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STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

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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,

Plaintiffs,

and

**MARTIN INTERVENORS'
MOTION TO ADOPT PROPOSED
REDISTRICTING CRITERIA**

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Minnesota similarly situated,

Intervenors,

and

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

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,

Defendants.

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I. INTRODUCTION

On July 18, 2011, the Panel directed the parties to propose redistricting criteria to guide the process of drawing new congressional and state legislative districts, to be submitted on October 5, 2011. Scheduling Order No. 1, at 3. The Martin Intervenors propose the following redistricting criteria, which are addressed below in greater detail:¹

Congressional Districts

1. There will be eight districts with a single representative for each district. 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.
2. The districts will consist of convenient, contiguous territory. 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.
3. Districts shall not be drawn with either the purpose or effect of diluting racial, ethnic, or language minority voting strength, as proscribed by the Voting Rights Act of 1965, as amended, and the Fourteenth and Fifteenth Amendments to the United States Constitution.
4. The districts will preserve communities of interest whenever possible. "Communities of interest" include, but are not limited to, political subdivisions, Indian reservations, neighborhoods, or other geographic areas where there are clearly recognizable similarities of social, political, cultural, ethnic, or other interests, and/or that are linked by common transportation.

¹ In its Order Scheduling Public Hearing, the Panel noted that the parties would be given an opportunity to submit additional criteria after the public hearings being held by the Panel to provide the public with an opportunity to be included in the redistricting process. The Martin Intervenors believe that taking the views of the people of Minnesota into account is of paramount concern, and look forward to the opportunity to refine its proposed redistricting criteria as necessary in light of citizen input.

5. A county, city, or township will not be divided among more districts than necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

6. Districts will be structured into compact units necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

7. 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 districts with a single representative for each district. The 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.

2. No representative district shall be divided in the formation of a senate district.

3. The districts will consist of convenient, contiguous territory. 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.

4. Districts shall not be drawn with either the purpose or effect of diluting racial, ethnic, or language minority voting strength, as proscribed by the Voting Rights

Act of 1965, as amended, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

5. The districts will preserve communities of interest whenever possible. “Communities of interest” include, but are not limited to, political subdivisions, Indian reservations, neighborhoods, or other geographic areas where there are clearly recognizable similarities of social, political, cultural, ethnic, lingual, or other interests, and/or that are linked by common transportation.

6. A county, city, or township will not be divided among more districts than necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

7. Districts will be structured into compact units necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

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.

II. ARGUMENT

A. Number of and Numbering of Districts

Based on the results of the 2010 Census, Minnesota is allocated eight congressional districts, as it was after the 2000 Census. In the 2000 cycle, the *Zachman* Panel numbered congressional districts from the southeast corner of the state to the northeast. *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions (“*Zachman* Criteria Order”), at 2 ¶ 3). The Martin Intervenors submit the same numbering scheme should be used here as well.

The Panel should also adopt the same numbering scheme previously for legislative districts. By statute, the Minnesota senate and house of representatives are composed of 67 and 134 members, respectively. Minn. Stat. §§ 2.021; 2.031, subd. 1. In the last cycle, the *Zachman* panel numbered districts from the upper left part of the state to the bottom right, then numbered the seven-county metropolitan region, beginning with the suburbs and ending with Minneapolis and St. Paul. *Zachman* Criteria Order, at 4 ¶ 4. While district boundaries will change to reflect population shifts, there is no reason to alter this well-established numbering scheme.

B. “Nesting”

Proposed Criterion: No representative district shall be divided in the formation of a senate district.

“Nesting” is the process of drawing districts such that the geographical boundaries of two or more state lower legislative chamber districts are completely contained within the boundaries of a state upper legislative chamber district. The Minnesota Constitution requires that house districts be “nested” within senate districts. See Article VI, Sec. 3 (“No representative district shall be divided in the formation of a senate district.”).

C. Convenient, Contiguous Territory

Proposed Criterion: Districts will consist of convenient, contiguous territory. 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.

