

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

OFFICE OF
APPELLATE COURTS

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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,

Plaintiffs,

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,

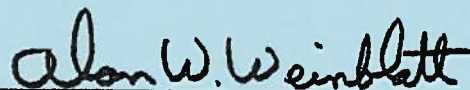
Plaintiff-Intervenors,

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,

Defendants.

Dated: December 9, 2011



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**BRITTON, ET AL
PLAINTIFF-INTERVENORS'
RESPONSE TO PROPOSED
CONGRESSIONAL PLANS**

Introduction

The purpose of this Memorandum is to point out to the Special Redistricting Panel some of the reasons why the radical proposed congressional redistricting plan submitted by Plaintiffs Hippert et al. (hereinafter "Hippert" or "the Hippert Plaintiffs") does not meet even the minimal criteria adopted by this Court. It also will show the Panel several

significant difficulties created by the congressional redistricting plan proposed by the Martin, et al. Plaintiffs (hereinafter “Martin” or “the Martin Plaintiffs”) and the shortcomings therein.

In proceeding to the remedy phase of this litigation, this Court is acting as a court of equity with full equitable powers subject only to the constitutional requirements found in the United States Constitution, the Minnesota Constitution and statutes, general rules of equity and the criteria that the Court, itself, adopted in its November 4, 2011 Order. This Memorandum, therefore, points out both legal and equitable factors to be considered in adopting a final plan of Congressional redistricting. The Court is reminded that the plan it adopts will, absent legislative action,¹ be the plan that will control congressional elections for the next five (5) elections.

I. The Hippert Plan.

A. **Governor Dayton’s Veto.**

The Hippert plan proposes that this Court adopt the congressional redistricting plan passed by the Minnesota legislature but vetoed by Governor Dayton. The Britton, et al. Plaintiffs respectfully submit that for the Court to adopt the Hippert plan would be disrespectful to both the current governor and to the role of any future governor in the decennial redistricting process. Governor Dayton vetoed the plan proposed by the

¹ As this Court has previously noted, legislative and congressional redistricting is, in the first place, a job for the political branches of state government, the legislature and Governor. It is respectfully submitted that granting the Britton, et al motion determining that the present districts are unconstitutional would go a long way in signaling to those political branches that the Federal and Minnesota Constitutions do not permit a denial of Equal Protection to result from governmental inaction or from unconstitutional action.

legislature because (a) it was drawn for the purpose of protecting or defeating incumbents, and (b) it was adopted solely on a partisan vote. That vetoed plan is essentially the same congressional redistricting plan that the Hippert Plaintiffs propose to this Court. It is the functional equivalent. For the Court to now adopt that plan would make the judiciary a super executive, overriding the Governor's veto, and would also constitute a judicial conclusion that redistricting plans that are drawn for the primary purpose of defeating or protecting incumbents can be considered to be a valued judicial remedy.

The Governor of Minnesota has a lawful role participating in adoption of redistricting plans, both congressional plans, *Smiley v. Holm*, 285 U.S. 355, 52 S. Ct. 377 (1932) and state legislative plans, *Duxbury v. Donovan*, 272 Minn. 424, 138 N.W.2d 692 (1965). He has the right of veto which, if exercised, renders such plan a nullity. *Id.*

In recognizing the validity of that veto, our Supreme Court began with the proposition that:

The concepts with which we are concerned involve such basic considerations as (a) the division of authority between the executive, legislative and judicial branches of our government. . .

Duxbury, supra, 272 Minn. at 426, 138 N.W.2d at 694.

For this state court to overrule Governor Dayton's veto would be to ignore his role in the congressional redistricting process. As concluded by the Court in *Duxbury, supra*.

It is our conclusion that the language used by the framers of the constitution in dealing with the problem of apportionment, read in light of the other pertinent provisions of that document, gives to the governor the power to require a two-thirds majority of both houses in order to give to apportionment legislation the effect of law.

Duxbury, supra, 272 Minn. at 442, 138 N.W.2d at 704. There was no two-thirds override majority in favor of this plan.

This court should not judge the merits of any governor's veto, but only acknowledge the constitutional power to veto and not allow the legislature to do an end run around that veto by the expedient of presenting it, with or without minor modifications, to a court for adoption. *Duxbury, supra*, 272 Minn. at 242-43, 138 N.W.2d at 704.

This particular Governor's veto message containing his reasons for exercise of the veto also are entitled to great weight because they, in part, are based upon the conclusion that the Hippert plan (i.e. the legislature's plan) had incumbent protection (Republican incumbent) and targeted incumbent defeat (Democratic-Farmer-Labor incumbents) as its primary motivation. That deficiency in the Hippert plan, as recognized by Governor Dayton (See Exhibits A and B attached hereto and incorporated herein), is precisely one of the factors that this court has prohibited. "Congressional districts shall not be drawn for the purpose of protecting or defeating incumbents." (Order Stating Redistricting Principles, Nov. 4, 2011 at ¶ 7 on p. 7). Thus, because (a) this state Court should honor the veto by any governor of congressional or legislative plans and (b) this particular Governor's ground (i.e. his opposition to incumbency protection) melds with the criteria adopted by the Court, the Hippert plans should be viewed, at least, with great suspicion. The Britton Plaintiffs ask that the Hippert plan be rejected in deference to the executive and in recognition of its incumbent protection motivation.

B. Specific Weaknesses.

Several specific weaknesses in the Hippert, et al. proposal are easily seen. Indeed, the Hippert proposed congressional map is the most drastic and draconian option of all that have been put forward. Geographically, it violates the concept of “community of interest” under any definition. That result should not be surprising since its principal purpose is to create a safe congressional district for freshman congressman Cravaack. The only way to have done that is to create, from whole cloth, an east-west district across the north central part of the state. In order to do that and adhere to population equality, the plan creates two east-west districts, thus combining in a single district the agricultural counties of northwest Minnesota with the mining, timber, shipping and recreational counties of the northeast.

1. Proposed Eighth Congressional District

The northwest part of the state and the northeast part of the state have been in separate congressional districts since at least 1891. See attached maps from the Minnesota Geographic Information Service (Exhibits C1-C-9)

The north half of the current Seventh Congressional District (northwestern Minnesota) has absolutely nothing in common with the north half of the current Eighth Congressional District (northeastern Minnesota). The entire Seventh Congressional District is agricultural, beef and pork, grain and dairy. The current Eighth Congressional District is based on mining, recreation, shipping and timber. There is no community of interest between them. Furthermore, their interests may often be in conflict.

The Hippert proposal for Congressional District 8 starts with the proposition that the current Eighth Congressional District “has suffered significant population losses in the past decade.” Hippert Brief at p. 42. That statement is totally factually UNTRUE. The ideal population for a Minnesota congressional district in 2011 is 662,991 people. (Order Stating Redistricting Principles, Nov. 4, 2011, at p. 5). The current Eighth Congressional District has 660,342 people.² Thus, only 2,649 people need to be added to that district in order to achieve population equality. The radical surgery on Congressional District 8 that the Hippert plan proposes cannot logically or rationally be based on the addition of 2,649 people, particularly when that number can be found easily in Beltrami County, which is already split. For that reason alone Hippert proposed Congressional District 8 should be rejected.

The Hippert plan’s alleged second justification is that Canadian border points of entry along the state’s northern border create a community of interest. First, no evidence exists that any so called “port” is, itself, a source of Canada-U.S. trade. General trade figures do not tie that trade to any of the listed “ports.” Furthermore, six of the eight so called “ports” are also included in the Britton Plaintiffs’ proposed Seventh Congressional District. The same is true for the Martin Plaintiffs’ proposed Seventh Congressional District. Trade simply is a factor, not a basis for drawing districts. It is simply not a measure of a community of interest. Congressional members represent people, not dollars of trade.

² Minn. Dept. of Admin. Office of Geographic and Demographic Analysis, <http://www.demography.state.mn.us/resource.html?Id=31942>. Exhibit D attached hereto.

Nor is the quantity of Federal lands in the current Eighth Congressional District a valid justification for the Hippert Eighth Congressional District. The parks, forests and refuges named in the Hippert brief are now primarily in the current Eighth Congressional District and are also in the new Eighth Congressional District as proposed in the Britton Plaintiffs' plan for the Eighth Congressional District and in the Martin Plaintiffs' plan for that district. This "community of interest" relates the purpose for which those lands are used, not the interests of the inhabitants. There is no dispute that the current Eighth Congressional District is heavily recreational and the current Seventh District is not. There is no need to mix and, hence dilute, that recreational community of interest.

Native American reservations should not be put into a single congressional district just for the convenience of the United States Bureau of Indian Affairs as the Hippert Brief argues (p. 45). There was absolutely no testimony from elected Native American tribal officers asking that they all be put in a single congressional district. Such baseless packing of Native Americans is both constitutionally suspect and makes no economic or social sense. While no Reservation should be divided needlessly in drafting a district (and the Britton et al. plan does not do so), packing all Reservations into one district is racial gerrymandering, pure and simple.

Transportation corridors are important factors to be considered in drawing congressional districts, but Minnesota Highway 2 is not such a corridor. It does not connect any of the seven (7) northwest counties to the rest of the proposed Hippert Congressional District 8, nor are there any other "community of interest" roads within the proposed district. To call Highway 2 "convenient for travel" (Hippert Brief at 46) for

people living in the eastern part of the proposed district to easily travel the far western part of Minnesota could only come from the pen of one who has not travelled it between November and April. In comparison, note that Britton, et al. plan features transportation corridors that are north-south and include numerous highways (e.g. U.S. 75, U.S. 59, MN 9 and Interstate 94).

