

July 28, 2010

Civil Filing  
Hennepin County District Court  
Room # C-332  
300 So. 6<sup>th</sup> Street  
Minneapolis, MN 55487

Re: *Douglas Benson, et al. v. Jill Alverson, in her official capacity as the Hennepin County Local Registrar, et al.*  
Court File # 27-CV-10-11697 (Judge Mary S. DuFresne)

Dear Sir or Madam:

On behalf of proposed Defendant-Intervenor Minnesota Family Council, I enclose for filing in this matter the Notice of Motion and Motion to Intervene; Memorandum of Law in Support of Motion to Intervene; Affidavit of Thomas Prichard; and Proposed Order. This matter is scheduled for hearing before Judge DuFresne on September 3, 2010. Also enclosed is the Certificate of Service and a check for the filing fee.

By copy of this letter, I am serving the enclosed on counsel for the parties.

Sincerely,

**SHREFFLER LAW, PLLC**

By: 

Charles R. Shreffler

CRS  
Enclosures

cc: Peter Nickitas, Esq. (w/enc)  
Daniel Rogan, Esq. (w/enc)  
Lori Swanson, Esq. (w/enc)  
Client (w/enc)

**CERTIFICATE OF SERVICE BY MAIL**

Charles Shreffler, of the City of Minneapolis, County of Hennepin, State of Minnesota, states and affirms under penalty of perjury that on July 28, 2010 he served:

- Notice of Motion and Motion to Intervene;
- Memorandum of Law in Support of Motion to Intervene;
- Affidavit of Thomas Prichard; and
- Proposed Order

on counsel for the plaintiffs and counsel for the defendants in this action, by mailing true and COI Tectopies thereof, enclosed in envelopes, postage for first class mail prepaid, and by depositing same at the post office in Minneapolis, Minnesota, and directed to the following at their *last* known addresses:

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Lori Swanson, Esq.  
Office of Minnesota Attorney General  
Suite 1400  
445 Minnesota Street  
St. Paul, MN 55101

  
Charles Shreffler

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Douglas Benson, Duane Gajewski,  
Jessica Dykhuis, Lindzi Campbell, Sean  
Campbell, Thomas Trisko and John  
Rittman,

Case Type: Other Civil  
Court File No. 27 CV 10-11697

Plaintiffs,

v.

Jill Alverson, in her official capacity as  
the Hennepin County Local Registrar,  
and State of Minnesota

**NOTICE OF MOTION AND  
MOTION TO INTERVENE**

Defendants,

and

Minnesota Family Council,

Defendant-Intervenor.

TO: Plaintiffs above-named and their attorney, Peter James Nickitas, Peter J. Nickitas Law Office, LLC, 431 South Seventh Street, Suite 2446, Minneapolis, Minnesota 55415;

Defendant Jill Alverson and her attorneys, Michaela. Freeman, Daniel Rogan, and John March, Hennepin County Attorney's Office, 2000A Government Center, Minneapolis, Minnesota 55487;

Defendant State of Minnesota and its attorney, Lori Swanson, Office of Minnesota Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101:


PLEASE TAKE NOTICE that Proposed Defendant-Intervenor Minnesota Family Council (the "Council") will move to intervene as a defendant in this case pursuant to Minn. R. Civ. P. 24.01 and Minn. R. Civ. P. 24.02 before the Honorable Mary Steenson Dufresne on Friday, September 3, 2010, at 9:00 a.m. in Courtroom 1559, Hennepin County Government Center, 300 South Sixth Street, Minneapolis, MN 55487.

The Council is entitled to intervene as of right under Minn. R. Civ. P. 24.01 because it timely filed its request to intervene; it has significant and unique interests relating to the subject of this action; its ability to protect those interests might be impaired or impeded by the disposition of this action; and its interests will not be adequately represented by the existing parties. *See* Minn. R. Civ. P. 24.01. Alternatively, the Council should be permitted to intervene under Minn. R. Civ. P. 24.02 because it timely filed its request to intervene; its interests and arguments present questions of law in common with the issues in this action; its intervention will not unduly delay or prejudice the adjudication of this action; and its involvement will be a beneficial addition allowing for a more informed judicial decision on a subject of vital social importance. *See* Minn. R. Civ. P. 24.02.

This motion is based on the records and file of this case, including the Memorandum of Law in support of Motion to Intervene and Affidavit of Thomas W. Prichard, filed herewith, and the arguments of counsel.

DATED: July 28, 2010

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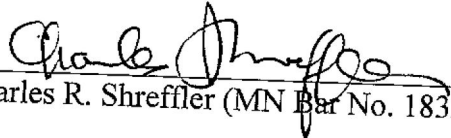
*Attorneysfor Minnesota Family Council*

*\*Pro hac vice motion forthcoming*

**ACKNOWLEDGMENT PURSUANT TO MINN. STAT. § 549.211**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211 for conduct violating Subsection 2 of that Statute.