By Constitution, Minnesota requires that senators be “chosen by single districts of convenient contiguous territory.” Minn. Const. Art. IV, Sec. 3 (emphasis added). This constitutional provision does not apply to house districts or congressional districts. By

statute, however, Minnesota requires that “*all* districts consist of convenient contiguous territory.” Minn. Stat. § 2.91 (emphasis added).

Contiguity is one of the most common and uncontroversial rules for drawing district lines. *See, e.g., Shaw v. Reno*, 509 U.S. 630, 647 (1993) (identifying contiguity as a traditional districting principle). A contiguous district generally can be defined as one in which one can travel from one part of the district to any other part without crossing the district boundary. Fredrick McBride & Meredith Bell-Plats, *Extreme Makeover: Racial Consideration and the Voting Rights Act in the Politics of Redistricting*, 1 STAN. J. C.R. & C.L 327, 350 (2005)

“Convenient” means “[w]ithin easy reach; easily accessible.” *LaComb v. Growe*, 541 F. Supp. 145, 150 (D. Minn. 1982) (quoting *The Compact Edition of the Oxford English Dictionary* (Oxford University Press 1971)), *aff’d sub nom. Orwoll v. LaComb*, 456 U.S. 966 (1982).

The Martin Intervenors’ proposed criterion is nearly identical with that adopted by the *Zachman* Panel in the last cycle, with the exception of the language italicized below:

[Districts must] consist of convenient, contiguous territory *structured into compact units*. Contiguity by water is sufficient if water is not a serious obstacle to travel within the district. Districts with areas that touch only at a point will be considered noncontiguous.

Zachman Criteria Order, at 2 ¶ 4 & 4 ¶ 5); The Martin Intervenors therefore part ways with the *Zachman* panel’s “contiguity” criterion in only one, limited respect – this criterion should not address “compactness.” While compactness is a relevant redistricting criterion, as discussed in Section II.G below, there is no constitutional or statutory mandate that districts must be compact, and there are significant analytical issues with preferring compactness at the expense of other redistricting criteria. Thus,

while compactness is a relevant factor, it should not be placed on the same footing with the other criteria.

D. Minority Representation

Proposed Criterion: Districts shall not be drawn with either the purpose or effect of diluting racial, ethnic, or language 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.

This proposed criterion is nearly identical to the criterion adopted by the *Zachman* panel. See *Zachman* Criteria Order, at 2 ¶ 5, 4 ¶ 6. It is modified only to reflect the fact that the Voting Rights Act protects the interests of language minorities as well. The need for any plan adopted by the Panel to comply with the Voting Rights Act and the U.S. Constitution is obvious and likely does not require explication as a formal redistricting criterion. Nonetheless, it is important for Minnesota to continue to make clear its commitment to protecting the representational interests of Minnesota's minority communities. The formulation of this commitment adopted by the *Zachman* panel has served the state well over the past decade, and should be adopted by the Panel to govern this round of redistricting.

E. Communities of Interest

Proposed Criterion: The districts will preserve communities of interest whenever possible. "Communities of interest" include, but are not limited to, political subdivisions, Indian reservations, neighborhoods, or other geographic areas where there are clearly recognizable similarities of social, political, cultural, ethnic, lingual, or other interests, and/or that are linked by common transportation.

As the Panel has recognized, "[t]he preservation of 'communities of interest' is a well-established redistricting principle." Amended Order Setting Public Hearing

Schedule (September 13, 2011); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995) (preservation of communities of interest, including those defined communities sharing “political, social, and economic interests,” is a traditional redistricting principle).

The importance of preserving communities of interest has long been recognized in Minnesota. The past two Special Redistricting Panels have recognized the importance of preserving communities of interest. See Zachman Criteria Order, at 3 ¶ 7, 5 ¶ 8;); *Cotlow v. Growe*, No. C8-91-985 (Minn. Special Redistricting Panel Sept. 13, 1991) (Pretrial Order No. 2). Similarly, the federal court redrawing legislative districts after the 1980 Census drew districts “generally . . . along recognized neighborhood lines . . . to join together identifiable neighborhoods with traditional ties.” *LaComb v. Growe*, 541 F. Supp. 160, 164 (D. Minn. 1982).

