

FILED

June 23, 2021

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT**

**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 (proposed),

Petitioners,

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,

Petitioners,

**MEMORANDUM IN SUPPORT OF
MOTION TO JOIN
ADDITIONAL PARTY AND AMEND
COMPLAINT**

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,

Respondents.

INTRODUCTION

In this action, Petitioners Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom and James E. Hougas III (“Petitioners”) challenge the current constitutionality of the outdated plan of legislative districts and congressional districts as established by the Minnesota Special Redistricting Panel in *Hippert v. Ritchie*, No. A11-152, 813 N.W.2d 374 (Minn. 2012) (Final Orders dated Feb. 21, 2012). As a non-partisan political organization whose members are registered voters in Minnesota who work to empower voters, the League of Women Voters Minnesota (“League”) has an interest in the constitutionality of the current legislative and congressional districts and the appropriate remedy for the districts’ alleged constitutional flaws. The Legislature’s special session is about to adjourn without apparent legislative redistricting action being taken and adding the League to this proceeding at this stage will facilitate efficient and timely preparation for hearings.

Accordingly, pursuant to Minnesota Rules of Civil Procedure 15.01, 19.01 and 20.01, Petitioners and the League jointly move to join the League into this action as an additional party plaintiff and petitioner and to accordingly amend the complaint in the form set forth in Exhibit A to the Affidavit of Jody E. Nahlovsky.

PROCEDURAL HISTORY

This action was originally filed by Petitioners in Carver County District Court on February 19, 2021, *Wattson v. Simon*, No. 10-CV-21-127, alleging that Minnesota’s current legislative and congressional districts are unconstitutional based on the 2020

Census, thus requiring declaratory and injunctive relief. Petitioners then filed a petition with this court, requesting it to assume jurisdiction over the Carver County action and any other redistricting actions filed in Minnesota state courts based on the 2020 Census. On March 22, 2021, the Minnesota Supreme Court granted Petitioners' petition for appointment of a special redistricting panel to hear and decide challenges to the validity of state legislative and congressional districts based on the 2020 Census. The proceedings are stayed until further order of the Chief Justice.

Another action was filed on April 26, 2021, in Ramsey County District Court, *Sachs et al. v. Simon*, No. 62-CV-21-2213. The plaintiffs in that case filed a petition with the Minnesota Supreme Court, No. A21-0546, requesting that it assume jurisdiction over the Ramsey County action and to consolidate that case with *Wattson v. Simon*, No. A21-0243. On May 20, 2021, the Minnesota Supreme Court granted that petition.

ADDITIONAL PARTY PLAINTIFF

The additional party plaintiff and petitioner is the League of Women Voters Minnesota which is a nonprofit corporation formed under Minnesota Statute Section 317A *et seq.* The League was founded in 1919 to encourage informed and active participation in government, increase understanding of major public policy issues, and influence public policy through education and advocacy. In short, the mission of the League is empowering voters and defending democracy. The League is proud to be nonpartisan, neither supporting nor opposing candidates or political parties at any level of government, but always working on vital issues of concern to members and the public. The League has 35 local chapters

with a total of over 2,400 members in Minnesota, a vast majority of whom are registered voters in Minnesota. These members live in all eight congressional districts, 63 of Minnesota's 67 state senate districts, and 119 of Minnesota's 134 state house districts. Affidavit of Jody E. Nahlovsky, Exhibit A, Amended Complaint, ¶ 6.

The League has been a key organization engaging Minnesotans on all types of political processes, including redistricting. For the current cycle of redistricting, the League has been engaged in its People Powered Fair Maps™ program since 2019 to educate and advocate for fair and accurate representation in Minnesota's redistricting process. As part of that campaign, the League has advocated that every Minnesotan should have the opportunity to have meaningful participation in the redistricting process. The League believes that new maps drawn during the redistricting cycle should maximize fair and accurate representation through an open and honest process that empowers voters, regardless of where they live, how they vote, or what their background is. Affidavit of Jody E. Nahlovsky, Exhibit A, Amended Complaint, ¶ 6.

