STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C0-01-160

Susan M. Zachman, Maryland Lucky R. Rosenbloom, Victor L.M. Gomez, Gregory G. Edeen, Jeffrey E. Karlson, Diana V. Bratlie, Brian J. LeClair and Gregory J. Ravenhorst, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Thomas L. Weisbecker, Theresa Silka, Geri Boice, William English, Benjamin Gross, Thomas R. Dietz and John Raplinger, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Applicants for Intervention,

and

Jesse Ventura,

Applicant for Intervention,

and

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

Applicants for Intervention,

vs.

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

Defendants.

ORDER

Granting Motions for Permissive Intervention, Directing Filing of Stipulation and Statement of Unresolved Issues, and Stating Preliminary Timetable

O R D E R

Intervention

In its First Scheduling Order of August 22, 2001, this panel asked all parties wishing to intervene in this matter to submit motions to intervene by September 14, 2001. Three such motions were timely filed by the deadline. First, a group of citizens and registered voters aligned with the Democratic-Farmer-Labor party moved to intervene as plaintiffs ("Cotlow applicants"). All of the existing parties have consented to the Cotlow applicants' permissive intervention.

The second applicant is Governor Jesse Ventura, who seeks to intervene as a plaintiff. The existing plaintiffs ("Zachman plaintiffs") object to this intervention on the grounds that applicant Ventura lacks standing, failed to submit a complaint in intervention as required by Minnesota Rule of Civil Procedure 24, and does not have interests in this case not already adequately represented by the Zachman plaintiffs or Cotlow applicants.

The third group consists of Minnesota Senate Majority Leader Senator Roger D. Moe, Minnesota House Minority Leader Representative Thomas W. Pugh, and Representatives Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson and James L. Oberstar of the United States Congress ("Moe applicants").[1] The Moe applicants seek to intervene as plaintiffs, but the Zachman plaintiffs object to their intervention on several grounds, including their alleged lack of standing and lack of an interest in this matter that cannot be represented by the Zachman or Cotlow groups.

[1] In August, the Moe applicants submitted a motion to intervene as defendants. The applicants subsequently withdrew that motion and, on September 14, 2001, filed a superseding motion to intervene as plaintiffs. This panel's analysis of the Moe applicants' request to intervene is based solely on the latter filing.

Oral arguments have now been heard with respect to all applicants' motions for intervention. Having reviewed the concept of standing and the requirements of Minn. R. Civ. P. 24, we conclude that each of the motions for permissive intervention should be granted.

A.

The threshold question raised by the Zachman plaintiffs is whether the applicants must have standing to initiate a vote dilution suit in their own right in order to intervene as plaintiffs. The Zachman plaintiffs argue that *Baker v. Carr*, 369 U.S. 186, 204-08 (1962), and other United States Supreme Court precedent require that a person initiating a vote dilution suit must reside in an underrepresented district[2] in order to show the "injury in fact" necessary to acquire standing. However, the Zachman plaintiffs have not cited any precedent indicating that the stringent standard for acquiring standing to initiate a lawsuit also governs a party's request to intervene in a preexisting lawsuit.

Although Minnesota courts have not explicitly decided this issue, it is telling that the rule 24 tests for intervention have been applied in numerous cases with no discussion of standing, despite the fact that standing is necessary to a court's jurisdiction. *See, e.g., Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207-08 (Minn. 1986); *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28-29 (Minn. 1981); *Murray v. Antell*, 361 N.W.2d 466, 469 (Minn. App. 1985); *cf. Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989) ("The question of standing, which can be raised by this court on its own motion, is essential to our

---

[2] An underrepresented district is one that has a population greater than the ideal population of a district after the most recent census. A citizen of an overpopulated district has less representation per person than residents of other districts and therefore suffers harm to his or her right to "one [person], one vote." *Hanlon v. Towey*, 274 Minn. 187, 189-90, 142 N.W.2d 741, 742 (1966) (discussing this principle in the context of redistricting county commissioner districts).

exercise of jurisdiction."). Some courts have noted more directly that a party may obtain a right to intervene without establishing standing to participate in all aspects of the lawsuit. *See, e.g., Freeman v. Armour Food Co.,* 380 N.W.2d 816, 820 (Minn. 1986) (holding that no-fault carrier's statutory right to intervene in a workers' compensation case to protect its right to reimbursement "is only a right to intervene" and did not give the carrier standing to independently initiate a claim petition); *see also Diamond v. Charles,* 476 U.S. 54, 68 (1986) (stating that a person with a sufficient interest to intervene in an action under Fed. R. Civ. P. 24 (which is virtually identical to Minn. R. Civ. P. 24) does not necessarily have standing to "keep the case alive" in the absence of the original plaintiff).