The Martin Intervenors submit that long-term technological and political trends continue to heighten the importance of preserving communities of interest, while, at the same time, rendering political subdivision boundaries of relatively less importance.

Geographers and political scientists have observed that people sort themselves into neighborhoods and communities with others who share similar attitudes and behaviors. See, e.g., Jowei Chen & Jonathan Rodden, *Using Legislative Districting Simulations to Measure Electoral Bias in Legislatures*, Paper Prepared for the Annual Meeting of the Society for Political Methodology, 9 (July 15, 2010), <http://www-personal.umich.edu/~jowei/florida.pdf>. That is, the “first law of geography” is that “[e]verything is related to everything else, but near things are more related than distant things.” *Id.* at 8. This phenomenon is of great significance to redistricting.

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Because people sort themselves into communities of interest, they typically feel best represented when their voting districts match their community. By contrast, research suggests that districts that “fragment neighborhoods and combine different communities into heterogeneous units” tend to cause individuals to “feel unrepresented.” Richard Briffault, *Lani Guinier and the Dilemmas of American Democracy*, 95 COLUM. L. REV. 418, 431-32, 443 (1995). As a result, where “proximate and contiguous natural communities of interest” are divided,” voters’ ability to “organize [and] . . . influence their current representatives” is diminished. Bernard Grofman, *Would Vince Lombardi Have Been Right if He Had Said: “When It Comes to Redistricting, Race Isn’t Everything, It’s the Only Thing?”*, 14 CARDOZO L. REV. 1237, 1262-63 (1993).

Likewise, a single representative will struggle to represent his or her entire district when it contains an amalgam of disparate and discrete communities of interest. Fair representation of all citizens in a district cannot be achieved if a district consists of “communities with interests in common . . . being thrown in with [other] very unlike components.” Charles Backstrom et al., *Establishing a Statewide Electoral Effects Baseline, in POLITICAL GERRYMANDERING AND THE COURTS*, 145, 153 (Bernard Grofman ed., 1990); *see also* Grofman, *supra*, at 1262.

The necessary corollary of this research is that individuals do not necessarily share similar interests simply because they reside within the same political subdivision. To be sure, a community of interest may correlate with an existent political subdivision, which can serve as a unifying geographically-defined unit and social construct. But “respect for subdivision lines in districting does not in itself demonstrate a substantive theory of

group representation” because “[s]ubstate territorial boundaries, after all, do not necessarily coincide with identifiable or unitary communities of interest.” Nancy Maveety, REPRESENTATION RIGHTS AND THE BURGER YEARS 39 (1991); *see also* Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest*, 33 UCLA L. REV. 1, 34 (1985) (“The boundaries of racial, social, and economic communities may be sharp or barely perceptible, but in either event, there is no evidence that they conveniently coincide with municipal boundaries”); Gordon E. Baker, *The “Totality of Circumstances” Approach, in Political Gerrymandering and the Courts* 203, 207 (recognizing that “[s]ome ‘functional’ communities can transcend county lines and make more reasonable borders for district boundaries than others” such as “[t]ransportation and communication networks [or] common social and economic interests”).

Two examples illustrated the disconnect between how people define themselves as communities and the political subdivisions in which they technically reside.

First, the borders of many political subdivisions are historical relics rather than manifestations of a cohesive organization of modern Minnesota. Indeed, most Minnesota counties were created in the territorial period that ended in 1857.

http://www.mncounties.org/about_counties.html. Factors that went into their shape include (1) adherence to the survey of the Louisiana Purchase ordered by Thomas Jefferson, reflecting Jefferson’s belief that counties should be small enough that a citizen could travel on horseback to and from the county seat in one day; (2) natural boundaries that could not easily be crossed at the time; and (3) the regional economics of the fur

trade, large tract agriculture, mining and the lumber industry. *Minnesota Redesign*, ASSOCIATION OF MINNESOTA COUNTIES (Feb. 2009), http://www.mncounties.org/redesign/Redesign_Package09.pdf.

