

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

A21-0243  
A21-0546

**FILED**

September 3, 2021

OFFICE OF  
APPELLATE COURTS

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Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood,  
Mary E. Kupper, Douglas W. Backstrom, and James E.  
Hougas, III, individually and on behalf of all citizens and  
voting residents of Minnesota similarly situated, and  
League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane,  
Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota; and  
Kendra Olson, Carver County Elections and Licensing  
Manager, individually and on behalf of all Minnesota  
county chief election officers,

Defendants,

**NOTICE OF MOTION AND  
APPLICATION TO  
INTERVENE  
BY PROPOSED DATA  
SCIENCE INTERVENORS**

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Frank Sachs, Dagny Heimisdottir, Michael Arulfo,  
Tanwi Prigge, Jennifer Guertin, Garrison O'Keith  
McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle  
Main, and Wayne Grimmer,

Plaintiffs,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie,  
Xiongpaoo Lee, Abdirazak Mahboub, Aida Simon,  
Beatriz Winters, Common Cause, OneMinnesota.org,  
and Voices for Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

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- TO: Defendant Steve Simon, Secretary of State of Minnesota, and his Attorneys Nathan J. Hartshorn and Angela Behrens, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101-2134; and
- TO: Defendant Kendra Olson, Carver County Elections and Licensing Manager, and her Attorney Jennifer K. Tichey, Carver County Attorney's Office, 604 East 4<sup>th</sup> Street, Chaska, MN 55318; and
- TO: Plaintiffs Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom, James E. Hougas, III, and League of Women Voters Minnesota, and their Attorneys James H. Gilbert, Adam L. Sienkowski, and Jody E. Nahlovsky, James H. Gilbert Law Group P.L.L.C., 12700 Anderson Lakes Parkway, Eden Prairie, MN 55344; and
- TO: Plaintiff-Intervenors Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt, and their Attorneys Elizabeth M. Brama, Maren M. Forde, and Samuel N. Louwagie, Taft Stettinius & Hollister LLP, 2200 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, MN 55402; and
- TO: Plaintiffs Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer, and their Attorneys Charles N. Nauen, David J. Zoll, Kristen G. Marttila, and Rachel A. Kitze Collins, Lockridge Grindal Nauen P.L.L.P., 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401-2159; and Marc. E. Elias, Aria C. Branch, Daniel C. Osher, Jyoti Jasrasaria, Perkins Coie LLP, 700 Thirteenth Street NW, Suite 600, Washington, D.C. 20005-3960, and Abha Khanna and Jonathan P. Hawley, Perkins Coie LLP, 1201 Third Avenue, Suite 4900, Seattle, WA 98101-3099; and
- TO: Plaintiff-Intervenors Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpaoo Lee, Abdirazak Mahboub, Aida Simon, Beatriz Winters, Common Cause, OneMinnesota.org, and Voices for Racial Justice, and their Attorneys Brian A. Dillon and Amy Erickson, Lathrop GPM, 80 South Eighth Street, 500 IDS Center, Minneapolis, MN 55402.

PLEASE TAKE NOTICE THAT Karen Saxe, Paul Zorn, Deanna Haunsperger, Stephen Kennedy, Stephen Polasky, Victor Reiner, Brianna Heggeseth, Lisa Lendway, Shilad Sen, David Van Riper, Jonathan Schroeder, and Tracy Kugler (collectively, the "Proposed Data Science Intervenors") hereby move the Panel for an Order granting them intervention as additional Plaintiffs to fully participate in the above-captioned proceedings. This Motion and Application is based on Minnesota Rule of Civil Procedure 24 and the attached Memorandum of Law in Support of Motion and Application to Intervene by the Proposed Data Science Intervenors, along with the

accompanying Proposed Complaint in Intervention. The Proposed Data Science Intervenors have also served a Notice of Proposed Intervention under Minnesota Rule of Civil Procedure 24.03.

Dated: September 3, 2021

Respectfully submitted,

BASSFORD REMELE, P.A.

By: /s/ Lewis A. Remele

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*Attorneys for Data Science Intervenors*

**ACKNOWLEDGMENT REQUIRED UNDER MINN. STAT. § 549.211, SUBD. 1**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211, if factual contentions and legal arguments contained in this motion are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Dated: September 3, 2021

By: /s/ Lewis A. Remele  
Lewis A. Remele (#90724)

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**NOTICE OF PROPOSED  
INTERVENTION**

Steve Simon, Secretary of State of Minnesota; and  
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Manager, individually and on behalf of all Minnesota  
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Defendants,

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- TO: Defendant Steve Simon, Secretary of State of Minnesota, and his Attorneys Nathan J. Hartshorn and Angela Behrens, Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1400, St. Paul, MN 55101-2134; and
- TO: Defendant Kendra Olson, Carver County Elections and Licensing Manager, and her Attorney Jennifer K. Tichey, Carver County Attorney's Office, 604 East 4<sup>th</sup> Street, Chaska, MN 55318; and
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- TO: Plaintiff-Intervenors Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt, and their Attorneys Elizabeth M. Brama, Maren M. Forde, and Samuel N. Louwagie, Taft Stettinius & Hollister LLP, 2200 IDS Center, 80 South 8<sup>th</sup> Street, Minneapolis, MN 55402; and
- TO: Plaintiffs Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer, and their Attorneys Charles N. Nauen, David J. Zoll, Kristen G. Marttila, and Rachel A. Kitze Collins, Lockridge Grindal Nauen P.L.L.P., 100 Washington Avenue South, Suite 2200, Minneapolis, MN 55401-2159; and Marc. E. Elias, Aria C. Branch, Daniel C. Osher, Jyoti Jasrasaria, Perkins Coie LLP, 700 Thirteenth Street NW, Suite 600, Washington, D.C. 20005-3960, and Abha Khanna and Jonathan P. Hawley, Perkins Coie LLP, 1201 Third Avenue, Suite 4900, Seattle, WA 98101-3099; and
- TO: Plaintiff-Intervenors Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpaoo Lee, Abdirazak Mahboub, Aida Simon, Beatriz Winters, Common Cause, OneMinnesota.org, and Voices for Racial Justice, and their Attorneys Brian A. Dillon and Amy Erickson, Lathrop GPM, 80 South Eighth Street, 500 IDS Center, Minneapolis, MN 55402.

Pursuant to Minnesota Rule of Civil Procedure 24.03, Karen Saxe, Paul Zorn, Deanna Haunsperger, Stephen Kennedy, Stephen Polasky, Victor Reiner, Brianna Heggeseth, Lisa Lendway, Shilad Sen, David Van Riper, Jonathan Schroeder, and Tracy Kugler (collectively, the "Proposed Data Science Intervenors") hereby provide notice of their intention to intervene in the above-captioned proceedings. Intervention is sought for the reasons stated in the accompanying Proposed Data Science Intervenors' Notice of Motion and Application to Intervene, Memorandum of Law in Support of Motion and Application to Intervene, and Proposed Complaint in

Intervention. The Proposed Data Science Intervenors claim an interest relating to the legislative and congressional redistricting that is the subject of this action, and they are so situated that the disposition of this action may as a practical matter impair or impede their ability to protect that interest. As such, they are entitled to intervene as a matter of right or by permission under Rule 24 of the Minnesota Rules of Civil Procedure.

Ordinarily under Rule 24.03, in the absence of objections by any existing party to this matter within 30 days after service of this Notice, intervention should be deemed to have been accomplished. However, the Proposed Data Science Intervenors appreciate the Panel's August 4, 2021 deadline for seeking intervention, and they address that issue more fully in their accompanying Memorandum of Law. In all events, the Proposed Data Science Intervenors request that the Panel dispense with the lengthy notice procedure of Rule 24.03, which could consume a number of weeks and thus likely defeat the purpose of the proposed intervention. Before filing these intervention papers, counsel for the Proposed Data Science Intervenors made efforts to obtain written consent to intervention from all parties to this case. Two groups of parties indicated they would not consent at this time, the defendant Secretary of State indicated he neither consented nor objected, and other parties have not yet provided written responses. Counsel for the Proposed Data Science Intervenors believe the issue of consent can be better addressed with these intervention papers on file and, promptly upon filing, intend to consult further with counsel for the existing parties to determine whether consent can be obtained. Counsel will inform the Panel once they receive the final positions of the existing parties.

