STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A11-152

Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg and Debra Hasskamp,
individually and on behalf of all citizens of Minnesota similarly situated,

Intervenors,

and

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

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.

HIPPERT PLAINTIFFS' RESPONSE MEMORANDUM IN SUPPORT OF MOTION TO ADOPT REDISTRICTING CRITERIA

ORAL ARGUMENT REQUESTED

INTRODUCTION

"[R]eapportionment is primarily a matter for legislative consideration and determination." *White v. Weiser*, 412 U.S. 783, 794 (1973); *see also* Order, at 2 (J. Gildea, June 1, 2011). The latitude afforded court-ordered redistricting plans "is considerably narrower than that accorded apportionments devised by state legislatures." *Connor v. Finch*, 431 U.S. 407, 419–20 (1977). As a result, courts rightfully tend to be cautious about becoming "entangled in the politics that might surround redistricting processes and are common to the legislative arena." *Zachman v. Kiffmeyer et al.*, No. C0-01-160 (hereinafter "*Zachman*"), Order Stating Redistricting Principles, at 10 (Minn. Special Redistricting Panel, Dec. 11, 2001); *see also Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) ("Laws promulgated by the Legislative Branch can be inconsistent, illogical, and ad hoc; law pronounced by the courts must be principled, rational, and based upon reasoned distinctions.").

Given these limitations, Plaintiffs respectfully submit that the Panel's role is to do only what is constitutionally and statutorily required and no more. The Panel was not charged with enacting legislative changes, nor with implementing scholarly ideals that deviate from established constitutional and statutory requirements. Rather, the Panel's task is "an exposed and sensitive one that must be accomplished circumspectly, and in a manner 'free from any taint of arbitrariness or discrimination.'" *Connor*, 431 U.S. at 415 (citing *Roman v. Sincock*, 377 U. S. 695, 710 (1964)).

The redistricting criteria framework proposed by the Hippert Plaintiffs is firmly grounded in these principles, and in constitutional, statutory, and objective requirements.

These proposed redistricting criteria are designed to help the Panel develop redistricting plans that comply with all applicable laws and that cannot be assailed as overreaching or improper. The parties largely agree upon many aspects of the Hippert Plaintiff's proposed redistricting criteria.[1] On the other hand, some of the criteria proposed by other parties would require the Panel to deviate from longstanding precedent, and prioritize subjective criteria in a way that will likely compromise the integrity of the redistricting process. Adherence to the Panel's limited purpose requires that such approaches be rejected. Instead, the Panel should adopt the redistricting criteria proposed by the Hippert Plaintiffs, which place overriding importance on constitutional and statutory requirements and neutral, objective principles.

ARGUMENT

I. PRIORITIZING COMMUNITIES OF INTEREST OVER POLITICAL SUBDIVISIONS IS CONTRARY TO MINNESOTA LAW.

The Panel should reject the Martin Intervenors' argument that maintaining political subdivisions should be subservient to vague and undefined communities of interest. *See* Martin Intervenors' Motion to Adopt Proposed Redistricting Criteria (hereinafter "Martin Brief"), at 6–13 (Oct. 5, 2011). As stated in their opening submission, the Hippert Plaintiffs do not suggest that the Panel should not give consideration to communities of interest. However, adoption of the Martin Intervenors'

[1] For example, the parties all agree that: (i) districts must consist of convenient, contiguous territory; (ii) house districts must be nested within senate districts; and (iii) the dilution of racial or ethnic minority voting strength is prohibited. Because there appears to be agreement on these points, this brief will not address them. In addition, this memorandum will not address the issue of population deviation for legislative districts, which has already been fully briefed by the parties.

proposal would violate Minnesota statutes and well-established judicial precedent, and would subvert a number of practical goals served by the preservation of political subdivisions. Furthermore, given the subjective nature of what constitute communities of interest, elevating consideration of such communities above established political subdivisions would increase the risk of undermining the public's trust in the redistricting process.