Freight railroads likewise do not create a community of interest. Just because a freight train may travel through a district does not engender any community or even sense of community. The Hippert plaintiffs have provided no evidence that the small towns along the railroad right of way have anything in common. They don't. Likewise, iron ore trains traveling from Montana and Wyoming (Hippert Brief, p. 48) speeding through the state to Lake Superior do not create a community of interest, even if they stopped or even slowed down, a proposition for which there is no factual basis. The iron ore and goods that are said to account for 80% of the Port of Duluth Superior total tonnage may be from Montana, Wyoming and from the Minnesota Iron Range. They are certainly not from the counties of far western and northwestern Minnesota. Again, where is the community?

The Hippert proposed Congressional District 8 also violates Rule 1: "If it ain't broke, don't fix it." Why destroy the historic agricultural community of the Seventh Congressional District or the equally distinct mining, recreation shipping and timber communities of the Eighth Congressional District? These are actual and real communities, not the *post hoc ergo propter hoc* design of the Hippert plan.

2. Seventh Congressional District

The Hippert proposed Seventh Congressional District is gerrymandering at its worst. If memory is correct, it was the Hippert group that proposed including Chisago and Isanti Counties in an expanded 11 County Metropolitan Area definition. Now that same group proposes putting those same two “metropolitan” counties in the same congressional district with twenty-four (24) of the most rural counties of the state along the South Dakota and Iowa borders, none of which are within the Hippert plaintiffs’ expanded definition of “metropolitan.”

The only justification for the geographic and cultural mishmash created by their proposed Congressional District 7 is the unsupported claim that the Hippert plan combines western Minnesota with the “fast growing area in the central part of the state and the northern Twin Cities metropolitan area (e.g. Sherburne, Isanti, Chisago, Pine and Mille Lacs Counties). Hippert Brief at p. 38. Where is the community of interest in that configuration? Which current member of Congress lives in the eastern extreme of this proposed district from which to create a new rural district? A simple look at this district shows that it makes no common sense.

The Hippert group argues that there has been considerable growth in the central part of the state over the past decade, citing only the tourist agency’s website. Even if true, that fact does not create a community of interest between Pine City and Wadena (Wadena County) or Wilkin County, to name a few. It is not proximity that necessarily creates a community nor is it distance that prevents the existence of community. It is commonality of interest and experience. The quality of farmland and the people’s

commitment to that land, as a way of life, that is found in the western counties of Minnesota does not create a commonality with Pine County or the exurban development of Isanti or Chisago, the very urbanization that formed the justification for the Hippert group's push for an "11 county metropolitan area" definition.

It is true that Interstate 35 and the communities around it do have a civil, political, educational and social commonality. Likewise, so do the communities built and growing along Interstate 94 and (though to some lesser extent) the counties along U.S. 169, but in no way do these facts justify lumping all of the above separate communities together. Interstate 35 also runs through the south central counties. Under the Hippert theory, they, too, should be added. Likewise, including the exurban counties of McLeod, Sibley, Meeker, Kandiyohi and Renville and lumping them with the strongly agricultural western tier of counties along the state's western border does not make sense. What is the currently existing common interest?

The Britton Plaintiffs agree that St. Cloud is a regional center of culture, entertainment and education. Hippert Brief, p. 40. If that is true, what is the justification for including it in the same congressional district with Breckenridge and Ortonville on the west and Pine, Isanti and Chisago on the east?

Likewise, if it is true that St. Cloud does not have a strong community of interest with far northern Minnesota (Hippert Brief, pp. 40-41), why tie it to Mille Lacs County, Mora and northern Pine County? This Hippert principle may be correct, but its application in this proposal runs contrary to that very principle.

For these same reasons, the Britton, et al. plan centers its proposed Congressional District 6 around the communities of St. Cloud, Sherburne County, Anoka County and Washington County. The proposed Britton Congressional District 6 community of interest is Interstate 94 and U.S. Highway 10 from St. Cloud to the Wisconsin border. At least as important, the Britton, et al. proposed Congressional District 6 calls for only minimal change from the current configuration, only deleting Wright County (as requested at the public hearings) because it is metropolitan. The Britton plan is modeled after the current plan adopted by the Panel in Zachman v. Kiffmeyer, except that (a) it no longer divides Washington County, (b) no longer includes any part of Wright County or Ramsey County, (c) still includes all of Benton County and Sherburne County, and (d) still includes part of Anoka County and Stearns County. Perhaps most importantly, the Britton plan includes the Benton County part of St. Cloud, the Stearns County part of St. Cloud and the Sherburne County part of St. Cloud proving that it is not necessary to divide that city into several congressional districts.

While proposed Hippert Congressional District 7 does include “many out state cities of similar size” (Hippert Brief, p. 40), the very list of those cities (*Id.*) shows the total lack of commonality among them, *e.g.*, Taylors Falls, Alexandria, Breckenridge, Montevideo. Under the Hippert theory, all cities of roughly equal size should be lumped together. In fact, that is what their plan proposes. Because the Hippert plan does not meet its own principles, because it has no real commonality of interest, because it needlessly wrecks havoc on the historical north-south division and because it needlessly divides St. Cloud, it should be rejected.

3. Sixth Congressional District

While Hippert Districts 7 and 8 make absolutely no sense, the proposed District 6 does have some element of rationality. Why, then, does it needlessly cut off the southern part of Washington County from that district? There is no reason why all of Washington County could not be kept within the Sixth District. Since Anoka County is split anyway, Washington County could be left intact and a different split in Anoka or Stearns County could be substituted. After all, wasn't it the Hippert group that so insisted on splitting fewer counties?

Furthermore, in light of the testimony at the St. Paul public hearing that residents of Washington County did not want to be included with a Wright County District why not honor that reasonable request, delete Wright County and substitute more of metropolitan Anoka County, the balance of Washington and a larger part of Stearns. No reason except an apparent desire to break up Washington County.

What happened to the 11 County Metropolitan Area that the Hippert Plaintiffs fought so hard to have recognized?

4. Fifth Congressional District

Congressional District 5 of the Hippert Plan would be reasonable, but for the fact that it adds parts of Brooklyn Park, Brooklyn Center and Hilltop instead of Bloomington and Edina. Indeed, it deletes Edina from Congressional District 5 even though that first ring suburb is left surrounded on three sides by the balance of the district.

In so gerrymandering the district, the plan needlessly both splits Brooklyn Park and separates the remainder from Brooklyn Center, thus destroying that community of interest. No reason or justification is offered.

Bloomington is the second largest city in Hennepin County. Furthermore, it is closely tied to Richfield to its north. They share Interstate 494 and the commercial development on both sides of that major road. There is absolutely no reason to separate the two communities and the Hippert plaintiffs do not even attempt to offer one. *Per contra*, keeping Brooklyn Park and Brooklyn Center both intact and together would more closely meet the needs of those growing suburbs.

The Hippert group's brief (p. 11) contends that first ring suburbs should be kept with the center city to which they adjoin. If so, why separate Edina and Bloomington from Minneapolis?³ The Court's attention is drawn to the fact that Brooklyn Park and Fridley are not first rung suburbs. The Hippert plan does not even follow its own theory. The split of Brooklyn Park (part) from the rest of that city and from Brooklyn Center cannot be justified, particularly because it is not necessary or reasonable.

The Hippert Plan's decision to delete Bloomington and add Fridley (but only an arbitrary part), Hilltop, Brooklyn Center and an arbitrary part of Brooklyn Park to Congressional District 5 shows that they clearly intend to pack as many racial and language minorities into a single district as possible. This racial gerrymandering has no place in an open and transparent redistricting plan, particularly not in a court adopted

³ The Britton plan does not totally separate Edina from Minneapolis. It does split Edina, but only because it is too large.

plan. This effort should be rejected. There is little doubt that Congressional District 5 has and in all likelihood will continue to elect a congressional representative who is the choice of racial and language minorities without the obvious “packing” accomplished by this plan.

5. Fourth Congressional District

Congressional District 4 of the Hippert Plan, like that found in the Martin plan (though with a different configuration) needlessly splits Washington County (between proposed CD 4 and CD 6) and, as the result, also needlessly splits Inver Grove Heights. By the simple expedient of keeping Washington county intact (as Hippert et al urged this panel to do), not splitting Inver Grove Heights and dividing Eagan along Interstate 35E significantly less damage could be done to this district. What is the justification, reason or even rationale for adding an arbitrary part of Fridley and Spring Lake Park (both in Anoka County) to the St. Paul, Ramsey County and northern Dakota County Congressional district; and also adding a part, but only a part, of Washington County to that same district? What is the commonality between the communities of northern Dakota County and Anoka County?

It is respectfully submitted that there is also no rationale for dividing Woodbury, Inver Grove Heights and Fridley except to create a hodgepodge of unrelated municipalities.

There is also no justifiable reason for cutting Sunfish Lake and western Inver Grove Heights off from St. Paul, South St. Paul and West St. Paul. All of these communities are, without doubt, parts of metropolitan St. Paul. To add insult to that

injury, those St. Paul suburbs are added to Wabasha, Le Sueur and Nicollet counties. To what legitimate end? What is even an arguable community of interest between Inver Grove Heights and Wabasha, Zumbrota, Kasota or Elysian?

The proposed Congressional District 4 should be rejected because it violates nearly all of the Court's criteria as well as the Hippert, et al. criteria (i.e. tie suburbs to the adjacent central city) and has no rational basis.

