for article III purposes").

[21]*See* Minn. R. Civ. P. 24.01 (authorizing intervention "unless the applicant's interest is adequately represented by existing parties").

[22]Minn. Const., art. IV, § 3 ("At 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 and legislative districts.").

[23]Order (7/12/01) ("the special redistricting panel shall release a redistricting plan that satisfies constitutional and statutory requirements only in the event a legislative redistricting plan is not enacted in a timely manner").

[24]*See Minnesota Legislative Manual* 378-79, 384-85 (2001-02).

The cases on which the Plaintiffs rely for the propositions that "[t]here is no constitutional right to run for office from a particular district"[25] and that "Applicants do not have standing in their capacity as U.S. Representatives or legislators"[26] are inapposite. For the former proposition, the Plaintiffs rely on the trial court's holding in *LaPorte County Republican Central Committee v. Board of Commissioners.*[27] What the Plaintiffs' memorandum does not mention is that the trial court's holding in *LaPorte* was *reversed on appeal.*[28] The appellate court held that the *LaPorte* plaintiffs had indeed stated a viable claim,[29] so the case on which the Plaintiffs here rely is not even good law. Even so, the Applicants are not asserting any "constitutional right to run for office from a particular district": they are instead asserting a generalized interest in equal apportionment that the state's voters—including them—share, and which they assert from a particular political viewpoint that the Plaintiffs do not adequately represent. The *LaPorte* case involved an after-the-fact challenge to political gerrymandering, which is not at issue here.

For the proposition that "Applicants do not have standing in their capacity as U.S. Representatives or legislators," the Plaintiffs cite three cases: *Quilter v. Voinovich,*[30]

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[25]Pls.' Mem. Opp'n Interven'n Moe, Argument II.A at 4 (9/21/01) .

[26]*Id.* II.B at 4-5.

[27]851 F. Supp. 340 (N.D. Ind. 1994).

[28]43 F.3d 1126 (7th Cir. 1994), *rev'g* 851 F. Supp. 340.

[29]43 F.3d at 1129-30.

[30]981 F. Supp. 1032 (N.D. Ohio 1997).

Illinois Legislative Redistricting Commission v. LaPaille,[31] and *DeJulio v. Georgia*.[32] *Quilter* involved a challenge against alleged racial gerrymandering, not malapportionment. The *Quilter* court held that members of the apportionment board lacked standing to challenge the racial gerrymandering unless "any of them have personally been subjected to a racial classification in relation to [the challenged] districts."[33] The trial court thereby implied that the plaintiffs would have enjoyed the necessary standing, if they had been subject to the challenged process—that is, if they "would be directly affected by the decree of [the] court";[34] the Applicants in this case *will* be so affected, so the holding in *Quilter* does not defeat their intervention here.

LaPaille involved an internal squabble among redistricting commissioners, who were seeking relief only as commissioners—from themselves (or at least the commission on which they served) and other state officers—and *not* as voters. The *LaPaille* court let the action proceed because an amended pleading added an actual voter, in his capacity as such, as a plaintiff. But the court also ordered that

> The Redistricting Commission, [Secretary of State] and the State Board of Elections will be treated as nominal parties to the litigation. While they appear to have no legally cognizable rights in this action, their presence may serve a useful, if not mechanical, role in the eventual disposition of the matter.[35]

The *LaPaille* court thus kept *parties who lacked standing* in the case essentially as *intervenors*. The holding in *LaPaille* thus supports the Applicants' intervention.

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[31] 782 F. Supp. 1267 (N.D. Ill. 1991).

[32] 127 F. Supp. 2d 1274 (N.D. Ga. 2001).

[33] 981 F. Supp. at 1037.

[34] *67th Minn. State Senate v. Beens*, 406 U.S. 187, 194 (1972) (upholding intervention by State Senate) (quoting *Silver v. Jordan*, 241 F. Supp. 576, 579 (S.D. Cal. 1964), *aff'd*, 381 U.S. 415 (1965)).

DeJulio was not truly a reapportionment case at all: it challenged a specific, unique, and—to this case—irrelevant procedure by which Georgia's legislature involves subsets of legislators in enacting special laws of local application; but the *DeJulio* court did indeed allow as parties "individual [legislators] in their official capacities" as "proper individual representatives of the named [legislative] bodies."[36] *DeJulio* thus does not support the Plaintiffs' argument that legislators lack standing.

V. The Applicants' interest is not adequately represented by existing Parties, and the Plaintiffs are estopped from objecting to the Applicants' intervention.

Finally, the Plaintiffs argue that "Applicants' interests are adequately represented by the current Plaintiffs,"[37] particularly the Cotlow Plaintiffs to whose intervention the Zachman Plaintiffs have already consented.

By consenting to the Cotlow Plaintiffs' intervention, the Zachman Plaintiffs have engaged in the equivalent of forum-shopping with respect to who their adversaries will be. Essentially, the Zachman Plaintiffs—who first argued that they themselves "and/or Defendants will adequately represent Applicants' claimed interest"[38]—now want to manipulate which political opponents they must deal with, by letting some in and freezing others out. The Zachman Plaintiffs, who are all Republicans, want to control in "their" lawsuit who can speak for the Democratic-Farmer-Labor Party.

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[35]782 F. Supp. at 1272.

[36]127 F. Supp. 2d at 1294.

[37]Pls.' Mem. Opp'n Interven'n Moc, Argument III at 6-7 (9/21/01) .

[38]Notice Objec'n Interven'n (unsigned and undated, served 8/15/01).

