FAEGRE & BENSON LLP

2200 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-3901
TELEPHONE 612.766.7000
FACSIMILE 612.766.1600
www.faegre.com

13 November 2001

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

BY MESSENGER

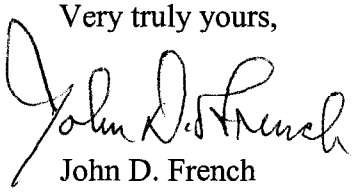
Re: Zachman v. Kiffmeyer, No. C0-01-160 (Minn. Special Redistricting Panel)
Faegre File No. 57455/240154

Dear Mr. Grittner:

Please file the enclosed original and nine copies of the Moe Intervenors' Proposed Redistricting Principles, together with the accompanying affidavits of service.

Thank you very much. Please call me if you have any questions.

Very truly yours,



John D. French
Attorney for
Moe Intervenors

enclosures

cc (w/ encs.):
Brian J. Asleson
Alan I. Gilbert
Timothy D. Kelly
Marianne D. Short/Michelle B. Frazier
Alan W. Weinblatt

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

Susan M. Zachman, et al.,

Plaintiffs,

vs.

Mary Kiffmeyer, et al.,

Defendants.

No. C0-01-160

MOE INTERVENORS' PROPOSED REDISTRICTING PRINCIPLES

Pursuant to the Order Granting Motions for Permissive Intervention, Directing Filing of Stipulation and Statement of Unresolved Issues, and Stating Preliminary Timetable at 9-10 (Oct. 9, 2001), and Scheduling Order No. 2 at 5 (Oct. 29, 2001), the Moe Intervenors respectfully submit this statement of their proposed redistricting principles.

Stipulated Principles

This Panel has ordered that "all parties work together toward a stipulation regarding the appropriate redistricting criteria."[1] The Moe Intervenors join in that stipulation, which the Parties are filing as a separate document.

[1]Sched. Order No. 2 at 5 (10/29/01).

Further Principles

This Panel has also ordered that "[t]o 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 . . . ."[2] The Moe Intervenors hereby submit seven such criteria, regarding—

- maximum population deviation for legislative districting,
- point contiguity,
- minority representation,
- preserving political subdivisions,
- electoral districts, reservations, and neighborhoods as communities of interest,
- communities of interest linked by common transportation or communication, and
- preserving the cores of existing districts.

I. Maximum population deviation for legislative districting

The Parties have agreed on a principle regarding the maximum population deviation for congressional districts: "Congressional districts must be as nearly equal in population as practicable." And they have agreed that legislative districts must be substantially equal in population, and that a legislative district's population must not deviate from the ideal by more than a certain amount:

> 3. **Equal population**
>
> (a) Legislative districts must be substantially equal in population. The population of a legislative district must not

[2] *Id.* at 6.

> deviate from the ideal by more than __ percent, plus or minus.

But they have not agreed on what that maximum deviation is—what ought to fill in the blank in the stipulated principle. The Moe Intervenors propose that the maximum population deviation for legislative districts ought to be *two percent*.

This Panel's predecessor found that, in legislative redistricting after the 1990 Census, "[t]he population of a district must not deviate from the ideal by more than two percent."[3] The same standard applied in legislative redistricting after the 1980 Census,[4] and after the 1970 Census.[5] The Moe Intervenors do not know of any reason why this Panel ought to allow a different deviation than its predecessors allowed, and which has been the law in this state for thirty years.

One can certainly draw a map that deviates from the ideal by less than two percent. Indeed, if citizens are grouped arbitrarily without regard for their social, political, cultural, historical, ethnic, or economic interests—that is, without regard for reality—then one can draw a map with practically zero deviation. But "[m]athematical exactness or precision is hardly a workable constitutional requirement"[6] and, indeed, "[i]ndiscriminate districting, without any regard for political subdivision or natural or

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[3]Findings Fact, Conclusions Law, & Order J. Legislative Redistricting, Findings of Fact 12(4), *Cotlow v. Growe*, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991), *available at* http://www.senate.leg.state.mn.us/departments/scr/redist/cotlo129.htm.