Dated: July 28, 2010

  
\_\_\_\_\_  
Charles R. Shreffler (MN Bar No. 183295)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Douglas Benson, Duane *Gajewski*,  
Jessica Dykhuis, Lindzi Campbell, Sean  
Campbell, Thomas Trisko and John  
Rittman,

Case Type: Other Civil  
Court File No. 27 CV 10-11697

Plaintiffs,

v.

Jill Alverson, in her official capacity as  
the Hennepin County Local Registrar,  
and State of Minnesota

**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
INTERVENE**

Defendants,

and

Minnesota Family Council,

Defendant -Intervenor.

**INTRODUCTION**

Plaintiffs filed this lawsuit seeking to invalidate our State's marriage laws under various provisions of the State Constitution. The Minnesota Family Council (the "Council") seeks to intervene to defend against Plaintiffs' effort to strike down those laws. The Council has significant interests in this case: it is the principal organization that supported and lobbied for the State's current marriage laws; and if Plaintiffs were to succeed in this action, that outcome would substantially impede and interfere with the Council's ability to pursue, further, and accomplish its organizational missions, goals, and activities. Neither of the existing defendants will adequately represent these interests. The Court should thus permit the Council to intervene.

## FACTUAL BACKGROUND

The Council is the largest nonprofit, nonpartisan, pro-family organization in the State of Minnesota; it represents approximately 300,000 constituents. Prichard Aff. at " 2, 12. The Council's missions and primary goals are, among other things, (1) to support, lobby for, and preserve laws and policies that strengthen families, (2) to support, lobby for, and preserve laws defining marriage as the union of one man and one woman, (3) to support, lobby for, and preserve laws and policies supporting the raising of children by a married mother and father, and (4) to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system. *Id* at " 4-7.

Since its founding, the Council has been involved in drafting, promoting, and lobbying for many legislative measures that strengthen marriage and families. Prichard Aff. at , 22. Specifically, the Council was directly involved in the enactment of Minnesota's Defense of Marriage Act, Laws of Minnesota 1997, Chapter 203, Article 10 (the "State DOMA"), which is the primary law challenged by Plaintiffs in this litigation. *Id* at „25-33. Simply put, the Council was the principal organization that supported and lobbied for the enactment of that statute. *Id* at, 25. The Council expended extensive time, energy, and resources to see the State DOMA codified as law. *Id* at, 33.

## PROCEDURAL BACKGROUND

On May 11, 2010, Plaintiffs filed their complaint in this case. Just over three weeks later, on June 3, 2010, the Council filed its notice of intervention. On June 30, 2010, Plaintiffs filed their notice of objection to the Council's notice of intervention. Shortly thereafter, the Council filed this motion to intervene.

## ARGUMENT

I. The Council Is Entitled to Intervene As of Right under Minn. R. Civ. P. 24.01.

To intervene as of right under Minn. R. Civ. P. 24.01, a nonparty must establish four elements:

(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 & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). "The policy of encouraging intervention whenever possible is favored by courts, and the rule should be liberally applied." *Blue Cross/Blue Shield of Rhode Island v. Flam by Strauss*, 509 N.W.2d 393,396 (Minn. Ct. App. 1993) (citing *Engelrup v. Potter*, 224 N.W.2d 484, 489 (Minn. 1974)); accord *State v. Deal*, 740 N.W.2d 755, 760 (Minn. 2007) ("[I]t is our policy to encourage intervention wherever possible"). Our State's Supreme Court has thus made clear that "the extensive use of intervention should be encouraged." *Norman v. Refsland*, 383 N.W.2d 673,678 (Minn. 1986). Here, the Council satisfies all elements for intervention as of right, and thus should be permitted to intervene.

A. The Council Submitted a Timely Application for Intervention.

"The factors to be considered in determining timeliness include how far the suit has progressed at time of intervention, the reason for the delay, and the possible prejudice of the delay to the existing parties." *SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn. 1979). The Council did not delay in filing its notice of intervention; indeed, it filed that document at the very earliest stages of the proceeding (approximately three weeks after Plaintiffs filed their complaint). At that time, nothing had OCCURRED in this case other than the filing of

Plaintiffs' complaint, and even now, this case is still in its infancy. The Council has thus satisfied the timeliness requirement.

**B. The Council Has Significant Interests in the Subject of this Action, and Resolving Plaintiffs' Legal Claims Might Impair the Council's Ability to Protect Those Significant Interests.**

The Council was intimately involved in the enactment of the State DOMA, which is the subject of this action; most notably, the Council was the principal organization that supported and lobbied for its enactment by the Legislature. Additionally, the Council has a particularized interest in furthering its organizational missions and goals involving marriage and family issues-many of which are directly threatened by Plaintiffs' lawsuit. These interests in the subject of this lawsuit entitle the Council to intervene as of right. And given that Plaintiffs seek to strike down the State DOMA and redefine marriage in our State, resolving this case might as a practical matter impair the Council's ability to protect those interests.

**1. The Council Is Entitled to Intervene to Protect Its Significant Interests as the Principal Organization That Supported the State nOMA.**

Minnesota courts apparently have not addressed the issue of whether the principal organization behind a law's enactment has an interest in intervening to defend against a legal challenge to that law. But many federal cases, which our state courts look to for guidance, support intervention in those circumstances.

