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June 8, 2001

OFFICE OF
APPELLATE COURTS

JUN 13 2001

FILED

Frederick K. Grittner
Minnesota Supreme Court Administrator
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

Re: **Susan M. Zachman, et al. v. Mary Kiffmeyer, et al.**
Supreme Court File No. C0-01-160

Dear Mr. Grittner:

Enclosed for filing in connection with the above-referenced matter please find the original and three copies each of the following:

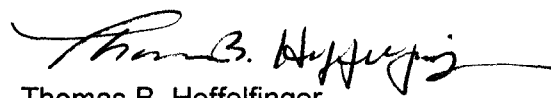
1. Petitioners' Motion to Lift Stay and Appoint Panel;
2. Petitioners' Memorandum of Law in Support of Motion to Lift Stay and Appoint Panel;
3. Affidavit of Thomas B. Heffelfinger, with exhibits A and B; and
4. Proposed Order.

By copy of this letter with enclosure, copies of the above-referenced items are being provided to Mary Kiffmeyer, Secretary of State of Minnesota, and to Mike Hatch, Attorney General, State of Minnesota.

Thank you for your assistance in this matter.

Sincerely,

BEST & FLANAGAN LLP


Thomas B. Heffelfinger

TBH:jmt
Enclosures

cc: Mary Kiffmeyer, Secretary of State (w/enc.)
Mike Hatch, Esq., Attorney General (w/enc.)
Charles R. Shreffler, Esq. (w/enc.)

Robert L. Crosby
Leonard M. Addington
N. Walter Graff
Allen D. Barnard
Richard A. Peterson
Robert J. Christianson, Jr.
Frank J. Walz
Frank Vogl
Marinus W. Van Patten, Jr.
John A. Burton, Jr.
James C. Diraceles
Thomas B. Heffelfinger
Roger R. Roe, Jr.
Robert L. Meller, Jr.
Morris E. Knopf
Judith A. Rogosheske
Scott D. Eller
Charles C. Berquist
E. Joseph LaFave
Gregory D. Soule
Cathy E. Gorlin
Patrick B. Hennessy
Timothy A. Sullivan
Daniel R.W. Nelson
David J. Zubke
Steven R. Kruger
Paul E. Kaminski
Ross C. Formell
Caryn S. Glover
Mary E. Shearen
Barbara M. Ross
Catherine J. Courtney
Jeannice M. Reding
Sarah Crippen Madison
Robert D. Maher
Christopher D. Johnson
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James I. Best
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Robert J. Flanagan
1898-1974

FOUNDED 1926

JUN 13 2001

FILED

STATE OF MINNESOTA
IN SUPREME COURT

C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
G. Edeen, Jeffrey E. Karlson, Diana V.
Bratlie, Brian J. LeClair and Gregory J.
Ravenhorst, individually and on behalf of all
citizens and voting residents of Minnesota
similarly situated,

Petitioners,

vs.

**MOTION TO LIFT
STAY AND
APPOINT PANEL**

Mary Kiffmeyer, Secretary of State of
Minnesota; and Doug Gruber, Wright
County Auditor, individually and on behalf
of all Minnesota county chief election
officers,

Respondents.

To: The Honorable Kathleen Ann Blatz, Chief Justice of the Minnesota Supreme Court,
305 Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155-6102:

By Order dated March 2, 2001, the Court granted Petitioners' motion to appoint a special redistricting panel. The Court stayed appointment of the panel pending a determination "that panel action must commence in order that the judicial branch can fulfill its proper role in assuring that valid redistricting plans are in place in time for the 2002 state legislative and congressional elections. . . ." 622 N.W.2d 561, 563-64 (Minn. 2001).

Petitioners respectfully request that the Court lift the stay at this time, and appoint a special redistricting panel. The grounds for this motion are:

1. The rationale for the stay, deference to the Legislature, no longer exists. The Court has respected the "primacy of the legislative role in the redistricting process." Id. at 563. The Legislature has now adjourned without reaching agreement on the principles to be followed in preparing legislative and congressional redistricting plans, and also without agreement on specific redistricting plans.

