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January 25, 2001

**VIA MESSENGER**

Frederick K. Grittner  
Minnesota Supreme Court Administrator  
305 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

**Re: Patricia Cotlow, et al. v. Mary Kiffmeyer (as successor to  
Joan Grove, Secretary of State of Minnesota), et al.**  
**Supreme Court File No. C8-91-985**

**Susan M. Zachman, et al. v. Mary Kiffmeyer, et al.**  
**Wright County Court File No. CX-01-116**

Dear Mr. Grittner:

Enclosed for filing in connection with the above-referenced matter please find the original and three copies each of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al., a case filed on January 4, 2001, in the Tenth Judicial District, Wright County, Minnesota. These documents are to be considered in connection with the above-captioned Cotlow matter:


1. Plaintiffs' Petition for Appointment of Special Redistricting Panel;
2. Affidavit of Thomas B. Heffelfinger, with exhibits; and
3. Proposed Order, with exhibit.

Also enclosed please find this firm's check in the amount of \$250.00, representing plaintiffs' filing fee for this Petition. By copy of this letter with enclosure, a copy of the above-referenced Petition is being hand-delivered to Chief Justice Kathleen Anne Blatz, and provided to all interested parties via United States mail.

Thank you for your assistance in this matter.

Sincerely,

BEST & FLANAGAN LLP

  
Thomas B. Heffelfinger



Robert L. Crosby  
Leonard M. Addington  
N. Walter Graff  
Allen D. Barnard  
Richard A. Peterson  
Robert J. Christianson, Jr.  
Frank J. Walz  
Frank Vogl  
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Cathy E. Goflin  
Patrick B. Hennessy  
Timothy A. Sullivan  
Daniel R.W. Nelson  
David J. Zubke  
Steven B. Kruger  
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Ross C. Formell  
Caryn S. Glover  
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Catherine J. Courtney  
Jeannice M. Reding  
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Robert J. Flanagan  
1921-1971

FOUNDED 1926

TBH:jmt  
Enclosures

**COPY**

Frederick K. Grittner  
January 25, 2001  
Page 2

cc: The Honorable Chief Justice Kathleen Anne Blatz (w/enc.)  
(via messenger)  
The Honorable Kenneth J. Maas (w/enc.)  
The Honorable William E. Walker (w/enc.)  
Alan W. Weinblatt, Esq. (w/enc.)  
Mike Hatch, Esq. (w/enc.)  
Amy Klobuchar, Esq. (w/enc.)  
John D. French, Esq. (w/enc.)  
Zachman, et al. v. Kiffmeyer, et al. Plaintiffs (w/o enc.)  
Charles R. Shreffler, Esq. (w/enc.)  
Tom Kelly, Esq. (w/enc.)

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STATE OF MINNESOTA  
IN SUPREME COURT

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OFFICE OF  
APPELLATE COURTS

JAN 25 2001

**FILED**

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,

Petitioners,

vs.

PETITION FOR APPOINTMENT  
OF SPECIAL REDISTRICTING PANEL

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

Respondents.

---

TO: The Honorable Kathleen Anne Blatz, Chief Justice of the Minnesota Supreme Court,  
305 Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155-6102:

Petitioners respectfully request that the Chief Justice exercise the supervisory authority  
delegated to her under Minn. Stat. § 2.724 to appoint a Special Redistricting Panel to oversee  
the judicial aspects of the redistricting of Minnesota legislative and congressional districts based  
upon the 2000 Census.

The grounds for this Petition are:

1. The Chief Justice of the Minnesota Supreme Court has the discretion and  
authority to appoint a panel of judges to consider and oversee all redistricting litigation related to  
the 2000 United States Census. Specifically, Minn. Stat. § 2.724 provides that the Chief Justice  
may appoint judges to handle matters filed outside the judge's home judicial district:

00-01-160

## 2.724 Chief justice of the supreme court; duties

**Subd. 1. Appointments.** When public convenience and necessity require it, the chief justice of the supreme court may assign any judge of any court to serve and discharge the duties of judge of any court not that judge's own and at such times as the chief justice may determine. A judge may appeal an assignment to serve on a court in a judicial district not that judge's own to the supreme court and the appeal shall be decided before the assignment is effective. Notwithstanding the provisions of this subdivision, no judge shall be assigned to serve on a court in a judicial district which is located more than 50 miles from the boundary of that judge's judicial district for more than 15 working days in any 12-month period, unless the judge consents to the assignment [emphasis added].

**Subd. 4. State court supervision.** The chief justice shall exercise general supervisory powers over the courts in this state, with powers including, but not limited to:

(c) Supervision of the administrative operations of the courts.

The chief justice may designate other justices or judges to assist in the performance of duties.

