

SEP 28 2011

FILED

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

A11-152

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Sara Hippert, et al.,

Plaintiffs,

and

Kenneth Martin, et al,

Intervenors,

**MARTIN INTERVENORS'  
STATEMENT OF  
UNRESOLVED ISSUES**

and

Audrey Britton, et al.,

Intervenors,

vs.

Mark Ritchie, Secretary of State of  
Minnesota; and Robert Hiivala, Wright  
County Auditor, individually and on behalf  
of all Minnesota county chief election  
officers,

Defendants.

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**I. INTRODUCTION**

Pursuant to Scheduling Order No. 1 (July 18, 2011), the Martin Intervenors respectfully submit this statement of unresolved issues. As set out in the parties' Joint Statement of Unresolved Issues, filed today, the parties were not able to reach agreement on (1) the maximum population deviation permissible for state legislative districts and (2)

whether the current congressional and legislative districts are unconstitutionally malapportioned in light of the 2010 Census.

## II. ARGUMENT

### A. Maximum Tolerable Deviation for Legislative Districts.

The Martin Intervenors respectfully submit that the Panel should not adopt a “maximum tolerable deviation.” Under both the Minnesota and United States Constitution, true population equality is the ultimate goal for a state legislative plan. Limited population deviations are permissible, but only as is necessary to adhere to Minnesota’s traditional redistricting criteria. As a result, there is no “maximum tolerable deviation” that exists in the abstract. Instead, the Panel should adopt the goal of population equality with *de minimis* population deviation among legislative districts justified only by longstanding state redistricting principles such as the protection of communities of interests.

“The whole object of [redistricting] . . . is to vest in the people rights that inherently belong to them, namely, participation upon an equal footing in the affairs of the state.” *Duxbury v. Donovan*, 138 N.W.2d 692, 698–99 (1965) (quoting *State ex rel. Meighen v. Weatherill*, 147 N.W. 105, 107 (1914)). Indeed, the Minnesota Constitution enshrines the principle that each citizen’s vote should carry equal weight. Under Article IV, Section 2 of the Minnesota Constitution, representation in the state senate and house “shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.” *Cf. Reynolds v. Sims*, 377 U.S. 533, 568, 84 S. Ct. 1362, 12

L.Ed.2d 506 (1964) (seats in both houses of a bicameral state legislature must be apportioned on a population basis).

While districts must be of equal population, precise mathematical exactitude is not required. *Id.* at 577; *see also Zachman v. Kiffmeyer*, Civ. File No. C0-01-160 (Order Stating Redistricting Principles and Requirements for Plan Submission dated December 11, 2001) (“*Zachman* Redistricting Principles Order”), at 9. That said, court-drawn state legislative redistricts plans must abide by a strict standard of population equality and “must ordinarily achieve the goal of population equality with little more than de minimis variation.” *Chapman v. Meier*, 420 U.S. 1, 27, 95 S. Ct. 751 (1975); *see also Weatherill*, 125 Minn. at 342 (“Perfect exactness in the apportionment according to the number of inhabitants is [not] required . . . [b]ut there should be as close an approximation to exactness as possible”) (quoting *State v. Cunningham*, 51 N.W. 724 (Wis. 1892)).<sup>1</sup>

To comply with these constitutional mandates, the court must “make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.” *Gaffney v. Cummings*, 412 U.S. 735, 743, 93 S. Ct. 2321, 37 L.Ed.2d 298 (1973). Thus, even if a particular population deviation is constitutionally permissible, “this does not mean that where the legislature has failed to enact a valid plan, courts should not strive to implement, along with other constitutional concerns, a plan of redistricting which provides the greatest numerical equality possible.” *Emison v. Growe*,

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<sup>1</sup> The U.S. Supreme Court has not articulated a maximum permissible population deviation for legislative districting plans drawn by courts, but has generally held that plans drawn by the legislature with a maximum population deviation over 10% create a

782 F. Supp. 427, 443-44 (D. Minn. 1992), *rev'd on other grounds by* 507 U.S. 25, 113 S. Ct. 1075, 122 L.Ed.2d 388 (1993). As a result, deviations from population equality “must be supported by enunciation of historically significant state policy or unique features.” *Connor*, 431 U.S. at 414; *see also Zachman Redistricting Principles Order*, at 10 (quoting *Karcher v. Daggett*, 462 U.S. 725, 741 (1983)) (requiring plans submitted by the parties to “show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions.”). In short, where a reapportioning court departs from the principle of population equality, it bears the “responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted.” *Chapman*, 420 U.S. at 26-27.

In 2001, the *Zachman* Panel recognized and adhered to the principles outlined above to govern the last round of Minnesota redistricting. The *Zachman* Panel instructed the parties that “[p]roposed plans . . . must adhere as closely as possible to the concept of population-based representation.” *Zachman Redistricting Principles Order*, at 10) (quoting *Karcher v. Daggett*, 462 U.S. 725, 741 (1983)). While the *Zachman* panel did adopt a 2% maximum deviation for the parties’ plans, it was not “a level under which all population deviations will be presumed acceptable.” *Id.*

Here, the Martin Intervenors respectfully submit that the Panel should follow the *Zachman* Panel approach in main – the legislative plan ultimately adopted by the Panel

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prima facie case of discrimination requiring justification by the State. *See Brown v. Thomson*, 462 U.S. 835, 842-43, 851, 103 S. Ct. 2690 (1983).

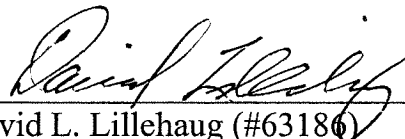
should adhere as closely as possible to population equality. No artificial and arbitrary maximum deviation should be specified.

**B. Minnesota's Current Districts Are Unconstitutionally Malapportioned**

The parties also failed to reach agreement as to whether current congressional and legislative districts are unconstitutionally malapportioned. However, it is self-evident that if new elections cannot be held constitutionally under the current districts, those districts are currently unconstitutionally malapportioned. The legislative districts drawn by the *Zachman* panel nine years ago, of course, were not drawn with reference to the population data shown by the 2010 Census, and thus do not meet this standard.

Dated: September 28, 2011

Respectfully submitted,



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