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August 17, 2001

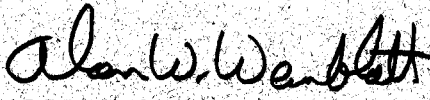
Mr. Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN 55155-6102

APPELLATE OFFICE OF
AUG 20 2001
FILED

Re: Zachman v. Kiffmeyer
Case No. C0-01-160

Mr. Grittner:

Enclosed herewith for filing and distribution to the members of the Special Redistricting Panel, please find an original and five copies of the Complaint in Intervention for Patricia Cotlow, et al, together with my Affidavit of Service.


ALAN W. WEINBLATT
FOR
WEINBLATT & GAYLORD PLC

AWW:wmf

STATE OF MINNESOTA
IN SUPREME COURT
C0-01-160

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

Plaintiffs,

COMPLAINT IN INTERVENTION

and

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

Intervening Plaintiffs,

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,

Respondents.

OFFICE OF
APPELLATE COURTS

AUG 20 2001

FILED

Intervening Plaintiffs, for their cause of action, state and allege as follows:

PARTIES

1. Intervening Plaintiffs are citizens and qualified voters of the United States of America and of the State of Minnesota residing in various counties, legislative districts and congressional districts in the State of Minnesota, as appears with greater particularity in Exhibit "A" which is attached hereto and made a part hereof by reference.
2. Intervening Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters of the United States of America who reside in the State of Minnesota 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 Intervening Plaintiffs will fully 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 (1) the

constitutionality of the scheme of legislative apportionment set forth in Minnesota Statutes §§2.043 through 2.703 and (2) the constitutionality of the current plan of congressional redistricting set forth in Minnesota Statutes §§2.742 through 2.812, both of which are being enforced by the Defendants.

3. 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, qualified and acting Secretary of State of Minnesota. On information and belief, she resides in Hennepin County, Minnesota. Under the provisions of Minnesota Statutes 2000 Chapters 200 through 211 inclusive, she is charged, in her official capacity, with the duty of keeping records of state elections, giving notice of state elections, receiving the filings of candidates for state elective offices, preparing ballots and instructions to voters, distributing copies of the election laws of the State of Minnesota, receiving election returns, furnishing blank election ballots and forms to the several county auditors, furnishing certificates of election to successful legislative candidates in multi-county districts and to successful candidates for election to the United States Congress, serving on the State Canvassing Board, and various other election duties.
4. Defendant Doug Gruber is the duly qualified and acting Auditor of Wright County, State of Minnesota. As such he is the Wright County Chief election officer.

5. 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; there are predominantly common questions of law, to wit, the constitutionality under the United States and Minnesota constitutions of (a) the legislative apportionment system set forth in Minnesota Statutes §§2.043 through 2.703 and (b) the current plan of congressional redistricting as set forth in Minnesota Statutes §§2.742 through 2.812; the defenses of the named Defendants will fairly and adequately protect the interests of the class; and the prosecutions 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 Intervening Plaintiffs.
6. Said county auditors and chief county election officials, however designated or titled, are charged with various election duties in their respective counties, including but not limited to preparation of ballots, furnishing of ballots, canvassing of returns of legislative and congressional elections; providing certificates of election to successful legislative and congressional candidates in single county legislative districts; certifying to the Secretary of State the

results of the canvass in their respective counties and various other miscellaneous duties with respect to primary, general and special elections.

7. The Plaintiffs represent the interests of supporters of the Independent Republican Party of Minnesota and not of Intervening Plaintiffs who are supports of the Minnesota Democratic-Farmer-Labor Party nor the interests of the citizens of Minnesota as a whole.

COUNT I

LEGISLATIVE MALAPPORTIONMENT

8. This case arises under the Fourteenth Amendment, Section 1 to the Constitution of the United States which 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.”

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. A state statute which effects a legislative apportionment which invidiously discriminates against

voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

This case also arises under the Fifth Amendment to the Constitution of the United States which provides in pertinent part:

"No person shall . . . be deprived of life, liberty or property without due process of law."

Minnesota Statutes §§2.043 through 2.703 effect an apportionment which invidiously discriminates against voters in the more highly populous districts including Intervening Plaintiffs and prefers other voters in the least populous districts in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

9. This case also arises under Article IV, Section 2 of the Minnesota State

Constitution which 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."

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

"The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state and also have the power at their first session after each enumeration of the inhabitants of this state made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion the new senators and

representatives among the several districts according to the provisions of section Second this Article."

