STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A21-0243
A21-0546

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

vs.

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,

CORRIE PLAINTIFFS' SEPARATE STATEMENT OF UNRESOLVED ISSUES

and

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

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

Pursuant to Scheduling Order No. 2, the parties recently filed a stipulation confirming their agreement on certain Preliminary Issues. Through this Statement of Unresolved Issues, the Corrie Plaintiffs write separately to address the maximum tolerable percentage deviation from the ideal population for legislative districts—an issue on which the parties do not agree. The Corrie Plaintiffs request that that Panel adopt a *de minimus* standard for the tolerable percentage deviation from the ideal for legislative districts that allows for the maximum flexibility permitted by the applicable law.

ARGUMENT

I. The Panel Should Adopt a *De Minimus* Standard for the Deviation from the Ideal for Legislative Districts That Allows for the Maximum Flexibility Permitted by the Applicable Law.

A *de minimus* standard that allows for maximum flexibility is most appropriate because it: (1) is consistent with the applicable law; and (2) provides flexibility sufficient

to address legitimate state interests in redistricting, such as protecting communities of interest.

A. A *De Minimus* Standard With Flexibility Is Consistent With Applicable Law.

United States Supreme Court precedent establishes that: (1) legislative districts must apportioned so that districts are "as nearly of equal population as practicable[,]" *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); and (2) *de minimis* deviation from the ideal district population is the goal. *Connor v. Finch*, 431 U.S. 407, 414, 97 S. Ct. 1828, 1833 (1977). Notably, however, the United States Supreme Court has never suggested that judicial redistricting panels should be constrained by an arbitrary maximum tolerable deviation from the ideal for legislative districts. Instead, the Court has adopted a flexible approach, allowing for greater deviation from the ideal population for legislative districts so long as the deviation is "based on legitimate considerations incident to the effectuation of a rational state policy." *Connor*, 431 U.S. at 418. Following this approach, the Court's decisions establish "that an apportionment plan with a maximum population deviation of under 10% falls within th[e] category of minor deviations" that will be treated as prima facie constitutional, and that a plan with greater than 10% deviation "creates a prima facie case of discrimination and therefore mut be justified by the State." *Brown v. Thomson*, 462 U.S. 835, 842-43 (1983). The Court also recognizes that "each case must be evaluated on its own facts, and a particular population deviation from the ideal may be permissible in some cases but not others[.]" *Chapman v. Meier*, 420 U.S. 1, 22 (1975) (citations omitted). In *Chapman*, for example, the Court noted that population deviations of as much as 7.83 and

9.9 percent have been upheld when the deviations were not shown to have been motivated by "invidious discrimination." *Id*. at 23 (citing *Gaffney v. Cummings*, 412 U.S. 735 (1973) and *White v. Regester*, 412 U.S. 755 (1973)).

This Panel should not be constrained by an arbitrary maximum tolerable percentage deviation for legislative districts in establishing Minnesota's new redistricting plan. Instead, the Panel should adhere to the flexible approach espoused by the United States Supreme Court, which permits deviation from the ideal population for legislative districts of as much as ten percent, so long as the deviation is "based on legitimate considerations incident to the effectuation of a rational state policy." *Connor*, 431 U.S. at 418, citing *Reynolds*, 377 U.S. at 579.

B. A *De Minimus* Standard With Flexibility Will Allow the Parties to Best Address Other Legitimate State Interests, Such as Protecting Communities of Interest.

Both this Panel and the United States Supreme Court have recognized that greater deviation from the ideal is particularly appropriate if it furthers the well-established redistricting principle of preserving communities of interest, which have been defined to include groups of Minnesota citizens with clearly recognizable similarities of social, geographic, cultural, or ethnic interests. *Hippert v. Ritchie*, Order Stating Redistricting Principles and Requirements for Plan Submissions at 9 ¶ 8 (citing *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (recognizing that, where possible, communities of interest should be preserved). Preserving communities of interest is of the utmost importance to ensuring fair and meaningful representation of communities of interest in the Minnesota Legislature.

For the last three redistricting cycles, Minnesota's judicial redistricting panels have unnecessarily and arbitrarily constrained themselves by suggesting that under *no* circumstances may legislative districts deviate "by more than two percent from the population of the ideal district." *Hippert v. v. Richie*, Order Stating Redistricting Principles and Requirements for Plan Submissions, at 8 (Nov. 4, 2011); *see also Zachman v. Kiffmeyer*, No. C0-01-160, slip op. at 3 (Minn. Special Redistricting Panel Dec. 11, 2001) (same); *Cotlow v. Growe*, No. MX 91-001562, slip op. at 4 (Minn. Special Redistricting Panel Aug. 16, 1991) (same). As explained above, this arbitrary two percent limitation should be rejected because it is inconsistent with United States Supreme Court precedent and unnecessarily constrains the Panel's ability to preserve communities of interest—a legitimate state interest.

CONCLUSION

In sum, the Corrie Plaintiffs recognize that *de minimis* deviation from the ideal district population is an important goal. *See Reynolds*, 377 U.S.at 554-55. At the same time, it is critically important that communities of interest—specifically, communities that share social, geographic, cultural, or ethnic interests—are preserved, so that they may be adequately represented in the Minnesota Legislature. In order to balance the "one person, one vote" principle with the critically important goal of preserving communities of interest and ensuring their adequate representation, more deviation from the ideal for legislative districts should be allowed where necessary and appropriate.

Dated: September 24, 2021

By */s/Brian A. Dillon*

Brian A. Dillon (MN #0386643)
Amy Erickson (MN # 0399214)
80 South Eighth Street
500 IDS Center
Minneapolis, MN 55402
Phone: 612-632-3000
brian.dillon@lathropgpm.com
amy.erickson@lathropgpm.com

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