There are often a great number of things that bind two individuals together more closely than the accident that they reside a county that was created a century and a half ago. Thus, while counties still obviously serve as an important organizational principle of government, they play a fundamentally different role in individuals' conception of their community when a state is connected by media, internet service, highways and commuter rail rather than being traversable only by horse or foot. Likewise, people residing in the same general area but in different political subdivisions will be unified by access to common sources of information, such as newspapers, radio, and television stations. Grofman, *supra*, at 1262.

Second, municipalities often do not align with communities of interest. With increasing regularity, suburban and exurban growth in Minnesota has led to annexation of non-contiguous territory that may have little in common with the annexing jurisdiction. Likewise, in an era of urban sprawl, the line between different cities blurs and sometimes fades to the vanishing point. If the nearest community center or park is technically across a municipal border, that fact may matter little to the average voter.

In short, the goal of drawing a fair district map is not to achieve some abstract geographic ideal, but to ensure that voters of a state are fairly represented:

[O]ne of the . . . bases of representation in our culture is territorial—not of arbitrary aggregations of geography for the purpose of conducting elections, but as meaningful entities

that have legitimate collective interests arising from the identity of citizens with real places and areas. If districts ignore the neighborhood or community within which most people carry out their daily lives, the representative, even in a strongly partisan district, may be faced with difficult conflicts of interest between people in disparate parts of the district; and citizens in those isolated parts of a district may come to feel that their community is unrepresented, even if their ideology is being represented.

Richard Morrill, *A Geographer's Perspective*, in Political Gerrymandering and the Courts 212, 216-17.

While an analysis of particular communities of interest in Minnesota will best be conducted after the public hearings, the Martin Intervenors urge the Panel to recognize certain generic types of communities of interest identified by the *Zachman* Panel.

In addition to its final orders adopting congressional and legislative plans, the *Zachman* Panel repeatedly recognized the importance of preserving communities of interest and specifically recognized and discussed many different types of communities of interest:

Well-established natural divisions. The *Zachman* Panel identified several well-recognized and distinct regions of the state, including the Red River Valley, the Iron Range, and the St. Croix River Valley. *See Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan (“*Zachman* Congressional Order”, at 9; *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan (“*Zachman* Legislative Order”, at 5).

Reservations. The *Zachman* Panel described Native American reservations as among the “largest communities of interest” in Minnesota. *See Zachman* Congressional Order, at 10; *see also Zachman* Legislative Order, at 5 (maintaining the White Earth and Red Lake Reservations in a common senate district).

Transportation corridors. While transportation corridors are not themselves communities of interest, they do serve as an important means of unifying and creating communities of interest in Minnesota because (1) the state's population is clustered in its southeastern center, radiating out from the Twin Cities along the state's major thoroughfares and (2) rural areas of the state are, in some areas, readily traversable only along major transportation corridors. As a result, the *Zachman* Panel recognized that communities of interest may coalesce along the state's transportation corridors. *See, e.g.*, Final Congressional Order at 5-6, 10.

Neighborhoods. As discussed above, local neighborhoods provide one of the most obvious communities of interest, as the nearer two individuals reside, the more closely aligned their interests tend to be. *Chen & Rodden, supra*, at 9. The *Zachman* Panel specifically noted that with the metropolitan area, its plan followed "neighborhood boundaries to the extent possible"

F. Political Subdivisions

Proposed Criterion: A county, city, or township will not be divided among more districts than necessary to meet equal-population requirements or to form districts that are composed of convenient contiguous territory or to preserve communities of interest.