Minn. R. Civ. P. 24.01 is consistent with, and materially indistinguishable from, the parallel federal rule, Fed. R. Civ. P. 24(a)(2). See *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981) (noting that the Minnesota intervention rule is "identical" to the federal rule); Comment to Minn. R. Civ. P. 24.01 (noting that a recent amendment to the state intervention rule was "desirable purely for ... the sake of consistency with the federal rule"). It

has long been the practice of our state courts when interpreting our intervention rule to look for guidance to authority interpreting the federal intervention rule. *See Costley*, 313 N.W.2d at 28-29 (relying on authority interpreting the federal intervention rule); *Deal*, 740 N.W.2d at 761 (relying on support from federal law for the "conclusion that intervention should be permitted").

Federal courts have often found that an organization that supported a law has a significant interest in defending the legality of that measure. "A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995). Stated differently, "a public interest group that is involved in the process leading to adoption of legislation has a cognizable interest in defending that legislation." *Michigan State AFL-CIO v. Miller*, 103 F.3d ]240, 1245 (6th Cir. ]997).

In *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006), for instance, the court ruled that a public-interest group that supported an enacted law had "a 'significant protectable interest' in defending the legality of the measure." *Id.* And similarly, in *Washington State Building & Construction Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982), the court held that "the public interest group that sponsored the [challenged statute] was entitled to intervention as a matter of right." *Id.*; *see also Miller*, 103 F.3d at 1246-47 (finding that an organization that was "a vital participant in the political process that resulted in legislative adoption of the [challenged laws]" had a substantial interest in defending them); *Idaho v. Freeman*, 625 F.2d 886, 887 (9th Cir. 1980) (concluding that an organization had the right to intervene in a suit challenging the ratification procedures for a constitutional amendment supported by that organization); *Coal. of Arizona/New Mexico Counties for Stable Economic Growth v. Dep 't of Interior*, 100 F.3d 837, 841 (10th Cir, 1996) (finding that the proponent and primary advocate of a particular animal

listing under the Endangered Species Act had a "direct and substantial interest" in litigation challenging that listing and thus was entitled to intervene as of right).

Here too, the Council was the principal organization that supported the law challenged in this action. Prichard Aff. at ~ 25. The Council directly contacted and lobbied many State legislators in support of the State DOMA. *Id* at ~ 26. The Council also sent literature to its constituents, encouraging them to call their legislators and ask them to enact the law. *Id* at ~ 29. The Council collected signatures from its constituents in support of the State DOMA, and submitted more than 15,000 of those signatures to the Legislature. *Id.* at ~ 30. The Council also drafted and paid for a full-page advertisement in the Star Tribune urging legislators and voters to support the State DOMA. *Id* at ~ 28. It is thus undeniable that the Council supported the enactment of the State DOMA, and as a result, it has a unique interest in defending against this legal challenge to that statute.

The Council has also been involved in opposing recent legislative efforts that would have effectively repealed the State DOMA. Prichard Aff. at ~ 35. During the last two years, four bills have been introduced in the Minnesota Legislature attempting to redefine marriage to include same-sex couples, and two bills have been introduced attempting to extend governmental recognition in Minnesota to same-sex unions contracted in other States. *Id.* at ~ 36. The Council organized legislative testimony opposing those bills in both the Senate and House Committees. *Id.* This further demonstrates the Council's interests in defending against Plaintiffs' legal challenge, which tries to accomplish judicially what these unsuccessful bills sought to achieve legislatively.

Resolving Plaintiffs' claims might impair the Council's ability to protect its interests as the principal organization that supported the State DOMA. "Whether disposition of the

underlying action may impair or impede [an intervention applicant's] ability to protect its interests should be viewed from a practical standpoint rather than one based upon strict legal criteria." *BE & K Constr. Co. v. Peterson*, 464 N.W.2d 756, 758 (Minn. Ct. App. 1991); *accord Minneapolis Star & Tribune*, 392 N.W.2d at 207. Here, it is undisputed that if the State DOMA is struck down as Plaintiffs request, it would nullify the Council's extensive expenditures of time, energy, and resources to bring about that law's enactment. It is thus plain that the disposition of this lawsuit, as a practical matter, might impede the Council's ability to protect its significant interests as the principal organization that supported the State DOMA.

2. The Council Is Entitled to Intervene to Protect Its Significant Interests in Furthering Its Organizational Missions, Goals, and Activities.

"Minnesota courts recognize impediments to an organization's activities and mission as an injury sufficient for standing." *Alliance for Metropolitan Stability v. Metropolitan Council*, 671 N.W.2d 905, 914 (Minn. Ct. App. 2003); *Rukavina v. Pawlenty*, 684 N.W.2d 525, 533 (Minn. Ct. App. 2004). It thus logically follows that an organization has a significant interest in intervening in litigation where the plaintiffs seek an outcome that will impede or negatively affect the organization's missions, goals, or activities.