Dated: September 3, 2021

Respectfully submitted,

BASSFORD REMELE, P.A.

By: /s/ Lewis A. Remele

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*Attorneys for the Proposed Data Science Intervenors*



**ACKNOWLEDGMENT REQUIRED UNDER MINN. STAT. § 549.211, SUBD. 1**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211, if factual contentions and legal arguments contained in this notice are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Dated: September 3, 2021

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Karen Saxe, Paul Zorn, Deanna  
Haunsperger, Stephen Kennedy, Stephen  
Polasky, Victor Reiner, Brianna Heggeseth,  
Lisa Lendway, Shilad Sen, David Van  
Riper, Jonathan Schroeder, and Tracy  
Kugler,

Plaintiff-Intervenors,

**[PROPOSED] COMPLAINT  
IN INTERVENTION BY  
DATA SCIENCE INTERVENORS**

v.

Steve Simon, Secretary of State of  
Minnesota,

Defendant.

---

Plaintiff-Intervenors Karen Saxe, Paul Zorn, Deanna Haunsperger, Stephen Kennedy, Stephen Polasky, Victor Reiner, Brianna Heggeseth, Shilad Sen, Lisa Lendway, David Van Riper, Jonathan Schroeder, and Tracy Kugler in support of their Complaint in Intervention, state and allege as follows:

**INTRODUCTION**

1. On August 12, 2021, pursuant to Public Law No. 94-171, the U.S. Census Bureau released the redistricting data from the 2020 Census (the “2020 Census Redistricting Data Release”). The 2020 Census Redistricting Data Release revealed significant changes in the distribution of the population in the State of Minnesota over the last decade, which has rendered

Minnesota's current congressional and legislative districts malapportioned in violation of the United States Constitution and the Minnesota Constitution.

2. Plaintiff-Intervenors are United States citizens and qualified voters in the State of Minnesota who reside in congressional and legislative districts that were established in 2012 by the Special Redistricting Panel in *Hippert v. Ritchie* using population data from the 2010 Census. The 2020 Census Redistricting Data Release now shows that each Plaintiff-Intervenor lives in a congressional and/or legislative district that is overpopulated, which would dilute the strength of their votes in future congressional and/or legislative elections.

3. Plaintiff-Intervenors are not only citizens and qualified voters in the State of Minnesota, but also professors and research scientists in mathematics, statistics, computer science, geography, and allied fields who believe that high-speed computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, improve the redistricting process, and promote fair and effective representation for all Minnesotans. They therefore will refer to themselves in this Complaint in Intervention as the "Data Science Intervenors."

4. As registered voters in the State of Minnesota, the Data Science Intervenors have exercised, and wish to continue exercising, their undiluted right to vote for their preferred candidates in primary and general elections. The 2020 Census Redistricting Data Release confirms that population shifts during the last decade have diluted the Data Science Intervenors' voting strength and have rendered Minnesota's congressional and legislative districting plans unconstitutional under both the United States Constitution and the Minnesota Constitution. Specifically, the current congressional districts violate Article I, Section 2 of the United States Constitution, as well as Article I, Section 2 and Article IV, Section 3 of the Minnesota Constitution. The current legislative districts violate the Fourteenth Amendment of the United States

Constitution, as well as Article I, Section 2 and Article IV, Sections 2 and 3 of the Minnesota Constitution.

5. The Data Science Intervenors therefore intervene in this action to enforce their voting rights guaranteed by the United States Constitution and the Minnesota Constitution and to do so by applying advanced computational science to the redistricting process.

### **PARTIES**

6. The Data Science Intervenors are professors and academics at leading Minnesota colleges and universities who teach and conduct research in subfields of mathematics and science that are directly relevant to redistricting. They also are United States citizens and qualified voters residing in overpopulated congressional and legislative districts in the State of Minnesota.

7. The Data Science Intervenors include two Past Presidents of the Mathematical Association of America, an Associate Executive Director of the American Mathematical Society, a Member of the National Academy of Sciences, and three research scientists from the Minnesota Population Center, which is the University of Minnesota's institute for demographic research, including spatial demography.

8. Data Science Intervenor Karen Saxe is a registered voter who resides in Northfield, Minnesota, in Rice County, and in Congressional District 2, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Dr. Saxe is a Professor Emerita of Mathematics at Macalester College, where she taught courses on electoral system design and voting theory. Dr. Saxe serves as an Associate Executive Director of the American Mathematical Society (AMS) and the Director of AMS's Office of Government Relations. Dr. Saxe has published multiple articles on redistricting in *Math Horizons* and *Notices of the American Mathematical Society*, and has co-authored a leading study of "Redistricting and District Compactness," published in volume 624 of

the peer-reviewed *Contemporary Mathematics*. Dr. Saxe also was one of the principal drafters of the Policy Statement on Drawing Voting Districts, issued jointly by AMS and the American Statistical Association, which is the world's largest organization of statisticians and the oldest professional science society in the United States. Dr. Saxe is a Past Vice President of the Mathematical Association of America. She has a Ph.D. in Mathematics from the University of Oregon.

9. Data Science Intervenor Paul Zorn is a registered voter who resides in Northfield, Minnesota, in Rice County, and in Congressional District 2, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Dr. Zorn is an Emeritus Professor of Mathematics at St. Olaf College, a Past President of the Mathematical Association of America (MAA), and the current chair of the MAA's Science Policy Committee. His professional research interests include complex analysis, mathematical exposition, computer graphics, and computer algebra systems. Dr. Zorn has a Ph.D. in Mathematics from the University of Washington.

10. Data Science Intervenor Deanna Haunsperger is a registered voter who resides in Northfield, Minnesota, in Dakota County, and in Congressional District 2, Senate District 58, and House District 58B, which the 2020 Census Redistricting Data Release demonstrates are overpopulated. She is a Professor of Mathematics at Carleton College and a Past President of the Mathematical Association of America. Dr. Haunsperger has taught a course titled "Mathematics and Democracy" and, this fall, will supervise a half-dozen students at Carleton who will analyze mathematical ways to ensure fair redistricting in Minnesota. Dr. Haunsperger has a Ph.D. in Mathematics from Northwestern University, where her thesis was on voting theory, the mathematics behind tallying elections.

11. Data Science Intervenor Stephen Kennedy is a registered voter who resides in Northfield, Minnesota, in Dakota County, and in Congressional District 2, Senate District 58, and House District 58B, which the 2020 Census Redistricting Data Release demonstrates are overpopulated. Dr. Kennedy is an Emeritus Professor of Mathematics at Carleton College, where he has taught a course covering the mathematics behind voting theory and apportionment. Earlier this year, Dr. Kennedy taught a version of this course as a visiting faculty member at the University of Richmond, including a month-long unit addressing the mathematics of redistricting and gerrymandering. Dr. Kennedy has a Ph.D. in Mathematics from Northwestern University.

12. Data Science Intervenor Stephen Polasky is a registered voter who resides in Arden Hills, Minnesota, in Ramsey County, and in Congressional District 4 and Senate District 42, both of which the 2020 Census Redistricting Data Release demonstrates are overpopulated. Dr. Polasky is a Regents Professor and a Professor of Applied Economics at the University of Minnesota, Twin Cities. Because Dr. Polasky's research focuses on issues involving land use, land management, and common property resources, he has extensive experience with Geographic Information Systems (GIS), which are computer systems that analyze and display geographically referenced information. Dr. Polasky is a Member of the National Academy of Sciences and a Fellow of the American Association for the Advancement of Science. He has a Ph.D. in Economics from the University of Michigan.

13. Data Science Intervenor Victor Reiner is a registered voter who resides in Minneapolis, Minnesota, in Hennepin County, and in Congressional District 5 and Senate District 61, both of which the 2020 Census Redistricting Data Release demonstrates are overpopulated. Dr. Reiner is a Professor of Mathematics at the University of Minnesota. His professional research interests include algebraic, geometric, and topological combinatorics, as well as discrete geometry.

Dr. Reiner is the co-moderator for the math arXiv preprint server's category "math.CO" (Combinatorics), which is the category under which many math papers on redistricting and gerrymandering are submitted. Dr. Reiner also is a Fellow of the American Mathematical Society. He has a Ph.D. in Mathematics from the Massachusetts Institute of Technology (MIT).