In addition, Minn. Stat. § 480.16 grants the Chief Justice of the Minnesota Supreme Court the "discretionary authority" to direct any judge to hold court in any county or district "where the need therefor exists." Finally, Minn. Stat. § 484.69 permits the Chief Justice to supervise and oversee the operations of each judicial district, including, but not limited to, the assignment of judges. Minnesota Court of Appeals has recognized that judicial assignments are subject to the discretion and administrative authority of the Chief Justice. In Re Petition Regarding Assignment of Judges in the Ninth Judicial District, 416 N.W.2d 450, 453 (Minn. 1987).

2. It is the precedent of the Minnesota Supreme Court to appoint a panel of three judges to hear and decide matters related to the apportionment of state, legislative and congressional districts. In an Order dated June 4, 1991, then Chief Justice Sandy Keith appointed a three-judge panel in the redistricting case of Patricia Cotlow, et al. v. Joan Growe, et al. (C8-91-985). See Affidavit of Thomas B. Heffelfinger, which is attached hereto and incorporated herein. Chief Justice Keith properly exercised his discretion in 1991. The needs

for a Special Redistricting Panel are even more compelling now. Whereas Chief Justice Keith's 1991 Order was based on his having been "informally requested," currently, as set forth below, two pending legal actions create a real potential for confusing, overlapping and inconsistent litigation and court orders.

3. There is already pending in the Tenth Judicial District, Wright County, the matter of Susan Zachman, et al. v. Mary Kiffmeyer, et al., Court File No. CX-01-116, an action which seeks declaratory and injunctive relief regarding the malapportionment of legislative and congressional districts based on the 2000 Census. Petitioners here are the plaintiffs in that suit. See Affidavit of Thomas B. Heffelfinger, Exhibit A.

4. In an attempt which is procedurally and jurisdictionally suspect, counsel for plaintiffs in the matter of Patricia Cotlow, et al. v. Mary Kiffmeyer (as successor to Joan Growe, Secretary of State of Minnesota), et al., the 1991 state court redistricting litigation, has in the past two weeks brought a motion requesting that the former Special Redistricting Panel reopen its judgment and, in essence, usurp jurisdiction over redistricting matters related to the 2000 Census. The recent Cotlow motion also seeks relief almost identical to that being sought in Zachman. See Affidavit of Thomas B. Heffelfinger, Exhibit B. Petitioners contend that the Cotlow panel lost jurisdiction over redistricting matters in 1994 when the Minnesota Legislature passed and the Governor signed legislation adopting the Cotlow panel's redistricting plan. In any event, the pendency of Zachman and the recent motion in Cotlow create a very real potential for confusing and duplicative litigation and inconsistent court orders.

5. The interest of the public, including the Petitioners, in fair and impartial redistricting and the need for efficient allocation of judicial resources, warrant that the Chief Justice act at this time to appoint a new Special Redistricting Panel for the purpose of consolidating the judicial aspects of legislative and congressional redistricting. Given the increasingly partisan nature of the redistricting process, both in Minnesota and nationwide, it is

crucial that the Minnesota judicial system establish and maintain credibility on this issue from the very beginning of the process. The appointment of a new Special Redistricting Panel at this early stage in the various litigative matters and before the Legislature has completed its process is a crucial step in the Court's maintaining that credibility.

6. The Special Redistricting Panel should be appointed now, before the various pieces of litigation proceed further, and before the Legislature completes its process. If the various pieces of litigation proceed independently, overlapping and inconsistent litigation and results are likely. This, alone, will undermine the credibility of the Minnesota judicial process. Moreover, the redistricting process is complex and time-consuming. The judges of the Special Redistricting Panel and their staff will undoubtedly be required to spend considerable effort reviewing census data, legal pleadings and other information relevant to a fair and impartial redistricting plan. In order to have a new redistricting plan in place for the 2002 elections, this process of judicial review cannot be delayed until after the Legislature acts. Finally, issues related to the constitutionality of the current legislative and congressional districts, as alleged in Zachman are ripe for decision and can and should properly be ruled upon prior to the completion of the legislative session.

7. Delay in appointing a new Special Redistricting Panel would only delay the inevitable. Historically, redistricting issues in Minnesota have been resolved by the courts. The 2001 redistricting effort promises to be no different. Although the preliminary 2000 Census results were made public less than four weeks ago, and the Legislature has been in session less than three weeks, there are already two separate legal actions, Zachman and Cotlow pending in Minnesota courts regarding redistricting. Although the Petitioners herein strongly believe that the Cotlow plaintiffs' Motion to Reopen, Vacate and Modify Judgment lacks any legal basis whatsoever, the fact that Minnesota voters are already seeking judicial review of

redistricting matters points to the compelling need for the Minnesota judiciary to take firm and immediate control of these issues and to assign a single panel to oversee those matters.

8. Finally, Petitioners submit that the judges appointed to the Special Redistricting Panel arising from the 2000 Census should be judges who were not involved in the 1991 Cotlow litigation and, therefore, do not have any "pride of authorship" in the Cotlow redistricting plan. The constitutionality of the Cotlow plan is a central issue in the current redistricting litigation. Accordingly, the review of any new redistricting plan is best undertaken by a Special Redistricting Panel whose members do not have, even subtly, the appearance of a vested interest in defending the prior redistricting plan.