6. Third Congressional District

The Hippert Plaintiffs' proposed Congressional District 3 would make some sense if it did not include suburban Edina and Bloomington with rural non-metropolitan McLeod County. Why that county is added instead of metropolitan Wright County is a mystery. Wright County, at the request of the Hippert Plaintiffs, is in the metropolitan area, but McLeod County is not.

Just as nonsensical, why is Carver County split off from Scott County? If ever there was a Burns and Allen or Abbott and Costello, Scott County and Carver County belong in the same Congressional District. Their community of interest is not just geographical as neighbors. Together they and western Dakota County form the heart of exurbia. Together these three counties form more than two thirds (2/3) of a congressional district. What is the rationale for dividing them? Even more weird and unexplained is why Scott County is dumped in with Goodhue and Wabasha Counties. Again, the Hippert Plaintiffs argued strongly for an 11 county metro area including Dakota and Scott, only then to put them in with all rural counties. It makes no rational sense, except that like

sausage, one probably would not have liked to see how it was made behind closed Republican caucus doors.

Plaintiffs Britton, et al. ask that the Hippert plan for Congressional District 4 and Congressional District 3 be rejected as being contrary to fair and reasonable redistricting principles. These proposals are not just a matter of disagreement. They are totally political gerrymandering for partisan purposes.

7. Second Congressional District

Hippert Congressional District 2 is the result of having taken Scott and southern Dakota Counties out of proposed District 2 and dumping them into the rural district of Wabasha, Goodhue, Rice, Le Sueur and Nicollet (part). It simply makes no sense. Not only does this plan 1) needlessly divide Scott off from Carver, and 2) put Scott and Dakota, suburban counties, in the same district with six rural counties but it also violates the very principle on which the plan says that it is based, recognition of rings.

It is respectfully submitted that the southern and western exurban metropolitan ring around the Twin Cities is southern Dakota, Scott, Carver and Wright Counties. The Hippert plan pays lip service to this ring, but puts its counties into four different congressional districts. Just as the Hippert plan puts “metropolitan” Chisago and Isanti County into a rural congressional district, it does exactly the same thing to Scott and Carver. It should be rejected.

8. First Congressional District

If the goal is to totally screw up the state's social, economic and political relationships, the proposed Hippert district is well suited for that purpose. The proposed plan ignores the fact that the counties west of Blue Earth are highly agricultural, have few urban centers and are more closely associated with the agricultural western tier of the state than they are with the south and southeastern sections of the state. The other, more rational choice and minimal change plan, is to add to the First Congressional District the northerly counties of Wabasha, Goodhue, Rice, Nicollet and Le Sueur. This will create a more centered district of mid-sized towns and recognizes Interstate 35 as its base and its commonality.

It is absolutely true that the First Congressional District needs to add people, but why create three districts along Minnesota's western border when one district will do just fine? The simplest and least damaging way to add the required number of people to the first District is simply to expand north from Winona County to add Wabasha County; expand north from Olmsted County and Dodge County to add Goodhue County; expand north from Steele County to add Rice County; and expand north from Waseca County and Blue Earth County to add Le Sueur County (a small part of which was already in Zachman District 1).

This is the Britton proposal for Congressional District 1. It splits only two counties: Dakota County contributes its part of Northfield City so as to keep that city whole; and Le Sueur County contributes a portion of New Prague. This district is focused north and south because it is tied together by Interstate Highway 35, Interstate Highway

90 and U.S. Highways 169, 218, 52 and 63. Equally as important, it contains the larger towns of southeast and south central Minnesota, i.e., Rochester, Red Wing, Faribault, Northfield, Albert Lea, Austin and Owatonna, but excludes those towns in the west and southwest whose interests are solely agricultural and not commercial.

This alternative, like the suggested changes in the Fourth, Fifth, Seventh and Eighth Congressional Districts that are suggested by Britton et al., is a “minimal change” proposal. It involves the least social and political engineering and promotes stability. This alternative also enables Congressional District 7, the westerly agricultural area, to simply expand south, and pick up the nine southwesterly counties (except not Watonwan) in their entirety. Again, a minimal change plan.

II. The Martin Congressional Plan

There are certain aspects of the congressional redistricting plan proposed by the Martin, et al. Plaintiffs that should give the Court great cause for concern, particularly in light of the criteria it has adopted.

A. Pairing of the only two female members of Congress from Minnesota.

Foremost of these concerns is the fact that this plan may needlessly pair Minnesota’s only two female members against each other. Representative Betty McCollum is a resident of the city of St. Paul and County of Ramsey. Representative Michelle Bachmann is, on information and belief, a resident of Washington County. The Martin Plaintiffs’ proposed plan puts them in the same congressional district. Not only are these two representatives currently the only female members of Congress from

Minnesota, but they are two of only three women to ever represent this state in the United States House of Representatives. While incumbency is not a legitimate basis for districting, an important equitable rule is: “above all else, do no harm.” This proposed configuration is not necessary or fair. Furthermore, a court of equity should not allow this result, intended or not.

While the Britton, et al. Plaintiffs are DFL oriented and would very much like to see Representative Bachmann defeated, they strongly believe that such defeat should only come at the hands of the voters – not by judicial political gerrymandering, as long as there is a reasonable way to avoid it.

B. Washington County

To add insult to this injury, adding parts of Washington County helter-skelter to the Fourth Congressional District is a needless change. Since 1982, the Fourth Congressional District has only included Ramsey County and the adjoining portions of Dakota County. The proposed Martin plan detaches all of Dakota County and adds to Ramsey County only the southern, more rural, portion of Washington County, the portion that apparently includes the home of Representative Bachmann. By so doing, the Martin plan also needlessly divides Washington County.

C. Deleting St. Paul’s southern suburbs – Martin Congressional District 4

The second concern with the Martin plan arises out of the first. Because that plan adds a large part of Washington County to St. Paul and Ramsey County, it therefore deletes from the Fourth Congressional Districts, the cities of West St. Paul, South St. Paul, Mendota Heights and Inver Grove Heights, all first ring suburbs of the St. Paul-

Ramsey County congressional district which have been part of Congressional District 4 since 1982. The current judicial challenge to the constitutionality of the state's congressional districts is based solely on population inequality. Absent that inequality, there would be no judicial basis for redrawing districts at all.⁴ This plan is far from making only those changes arguably required to achieve population equality. Hopefully the goal of the plan for the Fourth District is not to split the language minority population (Spanish) of St. Paul's West Side residents from their Hispanic cousins in West St. Paul and South St. Paul. That, however, is the result. The Britton, et al. Plaintiffs ask the Court to avoid that needless dicing and slicing.

D. Martin Congressional District 3

Then, having torn St. Paul's first ring southern suburbs from their historical congressional and cultural base, the Martin plan arbitrarily adds them to Plymouth, Minnetonka, Hopkins, Edina, Eden Prairie and other western and southern Hennepin County suburbs. The plan arbitrarily declares that those southern St. Paul suburbs (Inver Grove Heights, South St. Paul, West St. Paul and Mendota Heights) which have previously been an integral part of Congressional District 4 for 30 years, have now, miraculously, become a community of interest with western Hennepin County. Calling a horse a camel does not increase the camel population by one. Contending that these first ring St. Paul suburbs are part of a "community" with Plymouth, Minnetonka, Hopkins,

⁴ This is precisely the reason why the Britton Plaintiffs have been so insistent in seeking a judicial determination that the present districts are unconstitutional as a first step prior to issuing a plan for new districts. If the old districts are not unconstitutional, what is the source of judicial authority to create new ones?

Edina and Eden Prairie, does not create or recognize a community. It simply destroys one. As noted in their names, these suburbs are part of the community of interest of St. Paul. They are not east Minnetonka.

The four questions arising from this sea change are:

1. Does northern Dakota County (i.e., South St. Paul, West St. Paul, Mendota heights, Inver Grove Heights), have more in common with St. Paul than do the river communities along the St. Croix River?
2. Do those same first ring St. Paul suburbs have more in common with St. Paul than they do with Plymouth, Minnetonka, Eden Prairie and Burnsville?
3. What is the legal or equitable justification for splitting Washington County when it is not necessary to achieve population equality?
4. What is the legal or equitable justification for pairing the state's only two female members of Congress against each other?

The Martin Intervenors have answered none of these questions.

St. Paul's primary north and south transportation corridor is Interstate 35E (through Mendota Heights). Its ethnic mobility pattern and language pattern is from its Hispanic West Side to Hispanic West St. Paul and South St. Paul and not to primarily caucasian Washington County. Likewise, northern Dakota County's ties are north to St. Paul, not to the far west of Plymouth, Minnetonka, Hopkins, or even east to Woodbury. This is a blatant attempt at social and political engineering from whole cloth. One only needs to drive South St. Paul, Inver Grove Heights, West St. Paul and the Lake Minnetonka area to see the absence of economic, social and language commonalities. If it is true, as all parties to this case and the Zachman case panel agreed, that St. Paul and Minneapolis should not be in the same congressional district, then what is the rationale

for combining St. Paul's first ring suburbs of West St. Paul, South St. Paul, Mendota Heights, etc. with far western (second and third ring) Minneapolis suburbs?

The Martin plan combines St. Paul's Summit University and Frogtown areas with Marine on St. Croix, Stillwater and the St. Croix River communities down to Denmark. Central St. Paul has less of a community of interest with Denmark Township than it does with the nation of Denmark

E. St. Cloud is now in the Arrowhead. Proposed Congressional District 8

The next most disrespectful change wrought by the Martin plan is to place the City of St. Cloud (actually only part of it) in the same congressional district (CD8) with Duluth, the Arrowhead and the Iron Range. Where is that commonality of interest? Simply put, there is no rational basis for including Duluth, the state's third largest city (and primary port) with arbitrary parts of St. Cloud in the same district. A congressional representative from St. Cloud will have little in common with his or her Iron Range, forestry or Lake Superior constituents. Likewise, a congressional member from Duluth or the Range will have great difficulty focusing on St. Cloud issues. To further question the wisdom of this plan, why did the drafters find it necessary to split St. Cloud if its inclusion in proposed Congressional District 8 is such a good idea?