14. Data Science Intervenor Brianna Heggeseth is a registered voter who resides in Saint Paul, Minnesota, in Ramsey County, and in Congressional District 4 and House District 64A, both of which the 2020 Census Redistricting Data Release demonstrates are overpopulated. Dr. Heggeseth is an Associate Professor of Statistics at Macalester College. Dr. Heggeseth's research interests include the study of statistical methods and their application in social and hard sciences. Her methodology work has focused on uncovering group structure in longitudinal data through clustering-analysis techniques and probability models, as well as data-mining approaches. Dr. Heggeseth has a Ph.D. in Statistics from the University of California, Berkeley.

15. Data Science Intervenor Lisa Lendway is a registered voter who resides in Saint Paul, Minnesota, in Ramsey County, and in Congressional District 4, Senate District 65, and House District 65A, all of which the 2020 Census Redistricting Data Release demonstrates are overpopulated. Dr. Lendway is an Assistant Professor of Statistics and Data Science at Macalester College. Dr. Lendway has a Ph.D. in Statistics from the University of Minnesota, where her research focused on using mixed-effects methods to model longitudinal growth using cross-sectional data. Dr. Lendway also has over eight years of experience working as a data scientist in a variety of industries, including marketing, healthcare, and insurance.

16. Data Science Intervenor Shilad Sen is a registered voter who resides in Minneapolis, Minnesota, in Hennepin County, and in Congressional District 5, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Dr. Sen is a Professor of

Computer Science at Macalester College. His research interests include online communities, human-computer interaction, and machine learning. Dr. Sen's research draws upon the fields of data-mining, psychology, and computer systems design. Dr. Sen also currently serves as a Principal Applied Scientist in the Office of Applied Research at Microsoft. He is a former research fellow for Target Corporation, where he worked to develop and scale algorithms and systems for personalization. Dr. Sen has worked for Sourcelight Technologies, Google, IBM Research, and Thomson Reuters R&D. Dr. Sen has a Ph.D. in Computer Science from the University of Minnesota.

17. Data Science Intervenor David Van Riper is a registered voter who resides in Saint Paul, Minnesota, in Ramsey County, and in Congressional District 4, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Mr. Van Riper is the Director of Spatial Analysis at the Minnesota Population Center, which is part of the Institute for Social Research and Data Innovation at the University of Minnesota. He is an expert in small-area census data and leads the Minnesota Population Center's team in researching the impact of differential privacy on the 2020 decennial Census. He is co-Principal Investigator on two grants funded by the National Institutes of Health: IPUMS NHGIS (National Historical Geographic Information System), which provides access to historical and contemporary small-area data, including GIS mapping files, for the United States, and IPUMS GeoMarker, which allows users to securely geocode data and attach neighborhood characteristics to the geocoded output. Mr. Van Riper has an M.A. in Geography from the University of Minnesota.

18. Data Science Intervenor Jonathan Schroeder is a registered voter who resides in Saint Paul, Minnesota, in Ramsey County, and in Congressional District 4, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Dr. Schroeder is a Research Scientist



at the Minnesota Population Center, which is part of the Institute for Social Research and Data Innovation at the University of Minnesota. Dr. Schroeder is an expert in census geography with extensive experience modeling population distributions. His research interests include the relationship between the design of zones and their correspondence with population characteristics, and developing and applying methods of spatio-temporal analysis and visualization of census data. One focus of Dr. Schroeder's research has been areal interpolation models to produce geographically standardized time series where the boundaries of Census reporting units have changed. Dr. Schroeder has a Ph.D. in Geography from the University of Minnesota, where his research focused on patterns in long-term population trends throughout major U.S. cities by applying a novel multivariate mapping technique to time series of Census tract data.

19. Data Science Intervenor Tracy Kugler is a registered voter who resides in Saint Paul, Minnesota, in Ramsey County, and in Congressional District 4, which the 2020 Census Redistricting Data Release demonstrates is overpopulated. Dr. Kugler is a Research Scientist at the Minnesota Population Center, which is part of the Institute for Social Research and Data Innovation at the University of Minnesota. She has over a decade of experience working intensively with census data, beginning with her dissertation research conducting quantitative analyses of spatial patterns of metropolitan development covering all U.S. metropolitan areas, and continuing in her current work as Research Project Manager for IPUMS Terra and IPUMS IHGIS (IPUMS stands for data integrated across time, space, and scientific domains, and IHGIS is the International Historical Geographic Information System). IPUMS Terra and IHGIS process, document, and integrate census data for dissemination to social-science researchers and policy analysts. Dr. Kugler has developed workflows for documenting and manipulating highly heterogeneous published census tables to conform to a standard data and metadata structure. Dr.

Kugler also has a background in multi-criteria optimization through her Master's degree, which is central to understanding the U.S. Census Bureau's implementation of differential privacy. Dr. Kugler has a Ph.D. in Geography from Oregon State University and an M.S. in Systems Engineering from Case Western Reserve University.

20. Defendant Steve Simon is the Secretary of State of the State of Minnesota and is sued in his official capacity. Simon is responsible for implementing Minnesota's elections laws and administering its elections.

### **JURISDICTION**

21. Pursuant to Minn. Stat. §§ 2.724, 480.16, this Panel has authority to redress the claims of the Data Science Intervenors of violations of the United States and Minnesota Constitutions. This Panel also has authority to grant declaratory relief pursuant to Minn. Stat. §§ 555.01 *et seq.*

22. On June 30, 2021, the Chief Justice of the Minnesota Supreme Court appointed this Special Redistricting Panel to hear and decide all matters in connection with the claims asserted in complaints filed by other Plaintiffs alleging malapportionment of congressional and legislative districts based on the 2020 Census data. The Panel also was charged with jurisdiction over any additional congressional or legislative redistricting challenges that may be filed in Minnesota state courts based on the 2020 Census.

### **CLAIM OF ENTITLEMENT TO INTERVENTION**

23. The Data Science Intervenors claim an interest regarding the validity of the congressional and legislative districts that are the subject of the Special Redistricting Panel's jurisdiction, and are so situated that this action's disposition may, as a practical matter, impair or impede their ability to protect that interest.

24. In prior decades, one of the greatest challenges that Special Redistricting Panels have confronted is that good redistricting requires adherence to multiple criteria—for example, population equality, contiguity, compactness, respect for county boundaries, and compliance with the Voting Rights Act—and every one of these criteria at some point conflicts with the others. Satisfying all these principles simultaneously is the core challenge for anyone seeking to redistrict in the public interest.

25. The Data Science Intervenors bring a unique and important perspective to this problem. With experts, they can offer cutting-edge computational methods and resources to develop maps that approach being “Pareto optimal,” which means that they are so strong on each redistricting criterion that improving the map on one criterion necessarily worsens it on another. These ideal, or nearly ideal, maps cannot be devised by hand, even with the best commercial redistricting software and weeks or months to draw them. But these maps can be discovered through “computational redistricting,” which is the use of algorithms designed to optimize maps across multiple criteria simultaneously by generating “chains” of thousands or millions of maps, each one better than its predecessor.

26. The Data Science Intervenors and their experts can assist this Panel by applying these computational methods to Minnesota’s congressional and legislative maps, deploying whatever redistricting principles and criteria this Panel ultimately chooses to articulate and prioritize. The Data Science Intervenors and their experts also can assist the Panel in translating qualitative principles into quantitative metrics, and in assessing the inevitable tradeoffs between competing criteria. And the Data Science Intervenors and their experts will perform this work not in service of a political party or a set of incumbent officeholders or a particular demographic group,

but rather in service of the common interest that all Minnesotans share in having fair and effective representation in Congress and in the Legislature.

27. The Data Science Intervenors' claims in this Complaint in Intervention share common questions of law and fact with the claims in the original action—namely, the constitutionality of the current congressional and legislative districts established by the *Hippert* panel.