Respectfully submitted,

Dated: January 25, 2001.

**BEST & FLANAGAN LLP**

By Thomas B. Heffelfinger  
Thomas B. Heffelfinger (#4328X)  
4000 US Bank Place  
601 Second Avenue South  
Minneapolis, MN 55402-4331  
Telephone: (612) 339-7121

Dated: January 25, 2001.

**SHREFFLER LAW FIRM, P.A.**

By Charles R. Shreffler  
Charles R. Shreffler (#183295)  
2116 Second Avenue South  
Minneapolis, MN 55404-2606  
Telephone: (612) 872-8000

*Attorneys for Petitioners*

**AFFIDAVIT OF SERVICE**

JEANNE M. TROUP, being duly sworn, on oath says that on January 25, 2001, she served true and correct copies of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al. matter, to be used in connection with the Patricia Cotlow, et al. v. Mary Kiffmeyer, et al. matter:

**PETITION FOR APPOINTMENT OF SPECIAL REDISTRICTING PANEL;  
AFFIDAVIT OF THOMAS B. HEFFELFINGER; AND  
PROPOSED ORDER**

upon:

Alan W. Weinblatt, Esq.  
WEINBLATT & GAYLORD, PLC  
336 N. Robert Street, Suite 1616  
St. Paul, MN 55101

Michael Hatch  
Attorney General of Minnesota  
1102 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2128

Amy Klobuchar  
Hennepin County Attorney  
Hennepin County Govt. Ctr.  
300 South Sixth Street  
Minneapolis, MN 55487-0501

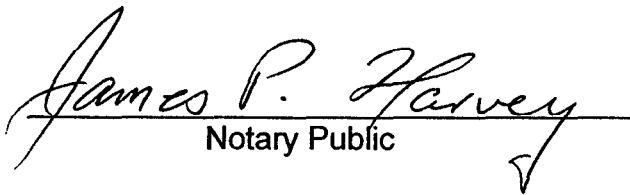
Tom Kelly, Esq.  
Wright County Attorney  
Wright County Govt. Ctr.  
Ten Second Street NW  
Buffalo, MN 55313

John D. French, Esq.  
Faegre & Benson, LLP  
89 South 7<sup>th</sup> Street, Suite 2200  
Minneapolis, MN 55402

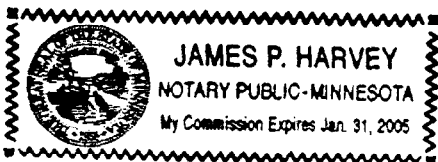
by depositing true and correct copies of the foregoing documents with the United States mail in pre-paid envelopes addressed to the above-named individuals, at the above-listed addresses, the last-known addresses for same.

  
JEANNE M. TROUP

Subscribed and sworn to this 25th day of  
January, 2001.

  
Notary Public

136868





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STATE OF MINNESOTA  
IN SUPREME COURT

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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,

Petitioners,

vs.

**AFFIDAVIT OF  
THOMAS B. HEFFELFINGER**

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

Respondents.

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STATE OF MINNESOTA     )  
                                          ) ss.  
COUNTY OF HENNEPIN    )

THOMAS B. HEFFELFINGER, being first duly sworn and upon oath, deposes and states as follows:

1. I am an attorney for Best & Flanagan LLP, attorneys for Petitioners 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 in the above-captioned matter.

2. Attached hereto and made a part hereof as Exhibit A is a true and correct copy of the Complaint, filed on January 4, 2001, in Wright County, Minnesota, in Susan M. Zachman, et al. v. Mary Kiffmeyer, et al., (CX-01-116).

3. Attached hereto and made a part hereof as Exhibit B is a true and correct copy of the Notice of Motion and Motion to Reopen, Vacate and Modify Judgment, filed on January 11, 2001, by plaintiffs in Patricia Cotlow, et al. v. Mary Kiffmeyer (as successor to Joan Grove, Secretary of State of Minnesota), et al. (C8-91-985).

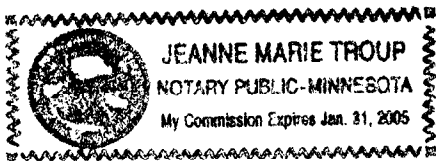
4. Attached hereto and made a part hereof as Exhibit C is a true and correct copy of an Order of the Minnesota Supreme Court, dated June 4, 1991, in the matter of Patricia Cotlow, et al. v. Joan Grove, et al. (C8-91-985).

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
THOMAS B. HEFFELFINGER

Subscribed and sworn to before me  
this 24th day of January, 2001.

  
\_\_\_\_\_  
Notary Public



STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

---

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,

Court File No. \_\_\_\_\_

Plaintiffs,

**SUMMONS**

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.