11. Intervening Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provisions of the Minnesota Constitution to have the entire membership of the Minnesota Legislature apportioned and elected on the basis of the 2000 Federal Census. The intent and the purpose of the aforesaid provisions of the Minnesota Constitution is to require that the members of the Legislature be elected by the people of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota State Senators and Representatives must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.
12. On information and belief, the United States Census for the 2000 shows that the state legislative districts as established and set forth in Minn. Stat. 2000, §§2.043 through 2.703 are unequally apportioned; the legislature of the State of Minnesota has adopted no legislative apportionment system since 1994; that despite the compilation of the 2000 census, the legislature has failed and neglected to reapportion the legislative districts in the State of Minnesota and will unless otherwise ordered, continue to fail and neglect to reapportion those districts; and the present apportionment of the state legislative

districts is not based on any logical or reasonable formula whatsoever, but is arbitrary and capricious.

13. The unequal representation reflected in the statutes cited above, deprives Intervening Plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the United States Constitution including their rights of Due Process of Law and Equal Protection of the laws. It also deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.
14. The common relief sought against the defendants in their official capacities relates to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of senators and representatives of said State Legislature calling for elections therefor; and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of state representatives and senators to the Minnesota State Legislature.
15. The Legislature of the State of Minnesota did not pass a law reapportioning itself in conformity with the United States Constitution and the Constitution of the State of Minnesota which law will be signed by the governor of the State of Minnesota, during the 2001 Legislative Session. The Intervening Plaintiffs allege on information and belief that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct the

election for the next legislature, namely the 2003 legislature, during the year 2002, on the basis of the senatorial and representative districts set forth in Minn. Stat. §§2.043 through 2.703, and that until there is legislative reapportionment, Defendants will continue to do so in subsequent elections of members of the Minnesota state legislature.

16. Intervening Plaintiffs further allege that they intend to and will vote in the state primary and general elections in 2002 and thereafter for candidates for state legislative offices; and that said elections conducted in accordance with Minn. Stat. §§2.043 through 2.703 will continue to deprive Intervening Plaintiffs of their rights guaranteed under the Constitution of the United States and the Constitution of the State of Minnesota.
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 prescribed by Minn. Stat. §§2.043 through 2.703, has deprived and will continue to deprive Intervening Plaintiffs of their constitutional rights in that:
 - (a) They are and will be arbitrarily deprived of liberty and property without Due Process of law, and are and will be arbitrarily deprived of the Equal Protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

- (b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.
 - (c) They are and will be, to substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.
 - (d) They are and will be deprived of an equally apportioned state legislature as guaranteed by Article 4, Sections 2 and 3 of the Minnesota Constitution.
 - (e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.
18. By reason of the failure of the Legislature and Governor of the State of Minnesota to reapportion the legislative districts of the state in conformity with the Minnesota Constitution, thus violating the constitutional rights of these Intervening Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

COUNT II

CONGRESSIONAL REDISTRICTING

19. Intervening Plaintiffs reallege Paragraphs 1 through 6 hereof.

20. This case arises under the Fourteenth Amendment, Section 1 of the Constitution of the United States which provided 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.

The provisions thereof guaranty to the citizens of each state the right to vote in State and Federal elections and that the vote of each shall be equally effective with any other vote cast in such elections. State action which enforces or effects an apportionment which invidiously discriminates against voters in highly populous districts and prefers other voters in the least populous districts violates the above quoted constitutional provision.

21. Article IV, Section 3 of the Minnesota State 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.

22. Intervening Plaintiffs as citizens of the United States and of the State of Minnesota have the right conferred by the above provision of the Minnesota Constitution to have all Representatives in Congress from the State of Minnesota apportioned and elected on the basis of the 2000 Federal Census. The intent and purpose of the aforesaid provision of the Minnesota Constitution is to require that Representatives in Congress be elected by the

people of the State of Minnesota on a basis of equal representation of the individual electors in the state and that the Minnesota Representatives in Congress from the State of Minnesota must be equally apportioned throughout the state in districts which are arranged in proportion to the number of inhabitants therein.

23. On information and belief, the United States Census for 2000 shows that the congressional districts as established in Minnesota Statutes §§2.742 through 2.812 are now unequally apportioned; that despite the compilation of said Census, the Legislature has failed and neglected to reapportion lawfully the congressional districts in the State of Minnesota; and the present apportionment of the congressional districts is not based upon any logical or reasonable formula whatsoever, but is arbitrary and capricious. The estimated present population of each congressional district as now set forth in Minnesota Statutes §§2.742 through 2.812, appear more fully in Exhibit "B" which is attached hereto and made a part hereof by reference.
24. The unequal representation reflected in Exhibit "B" deprives Intervening Plaintiffs and all other voters of the highly populated districts of the rights guaranteed to them by the Fourteenth Amendment to the Constitution of the United States including their rights of Due Process of Law and the Equal Protection of the laws. It further deprives them of their rights as guaranteed by the above quoted provisions of the Minnesota State Constitution.