The Zachman Plaintiffs have argued that the Cotlow Plaintiffs and the Applicants are interchangeable, since the Applicants' interests are already—according to the Zachman Plaintiffs—"adequately represented" by the Cotlow Plaintiffs, to whose intervention they have conveniently consented. But because the Zachman Plaintiffs have consented to the Cotlow Plaintiffs' intervention, and if the Cotlow Plaintiffs and the Applicants are indeed interchangeable as the Zachman Plaintiffs argue, then the Zachman Plaintiffs ought to be estopped from objecting to the Applicants' intervention.

It is not necessarily true that the Applicants' "interest is adequately represented by existing parties" simply because the Cotlow Plaintiffs are also Democrats. The Applicants are different voters than the Cotlow Plaintiffs, from different legislative districts than the Cotlow Plaintiffs, with a different perspective than the Cotlow Plaintiffs. The Applicants, unlike the Cotlow Plaintiffs, are themselves elected representatives. The Applicants include a representative from the Eighth Congressional District, while the Cotlow Plaintiffs do not. Most importantly, the Applicants represent institutional interests that are entitled to representation in this proceeding, and that are otherwise unrepresented, not even by the Cotlow Plaintiffs.

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."[39] An applicant for intervention need

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[39] *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."[40] The Applicants have met that burden here.

September 28, 2001.

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M1:799352.01

[40] *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)).

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28 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:

Please file the enclosed original and nine copies of the Moe Applicant Plaintiffs-Intervenors' Reply Memorandum. By copy of this letter, these papers are being served upon the Parties and the other known Applicants for Intervention.

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

Very truly yours,

Brian Melendez
Attorney for
Applicants for Intervention

enclosures

cc (w/ encs.):
Brian J. Asleson
John D. French
Alan I. Gilbert
Thomas B. Heffelfinger
Charles R. Shreffler
Marianne D. Short
Alan W. Weinblatt

M1:799636.01

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Greg Shackle, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:48 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Alan Weinblatt, Esq. therein named, personally at 1616 Pioneer Building, 336 North Robert Street, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Wendy France, legal secretary, an expressly authorized agent for service for said Alan Weinblatt, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
October 1, 2001.

Notary Public

DENNIS B. QUIMBY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Re: 2938-460907-1

STATE OF MINNESOTA

COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Kevin Horrocks, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:30 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Charles R. Schreffler, Esq. therein named, personally at 2116 2nd Avenue South, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Lee Sanford, legal assistant, an expressly authorized agent for service for said Charles R. Schreffler, Esq., a true and correct copy thereof.

K. B Horrocks

Subscribed and sworn to before me,
October 1, 2001.

Choua Xiong
Notary Public

CHOUA XIONG
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Re: 2938460907-1

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Greg Shackle, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:33 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Alan Gilbert, Esq. therein named, personally at 1100 NCL Tower, 445 Minnesota Street, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Michelle Sorvarr, receptionist, an expressly authorized agent for service for said Alan Gilbert, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
October 1, 2001.

Notary Public

DENNIS B. QUIMBY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Re: 2938-460907-1

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Greg Shackle, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:33 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Mike Hatch, Esq. therein named, personally at 1100 NCL Tower, 445 Minnesota Street, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Michelle Sorvarr, receptionist, an expressly authorized agent for service for said Mike Hatch, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
October 1, 2001.

Notary Public

DENNIS B. QUIMBY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Re: 2938-460907-1

STATE OF MINNESOTA

COUNTY OF RAMSEY

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Greg Shackle, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:33 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Mark B. Levinger, Esq. therein named, personally at 1100 NCL Tower, 445 Minnesota Street, St. Paul, County of Ramsey, State of Minnesota, by handing to and leaving with Michelle Sorvarr, receptionist, an expressly authorized agent for service for said Mark B. Levinger, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
October 1, 2001

Notary Public

DENNIS B. QUIMBY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Re: 2938-460907-1

STATE OF MINNESOTA

COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Greg DeGrace, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:35 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon John French, Esq. therein named, personally at 2300 Wells Fargo Center, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Mary Melling, supervisor, an expressly authorized agent for service for said John French, Esq., a true and correct copy thereof.

NICOLE M. SHAY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Subscribed and sworn to before me,
October 1, 2001.

Notary Public

Charge $17.00

Re: 2938460907-1

STATE OF MINNESOTA

COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Brad Emery, being duly sworn, on oath says: that on the 28th day of September, 2001, at 4:05 p.m. (s)he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Thomas B. Heffelfinger, Esq. therein named, personally at 601 2nd Avenue South, #4000, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Cindy Smith, receptionist, an expressly authorized agent for service for said Thomas B. Heffelfinger, Esq., a true and correct copy thereof.

Brad Emery

Subscribed and sworn to before me,
October 1, 2001.

Notary Public

NICOLE M. SHAY
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Charge $17.00

Re: 2938460907-1

STATE OF MINNESOTA

COUNTY OF HENNEPIN

AFFIDAVIT OF SERVICE

CO-01-160

METRO LEGAL SERVICES

Michael D. Nielsen, being duly sworn, on oath says: that on the 1st day of October, 2001, at 8:23 a.m. he served the attached Reply Memorandum in Support of Motion to Intervene; Complaint in Intervention; and Affidavit of Jesse Ventura upon Brian J. Aleson, Esq. therein named, personally at 10 2nd Street Northwest, Buffalo, County of Wright, State of Minnesota, by handing to and leaving with Judy Merritt, legal secretary, an expressly authorized agent for service for said Brian J. Aleson, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
October 4, 2001.

Notary Public

DANIEL J. DOWLING
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2005

Charge $55.00

Re: 2398460907-1