Just as the Hippert, et al. plan creates an east west district in northern Minnesota running from the Wisconsin border to the North Dakota border, lumping recreation, timber, mining and Great Lakes interests in with the agricultural interests of the Red River Valley, the Martin, et al. plan district lumps very disparate interests together and both suffer. To a resident of Duluth, the Range or Koochiching County, being thrown

into the same congressional district with a part of St. Cloud makes no more common sense than being combined with Moorhead. Simply put, both proposals are political gerrymandering with no rational justification.

Issuance of a judicial remedy by this Court to cure the population inequality problem should not be the occasion for social or political engineering. *See, e.g., Sixty Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 92 S.Ct. 1477 (1972). As with the Hippert et al. plan for a new Eighth Congressional district, the Martin, et al. plan exceeds the bounds of judicial self restraint. Compare the minimal change plan for the Eighth Congressional District proffered by Plaintiffs Britton, et al.

F. Goodhue County.

Another unreasonable proposal of the Martin, et al. plan is its inclusion of Goodhue County in the exurban mix of southern Dakota, Scott, Carver and western Hennepin counties. Those latter four have the commonality of interest that the plan appears to be looking for. Plucking rural Goodhue out from its neighbors (Wabasha and Rice) and adding it to the metropolitan exurban district destroys that commonality. Even worse, the plan gives no factual, equitable or legal basis for combining Red Wing (Goodhue) with northern Hennepin County. Goodhue is not suburban or exurban. Its distance from the core urban center should, by itself, result in its being part of the southern Minnesota district.

G. Seventh Congressional District

The Britton Plaintiffs are in total agreement with the Martin Plaintiffs that the six most southwestern counties of Minnesota are part of the western agricultural band and

should be part of the expanded Seventh Congressional District. (Martin Brief at p. 21). The reasons recited in their brief are correct and accurate. A drive in those six counties (Pipestone, Murray, Cottonwood, Rock, Nobles and Jackson) and then following U.S. 75 north confirms that commonality. What is not understandable at all is the plan's inclusion of Sibley, McLeod and Meeker in this western agricultural district. Those three as well as Kandiyohi and Renville counties are very different from the recognizable western agricultural band. While western Minnesota is entitled to have its own congressional district, there is no reason to require that agricultural district to encompass the exurban part of the Twin Cities. In fact, to do so distracts from the commonality of the western agricultural band of counties. These five counties are not likely to get the congressional focus from a congressional representative from western Minnesota agricultural interests than they would from a member from their own counties or from the exurban counties of Wright, Carver and Scott. Just as the western counties are entitled to a representative who shares and understands their needs, so, too, do these eight westerly exurban counties (Kandiyohi, Renville, Meeker, McLeod, Sibley, Wright, Carver and Scott) have sufficient population (when southern Dakota is added) to justify having their own voice.

Conclusion

A lawsuit challenging existing congressional and legislative redistricting based upon the decade long changes in population is not an occurrence for major surgery on a political branch of government. *See e.g. Beens v. Erdahl*, 336 F.Supp. 715 (D.Minn. 1972), *reversed sub non, Sixty Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 92 S.Ct. 1477 (1972), in which the United States Supreme Court summarily reversed a judgment of the District Court that reduced the number of state senators from sixty-seven (67) to Thirty-five (35) and the number of state representatives from one hundred thirty five (135) to one hundred five (105) in the context of legislative redistricting. In reversing that order, the Supreme Court correctly observed:

The remedial powers of an equity court must be adequate to the task, but they are not unlimited.

Sixty Seventh State Senate v. Beens, supra, 406 U.S. at 199, 92 S.Ct. at 1485.

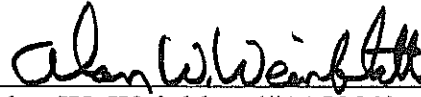
For the Court to adopt Hippert, et al. proposed Districts 1, 2, 3, 4, 6, 7 and 8 would constitute similar radical surgery. Adoption of proposed Hippert District 5 is racial gerrymandering (i.e. “packing”) at its worst and should not be allowed.

As a court of equity the judgment of the Court should focus on the necessary expansion or contraction of existing districts to achieve population equality and to recognize those changes that reflect demographic changes, not political power changes. This minimal change concept is absent from both the Hippert, et al. proposal and the Martin, et al. plan. Those plans should be rejected and a minimal change plan, either that

offered by Plaintiffs Britton, et al. or the Court's own equitable concept of minimal change should be adopted.

Respectfully Submitted,

Dated: December 9, 2011



Alan W. Weinblatt (#115332)

Jay Benanav (#0006518)

Jane L. Prince (#0388669)

WEINBLATT & GAYLORD, PLC

111 East Kellogg Boulevard, Suite 300

St. Paul, MN 55101

Telephone: (651) 292-8770

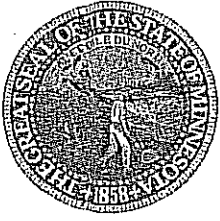
Facsimile: (651) 223-8282

alan@weglaw.com

Attorneys for Plaintiff- Intervenors Britton, et al.

EXHIBITS

- A. Governor's veto message of Legislature's legislative districting plan
- B. Governor's veto message of Legislature's congressional districting plan
- C. Historic Congressional Maps – 1892-2010
- D. 2010 Population Counts for Minnesota Congressional Districts



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 19, 2011

The Honorable Kurt Zellers
Speaker of the House
463 State Office Building
St. Paul, Minnesota 55155

Dear Speaker Zellers:

I have vetoed and am returning Chapter 35, House File 1425, a bill adopting a legislative districting plan for use in 2012 and thereafter.

In my letter of April 25th to Representative Sarah Anderson, the Chief Author of this bill, I stated that I would not support a plan whose districts were drawn for the purpose of protecting or defeating incumbents. This bill violates that principle. It pairs five DFL senators, but only one Republican senator. It pairs 14 DFL representatives, but only six Republicans. In each pair, one incumbent must either move, not run for re-election, or be defeated. The districts in this bill are too partisan, drawn for the purpose of defeating a disproportionate number of Democrats.

My April 25th letter also made clear that, to earn my approval, the plan must be passed with strong bipartisan support, both in committee and on the floor. This bill was not. After all DFL amendments to the districting principles were defeated, both in committee and on the floor, the map was unveiled and adopted with little opportunity for public analysis and reaction, and the plan received no DFL votes in either the House or the Senate.

Legislative districts must endure for a decade. They must provide fair representation for voters of all political parties. A plan without bipartisan support is one I will not approve.

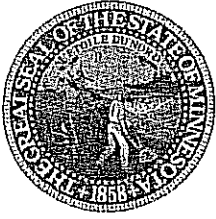
Sincerely,

A handwritten signature in black ink that reads "Mark Dayton".

Mark Dayton
Governor

cc: Senator Michelle L. Fischbach, President of the Senate
Senator Amy T. Koch, Majority Leader
Senator Thomas M. Bakke, Minority Leader
Senator Geoff Michel
Representative Paul Thissen, Minority Leader
Representative Sarah Anderson
The Honorable Mark Ritchie, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Albin A. Mathiowetz, Chief Clerk of the House of Representatives

EX. A



STATE OF MINNESOTA

Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

May 19, 2011

The Honorable Kurt Zellers
Speaker of the House
463 State Office Building
St. Paul, Minnesota 55155

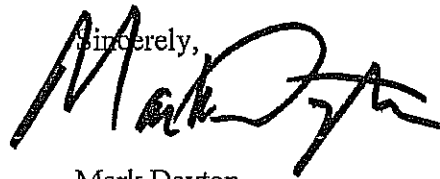
Dear Speaker Zellers:

I have vetoed and am returning Chapter 36, House File 1426, a bill adopting a congressional districting plan for use in 2012 and thereafter.

In my letter of April 25th to Representative Sarah Anderson, the Chief Author of this bill, I stated that I would not support a plan whose districts were drawn for the purpose of protecting or defeating incumbents. This bill violates that principle. It creates safe seats for six incumbents, while the First District has been drawn for the purpose of defeating the incumbent.

My April 25th letter also made clear that, to earn my approval, the plan must be passed with strong bipartisan support, both in committee and on the floor. This bill was not. After all DFL amendments to the districting principles were defeated, both in committee and on the floor, the map was unveiled and adopted with little opportunity for public analysis and reaction, and the plan received no DFL votes in either the House or the Senate.