A. Minnesota Law Allows Political Subdivision Splits Only When "Necessary to Meet Constitutional Requirements."

Minnesota law requires "that political subdivisions not be divided more than necessary to meet constitutional requirements" in redistricting plans. Minn. Stat. § 2.91, subd. 2. This is not merely a preference or aspiration – it is a statutory mandate, enacted into law by the elected representatives of the people of Minnesota. The Panel clearly cannot, and would not, ignore or re-write duly enacted laws.

Pursuant to Minn. Stat. § 2.91, the sole permissible exception to the required preservation of political subdivisions is when division is necessary "to meet *constitutional* requirements." Minn. Stat. § 2.91, subd. 2 (emphasis added). Under the statute, for example, the Panel may split political subdivisions to satisfy the population equality standards required by the United States Constitution and the Minnesota Constitution. It may also split political subdivisions to satisfy the constitutional requirement of "single districts of convenient contiguous territory." MINN. CONST. art. IV, § 3.

On the other hand, it is not permissible under Minn. Stat. § 2.91 to split political subdivisions solely for the sake of non-constitutional requirements. Neither the Minnesota Constitution nor Minnesota statutory law recognize, or even mention, communities of interest as a criterion for redistricting.[2] Using a non-constitutional and non-statutory criterion like communities of interest to justify political subdivision splits would render the limited exception for "constitutional requirements" in Minn. Stat. § 2.91 meaningless, and violate basic principles of statutory construction. *See* Minn. Stat. § 645.16 ("Every law shall be construed, if possible, to give effect to all its provisions."). Thus the plain language of Minn. Stat. § 2.91 is the first reason to reject the proposal to allow division of political subdivisions "to preserve communities of interest." *See* Martin Brief, at 12.

B. Prioritizing Communities of Interest Over Political Subdivisions is Contrary to Longstanding Precedent.

Consistent with Minn. Stat. § 2.91, the approaches taken by previous redistricting panels in the State of Minnesota have always made the preservation of political subdivisions paramount to non-constitutional criteria. Ten years ago, the *Zachman* Panel placed "primary importance on the integrity of political subdivisions..." above all other non-constitutional criteria. *See Zachman*, Final Order Adopting a Legislative

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[2] In contrast, constitutional or statutory provisions in certain other states expressly require consideration of communities of interest. *See, e.g.*, ARIZ. CONST., art. 5, Part 2, § 1(14)(D) ("District boundaries shall respect communities of interest to the extent practicable."); OR. REV. STAT. § 188.010(d) ("Each district, as nearly as practicable, shall ... [n]ot divide communities of common interest...."); S.D. CODIFIED LAWS § 2-2-32(2) (requiring "[p]rotection of communities of interest by means of compact and contiguous districts"). Minnesota has never adopted such a requirement.

Redistricting Plan, at 5 (Mar. 19, 2002). The *Zachman* Panel expressly made communities of interest subservient to constitutional and statutory requirements by stating that "[c]ommunities of interest will be preserved *where possible in compliance with the preceding principles*." *Zachman*, Order Stating Redistricting Principles, at 3, 5 (Dec. 11, 2001) (emphasis added).

By prioritizing political subdivisions over communities of interest, the *Zachman* panel followed the same approach taken by previous redistricting panels in Minnesota. In 1991, the state redistricting panel in *Cotlow v. Growe* stated that "[t]he districts should attempt to preserve communities of interest *where that can be done in compliance with the preceding standards*." No. C8-91-985, Pretrial Order No. 3, at Legislative Redistricting Criteria No. 9 (Sep. 3, 1991) (emphasis added). That same year, the federal panel in *Emison v. Growe* stated that "[a]n apportionment plan may recognize the preservation of communities of interest in the formation of districts *while adhering to the established criteria*." No. 4-91-202, Order, at 5 (Oct. 21, 1991) (emphasis added).