28. The Data Science Intervenors have sought intervention early in this action, as soon as they evaluated the 2020 Census Redistricting Data Release with counsel to confirm whether they lived in overpopulated districts and therefore had standing to bring claims of vote dilution due to malapportionment. Population estimates, such as the 2019 data estimates from the Minnesota State Demographic Center, were insufficient to confirm standing. The 2020 Census Redistricting Data Release shows that the estimates were inaccurate and unreliable for purposes of redistricting. For example, the 2019 Minnesota State Demographic Center data estimates, on which existing parties to this proceeding relied, incorrectly labeled as overpopulated the legislative districts where nine of the Data Science Intervenors (Heggeseth, Kugler, Polasky, Reiner, Saxe, Schroeder, Sen, Van Riper, and Zorn) reside and vote.<sup>1</sup>

#### **ADDITIONAL FACTS PERTINENT TO ALL CLAIMS**

29. Minnesota's current congressional and legislative districts were established by the Special Redistricting Panel in *Hippert*, following the 2010 Census, and were designed to ensure

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<sup>1</sup> These are Senate Districts 20, 64, 62, and 66, and House Districts 42A and 61B. *See* 2019 Minn. House Dist. Population, Minn. Legis. Coordinating Comm'n Geographic Info. Servs. (Jan. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019HousePopEst.pdf> (last visited Sept. 2, 2021); 2019 Minn. Senate Dist. Population, Minn. Legis. Coordinating Comm'n Geographic Info. Servs. (Feb. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019SenatePopEst.pdf> (last visited Sept. 2, 2021).

population equality. According to 2010 Census data, Minnesota's eight congressional districts were literally as close as possible to being perfectly equal in population, with each districting containing either 662,990 or 662,991 residents (a mere one-person total deviation). *Hippert v. Ritchie*, 813 N.W.2d 391, 394 n.2 (Minn. 2012). Likewise, according to 2010 Census data, Minnesota's 67 senate districts and 134 house districts were also close to being equal in population, with not a single district deviating even one percentage point from the ideal population (which was 79,163 for each senate district and 39,582 for each house district, again according to 2010 Census data). *Hippert v. Ritchie*, 813 N.W.2d 374, 377 (Minn. 2012).

30. Over the last decade, however, births, deaths, and in-migration and out-migration have rendered these same Minnesota congressional and legislative districts significantly unequal in population. According to 2020 Census data, Minnesota's eight congressional-district populations now range from 673,514 to 737,898 residents, a total deviation of more than 9%; Minnesota's senate-district populations now range from 77,110 to 94,929 residents, a total deviation of more than 20%; and Minnesota's house-district populations now range from 37,245 to 52,579 residents, a total deviation of more than 36%.

31. As the 2020 Census Redistricting Data Release demonstrates, Congressional Districts 2, 3, 4, 5 and 6 are overpopulated, while Congressional Districts 1, 7, and 8 are underpopulated. As a result, residents of Congressional Districts 2, 3, 4, 5 and 6 have diminished electoral power compared to residents of Congressional Districts 1, 7, and 8. Similarly, the senate and house districts ordered in *Hippert* are now either overpopulated or underpopulated as compared with their ideal numbers. Accordingly, residents of overpopulated senate and house districts have diminished electoral power compared to residents of underpopulated districts.

32. Every one of the Data Science Intervenors resides and votes in a congressional district that the 2020 Census Redistricting Data Release identifies as overpopulated. For example, Data Science Intervenors Reiner and Sen reside and vote in Congressional District 5, which, according to the 2020 Census Redistricting Data Release, has a population of 736,036—substantially more than the one-eighth of Minnesota’s total population that each of the eight congressional districts is to contain.

33. Several of the Data Science Intervenors reside and vote in legislative districts that the 2020 Census Redistricting Data Release identifies as disproportionately overpopulated. For example, Data Science Intervenors Haunsperger and Kennedy reside and vote in both overpopulated House District 58B and Senate District 58. According to the 2020 Census Redistricting Data Release, Senate District 58 has a population of 91,605—substantially more than the one-sixty-seventh of Minnesota’s total population that each of the 67 Senate districts is to contain.

34. The existing malapportionment of congressional and legislative districts in Minnesota dilutes the voting strength of the Data Science Intervenors in overpopulated districts, as the weight or value of each Data Science Intervenor’s vote is less than that of any voter residing in an underpopulated congressional or legislative district, in violation of the United States and Minnesota Constitutions.

35. Article IV, Section 3 of the Minnesota Constitution tasks the Legislature with redrawing Minnesota’s congressional and legislative districts following the release of redistricting data from each federal decennial census. By statute, the Legislature’s deadline to fulfill this duty falls “25 weeks before the state primary election in the year ending in two.” Minn. Stat. § 204B.14. For the current redistricting cycle, this deadline will be February 15, 2022.

36. In every legislative redistricting cycle since the 1970s, and in every congressional redistricting cycle since the 1980s, the Legislature and Governor have failed to agree upon a redistricting plan, and the courts have had to step in to redraw the map to ensure that elections comply with the United States and Minnesota Constitutions.

37. On June 30, 2021, the Chief Justice of the Minnesota Supreme Court appointed this five-judge Special Redistricting Panel to redraw the congressional and legislative districts in the event the Legislature and Governor fail to meet the February 15, 2022 deadline.

38. On information and belief, the Minnesota Legislature and Governor will fail to meet this deadline. If that occurs, and absent intervention by this Panel, Defendant will therefore conduct the primary and general elections in 2022 and thereafter for Minnesota's Representatives in Congress and members of the Minnesota Legislature based on the congressional and legislative districts ordered in *Hippert*, which the 2020 Census Redistricting Data Release now confirms are unconstitutional based on the current distribution of Minnesota's population.

39. The Data Science Intervenors intend to exercise their right to vote in the primary and general elections in 2022 and thereafter for Minnesota's Representatives in Congress and for members of the Minnesota Legislature. Conducting those elections under the maps established by the *Hippert* panel will deprive the Data Science Intervenors of their rights under the United States and Minnesota Constitutions.

40. The relief sought against Defendant in his official capacity relates to his duty to lawfully conduct the election of Minnesota's Representatives in Congress and members of the Minnesota Legislature.

## COUNT I

### CONGRESSIONAL REDISTRICTING

41. The Data Science Intervenors incorporate by reference Paragraphs 1 through 40.

42. Article I, Section 2 of the United States Constitution, as amended by Section 2 of the Fourteenth Amendment, provides that “[t]he House of Representatives shall be composed of Members chosen every second Year by the People of the several States” and that “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State.” These provisions create a constitutional guarantee of “one person, one vote,” requiring a State’s congressional districts to achieve population equality as nearly as is practicable.

43. Article I, Section 2 of the Minnesota Constitution provides that “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof.”

44. Article IV, Section 3 of the Minnesota Constitution provides: “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 . . . districts.”

45. Collectively, these provisions require the Legislature to redraw Minnesota’s congressional districts on the basis of Minnesota’s population following the release of redistricting data from the federal decennial census.

46. Absent new congressional districts as required by the United States and Minnesota Constitutions, any action of Defendant in administering an election for Minnesota’s Representatives in Congress using the decade-old districts from *Hippert* will deprive the Data Science Intervenors of their constitutional rights under Article I, Section 2 of the United States



Constitution; Article I, Section 2 of the Minnesota Constitution; and Article IV, Section 3 of the Minnesota Constitution.

## **COUNT II**

### **LEGISLATIVE REDISTRICTING**

47. The Data Science Intervenors incorporate by reference Paragraphs 1 through 40.

48. The Equal Protection Clause of Section 1 of the Fourteenth Amendment to the United States Constitution prohibits any State from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”

49. Article I, Section 2 of the Minnesota Constitution provides that “[n]o member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof.”

50. Article IV, Section 2 of the Minnesota Constitution provides: “The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.”

51. Article IV, Section 3 of the Minnesota Constitution provides: “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 . . . legislative districts.”

52. Collectively, these provisions require the Legislature to redraw Minnesota’s legislative districts on the basis of Minnesota’s population following the release of redistricting data from the federal decennial census.

53. Absent new legislative districts as required by the United States and Minnesota Constitutions, any action of Defendant in administering an election for members of the Minnesota

Legislature using the decade-old districts from *Hippert* will deprive the Data Science Intervenors of their constitutional rights under the Fourteenth Amendment to the United States Constitution; Article I, Section 2 of the Minnesota Constitution; and Article IV, Sections 2 and 3 of the Minnesota Constitution.