Similarly, federal courts have issued "numerous [decisions] in which ... special interest groups have been held to have a sufficient interest for purposes of intervention as of right in cases in which their particular interests were threatened." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1252 (10th Cir. 2001) (citing *Coal. of Arizona/New Mexico Counties*, 100 F.3d at 842-43). Federal courts thus have often found sufficient interests to intervene where an organization's mission or goals are threatened by the relief sought in the litigation. *See Wi/dEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010)

("[O]rganizations whose purpose is the protection and conservation of wildlife and its habitat have a protectable interest in litigation that threatens those goals"); *Planned Parenthood v. Citizens for Cmty. Action*, 558 F.2d 861, 869 (8th Cir. 1977) (holding that a neighborhood association, which had the "professed purpose" of "preserv[ing] property values and insur[ing] that abortion facilities do not affect the health, welfare and safety of citizens," was entitled to intervene in an action challenging a local ordinance imposing a moratorium on constructing abortion clinics); *New York Pub. Interest Research Group v. Regents of the Univ.*, 516 F.2d 350, 351-52 (2d Cir. 1975) (holding that a pharmacists' organization had a right to intervene in an action brought by consumers to challenge a regulation prohibiting the advertising of prescription-drug prices).

The Council's mission and one of its primary goals is to support, lobby for, and preserve laws defining marriage as the union of one man and one woman. Prichard Aff. at ~ 5. But if Plaintiffs obtain the relief they seek, causing the State nOMA to be struck down and marriage to be legally redefined to include same-sex couples, it would substantially impede and interfere with the Council's ability to pursue, further, and accomplish that mission and goal. *Id.* at, 39. It would also force the Council to divert substantial resources to lobbying to reestablish the legal definition of marriage as the union of one man and one woman; these efforts would include educating legislators and the public about the importance of reestablishing that legal definition of marriage. *Id.* at ~ 42-44.

Of particular note, if Plaintiffs obtain the legal change they seek, reestablishing the definition of marriage would be very difficult and onerous, requiring that the Council commit a substantial amount of resources to that task. Prichard Aff. at ~ 45. The reason that this task would be so onerous is because the only way to restore that definition in the law would be through an amendment to the State Constitution. *Id.* An amendment to the State Constitution is

more arduous to enact than a statute because a constitutional amendment requires majority approval of both houses of the Legislature followed by majority approval of the voting electorate, whereas, enacting a statute does not require majority approval of the electorate. *Jd.* Additionally, the Council has found it more difficult to persuade the Legislature to approve constitutional amendments (compared to statutes). *Jd.*

Furthermore, awarding the relief that Plaintiffs request would affect other missions and goals of the Council. The Council's mission and one of its primary goals is to support, lobby for, and preserve laws and policies supporting the raising of children by a married mother and father. Prichard Aff. at ¶ 6. But if the State DOMA is struck down and marriage is redefined, it would substantially impede and interfere with the Council's ability to pursue, further, and accomplish that goal by making it very difficult for the Council to advance, enact, and advocate for laws and policies that support the raising of children by a married mother and father. *Jd.* at ¶ 40, 46. The reason that this task would be so onerous is because redefining marriage to include same-sex couples would mean, as a matter of law, that the relationships of same-sex couples are identical to the relationships of opposite-sex couples. *Jd.* at ¶ 46. It would thus be extremely difficult—and, indeed, nearly impossible—to enact and preserve laws and policies preferring that children be raised by a married mother and father rather than by a same-sex couple. *Id.*

One of the Council's other primary goals is to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system. Prichard Aff. at ¶ 7. But if Plaintiffs succeed in this action, it would substantially impede and interfere with the Council's ability to pursue, further, and accomplish that goal because it would become very burdensome to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system. *Id.* at ¶ 41, 47. The reason that this task would be so difficult is because redefining marriage as requested by Plaintiffs would

mean, as a matter of law, that homosexual behavior is legally recognized as worthy of governmental support and promotion. *Id.* at, 47. It would thus become extremely arduous- and perhaps impossible-to prevent the public-school system from promoting homosexual behavior or same-sex relationships. *Jd.*

Additionally, the Council believes that many other seismic societal effects would result from redefining the institution of marriage. Prichard Aff. at ~ 19. So *if* Plaintiffs are successful in their legal challenge, the Council would be forced to divert substantial resources to educate its constituents, legislators, and the public on these many societal effects of redefining marriage. *Jd.* at , 44. It is also likely that additional issues, such as complex religious-liberty concerns, would arise within the Council's mission, and the Council would be forced to divert or increase organizational resources to address them. *Id.* at, 48.

So in short, if Plaintiffs succeed in this legal challenge, it would substantially impede and interfere with the Council's ability to pursue, further, and accomplish its missions and goals, and significantly alter and impact the Council's activities, including their organizational and advocacy efforts. *Id.* at ~~ 38-44. The Council's interests in achieving its missions, goals, and activities are significant interests that entitle the Council to intervene. *See WildEarth Guardians*, 604 F.3d at 1199; *New York Pub. Interest Research Group*, 516 F.2d at 351-52; *cf. Alliance/or Metropolitan Stability*, 671 N.W.2d at 913-15 (finding that organizations had standing where they asserted that the challenged governmental actions "substantially interfere[ed] with [their] mission[s] by compelling [them] to divert resources").