2. Time is of the essence. Ten years ago, the Court appointed a special redistricting panel on June 4, 1991. That appointment followed the Legislature's passage of legislative and congressional redistricting plans. The primary role of that panel was the review of one redistricting plan that had been approved by both Houses of the Legislature. This year, the Houses of this Legislature have disagreed on both principles and plans and the panel will be required to determine redistricting principles and then to draw legislative and congressional plans consistent with those principles. These tasks will certainly be more time consuming than the tasks undertaken by the 1991 panel. Further, adoption of congressional and legislative redistricting plans does not complete the work of redistricting. At that point, other governmental units (e.g., counties, municipalities, school districts) will need time to complete their redistricting work. To reduce voter confusion and the potential for disenfranchisement in the 2002 elections, the public is better served if the judicial tasks related to redistricting would be completed in 2001.

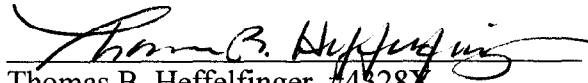
This Motion is based upon the Memorandum of Law and Affidavit of Thomas B.

Heffelfinger filed herewith.

Respectfully submitted.

Dated: June 3, 2001.

BEST & FLANAGAN LLP



Thomas B. Heffelfinger, #4328X
4000 US Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4331
(612) 339-7121

Dated: June 8, 2001.

SHREFFLER LAW FIRM, P.A.



Charles R. Shreffler, #183195
2116 Second Avenue South
Minneapolis, MN 55404-2606
Telephone: (612) 872-8000

Attorneys for Petitioners

AFFIDAVIT OF SERVICE

JEANNE M. TROUP, being duly sworn, on oath says that on June 8, 2001, she served true and correct copies of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al. matter, Supreme Court File No. C0-01-160, as follows:

1. Petitioners' Motion to Lift Stay and Appoint Panel;
2. Petitioners' Memorandum of Law in Support of Motion to Lift Stay and Appoint Panel;
3. Affidavit of Thomas B. Heffelfinger, with exhibits A and B; and
4. Proposed Order.

upon:

Mary Kiffmeyer
Secretary of State
180 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1299

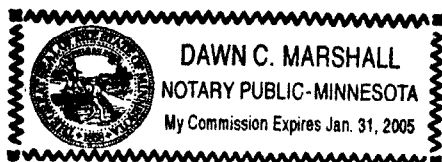
Mike Hatch, Esq.
Attorney General
102 Capitol Building
Aurora Avenue
St. Paul, MN 55155

by depositing true and correct copies of the foregoing documents with the United States mail in pre-paid envelopes addressed to the above-named individuals, at the above-listed addresses, the last-known addresses for same.


JEANNE M. TROUP

Subscribed and sworn to before me
this 8th day of June, 2001.


Notary Public



**STATE OF MINNESOTA
IN SUPREME COURT**

C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
G. Edeen, Jeffrey E. Karlson, Diana V.
Bratlie, Brian J. LeClair and Gregory J.
Ravenhorst, individually and on behalf of all
citizens and voting residents of Minnesota
similarly situated,

Petitioners,

vs.

Mary Kiffmeyer, Secretary of State of
Minnesota; and Doug Gruber, Wright
County Auditor, individually and on behalf
of all Minnesota county chief election
officers,

Respondents.

