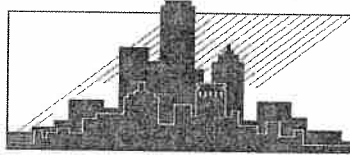


WEINBLATT & GAYLORD PLC
ATTORNEYS & COUNSELORS AT LAW

Suite 300 Kellogg Square
111 East Kellogg Boulevard
St. Paul, Minnesota 55101
Telephone: (651) 292-8770
Fax: (651) 223-8282
Website: www.weglaw.com



Alan W. Weinblatt
Kathleen A. Gaylord
Jay Benanav
Jane L. Prince

Katharina E. Liston
Of Counsel

October 28, 2011

OFFICE OF
APPELLATE COURTS

OCT 28 2011

FILED

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AND HAND DELIVERED

Minnesota Special Redistricting Panel
The Honorable Wilhelmina M. Wright, Presiding Judge
c/o Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: *Hippert, et al. and Martin, et al. and Britton, et al. v. Ritchie, et al.*
Court File Number A11-152

Judge Wright:

Contrary to the representations made in open court this week by counsel for Defendant Secretary of State, in each of the prior four decades the Court did, as a preliminary matter, declare the pre-existing legislative and congressional districts to be unconstitutional. I have re-examined the files of those cases at the Minnesota Historical Society and find the following Orders:

1. *Richard Beens, et al. v. Arlen Erdahl, et al.*, No. 4-7-Civ. 151. Findings and Order dated Nov. 15, 1971. United States District Court, District of Minnesota, Honorable Earl R. Larson.
2. *Sharon LaComb, et al. v. Joan Growe*, No. 4-81 Civ. 152. Order Determining Unconstitutionality of Prior Districts dated Sept. 14, 1981.
3. *Patricia Cotlow, et al. v. Joan Growe*, No. MX91-001562. Stipulation of Unconstitutionality by all parties, including Secretary of State, dated Feb. 25, 1991. Also, Pretrial Order No. 4 declaring unconstitutionality dated Oct. 1, 1991, Minnesota Special Redistricting Panel, all three judges concurring.
4. *Susan Zachman, et al. and Patricia Cotlow, et al. v. Mary Kiffmeyer, et al.*, Court File CO-01-160, Scheduling Order No. 2 dated Oct. 29, 2001, Paragraphs 3 and 4, Honorable Edward Toussaint, Jr., Presiding Judge. (Copy Attached)

Minnesota Special Redistricting Panel
October 28, 2011
Page Two

Also to make it clear, my special request for access to software did not include Maptitude. I do not request any special treatment. My request pertained to databases that are shown on the State of Minnesota's GIS pages that could be made available to the Court and to all parties at no significant additional cost to the State (*e.g.*, minority voting age population, transportation corridors, neighborhoods, etc.). Simply put, whatever data the Court has access to, I respectfully request similar access.

I hope this clears up any confusion resulting from the Oral Argument.



ALAN W. WEINBLATT
FOR
WEINBLATT & GAYLORD, PLC

AWW:kq
Encl.

cc: Eric J. Magnuson, Elizabeth M. Brama, Michael C. Wilhelm, Briggs and Morgan
Tony P. Trimble and Matthew W. Haapoja, Trimble & Associates, Ltd.
Marc Elias, Kevin J. Hamilton, Perkins Coie LLP
David L. Lillehaug and Christopher A. Stafford, Fredrikson & Byron, PA
Solicitor General Alan I. Gilbert, Minnesota Attorney General's Office
Kristyn M. Anderson, Minnesota Attorney General's Office
Thomas N. Kelly and Greg T. Kryzer, Wright County Attorney's Office
Audrey Britton
David Bly
Cary Coop
John McIntosh

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

CO-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory G.
Edeen, Jeffrey E. Karlson, Diana V. Bratlie,
Brian J. LeClair and Gregory J. Ravenhorst,
individually and on behalf of all citizens and
voting residents of Minnesota similarly
situated,

