

FILED

October 28, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

Case No. A20-1362

Donald J. Trump for President, Inc.,
Senate Victory Fund, House Republican
Campaign Committee, and Ryan J.
Beam,

Petitioners,

v.

Steve Simon, in his official capacity as
Minnesota Secretary of State,

Respondent,

and

Robert LaRose, Teresa Maples, Mary
Sansom, Gary Severson, and Minnesota
Alliance for Retired Americans
Educational Fund,

Proposed Intervenor-
Respondents.

**ROBERT LAROSE, TERESA MAPLES,
MARY SANSOM, GARY SEVERSON,
AND MINNESOTA ALLIANCE FOR
RETIRED AMERICANS
EDUCATIONAL FUND'S
MOTION TO INTERVENE AS
RESPONDENTS**

TO: The Minnesota Supreme Court and all counsel of record.

Proposed Intervenor-Respondents Robert LaRose, Teresa Maples, Mary Sansom, Gary Severson, and Minnesota Alliance for Retired Americans Educational Fund (the "Alliance," and collectively, "Proposed Intervenor-Respondents") hereby move the Minnesota Supreme Court, under Minnesota Rule of Civil Appellate Procedure 127,

for an order permitting them to intervene as respondents in the above-captioned matter and participate in any briefing permitted by the Court.

On August 3, 2020, in a lawsuit filed by Proposed Intervenors against Respondent Steve Simon, the Minnesota Secretary of State (the “Secretary”), Ramsey County District Court Judge Sara Grewing entered a consent decree in which the Secretary agreed not to enforce the State’s Election Day receipt deadline and witness-signature requirement for mail ballots during the November election (the “Consent Decree”). *See generally LaRose v. Simon*, No. 62-cv-20-3149 (Ramsey Cnty. Dist. Ct.). Various Republican Party organizations—including Petitioner Donald J. Trump for President, Inc.—appealed to this Court, but soon after signed a stipulation in which they dismissed that appeal and waived any further challenge to the Consent Decree. Petitioners now seek to undo the Consent Decree on the eve of the election, and in so doing pose a clear and direct threat to Proposed Intervenors’ rights and legal interests. Proposed Intervenors are entitled to intervene in this matter as of right under Minnesota Rule of Civil Procedure 24.01 to safeguard their substantial and distinct legal interests. Alternatively, Proposed Intervenors should be granted permissive intervention pursuant to Rule 24.02.

I. Intervention as of Right

It has long been the “policy” of Minnesota courts “to encourage intervention whenever possible.” *Norman v. Refsland*, 383 N.W.2d 673, 678 (Minn. 1986). “The

requirements of Minn. R. Civ. P. 24.01 provide guidance for appellate intervention.” *In re Crablex, Inc.*, 762 N.W.2d 247, 251 (Minn. Ct. App. 2009); *see also League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). “Rule 24.01 establishes a 4-part test that a non-party must meet before being allowed to intervene as of right”:

- (1) a timely application for intervention,
- (2) an interest relating to the property or transaction which is the subject of the action;
- (3) circumstances demonstrating that the disposition of the action may as a practical matter impair or impede the party’s ability to protect that interest; and
- (4) a showing that the party is not adequately represented by the existing parties.

Minneapolis Star & Trib. Co. v. Schumacher, 392 N.W. 2d 197, 207 (Minn. 1986).

Proposed Intervenors satisfy each of these requirements.

First, this motion is timely. Petitioners filed their petition today, so there has been no significant action in this case, and there is no risk of delay or prejudice to the parties. *See id.* at 207.

Second and third, Proposed Intervenors have strong interests in the Consent Decree—the subject of this action—that will be impaired or impeded by disposition in their absence. Petitioners call into question the Consent Decree *to which Proposed Intervenors are parties*. A reversal of the Consent Decree would indisputably impede the ability of Proposed Intervenors to realize their interest in that agreement. *See Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081–82 (8th Cir. 1999) (finding interest requirement “easily satisfie[d]” where “[t]he disposition of the

lawsuit . . . may require resolution of legal and factual issues bearing on the validity of [] agreements” in which proposed intervenor had interests); *see also Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974) (looking to federal cases applying analogous Federal Rule of Civil Procedure 24); *Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568, 570–71 (Minn. Ct. App. 1990) (same). Moreover, Proposed Intervenors—both individual voters who risk disenfranchisement and the Alliance, which is dedicated to promoting the franchise for its members—have an interest in safeguarding their right to vote. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (“The Democratic Party [] has standing to assert the rights of those of its members who will be prevented from voting by the new law.”), *aff’d*, 553 U.S. 181 (2008).

Fourth, Proposed Intervenors’ interests are not adequately represented by the Secretary. *See Jerome Faribo Farms*, 464 N.W.2d at 570 (intervenors “carry the ‘minimal’ burden of showing that the existing parties ‘may’ not adequately represent their interests” (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972))). This is a case where “the government’s representation of the public interest [is] not [] ‘identical to the individual parochial interest’ of a particular group just because ‘both entities occupy the same posture in the litigation.’” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 899 (9th Cir. 2011) (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009)).

Instead, Proposed Intervenors have specific interests implicated by the litigation that they cannot rely upon the Secretary to adequately protect. Although Proposed Intervenors and the Secretary were ultimately able to reach an agreement in state court, Proposed Intervenors *had to sue the Secretary* to obtain that agreement to protect their constitutional rights in the upcoming election. The Consent Decree was the product of negotiation and a balancing of the distinct interests of Proposed Intervenors and the Secretary, and “there is no assurance that the state will continue to support all the positions taken in” the Consent Decree. *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1001 (8th Cir. 1993); *see also, e.g., Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020).

II. Permissive Intervention

Alternatively, Proposed Intervenors easily satisfy the requirements for permissive intervention under Rule 24.02. Under Rule 24.02, the Court may grant intervention “upon timely application . . . when an applicant’s claim or defense and the main action have a common question of law or fact.” Minn. R. Civ. P. 24.02. In exercising its discretion under Rule 24.02, “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.*

As discussed in Part I *supra*, this motion is timely. Moreover, Proposed Intervenor's defenses share common questions of law and fact with the petition; indeed, they are "directly responsive" to Petitioners' claims because Proposed Intervenor seeks to uphold the very Consent Decree that Petitioners "seek to overturn." *Franconia Minerals (US) LLC v. United States*, 319 F.R.D. 261, 266 (D. Minn. 2017) (quoting *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002)). Proposed Intervenor maintains that the Consent Decree is entirely consistent with both federal and Minnesota law, and that Petitioners' claims are wholly baseless. Lastly, intervention will result in neither prejudice nor undue delay. Proposed Intervenor has an undeniable interest in a swift resolution of this action, to ensure that the Consent Decree is successfully implemented and all Minnesota voters are able to cast ballots and have their votes counted. Given the legal and factual shortcomings of Petitioners' claims, Proposed Intervenor is confident that their intervention in this case, and the filings that will follow, will result in expeditious resolution of this matter.

Proposed Intervenor respectfully requests that this Court issue an order permitting them to intervene as Respondents in this proceeding.

DATED this 28th day of October, 2020

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*Pro hac vice applications will be submitted
with this motion

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, Subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, Subd. 2.

/s/ Sybil L. Dunlop _____
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