We further note that requiring potential intervenors to show standing to initiate a lawsuit would nullify the tests for intervention stated in Minn. R. Civ. P. 24. Intervention of right under rule 24.01 requires, *inter alia*, that the applicant have "an interest relating to the property or transaction which is the subject of the action" and a potential impediment to that interest as a result of the litigation, while permissive intervention under rule 24.02 requires that the applicant's claim and the main action share "a common question of law or fact." Minn. R. Civ. P. 24.01, 24.02. Even more significantly, rule 24.03 states that a party accomplishes intervention when he or she files a notice of intervention that is not challenged within 30 days. Minn. R. Civ. P. 24.03. In contrast, the standing doctrine requires "an 'injury in fact' – an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent * * *." *United States v. Hays*, 515 U.S. 737, 743 (1995). The latter is undoubtedly a more stringent standard; thus, requiring a party to show standing to initiate a lawsuit in order to intervene would remove the need to ever apply rule 24. We cannot assume that this was the supreme court's

intent in drafting rule 24 and therefore conclude that standing to initiate a suit is unnecessary to intervention as a plaintiff.

B.

We turn, then, to the application of rule 24 to the case at bar. The purpose of this rule is "to protect nonparties from having their interests adversely affected by litigation conducted without their participation." *Gruman v. Hendrickson*, 416 N.W.2d 497, 500 (Minn. App. 1987). Consequently, courts should interpret rule 24 liberally and encourage intervention. *Costley*, 313 N.W.2d at 28; *Engelrup v. Potter*, 302 Minn. 157, 166, 224 N.W.2d 484, 489 (1974).

All the applicants for intervention sought to intervene as of right under rule 24.01 or, in the alternative, to obtain permissive intervention under rule 24.02. Rule 24.02, which states the more lenient standard, 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: (1) that the applicant filed a timely application for intervention; (2) a common question of law or fact between the applicant's claim and the main action; and (3) that intervention will not unduly delay or prejudice the existing parties. *Id.*; *Heller v. Schwan's Sales Enters., Inc.,* 548 N.W.2d 287, 292 (Minn. App. 1996), *review denied* (Minn. Aug. 6, 1996). Permissive intervention under rule 24.02 is within the discretion of the trial court. *Murray*, 361 N.W.2d at 469 (citing *State ex rel. Peterson v. Bentley*, 216 Minn. 146, 157-58, 12 N.W.2d 347, 354 (1943)). Because we conclude that all applicants have satisfied rule 24.02, we find it unnecessary to consider rule 24.01's more stringent test for intervention of right.

We note first that the applicants all filed their applications for intervention on or before the September 14, 2001 deadline. As a result of that deadline, all such applications are before the panel prior to the resolution of any more substantive issues. Each of the applicant's motions to intervene is therefore timely.[3]

Second, the applicants' and Zachman plaintiffs' claims all have common questions of law and fact. Regardless of whether they are intervening in their personal capacity or as government officials, all applicants have a specific claim and interest in the constitutionality of the current legislative and congressional districts and the appropriate remedy for the districts' alleged constitutional flaws. These common questions, which are the central issues in this case, are sufficient to satisfy the second prong of rule 24.02.

Third, the minor inconvenience of adding parties to the case at this date will not unduly delay or prejudice the existing parties. It is important to obtain as many viewpoints as possible when a court undertakes redistricting or other complex, unique litigation. *See Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 34, 221 N.W.2d 162, 166 (1974) (noting that allowing parties to intervene and add to the record aids the courts in making thoroughly informed decisions and promotes judicial efficiency by assuring that one lawsuit resolves all possible challenges to allegedly invalid statutes); *see also* Note, *Federal Court*

---

[3] The Zachman plaintiffs claim that applicant Ventura's failure to include a complaint in intervention precludes him from intervening. *See* Minn. R. Civ. P. 24.03 ("The notice of intervention shall be accompanied by a pleading setting forth the nature and extent of every claim or defense as to which intervention is sought and the reasons for the claim of entitlement to intervention."). However, "technicalities should not be invoked * * * to defeat intervention." *Engelrup*, 302 Minn. at 165, 224 N.W.2d at 488 (quotation omitted). Although applicant Ventura did not file a separate complaint in intervention until after the September 14 deadline for motions to intervene, his motion to intervene and accompanying memorandum set forth his claims and reasons for seeking intervention. Consequently, applicant Ventura's failure to file a separate complaint does not deprive him of the right to intervene.

Involvement in Redistricting Litigation, 114 Harv. L. Rev. 878, 900 (Jan. 2001) (noting that judges handling redistricting "should take a more permissive approach to intervention and standing and should open up participation * * * to incorporate more of the diverse interests that have a stake in the outcome"). In this unique case, the panel's interest in gathering information from a variety of sources outweighs the relatively minor inconvenience to the parties of having to consider the arguments of the three intervenors.