Plaintiffs,

and

Patricia Cotlow, Thomas L. Weisbecker,
Theresa Silka, Geri Boice, William English,
Benjamin Gross, Thomas R. Dietz and John
Raplinger, individually and on behalf of all
citizens and voting residents of Minnesota
similarly situated,

Plaintiffs-Intervenors,

and

Jesse Ventura,

Plaintiff-Intervenor,

and

Roger D. Moe, Thomas W. Pugh, Betty
McCollum, Martin Olav Sabo, Bill Luther,
Collin C. Peterson and James L. Oberstar,

Plaintiffs-Intervenors,

vs.

Mary Kiffmeyer, Secretary of State of
Minnesota, and Doug Gruber, Wright County
Auditor, individually and on behalf of all
Minnesota county chief election officers,

Defendants.

SCHEDULING ORDER NO. 2

Stating Initial Findings of Fact and
Conclusions of Law and Directing
Filing of Stipulation on Redistricting
Criteria and Submissions on Disputed
Criteria

ORDER

By order of October 9, 2001, the parties to this action were directed to work toward a stipulation on preliminary matters and to submit separate statements of unresolved issues. Based on these submissions and subsequent oral argument, the panel concludes as follows:

1. Jurisdiction: The panel has subject matter jurisdiction over this action. *See Scott v. Germano*, 381 U.S. 407, 409 (1965) (“The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.”); *see also Cotlow v. Growe*, No. MX 91-001562 (Special Redistricting Panel July 29, 1991) (Pretrial Order No. 1). In addition, this panel was properly appointed pursuant to the chief justice’s power to assign judges to hear particular cases. Minn. Stat. §§ 2.724, 480.16 (2000).

2. Population Data: United States Census 2000 Public Law 94-171 Redistricting Data as of April 2001, with population data down to the census block level, shall be used in this redistricting process. The appropriate geographic data is available through the Geographic Information Systems Office of the Legislative Coordinating Commission and in the Maptitude for Redistricting software. The panel will use Maptitude for Redistricting to view and analyze all proposed redistricting plans.

3. Current Congressional Districts: The population of the State of Minnesota is unconstitutionally malapportioned among the state’s current congressional districts. The United States Supreme Court has held that the populations of congressional districts must be as nearly equal as practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see also* U.S. Const. art. I, § 2 (“Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers * * *.”) The ideal population of a congressional district after the 2000 Census is 614,935. We reach this number by dividing

Minnesota's total population, which is 4,919,479 according to Census 2000 numbers, by the eight congressional representatives apportioned to Minnesota after the census. However, current congressional district populations range from 720,995 in the Sixth District to 557,819 in the Fifth District. This creates population deviations of up to +17.25% and -9.29%.

4. Current Legislative Districts: The population of the State of Minnesota is unconstitutionally malapportioned among the state's current legislative districts. *See* Minn. Const. art. IV, § 2 ("The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.") The ideal state senate district population is 73,425 after dividing the state's total population by its 67 senate districts. Current senate district populations deviate from the ideal by +36.08% (Senate District 37) to -14.68% (Senate District 46). The ideal state house district population is 36,713, based on dividing the state's total population by its 134 house districts. Current house district populations deviate from the ideal by +60.15% (House District 56B) to -16.19% (House District 63A).

5. Scheduling: Although the parties have stipulated to most aspects of the panel's provisional timetable, the following issues remain:

First, the parties jointly request that the panel move the deadline for the parties' responses to each other's redistricting plans from January 7, 2002 to January 11, 2002. The panel adopts this change.

Second, over the objections of the Cotlow, Ventura, and Moe plaintiffs, the Zachman plaintiffs propose that the redistricting schedule should include a period for the parties to conduct

discovery. Because we believe that the schedule gives the parties a sufficient opportunity to examine and comment on each other's redistricting plans, we decline to provide for discovery.

Third, the parties disagree as to when the panel should release its final order and plan. We have considered the arguments in favor of a release date of March 19, 2002, as well as those in favor of an earlier release, and hereby finalize a release date of March 19.

