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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

Minnesota Voters Alliance; Mary Amlaw; Ken Wendling; Tim Kirk,

Petitioners,

v.

Tom Hunt, in his official capacity as elections official for Anoka County; Steve Simon, in his official capacity as Secretary of State; Anoka County; the Office of the Minnesota Secretary of State; Shannon Reimann, in her official capacity as chief executive officer of the Minnesota Correctional Facility – Lino Lakes,

Respondents,

Jennifer Schroeder, an individual; and Elizer Eugene Darris, an individual,

[Proposed] Intervenor-Respondents.

Case Type: Civil
File No. 02-cv-23-3416
The Honorable Thomas R. Lehmann

INTERVENOR-RESPONDENTS' REPLY IN SUPPORT OF MOTION TO INTERVENE

INTRODUCTION

Petitioners' Opposition to Proposed Intervenors' Motion to Intervene[1] cannot dispute the Intervenors' compelling interest in this action. It is apparent from reading the Petition that saving taxpayer funds is pretext for disenfranchising the people on community supervision whose voting rights have been restored. This is deeply personal to the Intervenors. Given the stakes, Respondents' attempts to deny Intervenors a role in this litigation ring hollow.

[1] Cited herein as "(Opp. at ___.)"

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Petitioners cannot demonstrate any actual prejudice they face from Intervenors' participation in the litigation. While Petitioners complain about duplicative litigation filings (Opp. at 17), it was their decision to duplicate and regurgitate "facts" irrelevant to the motion to intervene and proliferate the paper before the Court. Nor can Petitioners' purported concern be squared with their criticism that Intervenors' arguments overlap with Respondents' positions.

Moreover, Petitioners fundamentally misunderstand or ignore the adequacy-of-representation analysis, which is not simply about comparing arguments raised in Rule 12 motions or the political preferences of the litigants. Instead, the analysis flows from the assessment of the Intervenors' and Respondents' underlying interests—Intervenors' interest in litigating to avoid disenfranchisement is quite different from Respondents' general interest in defending the law. And there are any number of ways those distinct interests may diverge throughout the litigation or resolution of it.

Petitioners' Opposition only highlights the critical need for Intervenors to participate in this litigation. Petitioners seek to use their Petition to accomplish what they failed to achieve through the legislative process—perpetuating the disenfranchisement of over 55,000 Minnesotans who live and work in the community on probation or community supervision. Petitioners seek to deny people like the Intervenors the freedom to vote, while also denying them a voice in the litigation seeking that end. The Court should reject Petitioners' attempt to exclude Intervenors from the courtroom just as Petitioners want them excluded people like them from participating in our democracy.

Intervenors respectfully request that the Court grant their motion to intervene.

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ARGUMENT

I. PETITIONERS MISSTATE THE "ADEQUATE REPRESENTATION" STANDARD, RELYING ON A STANDARD NOT ADOPTED BY THE MINNESOTA COURT OF APPEALS OR THE MINNESOTA SUPREME COURT.

Petitioners first argue that the Government can adequately represent the Proposed Intervenors in this Action and, thus, intervention as a matter of right is improper. (Opp. at 9-16.)

Petitioners rely on a non-binding Ramsey County District Court decision in *DSCC & DCCC v. Simon*, No. 62-CV-20-585, 2020 Minn. Dist. LEXIS 220, at *54 (Minn. Dist. Ct. July 28, 2020), to claim that when the government is a party, the government is presumed to adequately represent the interests of proposed intervenors and that proposed intervenors bear a more stringent burden to show otherwise. As a threshold matter, neither the Court of Appeals nor the Supreme Court has adopted the standard set forth in *DSCC & DCCC v. Simon*. In fact, the Minnesota Court of Appeals in *Schroeder v. Minnesota Sec'y of State Steve Simon*, 950 N.W.2d 70, 79 n.10 (Minn. Ct. App. 2020), expressly declined to take a position on the more stringent standard because it found that the Minnesota Voters Alliance (a Petitioner in this case) failed to demonstrate an interest in the underlying action to support intervention. 950 N.W.2d at 79 n.10. This Court is not bound by the opinions of Ramsey County courts, and the Court of Appeals has previously applied the "minimal" burden standard advocated by Proposed Intervenors when the government is a party. *See Jerome Faribo Farms, Inc. v. Cnty. of Dodge*, 464 N.W.2d 568, 571 (Minn. Ct. App. 1990) (applying minimal burden standard to show inadequacy of representation when party was a county defending against a challenge to a zoning decision). *Jerome Faribo Farms* is still good law and is binding.[2]

[2] Even Petitioners claim that "Minnesota law" decides this case. (Opp. at 14.) Petitioners cannot have it both ways: they cannot advocate for the more stringent federal test that *neither* the Minnesota Court of Appeals nor the Minnesota Supreme Court have adopted, then, out of the other side of their mouth, eschew federal cases cited by Proposed Intervenors. If the Petitioners want to advocate for this Court to adopt a more stringent test for intervention when the government is a party, a test Petitioners admit is adopted from the Eighth Circuit, a federal court, they cannot then run