In 1982, the panel in *LaComb v. Growe* "gave the *highest priority* after population equality to respecting minor civil division boundaries." 541 F. Supp. 160, 163 (D. Minn. 1982) (emphasis added). Likewise, in 1972, the panel in *Beens v. Erdahl* took the same approach, stating as follows:

> In forming Senate districts, *we have adhered to political subdivision lines wherever possible* . . . . Some of the House districts are not as compact as they might have been had we ignored the requirement of keeping political subdivisions intact, where feasible. In other instances, the existing boundaries of the townships or other political subdivisions give the districts an irregular appearance.

349 F. Supp. 97, 98–99 (D. Minn. 1972) (emphasis added). There is no reason for the Panel to deviate from this longstanding precedent.

C. Prioritizing Political Subdivisions Over Communities of Interest Discourages Gerrymandering and Serves Important Practical Objectives.

In addition to complying with state law and established precedent, preserving political subdivisions serves a number of practical objectives that benefit the State and its citizens. One of these benefits is that maintaining political subdivisions provides a neutral, objective criterion for redistricting that limits manipulation for political purposes. As the U.S. Supreme Court stated in *Reynolds v. Sims*, "[i]ndiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." 377 U.S. 533, 539 (1964). Because court-ordered redistricting plans must "not become entangled in the politics that might surround redistricting processes and are common to the legislative arena," prioritizing political subdivisions over more subjective criteria establishes an important safeguard against the potential politicization of the redistricting process. *Zachman*, Order Stating Redistricting Principles, at 10 (Dec. 11, 2001) (citing *Connor*, 431 U.S. at 414); *see also LaComb*, 541 F. Supp. at 163 n.4 ("And . . . [the construction of] districts along political subdivision lines [deters] the possibilities of gerrymandering.") (citing *Reynolds*, 377 U.S. at 581)).

Prioritizing political subdivisions over communities of interest (and similar nebulous measures such as "competitiveness") will also prevent parties from using vague communities of interest as after-the-fact justifications for their proposed maps. If

inherently difficult-to-define communities of interest receive priority over political subdivisions, any party would be able to make a creative *ad hoc* argument that its proposed map is based on previously unidentified (and likely immeasurable) communities of interest. Indeed, while parties have suggested general categories of potential communities of interest, no party has yet identified specific communities that would form the basis of its maps. On the other hand, giving priority to objective criteria, like political subdivisions, will require the parties to ensure that their map proposals comply with the Panel's redistricting criteria in the first place and will not open the door to *ad hoc* rationalizations for redistricting map proposals.

Preserving political subdivisions also benefits the electoral process and the operation of state and local governments. For instance, the *Zachman* Panel recognized that "legislative boundaries that respect political subdivisions will give political subdivisions a stronger, unified voice, and will minimize confusion for the state's voters." *Zachman*, Final Order Adopting a Legislative Redistricting Plan, at 3 (Mar. 19, 2002). The *LaComb* Panel stated that "there are several justifications for the preservation of political subdivision boundaries," including the fact that:

> Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many states, much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions.

541 F. Supp. at 163 n.4 (citing *Reynolds*, 377 U.S. at 581). Likewise, in *Larios v. Cox* the court explained that:

> The governmental units of cities and counties contain the election offices responsible for such important governmental functions as the development of voter registration lists, the preparation of ballots, and the holding of elections. Thus, following those boundaries in the drawing of district lines provides the additional benefit of creating less confusion and fewer mistakes on election day.

300 F. Supp.2d 1320, 1346 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004).

In addition to reducing voter confusion, maintaining intact cities, townships, and counties reduces the cost of elections. A split political subdivision requires multiple ballot forms for every election in that locality, thereby increasing the cost of elections and taking a toll on election efficiency and accuracy. Each political subdivision split further increases the cost of recounts (and there were two legislative recounts and one gubernatorial recount in 2010 alone). These concerns are very real to local election officials with tight budgets, especially in a tight economy. *See, e.g.*, Testimony of Elk River City Council Member Paul Motten (Minn. Special Redistricting Panel, St. Cloud, MN, Public Hearing, Oct. 13, 2011).

