STATE OF MINNESOTA
IN COURT OF APPEALS

A23-0620

Dr. Jane Doe, Mary Moe, and Our Justice,

Plaintiffs-Appellees,

vs.

State of Minnesota, Governor of Minnesota, Attorney General of Minnesota, Minnesota Commissioner of Health, Minnesota Board of Medical Practice, and Minnesota Board of Nursing,

Defendants-Appellees,

and

Mothers Offering Maternal Support ("MOMS")

Appellant.

APPELLANT'S PRINCIPAL BRIEF

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- *Issues raised below in district court:* Motion to Intervene as a matter of right or for permissive intervention (MOMS Memorandum in Support of Motion to Intervene, Index # 387 and Judgment Dated July 13, 2022, Index #358.
- *Statement of trial court ruling*: The district court denied Appellant's motion to intervene on March 14, 2023, *Dr. Jane Doe, et al. vs. State of Minnesota, et al.* (Ramsey Cty. Distr. Ct. File No. 62-CV-19-3868). on the basis that it was untimely, and in the alternative on the basis that MOMS failed to satisfy all other requirements for intervention. (Order Dated March 14, 2023, Index # 431).
- *Issues subsequently preserved for appeal:* Notice of Appeal dated April 28, 2023, App. Index No. 1.
- *Apposite cases, constitutional or statutory provisions: League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012); *Norman v. Refsland,* 383 N.W.2d 673, 676 (Minn. 1986) citing *SST, Inc. v. City of Minneapolis,* 288 N.W.2d 225, 231 (Minn.1979); Minn. R. Civ. P. 24.01, 24.02.

2. Whether MOMS' motion to intervene as a matter of right or for permissive intervention was timely when the motion was filed five months from the filing of Plaintiffs' Second Amended

Complaint, Index #347, and prior to the district court's judgment disposing of the case, Index #358 becoming final.

- *Issues raised below in district court:* (MOMS Memorandum in Support of Motion to Intervene, Index # 387, and Judgment Dated July 13, 2022, Index #358).
- *Statement of trial court ruling*: The district court denied Appellant's motion to intervene on March 14, 2023, *Dr. Jane Doe, et al. vs. State of Minnesota, et al.* (Ramsey Cty. Distr. Ct. File No. 62-CV-19-3868) on the basis that it was untimely, and in the alternative on the basis that MOMS failed to satisfy all other requirements for intervention. (Order Dated March 14, 2023, Index # 431).
- *Issues subsequently preserved for appeal:* Notice of Appeal dated April 28, 2023, App. Index No. 1.
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3. Whether MOMS adequately asserted members' constitutional and statutory interest in the subject of the action to require or permit intervention as a matter of right or permission by the court.

- *Issues raised below in district court:* MOMS Memorandum in Support of Motion to Intervene, Index # 387, and Judgment Dated July 13, 2022, Index #385.
- *Statement of trial court ruling*: The district court denied Appellant's motion to intervene on March 14, 2023, *Dr. Jane Doe, et al. vs. State of Minnesota, et al.*

(Ramsey Cty. Distr. Ct. File No. 62-CV-19-3868). on the basis that it was untimely, and in the alternative on the basis that MOMS failed to satisfy all other requirements for intervention. (Order Dated March 14, 2023, Index # 431).

- *Issues subsequently preserved for appeal:* Notice of Appeal dated April 28, 2023, App. Index No. 1.
- *Apposite cases, constitutional or statutory provision: Parham v. J.R.*, 442 U.S. 584 (1979); *Hodgson v Minnesota*, 497 US 417 (1990); *SooHoo v. Johnson*, 731 N.W.2d 815 (Minn. 2007); *Justice v. Marvel, LLC*, 965 N.W.2d 335 (Minn. App. 2021); U.S. Const. Amend. 14; Minn. Const. Art. 1, § 7; Minn. Stat. § 144,343, submit. 2-5.

4. Whether MOMS' motion to intervene as a matter of right or by permission of the court was necessary to avoid the impairment or destruction of the interests of its members in this litigation.

- *Issues raised below in district court:* MOMS Memorandum in Support of Motion to Intervene, Index # 387 and Judgment Dated July 13, 2022. Index #385.
- *Statement of trial court ruling*: The district court denied Appellant's motion to intervene on March 14, 2023, *Dr. Jane Doe, et al. vs. State of Minnesota, et al.* (Ramsey Cty. Distr. Ct. File No. 62-CV-19-3868) on the basis that it was untimely, and in the alternative on the basis that MOMS failed to satisfy all other requirements for intervention. (Order Dated March 14, 2023, Index # 431).
- *Issues subsequently preserved for appeal:* Notice of Appeal dated April 28, 2023, App. Index No. 1.
- *Apposite cases, constitutional or statutory provisions: Webb Golden Val., LLC v, State*, 865 N.W.2d 689 (Minn. 2015); *Lorix v. Crompton Corp.*, 736 N.W.2d 619,

624 (Minn.2007); *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162 (Minn. 1974); *BE & K Const. CO. v. Peterson*, 464 N.W.2d 756 (Minn. App. 1991).

5. Whether MOMS' motion to intervene as a matter of right or by permission of the court evidenced inadequate representation by Defendants when Defendants failed to dispute key factual claims that are contrary to the overwhelming body of caselaw regarding minors' capacity to make serious medical decisions, resulting in the failure in the denial of the constitutional and statutory rights of MOMS members to direct the medical care of their minor daughters.

- *Issues raised below in district court:* MOMS Memorandum in Support of Motion to Intervene, Index #387 and Judgment Dated July 13, 2022, Index #358.
- *Statement of trial court ruling*: The district court denied Appellant's motion to intervene on March 14, 2023, *Dr. Jane Doe, et al. vs. State of Minnesota, et al.* (Ramsey Cty. Distr. Ct. File No. 62-CV-19-3868) on the basis that it was untimely, and in the alternative on the basis that MOMS failed to satisfy all other requirements for intervention. (Order Dated March 14, 2023, Index # 431).
- *Issues subsequently preserved for appeal:* Notice of Appeal dated April 28, 2023, App. Index No. 1.
- *Apposite cases, constitutional or statutory provisions: Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568 (Minn. App. 1990); *Maslof v. Babbitt*, 85 F.3d 1295 (8th Cir. 1996); *Mille Lacs Band of Chippewa Indians v. State of Minn*., 989 F.2d 994 (8th Cir. 1993).

