

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

OFFICE OF
APPELLATE COURTS

OCT - 5 2011

FILED

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

Petitioners,

and

**MOTION OF MARK RITCHIE,
SECRETARY OF STATE OF
MINNESOTA, TO ADOPT
REDISTRICTING CRITERIA**

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

Plaintiff Intervenors,

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

Plaintiff Intervenors,

vs.

Mark Ritchie, Secretary of State of
Minnesota; and Robert Hiivala, Wright
County Auditor, individually and on behalf of
all Minnesota county chief election officers,

Respondents.

Mark Ritchie, Secretary of State of Minnesota, moves the Panel to adopt the same redistricting criteria in this case as those adopted by the special redistricting panel ten years ago in *Zachman v. Kiffmeyer*.

Specifically, the *Zachman* panel issued an Order Stating Redistricting Principles and Requirements for Plan Submissions on December 11, 2001, setting forth eight principles to be used for congressional districts, and nine principles for legislative districts. See Exhibit A, attached hereto. The panel adopted these principles after reviewing the proposals and argument submitted by the parties. The panel engaged in a thorough analysis, and adopted these principles because they best served the panel's goal of "ensur[ing] that the final redistricting plan is fundamentally fair." Exhibit A, Memorandum, pp. 10-11. Indeed, the adoption of these principles was supported by a well-reasoned Memorandum by the panel. See Exhibit A, Memorandum. In addition, these principles remain good law.¹ In accordance with this well-supported rationale, the Panel should use the same redistricting criteria as established by the *Zachman* panel.

Finally, for the Panel's information, Secretary of State Ritchie refers the Panel to the 2011 Redistricting Guide of the Office of the Minnesota Secretary of State, which discusses the practical and logistical issues of redistricting for the State, counties,

¹ See, e.g., Minn. Const. art. IV, § 3 (senators to be chosen by single districts of convenient, contiguous territory; no representative district shall be divided in formation of senate district; senate districts numbered in regular series); Minn. Stat. § 2.91, subd. 2 (2010) (districts to consist of convenient, contiguous territory, substantially equal in population; political subdivisions not to be divided more than necessary to meet constitutional requirements); *League Of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006) (recognizing districting principles of compactness, maintaining communities of interest and maintaining traditional boundaries).

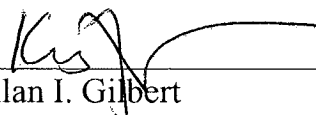
municipalities and school districts. This document is a public record and can be found at

<http://www.sos.state.mn.us/Modules/ShowDocument.aspx?documentid=9793>.

Dated: October 5, 2011

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota



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ATTORNEYS FOR MARK RITCHIE,
SECRETARY OF STATE OF
MINNESOTA

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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C0-01-160

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

Plaintiffs,

and

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

Plaintiffs-Intervenors,

and

Jesse Ventura,

Plaintiff-Intervenor,

and

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

Plaintiffs-Intervenors,

vs.

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

Defendants.

ORDER

Stating Redistricting Principles and
Requirements for Plan Submissions

OFFICE OF
APPELLATE COURTS

DEC 11 2001

FILED

ORDER

REDISTRICTING PRINCIPLES

Scheduling Order No. 2 directed the parties to stipulate to redistricting principles where possible and to submit arguments proposing or opposing additional criteria. Based on the parties' criteria stipulation and individual arguments, we hereby adopt the following principles:

Congressional Districts

1. There will be eight districts with a single representative for each district.
2. The districts must be as nearly equal in population as is practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964). Because a court-ordered redistricting plan must conform to a higher standard of population equality than a legislative redistricting plan, absolute population equality will be the goal. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997).
3. The congressional district numbers will begin with district one in the southeast corner of the state and end with district eight in the northeast corner of the state.
4. Districts will consist of convenient, contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district. Districts with areas that connect at only a single point will be considered noncontiguous. Minn. Stat. § 2.91, subd. 2 (2000); *Shaw v. Reno*, 509 U.S. 630, 646 (1993) (citing *Reynolds v. Sims*, 377 U.S. 533, 578 (1964)).
5. Congressional districts shall not be drawn with either the purpose or effect of diluting racial or ethnic minority voting strength and must otherwise comply with the Voting Rights Act of 1965, as amended, and the Fourteenth and Fifteenth Amendments to the United States Constitution.
6. The districts will be drawn with attention to county, city, and township boundaries. A county, city, or township will 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, and compact territory. When any county, city, or township must be divided into one or more districts, it will be divided into as few districts as possible. Minn. Stat. § 2.91, subd. 2; *Karcher v. Daggett*, 462 U.S. 725, 733 n.5, 740-41 (1983).