Resolving Plaintiffs' claims might impair the Council's ability to protect its interests in furthering its organizational missions, goals, and activities. The Council has plainly contended that if Plaintiffs succeed in this action, it would substantially impede and interfere with many of

the Council's missions and goals, substantially alter and impact the Council's activities, and force the Council to divert substantial resources. The disposition of this lawsuit thus, as a practical matter, might impede the Council's ability to protect its significant interests in furthering its organizational missions, goals, and activities.

C. The Council's Interests Are Not Adequately Represented by the Existing Defendants.

"The [intervention] applicant[] must also carry the 'minimal' burden of showing that the existing parties 'may' not adequately represent [its] interests." *Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568,570-71 (Minn. Ct. App. 1990) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)). The Council sufficiently satisfies this minimal burden because, as will be demonstrated herein, the State and the County will not adequately represent its interests.

Where an intervention applicant has different interests from the existing parties, even though its interests are not adverse to those parties, that is usually sufficient to satisfy the minimal burden of showing that the existing parties may not adequately represent the intervenor's interests. *See Planned Parenthood*, 558 F.2d at 870. Here, it is clear that the County and the State do not share the Council's interest as the primary organization that supported the enactment of the State DOMA. Neither does the County or the State share the Council's interests in furthering its mission and goals. Since the existing defendants do not share those interests, they are unable to adequately represent them.

In addition to defending the State DOMA that it worked to enact and protecting its organizational interests in achieving its mission and goals, the Council has particularized, statewide, public-policy interests in defending the institution of marriage against Plaintiffs' legal challenge. Prichard Aff. at ~ 51. These public-policy interests include, but are not limited to, (1)

ensuring that the government uniquely promotes the familial unit headed by a married mother and father, (2) ensuring that all children, insofar as possible, be raised by a married mother and father, and (3) avoiding the weakening of the institution of marriage and potential societal harm that accompanies a fundamental redefinition of the marital union. *Id.*

The existing defendants, however, do not share or represent the Council's public-policy interests. The County's localized interest is merely ministerial: it is concerned only with the ministerial duty of carrying out the law prescribed by the State. The County is thus unable to represent the Council's interests. *See Jerome Faribo Farms*, 464 N.W.2d at 571 ("The County .. ha[s] a public responsibility to permit proper [lawful] practices, a concern not shared by [the intervention applicant]"). Similarly, the State's interest is primarily ministerial. **It** is concerned with defending the legal scheme that has been enacted by the Legislature, but it does not share the particularized public-policy or organizational interests championed by the Council.

Courts "have repeatedly recognized that it is on its face impossible for a government agency to carry the task of protecting the public's interests and the private interests of a prospective intervenor." *WildEarth Guardians*, 604 F.3d at 1200 (quotation marks omitted). "In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *WildEarth Guardians v. Us. Forest Serv.*, 573 F.3d 992,996 (10th Cir. 2009). In particular, the government's public mission and necessary public neutrality inherently conflict with the interests of intervening organization. *Id.* at 997. Likewise, here, the governmental defendants will inevitably strive to maintain public neutrality on the politically charged issue of same-sex marriage, but this neutrality inherently conflicts with the Council's ardent public-policy interests in supporting marriage between one man and one woman. The Council has thus

satisfied its minimal burden of showing that the existing governmental defendants might not represent its interests.

Additionally, the inadequate-representation requirement is also satisfied where the existing parties might not present intervenor's arguments or evidence. *Blake v. Pallan*, 554 F.2d 947,954-55 (9th Cir. 1977). The Council intends to argue and present evidence showing that the government has many compelling interest in promoting the marital union of one man and one woman. Prichard Aff at ~ 52. For one, marriage furthers the compelling governmental interest of directing naturally procreative relationships between one man and one woman into a committed union so that the children born of that relationship will be raised by their own married mother and father. *Id.* Also, the Council intends to argue and present evidence showing that redefining marriage as Plaintiffs request is likely to weaken the institution of marriage and harm society. *Id.* at ~ 54. The existing government defendants, however, are unlikely to raise these arguments or introduce such evidence, and thus they are unable to represent the Council's unique interests in this case. *See Usery v. Brandel*, 87 F.R.D. 670,678 (W.D. Mich. 1980) (finding that the inadequate-representation requirement was satisfied where the intervention applicant would "bring to the proceedings a point of view which will enrich the record in a matter which may well establish precedent and influence public policy").