**PETITIONERS'
MEMORANDUM OF LAW
IN SUPPORT OF MOTION
TO LIFT STAY AND
APPOINT PANEL**

By Order dated March 2, 2001, the Court granted Petitioners' motion to appoint a special redistricting panel. The implementation of that Order was stayed pending a determination "that panel action must commence in order that the judicial branch can fulfill its proper role in assuring that valid redistricting plans are in place in time for the 2002 state legislative and congressional elections." 622 N.W.2d 561, 563-64 (Minn. 2001). Petitioners respectfully submit that the judicial role in the current redistricting process should now commence. Petitioners therefore request that the Court lift the stay at this time and appoint a special redistricting panel. Petitioners base this request on the following grounds:

A. The Legislature has adjourned without passage of a redistricting plan.

This Court recognizes the “primacy of the legislative role” in redistricting. Id. at 563. In deference to the Minnesota Legislature, the Court stayed judicial action on redistricting. At that time, the Legislature was still in session. The Legislature has now adjourned, failing to pass a redistricting bill for the Governor’s review.

The Minnesota House and Minnesota Senate failed to reach agreement on the principles to be followed for legislative and congressional redistricting. Each body passed its own set of redistricting principles. S.F. 1326 and H.F. 2488, 82nd Session (2001). Due to the Legislature’s adjournment, the conference committee on redistricting principles has now been discharged without an agreement. See Minn. Legislature, Joint Rule 3.02(a).

An agreement on redistricting principles is a necessary precursor to the Legislature’s consideration of legislative and congressional redistricting plans. Without an agreement on principles, the two houses lack the necessary foundation to evaluate and pass redistricting plans. Rep. Gregory Gray (DFL-Minneapolis) was reported as stating, during the May 16, 2001, meeting of the House Redistricting Committee, that

Since the Senate’s bill on redistricting principles differs from the House bill, . . . reaching a compromise agreement would be impossible.

Drawing the Lines, SESSION WEEKLY, May 18, 2001, at 3.

As a result, the House and Senate each passed redistricting plans based on their respective principles. On May 17, 2001, the Senate passed the legislative and congressional redistricting plans approved by the Senate Redistricting Committee. S.F. 2377, 82nd Session (2001). On May 19, 2001, the House passed the legislative and congressional redistricting plans approved by the House Redistricting Committee. H.F. 2519 and H.F. 2516, 82nd Session (2001).

According to the Session Weekly, the House bill is “significantly different from the Senate Plan.” Redistricting plans passed, SESSION WEEKLY, May 25, 2001, at 7. A conference committee on redistricting plans was established but has been discharged without agreement due to session adjournment. Minn. Legislature, Joint Rule 3.02(a). There has been no legislative activity on redistricting, either on principles or plans, since adjournment. Affidavit of Thomas B. Heffelfinger, ¶ 4.

Regarding the changes that the Senate and House plans propose for various legislative districts, the Star Tribune reported that:

Few [legislators] seemed to take their proposed fortune or misfortune too seriously. That’s because legislators expect that the DFL Senate and Republican House won’t agree on redistricting plans and that the final versions will be drawn by a court.

Parties fault each other on redistricting, MINNEAPOLIS STARTRIBUNE, May 16, 2001, at B1.

In sum, the Legislature has had its opportunity to pass redistricting plans. The Legislature was not able to accomplish this task. There is, therefore, no longer grounds for the Court to stay appointment of a special redistricting panel.

B. Time is of the essence.

Ten years ago, the Legislature passed redistricting plans in May 1991. Chapter 246, Minn. Stat. §§ 2.403-2.703 (Supp. 1991). A special redistricting judicial panel was appointed on June 4, 1991. The history of the 1991 special panel is instructive regarding the amount of time necessary for a special panel to complete its tasks. Because the 1991 Legislature had agreed on redistricting principles and also had adopted redistricting plans, the 1991 panel could start its constitutional review based on the work already done by the Legislature. On redistricting principles, the panel issued a pretrial order on July 26, 1991, directing the parties to “submit

responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans.” Cotlow, et al. v. Growe, et al., No. C8-91-985 (Spec. Redist. Panel Dec. 9, 1991) (order on legislative redistricting) at ¶ 9.¹ On September 13, 1991, the panel issued another pretrial order adopting final criteria for legislative and congressional redistricting. Id. at ¶ 12. This year, because the Legislature has not agreed on redistricting principles, the panel’s consideration of, and adoption of, redistricting principles may require more effort than was required ten years ago.