---

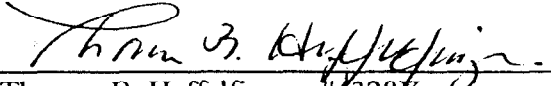
THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve upon Plaintiffs' attorney an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This case may be subject to Alternative Dispute Resolution (ADR) processes under Rule 114 of the General Rules of Practice for the District Courts. The Court Administrator or your attorney can provide you with information about ADR options and a list of neutrals available in your area. ADR does not affect your obligation to respond to the Summons and Complaint within twenty (20) days.


Dated: January 4, 2000

**BEST & FLANAGAN, LLP**

  
Thomas B. Heffelfinger, #4328X  
4000 US Bank Place  
601 Second Avenue South  
Minneapolis, MN 55402-4331  
(612) 339-7121

Dated: January 4, 2000

**SHREFFLER LAW FIRM, P.A.**

  
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(612) 872-8000

*Attorneys for Plaintiffs*

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

---

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,

Court File No. \_\_\_\_\_

Plaintiffs,

**COMPLAINT**

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.

---

Plaintiffs, for their Complaint against Defendants, state and allege as follows:

### **JURISDICTION**

1. This Court has authority as a court of general jurisdiction to redress Plaintiffs' claims regarding violations of the Minnesota State Constitution ("Minnesota Constitution") and authority to grant declaratory relief under the provisions of Minnesota Statutes Section 555.01 *et. seq.*

2. This Court has jurisdiction under 42 U.S.C. §1983, to redress Plaintiffs' claims of violations of the Constitution of the United States ("United States Constitution").

### **PARTIES**

3. Plaintiffs are citizens and qualified voters of the United States and the State of Minnesota. Plaintiffs reside in the following counties, legislative districts and congressional districts in the State of Minnesota:

<u>Plaintiff</u>	<u>County</u>	<u>Legislative Dist.</u>	<u>Cong. District</u>
Diana V. Bratlie	Dakota	37B	6
Gregory J. Edeen	Wright	19B	2
Victor L.M. Gomez	Ramsey	64A	4
Jeffrey E. Karlson	Wright	19B	2
Brian J. LeClair	Washington	56B	6
Gregory J. Ravenhorst	Cass	4B	8
Maryland Lucky R. Rosenbloom	Hennepin	61A	5
Susan M. Zachman	Wright	19B	2

4. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters who reside in the State of Minnesota, United States of America, and who are similarly situated as having been denied equal protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named individuals are typical of the claims of the members of this class; and these Plaintiffs will fairly and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications which would establish incompatible standards of conduct for the named Defendants. The common questions of law which predominate are the constitutionality of the current legislative apportionment system and the current plan of congressional districts established by the three (3) member Special Redistricting Panel (hereinafter the "Panel") in *Cotlow v. Growe*, Civ. File No. C8-91-985 (Orders dated December 9, 1991 and April 15, 1992)(hereinafter "*Cotlow v. Growe*"), both of which are being enforced by the Defendants.

5. The Defendants are each citizens of the United States and of the State of Minnesota, residing in the State of Minnesota. Defendant Mary Kiffmeyer is the duly elected and qualified Secretary of State of the State of Minnesota. In her official capacity, under Chapters 200 through 211 of Minnesota Statutes (the "Minnesota Election Law"), Secretary of State Kiffmeyer is the chief election officer of the State of Minnesota and is responsible for a variety of election duties, including giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the preparation and distribution of ballots, receiving election returns, issuing certificates of election to certain successful candidates, distributing information on certain election laws, serving on the State Canvassing Board and other duties necessary for the conduct of elections in the State of Minnesota.

6. Defendant Doug Gruber is the duly qualified and acting Auditor of Wright County, State of Minnesota. As such, Mr. Gruber is the chief election officer for Wright County.

7. This action is brought against Defendant Doug Gruber as Wright County Auditor, individually and as representative of all other county auditors and/or chief county election officers similarly situated in the State of Minnesota, such persons being so numerous as to make it impracticable to bring them all before the Court by way of joinder. Furthermore, there are predominant common questions of law, namely the constitutionality of the current legislative apportionment system and the current plan of congressional districts ordered in *Cotlow v. Growe*. The defenses of the named Defendants will fairly and adequately protect the interests of the class. Finally, the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties here.

**COUNT I**  
**LEGISLATIVE APPORTIONMENT – MINNESOTA CONSTITUTION**

8. The above-numbered paragraphs 1-7 are incorporated herein by reference.

9. Article IV, Section 2 of the Minnesota Constitution provides:

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 [emphasis added].

10. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. . . .

11. Through the above provisions, the Minnesota Constitution guarantees to the residents of the State of Minnesota that their vote shall be equally as effective as any other vote cast in an election for members of the Minnesota Legislature. Furthermore, these provisions require that the Minnesota Legislature equally apportion state legislative representation throughout the State of Minnesota by districts of equal population.