**It** is also important to note that neither of the existing defendants has shown a strong interest in vigorously defending against Plaintiffs' claims. The County, for instance, has filed a motion seeking to force Plaintiffs to add the State as a defendant. This move, in which the County effectively sought help in defending this suit, implies that the County lacks an interest in enthusiastically defending the marriage laws. Also, even though the State through the Attorney General could have voluntarily intervened to defend against Plaintiffs' claims, the State did not

do so. It did not become a party until it was compelled by Plaintiffs' amended complaint. The Council, in contrast, is eager to defend the State DOMA and protect all its interests in this case. Prichard Aff. at ~ 55. The Court, of course, would benefit from the more complete evidentiary record and comprehensive legal arguments that result when both sides of an issue are zealously represented.

In sum, the Council satisfies all the requirements for intervention as of right, and this Court should thus grant its request to intervene.

II. The Council Should Be Permitted to Intervene Permissibly under Minn. R. Civ. P. 24.02.

Even if this Court finds that the Council has not satisfied the requirements for intervention as of right, it should nevertheless allow the Council to intervene permissibly under Minn. R. Civ. P. 24.02. That rule authorizes courts to grant permissive intervention so long as the intervention applicant submits a "timely application" and its "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, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." *Id.*

The Council satisfies these statutory prerequisites for permissive intervention. First, the Council has filed a timely application for intervention. As previously demonstrated, the Council easily satisfies the timeliness requirement: it filed its application at the very earliest stages of this proceeding; it has not delayed in filing its application; and the parties will not be prejudiced by the timing of its intervention.

Second, the Council's defenses to Plaintiffs' claims present questions of law in common with the issues in the "main action." Plaintiffs' claims and the Council's defenses both involve the constitutionality of our State's marriage laws: Plaintiffs seek a declaration that the marriage

laws violate the State Constitution, and the Council contends that the marriage laws fully comply with that Constitution. These arguments present inextricably intertwined and completely overlapping questions of law.

Third, the Council's intervention would not unduly delay or prejudice the adjudication of the original parties' rights. The Council is willing to abide by any schedule imposed by the Court, and its involvement will not delay in any way the adjudication of this case.

Additional factors support the Council's request for permissive intervention. Notably, the Council, if permitted to intervene, would introduce pertinent evidence regarding the issues raised in this case, *see Prichard Aff.* at ¶¶ 52-54--evidence that the existing defendants are not likely to produce. Especially considering the magnitude of the issues in this case, this evidence would "be a beneficial addition allowing for a more informed decision by the court," and this favors the granting of permissive intervention. *See Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 166 (Minn. 1974) ("[I]t is appellants' contention that they would introduce evidence that would bear on the issues already in the case. This ... contribution would ... be a beneficial addition allowing for a more informed decision by the court.").

Also, as previously discussed, the Council, unlike the existing defendants, represents the public-policy interests in defending the institution of marriage. *See Prichard Aff.* at ¶ 51. So if this Court were to deny the Council's request to intervene, it would mean that no one representing these public-policy interests, which are important to the Council's many constituents, who constitute more than 300,000 citizens of this State, would have any part in the lawsuit. *See Snyder's Drug Stores*, 221 N.W.2d at 166 (allowing permissive intervention because, without the intervention applicant, it "meanjt] that really no one representing the ... public hard] any part in the lawsuit"). The Court would greatly benefit from hearing arguments


and reviewing evidence involving these public-policy interests; it should thus permit the Council to intervene.

**CONCLUSION**

For the foregoing reasons, the Court should issue an order permitting the Council to intervene in this case.

DATED: July 28, 2010

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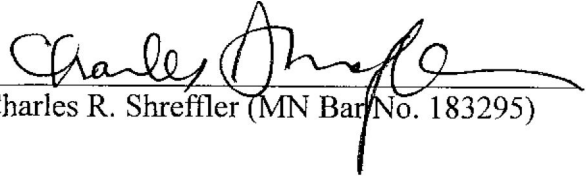
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*\*Pro hac vice motion forthcoming*

**ACKNOWLEDGMENT PURSUANT TO MINN. STAT. § 549.211**

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211 for conduct violating Subsection 2 of that Statute.

Dated: July 28, 2010

  
Charles R. Shreffler (MN Bar No. 183295)

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

Douglas Benson, Duane Gajewski,  
Jessica Dykhuis, Lindzi Campbell, Sean  
Campbell, Thomas Trisko and John  
Rittman,

Case *Type*: Other Civil  
Court File No. 27 CV 10-11697

Plaintiffs,

v.

Jill Alverson, in her official capacity as  
the Hennepin County Local Registrar,  
and State of Minnesota

**AFFIDAVIT OF THOMAS W.  
PRICHARD IN SUPPORT OF  
MOTION TO INTERVENE**

Defendants,

and

Minnesota Family Council,

Defendant-Intervenor.

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

Thomas W. Prichard, being first duly sworn upon oath, deposes and states:

1. I submit this affidavit as the President of the Minnesota Family Council (the "Council") in support of its motion to intervene.
2. The Council is the largest nonprofit, nonpartisan, pro-family organization in the State of Minnesota.
3. I have been President of the Council since 1990.
4. The Council's overarching mission is to support, lobby for, and preserve laws and policies that strengthen families because, as it says in our Statement of Principles, "We believe

that the family is the fundamental institution in a civil society, and government should promote and protect its formation and well being."