[4]Order, *LaComb v. Growe*, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981).

[5]Order, *Beens v. Erdahl*, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971).

[6]*Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

historical boundary lines, may be little more than an open invitation to partisan gerrymandering."[7]

The equal-population principle in congressional redistricting derives from the Apportionment Clause.[8] But the equal-population principle in *legislative* redistricting derives from the Equal Protection Clause,[9] which is somewhat less exacting, since it tolerates "divergences from a strict population standard" if they are "based on legitimate considerations incident to the effectuation of a rational state policy."[10] A legislative redistricting plan must achieve "*substantial* equality of population among the various districts, so that the vote of any citizen is *approximately* equal in weight to that of any other citizen in the State."[11] Subsequent cases have established that "substantial equality of population" generally means a deviation of less than ten percent[12]—although the Court has upheld even greater deviations, in order to preserve political subdivisions.[13]

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[7]*Id.* at 578-79.

[8]U.S. Const., art. I, § 2 ("Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers").

[9]*Id.*, amend. XIV, § 1 ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."); *Reynolds v. Sims*, 377 U.S. at 577 ("By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.").

[10]*Reynolds v. Sims*, 377 U.S. at 579.

[11]*Id.* (emphasis added).

[12]*See, e.g., Voinovich v. Quilter*, 507 U.S. 146, 161 (1993); *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983); *Connor v. Finch*, 431 U.S. 407, 418 (1977); *see generally* Peter S. Wattson, *How to Draw Redistricting Plans That Will Stand Up in Court*, II.D.1 at 6, *available at* http://www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/Draw202web.htm.

[13]*See Voinovich v. Quilter*, 507 U.S. 146, 161-62 (1993); *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983); *Mahan v. Howell*, 410 U.S. 315, 328 (1973); *see generally* Peter S. Wattson, *How to Draw Redistricting Plans That Will Stand Up in Court*, II.D.2 at 7, *available at* http://www.senate.leg.state.mn.us/-departments/scr/REDIST/Draw/Draw202web.htm.

Minnesota has adopted a somewhat more exacting standard—a maximum deviation of two percent[14]—than federal law requires. That standard has effectively become state constitutional law. The mere fact that somebody can draw a tighter map does not tighten the Constitution—especially since someone else may draw a map with a greater deviation that is nevertheless a better map because it better preserves political subdivisions or otherwise gives more weight to some other "rational state policy." A maximum deviation of two percent has been Minnesota law for a generation. Absent a strong showing why that law ought to change, this Panel ought to adhere to existing law and precedent, and adopt a maximum population deviation for legislative districting of two percent.

II. Point contiguity

The Parties have agreed on a principle regarding contiguity. The Moe Intervenors propose that that stipulated principle also include a provision for point contiguity (wording to be inserted is underlined):

> 4. **Contiguity.** All districts must be composed of convenient contiguous territory. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district. Territory that touches only at a point is not contiguous, unless the territory is within the same city, town, or unorganized territory.

The public-policy issue is whether a legislative or congressional district's boundaries ought to follow those of a political subdivision that includes territory touching only at a point. The Moe Intervenors propose that the fortuity of a political subdivision's

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[14]Findings Fact, Conclusions Law, & Order J. Legislative Redistricting, Findings of Fact 12(4), *Cotlow v. Growe*, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991), *available at* http://www.senate.leg.state.mn.us/departments/scr/redist/cotlo129.htm.

boundaries ought not to affect whether its citizens must vote in different legislative or congressional districts, just because two tracts of its territory touch only at a point.