Lastly, with respect to the Moe and Ventura applicants, we note that state and federal courts from a number of different jurisdictions have permitted state officers, individual legislators, or both, to fully intervene in redistricting lawsuits for a variety of purposes. *See, e.g.*, *Burns v. Richardson*, 384 U.S. 73, 75 (1966) (governor of Hawaii intervened as a plaintiff in suit by Hawaiian voters claiming underrepresentation of their voting district); *Miller v. EchoHawk*, 878 P.2d 746, 747 (Idaho 1994) (attorney general intervened as a plaintiff "on behalf of the people of the state of Idaho"); *Wolpoff v. Cuomo*, 600 N.E.2d 191, 193 (N.Y. 1992) (state senate majority leader); *Mellow v. Mitchell*, 607 A.2d 204, 213 (Pa. 1992) (noting that the following groups intervened and submitted redistricting plans: eight democratic members of the state house; two members of the state's congressional delegation; and six republican state senators); *Terrazas v. Ramirez*, 829 S.W.2d 712, 724 (Tex. 1991) (two state senators). For all these reasons, the Cotlow, Ventura, and Moe applicants' motions to intervene as plaintiffs are granted.

Stipulations and Unresolved Issues

Upon receiving the consent of all named parties to their intervention, the Cotlow applicants asked this panel to sign a proposed order granting their motion for intervention and giving the defendants "twenty (20) days * * * to serve on Plaintiffs and Intervening Plaintiffs any additional Answer or other pleading in response to Intervening Plaintiffs' Complaint in

Intervention." Furthermore, counsel for the Cotlow applicants made an informal motion at oral argument requesting that this panel grant partial summary judgment declaring Minnesota's current congressional and legislative districts unconstitutional.

While we recognize the need to move forward with this lawsuit, we deny these requests at this time. In a typical proceeding, the rules of civil procedure, which "govern the procedure in the district courts of the State of Minnesota in all suits of a civil nature," would indeed require the filing of a complaint and answer. Minn. R. Civ. P. 1.01, 7.01. This, however, is not a typical civil proceeding, and this panel is not a district court. Instead, this suit is unique in that the remedy for the alleged constitutional harm is a much larger issue than is the existence of the harm. Additionally, we are particularly concerned with balancing the primacy of the legislature with the statutory requirement that a redistricting plan shall be in place no later than March 19, 2002. *Compare Zachman v. Kiffmeyer*, 629 N.W.2d 98 (Minn. 2001) (noting the primacy of the legislature) (Order of Chief Justice), *with* Minn. Stat. § 204B.14, subd. 1a (2000) (stating that redistricting plans shall be completed "in no case later than 25 weeks before the state primary election in the year ending in two"). We will therefore adhere to the rules of civil procedure unless modification is necessary to alleviate conflicts between the rules and this panel's mandates or timelines.

In lieu of summary judgment motions or answers at this early stage of the proceedings, we ask the parties to instead work toward a stipulation on certain issues. These issues might include, but are not limited to:

- Whether this panel has subject matter jurisdiction and under what authority
- Whether the current districts are unconstitutionally flawed in light of the 2000 census
- Which census data and geographic maps should be used and as of what date

- Ideal populations for congressional, senate, and house districts
- The maximum tolerable percentage deviation from the ideal for legislative districts

All parties should participate in working toward this stipulation. One original stipulation and nine copies shall be filed with the Clerk of Appellate Courts by 5:00 p.m. on Wednesday, October 17, 2001.

To the extent any party disagrees with a group's stipulation, or to the extent the parties cannot agree at all on a particular issue, a disagreeing party shall submit a concise Statement of Unresolved Issues by 5:00 p.m. on October 17, 2001, by the procedure described above. This statement should consist of no more than five (5) pages. The panel will take these matters under advisement and resolve them as the occasion arises.

Timetable for Redistricting Process

Lastly, the panel has received a number of requests from various parties to establish a schedule for this judicial redistricting process. We agree that it is now a proper time to consider scheduling. Accordingly, the following is a provisional timetable for the remainder of the redistricting process:

Oct. 24, 2001 11:00 a.m.	Oral arguments on scheduling
Week of Oct. 29, 2001	Issuance of order regarding redistricting timetable and stipulated issues
Nov. 12, 2001	Closing date for submission of proposed redistricting criteria
Nov. 21, 2001	Closing date for parties' responses to each other's criteria
Dec. 4, 2001 9:00 a.m.	Oral arguments on redistricting criteria
Week of Dec. 10, 2001	Issuance of order on redistricting criteria and form of map submissions

Dec. 28, 2001	Closing date for submission of proposed redistricting plans and supporting justification
Jan. 7, 2002	Closing date for parties' responses to each other's plans
Jan. 16, 2002 9:00 a.m.	Oral arguments on redistricting plans
Mar. 19, 2002	Issuance of final order and redistricting plan

The parties may submit comments and arguments regarding this timetable. All such comments shall be submitted by 5:00 p.m. on October 17, 2001, by the procedure described above.

Any party who wishes to be heard in an oral argument on these preliminary matters shall request oral argument in writing no later than October 17. If oral argument is requested, the time allotted per argument will be stated at a later date.

Dated: October 9, 2001

BY THE PANEL:

Edward Toussaint, Jr.
Presiding Judge