Minnesota recognizes the importance of preserving political subdivisions where possible. Minn. Stat. § 2.91. Where political subdivisions are split to advance other redistricting criteria, they must not be divided more than necessary. *Id.*

Political subdivisions derive their importance as a traditional redistricting principle primarily from being well-defined and clearly identifiable communities of interest. Thus, as the *Zachman* panel recognized "counties, cities, and townships constitute some of Minnesota's most fundamental communities of interest and centers of local government." *Zachman* Legislative Order, at 3 (citing *LaComb v. Growe*, 541 F. Supp. 160, 163 (D.

Minn. 1982) (noting that “minor civil divisions contain people with a community of interests and common local government”).

The *Zachman* panel adopted identical criteria on this issue for legislative and congressional maps:

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.

Zachman Criteria Order, at 2-3 ¶ 6, 4 ¶ 7. The Martin Intervenors’ proposed criterion differs in two respects. First, it omits the first sentence of the *Zachman* criterion, which is redundant with the rest of the criterion. Second, it specifically provides that preservation of community of interests may justify splitting a political subdivision. Political subdivisions should not be slavishly preserved where doing so splits obvious communities of interest. As the *Zachman* panel noted last cycle “[s]ome political subdivisions . . . would have to be split.” *Zachman* Congressional Order, at 4; *see also Zachman* Legislative Order at 3-4 (discussing effort to respect political subdivisions, while splitting them where necessary). For example, where political subdivisions are contiguous only at a single point (or not contiguous at all), it may be necessary to subordinate this consideration to preserve contiguity. Order Adopting Criteria at 11.

G. Compactness

Proposed Criterion: Districts will be structured into compact units 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.

No state statute or constitutional provision requires Minnesotan districts to be compact. There is no federal constitutional requirement that districts meet certain, definable standards of compactness. That is, standing alone, a district cannot be struck down on the singular basis that it is not sufficiently compact. Zachman Criteria Order, at 11.

That said, Minnesota certainly recognizes compactness as a relevant redistricting criterion. *Id.* The past three redistricting panels all included compactness among their criteria. *Id.* at 11-12. The Martin Intervenors therefore submit that the Panel should consider the compactness of districts, albeit as a factor that should be readily subordinated where necessary.

While “compactness” as a principle is easy enough to state, it is more difficult in practice to define. No one method of measuring compactness is standard and, indeed, “[s]uch a straightforward term as ‘compactness’ has proven complicated in redistricting as it has been defined in terms as varied as ‘spatial nature,’ ‘socioeconomic characteristics,’ and ‘state law.’” Frederick McBride & Meredith Bell-Platts, *Extreme Makeover: Racial Consideration and the Voting Rights Act in the Politics of Redistricting*, 1 Stan. J. Civ. Rts. & Civ. Liberties 327, 349-50 (2005). Political scientists have devised dozens of ways of measuring compactness. See D. James Greiner, The Quantitative Empirics of Redistricting Litigation: Knowledge, Threats to Knowledge, and the Need for Less Districting, 29 Yale L. & Pol’y Rev. 527, 542 n.11 (Spring 2011). Generally speaking, compactness refers to the regularity of a district’s shape, in addition to some comparison of the district’s perimeter with its overall area. *Id.* “Definitions of

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compactness include: (1) having the minimum distance between all the parts of a constituency (a circle or hexagon is the most compact district); (2) the relative geographic dispersion of a district, there is no particular ideal of geographic compactness, compactness shall be measured using the Polsby-Popper Test; (3) all parts connected and touching; and (4) the extent to which a district's geography is dispersed around its center (i.e., extend too far from the center of the district)"). Frederick McBride & Meredith Bell-Platts, Extreme Makeover: Racial Consideration and the Voting Rights Act in the Politics of Redistricting, 1 Stan. J. Civ. Rts. & Civ. Liberties 327, 349-50 (2005); *see also* Gary D. Allison, Democracy Delayed: The High Court Distorts Voting Rights Principles to Thwart Partially The Texas Republican Gerrymander, 42 Tulsa L. Rev. 605, 679 (Spring 2007) (noting that two "standard measures of compactness" are "(1) the perimeter-to-area score, which compares the relative length of the perimeter of a district to its area, and [(2)] the smallest circle score, which compares the ratio of space in the district to the space in the smallest circle that could encompass the district") (internal quotation marks omitted and alteration in original).

