STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A11-152

Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg, and Debra Hasskamp, individually and on behalf of all citizens of Minnesota similarly situated,

Applicants for Intervention,

and

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

Applicants for Intervention,

vs.

Mark Ritchie, Secretary of State of Minnesota; and Robert Hiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

ORDER

In its first scheduling order of July 18, 2011, the panel ordered all persons wishing to intervene in this matter to submit motions to intervene by July 29, 2011. Two groups of applicants—the Martin applicants and the Britton applicants—filed timely motions to intervene.[1] The Martin applicants are voters and members of the Democratic-Farmer-Labor Party of Minnesota (DFL), who seek "to advance the interests of the DFL." The Britton applicants describe themselves as "citizens and qualified voters of the United States of America and of the State of Minnesota."

The July 18, 2011 order also directed the parties to file and serve any response to the motions to intervene by August 12, 2011. Only the plaintiffs responded by filing and serving a letter, in which they consented to the intervention of both groups of applicants.

No party or applicant has requested oral argument on the issue of intervention.

Both groups of applicants seek to intervene as of right under Minn. R. Civ. P. 24.01 or, in the alternative, to obtain permissive intervention under Minn. R. Civ. P. 24.02. The Martin applicants also argue that they have accomplished intervention under Minn. R. Civ. P. 24.03. Because we conclude that all applicants have satisfied the requirements of rule 24.02, we need not reach the application of rule 24.01 or rule 24.03.

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[1] On May 23, 2011, while the litigation in this matter was stayed by the February 14, 2011 order of Minnesota Supreme Court Chief Justice Lorie Gildea, the Martin applicants filed a notice of intervention and a complaint in intervention in Wright County District Court. On July 29, 2011, the Martin applicants filed a motion with the clerk of appellate courts to confirm their intervention or, in the alternative, to intervene. The panel construes both of the Martin applicants' submissions as timely motions to intervene.

Rule 24.02 provides:

> 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.

Minn. R. Civ. P. 24.02. Based on this language, a court may allow permissive intervention if it finds that (1) the applicant filed a timely application for intervention; (2) there exists a common question of law or fact between the applicant's claim and the main action; and (3) intervention will not unduly delay or prejudice the existing parties. *Id.*; *Nash v. Wollan*, 656 N.W.2d 585, 591 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003). Permissive intervention under rule 24.02 is within the court's discretion. *See Deal v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007) (stating that denial of a request for permissive intervention will be reversed only when a clear abuse of discretion is shown).

As to the first requirement for permissive intervention, all applicants filed their motions to intervene on or before the July 29, 2011 deadline. As a result of that deadline, all such motions are before the panel prior to the resolution of any more substantive issues. The motions of both groups of applicants, therefore, are timely.

As to the second requirement for permissive intervention, the claims of the applicants and the plaintiffs have common questions of law and fact. All applicants have a specific claim and interest in the constitutionality of the current congressional and legislative districts and the appropriate remedy for the districts' alleged constitutional

infirmities. These common questions, which are the central issues in this case, are sufficient to satisfy the second element of rule 24.02.

As to the third requirement for permissive intervention, adding parties to the case at this date will not unduly delay or prejudice the existing parties. The panel's interest in gathering information from various sources outweighs the possible inconvenience to the parties of considering and responding to the arguments of the two groups of intervenors. *See Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Oct. 9, 2001) (Order Granting Motions for Permissive Intervention, Directing Filing of Stipulation and Statement of Unresolved Issues, and Stating Preliminary Timetable) (granting three motions to intervene); *see also Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 34, 221 N.W.2d 162, 166 (1974) (stating that allowing parties to intervene enhances complexity of the case but allows for a more informed decision by the court); Note, *Federal Court Involvement in Redistricting Litigation*, 114 Harv. L. Rev. 878, 900 (2001) (stating that judges in redistricting cases "should take a more permissive approach to intervention . . . and should open up participation . . . to incorporate more of the diverse interests that have a stake in the outcome"). We also observe that plaintiffs have consented to the intervention of both groups of applicants and that the other parties have not objected to the motions to intervene.

For the foregoing reasons, we grant the Martin applicants' and the Britton applicants' motions to intervene. In light of our decision, the August 30, 2011 hearing on the motions to intervene need not occur and shall be removed from the panel's docket.

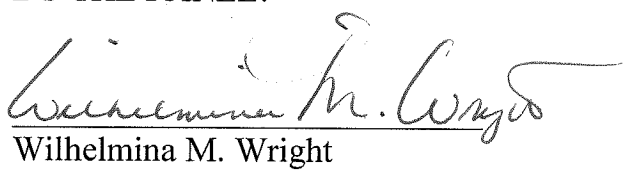
IT IS HEREBY ORDERED:

1. The Martin applicants' motion to intervene is GRANTED.

2. The Britton applicants' motion to intervene is GRANTED.

Dated: August 18, 2011

BY THE PANEL:



Wilhelmina M. Wright
Presiding Judge