Similar concerns arise for the work of preparing the redistricting plans. The preliminary legislative redistricting plan issued by the panel in November 1991 was “essentially Chapter 246 with the [legislatively passed] technical corrections.” Growe v. Emison, 507 U.S. 25, 29, 113 S.Ct. 1075, 1079 (1993). This year, the special redistricting panel will not have the same head start. It will be the responsibility of that panel to draw legislative and congressional plans, not just review such plans. Because this panel does not have the advantage of an agreed legislative plan which was enjoyed by the 1991 panel, this panel is already behind schedule.

Also, ten years ago, the state court proceedings were farther along when the special redistricting panel was appointed. For instance, intervenors had already joined the litigation. In comparison, the pending Zachman v. Kiffmeyer district court action has been stayed. The panel, therefore, will need to allow time to consider motions from intervenors in that action, if any, or to consolidate actions if other redistricting suits are filed.

By statute, the new legislative and congressional district boundaries must be enacted by March 19, 2002. Minn. Stat. § 204B.14, subd. 1a. Accomplishment of the judicial tasks for this redistricting litigation will require some very tight deadlines. Preliminarily, the panel must be

¹ A copy of this Order is included at Exhibit A to Affidavit of Thomas B. Heffelfinger filed

appointed. Then time must be set aside for intervention and/or consolidation. The first substantive task would likely be a hearing on redistricting principles with time on either side of such a hearing for briefing and deliberation. Once principles are established, the panel must undertake the fact-intensive task of establishing legislative and congressional plans consistent with constitutional principles. Finally, the schedule must allow time for possible appellate review. With a statutory deadline just over nine months away, time is of the essence.

Some legislators may believe that given enough time and meetings, the Legislature and the Governor may “eventually” come to an agreement on principles and plans. See Affidavit of Thomas B. Heffelfinger. Waiting for the Legislature and the Governor to “eventually” get around to agreeing on redistricting, however, is wholly inconsistent with the tight statutory deadline for redistricting. The Legislature has already had six months to develop redistricting principles and plans, and has failed to do so. It is wholly speculative to believe that the Legislature and Governor could agree, given more time. Deferring judicial actions based upon speculation is inconsistent with the tight deadline established by Minnesota law.

The statutory deadline does not allow enough time for election officials to accomplish the tasks that follow the adoption of new legislative and congressional plans. According to Secretary of State Mary Kiffmeyer, the statutory deadline “should be viewed as the most extreme scenario permitted by current law.” Letter from Mary Kiffmeyer, Minnesota Secretary of State, to Rep. Erik Paulsen, Minnesota House of Representatives (May 15, 2001), attached as Exhibit B to the Affidavit of Thomas B. Heffelfinger.² According to Secretary Kiffmeyer:

herewith.

² The same letter was sent to all members of the Minnesota Senate and House.

While the law may permit passage of a plan as late as March, 2002, prudent public policy demands that a redistricting plan be enacted long before that deadline. Because redistricting will result in significant changes to government boundaries at nearly every level, time is a critical element to managing these transitions.

Id. (emphasis added). In other words, the real deadline should be approximately January 1, 2002, in order to allow the time necessary for county and municipal redistricting, for candidate identification, and for precinct caucus preparations.

Finally, there is an additional factor regarding timely state court action on redistricting. In Grove v. Emison, the Supreme Court reiterated its prior holdings that “state courts have a significant role in redistricting.” 507 U.S. 25, 33, 113 S.Ct. 1075, 1081.

The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged.

Id., quoting Scott v. Germano, 381 U.S. 407, 409, 85 S.Ct. 1525, 1527 (1965). Further, “the Constitution leaves with the States primary responsibility for apportionment of their federal congressional and state legislative districts.” Grove, 507 U.S. at 34, 113 S.Ct. at 1081.