WHEREFORE, the Data Science Intervenors respectfully pray that this Panel:

- a. Grant the Data Science Intervenors' motion and application to intervene;
- b. Enter a declaratory judgment pursuant to Minn. Stat. § 555.01 *et seq.* that Minnesota's current congressional and legislative districting plans violate the Data Science Intervenors' rights under Article I of, and the Fourteenth Amendment to, the United States Constitution and Articles I and IV of the Minnesota Constitution;
- c. Permanently enjoin Defendant, his officers, agents, employees, attorneys, successors in office, and all persons in active concert or participation with them, from conducting a primary or general election after February 15, 2022, using the congressional or legislative districting plan established in *Hippert* or any other congressional or legislative districting plan that violates the United States Constitution or the Minnesota Constitution;
- d. If state authorities fail to enact a new, legally valid congressional redistricting plan by February 15, 2022, order into effect a new congressional redistricting plan that meets all requirements of federal and state law;
- e. If state authorities fail to enact a new, legally valid legislative redistricting plan by February 15, 2022, order into effect a new legislative redistricting plan that meets all requirements of federal and state law; and

f. Grant the Data Science Intervenors any other relief that the Panel finds just and equitable.

Dated: September 3, 2021

Respectfully submitted,

BASSFORD REMELE, P.A.

By: /s/ Lewis A. Remele

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**ACKNOWLEDGMENT REQUIRED UNDER MINN. STAT. § 549.211, SUBD. 1**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211, if factual contentions and legal arguments contained in this pleading are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Dated: September 3, 2021

By: /s/ Lewis A. Remele  
Lewis A. Remele (#90724)

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

A21-0243  
A21-0546

**FILED**

September 3, 2021

OFFICE OF  
APPELLATE COURTS

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Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood,  
Mary E. Kupper, Douglas W. Backstrom, and James E.  
Hougas, III, individually and on behalf of all citizens and  
voting residents of Minnesota similarly situated, and  
League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane,  
Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota; and  
Kendra Olson, Carver County Elections and Licensing  
Manager, individually and on behalf of all Minnesota  
county chief election officers,

Defendants,

**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION  
AND APPLICATION  
TO INTERVENE BY  
PROPOSED DATA SCIENCE  
INTERVENORS**

---

Frank Sachs, Dagny Heimisdottir, Michael Arulfo,  
Tanwi Prigge, Jennifer Guertin, Garrison O'Keith  
McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle  
Main, and Wayne Grimmer,

Plaintiffs,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie,  
Xiongpaoo Lee, Abdirazak Mahboub, Aida Simon,  
Beatriz Winters, Common Cause, OneMinnesota.org,  
and Voices for Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

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## INTRODUCTION

This Motion to Intervene is brought by 12 Minnesota voters who seek to bring a unique perspective to the challenging task of drawing congressional and legislative districts in this State. Each proposed intervenor works at one of Minnesota's leading colleges or universities as a professor or research scientist in mathematics, statistics, computer science, geography, or an allied field directly relevant to redistricting. Each of the proposed intervenors comes to this proceeding untethered to the agenda of any political party, incumbent officeholder, or demographic or special interest group. And each comes to this Panel with a genuine desire to be helpful—to assist the Members of the Panel in identifying maps that use the best math and science to ensure fair and effective representation for all Minnesotans. These “Proposed Data Science Intervenors” intend, with the assistance of experts, to use highly sophisticated computational methods and algorithmic techniques to present this Panel with proposed congressional and legislative redistricting maps that optimize the nonpartisan objectives that should govern redistricting.

These 12 Minnesota voters learned only recently that their congressional and legislative districts are overpopulated in violation of the “one person, one vote” principle protected by both the United States and Minnesota Constitutions. On August 12, 2021, the U.S. Census Bureau released what is known as the “Redistricting Data Summary File.” Due primarily to the COVID-19 pandemic, the Redistricting Data Summary File was released many months later this year than in prior post-Census years. Thus, it was only as of the August 12 release of this Census data (the “August 12 Census Redistricting Data Release”) that these Minnesota voters first learned whether their current districts are either overpopulated or underpopulated, and thus whether or not their votes will be diluted if future elections are held in those districts.

The Proposed Data Science Intervenors (and their counsel) also learned just days ago that on July 22, 2021, the Panel entered a scheduling order setting August 4, 2021 as the deadline for

seeking to intervene in this proceeding. (July 22, 2021 Order, at 2.) But August 4 was eight days *before* the Census Bureau released the Redistricting Data that conclusively revealed which voters have justiciable interests in the redistricting process. The Proposed Data Science Intervenors, like everyone else in Minnesota, did not have justiciable claims on August 4.

The Proposed Data Science Intervenors should not be barred from intervening because of a deadline that expired before they could know whether or not they had legitimate claims. And it would be inefficient to require the Proposed Data Science Intervenors to file their own separate lawsuit in district court, only to then ask the Panel to consolidate that suit with this one. The existing parties do not adequately represent Proposed Data Science Intervenors' interests because no one else proposes to assist the Panel in preparing redistricting plans based on the cutting-edge data science and computational methods described in this Motion. There also would be no prejudice to allowing intervention at this juncture, as no other substantive deadline has passed, and the Proposed Data Science Intervenors are fully prepared to comply with all upcoming deadlines.

Significantly, counsel for the Proposed Data Science Intervenors have not found a single redistricting case—in state court or federal court, in Minnesota or any of the 49 other States—denying citizens access to court because they failed to file *before* the release of the Census Redistricting Data that gave rise to their claims. Doing so here would not only be unprecedented. It would be manifestly unjust.

Therefore, the Proposed Data Science Intervenors respectfully ask the Panel to grant their Motion and allow them to intervene and participate fully in these proceedings.<sup>1</sup>

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<sup>1</sup> The Proposed Data Science Intervenors request that the Panel dispense with the lengthy notice procedure of Rule 24.03, which could consume a number of weeks and thus likely defeat the purpose of the proposed intervention. Counsel for the Proposed Data Science Intervenors have made efforts to obtain written consent to intervention from all parties to this case. Two groups of parties indicated they would not consent at this time, the defendant Secretary of State indicated he neither consented nor objected, and other parties have not yet provided written responses. Counsel

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. The Proposed Data Science Intervenors.**

The Proposed Data Science Intervenors are twelve Minnesota voters who each reside in a congressional or legislative district that the August 12 Census Redistricting Data Release identified as overpopulated. (Proposed Compl. ¶¶ 3, 6–19.) As detailed more fully in the attached Proposed Complaint in Intervention, they are also professors and academics at leading Minnesota colleges and universities who teach and conduct research in subfields of mathematics and science that are directly relevant to redistricting. (*Id.*) The Proposed Data Science Intervenors include two Past Presidents of the Mathematical Association of America, an Associate Executive Director of the American Mathematical Society, a Member of the National Academy of Sciences, and three research scientists from the Minnesota Population Center, which is the University of Minnesota’s institute for demographic research, including spatial demography. (*Id.* ¶¶ 8–10, 12, 17–19.) Each Proposed Data Science Intervenor believes that high-speed computers and cutting-edge algorithmic techniques can and should be used to thwart gerrymandering, improve the redistricting process, and promote fair and effective representation for all Minnesotans, and they seek to intervene to leverage their experience and knowledge, as well as their team of experts, to assist this Panel for the benefit of all Minnesotans. (*Id.* ¶¶ 3, 6–19.)

### **II. Proceedings to Date.**

This matter is in its early stages. This Panel was appointed on June 30, 2021. (June 30, 2021 Order, at 3.) On July 22, 2021, this Panel entered an order setting August 4, 2021 as the deadline to intervene. (July 22, 2021 Order, at 2.) On August 23, 2021, the Panel granted two

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for the Proposed Data Science Intervenors believe the issue of consent can be better addressed with these intervention papers on file and, promptly upon filing, intend to consult further with counsel for the existing parties to determine whether consent can be obtained. Counsel will inform the Panel once they receive the final positions of the existing parties.

motions to intervene, explaining in part that the Panel “has a strong interest in gathering broad and varied input to inform its decision, because the redistricting process affects all Minnesotans.” (Aug. 23, 2021 Order, at 4.) On August 24, 2021, the Panel entered a scheduling order seeking a stipulation on preliminary issues by September 24, and then, as to redistricting principles, a stipulation by October 12, responses on areas of disagreement by October 20, and, if necessary, oral argument on November 3, 2021. (Aug. 24, 2021 Order, at 2–3.) The Panel also has indicated an intent to hold public hearings in October 2021. (July 22, 2021 Order, at 3.) If permitted to intervene, the Proposed Data Science Intervenors intend to comply with all these deadlines.