25. The common relief sought against all defendants in their official capacities related to their respective jurisdictions in carrying out the election laws of the State of Minnesota with respect to the election of Representatives in Congress calling for elections therefor; the appointment of election judges therefor; the registration of qualified voters therefor; the holding of elections therefor; the certifying of the result of said elections; the preparation of ballots therefor, and the taking of all steps necessary to hold all elections both nominating and general, and all matters relating to the election of Representatives in Congress.

26. The Legislature of the State of Minnesota did not pass a law reapportioning the congressional districts in conformity with the United States Constitution and the Constitution of the State of Minnesota during the 2001 Legislative Session. The Intervening 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 the next election for Representatives in Congress during the year 2002, on the basis of the current congressional districts and that until there is congressional reapportionment, defendants will continue to do so in subsequent elections of Representatives in Congress.

Intervening Plaintiffs further alleges that they intend to and will vote in the state primary and general election in 2002 and thereafter for candidates for

Representatives in Congress; and that said elections conducted in accordance with the present districts will continue to deprive Intervening Plaintiffs and the class that they represent of their rights guaranteed under the Constitution of the United States and of the State of Minnesota.

27. In the absence of reapportionment of the congressional districts of the State of Minnesota in conformity with the United States Constitution and the Minnesota Constitution, any action of these defendants in conducting an election for Representatives in Congress in accordance with the present districts has deprived and will continue to deprive Intervening Plaintiffs of their constitutional rights in that:

- (a) They are and will be arbitrarily deprived of liberty and property without due process of law, and are and will be arbitrarily deprived of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.
- (b) They are and will be deprived of liberty and property contrary to Article I, Section 7 of the Minnesota Constitution.
- (c) They are and will be, in substantial measure, disenfranchised and deprived of their rights and privileges, all in violation of Article I, Section 2 of the Minnesota Constitution.

(d) They are and will be deprived of equally apportioned congressional districts as guaranteed by Article 4, Section 3 of the Minnesota Constitution.

(e) Their right to vote, as guaranteed by Article 7, Section 1 of the Minnesota Constitution, is and will continue to be abridged, diluted and infringed.

28. By reason of the failure of the Legislature of the State of Minnesota to reapportion the congressional districts of the state in conformity with the Federal and Minnesota Constitutions, thus violating the constitutional rights of these Intervening Plaintiffs and of all other members of the class of citizens and voters whom they represent, a justiciable controversy exists.

JURISDICTION

29. This Court has authority under and by virtue of 42 U.S.C. § 1983 et. seq. to enforce the Intervening Plaintiffs' United States Constitutional rights set forth above and has general jurisdiction to enforce the Intervening Plaintiffs' Minnesota constitutional rights set forth in Counts I and II above.

30. This Court also has jurisdiction under the provisions of M.S.A. §555.01 and §555.08 through 555.12 to grant the relief requested herein.

WHEREFORE, Intervening Plaintiffs pray for relief as follows:

1. That this Court declare the rights of the Intervening Plaintiffs and the class they represent in the premises, to wit:
 - (a) that the present legislative apportionment of the State of Minnesota as set forth in Minnesota Statutes §2.043 through 2.703 has deprived and continues to deprive Intervening Plaintiffs and their class of their liberty and property without Due Process of law and has denied and continues to deny the Intervening Plaintiffs Equal Protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States; and
 - (b) the present scheme of congressional apportionment deprives Intervening Plaintiffs and the class they represent of Due Process of Law and Equal Protection of the law all in violation of the Fourteenth Amendment to the Constitution of the United States.
2. The Court declare that Minnesota Statute §§2.043 through 2.073 unlawfully impairs the rights of the Intervening Plaintiffs and the class they represent as guaranteed by Article 1, Section 2 and Article 4, Sections 2 and 3 of the Minnesota Constitution.
3. The Court issue its permanent injunction and judgment decreeing that the plan of legislative apportionment set forth in Minnesota Statute

§§2.043 through 2.703 may not hereafter be used as a valid plan and scheme of legislative apportionment.

4. The Court permanently restrain the defendants and the class of persons they represent from receiving nominations and petitions for legislative office, from issuing certificates of nominations and elections, and from all further acts necessary to the holding of elections for members of the Minnesota Legislature in the districts set out and described in Minnesota Statutes §§2.043 through 2.703 until such time as the legislature passes and the governor approves legislation reapportioning the state legislative districts in accordance with the Constitution of Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.
5. The Court notify the Legislature of the State of Minnesota presently in session, that it shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new legislative apportionment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new legislative apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of

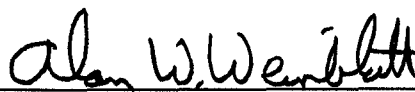
legislative apportionment by said Legislature that this Court will make a determination of a proper legislative apportionment system for the State of Minnesota.

