

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

A21-0243
A21-0546

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December 3, 2021

OFFICE OF
APPELLATE COURTS

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.

**REPLY IN SUPPORT OF
APPLICATION BY CITIZEN
DATA SCIENTISTS FOR
LEAVE TO PARTICIPATE AS
AMICI CURIAE AND
REQUEST FOR LEAVE TO
FILE BRIEF**

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.

INTRODUCTION

The *Anderson* plaintiffs' objection to the Citizen Data Scientists' application to submit a brief as *amici curiae* (the "Application") actually demonstrates the importance and value of the Citizen Data Scientists' proposed *amicus* brief. The Panel should view the objection for what it is: a recognition by the *Anderson* plaintiffs that the analysis the Citizen Data Scientists offer will assist the Panel in identifying—and eliminating—proposed maps that were designed to privilege partisanship or other agendas over fairness.

The Citizen Data Scientists come to this Panel untethered to partisan objectives, incumbent officeholders, or any special interest group. Their sole interest is in this Panel using a transparent, data-driven, scientific approach to identify redistricting plans that are fair for *all* Minnesotans.

To further that interest, the Citizen Data Scientists' experts have deployed the high-performance techniques of computational redistricting to identify redistricting plans that seek to maximize, simultaneously, the neutral redistricting principles that this Panel announced on November 18. As members of the public, the Citizen Data Scientists submitted their own plans, to the Panel and to all parties in this proceeding, on November 29—eight days before the parties must submit their own maps. The Citizen Data Scientists separately filed the Application, asking to provide precise, simple, quantitative benchmarks, developed through computational redistricting, that will help the Panel evaluate proposed maps with transparent, easy-to-understand criteria under each redistricting principle. The brief is not an effort to "sell" the Citizen Data Scientists' maps; it is an effort to give the Panel information about the levels at which the Panel's full set of

neutral redistricting principles can be achieved and optimized, enabling the Panel to identify maps that are “excellent” rather than merely “good enough.”

The *Anderson* plaintiffs do not actually contend the Citizen Data Scientists’ proposed *amicus* submission will be unhelpful to the Panel. Instead, having seen the Citizen Data Scientists’ proposed redistricting plans, the *Anderson* plaintiffs likely know that their maps will fall short of meeting the Citizen Data Scientists’ proposed benchmarks. So, rather than improve their own maps, they attack the messenger, in the hope that the Panel will not be able to identify the ways in which the plaintiffs’ own maps do not suffice.

The members of the Panel should have the benefit of simple benchmarks that will empower them to systematically and evenhandedly evaluate maps proposed by the *Anderson* plaintiffs, or anyone else. Those benchmarks—which could not be properly calibrated until after the Panel set its redistricting principles on November 18—are what the Citizen Data Scientists want to provide in their *amicus* brief. There is no reason for this Panel to reject this assistance.

ARGUMENT

I. The Application Is Timely.

The Citizen Data Scientists have timely sought *amicus* status. There is no support for the *Anderson* plaintiffs’ argument that leave should have been sought back in March 2021.

Minnesota Rule of Appellate Procedure 129’s 14-day time limit does not apply here because there is no “appellate court order granting review” of a lower-court decision. More fundamentally, under the *Anderson* plaintiffs’ argument, the deadline for filing an *amicus*

brief would have expired long before this Panel was even constituted (in June) and long before it set a deadline to intervene (in August). Such a premature deadline makes no sense. The Citizen Data Scientists could not have known in March 2021 that they had a perspective to offer that differs from the parties and that this Panel would be in danger of overlooking. Indeed, the Panel invited the Citizen Data Scientists to seek leave to participate as *amici* six months after the *Anderson* plaintiffs' proposed March 2021 deadline. (Sept. 10, 2021 Order at 4.)

