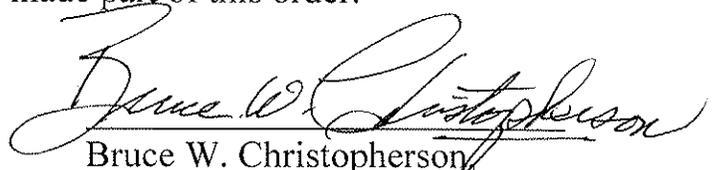




3. Consequently to the above orders, and there being no other independent legal action initiated by the applicants, all other action requested by the applicants, including but not limited to that in the nature of issuance of a Writ of Mandamus, is denied without prejudice.
4. The applicants are granted amicus curiae status to participate in oral and written arguments in the action herein.
5. The attached memorandum is made part of this order.

Dated: June 27, 2011

  
Bruce W. Christopherson  
Judge

## Memorandum

### I.

#### Notice of Intervention

The court treats the Notice of Intervention as a Motion to Intervene pursuant to Rule 24, Rules of Civil Procedure.

Rule 24.01 states:

“Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

Rule 24.02 states:

“Upon timely application anyone may be permitted to intervene in an action when an applicant’s claim or defense and the main action have a common question of law or fact....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.”

A reasonable interpretation of Rule 24.01 indicates that intervention shall be allowed when:

1. The applicant has a stake in the dispute; and
2. Disposition of the action, without the applicant's participation, would hinder the applicant in protecting that stake.

A reasonable interpretation of Rule 24.02 indicates that intervention may, in the court's discretion, be allowed when:

1. The applicant has a claim or defense; and
2. There is a common question of law or fact between the applicant's claim and the main action; and
3. Intervention would not unduly delay or prejudice the adjudication of the rights of the original parties, as determined by the court in its discretion.

The claim of the applicants fails to satisfy either above subdivision for these reasons:

The applicants' claims or defenses that they assert are not those of the individual or collective senators. Rather they are those of the Minnesota Senate as a body politic.

The relief requested by the petitioners does involve the interests of the legislative branch and the executive branch since it seeks to

authorize expenditures not authorized in statute by either branch. However it does not necessarily follow that individual members of the legislature acquire legal standing to separately assert those rights and defenses.

Among the many parties served by the petitioners with copies of the petition and other relevant documents in this proceeding were: the President of the Minnesota Senate, the Majority Leader of the Minnesota Senate, and the Minority Leader of the Minnesota Senate. There have been no responsive pleadings nor appearances by the Minnesota Senate in this case, although the Senate did respond and appear in Ramsey County District Court File Number 62-CV-11-5203.

The applicants have characterized their roles and status in this proceeding as that of acting in their capacity, individually and collectively, as state senators. See these portions of their pleadings:

- a) The caption of their Notice.
- b) Page one, paragraphs one and two.
- c) Page three, numbers 1 and 3.
- d) Page five, number 3.

In such individual and collective roles as state senators, they lack independent stakes, defenses, and standing to intervene as parties in this action.

Further, litigation in this proceeding of the applicants' claims extraneous to the petition relating to the requested writ of mandamus would unduly delay and prejudice fair consideration of the pending petition on its merits.

In summary, the Minnesota Senate is the proper party empowered to fairly represent the interest of all state senators, acting in their roles as senators, including the applicants, in these proceedings.

For these reasons the motion to intervene is denied.

## II.

### Demand for Joinder

The court treats the Demand for Joinder pursuant to Rule 19.01, Rules of Civil Procedure.

In essence the rule requires joinder when feasible if:

- a) Without the applicant, complete relief to the existing parties may not be granted; or

- b) The applicants claim an interest relating to the subject of the action, and disposition of that action in the applicants' absence would legally prejudice the applicants as described in the rule.

The applicants' motion should be denied because:

- a) Proper consideration of the petition may be undertaken without the applicants' participation. As explained above, full and fair opportunity has been afforded the Senate to participate in these proceedings, as it has done in Ramsey County District Court File Number 62-CV-11-5203. Even though the Senate has chosen not to respond in this action, the opportunity offered negates individual standing for joinder by these applicants.
- b) The extraneous requests for relief by the applicants are too remote or collateral to the relief requested in the petition to require their joinder in this action. This court takes no position regarding the merits of the mandamus relief requested by the applicants nor their standing to bring a separate action seeking such relief. However it is clear that such issues are collateral to the relief sought in the petition, and the granting of such relief would not address the primary intent of the petition. Therefore the applicants may have

an alternative adequate remedy of initiating a separate action should they so choose.

For these reasons, the motion for joinder is denied.

### III.

#### Applicants as Amicus Curiae

An amicus curiae, or “friend of the court,” is one who gives information to the court on some matter of law in respect to which the court is doubtful. State v. Finley, 242 Minn. 288, 294, 64 N.W.2d 769, 773 (1954) (citing Kemp v. Rubin, 64 N.Y.S.2d 510 (N.Y. Sup. Ct. 1946)).

This court recognizes the benefit of the insight and suggestions of the applicants, expressed through their attorney.

BWC