Statement of the Case

This case involves "perhaps the oldest of the fundamental liberty interests" recognized by the United States Supreme Court, *Troxell v. Granville*, 530 U.S. 57, 65 (2000) – the right of parents to direct the care and upbringing of their minor children. On July 13, 2022, the Minnesota District Court for Ramsey County, Second Judicial District, the Honorable Thomas Gilligan Jr. presiding, entered judgment for Plaintiffs-Appellees Dr. Jane Doe; Mary Moe; and Our Justice, declaring several Minnesota laws regulating abortion unconstitutional and enjoining their enforcement. Index #358.[1] One of the laws enjoined is Minn. Stat. § 144.343, subdue. 2–6 ("Parental Notification Law"). Section 144.343 requires that parents be notified of a minor daughter's intention to obtain an abortion, followed by a brief reflection period allowing for consultation between the parents and their daughter prior to performance of the abortion.

The evidentiary record

In the July 11, 2022,the memorandum providing the district court's reasoning in support of the judgment, Judge Gilligan noted multiple times that Respondent Defendants provided no evidence disputing key factual claims made by Plaintiffs-Appellees in their motion for summary judgment. Index #357. Defendants-Appellees provided "little" or "no evidence" rebutting Plaintiffs' claims regarding adolescent decision-making capacity during times of stress, *Doe v. State*, 2022 WL 2662998 (judgment rendered July 13, 2022) at 42, 45,47-48. Defendants-Appellees also failed to provide any evidence challenging Plaintiffs' claims regarding the certainty and knowledge that pregnant minors have about abortion, pregnancy, and pregnancy-related

[1] The July 13, 2022 memorandum has been published as part of the Westlaw legal data base at *Doe v. State*, 2022 WL 2662998 (judgment rendered July 13, 2022). Counsel will often use this citation when providing the court with pinpoint citations for support of Proposed Intervenor Defendant-Appellant's argument.

resources when considering abortion, *id.* at 52, 53. This absence of any evidentiary defense was compounded by the fact that several weeks before judgment, but after briefing and argument, *Hodgson v Minnesota*, 497 US 417 (1990), the key component of Defendants-Appellees' defense of the Parental Notification Law, was abrogated by *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228 (2022). Defendants-Appellees made no motion or other effort to allow for submission of additional evidence and rebriefing.

District court assurances of "zealous" defense

Prior to issuance of the district court's memorandum of July 11, 2022, members of MOMS had no reason to know of the deficient representation of their interests by the Attorney General and other Defendants-Appellees. In response to two pre-judgment motions to intervene, one by Pro-life Action Ministries ("PLAM") and Association for Government Accountability ("AGA") (Index #55) and the second by the Ninety First Minnesota Senate ("Senate") (Index #131), the district court twice held that Defendants adequately represented the interests of proposed intervenors. (Order Denying Motion dated January 28, 2020, Index #95 and Order and Memorandum dated November 2, 2020, Index #159).[2] In disposing of the Senate's motion the court even went as far as to opine "the Defendants have been zealous in their defense of this case." Index #159 at p. 23.[3]

[2] This Court upheld the denial of intervention by PLAM and the Association for Government Accountability on the basis that the proposed intervenors had failed to demonstrate an interest in the litigation. *Doe v State*, A20-0273, 2020 WL 6011443, at *1 (Minn. App. 2020). The Senate did not appeal its denial.

[3] In in response to a motion to intervene by Traverse County Attorney Matthew Franzese, the court found that Defendants representation was adequate of his interests. Order Denying Motion dated September 6, 2022, Index #382.

Only upon learning that the district court had struck down Minnesota's Parental Notification law and after having the opportunity to review the ruling with counsel, did Minnesota mothers become aware of the Defendants' inadequate defense of their interests. Declaration of Jessica Chastek on behalf of Mothers Offering Maternal Support (MOMS), Index #389. In response to this discovery a group of Minnesota mothers formed MOMS to protect their fundamental right to care for and direct the upbringing of their minor daughters.

In furtherance of their common interest, MOMS retained counsel and filed its notice of intention to intervene in this case on September 12, 2022. Index #386. In support of its claim that Defendants' representation of the mothers' rights was inadequate, MOMS simultaneously filed eleven expert declarations rebutting many of the factual claims of Plaintiffs-Appellees and evidencing the benefits of parental involvement laws. Index #388-399.

Plaintiffs-Appellees and Defendants-Appellees objected to MOMS' intervention. (Index #408 and Index # 409). Upon receiving the objections, MOMS filed its motion to intervene with a supporting brief on November 11, 2022. (Index # 414). All parties filed responsive briefing, and the district court heard arguments on January 5, 2023. On March 14, 2023, the district court denied both MOMS' motion for intervention as a matter of right and for permissive intervention. (Index #431.)

This appeal followed within 60 days after the district court's appealable order and was timely filed. The Proposed Intervenor Defendant-Appellant MOMS seeks reversal of the district court's denial of its motion to intervene in order to seek reopening of the case to defend the fundamental constitutional rights of parents to direct the care of their children and the statutory rights of parents to notification of a minor daughter's intention to obtain an abortion as provided in the Parental Notification Law. App. Index #1.

Statement of Facts

This case began in May 2019 when an abortion provider, Dr. Jane Doe a physician providing abortions to adult women, Ms. Mary Moe, a non-physician seeking to provide abortions, and the First Unitarian Society of Minneapolis[4] challenged several state laws regulating abortion on the basis that the laws violate the Minnesota Constitution. The challenged laws included Minn. Stat. § 145.412, subdiv. 1(1) (the Physician-Only Law); § 145.412, subdiv. 1(2), 3(1) (the Hospitalization Law); § 145.412, subdiv. 1(3), 1(4), 4, and Minn. Stat. § 145.413, subdiv. 3 (the Felony Penalties); § 144.343, subdiv. 2–6 (the Parental Notification Law) and § 145.4242(a)-(c) Women's Right to Know laws and law requiring a brief reflection period). Plaintiffs Complaint, Index #1 (May 29, 2019).

This appeal relates only to the district court's ruling that Minn. Stat. § 144.343, subdiv. 2–6 (the Parental Notification Law) is unconstitutional.