As far as the Moe Intervenors know, point contiguity has not been an issue in any past Minnesota redistricting. The standard Maptitude report on contiguity does not recognize point contiguity because it searches only for districts that contain more than one area. If a district does contain more than one area, then the program treats it as not contiguous. Unfortunately, several political subdivisions in Minnesota consist of territory that is contiguous only at a point—either corner-to-corner, or a corner touching a straight line. There are also several cities which include territory that does not touch, even at a corner. The standard Maptitude report was modified last spring in order to check whether multiple areas within a district touch at any point; if they do, then the program does not count the district as containing "areas that do not touch." The modified report will identify each district with multiple areas that touch, for the purpose of checking that the point contiguity falls within a single political subdivision.

The federal court in Minnesota, redistricting the state after the 1980 Census, recognized the need for "minor . . . deviations from compactness" where "these deviations reflect irregular boundaries of townships, counties or other political subdivisions."[15] The state courts have not addressed this issue in the context of legislative or congressional districts, but the Supreme Court of Minnesota has held in a homesteading case that "[t]wo separate . . . parcels of land, touching only at the corners, between which is a regular roadway, if owned, occupied, and cultivated as one farm, may

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[15] *LaComb v. Growe*, 541 F. Supp. 160, 164-65 (D. Minn. 1982).

constitute a homestead, although the residence and appurtenances are all located upon one tract."[16]

The Moe Intervenors propose their point-contiguity provision for the purpose of working with the software in order to allow point contiguity in reasonable cases.

III. Minority representation

The Moe Intervenors propose the following principle regarding minority representation, to follow the stipulated principle regarding numbering:

> [6.] **Minority representation.** No district shall be drawn that dilutes the voting strength of racial or language minority populations. Where a sizeable concentration of a racial or language minority makes it possible, and where it can be done in compliance with the other redistricting principles, the districts must increase the probability that members of the minority will be elected.

The Parties did reach agreement that the redistricting principles ought to include a principle regarding minority representation. But they did not reach agreement on that principle's wording.

The form that the Moe Intervenors are proposing passed the Senate this year, and is based on the affirmative obligation of enhancing minority representation that the federal court in Minnesota adopted after the 1970, 1980, and 1990 Censuses, and which this Panel's predecessor adopted as well after the 1990 Census. The Senate's bill earlier this year added the wording on balancing this affirmative obligation with the other redistricting principles. This policy has served the state well over the last three decades, and ought not to be jettisoned by a stipulation among private parties.

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[16] *Brixius v. Reimringer*, 101 Minn. 347, 112 N.W. 273, 273 (1907) (syllabus by the court).

IV. Preserving political subdivisions

The Moe Intervenors propose the following principle regarding preserving political subdivisions, to precede the stipulated principle regarding communities of interest:

> #. **Preserving political subdivisions.** A county, city, or town must not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

It is already this state's policy, declared by statute, that, in drawing legislative and congressional districts, "political subdivisions not be divided more than necessary to meet constitutional requirements."[17] Any redistricting plan ought to recognize that policy.

The stipulated principle regarding communities of interest does recognize "political subdivisions" as a protectible community of interest that "[t]he districts should attempt to preserve . . . where that can be done in compliance with the preceding principles." The Moe Intervenors propose that preserving major political subdivisions belongs in an independent and prior principle because, while political subdivisions do indeed constitute communities of interest, major political subdivisions are communities of a more important order than the other kinds of communities in the stipulated principle regarding communities of interest. (This proposed principle covers only major political subdivisions—that is, "[a] county, city, or town." This principle does not cover a minor

[17]Minn. Stat. § 2.91, subd. 2.

political subdivision, such as a school district[18] or a taxing district,[19] which is still a community of interest protected under the stipulated principle regarding communities of interest.)