The Supreme Court held, in Grove, that “the District Court erred in not deferring to the state court’s timely consideration of . . . reapportionment.” Id. at 37, 113 S.Ct. at 1083 (emphasis added).

Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit federal litigation to be used to impede it.

Id. at 34, 113 S.Ct. at 1081 (emphasis added).

Timely action by the state judiciary is now required to protect the federal Constitutional responsibility and authority delegated to the State of Minnesota to apportion congressional and legislative districts. If the state judiciary fails to act, the potential for federal court action will be increased. "Germano requires deferral, not abstention." Id. at 37, 113 S.Ct. at 1082.

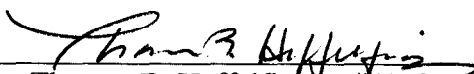
CONCLUSION

The initial rationale for a stay of this action no longer exists. The Legislature has adjourned, sending to the Governor neither a bill on redistricting principles nor a bill on redistricting plans. Given the minimal time available for the state judiciary to now take up the task of redistricting, Petitioners respectfully request that the Court lift the stay at this time, appoint a special redistricting panel and direct this panel to take such action as is appropriate for the timely adoption of legislative and congressional redistricting plans.

Respectfully submitted,


Dated: June 8, 2001.

BEST & FLANAGAN LLP


Thomas B. Heffelfinger, #4328X
4000 US Bank Place
601 Second Avenue South
Minneapolis, MN 55402-4331
(612) 339-7121

Dated: June 8, 2001.

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Telephone: (612) 872-8000

Attorneys for Petitioners

AFFIDAVIT OF SERVICE

JEANNE M. TROUP, being duly sworn, on oath says that on June 8, 2001, she served true and correct copies of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al. matter, Supreme Court File No. C0-01-160, as follows:

1. Petitioners' Motion to Lift Stay and Appoint Panel;
2. Petitioners' Memorandum of Law in Support of Motion to Lift Stay and Appoint Panel;
3. Affidavit of Thomas B. Heffelfinger, with exhibits A and B; and
4. Proposed Order.

upon:

Mary Kiffmeyer
Secretary of State
180 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1299

Mike Hatch, Esq.
Attorney General
102 Capitol Building
Aurora Avenue
St. Paul, MN 55155

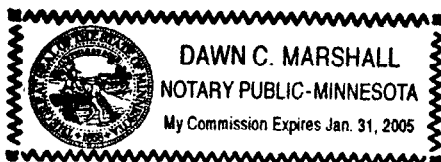
by depositing true and correct copies of the foregoing documents with the United States mail in pre-paid envelopes addressed to the above-named individuals, at the above-listed addresses, the last-known addresses for same.


JEANNE M. TROUP

Subscribed and sworn to before me
this 8th day of June, 2001.



Notary Public



STATE OF MINNESOTA
IN SUPREME COURT

C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
G. Edeen, Jeffrey E. Karlson, Diana V.
Bratlie, Brian J. LeClair and Gregory J.
Ravenhorst, individually and on behalf of all
citizens and voting residents of Minnesota
similarly situated,

Petitioners,

vs.

ORDER

Mary Kiffmeyer, Secretary of State of
Minnesota; and Doug Gruber, Wright
County Auditor, individually and on behalf
of all Minnesota county chief election
officers,

Respondents.

WHEREAS, the Court previously granted Petitioners' motion to appoint a Special Redistricting Panel of three (3) judges to hear and decide challenges to the validity of state legislative and congressional districts based on the 2000 census; and

WHEREAS, the Court stayed appointment of the Special Redistricting Panel; and

WHEREAS, the grounds warranting a stay of this appointment no longer exist.

