

FILED

STATE OF MINNESOTA

December 3, 2021

SPECIAL REDISTRICTING PANEL

**OFFICE OF
APPELLATE COURTS**

A21-0243

A21-0546

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,

and

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

**ANDERSON PLAINTIFFS'
OPPOSITION TO
APPLICATION BY CITIZEN
DATA SCIENTISTS FOR
LEAVE TO PARTICIPATE AS
AMICI CURIAE AND
REQUEST FOR LEAVE TO
FILE BRIEF**

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie,
Xiongpa 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 submit this memorandum in opposition to the application by Karen Saxe, *et al.* (“Saxe Applicants”) to submit a brief in this matter as *amici curiae*.

The Panel should deny the Saxe Applicants’ motion for three reasons. *First*, the motion is untimely, filed eight months after Chief Justice Gildea issued an order granting the petition for the appointment of this Panel, nearly three months after this Panel denied the Saxe Applicants’ motion to intervene, and just one week before the parties’ legislative and congressional plans and briefs are due. *Second*, the Saxe Applicants do not have any specific interest in this action that necessitates their participation as *amici* and do not satisfy the standard for such participation. Instead, the Saxe Applicants simply seek to submit a brief on map-drawing generally and their critiques of the submissions of each of the parties specifically, and to act, essentially, as a special advisor to this Panel based upon their self-proclaimed expertise. *Third*, the Saxe Applicants’ late-filed application seeks to permission to provide briefing explaining and justifying the proposed congressional and legislative

maps they submitted through the public comment period and critiquing the redistricting plans submitted by the parties in this case. In other words, their request is nothing more than a backdoor attempt to participate in this action as a party, despite this Panel’s previous denial of the request that they be permitted to do so.

ARGUMENT

I. Saxe Applicants’ Motion is Untimely

The Saxe Applicants’ request to participate as *amici curiae* is untimely. The Minnesota Rules of Appellate Procedure require that a request for leave to participate as *amicus curiae* be filed “no later than 14 days after the . . . appellate court order granting review.” Minn. R. App. 129. The appellate order granting the petition for the appointment of this Panel was issued on March 22, 2021, more than eight months before the Saxe Applicants filed their application and request.

Moreover, while in denying the Saxe Applicants’ motion to intervene the Panel stated that “[i]f the Saxe applicants wish to contribute further information within their area of expertise, they may request leave to submit a brief as *amicus curiae*” (9/10/21 Order at 4), the Saxe Applicants waited nearly *three months* from that Order to make their request. They did so despite this Panel expressing therein that “[t]he redistricting process is both complex and time-sensitive” and that “[p]art of [the Panel’s] work is setting and closely adhering to a schedule.” *Id.* at 3-4. And neither the Saxe Applicants’ participation in the public comment process nor this Panel’s Order on redistricting principles justifies their tardiness because nothing precluded them from submitting their request to participate as

amici sooner – particularly since their request appears to have no relation to the principles, but rather to the group’s self-identification as experts on map-making.

This delay is not only contrary to the Panel’s admonition to the Saxe Applicants of the time-sensitive nature of its redistricting work, it is fundamentally unfair to the parties in this case. By waiting until the last minute to file their request, the Saxe Applicants all but assure that, if their request is granted, their brief will be filed *after* the parties have submitted their redistricting plans and briefing thereon, forcing those same parties, who are already operating in this case under tight deadlines and condensed briefing schedules, to respond to the Saxe Applicants’ untimely briefing.

II. Saxe Applicants Do Not Satisfy the Requirements to Participate as Amici

Minnesota’s previous redistricting panels have recognized the standard for approving applications to participate as *amicus curiae*:

The ordinary purpose of an *amicus curiae* brief in civil actions is to inform the court as to facts or situations which may have escaped consideration or to remind the court of legal matters which have escaped its notice and regarding which it appears to be in danger of making a wrong interpretation.

Hippert v. Ritchie, No. A11-152, Amicus Order, at 2 (Nov. 29, 2011) (“Hippert Amicus Order”). As the *Zachman* Panel recognized, “[t]he purpose of an amicus brief is . . . not to repeat arguments a party has already made.” *Zachman v. Kiffmeyer*, No. C0-01-160, Amicus Order (Jan. 7, 2002) (“Zachman Amicus Order”).

The Saxe Applicants try to frame their proposed submission as one that will inform the Panel of new information through their self-proclaimed expertise in evaluating redistricting maps using the latest technology and analytics. 11/30/21 Application at 2.