Plaintiffs-Appellees sought summary judgment on their claims that the Parental Notification Law violated Minnesota Constitutional protections of privacy and equal protection. Index #229. Respondent Defendants limited their defense of the statute to their argument that no genuine issues of fact existed with respect to the impact of that Parental Notification Law on minors." Index #238 at 6. In response to Plaintiffs-Appellees numerous allegations regarding adolescent decision making and affirmative harms to some minors due to parental or judicial involvement, Index #229 at 22-25, Defendants merely relied on the federal constitutional case, *Hodgson v. Minnesota*, 497 U.S. 417 (1990) (*abrogated by Dobbs v. Jackson Women's Health Org*. Index #238 at 26-30 and an economist's written statements that the law did not appear to

[4] The First Unitarian Society of Minneapolis was subsequently dismissed from the case. Order dated June 22, 2022, Index #351, based upon stipulated facts of the parties. Stipulation dated June 13, 2022, Index #347.

delay or deter minors from obtaining abortions, nor did it appear to increase the cost of such abortions. Index #238 and Index #312. Judgment on this issue, as well as other issues presented in the cross-motions for summary judgment was delayed pending the resolution of several interlocutory appeals.

Upon the resolution of those appeals on June 13, 2022, Plaintiffs-Appellees filed its Second Amended Complaint, dismissing certain claims unrelated to this appeal, removing First Unitarian Society of Minneapolis as a plaintiff, and adding Our Justice, an abortion funding organization as a plaintiff. Amended Compl., Index #347. Plaintiffs-Appellees continued to assert their original claims that the Parental Notification Law violated minor girls' right to privacy under Minnesota Constitution, Art. I, §§ 2, 7, and 10 (*id*. at ¶ 237(j)), and the rights of minor girls to the equal protection of the laws under Minnesota Constitution Art. I, § 2 (*id*. at ¶ 240(j)); as well as the prohibition of special laws contained the Minnesota Constitution, Art. XII, § 1 (*id*. at ¶ 243(j)).

In support of their claims Plaintiffs-Appellees proffered testimony of multiple experts, at least three of whom spoke directly to the requirements of the Parental Notification law: Kelsey Leonardsmith, M.D. (Other Document, Index #231, Ex. 2), Amanda Stephenson, Ph.D. (Other Document, Index #231, Ex. 5), and Carrie Ann Terrell, M.D. (Other Document, Index #231, Ex. 6). Dr. Leonardsmith is a medical doctor specializing in family medicine with an emphasis on adolescents. Index #231, Ex. 2 at 1. Dr. Terrell is a medical doctor specializing in obstetrics and gynecology. Index #231, Ex. 6 at 1. Professor Stephenson is a sociologist with a specialization in demography. Index #231, Ex. 5 at 1. Both physicians testified as to perceived harms of requiring parental notification (#231, Ex. 2 and 6). Professor Stephenson testified to the results of her

informal telephone survey of Minnesota courts regarding judicial bypass of parental notification.[5] Index ##231, Ex. 5.

In contrast, Defendants submitted two unsworn expert witness reports.[6] The first was authored by Dr. Donald Wothe, a medical doctor who specializes in high-risk pregnancies. While Dr. Wothe's report addressed several laws at issue in this case, his report does not mention or address the Parental Notification Law, or the medical treatment of pregnant minors. Index #240, Ex. 1.

Defendants' other expert, Professor Jason Lindo, has a Ph.D and is a professor of economics at Texas A&M University. Index #240, Ex. D ¶¶ 1-2. He opined that the Parental Notification Law did not reduce abortions in the State of Minnesota, nor increase costs to patients, nor lower provider availability. Index #247, Ex. O ¶¶ 9, 15.

He did not, nor was he qualified to, offer any opinion regarding the benefits of parental involvement in medical decision-making on behalf of minors, the capacity of minors to give free and informed consent to abortions, the unique risks to minors of coerced abortion due to illegal

[5] The deficiencies of this survey are apparent when compared with the court ordered comprehensive reporting regarding the practice and frequency of judicial bypass proceedings in *Hodgson v. State of Minn*., 648 F Supp 756 (D. Minn. 1986), *rev'd*, 853 F.2d 1452 (8th Cir 1988), *affd sub nom. Hodgson v Minnesota*, 497 U.S. 417 (1990).

[6] Unsworn statements and unsworn or uncertified copies of papers are not competent evidence to defeat a summary-judgment motion, see Minn. R. Civ. P. 56.05(d) (setting forth requirements for affidavits in summary-judgment motions). *Kay v Fairview Riverside Hosp*., 531 N.W.2d 517, 520 (Minn. App. 1995, rev. denied July 20, 1995) (facts submitted by appellant in the police reports and psychologist's report not considered for purposes of the summary judgment determination because they were not submitted in proper affidavit form). However, courts may consider other documents filed with the court if those documents have sufficient indices of reliability. Minn. R. Civ. P. 56.05(a)(1); *Lundgren v. Eustermann*, 370 N.W.2d 877, 881 (Minn.1985). *See* C.A. Wright & A.R. Miller, Affidavits in Support of or in Opposition to Summary Judgment, 10B Fed. Prac. & Proc. Civ. § 2738 (4th ed.).

sexual activity in the form of sex trafficking and sexual assault, and the nature of the statutory exceptions to parental involvement in the law.[7] Each of these issues is addressed in expert declarations proffered by Proposed Intervenor Defendant-Appellant MOMS in support of its Motion to Intervene. Index #388-399.

Defendants-Appellees refusal to provide an adequate evidentiary defense of the Parental Notification Law was sufficiently striking that even Judge Gilligan questioned it when hearing arguments on the summary judgment motions. Transcript of January 31, 2022 hearing, Index #312 at 58 line 1 through 66 line 7.

Exactly one month after Plaintiffs-Appellees filed their Second Amended Complaint (Amended Summons and Complaint dated June 13, 2022, Index #347), the district court issued its judgment declaring several Minnesota laws regulating abortion, including the Parental Notification Law, unconstitutional . Order dated July 13, 2022, Index #358.

On July 28, 2022, the Attorney General announced the Defendants would not appeal from the judgment.[8]

Proposed Intervenor Defendant-Appellant MOMS filed its notice of intention to intervene on September 12, 2022. Index #386. Simultaneously MOMS filed eleven expert declarations establishing the benefits of parental involvement in the decisions of their minor daughters when facing an unplanned pregnancy, the risks of coerced abortion among minors, and other factual predicates supporting the constitutionality of the Parental Notification Law, as well as expanded

[7] Compare *Lundgren v. Eustermann*, 370 N.W.2d 877, 881 (Minn.1985) (holding that psychologist is not competent to give an opinion on the standard of medical care required of physician).