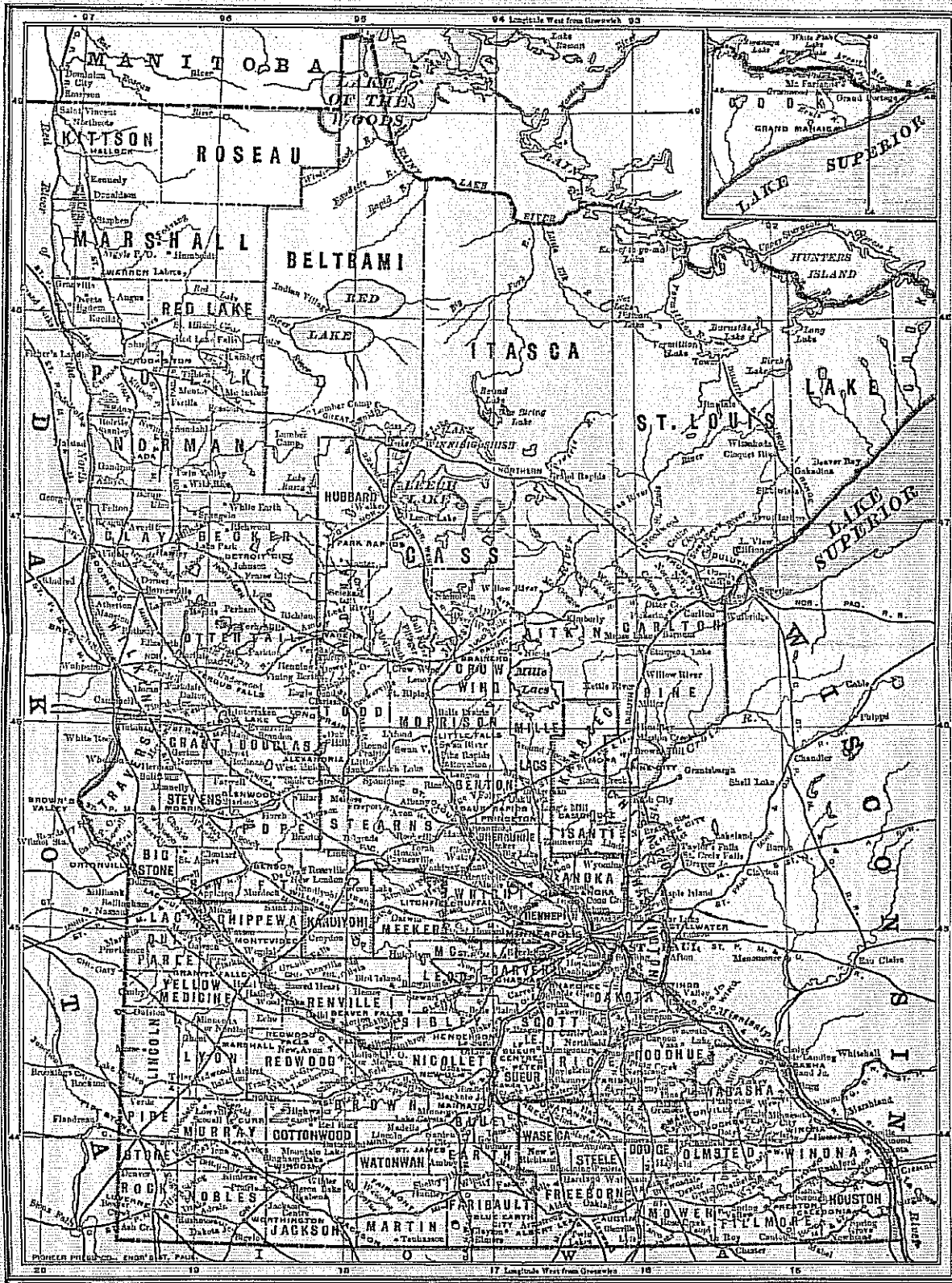
Congressional districts must endure for a decade. They must provide fair representation for voters of all political parties. A plan without bipartisan support is one I will not approve.

Sincerely,


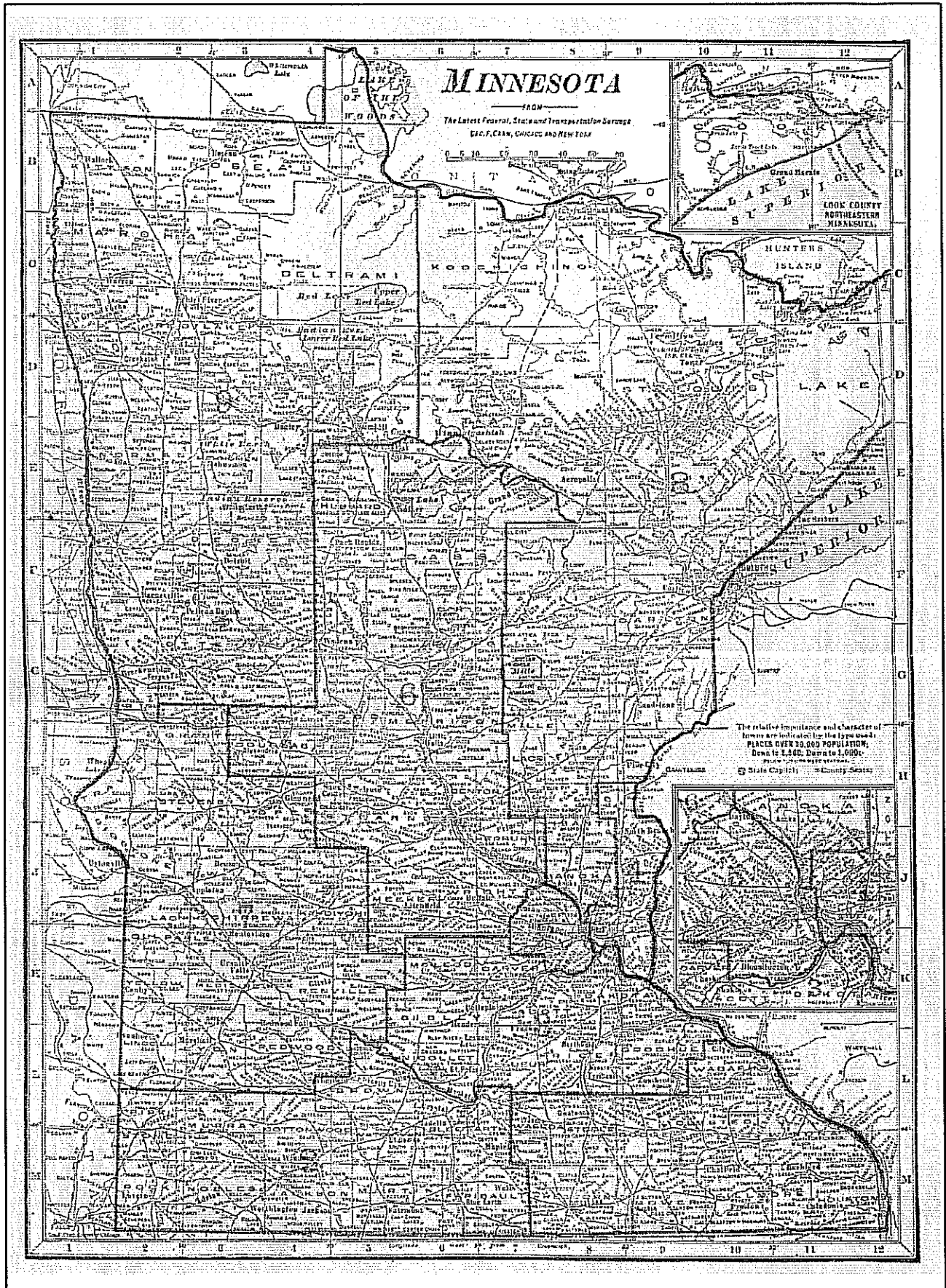
Mark Dayton
Governor

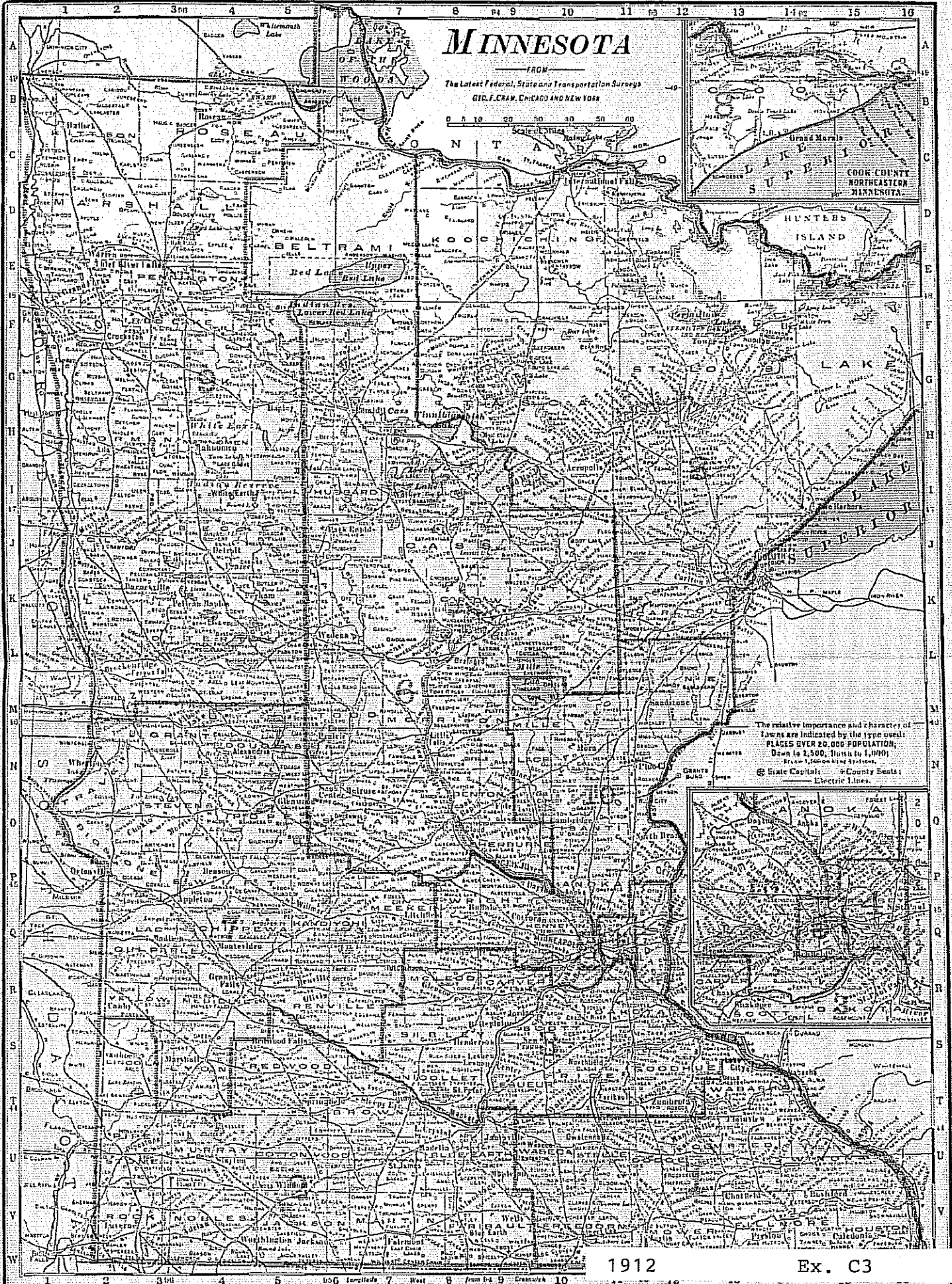
cc: Senator Michelle L. Fischbach, President of the Senate
Senator Amy T. Koch, Majority Leader
Senator Thomas M. Bakke, Minority Leader
Senator Geoff Michel
Representative Paul Thissen, Minority Leader
Representative Sarah Anderson
The Honorable Mark Ritchie, Secretary of State
Mr. Cal R. Ludeman, Secretary of the Senate
Mr. Albin A. Mathiowetz, Chief Clerk of the House of Representatives