They will, the Saxe Plaintiffs claim, “help the Panel assess the balance [of redistricting principles]—or lack thereof—in each proposed redistricting plan” (*id.* at 4) and to evaluate which redistricting plans receive a “‘good’ or ‘excellent’ score” in considering those principles (*id.* at 6). But in reality, the Saxe Applicants do not represent any interests not already before this Panel, nor will they provide this Panel with any new “facts or situations which may have escaped its consideration.” Indeed each party in this redistricting litigation comes before the Panel, of course, with the intention of utilizing available technology and data analytics, available on the well-known and trusted Maptitude software, to present the Panel with what it believes to be the best maps under the Panel’s adopted principles. Each party, too, will present to the Panel their criticisms of other parties’ maps based upon the Panel’s redistricting principles. Moreover, the Panel will likewise receive input from its own experts and advisors who will, presumably, utilize available technology and data analytics.

In other words, the Saxe Applicants seek only to provide this Panel with their opinion and positions on district mapping *generally*. But as the *Hippert* Panel held in denying the *amicus* application of Common Cause in 2011, such a general interest “is inconsistent with the purpose of amicus participation.”¹ Hippert Amicus Order at 2. Just as the *Hippert* Panel denied the application of Common Cause to generally “provide the Special Redistricting Panel (the panel) with an ‘informed, non-partisan perspective’ on the parties’ proposed redistricting plans” (Hippert Amicus Order at 2), this Panel should deny

¹ Common Cause’s participation in this case is different because they timely moved to intervene, identifying separate interests of individual plaintiffs with standing.

the Saxe Applicants’ request to broadly provide input on the application of this Panel’s redistricting principles to redistricting plans. In other words, the Saxe Applicants are not like, for instance, the Minnesota Women’s Campaign Fund in *Zachman*, whose *amicus* application was granted because it proposed to submit a brief discussing a specific issue not addressed by any other party – namely, “gender issues surrounding the redistricting plans submitted to this panel.” *Zachman Amicus Order* at 2.

Further, while the Saxe Applicants assert in their motion that their “data science” is able to provide the Panel with superior information on the application of this Panel’s redistricting principles to proposed redistricting plans, they provide no insight into what their “data science” actually is or how the technology it deploys works. As a result, it is not clear how valid their “science” is. And given the lateness of their *amicus* application and the procedural schedule, there is no opportunity for either the parties or this Panel to test it. Notably, if the Saxe Applicants wanted their “data science” to be a criteria against which legislative and congressional redistricting plans are measured, they should have timely intervened in this action to propose such a criteria as a redistricting principle in this case.

Moreover, as did Common Cause in *Hippert*, the Saxe Applicants had the full opportunity to provide this Panel with its input and purported expertise during the public comment period. Indeed, the Saxe Applicants admit that they participated in public hearings and submitted to this Panel proposed congressional and legislative redistricting plans. *See* 11/30/21 Application at 1-2, n.1, and n.3. Thus the Saxe Applicants “ha[ve] already informed the panel of [their] views and concerns by participating” in that process. *Hippert Amicus Order* at 3. This Panel should “decline to elevate the opinions and concerns

of [the Saxe Applicants] above those of other participating members of the public by granting [them] a special opportunity to comment on the parties' proposed redistricting plans." *Id.* at 4.

III. Saxe Applicants Effectively Seek Party Status Despite this Panel's Prior Denial of that Request

Finally, in seeking permission to provide briefing to this Panel on what they consider optimal mapmaking and their critiques of the parties' redistricting plans, the Saxe Applicants essentially seek party status. This is underscored by the group's submission of their own map as members of the public – which they were entitled to provide, but which it seems very likely would be heavily referenced in their amicus briefing. This Panel has already denied such a request (*see* 9/10/21 Order) and should not permit the Saxe Applicants to become a party through the backdoor. Particularly because the Saxe Applicants' request for leave to participate as *amici curiae* is untimely, just like their motion for intervention, and will prejudice the existing parties.

CONCLUSION

For the foregoing reasons, the Saxe Applicants' application should be denied.

Dated: December 3, 2021

Respectfully submitted,

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CERTIFICATION OF DOCUMENT LENGTH

The undersigned hereby certifies that Anderson Plaintiffs' Opposition to 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 Opposition to Application contains 1,499 words, inclusive of any footnotes and exclusive of the caption and signature block.

Dated: December 3, 2021

Respectfully submitted,

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