5. The Council's mission and one of its primary goals is to support, lobby for, and preserve laws defining marriage as the union of one man and one woman.

6. The Council's mission and one of its goals is to support, lobby for, and preserve laws and policies supporting the raising of children by a married mother and father; this would include, for example, laws defining marriage as the union of one man and one woman and laws preferring adoption by a married mother and father.

7. The Council's mission and one of its goals is to oppose laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system.

8. The Council's mission also includes additional goals and issues, such as protecting the sanctity of human life from conception to natural death, affirming religious freedom, supporting religious expression in the public arena, affirming the limited role of government, and creating an informed and politically active citizenry throughout the State.

9. The Council engages in educational and advocacy efforts supporting laws that define marriage as the union of one man and one woman.

10. The Council engages in educational and advocacy efforts supporting laws that prefer, favor, or support the raising of children by a married mother and father.

11. The Council engages in educational and advocacy efforts opposing laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system.

12. The Council represents approximately 300,000 constituents throughout Minnesota.

13. The Council's constituents want Minnesota law to define marriage as the union of one man and one woman.

14. The Council encourages and supports its constituents in efforts ensuring that the law defines marriage as the union of one man and one woman.

15. The Council's review of existing social-science research has shown that the optimal family structure for children is a household headed by a married mother and father. Indeed, children raised in this family structure show superior performance in almost every measurable category, including general health, psychological well-being, educational achievement, and incidences of criminal activity.

16. The Council believes that it is the government's duty to promote the ideal familial structure of a married man and woman above every other arrangement,

17. The Council believes that the Legislature has a compelling interest in giving special recognition and benefits to the marital relationship between one man and one woman.

18. The Council believes that fundamental changes to the institution of marriage, such as redefining marriage to include same-sex couples (as Plaintiffs seek in this action), would weaken that institution and harm society.

19. The Council believes that seismic societal effects would result from redefining the institution of marriage.

20. The Council believes that redefining the institution of marriage to include same-sex couples would result over time in more children growing up without a married mother and father.

21. Based on these beliefs, the Council has worked in the Minnesota Legislature to preserve and protect the definition of marriage as the union of one man and one woman.

22. Since its founding, the Council has been involved in drafting, promoting, and lobbying for many legislative measures that strengthen marriage and families.

23. The Council, for example, supported legislation that would have given married couples an adoption priority over single individuals or other couples.

24. The Council also supported legislation that would have prohibited public schools from promoting homosexual behavior or same-sex relationships in their curriculum.

25. The Council was the principal organization that supported and lobbied for the enactment of Minnesota's Defense of Marriage Act, Laws of Minnesota 1997, Chapter 203, Article 10 (the "State DOMA").

26. The Council directly contacted and lobbied many State legislators in support of the State DOMA.

27. The Council encouraged the legislators to bring the State DOMA to the legislative floor so that it could be voted on.

28. The Council drafted and paid for a full-page advertisement that appeared in the Star Tribune in April 1997. That advertisement was fashioned as an "open letter" to the State legislators, and it urged them to enact the State DOMA. That advertisement also encouraged voters to contact their legislators and ask them to support the State DOMA. The Council spent thousands of dollars on that advertisement.

29. The Council also sent literature directly to its constituents, encouraging them to call their legislators and request that they enact the State DOMA.

30. The Council collected signatures from its constituents in support of the State DOMA, and it submitted more than 15,000 signatures to the Legislature in support of that law.

31. The Council also directly contacted and lobbied the legislators on the conference committee urging them to adopt the State DOMA. Through its lobbying efforts, the Council succeeded in ensuring that a majority of the committee members from the House of Representatives and a majority from the Senate approved the State DOMA.

32. The Council also lobbied the Governor of Minnesota to make sure that the Governor would not veto or oppose the State DOMA once it was approved by the Legislature.

33. The Council thus expended extensive time, energy, and resources to see the State DOMA codified as law.

34. The Council has significant, unique interests in ensuring that the State DOMA is upheld as constitutional.

35. The Council has worked to oppose recent legislative attempts that would have effectively repealed the State DOMA.

36. During the last two years, four bills have been introduced in the Minnesota Legislature attempting to redefine marriage in this State to include same-sex couples, and two bills have been introduced attempting to extend governmental recognition in this State to same-sex unions contracted in other States. The Council organized legislative testimony opposing those bills in both the Senate and House Committees.

37. If the State nOMA is struck down and marriage is redefined to include same-sex couples, it would nullify the Council's extensive expenditures of time, energy, and resources to bring about that law's enactment.

38. If the State DOMA is struck down and marriage is redefined to include same-sex couples, it would substantially alter and impact the Council's activities.

39. If the State DOMA is struck down and marriage is redefined to include same-sex couples, it would substantially impede and interfere with the Council's mission of supporting, lobbying for, and preserving laws that define marriage as the union of one man and one woman.

40. If the State DOMA is struck down and marriage is redefined to include same-sex couples, it would substantially impede and interfere with the Council's mission of supporting, lobbying for, and preserving laws and policies that promote the raising of children by a married mother and father.