7. Communities of interest will be preserved where possible in compliance with the preceding principles. For purposes of this principle, “communities of interest” include, but are not limited to, groups of Minnesota citizens with clearly recognizable similarities of social, geographic, political, cultural, ethnic, economic, or other interests. Additional communities of interest will be considered if persuasively established and not in violation of applicable law.

8. Districts may not be drawn for the purpose of protecting or defeating an incumbent. However, as a factor subordinate to all redistricting criteria, the panel may view a proposed plan’s effect on incumbents to determine whether the plan results in either undue incumbent protection or excessive incumbent conflicts.

Legislative Districts

1. There will be 67 senate districts with a single senator for each district. There will be 134 house of representative districts with a single representative for each district. Minn. Stat. §§ 2.021, 2.031, subd. 1 (2000).

2. No representative district shall be divided in the formation of a senate district. Minn. Const. art. IV, § 3.

3. Legislative redistricting plans will faithfully adhere to the concept of population-based representation. *Roman v. Sincock*, 377 U.S. 695, 710 (1964). The plans will not exceed a maximum population deviation of plus or minus 2%. See *Cotlow v. Growe*, No. MX-91-1562, at 4 (Special Redistricting Panel Aug. 16, 1991) (Pretrial Order No. 2). Because a court-ordered

redistricting plan must conform to a higher standard of population equality than a legislative redistricting plan, *de minimis* deviation from the ideal district population will be the goal. *Connor v. Finch*, 431 U.S. 407, 414 (1977); *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975).

4. The legislative districts must be numbered in a regular series, beginning with House District 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, but bypassing the seven-county metropolitan area until the southeast corner has been reached; then to the seven-county metropolitan area outside the cities of Minneapolis and St. Paul; then to Minneapolis and St. Paul.

5. Districts will consist of convenient, contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district. Districts with areas that connect at only a single point will be considered noncontiguous. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2; *Reynolds*, 377 U.S. at 578-79.

6. Legislative districts shall not be drawn with either the purpose or effect of diluting racial or ethnic minority voting strength and must otherwise comply with the Voting Rights Act of 1965, as amended, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

7. The districts will be drawn with attention to county, city, and township boundaries. A county, city, or township will 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, and compact territory. When any county, city, or township must be divided into one or more districts, it will be divided into as few districts as possible. Minn. Stat. § 2.91, subd. 2; *Reynolds*, 377 U.S. at 580-81.

8. Communities of interest will be preserved where possible in compliance with the preceding principles. For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesota citizens with clearly recognizable similarities of social, geographic, political, cultural, ethnic, economic, or other interests. Additional communities of interest will be considered if persuasively established and not in violation of applicable law.

9. Districts may not be drawn for the purpose of protecting or defeating an incumbent. However, as a factor subordinate to all redistricting criteria, the panel may view a proposed plan's effect on incumbents to determine whether the plan results in either undue incumbent protection or excessive incumbent conflicts.

PLAN SUBMISSION REQUIREMENTS

Pursuant to Scheduling Order No. 2, all redistricting plans shall be submitted no later than December 28, 2001, via the Clerk of Appellate Courts, and in the following form:

Redistricting Plans

1. Each party may submit no more than one congressional plan, one senate plan, and one house of representatives plan.
2. Each plan must be in the form of a separate electronic block equivalency file showing the district to which each census block in the state has been assigned. Each file must be in dBASE format.
3. Each block equivalency file must assign district numbers using the following conventions:
 - a. Congressional district numbers shall contain one character and be labeled 1 through 8.
 - b. Senate district numbers shall contain two characters and be labeled 01 through 67.

c. House district numbers shall contain three characters and be labeled 01A through 67B.

4. Each party's block equivalency files must be submitted to the court on either a 3-1/2 inch floppy disk or CD-ROM. Each party is encouraged to submit all three proposed plans on the same floppy disk or CD-ROM where possible.

5. One original and three copies of each floppy disk or CD-ROM shall be filed with the Clerk of Appellate Courts.

Paper Maps

The parties shall also submit one paper original and nine paper copies of each legislative and congressional map. As described *infra*, senate and house plans must be combined on a single map. The panel prefers that the maps be plotted on 17" by 22" paper, but 8-1/2" by 11" paper is acceptable so long as the maps are clear and comprehensible.

1. For its legislative plan, each party must include paper maps of: (1) the entire state; (2) Minneapolis and St. Paul surrounded by first-tier suburbs; and (3) the cities of Duluth, Mankato, Moorhead, Rochester, and St. Cloud. Senate district areas must be drawn as a color-themed area on the bottom layer with house district boundaries as overlying lines. Each district must be labeled with its house district number.