6. The Court declare that the present plan of Congressional districts unlawfully impairs the rights of the Intervening Plaintiffs and the class they represent as guaranteed by Article 4, Section 3 and Article 1, Section 2 of the Minnesota Constitution.
7. The Court issue its permanent injunction and judgment decreeing that the plan of congressional apportionment set forth in the present plan of Congressional districts as set forth in Minnesota Statutes §§2.742 through 2.812 may not hereafter be used by Defendants as a valid plan and scheme of congressional apportionment.
8. The Court permanently restrain the Defendants and the class of persons they represent from receiving nominations and petitions for Congressional office, from issuing certificates of nomination and election and from all further acts necessary to the holding of elections for members of Congress in the districts set out and described in Appendix A to the decree of the Court in Minnesota Statutes §§2.742 through 2.812 until such time as the legislature passes and the governor approves legislation apportioning the eight (8) Minnesota Congressional districts in accordance with the Constitution of

Minnesota and the Due Process and Equal Protection clauses of the United States Constitution.

9. The Court notify the Legislature of the State of Minnesota presently in session, that it Court shall retain jurisdiction of this cause during the terms of such legislature to determine at the end thereof whether any new congressional apportionment system has been devised to meet the requirements of the Fourteenth Amendment to the Constitution of the United States and the provisions of the Constitution of the State of Minnesota and for further hearings herein to determine the validity of any new congressional apportionment law as may be enacted; and in the absence of the enactment of a constitutionally valid method of congressional apportionment by said Legislature that this Court will make a determination of a proper congressional apportionment system for the State of Minnesota.
10. The Court order defendants to pay to Intervening Plaintiffs, pursuant to 42 U.S.C. §1988 and Minn. Stat. §555.08, their reasonable attorneys fees and expenses, expert fees, costs and other expenses incurred in prosecuting this action.
11. For such other and future relief as is just in the circumstances.


Dated: August 17, 2001



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weglaw@usinternet.com

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. §549.21, subd. 2, to the party against whom the allegations in this pleading are asserted.



ALAN W. WEINBLATT

EXHIBIT A

APPLICANT	COUNTY	LEGISLATIVE DISTRICT	CONGRESSIONAL DISTRICT
Patricia Cotlow	Hennepin	33B	03
Thomas L Weisbecker	Dakota	38A	04
Theresa Silka	Washington	56B	06
Geri Boice	Dakota	36A	06
William English	Hennepin	34B	03
Benjamin Gross	Dakota	38B	06
Thomas R. Dietz	Washington	51B	06
John Raplinger	Dakota	37B	06

EXHIBIT B

DISTRICT	POPULATION	DEVIATION	%DEVN
1	594,864	-20,071	-3.26
2	613,173	-1,762	-0.29
3	642,696	27,761	4.51
4	577,077	-37,858	-6.16
5	557,819	-57,116	-9.29
6	720,995	106,060	17.25
7	588,801	-26,134	-4.25
8	624,054	9,119	1.48

Total Population:	4,919,479
Ideal District Population	614,935
Summary Statistics	
Population Range:	557,819 to 720,995
Ratio Range:	1.29
Absolute Range	-57,116 to 106,060
Absolute Overall Range:	163,176.00
Relative Range:	-9.29% to 17.25%
Relative Overall Range:	26.54%
Absolute Mean Deviation:	35,735.13
Relative Mean Deviation:	5.81%
Standard Deviation:	50,549.77

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gergory 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,

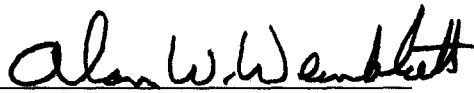
AFFIDAVIT OF
SERVICE

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,

Alan W. Weinblatt, being first duly sworn, deposes and says that on August 17, 2001, I served upon each of the persons listed in Exhibit A attached hereto by United States Mail and by facsimile a true and correct copy of the Complaint in Intervention for Patricia Cotlow, et al.


Alan W. Weinblatt

Subscribed and sworn to before me
this 17th day of August, 2001.

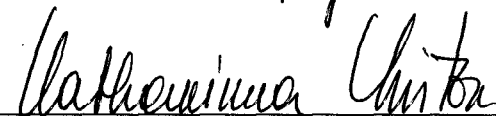

Katharina E. Liston
Notary Public



EXHIBIT A

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