ARGUMENT

Petitioners' and the League's joint motion seeks joinder under Minn. R. Civ. P. 19.01 and/or 20.01 and to amend the Complaint under Minn. R. Civ. P. 15.01.

A. Permissive Joinder under Rule 20.01

Minnesota Rule of Civil Procedure 20.01 provides in pertinent part:

All persons may join in one action as plaintiffs if they assert any right to

relief, jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of fact or law common to all these persons will arise in the action.

The purpose of Rule 20 is to promote judicial economy and expedite the final determination of disputes, thereby preventing multiple suits. *Kisch v. Skow*, 233 N.W.2d 732, 735 (Minn. 1975).

Whether the source of power for the exercise of discretion by the trial court in adding additional parties to pending litigation is statutory or inherent, the problem of joinder should be resolved by a consideration of the public and judicial interest in the administration of justice, through economy of litigation but without prejudice to the parties, to the end that the determination of the principal claims of the parties to the action shall be full and complete.

Schau v. Buss, 209 Minn. 99, 99, 295 N.W. 910, 910 (1940) (*Syllabus by the Court*). “[T]he rule as to allowable joinder should be broad and flexible.” *Id.* at 104, 912. As this litigation is still in the preliminary stages and no scheduling order has been issued, the minor inconvenience of adding the League as an additional plaintiff and petitioner would not result in any delay, additional expense or prejudice to any party to the case.

Further, the joinder of this additional plaintiff and petitioner would also allow the special redistricting panel to obtain as many viewpoints as possible in this complex litigation that involves particularly important and sensitive issues. *Cf. Snyder’s Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974) (providing that allowing parties to intervene and add to the record aids the court 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 Involvement in*

Redistricting Litigation, 114 Harv. L. Rev. 878, 900 (Jan. 2001) (noting that judges handling redistricting “should take a more permissible approach to intervention and standing and should open up participation *** to incorporate more of the diverse interests that have a stake in the outcome”).

The first consideration for permissive joinder under Rule 20.01 is that, before an additional party may be joined in an action, a claim of that party must arise from the same transaction or occurrence or series of transactions or occurrences as the other party’s claim. Here, the claims of the Petitioners and the League clearly arise from the same occurrence: the failure of the Minnesota Legislature to redraw the state’s legislative and congressional districts as required by the United States Constitution and the Constitution of the State of Minnesota. As such, the first Rule 20.01 requirement has been satisfied.

The second consideration for permissive joinder under Rule 20.01 is if any question of fact or law common to all these persons will arise in the action. Petitioners claim an interest in the action as qualified voters in the State of Minnesota who have been, among other things, denied equal protection of the laws. The mission of the League is empowering voters and defending democracy and it is always working on vital issues of concern to members and the public. The League has 35 local chapters with a total of over 2,400 members in Minnesota, a vast majority of whom are registered voters in Minnesota. These members live in all eight congressional districts, 63 of Minnesota’s 67 state senate districts, and 119 of Minnesota’s 134 state house districts. The League has been a key organization engaging Minnesotans on all types of political processes, including redistricting. Affidavit of Jody E. Nahlovsky, Exhibit A, Amended Complaint, ¶ 6. Petitioners and the League

have a specific claim and interest in the constitutionality of the current legislative and congressional districts.

Specifically, Petitioners and the League seek a prompt judicial determination that the legislative and congressional districts established by the Minnesota Special Redistricting Panel in *Hippert v. Ritchie*, No. A11-152, 813 N.W.2d 374 (Minn. 2012) (Final Orders dated Feb. 21, 2012), are now, with the passage of time and the release of a new decennial census, unconstitutional. In addition, Petitioners and the League seek a prompt judicial determination that those previously established legislative and congressional districts may not be used for any purpose. Furthermore, Petitioners and the League seek a prompt determination of the criteria for establishing new congressional and legislative redistricting plans that meet the constitutional requirements, as well as the adoption of those new plans.

These common questions, which are the central issues in this case, are sufficient to satisfy Rule 20.01's second requirement. The League should be added as a plaintiff and petitioner under Minnesota Rule of Civil Procedure 20.01.