Continued protection of political subdivisions will further ensure that the redistricting process is neutral and transparent, and will help facilitate the efficient operation of local government and elections. Conversely, adoption of the Martin Intervenors' proposal to disregard political subdivisions would add significant complexity and expense to the electoral process, engender voter confusion, and substantially increase the risk of politically motivated redistricting requests. These practical considerations provide additional reasons to reject the proposal to subordinate political subdivisions to communities of interest.

D. The Martin Intervenors' Arguments Are Unsupported, Inconsistent, and Unpersuasive.

As a final matter, the Martin Intervenors do not offer a persuasive justification for departing from the requirements of Minnesota statutory law or established precedent. Importantly, the Martin Intervenors do not cite a single statute or case law decision supporting their argument to prioritize communities of interest over political subdivisions. *See* Martin Brief, at 6–13. Instead, the Martin Intervenors rely wholly on academic journals to argue that "long-term technological and political trends continue to heighten the importance of communities of interest, while, at the same time, rendering political subdivision boundaries of relatively less importance." *Id.*, at 7. At most, certain articles cited by the Martin Intervenors argue that communities of interest may not necessarily fall within political subdivision boundaries; yet none of the articles provide support for the proposition that communities of interest should be *prioritized* over political subdivisions for redistricting purposes.[3]

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[3] In fact, the selective quotations chosen by the Martin Intervenors disguise that many of the scholarly articles they cite support the preservation of political subdivisions and criticize the subjectivity inherent in the communities of interest criterion. For example, in *A Geographer's Perspective*, the author writes that respect for the integrity of political units as a criterion "is and should be an important one" and that political subdivisions "often represent a simple barrier to extreme gerrymandering . . . ." Morrill, *A Geographer's Perspective*, *in* POLITICAL GERRYMANDERING AND THE COURTS, 215(Bernard Grofman ed., 1990). The author then goes on to state that communities of interest are "probably the least well defined" criterion and are "not a controlling criterion." *Id.* at 215–16. Numerous other articles cited by the Martin Intervenors express similar sentiments. *See e.g.*, Backstrom et al., *Establishing a Statewide Electoral Effects Baseline*, *in* POLITICAL GERRYMANDERING AND THE COURTS, 153 (Bernard Grofman ed., 1990) ("Except for race and ethnicity, community of interest is hard to identify . . . ."); Lowenstein et al., *The Quest for Legislative Districting in the Public*

Even if the articles cited by the Martin Intervenors did support making political subdivisions subservient to communities of interest, armchair sociological theorizing does not provide a legitimate reason for the Panel to violate Minn. Stat. § 2.91 or longstanding judicial precedent. None of the articles cited by the Martin Intervenors rely on studies conducted in or in any way related to the State of Minnesota, much less the redistricting laws or history of Minnesota.

The explanation for the Martin Intervenors' focus on these scholarly articles at the expense of relevant statutory and case law authorities—like Minn. Stat. § 2.91—is self-evident: application of Minnesota law and neutral, objective criteria does not favor their preferred political ideology. Needless to say, that is not a legitimate reason to depart from Minnesota's statutory requirements or established precedent.

The arguments advanced by the Martin Intervenors are also self-contradictory. In one breath, the Martin Intervenors argue that "people sort themselves into neighborhoods and communities with others who share similar attitudes and behaviors" and encourage the Panel to adopt neighborhoods as "obvious communities of interest." *See* Martin Brief, at 7, 12. In another breath, the Martin Intervenors argue that "individuals do not necessarily share similar interests simply because they reside in the same political subdivision." *See id.*, at 8.