The Supreme Court of the United States has recognized precisely that distinction; after rejecting "claims that deviations from population-based representation can validly be based solely on geographical considerations," the Court held that

> A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering.[20]

The federal court in Minnesota, redrawing legislative districts after the 1980 Census, likewise "gave the highest priority after population equality to respecting minor civil division boundaries,"[21] holding that there was "no justification for drawing district lines which cross Minneapolis, St. Paul and Duluth boundaries."[22] The federal court also

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[18]Minn. Stat. § 465.719, subd. 1(a) (defining "political subdivision" as "a county, a statutory or home rule charter city, a town, a school district, or other political subdivision of the state").

[19]Minn. Stat. § 471.49, subd. 3 (defining "political subdivision" as "any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied."

[20]*Reynolds v. Sims*, 377 U.S. 533, 580-81 (1964).

[21]*LaComb v. Growe*, 541 F. Supp. 160, 163 (D. Minn. 1982).

[22]*Id.* n.3.

held "[a] similar respect for municipal boundaries . . . elsewhere in the State, including St. Cloud and Rochester," and redistricted the state so that "[w]ith one exception, every other municipality outside the metropolitan area and Duluth—including Moorhead, Mankato, Winona, Austin, Hibbing, Albert Lea and Owatonna—is in a single house district. Municipal boundaries in the suburban metropolitan area are also respected to the extent possible."[23] The court applied similar principle in redrawing congressional districts.[24]

Equal population and minority representation are not ordinary redistricting principles, they are principles of constitutional dimension.[25] The state constitution also requires a senate of "single districts of convenient contiguous territory," and that "[n]o representative district shall be divided in the formation of a senate district."[26] Subject to those constitutional principles, the statutorily declared policy in favor of preserving political subdivisions belongs in the next rank of principles for redistricting, not merely as one kind of community among many communities of interest in the redistricting process.

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[23]*Id.* at 163.

[24]*LaComb v. Growe*, 541 F. Supp. 145, 148 (D. Minn. 1982).

[25]*See* U.S. Const., amend. XIV, §§ 1-2 (equal protection, apportionment); *id.*, amend. XV (prohibiting racial discrimination in franchise); Minn. Const., art. IV, § 2 (apportionment of members) ("The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.").

[26]Minn. Const., art. IV, § 3 (senate districts).

V. Electoral districts, reservations, and neighborhoods as communities of interest

The Parties have agreed on a principle regarding communities of interest. The Moe Intervenors propose that that stipulated principle also include a provision recognizing "existing legislative and congressional districts, Indian reservations, [and] neighborhoods" as protectible communities of interest (wording to be inserted is underlined, wording to be struck out is ~~struck out~~):

> 8. **Communities of interest.** The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding principles. For purposes of this principle, "communities of interest" include, but are not limited to, political subdivisions, existing legislative and congressional districts, Indian reservations, neighborhoods, or other geographic areas where there are clearly recognizable similarities of social, ~~geographic,~~ political, cultural, ethnic, or other interests[, or that are linked by common transportation or communication].

(This memorandum addresses the bracketed language below under the next heading, "communities of interest linked by common transportation or communication.")

The federal court in Minnesota, redrawing legislative districts after the 1980 Census, divided the Twin Cities "generally . . . along recognized neighborhood lines . . . . to join together identifiable neighborhoods with traditional ties."[27] This memorandum has already addressed major political subdivisions,[28] and will later address existing legislative and congressional districts.[29] Such geographic communities—including but not limited to political subdivisions, existing legislative and congressional districts, Indian

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[27] *LaComb v. Growe*, 541 F. Supp. 160, 164 (D. Minn. 1982).

[28] *See* Further Criteria, III, *supra* (preserving political subdivisions).

[29] *See* Further Criteria, VI, *infra* (preserving the cores of existing districts).

reservations, and neighborhoods—where there are clearly recognizable similarities of interests deserve consideration in the redistricting process.