THEREFORE, based on the files and pleadings herein,

IT IS HEREBY ORDERED that the stay herein is lifted and that the judges identified on Exhibit A, attached hereto, are appointed as the Special Redistricting Panel to hear and decide all

matters, including all pretrial and trial motions, in connection with the disposition of the above-entitled action and any related or consolidated actions.

IT IS FURTHER ORDERED that the Special Redistricting Panel shall take such action as is appropriate for the adoption of legislative and congressional redistricting plans prior to January 1, 2002.

Dated: _____, 2001.

BY THE COURT:

Chief Justice Kathleen Anne Blatz

EXHIBIT A

The Honorable _____, Judge of the _____

The Honorable _____, Judge of the _____

The Honorable _____, Judge of the _____

STATE OF MINNESOTA
IN SUPREME COURT

C0-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez, Gregory
G. Edeen, Jeffrey E. Karlson, Diana V.
Bratlie, Brian J. LeClair and Gregory J.
Ravenhorst, individually and on behalf of all
citizens and voting residents of Minnesota
similarly situated,

Petitioners,

vs.

**AFFIDAVIT OF
THOMAS B. HEFFELFINGER**

Mary Kiffmeyer, Secretary of State of
Minnesota; and Doug Gruber, Wright
County Auditor, individually and on behalf
of all Minnesota county chief election
officers,

Respondents.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

THOMAS B. HEFFELFINGER, being first duly sworn and upon oath, deposes
and states as follows:

1. I am an attorney at Best & Flanagan LLP, and, in that capacity, am one of
the attorneys for Petitioners Susan M. Zachman, Maryland Lucky R. Rosenbloom, Victor L. M.
Gomez, Gregory G. Edeen, Jeffrey E. Karlson, Diana V. Bratlie, Brian J. LeClair and Gregory J.
Ravenhorst in the above-captioned matter.

2. Attached hereto and made a part hereof as Exhibit A is a true and correct copy of the Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting in Patricia Cotlow, et al. v. Joan Growe, Secretary of State of Minnesota, et al., No. C8-91-985 (Dec. 9, 1991).

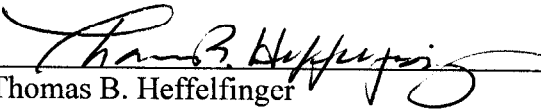
3. Attached hereto and made a part hereof of Exhibit B is a true and correct copy of a letter from Mary Kiffmeyer, Minnesota Secretary of State to Rep. Erik Paulsen, Minnesota House of Representatives (May 15, 2001). The same letter was sent to all members of the Minnesota Senate and House.

4. On June 6, 2001, I contacted Rep. Erik Paulsen, Chair of the House Redistricting Committee, via telephone to determine the current status of redistricting activities at the Minnesota Legislature. He informed me that on April 19, 2001, the Minnesota Senate passed a resolution containing its redistricting principles. On May 1, 2001, the Minnesota House of Representatives passed a resolution containing its redistricting principles. Because the House and Senate resolutions were in conflict, a conference committee on redistricting principles was appointed on May 3, 2001. The conference committee met only once, on May 3, 2001, but did not reach agreement on redistricting principles. Rep. Paulsen further advised me that both the House and the Senate have passed separate congressional and legislative redistricting plans. Because the House and Senate plans are significantly different from each other, a conference committee on redistricting plans was appointed on the evening of May 21, 2001. Because that day was the last day of session, the conference committee has never met. Rep. Paulsen further indicated that there have been no meetings of either conference committee, or any related working group, since adjournment of the Legislature on May 21, 2001. The House has further advised that Senate that there must be agreement on principles before plans will be considered.