We are bound by the directive of the chief justice to respect the primacy of the legislature. *Zachman v. Kiffmeyer*, 629 N.W.2d 98 (Minn. 2001) (noting the primacy of the legislature in the redistricting process and ordering that the special redistricting panel "release a redistricting plan that satisfies constitutional and statutory requirements only in the event a legislative redistricting plan is not enacted in a timely manner") (Order of Chief Justice). In the 1991 legislative session, the legislature itself enacted a decennial deadline for the issuance of timely redistricting plans. See 1991 Minn. Laws ch. 349, § 31, *codified at* Minn. Stat. § 204B.14, subd. 1a (2000) ("It is the intention of the legislature to complete congressional and legislative redistricting activities * * * in no case later than 25 weeks before the state primary election in the year ending in two."). This deadline next falls on March 19, 2002.

Some parties argue that declining to release a redistricting plan until after March 5, 2002, the date Minn. Stat. § 202A.14, subd. 1 (2000) sets for precinct caucuses, will upset the electoral process. However, the legislature amended Minn. Stat. § 202A.14, subd. 1 during the same 1991 session when it enacted the redistricting deadline, and then again in 1993. See 1991 Minn. Laws ch. 349, § 29; 1993 Minn. Laws ch. 150, § 1. The legislature had an opportunity at those times to set precinct caucuses for a date that would have followed the redistricting deadline, but it chose not to do so. We must assume that the legislature established this order of events without intending a result that is "impossible of execution" or "unreasonable." Minn. Stat. § 645.17(1)

(2000). Furthermore, we note that Minn. Stat. § 204B.14, subd. 1a expressly states a deadline for redistricting, while the statute discussing precinct caucuses does not reference redistricting at all. Our scheduling in this matter is guided by the more explicit statute and by the need to give the legislature a full and fair opportunity to complete redistricting by the statutory deadline. We therefore set March 19, 2002 as the date for release of our final order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the following schedule shall govern these proceedings:

- Nov. 13, 2001 Closing date for submission of proposed redistricting criteria
- Nov. 21, 2001 Closing date for parties' responses to each other's criteria
- Dec. 4, 2001 Oral arguments on redistricting criteria
9:00 a.m.
- Week of Issuance of order on redistricting criteria and form of map submissions
Dec. 10, 2001
- Dec. 28, 2001 Closing date for submission of proposed redistricting plans and
supporting justification
- Jan. 11, 2002 Closing date for parties' responses to each other's plans
- Jan. 16, 2002 Oral arguments on redistricting plans
9:00 a.m.
- Mar. 19, 2002 Issuance of final order and redistricting plan

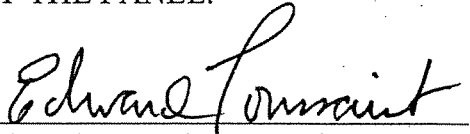
There shall be no exceptions to the December 28 deadline for the submission of redistricting plans. Oral argument on January 16, 2002 may include reference to minor adjustments to previously submitted plans, but the panel will consider all proposals final as of the close of oral argument on January 16.

IT IS FURTHER ORDERED that all parties work together toward a stipulation regarding the appropriate redistricting criteria. One original stipulation of proposed redistricting criteria

and nine copies shall be filed with the Clerk of Appellate Courts by 5:00 p.m. on Tuesday, November 13, 2001. As a general policy, the panel encourages the parties to use their own initiative to discuss and resolve conflicts where possible. To the extent any party disagrees with a group's stipulation, or to the extent the parties cannot agree at all on a particular issue, a disagreeing party shall submit a separate submission of proposed redistricting criteria by 5:00 p.m. on November 13, 2001, by the procedure described above.

Dated: *October 29, 2001*

BY THE PANEL:


Edward Toussaint, Jr.
Presiding Judge

OFFICE OF
APPELLATE COURTS

OCT 29 2001

FILED