### **ARGUMENT**

Under Minnesota Rule of Civil Procedure 24.01, the Proposed Data Science Intervenors should be permitted to intervene as of right so long as (1) their application is “timely”; (2) they “claim[] an interest” relating to the redistricting plans that are the subject of this proceeding; (3) they are “situated” so that the disposition of the action “may as a practical matter impair or impede [their] ability to protect [their] interests”; and (4) the existing parties do not “adequately represent[]” the proposed intervenor’s interests. *See* MINN. R. CIV. P. 24.01. Alternatively, permissive intervention is proper where (1) the application is timely, and (2) the proposed claims “have a common question of law or fact” with the existing claims. *See* MINN. R. CIV. P. 24.02.

Because intervention reduces duplicative litigation, courts in this State “encourage intervention whenever possible,” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986), and apply the intervention rules “liberally,” *Blue Cross/Blue Shield of Rhode Island v. Flam*, 509 N.W.2d 393, 396 (Minn. Ct. App. 1993), *rev. denied* (Minn. Feb. 24, 1994). As demonstrated below, the Proposed Data Science Intervenors’ Motion should be deemed timely, notwithstanding the Panel’s order setting an August 4 deadline for intervention, and they otherwise amply satisfy the liberal intervention requirements.

**I. This Motion to Intervene Should Be Deemed Timely.**

The Proposed Data Science Intervenors, and their counsel, were unaware of the Panel’s July 22, 2021 Scheduling Order until well after its August 4 deadline for intervention had passed. More fundamentally, that August 4 deadline expired eight days *before* the August 12 Census Redistricting Data Release, and it was not until that release that the Proposed Data Science Intervenors could determine whether they had claims to bring based on the 2020 Census. Therefore, this Motion should be deemed timely.

**A. Standard of Review.**

The Panel’s August 4 intervention deadline is a “non-jurisdictional procedural rule[] designed for the orderly transaction of business,” rather than a “jurisdictional time limit[] set forth by statute.” *Cole v. Wutzke*, 884 N.W.2d 634, 637–38 (Minn. 2016). As such, the Panel has ample discretion to relax the August 4 deadline. *See id.* at 638.

Rule 24 does not establish any specific deadline for a person to intervene in a proceeding, instead simply requiring intervention applications to be “timely.” MINN. R. CIV. P. 24.01, 24.02. Timeliness under Rule 24 is “considered on a case-by-case basis.” *Blue Cross/Blue Shield of Rhode Island*, 509 N.W.2d at 396. This flexible standard makes sense: By definition, a proposed intervenor is not a “party” to the proceeding and may not be aware of or receive any notice of the proceeding’s existence or developments implicating the intervenor’s interests. Accordingly, timeliness under Rule 24 “depends on factors such as how far the suit has progressed, the reason for the delay in seeking intervention, and any prejudice to the existing parties because of the delay.” *Id.*

The Rules of Civil Procedure contain other timeliness standards when a court-ordered deadline is involved, such as good cause for modifying a scheduling order (Rule 16.02) or “excusable neglect” for altering a deadline after it has passed (Rule 6.02). Counsel for the Proposed Data Science Intervenors have not located a case in which a Minnesota court applied the

“excusable neglect” standard, rather than Rule 24 itself, to determine the timeliness of an attempt to intervene that was made (as here) before judgment was entered. Nonetheless, if the Panel believes such standards are pertinent, the Proposed Data Science Intervenors satisfy the “good cause” and “excusable neglect” standards as well, for the same reasons they satisfy Rule 24’s timeliness requirement. *See, e.g., Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 471 (Minn. Ct. App. 2006) (“excusable neglect” standard also involves inquiry into the reasons for any delay, the party’s diligence, and potential prejudice).

**B. The Proposed Data Science Intervenors Have Valid Reasons for Not Having Sought to Intervene by the August 4 Deadline.**

As shown below, the Proposed Data Science Intervenors did not file this Motion before August 4 because they were unaware of the Panel’s deadline, had no reason to believe such a deadline would exist before the release of Census Redistricting Data, and—most importantly—did not appreciate, and could not have appreciated, the nature and extent of their claims before the August 12 Census Redistricting Data Release.

**1. The Proposed Data Science Intervenors’ Claims—and the Redistricting Process—Depend on Official Census Redistricting Data.**

Redistricting claims depend, necessarily, on the Census Redistricting Data that this year was released on August 12. The United States Constitution provides that Representatives in Congress “shall be apportioned among the several States according to their respective numbers,” based on an “actual Enumeration [that] shall be made within every . . . Term of ten Years, in such Manner as [Congress] shall by Law direct.” U.S. CONST. art. I, § 2; *id.* amend. XIV, § 2. The U.S. Census Bureau releases data from the federal decennial census in steps. In the first step—typically in December (but this year on April 26)—the Bureau releases a single number for each State, reflecting the State’s total population. That number is used to determine how many congressional seats (and thus congressional districts) each State will have for the next decade. But because the release

consists of literally a single number for the entire State and lacks any geographic detail, it cannot be used to determine whether existing districts are overpopulated or underpopulated, or to prescribe the bounds of new districts. In the second step—typically in March (but this year on August 12)—the Bureau releases its “Census Redistricting Data (Public Law 94-171) Summary File,” which contains population data for every “census block” in the State. A State the size of Minnesota typically has about 200,000 census blocks. This Redistricting Data Summary File contains the data that citizens need in order to determine whether their districts are overpopulated or underpopulated, and that legislatures (and sometimes courts) need in order to prescribe the bounds of new districts. Thus, redistricting occurs once every decade—*after* the U.S. Census Bureau releases the decennial Redistricting Data Summary File pursuant to Public Law No. 94-171. *See* 13 U.S.C. § 141.

If the Legislature fails to produce congressional and legislative districting plans, courts must step in. But the necessary precursor to this activity—whether by the Legislature or a duly appointed judicial panel—is the release of the decennial Census Redistricting Data on which all redistricting is premised. *See, e.g., Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (2016) (“Today, all States use total-population numbers from the census when designing congressional and state-legislative districts . . . .”); *Karcher v. Daggett*, 462 U.S. 725, 738 (1983) (“[T]he census count represents the ‘best population data available’” for redistricting and “is the only basis for good-faith attempts to achieve population equality”) (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969)).

This progression—Census Redistricting Data first, followed by redistricting—is reflected in Minnesota’s Constitution. The Constitution gives the Legislature “the power to prescribe the bounds of congressional and legislative districts,” but only “*after each enumeration of the inhabitants of this state made by the authority of the United States.*” MINN. CONST. art. IV, § 3 (emphasis added). Of course, the “enumeration of the inhabitants of this state” that is “made by the authority of the United States” is the federal decennial Census. The August 12 Census

Redistricting Data Release is what ripened the Minnesota Legislature’s authority, under the Minnesota Constitution, to embark upon the redistricting process.

For the Proposed Data Science Intervenors, the August 12 Census Redistricting Data Release is also what revealed to them, in concrete and unarguable terms, the fact that they live in overpopulated districts and thus have viable “one person, one vote” claims. Although there were ways of *projecting* or *estimating* which districts would be overpopulated or underpopulated prior to the release of the Census Redistricting Data, those projections and estimates necessarily rely on sampling and lack the kind of substantial (and costly) federal, state, and local outreach that facilitates full participation among the population. Only the Census Redistricting Data Summary File shows the actual *enumerated* population counts by district.

