

FILED

**STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL**

A21-0243

A21-0546

September 24, 2021

**OFFICE OF
APPELLATE COURTS**

Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom and James E. Hougas III, individually and on behalf of all citizens and voting residents of Minnesota similarly situated, and League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors

v.

Steve Simon, Secretary of State of Minnesota; and Kendra Olson, Carver County Elections and Licensing Manager, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

Frank Sachs, Dagny Heimisdottir,
Michael Arulfo, Tanwi Prigge, Jennifer
Guertin, Garrison O’Keith McMurtrey,
Mara Lee Glubka, Jeffrey Strand, Danielle
Main, and Wayne Grimmer,

Plaintiffs,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder
Gillespie, Xiongpaoo Lee, Abdirazak
Mahboub, Aida Simon, Beatriz Winters,
Common Cause, OneMinnesota.org, and
Voices for Racial Justice,

Plaintiff-Intervenors,

v.

Steve Simon, Secretary of State of
Minnesota,

Defendant.

**SACHS PLAINTIFFS’ STATEMENT OF
UNRESOLVED PRELIMINARY ISSUES**

Pursuant to the Special Redistricting Panel’s Scheduling Order No. 2 of August 24, 2021, Plaintiffs Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O’Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer hereby submit the following statement of unresolved preliminary issues.

Constitutionality of current legislative districts. Minnesota’s current legislative districts are unconstitutionally malapportioned in light of the 2020 Census. The U.S. Constitution “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.” *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); *see also* Minn. Const. art. IV, § 2 (“The representation in both houses [of the legislature] shall be apportioned equally . . .”). Minnesota’s current legislative districts deviate from their ideal populations. Because these deviations are the result of a decade’s worth of population changes and not “legitimate considerations incident to the effectuation of a rational state policy,” *Reynolds*, 377 U.S. at 579, Minnesota’s legislative districts are now unconstitutionally malapportioned.

Constitutionality of current congressional districts. Minnesota’s current congressional districts are unconstitutionally malapportioned in light of the 2020 Census. “Since ‘equal representation for equal numbers of people [is] the fundamental goal for the House of Representatives,’ the ‘as nearly as practicable’ standard requires that the State make a good-faith effort to achieve precise mathematical equality” for its congressional districts. *Kirkpatrick v. Preisler*, 394 U.S. 526, 530–31 (1969) (alteration in original) (citation omitted) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)). Minnesota’s eight current districts deviate substantially from the ideal population; the First, Seventh, and Eighth Congressional Districts are underpopulated, while the Second, Third, Fourth, Fifth, and Sixth Congressional Districts are overpopulated. Because these deviations are neither the “unavoidable” results of “a good-faith effort to achieve absolute equality” nor otherwise justified by the State, *Kirkpatrick*, 394 U.S. at 531, Minnesota’s congressional districts are now unconstitutionally malapportioned.

Tolerable deviation: congressional districts. The maximum tolerable deviation from the ideal for congressional districts is plus-or-minus one person. *See* Final Order

Adopting a Congressional Redistricting Plan, Appendix B at 1, *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (adopting congressional redistricting plan with maximum deviation of one person).

Tolerable percentage deviation: legislative districts. The Special Redistricting Panel should minimize deviations from the ideal for legislative districts, which, consistent with prior redistricting orders, must not exceed 2 percent. *See* Order Stating Redistricting Principles & Requirements for Plan Submissions at 8, *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (ordering maximum deviation of 2 percent); Order Stating Redistricting Principles & Requirements for Plan Submissions at 3, *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (same); Pretrial Order No. 2 at 4, *Cotlow v. Growe*, No. MX 91-001562 (Minn. Special Redistricting Panel Aug. 16, 1991) (same).

Dated: September 24, 2021

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

Charles N. Nauen (#121216)

David J. Zoll (#0330681)

Kristen G. Marttila (#346007)

Rachel A. Kitze Collins (#0396555)

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401-2159

(612) 339-6900

cnauen@locklaw.com

djzoll@locklaw.com

kgmarttila@locklaw.com

rakitze@locklaw.com

Marc E. Elias*
Aria C. Branch*
Daniel C. Osher*
Jyoti Jasrasaria*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
MElias@elias.law
ABranch@elias.law
DOsher@elias.law
JJasrasaria@elias.law

Abha Khanna*
Ben Stafford*
Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0177
AKhanna@elias.law
BStafford@elias.law
JHawley@elias.law

*Admitted pro hac vice

Attorneys for Plaintiffs Frank Sachs; Dagny Heimisdottir; Michael Arulfo; Tanwi Prigge; Jennifer Guertin; Garrison O'Keith McMurtrey; Mara Lee Glubka; Jeffrey Strand; Danielle Main; and Wayne Grimmer