[8] "Minnesota AG Keith Ellison won't appeal ruling that struck down many state abortion restrictions," Associated Press (July 28, 2022).

informed consent requirements like those previously contained in Minn. Stat. § 145.4242(a) (repealed by Omnibus Health Appropriations, ch. 70, art. 4, § 113 (2023)) and limitations on performance of abortions by non-physicians in later stages of pregnancy (*see* Minn. Stat. § 145.412, subdiv. 1(1), repealed by Omnibus Health Appropriations, ch. 70, art. 4, § 113 (2023)). Index #388-399.

On December 22, 2022, Plaintiffs-Appellees objected to MOMS intervention on the basis that Minnesota mothers lacked standing because "directing the healthcare and upbringing of their minor daughters is not an interest in the subject matter of this litigation that warrants intervention." Index #414 at 14. They also argued that (1) the notice of intervention with not timely, *id*. at 11-14, (2) striking down of the Parental Notification Law would not impair the ability of MOMS' members to direct the healthcare of the daughters, *id*. at 16; and (3) that Minnesota mothers' interests at stake in the litigation were no different than those of the general public, *id*. at 17-18. Finally, Defendants-Appellees claimed that they zealously represented MOMS' interests and must be presumed to have done so by virtue of their legal authority to represent the public interest. *Id*. at 16-19.

Plaintiffs-Appellees also objected to MOMS intervention because they argued that members of MOMS had no legally cognizable interests at stake in the litigation. Index #417. They argued because some members of MOMS read about the filing of the lawsuit in local newspapers, all Minnesota parents were put on notice that they had an interest at stake in the case and thus a duty to monitor the litigation carefully to determine whether their interests were being adequately represented (or at least hire counsel to do so on the parents' behalf), and file suit when the parents (or their hypothetical lawyers) perceived that their interests were not being adequately represented. *Id*. at 5-9. This failure of MOMS' members to monitor the case made the notice of intervention

untimely, or so they argued. *Id*. Like Defendants-Appellees, they argue that the rights and interest of parents are no different than those of the general public. *Id*. at 10. Plaintiffs-Appellees concluded their objection by arguing that Defendants-Appellees adequately represented the interests of state and thus the interests of all Minnesota parents in this case. Plaintiffs-Appellees were silent regarding Defendants-Appellees failure to submit rebuttal evidence to Plaintiffs-Appellees' experts' criticism of the Parental Notification Law and the government's continued and singular reliance on a U.S. Supreme Court case abrogated weeks before judgment was entered in this case. Index #238 pp. 28-31. *See Dobbs v. Jackson Women's Health Org*., 142 S.Ct. 2228 (2022).

On January 5, 2023, the district court heard oral arguments regarding MOMS' motion to intervene. Transcript, Index #430.

On March 14, 2023, the district court denied MOMS' motion to intervene finding that it was not timely, and, even if timely, the motion failed to establish all requirements for intervention pursuant to Minn. R. Civ. P. 24.01, 24.02. Index #431.

Contrary to the ruling of the district court, MOMS has established that it meets all requirements for intervention pursuant to Minn. R. Civ. P. 24.01, 24.02 and the ruling below should be reversed.

Argument

This Court should reverse the district court's denial of MOMS' motions to intervene. This Court has the responsibility and authority to reverse the district court's decision and allow MOMS to be a party to the lawsuit that threatens the statutory and fundamental constitutional rights of its' members.

I. Denial of a motion to intervene as a matter of right is appealable and subject to review by this Court.

This Court has jurisdiction because the district court's denial of a motion to intervene as a matter of right is an appealable order. Minn. R. Civ. App. P. 103.03 (j). *See also Norman v Refsland*, 383 NW2d 673, 676 (Minn. 1986). This appeal is timely in that it is filed within 60 days after the March 14, 2023 order. Minn. R. Civ. App. P. 104.01.

Review of denial of intervention by right is *de novo*. *State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 499 (Minn. App. 2005). In contrast, this Court reviews orders denying permissive intervention under Minn. R. Civ. P. 24.02 for clear abuse of discretion. In this case the district court's order denying permissive intervention is appealable because the district court ruled, in part, that MOMS did not have a protectable interest. Index #431, 20; *see State v. Deal*, 740 N.W.2d 755 (Minn. 2007) at 760; *see also Norman*, 383 N.W.2d at 675.

The Minnesota Supreme Court has declared a "policy of encouraging all legitimate interventions." *Costley v. Caromin House, Inc.*, 313 N.W.2d 21, 28 (Minn. 1981), and "technicalities should not be invoked to defeat intervention." *Engelrup v. Potter*, 224 N.W.2d 484, 488 (Minn. 1974). Rule 24 is to be construed liberally, and doubts resolved in favor of the proposed intervenor. *Westfield Ins. Co. v. Wensmann, Inc.*, 840 N.W.2d 438 (Minn. App. 2013), *see also United States v. Union Electric Co.*, 64 F.3d 1152, 1158 (8th Cir.1995). In determining whether intervention is proper, the court must accept the allegations in the pleadings as true, unless they are frivolous on their face. *Miller v. Miller*, 953 N.W.2d 489, 494 (Minn. 2021) (mother of minor child had right to intervene on behalf of the child in valuation of ex-husband's retirement account). Rule 24.01 does not require a potential intervenor to show a likelihood or probability of success on the merits. *Id*. While post-judgment attempts to intervene are disfavored, they are not prohibited. *Brakke v. Beardsley,* 279 N.W.2d 798, 801 (Minn.1979). *See also In re Crablex, Inc*.,

762 N.W.2d 247 at 251–52 (Minn. App. 2009) (permitting a post- judgement intervention on appeal, finding the motion to intervene timely).

To be entitled to intervention as a matter of right under Minn. R. Civ. P. 24.01, the proposed intervenor must satisfy four requirements: "(1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties." *League of Women Voters Minn. v. Ritchie*, 819 N.W.2d 636, 641 (Minn. 2012). The proposed intervenor must meet all four requirements. *Schroeder v. Minn. Sec'y of State Steve Simon*, 950 N.W.2d 70, 76 (Minn. App. 2020) (*citing League of Women Voters*, 819 N.W.2d at 641).