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Further, Petitioners' claim that "individuals oftentimes have a right to intervene when their desired outcome is *different from* or *opposed to* that of the other parties in a case" may be true, but it is irrelevant. (Opp. at 9.) Nothing in the cases cited by Petitioners stands for the proposition that the Court must deny intervention when the interests of a proposed intervenor and the interests of a party overlap. In fact, the opposite is true. *See Jerome Faribo Farms, Inc.*, 464 N.W.2d at 571. There, the Court of Appeals reversed a denial of a motion to intervene under Rule 24.01 even though the government shared overlapping interests with the proposed intervenors. *Id.* It found that the government may have multiple, even divided, interests and that intervenors may not necessarily share those interests. For example, county officials have a general responsibility to permit responsible land use practices; "a concern not shared by [intervenors]." *Id.* Here, Proposed Intervenors have a personal interest in retaining and exercising their right to vote, which is different than a generalized interest in defending the constitutionality of laws. Likewise, in *Jerome Faribo Farms*, the Court pointed out that government officials accused of wrongdoing may have a specific interest in defending themselves, an interest not shared by intervenors. *Id.* That also applies here, where Petitioners have accused Respondents of individual wrongdoing. In short, *Jerome Faribo Farms* gives the right answer: intervention as a matter of right is proper under these circumstances.

Further, Petitioners misinterpret *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981). In that case, the court allowed proposed intervenors to intervene even though they shared an interest with the defendant, Caromin House, Inc., in obtaining a permit to construct a group home in Two Harbors, Minnesota. *Id.* at 27. There, intervention was proper not because the intervenors' interests were *different* or *opposed*, but because they were *specific* where Caromin House had a general interest in building a group home as an investment:

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from federal decisions when those decisions are inconvenient. "After all, in the law, what is sauce for the goose is normally sauce for the gander." *Heffernan v. City of Paterson, N.J.*, 578 U.S. 266, 272 (2016).

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> Caromin House does not adequately represent the interest of the Residents and does not pretend to do so. Although Caromin House is interested in constructing a group home as an investment, it apparently has no ties to this particular neighborhood. *For the Residents, the location in Two Harbors, near friends and family, is important.* Caromin House has no duty to the Residents before the home is in operation and they reside in it. In contrast, the Residents have a vital interest in being able to live in and participate in this community.

Costley, 313 N.W.2d at 28 (emphasis added). Here, Proposed Intervenors have a *very* specific interest in the litigation. For years, Proposed Interveners were disenfranchised under the old law, fought long and hard to have their voting rights (and those of more than 55,000 Minnesotans) restored, finally secured those rights through legislation, and now have a very specific interest in this litigation because it seeks to take away those rights. While that may *overlap* with the interests of the Government in upholding the constitutionality of the Re-enfranchisement Statute, it is personal and distinctly different. Allowing intervention is proper. *See, cf.*, *Jerome Faribo Farms, Inc.*, 464 N.W.2d at 571; *Costley*, 313 N.W.2d at 28.

Moreover, the test applied by Petitioners, *i.e.*, whether Respondents and Proposed Intervenors raise the same arguments in their briefing, is *not* the proper test of whether the interests are so aligned that the Respondents may adequately represent the interests of Proposed Intervenors. (Opp. at 10.) Likewise, Petitioners' claims that the parties want the same outcome because of party affiliation, policy preference, or even historical support are irrelevant. (Opp. at 10-11.) Nothing in the cases cited by Petitioners stands for the proposition that the Court may rely on party affiliation or extraneous evidence of policy preferences to satisfy the test of whether a party adequately represents the interests of a proposed intervenor for the purposes of Rule 24.01. Again, *Jerome Faribo Farms* is instructive: the court must look at the potential outcomes of the litigation – not vague policy preferences or press releases – to address whether the interests overlap to such a

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degree that the Respondents could adequately represent the interests of Proposed Intervenors. They do not.

To put a finer point on it – Petitioners admit that *prior* to the passage of the Re-enfranchisement Statute, the government in *Schroeder* argued to *uphold* the previous law preventing people on community supervision from voting. (Opp. at 5.) Proposed Intervenors challenged the previous law. While the Government's interests lie primarily in upholding the laws of the State of Minnesota, Proposed Intervenors' interests lie in securing and maintain the right to vote for people on community supervision. These interests might overlap to some extent but they are by no means the same and it is certainly not a foregone conclusion that the various options for resolution of this litigation will satisfy the interests of both the Respondents and Proposed Intervenors.