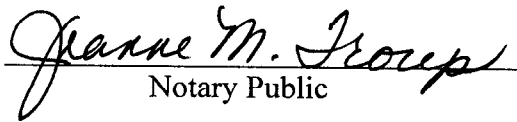
5. On June 8, 2001, I contacted Sen. Larry Pogemiller, Chair of the Senate Redistricting Committee, via telephone to determine the current status of redistricting efforts in the Minnesota Legislature. Sen. Pogemiller advised me that he agreed with the above-mentioned procedural history provided by Rep. Paulsen regarding the passage of House and Senate conflicting resolutions on principles, the passage of conflicting House and Senate plans and the status of efforts by the two conference committees. Sen. Pogemiller also agreed that there have been no meetings of either conference committee or related working group since adjournment. He stated that the Senate's "priority for sequencing" at this time was upon the budget. Sen. Pogemiller added that he was "optimistic" that "eventually" the Legislature and the Governor could agree on a plan.

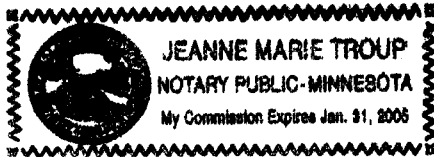
6. Although without statutory authority, the Governor's Citizen Advisory Commission on Redistricting ("Governor's Commission") has been established to "provide the governor with advice on the process used to prepare new congressional and legislative redistricting plans" See Governor's Citizen Advisory Commission on Redistricting: Home Page at www.mnplan.state.mn.us/redistricting. The Governor's Commission has adopted its own set of redistricting principles. Id. Its purpose is not to prepare redistricting plans, but to advise the Governor on "redistricting plans under consideration by the legislature." Id. On June 7, 2001, I attempted to contact Joe Mansky, Project Manager for the Governor's Commission, via telephone to determine the status of redistricting from the perspective of the Governor's Commission. I learned that Mr. Mansky is currently away from the office and out of town until June 18, 2001, and will not return messages until that time. Rep. Paulsen advised me, however, that to the best of his knowledge, the Governor's Commission has not yet provided the Governor with any advice regarding the conflicting House and Senate redistricting plans.

FURTHER AFFIANT SAYETH NOT.


Thomas B. Heffelfinger

Subscribed and sworn to before
me this 8th day of June, 2001.


Notary Public



AFFIDAVIT OF SERVICE

JEANNE M. TROUP, being duly sworn, on oath says that on June 8, 2001, she served true and correct copies of the following documents in the Susan M. Zachman, et al. v. Mary Kiffmeyer, et al. matter, Supreme Court File No. C0-01-160, as follows:

1. Petitioners' Motion to Lift Stay and Appoint Panel;
2. Petitioners' Memorandum of Law in Support of Motion to Lift Stay and Appoint Panel;
3. Affidavit of Thomas B. Heffelfinger, with exhibits A and B; and
4. Proposed Order.

upon:

Mary Kiffmeyer
Secretary of State
180 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1299

Mike Hatch, Esq.
Attorney General
102 Capitol Building
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St. Paul, MN 55155

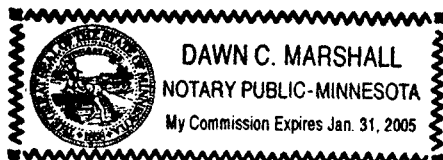
by depositing true and correct copies of the foregoing documents with the United States mail in pre-paid envelopes addressed to the above-named individuals, at the above-listed addresses, the last-known addresses for same.


JEANNE M. TROUP

Subscribed and sworn to before me
this 8th day of June, 2001.



Notary Public



STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

CS-91-985

Patricia Cotlow, Phillip Krase
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Grove, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

The Special Redistricting Panel convened hearings on July 26,
August 29, September 24, October 16, November 14, and December 3,
1991.