EX. B



CONGRESSIONAL DISTRICTS.

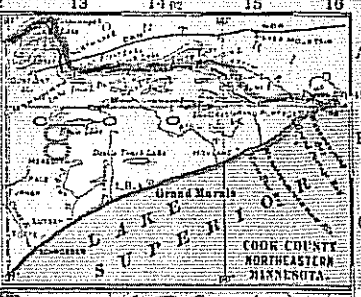




MINNESOTA

FROM
The Latest Federal, State and Transportation Surveys
GEO. F. CRAW, CHICAGO AND NEW YORK

Scale of Miles
0 10 20 30 40 50 60



COOK COUNTY
NORTHEASTERN
MINNESOTA

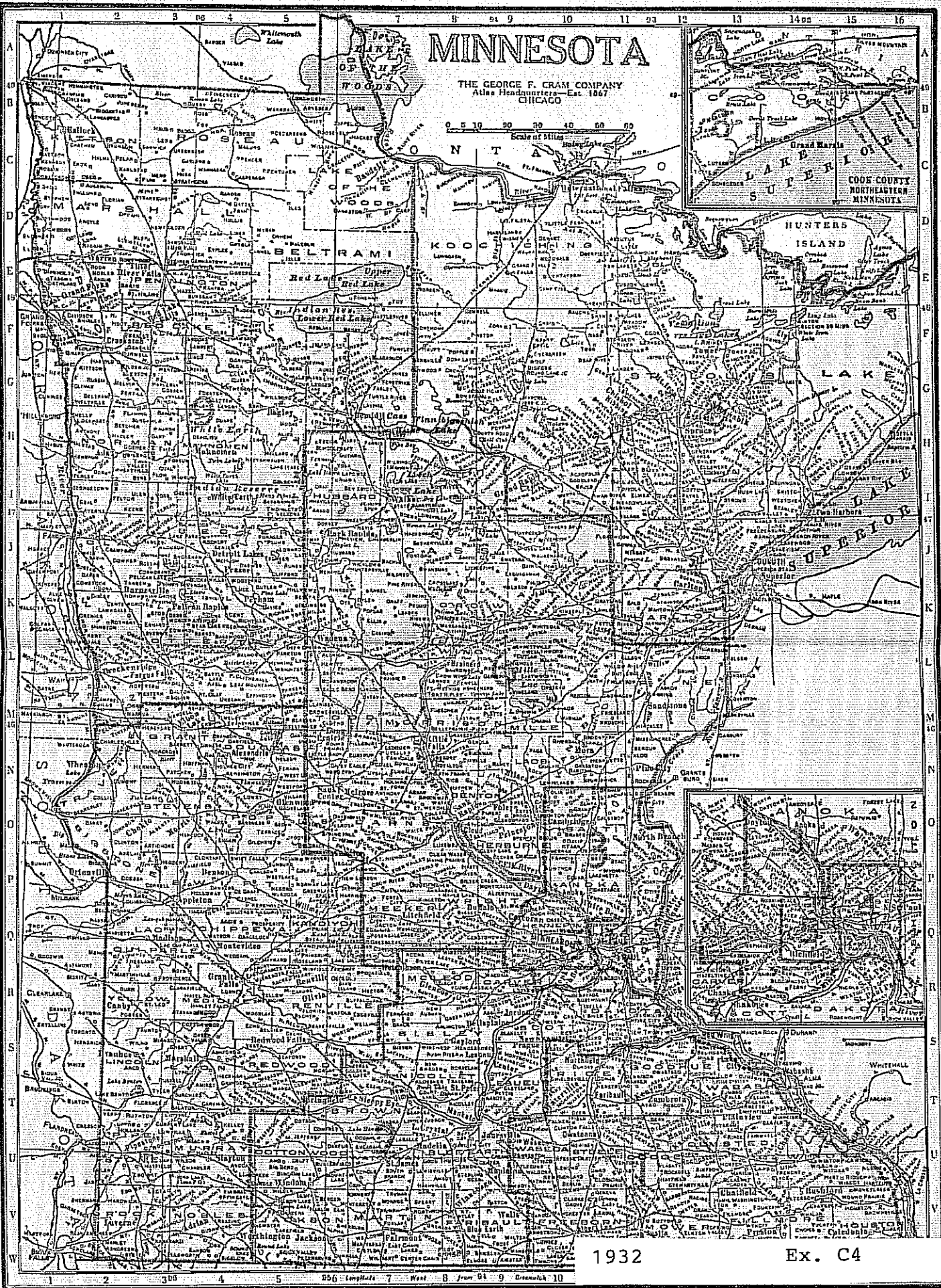
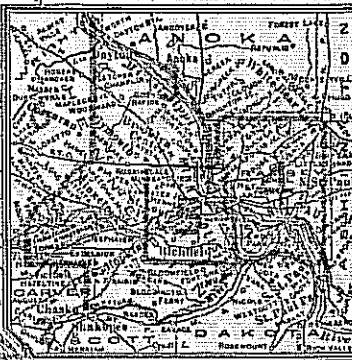
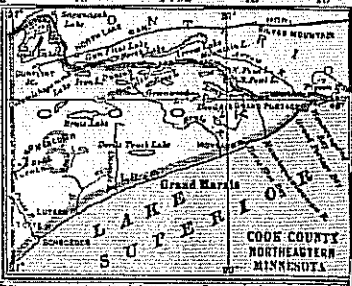
The relative importance and character of
towns are indicated by the type used:
PLACES OVER 20,000 POPULATION
Down to 2,500; Down to 1,000
Down to 500; Down to 250
State Capitals, County Seats &
Electric Lines