The August 12 Census Redistricting Data Release reveals that prior estimates, such as the 2019 data estimates from the Minnesota State Demographic Center on which other parties to this proceeding have relied, are not accurate or reliable for purposes of redistricting. For example, the August 12 Census Redistricting Data Release confirms that each of the 12 Proposed Data Science Intervenors lives in at least one overpopulated district. (Proposed Compl. ¶¶ 8–19.) Living and residing in an overpopulated district is what gives a person a viable “one person, one vote” claim. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (“[A]n individual’s right to vote . . . is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living [i]n other parts. . . .”); *Baker v. Carr*, 369 U.S. 186, 205–06 (1962) (“[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue”); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018) (“A plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district, asserts only a generalized grievance against governmental conduct of which he or she does not approve.” (quotation marks and citation omitted)). But the 2019 data estimates from the Minnesota Demographic Center



incorrectly labeled as overpopulated the legislative districts where nine of the twelve Proposed Data Science Intervenors reside and vote.<sup>2</sup>

Thus, the Proposed Data Science Intervenors were able to confirm only *after* the August 12 Census Redistricting Data Release whether and to what extent they have valid claims and are proper parties to this proceeding. This is because right up until Census Redistricting Data is released, “States operate under the legal fiction that even 10 years later, the plans are constitutionally apportioned” under the data from the prior Census. *Georgia v. Ashcroft*, 539 U.S. 461, 488 n.2 (2002). Any other result would lead to continuous efforts to redraw district maps as the population shifts. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 421 (2006) (plurality op.) (Kennedy, J.) (the “legal fiction” is “necessary to avoid constant redistricting, with its accompanying costs and instability”); *cf. Reynolds*, 377 U.S. at 583–84 (reapportionment every ten years meets “the minimal requirements for maintaining a reasonably current scheme of legislative representation” under the Equal Protection Clause). Thus, the release of the Census Redistricting Data every ten years is what kicks off the entire cycle of redistricting and, inevitably, redistricting litigation. That release did not happen until eight days after the Panel’s intervention deadline.

## **2. The Pandemic Delayed the Release of Census Data and Thus Delayed the Proposed Data Science Intervenors in Confirming Their Claims.**

The timing of the present redistricting process based on the 2020 Census differs from prior redistricting cycles in one crucial respect: The COVID-19 pandemic caused a five-month delay in the release of Census Redistricting Data. The data was due in March 2021, *see* 13 U.S.C. § 141,

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<sup>2</sup> These are Senate Districts 20, 64, 62, and 66, and House Districts 42A and 61B. *See* 2019 Minn. House Dist. Population, Minn. Legis. Coordinating Comm’n Geographic Info. Servs. (Jan. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019HousePopEst.pdf> (last visited Sept. 1, 2021); 2019 Minn. Senate Dist. Population, Minn. Legis. Coordinating Comm’n Geographic Info. Servs. (Feb. 2021), *available at* <https://www.gis.leg.mn/pdf/pop/2019SenatePopEst.pdf> (last visited Sept. 1, 2021).

but was not released until August 12, 2021.

The COVID-related delay has compressed the time available for the Legislature or this Panel to adopt new, constitutional redistricting plans. The statutory deadline for the Legislature and Governor to complete redistricting is February 15, 2022, *see* MINN. STAT. § 204B.14, subd. 1a (2020); but if they fail, this Panel must act at that point. Recognizing the time pressure, the Chief Justice of the Minnesota Supreme Court appropriately appointed this Panel six weeks before the 2020 Census Redistricting Data was released. (June 30, 2021 Order, at 3.)

In the post-2000 and post-2010 redistricting cycles, the Chief Justice also appointed a special redistricting panel in the summer months (July 2001 and June 2011, respectively). (July 12, 2001 Order, at 2; June 1, 2011 Order, at 2–3.<sup>3</sup>) In both instances, however, that appointment occurred *after* the decennial Census Redistricting Data had been released (on March 28, 2001 and March 15, 2011, respectively) *and after* the Legislature had several months to attempt to adopt redistricting plans based on that Census Redistricting Data.<sup>4</sup> Even with that extra time, motions to intervene in the 2001 redistricting case were not due until September 14, 2001 (2001 Special Redistricting Panel, Aug. 22, 2001 Order, at 2)—nearly *six months after* the 2000 Census Data was released on March 28, 2001. In the 2011 redistricting cycle, motions to intervene were due on July 29, 2011. (2011 Special Redistricting Panel, July 18, 2011 Order, at 2.) While that date is

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<sup>3</sup> The orders of or associated with the 2001 Special Redistricting Panel are available at <https://www.mncourts.gov/Media/Historic-High-Profile-Cases/Special-Redistricting-Panel-2001.aspx> (last visited Sept. 1, 2021). The orders of or associated with the 2011 Special Redistricting Panel are available at <https://www.mncourts.gov/Media/Historic-High-Profile-Cases/Special-Redistricting-Panel-2011.aspx> (last visited Sept. 1, 2021).

<sup>4</sup> *See* Census Bureau Delivers Minnesota’s Census 2000 Population Totals, U.S. Census Bureau (Mar. 28, 2001), *available at* [https://www.census.gov/newsroom/releases/archives/census\\_2000/cb01cn29.html](https://www.census.gov/newsroom/releases/archives/census_2000/cb01cn29.html) (last visited Sept. 1, 2021); Census Bureau Ships Local 2010 Census Data to Minnesota, U.S. Census Bureau (Mar. 15, 2011), *available at* [https://www.census.gov/newsroom/releases/archives/2010\\_census/cb11-cn88.html](https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn88.html) (last visited Sept. 1, 2021).

effectively within a week (and ten years) of the August 4, 2021 date that this Panel set for these proceedings, there is one crucial difference: By the end of July 2011, the 2010 Census Redistricting Data had been available for more than four months, and thus it was clear at that point which districts were overpopulated. In contrast, the 2020 Census Redistricting Data was not available this year until eight days *after* the August 4, 2021 intervention deadline.

The Chief Justice’s Order appointing this Panel implicitly acknowledges this year’s timing considerations, as the Order gave the Panel authority to hear both already-filed claims and all “additional” redistricting challenges filed in state court “*based on the 2020 Census.*” (June 30, 2021 Order, at 3 (emphasis added).) The Proposed Data Science Intervenors had no claims “based on the 2020 Census” until, at a minimum, the August 12 Census Redistricting Data Release.

**3. The Proposed Data Science Intervenors Acted Promptly and Efficiently Once Their Claims Ripened.**

This Motion thus should be deemed timely, despite the August 4 deadline. That is so because, as just explained, the Proposed Data Science Intervenors’ claims did not ripen until August 12. And that is so because, once those claims ripened and counsel identified the August 4 deadline, the Proposed Data Science Intervenors promptly brought this Motion. In similar circumstances, courts have favored intervention. *See, e.g., Matter of Welfare of Child. of M.L.S.*, No. A20-1644, 2021 WL 2640559, at \*11 (Minn. Ct. App. June 28, 2021) (reversing denial of intervention because the proposed intervenor acted diligently once she learned of the case and her right to participate); *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438, 446 (Minn. Ct. App. 2013) (reversing denial of intervention where proposed intervenor sought intervention promptly after learning of the case); *Halverson ex rel. Halverson v. Taflin*, 617 N.W.2d 448, 450-51 (Minn. Ct. App. 2000) (reversing denial of intervention filed a month after entry of order of protection, concluding the intervenor’s interests were strong and she had not understood the need to act

earlier); *Erickson v. Bennett*, 409 N.W.2d 884, 887 (Minn. Ct. App. 1987) (reversing denial of post-judgment intervention where intervenor had no notice of hearing implicating its interests).

Fairness and efficiency dictate that conclusion with particular force because, undoubtedly, the Proposed Data Science Intervenors could file a separate action in a Minnesota district court, and then seek to consolidate that case with this one. But that approach would be far less efficient than permitting intervention now. *See, e.g., Norman*, 383 N.W.2d at 678 (reversing denial of intervention, reasoning it made “little sense” to “force[]” the intervenors “to bring a separate lawsuit and then attend numerous motion hearings brought for consolidation”).

**C. This Proceeding Is in Its Early Stages, and Permitting Intervention Now Would Not Prejudice the Parties or the Panel’s Work.**

This Motion also should be deemed timely because this proceeding is in its early stages, with the merits not having been briefed, argued, or decided, and allowing intervention at this juncture would not prejudice the existing parties or the Panel’s work more broadly. *See Blue Cross/Blue Shield of Rhode Island*, 509 N.W.2d at 396. The first substantive submission from the parties—a stipulation about a few preliminary issues arising from the 2020 Census data—is not due until September 24, 2021. (Aug. 24, 2021 Order, at 2.) Thereafter, a stipulation on redistricting principles is due October 12, 2021, briefs on disputes about redistricting principles are due October 20, 2021, and oral argument on redistricting principles (if needed) is scheduled for November 3, 2021. (*Id.* at 3.) The Proposed Data Science Intervenors are fully prepared to comply with all these deadlines, and any others the Panel will set. There is no prejudice in allowing intervention at this point. *See, e.g., BE & K Const. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn. Ct. App. 1991) (reversing denial of intervention where “no rights ha[d] been adjudicated” and “no new issues ha[d] been introduced” that would prejudice the parties).