In any event, the information that the Citizen Data Scientists intend to share derives directly from the November 18, 2021 order setting forth the Panel's redistricting principles and therefore was not available before then. The Citizen Data Scientists' experts took the principles the Panel articulated on November 18, translated them into optimization algorithms, and then used high-performance computers to search through thousands upon thousands of maps to find the points at which these principles inevitably "trade off" against one another. Until the Panel articulated its redistricting principles, the Citizen Data Scientists could not deploy these optimization techniques. To take just one example, if the Panel had decided to select "least change" as a key redistricting principle, as the *Anderson* plaintiffs advocated, the Citizen Data Scientists' algorithms would have taken that principle into account, with a corresponding impact on the extent to which all other principles could be optimized. It was only with the final principles in hand on November 18 that the Citizen Data Scientists' experts could work to finalize their algorithms, and their counsel then could confirm the analysis and information to be offered as *amici*. The Application, filed just five business days after the Panel's Order, is thus timely.

II. The Citizen Data Scientists Offer Objective Analysis and Information Not Offered by Any Party.

The Citizen Data Scientists do not seek to participate as *amici curiae* as a supposed “backdoor” to party status. (*See* Obj. at 3, 7.) The Citizen Data Scientists made clear in their Application that they offer an analysis of the levels at which the Panel’s redistricting principles can be considered optimized, and that they do not seek *amicus* status to promote the maps that they submitted to the Panel (and to the parties) as members of the public. (Application at 4.) To reiterate: Those maps speak for themselves. The purpose of the *amicus* submission is separate, and it is to give the Panel simple quantitative benchmarks to assist it in evaluating the maps that are presented to it, as well as any map the Panel might draw itself. Precisely how the Panel chooses to use the benchmarks is of course up to the Panel.

The Citizen Data Scientists’ proposed submission fits squarely within the purpose of *amicus* status. As stated in the Application, an *amicus* brief is proper to provide assistance to the Court or information that the Court does not otherwise have. (Application at 3.) That is precisely what the Citizen Data Scientists seek to do here. No party to this proceeding has used computational redistricting and systematically searched through thousands upon thousands of maps to understand what combinations are and are not possible for Minnesota under the Panel’s stated redistricting principles. Mapitude may be “well-known and trusted” (Obj. at 5), but it is not capable of providing the analysis that the Citizen Data Scientists offer.

More importantly, no party to this proceeding comes to this Panel offering specific benchmarks about what can be achieved in maps, and against which the Panel can evaluate proposed redistricting plans. Each party will argue the merits of its proposed maps, without stepping back to identify for the Panel, objectively and untethered to any particular agenda, what a “good” or “excellent” score on the Panel’s redistricting principles actually is. The Citizen Data Scientists offer precisely that form of assistance to the Panel. Even the *Anderson* plaintiffs do not argue that such assistance is unimportant; they merely prefer that the Panel not have it available. The Panel members should ask themselves what these plaintiffs are so afraid of.

III. The Proposed Submission Does Not Prejudice Any Party.

The Citizen Data Scientists’ proposed *amicus* submission also does not prejudice any party. The Citizen Data Scientists have committed to filing the brief within 48 hours after the Panel grants the Application. The *Anderson* plaintiffs will have the opportunity, including in their responsive brief on December 17 and at oral argument in January, to address, downplay, or ignore the Citizen Data Scientists’ analysis, as they see fit.

What the Citizen Data Scientists offer—information about the levels at which the redistricting principles can be achieved—is not the kind of information that the parties, or this Panel, should shy away from receiving. If the *Anderson* plaintiffs propose maps that meet these levels, that could only bolster their arguments favoring their maps. More likely, their maps will fall short in one or more areas; but even then, they are free to argue that the Citizen Data Scientists’ benchmarks do not matter or are incorrect. But the notion that a *partisan* party is prejudiced because a *nonpartisan* group of mathematicians and scientists

offer neutral, objective analysis and information to aid this Panel in its work should be seen for what it is: a fear of what that analysis will expose.

CONCLUSION

For the foregoing reasons, the Citizen Data Scientists respectfully request that the Panel grant their *amicus* Application.

Dated: December 3, 2021

Respectfully submitted,

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CERTIFICATION OF DOCUMENT LENGTH

The undersigned hereby certifies that this Reply in Support of the Application by Citizen Data Scientists for Leave to Participate as *Amici Curiae* and Request for Leave to File Brief complies with the length limitations in Minn. R. Civ. App. P. 129.01(c). The Reply contains 1,422 words, inclusive of any footnotes and exclusive of the caption and signature block.

Dated: December 3, 2021

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