

STATE OF MINNESOTA

IN SUPREME COURT

A11-152

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, et al.,

Petitioners,

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.

ORDER

This action was filed January 21, 2010, in Wright County District Court alleging that the current legislative and congressional districts in Minnesota are unconstitutional based on the 2010 Census. The plaintiffs in this case have petitioned the Chief Justice to appoint a special redistricting panel to hear and decide the case.

Respondent Ritchie has filed a response to the petition arguing that appointment of a redistricting panel at this time would be premature, on the grounds that the Legislature

has not yet had an opportunity to adopt redistricting plans based on the 2010 Census.¹ Petitioners contend that because a three-judge court has been named to adjudicate a similar action pending in federal court and because the deadline for completion of redistricting is four weeks earlier than it was in 2001-02, a special redistricting panel should be appointed and should commence preliminary work immediately. The plaintiffs in the federal court action filed a letter in opposition to the petition pending here. Those plaintiffs assert that because the three-judge federal court has already been appointed to hear that redistricting case, Minnesota courts should not entertain a request to appoint a panel to “compete” with the federal action.²

The Chief Justice has authority to appoint a special redistricting panel under Minn. Stat. §§ 2.724 and 480.16 (2010), and did so in 1991 and 2001. The prior filing of a redistricting action in federal court does not negate that authority. *See Emison v. Growe*, 507 U.S. 25, 34 (1993) (“[R]eapportionment is primarily the duty and responsibility of the State through its legislative or other body, rather than that of a federal court.” (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975))). For reasons of judicial economy, as well as fairness and balance in the adjudication of the particularly important and sensitive issues inherent in redistricting, a multi-judge panel should be appointed to hear and decide the *Hippert* case, as well as any other redistricting challenges that may be filed

¹ Respondent Hiivala filed a response agreeing with respondent Ritchie.

² The federal court action was stayed by order filed February 7, 2011, based on stipulation of the parties in that action.

based on the 2010 Census. Accordingly, the petition for appointment of a special redistricting panel is granted.

As the parties acknowledge, however, redistricting is initially a legislative function. In both 1991 and 2001, the redistricting panels were not appointed until after the Legislature had an opportunity to enact redistricting plans. At this point, the 2010 Legislature is still in session and has not had that opportunity. While the need to have state legislative and congressional district lines drawn in time for the 2012 election cycle imposes undeniable time constraints on this process, it is important that the primacy of the legislative role in the redistricting process be honored and that the judiciary not be drawn prematurely into that process.

For these reasons, while the petition to appoint a special redistricting panel to hear and decide any issues relating to redistricting that must ultimately be resolved by the judicial branch is granted, the appointment of the panel and further proceedings in this case are stayed. When it is determined that panel action must commence in order that the judicial branch can fulfill its proper role in assuring that valid redistricting plans are in place in time for the 2012 state legislative and congressional elections, the stay will be lifted and a panel appointed.

Based on all the files, records and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition for appointment of a special redistricting panel to hear and decide challenges to the validity of state legislative and congressional districts based on the 2010 Census be, and the same is, granted.

2. Appointment of the special redistricting panel and further proceedings in this matter are stayed until further order of the Chief Justice.

Dated: February 14, 2011

/s/

Lorie S. Gildea
Chief Justice