12. Plaintiffs as citizens of the United States and residents of the State of Minnesota have the right under the Minnesota Constitution to have the members of the Minnesota Legislature equally apportioned and elected on the basis of the United States Census for the year 2000 (the “2000 Census”). On information and belief, the 2000 Census shows that the state legislative districts ordered in *Cotlow v. Growe* are unequally apportioned. Furthermore, the Minnesota Legislature has not adopted a legislative apportionment system since 1991, when the Panel ordered the current legislative districts. The Minnesota Legislature has failed and neglected to equally apportion the legislative districts in the State of Minnesota and will, on information and belief, continue to fail to



apportion said districts in a manner which reflects the mandate of Article IV, Section 2 of the Minnesota Constitution that they be "equally apportioned."

13. Minnesota's current state legislative districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 32,694 persons, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

14. The unequal apportionment of Minnesota's legislative districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters in highly-populated Minnesota legislative districts of the rights guaranteed to them under the Minnesota Constitution.

15. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning itself in conformity with the Minnesota Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

16. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that

said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the Minnesota Constitution.

17. In the absence of reapportionment of the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Rights and Privileges clause (Article I, Section 2) and the Equal Apportionment clause (Article IV, Section 2) of the Minnesota Constitution.

18. By the current and anticipated failure of the Minnesota Legislature to equally apportion the legislative districts of the state in conformity with the Minnesota Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

**COUNT II**  
**LEGISLATIVE APPORTIONMENT – UNITED STATES CONSTITUTION**

19. The above-numbered paragraphs 1-18 are incorporated herein by reference.

20. The Fourteenth Amendment, Section 1 of the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

21. The Fifth Amendment to the United States Constitution provides in pertinent part, “No person shall . . . be deprived of life, liberty or property without due process of law.”

22. The above provisions of the United States Constitution guarantee to the citizens of the United States in each state the right to vote in State and Federal elections and guarantees that the

vote of each shall be as equally effective as any other vote cast in such elections. Further, the United States Constitution guarantees that state legislative representation shall be equally apportioned throughout a state in districts in equal population.

23. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of . . . legislative districts.

24. Any plan of Minnesota legislative districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights guaranteed under the Fourteenth Amendment. Any action of Defendants in enforcing or implementing such a plan violates the equal protection and due process rights of Plaintiffs and other similarly-situated United States citizens residing and voting in Minnesota.

25. Minnesota's current state legislative districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 32,694 persons, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota

legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

26. On information and belief, the United States Department of Commerce, Bureau of Census will soon issue data from the 2000 Census showing that Minnesota's legislative districts as ordered by the Panel in *Cotlow v. Growe* are no longer equally apportioned.

27. The Minnesota Legislature has failed and will, on information and belief, continue to fail to equally apportion Minnesota's legislative districts in conformity with the Fifth and Fourteenth Amendments to the United States Constitution.

28. The unequal apportionment of Minnesota's legislative districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters of highly-populated Minnesota legislative districts of the rights guaranteed to them under Equal Protection and Due Process clauses of the United States Constitution.

29. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning itself in conformity with the United States Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

30. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the United States Constitution.

31. In the absence of reapportionment of Minnesota's legislative districts in conformity with the United States Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

32. By the current and anticipated failure of the Minnesota Legislature to equally apportion the legislative districts of the state in conformity with the United States Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

**COUNT III**  
**CONGRESSIONAL DISTRICTS – UNITED STATES CONSTITUTION**

33. The above-numbered paragraphs 1-33 are incorporated herein by reference.

34. Article I, Section 2 of the United States Constitution provides that:

The House of Representatives shall be composed of members chosen every second Year by the People of the several States. . . .

\*\*\*\*

Representatives. . . shall be apportioned among the several States. . . according to their respective Numbers. . . .

35. The Fourteenth Amendment, Section 1 of the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

36. The Fifth Amendment to the United States Constitution provides in pertinent part, “No person shall . . . be deprived of life, liberty or property without due process of law.”

37. The above provisions of the United States Constitution guarantee to the citizens of the United States in each state that their vote shall be as equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state. Furthermore, these provisions guarantee that congressional representation shall be equally apportioned throughout a state in districts of equal population.

38. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional . . . districts.

39. Any plan of Minnesota congressional districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights guaranteed under the Fourteenth Amendment. Any action of Defendants in enforcing or implementing such a plan violates the equal protection and due process rights of Plaintiffs and other similarly-situated United States citizens residing and voting in Minnesota.

40. Minnesota’s current state congressional districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 546,887 people, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota congressional districts and unlawfully discriminate against voters in more highly populated Minnesota congressional districts.

Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota congressional districts, as estimated for the year 1998 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size congressional district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

41. On information and belief, the United States Department of Commerce, Bureau of Census will soon issue data from the 2000 Census showing that Minnesota's congressional districts as ordered by the Panel in *Cotlow v. Growe* are no longer equally apportioned.