If the Martin Intervenors' argument that "near things are more related than distant things" is true, that principle should apply to cities and counties just as much as it applies

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Interest, 33 UCLA L. Rev. 1, 33 ("The vagueness of the 'community of interest' criterion guarantees that the courts will have no solid legal basis for their decisions.").

to neighborhoods. *Id.*, at 7. After all, political subdivisions are formally organized and provide government services to a set of people because they live near each other. Nevertheless, the Martin Intervenors ask the Panel to assume that individuals who reside in the same neighborhoods have similar interests, but that individuals who reside in the same cities or counties do not. In addition to contradicting testimony provided at the Panel's recent public hearings, these positions are incompatible and contradictory. The Martin Intervenors fail to provide a persuasive reason for departing from the statutory requirements and judicial precedent that have defined Minnesota's redistricting processes for decades.

For each of these reasons, the Panel should reject the Martin Intervenors' proposal to subordinate the preservation of political subdivisions to nebulous communities of interest. Adoption of this proposal would violate Minn. Stat. § 2.91 and the established precedent of *Beens*, *LaComb*, *Cotlow*, *Emison*, and *Zachman*. Moreover, the proposal would subvert important goals served by the preservation of political subdivisions. The people of Minnesota deserve a transparent redistricting process that respects the laws of their State and supports the efficient operation of government. Accordingly, the Panel should not adopt the criteria proposed by the Martin Intervenors concerning political subdivisions and communities of interest and should instead adopt the Hippert Plaintiffs' proposed redistricting criteria, which is consistent with the law.

II. COMMUNITIES OF INTEREST MUST BE "IDENTIFIABLE" AND SUPPORTED BY EVIDENCE.

To the extent that the Panel considers communities of interest, the Hippert Plaintiffs' proposed criteria requires that those communities of interest must be "identifiable." *See* Hippert Plaintiffs' *Exhibit A*, at Congressional Districts Standard No. 7 and Legislative Districts Standard No. 8. The requirement that communities of interest be "identifiable" requires actual proof, rather than mere assumption, of their existence and boundaries, and provides some level of objectivity to what is an inherently subjective determination. The "identifiable" requirement is also similar to the criteria adopted by the panel in *Emison v. Growe*, which required that "[t]o the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified." *See* No. 4-91-202, Order, at 5 (Oct. 21, 1991).

The "identifiable" requirement for communities of interest appears to be consistent with the Britton Intervenors' proposal that communities of interest must be supported by "clearly recognizable similarities" and must be "persuasively established." *See* Britton Intervenors' Exhibit A (hereinafter "Britton Criteria"), at Congressional Districts Standard No. 7 and Legislative Districts Standard No. 8 (Oct. 5, 2011). To the extent the Britton Intervenors intend that communities of interest must not be assumed, but rather must be based on convincing evidence, the Hippert Plaintiffs agree.

Moreover, if the "identifiable" requirement for communities of interest is included in the Panel's redistricting criteria, it should not be necessary to catalogue various types of communities of interest that might (or might not) be recognized in the mapping

process. If adequate proof will be required to identify a community of interest, there is no need for the Panel to make a preemptive assumption that a certain factor – neighborhoods or transportation corridors, for example – might a constitute a community of interest. This is consistent with the approach taken by the *Zachman* Panel, which refused to "presume bloc voting within even a single minority group...." *See Zachman*, Order Adopting a Congressional Redistricting Plan, at 9 (Mar. 19, 2002) (citing *Growe v. Emison*, 507 U.S. 25, 41 (1993)). It is far better to make determinations of communities of interest on a case-by-case basis, after examining relevant evidence, than it is to make broad-brush generalizations that may prove to be inaccurate in many circumstances.

Finally, in many cases traditional redistricting criteria make it unnecessary for the Panel to define additional potential communities of interest. Criteria such as the preservation of political subdivisions or the requirement for "convenient, contiguous territory,"[4] for example, will protect many communities of interest without special definition. For these reasons, the Panel should adopt the Hippert Plaintiffs' proposal that communities of interest must be "identifiable" and refrain from preemptively deciding, without specific, supporting evidence, what *might* constitute a community of interest.