41. If the State DOMA is struck down and marriage is redefined to include same-sex couples, it would substantially impede and interfere with the Council's mission of opposing laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system.

42. **If** the State DOMA is struck down and marriage is redefined to include same-sex couples, the Council would be forced to divert substantial resources to lobbying to reestablish the legal definition of marriage as the union of one man and one woman.

43. If the State DOMA is struck down and marriage is redefined to include same-sex couples, the Council would be forced to divert substantial resources to educating legislators and the public about the importance of reestablishing the legal definition of marriage as the union of one man and one woman.

44. If the State DOMA is struck down and marriage is redefined to include same-sex couples, the Council would be forced to divert substantial resources to educate its constituents, legislators, and the public on the many societal effects of redefining marriage to include same-sex couples.

45. If the State DOMA is struck down and marriage is redefined to include same-sex couples, reestablishing the definition of marriage as the union of one man and one woman would be very difficult and onerous. The reason that this task would be so onerous is because if a court strikes down the State DOMA as being unconstitutional, which is the position argued by Plaintiffs in this case, the only way to restore that definition in the law would be through an amendment to the State Constitution. An amendment to the State Constitution is more arduous to enact than a statute because an amendment to the State Constitution requires majority approval of both houses of the Legislature followed by majority approval of the voting electorate, whereas, enacting a statute does not require majority approval of the electorate. Additionally, the Council, through its prior lobbying for amendments to our State's Constitution, has found it more difficult to persuade the Legislature to approve a constitutional amendment (compared to a statute).

46. If the State DOMA is struck down and marriage is redefined to include same-sex couples, the Council's efforts to advance, enact, and advocate for laws and policies that support the raising of children by a married mother and father would become very difficult and onerous. The reason that this task would be so onerous is because redefining marriage to include same-sex couples would mean, as a matter of law, that the relationships of same-sex couples are identical to the relationships of opposite-sex couples. It would thus become extremely difficult-and,

indeed, nearly impossible-to enact and preserve laws and policies preferring that children be raised by married mothers and fathers rather than by same-sex couples.

47. If the State DOMA is struck down and marriage is redefined to include same-sex couples, the Council's efforts to oppose, prevent, and overturn laws and policies that promote acceptance of homosexual behavior or same-sex relationships in the public-school system would become very difficult and onerous. The reason that this task would be so onerous is because redefining marriage to include same-sex couples would mean, as a matter of law, that the relationships of same-sex couples are identical to the relationships of opposite-sex couples and that homosexual behavior is legally recognized as worthy of governmental support and promotion. It would thus become extremely difficult-s-and, indeed, nearly impossible-to prevent the public-school system from promoting homosexual behavior or same-sex relationships.

48. If the State DOMA is struck down and marriage is redefined to include same-sex couples, additional issues would likely arise within the Council's mission, and we would be forced to divert or increase organizational resources to address them. I have learned from family-policy organizations in States that have redefined marriage that troublesome religious-liberty issues accompany such a fundamental legal change. Some of these religious-liberty issues involve adoption and foster-care services provided by religious organizations; for instance, Catholic charity organizations in both Boston and Washington DC faced the dilemma of either offering their adoption or foster-care services to same-sex couples----conduct that would violate their sincerely held religious beliefs-c-or ceasing to continue their adoption or foster-care services. It is my understanding that the public-policy work surrounding these religious-liberty issues is complex and requires a lot of effort and resources. The Council would need to significantly increase its budget and human resources to adequately address the impacts of such a fundamental change to Minnesota's legal definition of marriage.

49. The Council's interests are not adequately represented by any of the existing parties to the action.

50. The Council believes that intervention is the only way to ensure that its interests are adequately represented.

51. The Council has public-policy interests in defending the institution of marriage against Plaintiffs' legal challenge. These public-policy interests include, but are not limited to, (1) ensuring that the government uniquely promotes the familial unit headed by a married mother and father, (2) ensuring that all children, insofar as possible, be raised by a married mother and father, and (3) avoiding the weakening of the institution of marriage and potential societal harm that accompanies a fundamental redefinition of the marital union.

52. The Council intends to argue and present evidence showing that the government has many compelling interests in promoting the marital union of one man and one woman. For instance, the Council intends to argue and present evidence showing that marriage furthers the compelling governmental interest of directing naturally procreative relationships between one man and one woman into a committed union so that the children born of that relationship will be raised by their own married mother and father.

53. The Council also intends to argue that the government has a compelling interest in promoting marital unions between one man and one woman because, unlike the relationships of same-sex couples, they are uniquely designed to promote the best interests of society and children by ensuring, insofar as possible, that children will be raised by their married mother and father.

54. The Council also intends to argue and present evidence showing that redefining marriage to include same-sex couples is likely to weaken the institution of marriage and harm society.

55. The Council is eager to defend the State DOMA against legal attack.

FURTHER YOUR AFFIANT SAITH NAUGHT.

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Thomas W. Prichard

Subscribed and sworn to before me this  
28.p- day of :SVVh 2010.

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