B. Required Joinder under Rule 19.01

Minnesota Rule of Civil Procedure 19.01 provides in pertinent part:

A person who is subject to service of process shall be joined as a party in the action if... (b) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (1) as a practical matter impair or impede the person's ability to protect that interest.

“Rule 19.01 operates in three parts, First, the rule applies to a person who is subject

to service of process. Second, Rule 19.01 lays out the factors for determining which parties are necessary. These parties are those in whose absence complete relief cannot be accorded in the action, or those who claim an interest relating to the subject of the action and whose absence will impair or impede their ability to protect that interest. Third, the rule states, if the person has not been so joined, the court *shall order that the person be made a party.*” *Schulz v. Town of Duluth*, 936 N.W.2d 334, 340-41 (Minn. 2019) (citations and quotations omitted) (emphasis in original). “The purpose of Rule 19...is to compel joinder of parties whenever feasible so that a complete disposition of a claim can be made in the pending case. The rule reflects pragmatic concern for the efficient use of judicial resources....” *State Auto Casualty and Underwriters v. Lee*, 257 N.W.2d 573, 575 (Minn. 1975).

As to the first part, the League is a Minnesota nonprofit corporation and is subject to process under Minnesota law. *See* Minn. Stat. § 317A.161, subd. 3; Minn. R. Civ. P. 4.03(c). Second, the League claims an interest in this action and its absence will impair or impede its ability to protect that interest. The mission of the League is empowering voters and defending democracy, and it is always working on vital issues of concern to members and the public. The League has 35 local chapters with a total of over 2,400 members in Minnesota, a vast majority of whom are registered voters in Minnesota. These members live in all eight congressional districts, 63 of Minnesota’s 67 state senate districts, and 119 of Minnesota’s 134 state house districts. The League has been a key organization engaging Minnesotans on all types of political processes, including redistricting.

This Court has taken jurisdiction over all redistricting cases in the state meaning the only way that the League can protect these interests with respect to redistricting is to have

its claims heard before the redistricting panel. The League has no way of protecting its interests without being made a party to this action. Adding the League to this lawsuit will help to “secure the just, speedy, and inexpensive determination” of its claim. Minn. R. Civ. P. 1.

Given the League is seeking to join this case, the third part of Rule 19.01 as described by the *Schulz* Court is satisfied. Joinder under Minnesota Rule of Civil Procedure 19.01 is also appropriate.

C. Amending Complaint under Minn. R. Civ. P. 15.01.

Leave to amend should be freely granted unless it results in prejudice to the other party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). Courts consider the stage of the action when deciding on a motion to amend. *Dale v. Pushor*, 75 N.W.2d 959, 601 (Minn. 1956). Here, Petitioners seek to amend their Complaint to add the League as a party plaintiff and petitioner to this Supreme Court action. This amendment is sought extremely early in this action, before a Panel has been appointed, and does not change the legal theories to be litigated. It only seeks to add a party in interest to the action. There is no resulting prejudice to any party as a result of this amendment and, as such, it should be granted.

CONCLUSION

For the reasons set forth above, Petitioners and the League jointly respectfully request that the Motion to join the League of Women Voters Minnesota as an additional

party plaintiff and petitioner to this Supreme Court action, and to accordingly amend the complaint in the form set forth in Exhibit A of the Affidavit of Jody E. Nahlovsky, be granted. Petitioners and the League request that this relief be granted upon the lifting of the stay, or sooner if the Court so chooses.

Respectfully Submitted,

Date: June 23, 2021

JAMES H. GILBERT LAW GROUP, P.L.L.C.

By: /s/ James H. Gilbert

James H. Gilbert (0034708)

Adam L. Sienkowski (0395659)

Jody E. Nahlovsky (0330139)

12700 Anderson Lakes Parkway

Eden Prairie, MN 55344

952/767-0167

asienkowski@lawgilbert.com

Attorneys for Petitioners Peter S. Wattson,

Joseph Mansky, Nancy B. Greenwood,

Mary E. Kupper, Douglas W. Backstrom

and James E. Hougas III and League of

Women Voters Minnesota