MINNESOTA

THE GEORGE F. GRAM COMPANY
Atlas Headquarters Est. 1867
CHICAGO

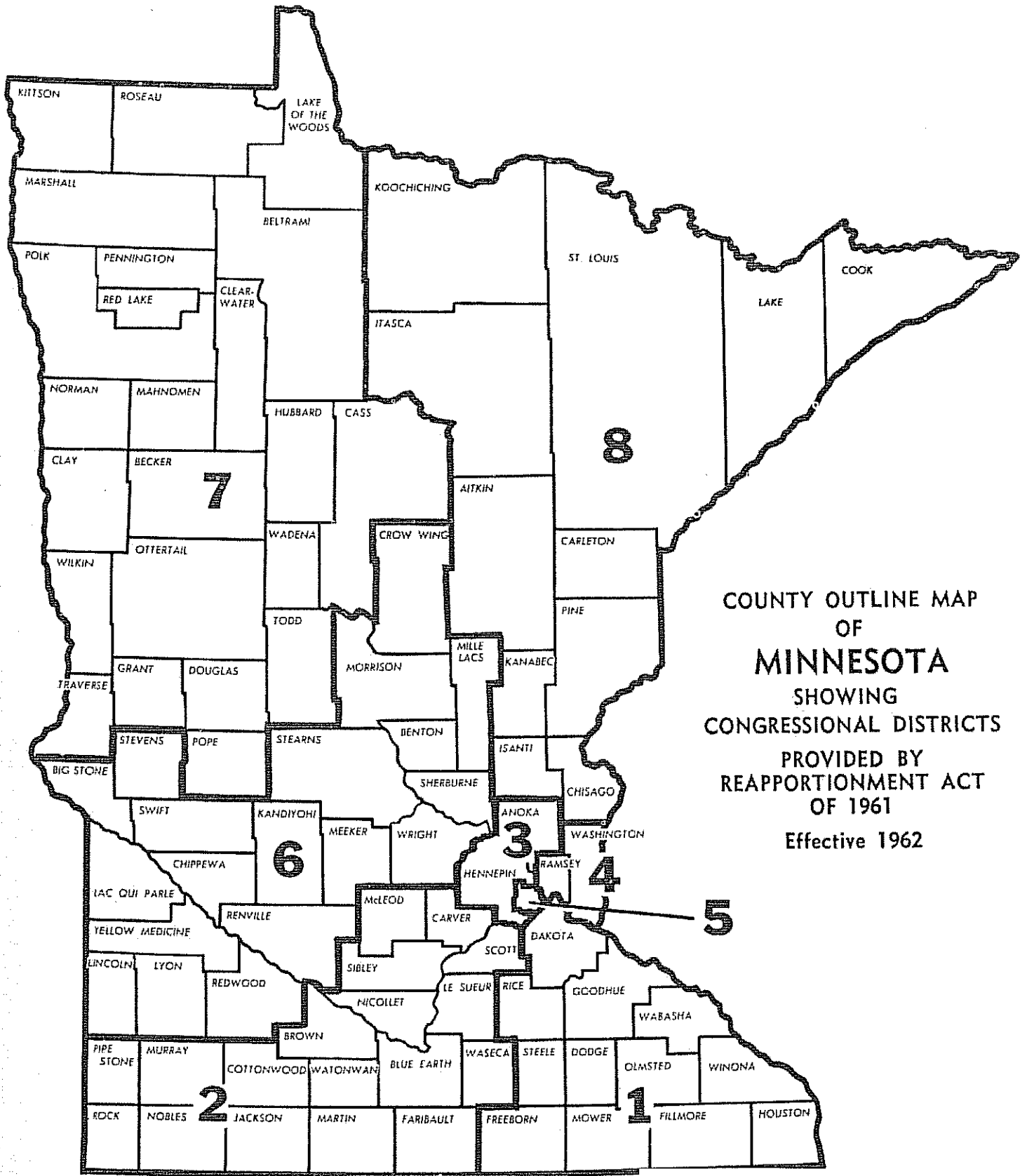
Scale of Miles
0 10 20 30 40 50



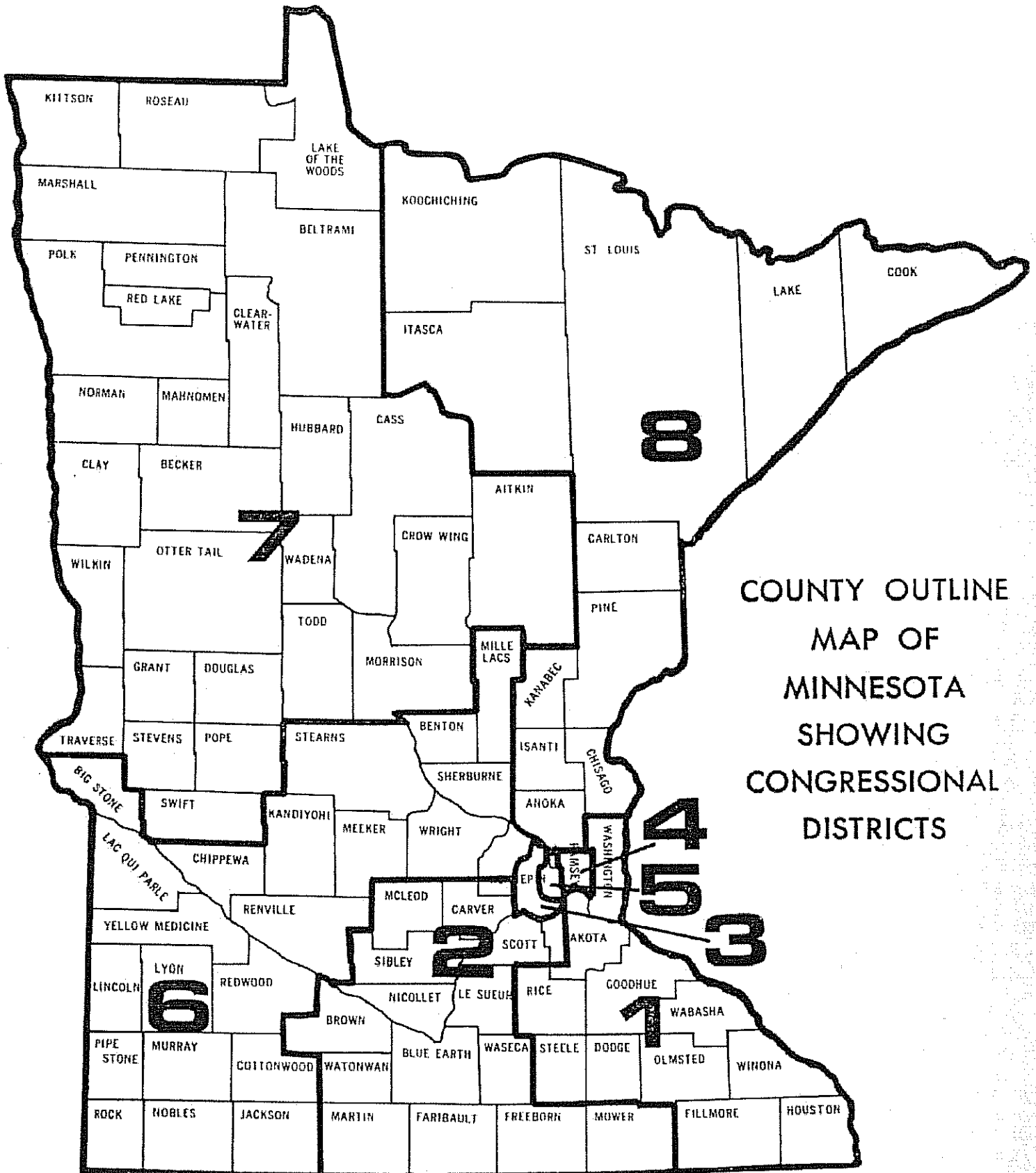
1932

Ex. C4

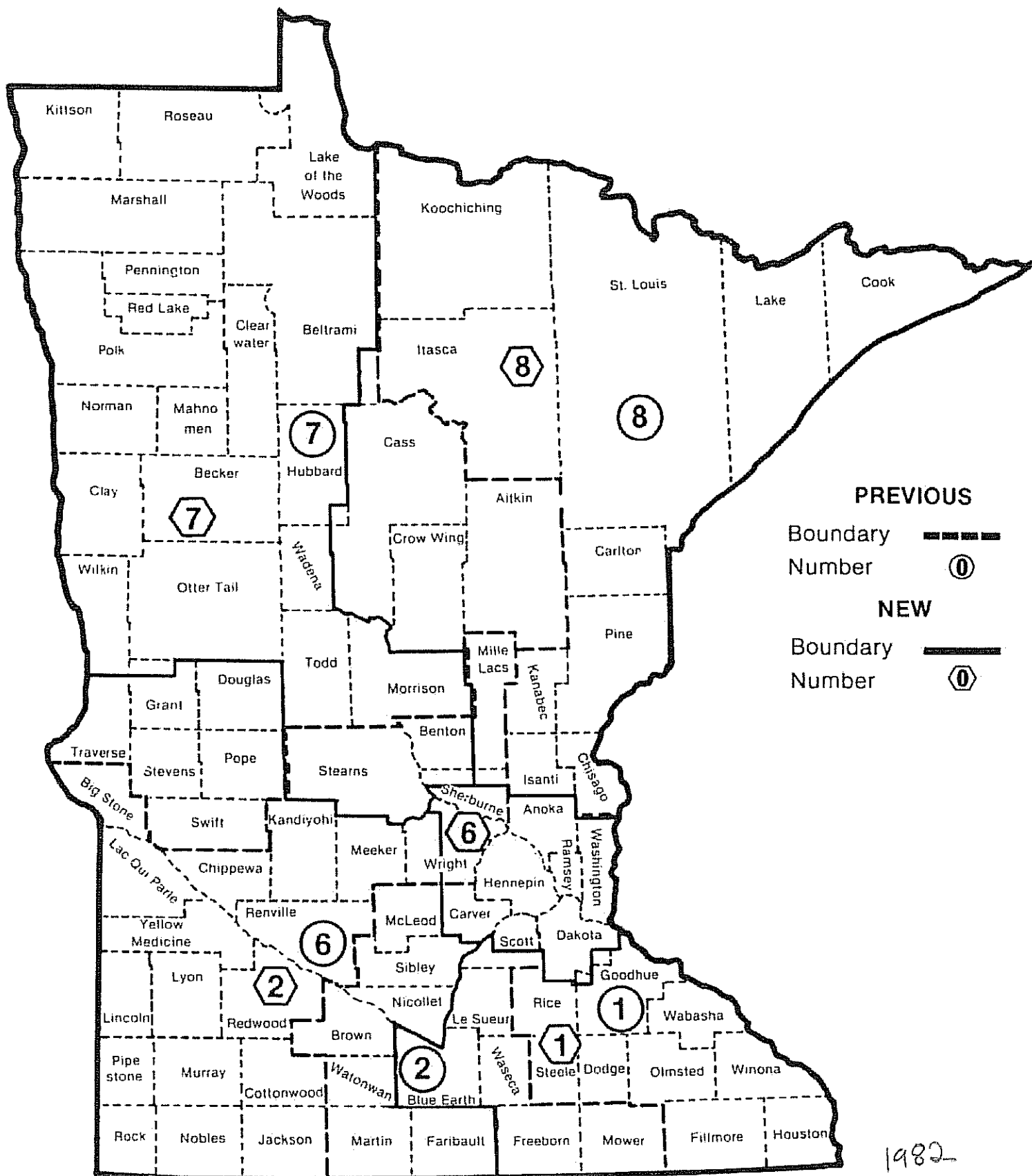
1932







COUNTY OUTLINE MAP
 OF
MINNESOTA
 SHOWING
 CONGRESSIONAL DISTRICTS
 PROVIDED BY
 REAPPORTIONMENT ACT
 OF 1961
 Effective 1962