[4] For example, the Britton Intervenors argue that transportation corridors should be recognized as communities of interest, in part, because of the requirement for "convenient, contiguous territory" set forth in the Minnesota Constitution. *See* Britton Intervenors' Motion to Adopt Proposed Redistricting Criteria (hereinafter "Britton Brief"), at 18–9 (Oct. 5, 2011).

III. THE PANEL SHOULD NOT ATTEMPT TO PREDICT OR AFFECT THE OUTCOMES OF FUTURE ELECTIONS.

The Panel should reject the Martin Intervenors' proposal that the Panel "may view a proposed plan's effect on incumbents to determine whether the plan results in either undue incumbent protection or excessive incumbent conflicts." *See* Martin Brief, at 17. Ten years ago, the *Zachman* Panel rejected proposals to consider election results, the "political competitiveness" of districts, and the extent to which an incumbent retains his or her prior territory. *Zachman*, Final Order Adopting a Legislative Redistricting Plan, at 6–7 (Mar. 19, 2002). The *Zachman* Panel did, however, consider whether the plan resulted in either "undue incumbent protection or excessive incumbent conflicts." *Id.* at 7. Because there are no measurable standards to determine whether incumbent protection is "undue" or whether incumbent conflicts are "excessive," the Panel should not adopt this proposed criterion.

Since the decision in *Zachman*, the United States Supreme Court decided *Vieth v. Jubelirer*, 541 U.S. 267 (2004). In *Vieth*, a plurality of the Court emphatically stated that "no judicially discernible and manageable standards for adjudicating political gerrymandering claims have emerged." *Id.* The plurality further explained that:

> Political affiliation is not an immutable characteristic, but may shift from one election to the next; and even within a given election, not all voters follow the party line. We dare say (and hope) that the political party which puts forward an utterly incompetent candidate will lose even in its registration stronghold. These facts make it impossible to assess the effects of partisan gerrymandering, to fashion a standard for evaluating a violation, and finally to craft a remedy.

Id. at 287; *see also* Britton Brief, at 14 ("[T]here are no measurable judicial standards for a court adopted partisan political plan whether Republican, DFL, independent or 'competitive.'"). The *Vieth* plurality further held that "fairness" was not a "judicially manageable standard" and that "[s]ome criterion more solid and more demonstrably met than that seems to us necessary... to meaningfully constrain the discretion of the courts, and to win public acceptance for the courts' intrusion into a process that is the very foundation of democratic decisionmaking."[5] *Vieth*, 541 U.S. at 291.

The same rationales that compelled the *Zachman* panel to reject "competitiveness" as a criterion and the *Vieth* plurality to hold that partisan gerrymandering claims were nonjusticiable compel the conclusion that "undue incumbent protection and excessive incumbent conflicts" are also unworkable standards. There is no accepted, rational standard by which the Panel can predict whether a redistricting plan unduly imperils or safeguards an incumbent. Elections are the result of myriad factors, including the individual candidates' personality and charisma, idiosyncratic single issues (*e.g.*, sports stadiums, the Iraq war, Enron, etc...), the resources invested by the parties, public sentiment toward a statewide or national candidate, as well as factors as arbitrary and unpredictable as the weather on election day or unforeseen political scandals. It is

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[5] In many circumstances, fairness and competitiveness are incompatible concepts. Fairness seeks to accurately reflect the political views of a district's population, whereas competitiveness seeks to achieve balance between political ideologies within districts that may not naturally exist. Regardless, given their subjective and immeasurable nature, both fairness and competitiveness are inappropriate criteria for court-ordered redistricting plans.

impossible for the Panel to attempt to predict an incumbent's advantages or disadvantages with any reasonable degree of certainty.