The district court erred when it denied MOMS' motion to intervene as a matter of right because MOMS satisfied all four factors required under Minn. R. Civ. P. 24.01.

II. The district court erred in denying MOMS' motion to intervene as untimely.

Minn. R. Civ. P. 24.01 requires that a motion to intervene be timely. *Omegon, Inc. v. City of Minnetonka*, 346 N.W.2d 648, 687 (Minn. App. 1984). Timeliness is determined on a case-by-case basis, is construed liberally, and is only untimely if the rights of the original parties are substantially prejudiced. *Id.* Minnesota Supreme Court has further clarified that timeliness is based on the "particular circumstances involved" in each case and includes factors such as: "how far the suit has progressed, the reason for any delay in seeking intervention, and any prejudice to the existing parties because of a delay." *Minneapolis Star & Trib. Co. v. Schumacher*, 392 N.W.2d 197, 207 (Minn. 1986). The district court erred in finding that MOMS' motion for intervention was untimely.

The district court's denial of MOMS intervention relied in part on the fact that some members of MOMS recall having some awareness that several abortion laws had been challenged

in this Court in 2019. Based on this, Judge Gilligan ruled that MOMS' motion to intervene was not timely. Order dated March 14, 2023, Index #431 at 14.

Embracing an objection raised by Plaintiffs-Appellees (Index #417 at 6-7) and Defendants-Appellees (Index #414 at 12-13) the court offer no authority for the extraordinary proposition that ordinary citizens must constantly monitor the legal work of government officials or be foreclosed from seeking relief when those officials fail to provide adequate representation of the unique statutory and constitutional interest of particular citizens, in this case parents who are entitled to be notified of actions by those providing abortions to the parents' minor girls. *See* Order dated March 14, 2023, Index #431 at 12-14.

In assessing MOMS' interests, Judge Gilligan acknowledged that "Not everyone has the time and expertise to evaluate the government's legal advocacy. Lawyers who do have such time and expertise, are often costly." *Id*. at 13. Yet he then immediately rejected this reality, opining that to recognize MOMS' right to intervene poses troubling public policy implication, *i.e.,* that recognizing MOMS' right to intervene might result in endless litigation by any citizen anytime the government loses a case. Such a concern might well be valid if MOMS was seeking to intervene on the basis that its members were Minnesota taxpayers, like the attempt by PLAM and UGA, or in cases where the proposed intervention was on behalf of non-defendant government officials like the members of the Ninety First Minnesota Senate or the Traverse County Attorney. But MOMS is clearly distinguishable from these prior proposed intervenors. Members of MOMS have a fundamental constitutional right at stake in this litigation – a right that the Minnesota legislature recognized and protected in its creation of a statutory right of parents to bring a civil action against those denying parental notification Minn. Stat. § 144.343, subdiv. 5. Such rights are rare and

recognizing MOMS' right to intervene will not, as suggested by Judge Gilligan, open the floodgate of litigation every time the government loses or settles a case.

The conclusion that MOMS' notice of intervention is timely is also supported by federal law. In construing the Minnesota law, state courts often look to federal cases in defining timeliness, as did the district court in this case (see Index #431, 11 fn. 5). This is because Fed. R. Civ. P. 24 (a) and (b) are substantially similar to Minn. R. Civ. P. 24.01 and 24.02 respectively.

In *United Airlines, Inc. v. McDonald* the U.S. Supreme Court ruled that a motion to intervene was timely, notwithstanding the litigation has gone on for more than five years. *United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977). As the Court states in *McDonald*, "the critical fact is that […] as soon as it became clear to the [proposed intervenor] that [her interests] would no longer be protected by the named class representatives, she promptly moved to intervene to protect those interests." *McDonald* 432 U.S. at 394. The Court goes on to state that the "conclusion is consistent with several decisions of the federal courts permitting post-judgment intervention for the purpose of appeal. The critical inquiry in every such case is whether in view of all the circumstances the intervenor acted promptly after the entry of final judgment. Here, the respondent filed her motion within the time period in which the named plaintiffs could have taken an appeal." *Id.* at 395-96.

Similarly, MOMS only discovered that its interests were not adequately protected through the memorandum supporting district court's judgment on July 13, 2022. (Index # 387, 5-6). The court's multiple findings that Defendants-Appellees had presented "no evidence," and had allowed Plaintiffs' evidence to go "unrebutted" made the lack of adequate representation of MOMS' interest clear, even to those without law degrees. *Id.* The Attorney General subsequently made public statements that he would not appeal the case on July 28, 2022. *Id.* at 5. MOMS' motion to

intervene was filed shortly after on September 12, 2022. *See* Index # 387. MOMS' notice of intervention is timely given the unique circumstances in this case.

The district court misconstrued or misapplied this Court's disfavor for post-judgment intervention as rendering such intervention impossible. Index #431, 21-12. The district court should have applied the law to the particular facts in this case: MOMS filed its motion to intervene in a timely fashion after it had knowledge that its interests were unprotected.

Contrary to the ruling below, MOMS did not engage in a "wait and see" approach, since it did not know, and had no reason to know, that its interests were unprotected until after July 11, 2022. The rationale for the district court's ruling is somewhat opaque, given that the court cited no authority for its conclusion, stating simply" This court agrees with Plaintiffs and Defendants that the knowledge of MOMS' members about the constitutional implications of this lawsuit should have prompted it to act in 2022 or earlier, rather than allowing MOMS to wait until this court rendered an adverse decision to conduct an after-action review, marshal its forces, and attempt to resurrect the defense of this lawsuit." To the extent that the court relied on the cases cited by the parties, its ruling is erroneous.

Plaintiffs-Appellees relied upon Minnesota cases where the proposed intervenor was personally involved in preparations for trial, and was present at trial every day (Index #417 at 5 *citing SST, Inc. v. City of Minneapolis*, 288 N.W.2d 225, 230 (Minn., 1979); proposed intervenor was owned, controlled, and operated by a party in the underlying litigation (Index #417at 5-6 *citing Harbal v. Fed. Land Bank of St. Paul*, 449 N.W.2d 442 (Minn. App. 1989)); the business of the proposed intervenor was to monitor and protect against civil liability (Index #417 at 6 *citing State Auto. and Cas. Underwriters v. Lee,* 257 N.W.2d 573 (Minn. 1977); or the proposed intervenor was served with a copy of the complaint filed when the case was filed (Index #417 at 6 *citing Erickson*

v. Bennett, 409 N.W.2d 884 (Minn. App. 1987).