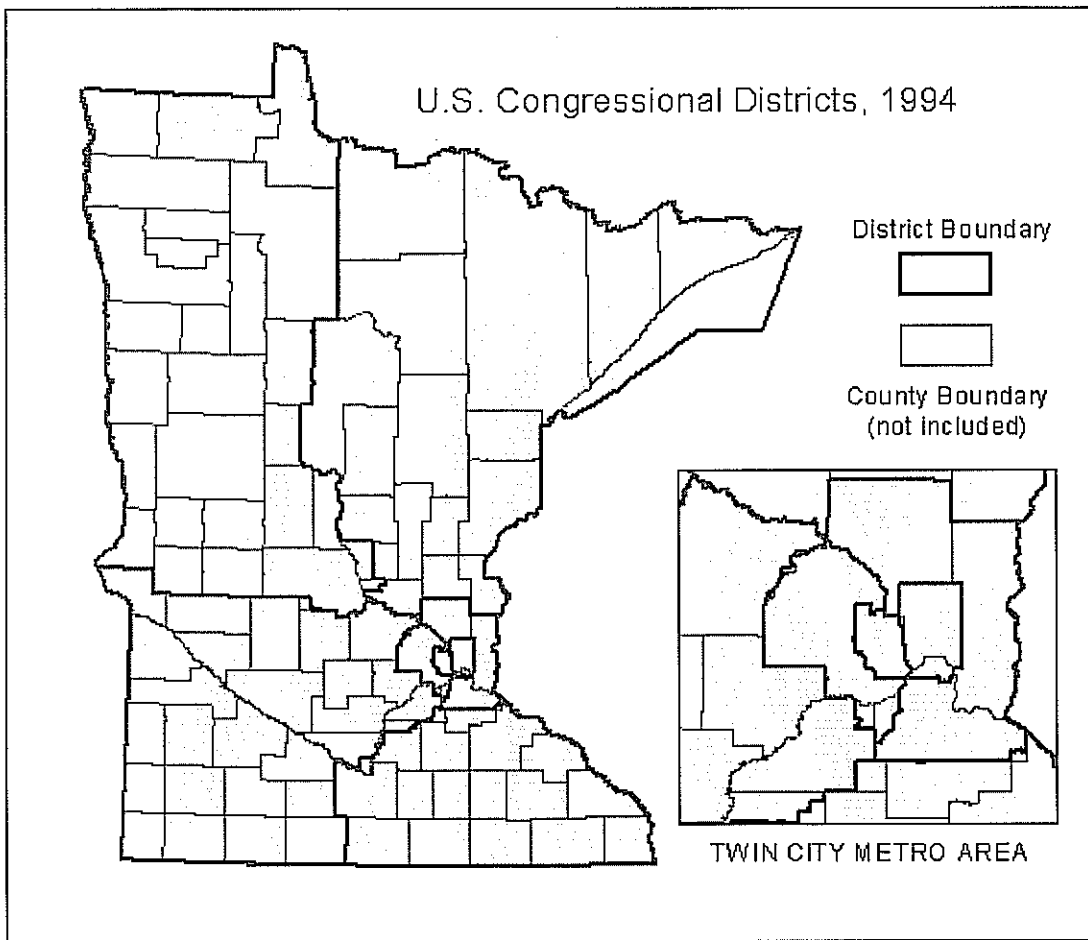


COUNTY OUTLINE
 MAP OF
 MINNESOTA
 SHOWING
 CONGRESSIONAL
 DISTRICTS



PREVIOUS
 Boundary 
 Number 
NEW
 Boundary 
 Number 

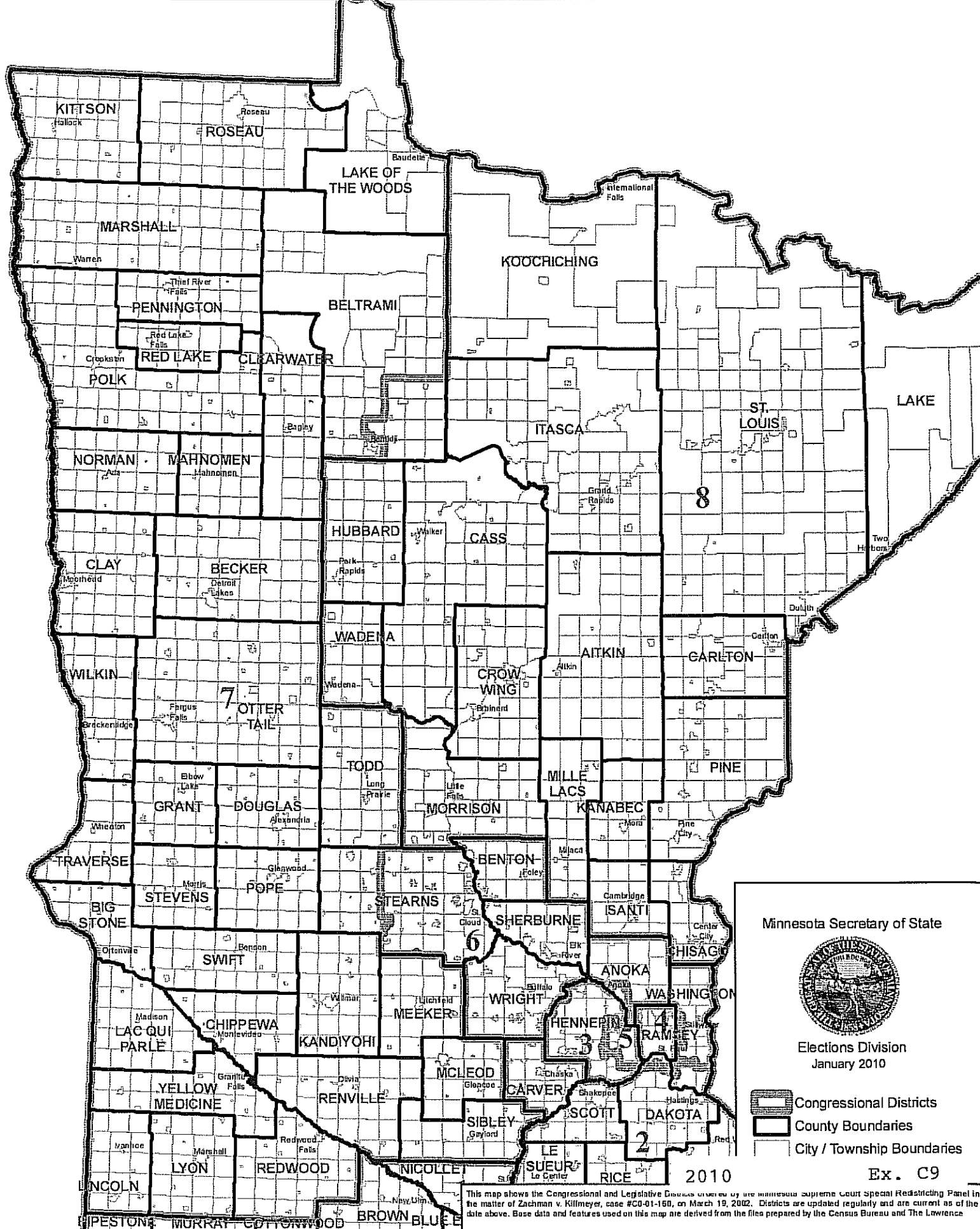
1982




1994

Ex. C8




Minnesota's 7th Congressional District



Minnesota Secretary of State



Elections Division
January 2010

-  Congressional Districts
-  County Boundaries
-  City / Township Boundaries

Ex. C9

This map shows the Congressional and Legislative Districts created by the Minnesota Supreme Court Special Redistricting Panel in the matter of Zachman v. Killmeyer, case #C0-01-160, on March 19, 2002. Districts are updated regularly and are current as of the date above. Base data and features used on this map are derived from the files prepared by the Census Bureau and The Lawrence



Dept. of Administration / Office of Geographic and
Demographic Analysis / State Demographic Center

Advanced
Search



DATASET

2010 POPULATION COUNTS FOR MINNESOTA CONGRESSIONAL DISTRICTS

View: [2010 population counts for Minnesota congressional districts](#)

Extent: 519.csv

Description: Population counts by district

Date: March 16, 2011

Subject(s): Demography; Census 2010

Creator(s): Minnesota Department of Administration. Office of Geographic and Demographic Analysis. Office of the State Demographer

Publisher: Minnesota Department of Administration. Geographic and Demographic Analysis Division.

Contact: [Tom Gillaspy](#), 651-201-2461; State Demographer

The following table can be downloaded as a CSV file using the "View" link above.

	Congressman	2010 Population	Deviation From Equal Population	Percent Minority
District 1	Walz	644,787	-18,204	11.0%
District 2	Kline	732,515	69,524	14.5%
District 3	Paulsen	650,185	-12,806	21.2%
District 4	McCollum	614,624	-48,367	30.9%
District 5	Ellison	616,482	-46,509	34.7%
District 6	Bachmann	759,478	96,487	9.7%
District 7	Peterson	625,512	-37,479	9.5%
District 8	Cravaack	660,342	-2,649	7.1%

Alternative resource record formats: [XML](#) | [MARC record](#) (for inclusion in library catalogs)

Can't find it? Try our [A-Z index](#)

Technical problems? Contact: andrew.koebrick@state.mn.us

EX. D