2. For its congressional plan, each party must include paper maps of: (1) the entire state; and (2) the metropolitan area. Each district must be labeled with its district number and population.

3. State maps shall include county boundaries and names, and the parties are encouraged to include major bodies of water, interstate highways, and U.S. highways.

4. Metro area and individual city maps must show the names and boundaries of minor civil divisions as well as the same information as on the state maps.

5. Each map must clearly state whether it shows congressional or legislative districts and identify the party who has submitted it.

6. The paper maps may include such other details as the parties wish to add, so long as the above boundaries, areas, lines, and labels are generally discernible.

Reports

Each party shall also submit one original and three copies of the following standard Maptitude Reports for each congressional, senate, and house plan. Each party must label every page of a report with the report's name, the corresponding plan, and the responsible party. Each report should contain the components listed below as well as its standard summary data.

1. Population Summary Report showing district populations as the total number of persons, and deviations from the ideal as both a number of persons and percentage of the population.

2. Plan Components Report listing the names and populations of counties within each district and, where a county is split between districts, the names and populations of the portion of the split county and each of its whole or partial minor civil divisions within each district.

3. Contiguity Report showing all districts that are noncontiguous either because two areas of a district do not touch or because they are linked by a point.

4. Compactness Reports stating the results of the Roeck, Perimeter, Polsby-Popper, and Population Circle measures of compactness.

5. Split Political Subdivisions Report listing the split counties, minor civil divisions, and voting districts (precincts), and the district to which each portion of a split political subdivision or voting district is assigned.

These requirements are the minimum submissions required of the parties and do not preclude the parties from submitting additional maps, reports, or justification for their maps. Any party may waive its right to receive paper copies of the above reports or maps, or may arrange with a plan originator to receive plans, paper maps, and reports by electronic mail, floppy disk, or CD-ROM.

Finally, we have repeatedly recognized the primacy of the legislative process in redistricting, and we are aware that redistricting plans will be submitted to the panel more than one month before the beginning of the 2002 legislative session. In order to give the legislature an opportunity to review and consider the plans submitted to the panel, each party is directed to provide the legislature with a block equivalency file for each proposed plan. We further encourage the parties to provide any additional information that legislative members or staff may request.

ORAL ARGUMENT

Oral argument regarding redistricting plans has been set for Wednesday, January 16, 2002. Arguments will begin at 9:00 a.m. in Courtroom 300 of the Minnesota Judicial Center. The parties will appear in the order in which they are listed on the caption for this case.

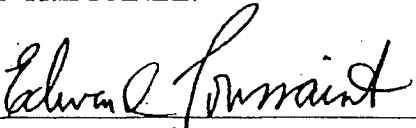
The parties will each have 30 minutes to present their plans and are encouraged to prepare visual presentations to supplement their arguments. Court will recess at the close of the morning's presentations and resume at 1:30 p.m. At that time, the parties will have 15 minutes apiece to present arguments in favor of their plans or in opposition to others. Each party may also utilize an additional five minutes for rebuttal.

A party that declines to submit redistricting plans may nonetheless argue in favor of or against a particular proposed plan. The parties will notify the panel in writing by January 11, 2002, whether they intend to participate in either session of the January 16 oral argument and

whether they require particular technical equipment to present their plans. At the close of oral argument, the parties shall provide the panel with copies of their electronic, overhead, or slide presentations via floppy disk, CD-ROM, or paper.

Dated: December 11, 2001

BY THE PANEL:


Edward Toussaint, Jr.
Presiding Judge

MEMORANDUM

Because the adoption of redistricting criteria involves a number of conflicting considerations, we take this opportunity to explain how we have resolved these conflicts. First, the parties request that we adopt a mathematical standard for acceptable legislative district population deviations. The United States Supreme Court has cautioned, however, that "it is neither practicable nor desirable to establish rigid mathematical standards." *Roman v. Sincock*, 377 U.S. 695, 710 (1964); *see also Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969) ("[T]o consider a certain range of variances *de minimis* would encourage legislators to strive for that range rather than for equality.") (discussing congressional district population variances). This is especially true where a court is responsible for redistricting because courts are held to higher standards of approximate population equality than are legislative bodies. *Chapman v. Meier*, 420 U.S. 1, 26 (1975). Thus, we have adopted a 2% overall deviation not as a level under which all population deviations will be presumed acceptable, but as a maximum deviation that no plan

should exceed.¹ Proposed plans still must adhere as closely as possible to the concept of population-based representation, and for both legislative and congressional plans a party must “show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions.” *Karcher v. Daggett*, 462 U.S. 725, 741 (1983); see also *Connor v. Finch*, 431 U.S. 407, 414, 419-20 (1977).