Members of MOMS were not personally involved in Defendants' preparation for trial, nor is the association controlled by the Defendants. Unlike an insurance company, members of MOMS are not in the business of monitoring litigation, nor was any member served with a copy of the complaint when this case was initiated. None of these cases are relevant to MOMS' intervention. There simply is no authority for the proposition that ordinary citizens – in this case Minnesota moms and dads – are required to anticipate that public officials might fail to fulfill their duties to faithfully defend state laws, and that these same parents either have sufficient legal knowledge (or sufficient resources to retain lawyers who do) to monitor the actions of those public officials to assure that parents' interests are being adequately defended. The absurdity of this position is even more pronounced in light of the district court's multiple public pronouncements affirming the "zealous" defense of the case by the Attorney General. *See* Order, Index #159 at p. 23

The district court erred in finding MOMS' motion to intervene untimely, and the ruling should be reversed.

III. The district court erred in its determination that MOMS has no interest in the subject of the action.

MOMS is comprised of Minnesota mothers who have minor daughters. Every member has a protected fundamental and constitutional interest in her parental right to direct the care and upbringing of her daughter. The district court recognized the ancient lineage of this interest, s*ee* (Index # 387, 15-18), yet declared that parental rights to direct the upbringing of a child is" not an interest to justify intervention as a matter of right." Index # 431, 18 (citations omitted). Unlike the previous proposed intervenors in this case, members of MOMS have a statutory right to be notified that their unemancipated minor daughters are seeking an abortion at least 48 hours prior to the performance of any abortion, Minn. Stat. §144.343 (1)-(4). Absent such notification,

members of MOMS have a right to bring a civil action against those depriving them of such notification. Minn. Stat. § 144.343 (5). These provisions make members of MOMS "the beneficiary of a legislative enactment granting standing" thus establishing MOMS's standing in this case. *See Webb Gold Valley, LLC v. State*, 865 N.W. 2d 689, 693 (Minn. App. 2009) *citing Lorix v. Crompton Corp.*, 736 N.W. 2d 619 (Minn. 2007) and *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 221 N.W.2d 162, 165 (Minn. 1974). *Accord St. Paul Police Fed'n v. City of St. Paul*, A05-2189, 2006 WL 2348481 at *1 (Minn. App. Aug. 18, 2006) (unpublished) (party has standing if the legislature has conferred standing by statute). *Cf. Diamond v. Charles*, 476 U.S. 54, 67 (1986) (O'Connor, J. concurring in part) ("I discern nothing in any of the provisions of the Illinois Abortion Law that were challenged in the Court of Appeals to suggest that Illinois meant to vest physicians, parents, or daughters with "significantly protectable interest[s].").

This right is more direct and concrete than the right of plaintiff in *Lorix v. Crompton Corp.*, 736 N.W. 2d 619 (Minn. 2007). In *Lorix* the Minnesota Supreme Court found that an end purchaser of tires had standing to sue a manufacturer of rubber-processing chemicals for antitrust violations because the chemicals that *may* have been "present in the tires she purchased or were consumed in the manufacturing process." *Lorix* at 622- 623. Notwithstanding the fact that the Plaintiff could not affirmative state that the defendant's chemicals were present in the tires or utilized in the process of manufacturing her tires, the Court found Ms. Lorix had standing to proceed to discovery where she would have to undertake the complex task of proving damages through multiple levels of sales. *Id*. at 635. This decision was in part because the "violation complained of — price fixing — is a *per se* violation of the law that strikes at the heart of antitrust law's purpose of protecting competition." *Id*. at 631.

Similarly, the elimination of parental notification regarding their minor daughter's intention to procure and abortion strike as the heart of the constitutional right of parents to care for their minor children. *See Parham v. J.R.*, 442 U.S. 584, 603 (1979); *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007); and *Justice v. Marvel, LLC*, 965 N.W.2d 335, 341-42 (Minn. App. 2021) (*rev'd on other grounds Justice v. Marvel, LLC*, 979 N.W.2d 894 (2022)).

Coal of Greater Minn. Cities v. Minn. Pollution Control Agency, 765 N.W.2d 169 (Minn. App. 2009) supports a party's standing when the injuries complained of are based on the *effect of a particular ruling*. In this case the effect of this Court's ruling striking down the parental notification law is to deprive members of MOMS and all Minnesota parents of their fundamental constitutional rights to direct the upbringing of their minor children.

Nonetheless the district court ruled that MOMS has insufficient to establish standing because MOMS has not provided evidence that any of its members have a daughter who is pregnant and considering or has considered obtaining an abortion. Index #431at 20. The court ruled that the interests of MOMS is "speculative and remote and cannot provide a sufficient interest for MOMS to intervene as of right." *Id*. The circularity of this reasoning is patent. The very purpose of the Parental Notification Law is to make sure that parents are aware of their minor daughter's pregnancy and intention to procure an abortion. If members of MOMS are already aware of these facts, the absence of the law does them no harm. It is only parents who are not aware of their daughters' intentions that benefit from the law. By providing these parents with notification, they are empowered to discuss, advise, and support their child as she makes important decisions about whether to continue or abort her pregnancy. Thus, parents may become the first to help instead of the last to know.

Minors, like most human beings, are reluctant to admit conduct that they may believe others may disapprove of. This is particularly true in interactions between adolescents and their parents. *See* Sophie Baudat *et al*., *How Do Adolescents Manage Information in the Relationship with Their Parents? A Latent Class Analysis of Disclosure, Keeping Secrets, and Lying*, 51 J. Youth & Adol. 1134 (2022) available at https://link.springer.com/article/10.1007/s10826-022-02377-z?utm_ source=getftr&utm_medium=getftr&utm_campaign=getftr_pilot); and Judith G. Smetana and Cecilia Wainryb, *Adolescents' and Emerging Adults' Reminisces about Emotions in the Context of Disclosing, Concealing, and Lying to Parents*, 30 Soc. Dev. 1077 (2021) available at https://onlinelibrary.wiley.com/doi/10.1111/sode.12522.The Parental Notification Law provides a powerful incentive to abortion providers to urge pregnant minors to overcome their reluctance and inform their parents of their pregnancies. This incentive has now been eliminated through the enjoining of Minn. Stat. § 144.343 (1-5), *Doe*, 2022 WL 2662998 at *1.