42. The Minnesota Legislature has failed and will, on information and belief, continue to fail to equally apportion Minnesota's congressional districts in conformity with the Fifth and Fourteenth Amendments to the United States Constitution.

43. The unequal apportionment of Minnesota's congressional districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters of highly-populated Minnesota congressional districts of the rights guaranteed to them under Equal Protection and Due Process clauses of the United States Constitution.

44. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning Minnesota's congressional districts in conformity with the United States Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 United States House of Representatives (and future congressional elections) on the basis of the congressional districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the United States House of Representatives.

45. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the United States House of Representatives from Minnesota, and that said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the United States Constitution.

46. In the absence of reapportionment of Minnesota's congressional districts in conformity with the United States Constitution, any action of these Defendants in conducting an election for members of the United States House of Representatives in accordance with the congressional districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

47. By the current and anticipated failure of the Minnesota Legislature to equally apportion the congressional districts of the state in conformity with the United States Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

WHEREFORE, plaintiffs pray for the following relief:

1. That this Court declare that the plan of legislative and congressional districts ordered in *Cotlow v. Growe* violates the rights of Plaintiffs and the class as follows:
  - (a) the present legislative district boundaries in the State of Minnesota violate Plaintiffs' rights of equal representation and equal apportionment of legislative districts mandated by the Minnesota Constitution;
  - (b) the present legislative district boundaries in the State of Minnesota violate Plaintiffs' rights to due process and equal protection guaranteed by the United States Constitution; and
  - (c) the present congressional district boundaries in the State of Minnesota violate Plaintiffs' rights to due process and equal protection guaranteed by the United States Constitution.



2. That this Court issue a permanent injunction and judgment decreeing that Minnesota's current legislative and congressional districts are not now valid plans of state legislative and congressional apportionment.

3. That this Court issue a permanent injunction enjoining Defendants and the class of persons they represent from taking any action related to carrying out their official duties in conducting primary or general elections for Minnesota state legislators and members of the United States House of Representatives from the State of Minnesota based on the legislative and congressional districts ordered in *Colton v. Grove*.

4. That this Court retain jurisdiction of this action to determine if the Legislature has passed and the Governor has signed legislation forming new Minnesota legislative and congressional districts in conformity with the Minnesota and United States Constitutions; that should the Legislature and Governor fail to enact such legislation, the Court will consider evidence, determine and order valid plans for Minnesota legislative and congressional districts.

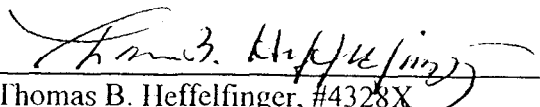
5. That this Court consider evidence, determine and order valid plans for new Minnesota legislative and congressional districts in the event the Minnesota Legislature and the Governor of the State of Minnesota fail to enact legislation establishing such districts in accordance with constitutional requirements.

6. That this Court order Defendants to pay to Plaintiffs' reasonable attorneys' fees and expenses, expert fees and costs and other expenses incurred in this action pursuant to 42 U.S.C. Section 1988.

7. That this Court order such other and future relief as is just in the circumstances.


Dated: January 4, 2000

**BEST & FLANAGAN, LLP**

  
Thomas B. Heffelfinger, #4328X  
4000 US Bank Place  
601 Second Avenue South  
Minneapolis, MN 55402-4331  
(612) 339-7121

Dated: January 9, 2000

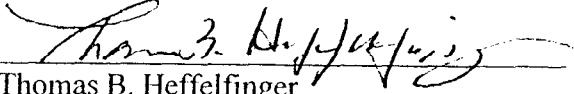
**SHREFFLER LAW FIRM, P.A.**

  
Charles R. Shreffler, #183275  
2116 Second Avenue South  
Minneapolis, MN 55404-2606

*Attorneys for Plaintiffs*

## ACKNOWLEDGMENT

Attorneys for Plaintiffs in the above matter hereby acknowledge, pursuant to Minnesota Statutes §549.211 that sanctions may be awarded to Defendants if it is found that claims contained in this pleading are not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law and/or that the allegations and other factual contentions do not have evidentiary support.