The unique considerations involved in redistricting also support the timeliness of this

Motion, as prior Special Redistricting Panels have taken a broad approach to intervention. For example, in 2011, the panel held that its own “interest in gathering information from various sources outweigh[ed] the possible inconvenience to the parties of considering and responding to the arguments of the two groups of intervenors.” (2011 Special Redistricting Panel, Aug. 18, 2011 Order, at 4.) The panel cited commentary highlighting the importance of taking a “permissive approach to intervention” in redistricting proceedings, to “open up participation . . . [and] incorporate more of the diverse interests that have a stake in the outcome.” (*Id.* (quoting Note, *Federal Court Involvement in Redistricting Litigation*, 114 HARV. L. REV. 878, 900 (2001))). It would do a disservice to the Panel and Minnesota voters to prevent the Proposed Data Science Intervenors from participating in this proceeding because of a deadline that expired before they possessed the data on which both their claims and this State’s redistricting process are premised.

**II. The Proposed Data Science Intervenors Satisfy the Other Requirements to Intervene as of Right (Rule 24.01) or for Permissive Intervention (Rule 24.02).**

The Proposed Data Science Intervenors also satisfy the other requirements for intervention under Rule 24. *See* MINN. R. CIV. P. 24.

**A. The Proposed Data Science Intervenors Have a Strong Interest in This Proceeding and Seek to Assist This Panel.**

The Proposed Data Science Intervenors have a strong interest in the validity of the congressional and legislative districts that are the subject of this proceeding. The Proposed Data Science Intervenors are United States citizens and qualified voters in the State of Minnesota who seek to preserve their ability to exercise their undiluted right to vote for their preferred candidates in primary and general elections. (Proposed Compl. ¶ 4.) But they are also professors and academics in subfields of science and mathematics who care deeply about using rigorous computational methods and analytics to improve the redistricting process in this State. (*Id.* ¶¶ 3, 6–19.) The Proposed Data Science Intervenors ask to participate in this proceeding to ensure that

science and technology have a seat at the redistricting table, and to provide the Members of this Panel the benefit of the cutting-edge methodologies that will allow them to adopt maps that maximally comply with whatever districting principles and criteria the Panel chooses to adopt.

In prior decades, judicial redistricting panels have grappled with the need, as a matter of good redistricting, to adhere to multiple criteria—such as population equality, contiguity, compactness, respect for county boundaries, and compliance with the Voting Rights Act—along with the reality that each criterion at some point conflicts with the others. Satisfying all these principles simultaneously is the core challenge for anyone seeking to redistrict in the public interest.

The Proposed Data Science Intervenors bring a unique and important perspective to this problem. Through experts, they can offer cutting-edge computational methods and resources to develop maps that approach being “Pareto optimal,” which means that they are so strong on each redistricting criterion that improving the map on one criterion necessarily worsens it on another. These ideal, or nearly ideal, maps cannot be devised by hand, even with the best commercial redistricting software and weeks or months to draw them. But these maps can be discovered through “computational redistricting,” which is the use of algorithms designed to optimize maps across multiple criteria simultaneously by generating “chains” of thousands or millions of maps, each one better than its predecessor.

The Proposed Data Science Intervenors and their experts can assist this Panel by applying these computational methods to Minnesota’s congressional and legislative maps, dutifully deploying whatever redistricting principles and criteria this Panel ultimately chooses to articulate and prioritize. So far as the Proposed Data Science Intervenors and their counsel are aware, none of the existing parties to this proceeding can provide this Panel with those sorts of computational resources and maps. And the Proposed Data Science Intervenors and their experts will perform this work not in service of a political party or a set of incumbent officeholders or a particular

demographic group, but rather in service of the common interest that all Minnesotans share in having fair and effective representation in Congress and in the Legislature.

**B. The Proposed Data Science Intervenors Cannot Protect Their Interests Without Participating in This Proceeding.**

The Proposed Data Science Intervenors' interests in the redistricting process will be adjudicated in this proceeding, and if they are not allowed to participate in this proceeding, they effectively will have no other way to guarantee those interests will be protected. *See, e.g., State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 501-02 (Minn. Ct. App. 2005) (reversing denial of intervention where the proposed intervenor was unable to protect its interest without intervention). Federal court likely would not be an option under *Grove v. Emison*, 507 U.S. 25, 34–37 (1993), if this Panel timely completes its redistricting work. And although the Panel intends to hold public hearings in October 2021, participation in a public hearing is no substitute for a seat at the table. Indeed, in connection with the 2010 Census, parties to the redistricting proceeding in this Court were permitted to submit their own proposed maps, along with accompanying briefing, and to present their proposals (and challenges to others' proposals) at oral argument. (Nov. 4, 2011 Order, at 9–14, 2011 Special Redistricting Panel.) The Proposed Data Science Intervenors seek that same opportunity to participate here and to submit, as a group, proposed maps generated through the advanced algorithmic techniques and high-speed computing described above.

**C. The Proposed Data Science Intervenors Have Unique Interests That the Existing Parties Do Not Adequately Represent.**

Proposed intervenors need carry only a “minimal burden” to show inadequacy of representation. *Jerome Faribo Farms v. Cty. of Dodge*, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990) (reversing denial of intervention) (quotation marks and citation omitted). And here, the existing parties do not adequately represent the interests of the Proposed Data Science Intervenors.

The existing Plaintiffs are supporters of the Minnesota Democratic-Farmer-Labor Party

(Sachs, et al. Compl. ¶ 6); supporters of the Republican Party (Anderson, et al. Compl. Intervention ¶ 10); claimed “redistricting aficionado[s]” (Wattson, et al. Compl. ¶ 4); and persons who identify as Black, Indigenous, or Persons of Color (“BIPOC”) (Corrie, et al. Intervention Pet. ¶ 2).

By contrast, the Proposed Data Science Intervenors do not come to this Panel to advance the interests of any political party, incumbent officeholder, or demographic group. They come to the Panel as mathematicians and data scientists, as well as Minnesota voters, and they offer the Panel sophisticated technical assistance in creating the best maps possible under the circumstances—maps that fulfill and balance, to the greatest extent possible, all the criteria that this Panel may adopt for the redistricting process. And they can assist the Panel in translating qualitative principles into quantitative metrics, and in assessing the inevitable tradeoffs between competing criteria. No other party to this proceeding comes with the ability to provide such resources, knowledge, and expertise. Intervention by the Proposed Data Science Intervenors “would, if anything, be a beneficial addition allowing for a more informed decision by the [Panel].” (See Aug. 23, 2021 Order, at 4 (granting intervention) (quoting *Snyder’s Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974)).

**D. In the Alternative, Permissive Intervention Is Appropriate.**

For the same reasons, permissive intervention is also proper. There can be no question that there are “common question[s] of law or fact” between the Proposed Data Science Intervenors’ complaint and the complaints filed by the existing parties. See MINN. R. CIV. P. 24.02. Like the existing plaintiffs, the Proposed Data Science Intervenors also “assert an interest in the constitutionality of the existing congressional and legislative districts and the appropriate remedy for any constitutional infirmity.” (Aug. 23, 2021 Order, at 3.) Moreover, as shown above, permitting the Proposed Data Science Intervenors to participate in this action will not “unduly delay or prejudice the adjudication of the rights of the original parties.” MINN. R. CIV. P. 24.02;



*see, e.g., Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974) (reversing denial of intervention where the pleadings were closed and only limited discovery had been taken to date). To the contrary, the Proposed Data Science Intervenors submit that their assistance will be extraordinarily helpful as the Panel undertakes its challenging task of redistricting.

### CONCLUSION

For the foregoing reasons, the Proposed Data Science Intervenors respectfully ask that this Panel grant their Motion and Application to Intervene and allow them to file their proposed Complaint in Intervention.

Dated: September 3, 2021

Respectfully submitted,

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