Minn. Stat. § 144.343 (5) requires the abortion provider to notify the parents regardless of the girl's ultimate decision. This notification provides parents information essential to their ability to fulfill their duty to care for their daughters. At a minimum, the knowledge that their daughter may have obtained an abortion allows parents to explore the circumstances giving rise to the pregnancy and monitor for any adverse consequences of the abortion – infection, hemorrhaging, or emotional distress being the most common. None of this is possible if the girl procures a secret abortion.

MOMS as "the beneficiary of a legislative enactment granting standing" has sufficient interest in the subject of this action to intervene by right. *Cf. Lorix v. Crompton Corp.*, 736 N.W. 2d 619 (Minn. 2007).This Court should reverse the district court and order that MOMS be allowed to intervene.

IV. MOMS' interests in the subject of the action have been impaired by the enjoining of the Parental Notification Law.

Minnesota and federal caselaw show that any practical impairment of interest is sufficient for this element to be met. The Minnesota Supreme Court requires courts to determine whether "circumstances demonstrating that the disposition of the action may *as a practical matter* impair or impede the party's ability to protect that interest." *Schumacher*, 392 N.W.2d at 207 (emphasis added). This is not doubt that such impairment exists in this case.

Berger v. N. Carolina State Conf. of the NAACP is informative on proposed interventions should be viewed when a variety of stakeholders are recognized in statutory law. The *Berger* case involved an attempt by the North Carolina legislature in a case where the executive branch represented the state. A North Carolina statute specifically allowed both the legislature and executive to defend the constitutionality of North Carolina laws. *Berger v. N. Carolina State Conf. of the NAACP*, 142 S.Ct. 2191, 2197 (2022) (citation to statute omitted). The U.S. Supreme Court noted that there were times the attorney general opposed laws enacted by the legislature and declined to defend them fully. *Id.* at 2197 (internal citations omitted). The Court held in cases where statutes recognized multiple parties' ability to bring suit the executive branch does not "hold[] a constitutional monopoly on representing [the State's] practical interests in court. […] To hold otherwise would risk allowing a private plaintiff to pick its preferred defendants and potentially silence those whom the State deems essential to a fair understanding of its interests." *Id.* at 2202-03.

In this case, the Parental Notification Law recognizes both the right of the state to pursue criminal penalties for violating the law, and simultaneously recognizes the right of parents to bring a civil action against those denying notification to a parent. Minn. Stat. § 144.343. By denying MOMS' motion to intervene on the basis that the Defendants-Appellees adequately represented

the rights of parents the district court has in fact silenced those who are essential to a fair understanding the parental right to notification.[9]

The district court erred in denying MOMS interests on the grounds that its interests would not be impaired by an adverse disposition of the case. This Court should reverse the district court and direct that MOMS be allowed to intervene.

V. Defendants did not adequately represent the interest of MOMS.

MOMS bears only a minimal burden of showing that Defendants-Appellees' representation of the interest of MOMS was inadequate. *Jerome Faribo Farms, Inc. v. County of Dodge*, 464 N.W.2d 568 (Minn. App. 1990). Notwithstanding this, the district court applied a presumption that representation of interested citizens by a government entity is adequate. Index #431 at 22. In doing so the court ignored a long-standing exception to that presumption. "[W]hen the proposed intervenors' concern is not a matter of 'sovereign interest," there is no reason to think the government will represent it." *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996). "If the citizen stands to gain or lose from the litigation in a way different from the public at large, the *parens patriae* would not be expected to represent him." *Chiglo v. City of Preston*, 104 F.3d 185, 187–88 (8th Cir. 1997); *cf. Commercial Union Ins. Co. v. City of St. Louis*, 497 F2d 957, 958 (8th Cir 1974) (intervention is proper in case where the city does not have "the same vital stake as the intervenors"). *See also* 7C Charles Alan Wright *et al*., Fed. Prac. & Civ. Proc. § 1909 Intervention under the 1966 Amended Rule—Adequacy of Representation (3d ed.2007) (good reason to believe that applicant for intervention who is willing to bear the cost of litigation is "the best judge of the representation of the applicant's

[9] The appearance that Plaintiffs picked their preferred defendants in this case is so strong that it formed the basis of the Senate's unsuccessful motion to intervene (Memorandum, Index #143).

own interests").

Absent intervention under the district court's ruling MOMS' members have lost their vital interests in rights provided only to parents of minor daughters. These rights include the right to be notified of a provider's intention to perform an abortion upon their unemancipated minor daughter at least 48 hours prior to the performance of the abortion, Minn. Stat. § 144.343 (1)-(4); and a right to maintain a civil action if wrongfully denied such notification, Minn. Stat. § 144.343 (5). These rights, just like parents' broader constitutional rights to direct and protect the wellbeing of their children, are unique to parents of minors, or those who legally stand in their stead, and may not be asserted by members of the general public.

The personal, unique, and constitutional interests of parents in the safety and wellbeing of their minor daughters, coupled with their moral and statutory duty to assure adequate medical care of their children (*see* Minn. Stat. § 260C.301 permitting termination of parental rights for failure to provide medical care), clearly distinguishes the interests of MOMS as the proposed intervenor from those of the "sovereign interest" of the state. In such cases the presumption of adequate representation by the state as *parens patriae* simply does not apply.

Assuming arguendo that MOMS had more than a minimal burden, it is satisfied as evidenced by the district court's findings that Defendants-Appellees offered literally no evidence to rebut many factual claims of Plaintiffs' experts (*Doe*, 2022 WL 2662998 at **42, 45, 47-48, 52) regarding parental involvement in a minor's decision to continue or abort a pregnancy; and only **equivocal** evidence in support of some state interests supporting parental involvement (*id*. at *11, 51,52) (emphasis added).

In place of evidence establishing the need for and benefits of the law Defendants-Appellees relied upon the fact findings and legal conclusions of *Hodgson v. Minnesota*, 497 U.S.

417 (1990), a Supreme Court case upholding the Minnesota parental notification law against federal challenges predicated on a minor's constitutional right to abortion. Index #238 at 26-30. On June 24, 2022, the United States Supreme Court ruled that the U.S. Constitution does not provide a right to abortion, abrogating all Supreme Court abortion cases relying upon *Roe v Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of S.E. Penn. v. Casey*, 505 U.S. 833 (1992). *Dobbs v Jackson Women's Health Org*., 142 S.Ct. 2228 (2022). Defendants-Appellees made no motion to reopen discovery to obtain evidence supporting the Parental Notification Law, nor did they seek permission to rebrief the cross-motions for summary judgment in light of this change in law.