Petitioners take issue with the cases cited by Proposed Intervenors. (Opp. at 12.) As a threshold matter, Petitioners misstate the holding in *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996), when they state that the Fifth Circuit granted intervention because the interests were not aligned. The Fifth Circuit specifically found the interests *were* aligned, but that the government's interest in representing the broad public interest was not sufficient to show adequate representation. *Id.* ("For this reason alone, the interests of AFBF members will not necessarily coincide, even though, at this point, they share common ground.") Petitioners omit the following italicized portion from their analysis: "*AFBF has more flexibility, however, in advocating its position, because the federal government* is bound by a prior court judgment that pumping from the Aquifer 'takes' endangered species; the AFBF intends to refute that finding." *Id.* The Fifth Circuit relied on the *general rule* that the government's broad support for the public interest is sufficient to find that the government would not adequately represent a private party and only

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relied on the issue of a prior order as additional support. *Id.* The omitted language supports granting the Proposed Intervenors' Motion to Intervene.

Finally, Petitioners, relying on an unpublished case, *Living Word Bible Camp v. Cnty. of Itasca*, A12-0281, 2012 WL 4052868, at *6 (Minn. Ct. App. Sept. 17, 2012), claim that the environmental cases "where the government is required to balance complex interests and the government agency, in addition to making these judgment calls, is a party" cited by Proposed Intervenors are contained to situations where "the interests of the putative intervenors are narrower than, and cannot be subsumed into, the government entities' interests." (Opp. at 12, (quoting *Living Word Bible Camp*, 2012 WL 4052868, at *6).) *Nothing* in the *Living Word Bible Camp* decision distinguishes between motions to intervene in so-called "environmental cases" and motions to intervene in other matters where the Government is a party. Petitioners' "environmental cases" analysis is fashioned from whole cloth with no support even in the unpublished authority upon which Petitioners rely.

However, *Living Word* actually supports the position of Proposed Intervenors: the Court of Appeals *reversed the district court's denial of intervention*, finding the landowners' interests in their property values were narrower than the general governmental interest in preserving game. *Id.* The same rationale could apply here. The Respondents' primary interest is in upholding the constitutionality of the Re-enfranchisement Statute. The Proposed Intervenors' interest is in *preserving the rights to vote for those on community supervision*. Again, applying Petitioners' own logic, intervention is proper.

II. PETITIONERS' ARGUMENTS AGAINST PERMISSIVE INTERVENTION FAIL BECAUSE PETITIONERS SUFFER NO PREJUDICE.

Ironically, Petitioners claim that allowing Proposed Intervenors to intervene "only forces Petitioners to respond to additional duplicative papers and pleadings and risks delay and

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complication of this case." (Opp. at 17.) Any duplication of effort was of Petitioners' own making by presenting their case-in-chief in the opening seven pages of their Opposition. Regardless, Petitioners appear to have found a streamlined way of responding to the various pleadings: copying and pasting from other documents and combining their response to the dismissal motions.

Any claim that intervention would delay the proceedings was rendered moot when the Court issued a letter order advising the Parties and Proposed Intervenors to be prepared to argue the dispositive motions on October 30 during the oral arguments on the Motion to Intervene. As Petitioners have themselves stated: The facts of this case will not change and are largely not in dispute. (Petitioners' Memorandum of Law in Support of Issuance of the Writ of Quo Warranto, filed Oct. 2, 2023, at 15.) Finally, Petitioners' fears that Proposed Intervenors could continue the litigation even if the Government settles (Opp. at 18) cut directly against the Petitioners' argument that the Proposed Intervenors' interests directly overlap with the Respondents'. Petitioners' "cost" argument is simply a rehashing of their losing argument that Respondents adequately represent the interests of the Proposed Intervenors.

CONCLUSION

For the reasons set forth herein and in Proposed Intervenors' Motion to Intervene, the Court should grant the Motion to Intervene and enter an order making the Proposed Intervenors parties to this case.

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Dated: October 23, 2023

/s/ *Craig S. Coleman*

Craig S. Coleman (MN #0325491)
Jeffrey P. Justman (MN #0390413)
Evelyn Snyder (MN #0397134)
Erica Abshez Moran (MN #0400606)
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 766-7000
craig.coleman@faegredrinker.com
jeff.justman@faegredrinker.com
evie.snyder@faegredrinker.com
erica.moran@faegredrinker.com

Ehren M. Fournier (MN #0403248)
Cassidy J. Ingram (*pro hac vice*)
FAEGRE DRINKER BIDDLE & REATH LLP
320 South Canal Street, Suite 3300
Chicago, IL 60606
Phone: (312) 569-1000
ehren.fournier@faegredrinker.com
cassidy.ingram@faegredrinker.com

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Teresa J. Nelson (MN #0269736)
David P. McKinney (MN #0392361)
AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA
2828 University Avenue SE, Suite 160
Minneapolis, MN 55414
Phone: (651) 645-4097
tnelson@aclu-mn.org
dmckinney@aclu-mn.org

-and-

Julie A. Ebenstein (pending *pro hac vice*)
Sophia L. Lakin (pending *pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
125 Broad Street
New York, NY 10004
Phone: (212) 607-3300
jebenstein@aclu.org
slakin@aclu.org

Attorneys for Intervenor-Respondents Jennifer Schroeder and Elizer Darris