Second, the parties generally assert that the panel should not become entangled in the politics that might surround redistricting processes and are common to the legislative arena. We fully agree. See *Connor*, 431 U.S. at 415 (noting that courts lack the “political authoritativeness” legislatures bring to redistricting and that “the court’s task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner free from any taint of arbitrariness or discrimination”). We therefore adopt the parties’ stipulation that districts should not be drawn for the purpose of protecting or defeating incumbents. Conversely, we decline to adopt criteria regarding the preservation of prior district cores, the recognition of prior districts as specific “communities of interest,” or the goal of ensuring that “politically-competitive districts will result.” As a practical matter, these proposed criteria might well conflict with the stipulation and with this panel’s goal in redistricting, which is neither to maximize nor minimize political opportunities for any political party or incumbent, but to ensure that the final

¹ The Zachman plaintiffs argue that Minn. Const. art. IV, § 2, which requires that “[t]he representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof,” states a standard at least as strict as the “as nearly equal as practicable” standard for congressional district populations, and should be interpreted to require a nearly equally low maximum deviation. We need not decide this issue, however, because the absence of a particular mathematical deviation standard in the Minnesota Constitution means that our goal remains the same – nearly complete population equality with only those deviations specifically related to significant state policies. See *Mahan v. Howell*, 410 U.S. 315, 322 (1973) (noting that state constitutional language regarding population equality in legislative districts is subject to liberal construction because there must be greater latitude for legislative redistricting than for congressional redistricting).

redistricting plan is fundamentally fair and based primarily on the state's population and secondarily on neutral districting principles. Nevertheless, because a redistricting plan based *solely* on mathematics may inadvertently result in the most adverse impact on a particular group, *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973), we are prepared to consider a plan's effect on incumbents in order to prevent an unfair result for either incumbents or potential challengers. See *LaComb v. Growe*, 541 F. Supp. 160, 165 (D. Minn. 1982); *Cotlow v. Growe*, No. C8-91-985, at 2 (Special Redistricting Panel Sept. 13, 1991) (Pretrial Order No. 3).

Third, we accept the recommendation that point contiguity should be prohibited, but we decline to create an exception for points that fall within a single city, township, or unorganized territory. Although such an exception might serve the neutral and legitimate purpose of preserving political subdivisions that consist of two areas contiguous at only a single point, it would create too great an opportunity for gerrymandering. These political subdivisions can better be kept intact by including the area surrounding the entire "point" within the same district or, where that is not possible, by subordinating the statute regarding the preservation of political subdivisions to the constitutional and statutory contiguity requirement.

Finally, we adopt a compactness criterion as a tool for evaluating and comparing redistricting plans. While we recognize the scholarly debate surrounding this criterion and the limitations of compactness as a singular basis for adopting or rejecting a particular plan, the United States Supreme Court has repeatedly recognized compactness as one means of averting gerrymandering and preventing districts from sprawling across a state. See, e.g., *Shaw v. Reno*, 509 U.S. 630, 647 (1993); *Swann v. Adams*, 385 U.S. 440, 444 (1967); *Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964)). Additionally, Minnesota's redistricting panels of the last three decades have each included compactness in their criteria. See *LaComb*, 541 F. Supp. at 148 n.5;

Beens v. Erdahl, 336 F. Supp. 715, 719 (D. Minn. 1972), vacated by *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187 (1972), remanded to 349 F. Supp. 97, 98 (D. Minn. 1972); *Cotlow*, MX-91-1562, at 2, 4. Compactness is also a criterion in both the house and senate resolutions stating redistricting criteria and in the governor's commission's standards. H.F. 2488, cl. 4 (Minn. Apr. 25, 2001); S.F. 1326, cl. 4 (Minn. Apr. 19, 2001); Governor's Citizen Advisory Comm'n on Redistricting, *Redistricting Principles and Standards*, para. II.D., at 3 (Minn. Apr. 4, 2001). Lastly, compactness was a constitutional, legislative, or judicial criterion in 36 states during the 1990s. Nat'l Conference of State Legislatures, *Redistricting Law 2000*, tbl. 5 (1999), available at <http://www.senate.leg.state.mn.us/departments/scr/redist/Red2000/redtc.htm>. We therefore join past Minnesota panels and other states in requiring congressional and legislative districts to be compact.