VI. Communities of interest linked by common transportation or communication

Likewise, the Moe Intervenors propose that the stipulated principle regarding communities of interest include a provision recognizing communities "that are linked by common transportation or communication" (wording to be inserted is underlined):

> 8. **Communities of interest.** The districts should attempt to preserve communities of interest where that can be done in compliance with the preceding principles. For purposes of this principle, "communities of interest" include, but are not limited to, political subdivisions[, existing legislative and congressional districts, neighborhoods,] or other geographic areas where there are clearly recognizable similarities of social, geographic, political, cultural, ethnic, or other interests, or that are linked by common transportation or communication.

(This memorandum addressed the bracketed language above under the preceding heading, "geographic communities of interest.")

The Supreme Court of the United States, while establishing equal apportionment as a constitutional principle, recognized "[m]odern developments and improvements in transportation and communications" as reasons for rejecting traditional "claims that deviations from population-based representation can validly be based solely on geographic considerations."[30] But subject to the principle of equal population, transportation and communications themselves are valid considerations in drawing districts, since they "insure effective representation for sparsely settled areas and . . .

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[30] *Reynolds v. Sims*, 377 U.S. 533, 580 (1964).

prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired."[31]

Those considerations are particularly important in Minnesota, with its population concentrated in the state's southeastern corner, and its transportation and communications network radiating from the Twin Cities like spokes from a wheel. Of the state's three Interstate highways, two serve the Twin Cities: Interstate 35 runs from Duluth to the Twin Cities, and points south; Interstate 94 runs from Chicago, through the Twin Cities, to St. Cloud and Moorhead. The other Interstate highway, Interstate 90, runs by Rochester and along the state's southern tier.

The northern tier, however, is not so well served. There is no Interstate highway north of Moorhead in the west, or Duluth in the east. There is no four-lane highway, or arterial road of any kind, that links the state's northwestern and northeastern corners; the only ground-based transit between them involves taking forest roads, or driving along the northern border through International Falls, or swinging as far south as Brainerd.[32] A sound redistricting plan cannot ignore such realities.

VII. **Preserving the cores of existing districts**

Finally, the Moe Intervenors propose the following principle regarding preserving the cores of existing districts, to follow the other principles:

> #. **Preserving the cores of existing districts.** A redistricting plan must preserve the cores of existing districts, and must minimize change in existing boundaries, except as necessary in order to effect the foregoing principles.

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[31] *Id.*

[32] *See* Rand McNally Road Atlas 50-51 (1998) (Minnesota).

The federal court in Minnesota, redrawing legislative districts after the 1980 Census, recognized promoting "constituency-legislator relations" as a valid consideration in drawing a redistricting plan.[33] That formulation is not entirely consistent with the stipulated principle that "[t]he districts must not be drawn for the purpose of protecting or defeating an incumbent." But it does raise another valid consideration: minimizing geographic change, and thereby preserving the cores of existing districts, which is neutral toward incumbents. Several states already recognize such a principle in their redistricting process.[34]

While a congressional or legislative district is an artificial creature upon its creation, after a decade of its citizens voting together, and their representatives advocating their interests, and the district's political parties contesting the same seats . . . it becomes a legitimate community. Not only will the incumbent legislator and his or her party have developed a relationship with the district, so will his or her challengers and their parties. For a decade, the winning and losing candidates (sometimes the same candidate in different elections) will have appealed to the same voters, and generally addressed the same set of issues, through the political process. To shift a voter from an existing district, into a new district that contains little common territory with his or her former district, disrupts that process—for the voter, for the incumbent representative, and for any challenger.

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[33]*LaComb v. Growe*, 541 F. Supp. 160, 165 & n.13 (D. Minn. 1982) (citing *White v. Weister*, 412 U.S. 783, 791 (1973); *Burns v. Richardson*, 384 U.S. 73, 89 n.16 (1966)).

[34]*See generally* "1990s Districting Principles Used by Each State," *in* Minnesota Senate, Senate Counsel & Research, *Reapportionment and Redistricting in the United States of America* 3-4, *available at* http://www.senate.leg.state.mn.us/departments/scr/REDIST/red-us/redist-US.htm.