  
Thomas B. Heffelfinger

## EXHIBIT A

### Estimated Population Change

	<u>Average 1990 Population<sup>1</sup></u>	<u>Est. 1998/1999 Population<sup>1,2</sup></u>	<u>Est. Net Change</u>	<u>Est. % Change</u>
HD 19B	32,694	46,268	13,574	41.51%
HD 37B	32,694	58,933	26,239	71.08%
HD 56B	32,694	46,983	14,289	43.71%
HD 4B	32,694	38,015	5,321	16.28%
HD 12A	32,694	37,438	4,744	14.5%
CD 1	546,887	570,317	23,443	4.3%
CD 2	546,887	576,198	29,324	5.4%
CD 3	546,887	623,235	76,361	14.0%
CD 4	546,887	558,569	11,685	2.1%
CD 5	546,887	535,039	- 11,835	- 2.2%
CD 6	546,887	682,032	135,158	24.7%
CD 7	546,887	564,438	17,564	3.2%
CD 8	546,887	593,839	46,963	8.5%

### Estimated Ideal District Population

Ideal 2000 congressional district: 614,935 (preliminary number of 4,919,479<sup>3</sup> ÷ 8)  
 Ideal 2000 state senate district: 73,245 (4,919,479 ÷ 67)  
 Ideal 2000 state house district: 36,713 (4,919,479 ÷ 134)

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<sup>1</sup>Source: Minnesota Planning State Demographic Center. According to the United States Department of Commerce, U.S. Census Bureau, Minnesota's actual 1990 population was 4,375,099.

<sup>2</sup>For comparison purposes, the estimated 1998 statewide population was 4,703,760; the estimated 1998 ideal Minnesota congressional district was 587,970.

<sup>3</sup>Source: Preliminary number released by U.S. Department of Commerce, Census Bureau.

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
C8-91-985

Patricia Cotlow, Phillip Krass,  
Sharon LaComb, James Stein, and  
Theodore Suss, individually and  
on behalf of all Citizens of Minnesota  
similarly situated,

Plaintiffs,

NOTICE OF MOTION

vs.

Mary Kiffemeyer (as successor to Joan Growe  
Secretary of State of Minnesota); and Patrick O'Conner,  
Hennepin County Auditor, individually  
and on behalf of all Minnesota county chief  
election officers,

Defendants,

and

The Seventy-eighth Minnesota State  
House of Representatives and the  
Seventy-eighth Minnesota State Senate,

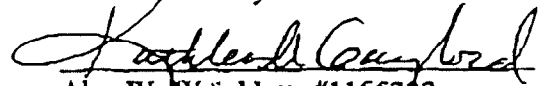
Defendant-Intervenor.

To: Michael Hatch, Attorney General of Minnesota, and Allan Gilbert, Deputy  
Attorney General, attorneys for Defendant Secretary of State; Amy Klobuchar,  
Hennepin County Attorney, attorney for Defendant, County Auditor; and John D.  
French, Faegre & Benson, attorney for Defendant-intervenor.

NOTICE is hereby given that Plaintiffs by and through their undersigned counsel of  
record will bring the attached Motion on for hearing before the Special Redistricting Panel  
on such date, and at such time and place as is fixed by said Panel.

Dated: January 11, 2001

Weinblatt & Gaylord PLC



Alan W. Weinblatt, #1155382

Kathleen A. Gaylord, #0033856

Attorneys for Plaintiffs

336 N. Robert Street, Suite 1616

St. Paul, MN 55101

651-292-8770

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
C8-91-985

---

Patricia Cotlow, Phillip Krass,  
Sharon LaComb, James Stein, and  
Theodore Suss, individually and  
on behalf of all Citizens of Minnesota  
similarly situated,

Plaintiffs,

**MOTION TO REOPEN,  
VACATE AND MODIFY  
JUDGMENT**

vs.

Mary Kiffemeyer (as successor to Joan Growe  
Secretary of State of Minnesota); and Patrick O'Conner,  
Hennepin County Auditor, individually  
and on behalf of all Minnesota county chief  
election officers,

Defendants,

and

The Seventy-eighth Minnesota State  
House of Representatives and the  
Seventy-eighth Minnesota State Senate,

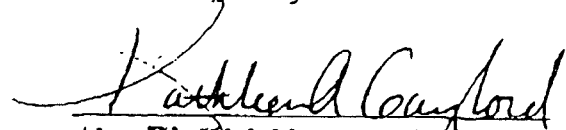
Defendant-Intervenors.

Plaintiffs Patricia Cotlow, et al hereby move the Court for an Order pursuant to Rule 60.02(e), Minnesota Rules of Civil Procedure (1) reopening this Court's Orders dated December 9, 1991 and April 15, 1992 and the judgments entered pursuant thereto; (2) declaring Minnesota Statutes §2.031-2.703, Laws 1994 Chapter 612, adopted pursuant to said judgment to be null and void; (3) notifying the Minnesota Legislature now in session that the Congressional and Legislative districts now in existence may not be used for any future purpose; and (4) modifying said judgment and the injunction issued pursuant thereto, if the Minnesota Legislature does not timely adopt new plans of Congressional and Legislative districts.

This Motion is based upon the attached Affidavit of Kathleen A. Gaylord, the accompanying Memorandum of Law, upon the cited Rule and upon all of the files, records and proceedings herein.