Regardless of this change in law after *Dobbs*, Minnesota courts have long rejected the proposition that the state courts' interpretation of the Minnesota constitution must be in lockstep with federal courts' interpretation of the U.S. Constitution. *See Doe,* 2022 WL 2662998 at *23; *Women of the State of Minn. by Doe v. Gomez*, 542 N.W.2d 17 (Minn. 1995) (rejecting federal precedent on public funding of abortion and interpreting state constitution to require public funding of therapeutic abortions); *Skeen v. State*, 505 N.W.2d 299 (Minn.1993) (discussing the state `right of education); *State v Fuller*, 374 N.W.2d 722, 727 (Minn. 1985) ("a decision of the United States Supreme Court interpreting a comparable provision of the federal constitution that, as here, is textually identical to a provision of our constitution, is of inherently persuasive, although not necessarily of compelling, force").

Defendants-Appellees failure to provide evidence supporting the state's interests in parental involvement and the benefits to minors from that involvement in effect left the Parental Notification Law as undefended as if Defendants-Appellees had simply defaulted in response to Plaintiffs-Appellees motion for summary judgment. MOMS has established that it stands ready to

correct this fatal omission, as evidenced by the eleven expert declarations filed simultaneously with its motion to intervene.

Contrary to the ruling of the district court, MOMS has not only met its minimal burden of persuasion that Defendants' representation of its interests was inadequate given the unique constitutional interests of its members, it has far exceeded that burden. The denial of intervention by right or by court permission should be reversed.

VI. The district court erred in denying MOMS' motion for permissive intervention and this court should reverse the order because it was an abuse of discretion

Assuming this Court declines to reverse the district court's denial of intervention by right, MOMS is entitled to permissive intervention under Minn. R. Civ. P. 24.02. Rule 24.02 requires that a proposed intervenor show that its application is timely, that the applicant's claim or defense and the main action have a common question of law or fact, and that intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. An order denying permissive intervention is reviewed for abuse of discretion. *Norman*, 383 N.W.2d at 676 (Minn.1986).

The district court's opinion denying MOMS' motion for permissive intervention relies heavily on its analysis supporting its denial of MOMS' motion for intervention as a matter of right. Index # 431, 25-29. Having declared that MOMS' motion for intervention as a matter of right was untimely, the court simply summarizes the reasoning presented earlier in the court's memorandum. Index #431, 27.

The court then affirmed that MOMS proposed defense of the Parental Notification Law and the main action have a common question of law. *Id*. In the view of the court, however, this was insufficient to require permissive intervention given what Judge Gilligan characterized the "adequate defense" of MOMS and Defendants-Appellees common interests.

In reviewing this last point in the district court's ruling, *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S.Ct. 1002, 1007, 1011 (2022) is instructive. The U.S. Supreme Court found the lower courts abused their discretion refusing permissive intervention because they based their rulings on an erroneous view of the law. *Id.* at 1011-12 (internal citations omitted). The trial court had failed to account for the strength of the proposed intervenor's interests, finding untimeliness because it came after years of litigation, and finding the proposed intervenor was at fault for not acting as soon as having reason to know that the intervenor's interests were in danger. *Id.* at 1012-13 (internal quotation marks and citations omitted).

Like the lower courts in *Cameron*, the district court in the case at bar failed to account for the strength of MOMS' interests, (Index #431, 17-20), found untimeliness simply because the case had been going on for three years (Transcript of February 14, 2023, Hearing, Index # 430, 12, 14; Index #431, 28), and found fault with MOMS for not acting sooner (Index # 430, 12; Index # 431, 13). However, "'[t]imeliness is to be determined from all the circumstances,' and 'the point to which [a] suit has progressed is ... not solely dispositive.'" *Cameron* at 1012 (*citing NAACP v. New York*, 413 U.S. 345, 365–366 (1973)); *see also Schumacher*, 392 N.W.2d at 207 (timeliness is based on the "particular circumstances involved").

The record reveals that MOMS' notice of intervention was filed within five months of Plaintiffs-Appellees filing its Second Amended Complaint. MOMS acted as soon as it discovered through the court's memorandum supporting summary judgment that Defendants-Appellees had proffered no evidence in the law's defense. Members of MOMS sought legal counsel, confirmed that evidence supporting the law was readily, and filed its motion to intervene while the trial court retained jurisdiction and within 43 days of the Attorney General's announcement that he would not pursue an appeal. (*Id.*).

The district court's concern that "[t]he whole litigation process, if MOMS is allowed to intervene and embark on its intended course of action, would start over" disregards the fact that MOMS seeks to reopen the case only to defend the Parental Notification Law. Nothing in these proceedings suggests that MOMS seeks to relitigate the constitutionality of Minnesota's § 145.412, subdiv. 1(2), 3(1)(the Hospitalization Law) and Minn. Stat. § 145.413, subdiv. 3 (the Felony Penalties). Recent repeal of § 145.412, subdiv. 1(3), 1(4), 4 (Physician Only Law), and § 145.4242(a)-(c)(Women's Right to Know Law) precludes further consideration of those statutes. If MOMS successfully intervenes and reopens the case, it can only be for the purpose of defending the Parental Notification Law.

The district court abused its discretion in denying MOMS permission to intervene in the case. This Court should reverse the district court's order and allow MOMS to intervene.

Conclusion

MOMS satisfied all four elements for intervention by right under Minn. R. Civ. P. 24.01: (1) a timely application; (2) an interest in the subject of the action; (3) an inability to protect that interest unless the applicant is a party to the action; and (4) the applicant's interest is not adequately represented by existing parties. *Schroeder* 950 N.W.2d at 76 (*citing League of Women Voters*, 819 N.W.2d at 641). Under this court's *de novo* review, the district court's denial of MOMS' motion for intervention as a matter of right should be reversed. MOMS also meets the more stringent standard of showing that the district court abused his discretion in denying its motion for permissive intervention under Minn. R. Civ. P. 24.02.

This court should reverse the district court's denial of MOMS' motion for intervention and allow MOMS to defend the rights of parents to care for their minor daughters by requiring notification when the girls are seeking abortion.

Dated: June 13, 2023

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