All the major political parties in the state have organized themselves around the existing legislative and congressional districts.[35] The Minnesota Election Law explicitly requires such organization:

> The rules of each major political party shall provide that for each congressional district and each county or legislative district a convention shall be held at least once every state general election year. Each major political party shall also provide for each congressional district and each county or legislative district an executive committee consisting of a chair and such other officers as may be necessary. . . .[36]

Each major political party[37] has complied with that law in its organization.[38] To preserve the cores of existing districts serves the purposes of every political party, not just the party that won the last election.

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[35]The Minnesota Election Law defines a "major political party" as

> a political party that maintains a party organization in the state, political division or precinct in question and:
> (a) Which has presented at least one candidate for election to a partisan office at the last preceding state general election, which candidate received votes in each county in that election and received votes from not less than five percent of the total number of individuals who voted in that election; or
> (b) whose members present to the secretary of state a petition for a place on the state partisan primary ballot, which petition contains signatures of a number of the party members equal to at least five percent of the total number of individuals who voted in the preceding state general election."

Minn. Stat. § 200.02, subd. 7 (defining "major political party").

[36]Minn. Stat. § 202A.13.

[37]The Minnesota Secretary of State recognizes four major political parties: the Democratic-Farmer-Labor party, the Green party, the Independence party, and the Republican party. *See* Minnesota Secretary of State, "Major Political Parties," *available at* http://www.sos.state.mn.us/election/parties.html.

[38]Minnesota Democratic-Farmer-Labor Party: *See* Const. & Bylaws, art. V, § 1 (Party organization in Anoka, Dakota, Hennepin, Ramsey, Stearns, St. Louis, and Washington counties: senate districts); *id.*, § 2 (house districts); *id.*, art. VI, § 1 (Party organization in counties not covered in art. V: senate districts); *id.*, § 2 (house districts); *id.*, art. VII (Party organization in congressional districts); DemLinks, "Minnesota DFL Organizations," *available at* http://www.dfl.org/-index.asp?Page=SUMMARY&GroupID=6&DTID=CU (listing congressional-district organizations).

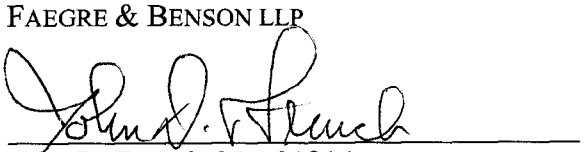
Green Party of Minnesota: *See* Constitution, *available at* http://www.mngreens.org; Green Party of Minnesota, Local Affiliates, *available at id.* (listing congressional-district and senate-district organizations)

Independence Party of Minnesota: *See* State Party Const., art. 9 (congressional-district conventions), *available at* http://www.eindependence.org/const_bylaw/constitution.htm#ArticleNine; *id.*, art. 10 (congressional-district committees), *available at* http://www.eindependence.org/-

A party or candidate that has been building a case to the voters for years, and has reached the verge of an electoral breakthrough, is robbed of that opportunity—as are the voters who would have voted for the offered change—if the district's boundaries suddenly and unnecessarily shift. A sound redistricting plan ought to minimize geographic change, and preserve the cores of existing districts.

November 13, 2001.

FAEGRE & BENSON LLP



John D. French, No. 31914
Brian Melendez, No. 223633
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Ph. 612.766.7309
Fax 612.766.1600

Attorneys for
Moe Intervenors

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const_bylaw/constitution.htm#ArticleTen; *id.*, art. 11 (legislative-district conventions and committees), *available at* http://www.eindependence.org/-const_bylaw/constitution.htm#ArticleEleven; Independence Party of Minnesota, "Contacts," *available at* http://www.eindependence.org/contacts.htm (listing congressional-district websites).

Republican Party of Minnesota: *See* "Who We Are," *available at* http://www.mngop.com/-info.cfm?x=3&action=Who (listing congressional-district chairs).