Dated: January 11, 2001

Weinblatt & Gaylord PLC



Alan W. Weinblatt, #1155882

Kathleen A. Gaylord, #0033856

*Attorneys for Plaintiffs*

336 N. Robert Street, Suite 1616

St. Paul, MN 55101

651-292-8770

651-223-8282 fax

STATE OF MINNESOTA  
IN SUPREME COURT

C8-91-985

Patricia Cotlow, Phillip Krass, Sharon  
LaComb, James Stein and Theodore Suss,  
individually and on behalf of all Citizens  
of Minnesota similarly situated,

Plaintiffs,

vs.

Joan Grove, Secretary of State of  
Minnesota; and Dale G. Folstad,  
Hennepin County Auditor, individually  
and on behalf of all Minnesota county  
chief election officers,

Defendants

ORDER

WHEREAS, pending in the Hennepin County  
District Court is the action commenced by Patricia Cotlow, et al.  
(Case No. MX 91-001562) challenging the apportionment of state  
legislative and congressional districts and

WHEREAS, this court has been requested infor-  
mally to appoint a panel of three judges to hear and decide the  
matter on its merits, as well as any and all motions or other  
proceedings arising in connection therewith;

IT IS HEREBY ORDERED that the Honorable  
Harriet Lansing, Judge of the Court of Appeals; the Honorable

A-196



William E. Walker, Judge of the Seventh Judicial District; and the Honorable Kenneth J. Maas, Jr., Judge of the Tenth Judicial District are appointed to hear and decide all matters, including all pretrial and trial motions, in connection with the panels' ultimate disposition of the above-entitled action. See Minn. Stat. § 2.724, subd. 1 (1990).

Dated: June 4, 1991

BY THE COURT:

ks/  
Chief Justice

AFFIDAVIT OF SERVICE

JEANNE M. TROUP, being duly sworn, on oath says that on January 25, 2001, she served true and correct copies of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al. matter, to be used in connection with the Patricia Cotlow, et al. v. Mary Kiffmeyer, et al. matter:

**PETITION FOR APPOINTMENT OF SPECIAL REDISTRICTING PANEL;  
AFFIDAVIT OF THOMAS B. HEFFELFINGER; AND  
PROPOSED ORDER**

upon:

Alan W. Weinblatt, Esq.  
WEINBLATT & GAYLORD, PLC  
336 N. Robert Street, Suite 1616  
St. Paul, MN 55101

Michael Hatch  
Attorney General of Minnesota  
1102 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2128

Amy Klobuchar  
Hennepin County Attorney  
Hennepin County Govt. Ctr.  
300 South Sixth Street  
Minneapolis, MN 55487-0501

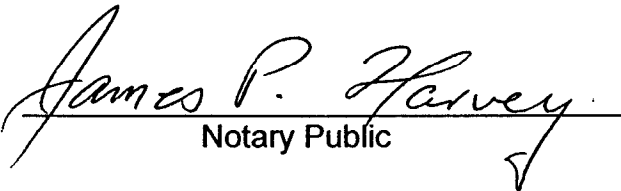
Tom Kelly, Esq.  
Wright County Attorney  
Wright County Govt. Ctr.  
Ten Second Street NW  
Buffalo, MN 55313

John D. French, Esq.  
Faegre & Benson, LLP  
89 South 7<sup>th</sup> Street, Suite 2200  
Minneapolis, MN 55402

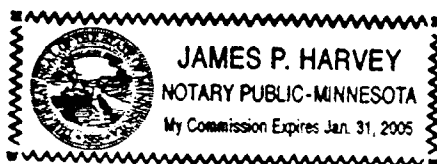
by depositing true and correct copies of the foregoing documents with the United States mail in pre-paid envelopes addressed to the above-named individuals, at the above-listed addresses, the last-known addresses for same.

  
JEANNE M. TROUP

Subscribed and sworn to this 25th day of  
January, 2001.

  
Notary Public

136868



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**STATE OF MINNESOTA  
IN SUPREME COURT**

---

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,

Petitioners,

vs.

**ORDER**

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

Respondents.

---

WHEREAS, the above-entitled action is pending in the Wright County District Court  
(Case No. CX-01116), challenging the constitutionality of the boundaries of Minnesota's state  
legislative and congressional districts; and

WHEREAS, Petitioners in the above-entitled action have petitioned this Court to appoint  
a Special Redistricting Panel of three (3) judges to hear and decide the matter on the merits, as  
well as any and all motions or other proceedings arising in connection therewith;

THEREFORE, based on the files and pleadings herein, and the testimony and evidence  
presented;

IT IS HEREBY ORDERED that the judges identified on Exhibit A, attached hereto, are appointed to hear and decide all matters, including all pretrial and trial motions, in connection with the panel's ultimate disposition of the above-entitled action.

Dated: \_\_\_\_\_, 2001.

BY THE COURT:

---

Chief Justice Kathleen Anne Blatz

**EXHIBIT A**

The Honorable \_\_\_\_\_, Judge of the \_\_\_\_\_

The Honorable \_\_\_\_\_, Judge of the \_\_\_\_\_

The Honorable \_\_\_\_\_, Judge of the \_\_\_\_\_