Ultimately, in some sense, compactness often comes down to a judicial "eyeball test" that deems some districts unjustifiably bizarrely shaped. *See* McBride & Bell-Platts, *supra*, at 349-50; *see also* James Greiner, *The Quantitative Empirics of Redistricting Litigation: Knowledge, Threats to Knowledge, and the Need for Less Districting*, 29 YALE L. & POL'Y REV. 527, 542 (2011) (compactness generally involves comparing district boundaries to some ideal geometric figure that is "pleasing to the eye"); Laughlin McDonald, *The Looming 2010 Census: A Proposed Judicially Manageable Standard and* 73876-0002/LEGAL21815976.3

Other Reform Options for Partisan Gerrymandering, 46 HARV. J. ON LEGIS. 243, 262 (2009) (“[M]ost courts have applied an intuitive, ‘eyeball’ test—if a district looks reasonably compact and similar in shape to other districts drawn by the jurisdiction it is deemed compact”).²

The utility of the compactness criterion can be limited because geometrical ideals typically have no counterpart in geographic realities. Natural geographic boundaries, such as rivers, lakes, and mountain ranges divide Minnesota into shapes. Increasingly, patterns of growth, annexation, and urban sprawl mean that cities do not follow neat square grid patterns.

In addition, it is important to recognize that compactness is not necessarily a neutral redistricting criterion. Adherence to compactness without reference to demographics tends to systematically favor whichever party dominates the less-populated areas of a state at the expense of the party that has more support in densely populated areas. As discussed above, voters typically cluster into communities of the like-minded. The closer together, the more similar the community. Chen & Rodden, *supra*, at 4-5; *see also id.* at 12 (neighboring voters are more politically similar, but the correlation disappears when voters reside more than 20 miles apart). But increased urbanization means that voter clusters are not uniformly distributed. *Id.* at 4. Some voters live in high density cities, others reside in sparsely populated rural areas, and there are a range of

² The *Zachman* panel used three measures of compactness to evaluate its plan: (1) Roeck; (2) Perimeter; (3) Polsby-Popper; and (4) Population Circle. *See* Appendix C to Final Plan.

suburban, exurban, and small towns in between. *Id.* The result is that “virtually any districting scheme that privileges compactness and contiguity will produce a bias against the urban party.” *Id.* at 5. Where compactness reigns supreme over communities of interest, similar voters in densely-populated urban areas are packed into districts, while supporters of that same party in less-populated areas have their vote diluted because they are systematically coupled with their political opponents.

In sum, while compactness is a relevant redistricting criterion, placing too great a weight on drawing aesthetically pleasing districts risks ignoring the fundamental goal of redistricting – ensuring fair representation for Minnesotans.

H. Avoiding Unfair Results for Incumbents or Potential Challengers

Proposed Criterion: 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.

This proposed criterion is identical to the criterion adopted by the *Zachman* panel. *See Zachman* Criteria Order, at 3 ¶ 8, 5 ¶ 9. As the *Zachman* panel recognized in the last redistricting cycle, judicial redistricting panels should not and need not become “entangled in the politics that might surround redistricting processes.” *Id.* at 9. That said, as the *Zachman* panel also recognized, drawing maps only by reference to the redistricting criteria discussed above without any consideration of their political effects may inadvertently result in an adverse impact on a particular group. To avoid such an

outcome, the Panel should—as a final step subordinate to all other redistricting criteria—consider whether a redistricting plan results in an unfair result for incumbents or potential challengers.

III. CONCLUSION

For the reasons stated above, the Panel should adopt the foregoing criteria to guide redistricting.

Dated October 5, 2011.

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