As with communities of interest, the lack of clear standards regarding whether a plan results in "undue incumbent protection or excessive incumbent conflicts" means that adoption of this nebulous criterion will enable parties to formulate their own standards for what is "undue" or "excessive" and assert them as after-the-fact justifications for their proposed maps. The result will be a morass of conflicting standards and arguments that the Panel will have no clear basis for resolving, and which a plurality of the United States Supreme Court has said is presently not manageable for purposes of assessing whether gerrymandering has occurred. Respectfully, the Panel should not adopt such subjective and malleable criteria, which will only hamper the redistricting process.

Moreover, if an incumbent's elected office is jeopardized by the mere fortuity of population trends and where people choose to live, that is nothing more than a legitimate byproduct of the democratic process. With respect, it is not the role of the Panel to level the playing field among political parties if demographic trends and population growth happen to inure in one party's favor, particularly in a state in which third-party politics are as active as they are in Minnesota.

The Panel will undoubtedly focus on ensuring that the constitutional and statutory requirements for redistricting plans in the State of Minnesota are met. In contrast, it should not engage in a guessing-game as to whether incumbents are unduly protected or subject to excessive conflicts, especially when no readily discernible standards exist for making those types of determinations. The Panel should reject the Martin Intervenors'

proposal to adopt a criterion regarding "whether the plan results in either undue incumbent protection or excessive incumbent conflicts."

IV. REDISTRICTING CRITERIA SHOULD REFLECT THE REALITY OF THE 11-COUNTY METROPOLITAN AREA.

The parties largely agree on the numbering and contiguity criteria for legislative districts, except that the Hippert Plaintiffs propose redistricting criteria recognizing that the Twin Cities metropolitan area consists of 11 Minnesota counties. In contrast, the other parties' proposed criteria continue to adhere to a seven-county definition of the Twin Cities metropolitan area. No other party has yet offered explanation or evidence in support of its position on this issue.

As argued in the Hippert Plaintiffs' initial brief, the demographic data firmly supports the existence of an 11-county Twin Cities Metropolitan area. The U.S. Office of Management and Budget ("OMB") has recognized the Twin Cities metropolitan area to be larger than seven counties for decades. And in contrast with 2001–2002, the Minnesota State Demographer now also recognizes that the Twin Cities metropolitan area is larger than seven counties. *See* Minneapolis-St. Paul Metropolitan Area Comparison: Fact sheet, April 2002, available online at http://www.demography.state.mn.us/FactSheets/MSACompare/ (last visited October 17, 2011). Furthermore, a new regional economic development partnership, "Greater MSP," also recognizes that the Twin Cities metropolitan area consists of the metropolitan statistical area defined by the OMB. *See* http://www.greatermsp.org/about-us/mission-vision/ (last visited October 17, 2011). Therefore, the Panel should reject any proposed

redistricting criteria that is based on the anachronistic seven-county definition of the Twin Cities metropolitan area.

V. THE PARTIES AGREE THAT COMPACTNESS IS OF LIMITED USEFULNESS.

As a final matter, the parties largely agree that compactness is a criterion of relatively little value for redistricting. *See* Britton Brief, at 9–14; Martin Brief, at 13–17. Because the parties are in agreement on this point, the Panel should adopt the Hippert Plaintiffs' proposal that compactness should be given the least weight of all the redistricting criteria.

CONCLUSION

The Panel has publicly acknowledged its narrow and circumscribed role in what should be a process resolved by the legislature and the governor. When these branches of government cannot agree on redistricting, the courts must step in. Of course, courts may not exceed the scope of their authority to develop redistricting plans in strict compliance with constitutional and statutory requirements. Nor should this Panel jeopardize the redistricting process by giving priority to vague and undefined criteria at the expense of neutral and objective criteria. The Hippert Plaintiffs' proposed redistricting criteria are the only criteria that establish a clear framework emphasizing constitutional and statutory requirements and objective criteria as the Panel's foremost priorities. For these reasons, the Hippert Plaintiffs respectfully request that the Panel adopt their proposed redistricting criteria in their entirety.

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