JAN 31 1992
Dance
HANN A. DISTRICT
CLERK ADMINISTRATION

FILED

91-1562

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR JUDGMENT ON
LEGISLATIVE REDISTRICTING

Plaintiffs were represented by Alan W. Weinblatt, Weinblatt & Davis; plaintiff-intervenors were represented by Bruce D. Willis and Mark B. Peterson, Popham, Haik, Schnobrich & Kaufman, Ltd.; defendant Joan Grove, Secretary of State, was represented by John R. Tunheim, Chief Deputy Attorney General, and Jocelyn Olson, Assistant Attorney General; defendant Patrick H. O'Connor, Hennepin County Auditor, was represented by Michael O. Freeman, Hennepin County Attorney, and Toni A. Beitz, Senior Assistant Hennepin County Attorney; and defendant-intervenors were represented by John D. French and Michael L. Cheever, Faegre & Benson, and Peter S. Wattson, Senate Counsel.

All parties were directed to file legislative redistricting plans on October 7, 1991. The panel convened hearings on October 16, November 14, and December 3, 1991 for comments on the plans.

Based on the record received from the Minnesota District Court, Fourth Judicial District; the record compiled during the course of the hearings; and the submissions of the parties; the panel makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. In January 1991, Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss initiated this action in Minnesota District Court, Fourth Judicial District. They asked the court to declare the present legislative apportionment, Minn. Stat. §§ 2.019, 2.042 through 2.702 (1990), and the present congressional apportionment, outlined in LaComb v. Grove, 541 F. Supp. 145

(D. Minn. 1982), invalid under the Minnesota and United States Constitutions.

2. The plaintiffs further requested the court to retain jurisdiction during the 1991 session of the legislature to determine whether any legislatively enacted plans for redistricting satisfied the Minnesota and United States Constitutions. In the absence of the enactment of a constitutionally valid apportionment by the legislature, the plaintiffs asked this court to devise a proper legislative and congressional apportionment for the State of Minnesota.

3. On February 15, 1991, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh served notice and statement of intervention. On March 14, 1991, plaintiffs served notice of objection to the intervention.

4. On February 25, 1991, the previously named plaintiffs and defendants Joan Grove and the Hennepin County Auditor stipulated that the court had subject matter jurisdiction; that as a result of population changes reflected in the 1990 federal census, the present legislative and congressional districts contravene the Minnesota and United States Constitutions; and that the Chief Judge of the Hennepin County District Court could request the Chief Justice of the State of Minnesota to appoint a panel of three district court or appellate judges to hear and decide this action.

5. On April 2, 1991, the Minnesota House of Representatives and the Minnesota Senate served notice of intervention as defendants and a statement of intervention. No party objected.

6. On May 18, 1991, the legislature passed Chapter 246, S.F. No. 1571, establishing a legislative redistricting plan. The bill was presented to the governor on May 24, 1991.

7. On June 4, 1991, the Minnesota Supreme Court appointed the undersigned three-judge panel to hear and decide all matters, including all pretrial and trial motions, and to reach an ultimate disposition of this case.

8. On June 20, 1991, the Minnesota Supreme Court declined original jurisdiction on the question of the validity of the enactment of a number of bills, including Chapter 246, the legislative redistricting bill. A declaratory judgment action was filed in Ramsey County District Court.

9. On July 26, 1991, the special redistricting panel conducted a pretrial status conference and, on July 29, 1991, issued Pretrial Order No. 1 ordering (a) that John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh be permitted to intervene as plaintiff-intervenors; (b) that parties submit responses to the criteria adopted by the Minnesota Legislature for legislative and congressional redistricting plans; and (c) that arrangements be made to permit the panel to view the legislature's redistricting computer system.

10. On August 2, 1991, by order of Ramsey County District Court, Chapter 246 was declared to be a validly enacted law.

11. On August 16, 1991, the special redistricting panel issued Pretrial Order No. 2 establishing certain preliminary

criteria for legislative and congressional redistricting and directing oral argument on other reserved criteria.

12. After the parties' arguments on the reserved criteria, the panel issued Pretrial Order No. 3 on September 13, 1991, adopting the final criteria for congressional and legislative redistricting. The criteria for legislative redistricting are as follows:

1. The Senate must be composed of 67 members. The House of Representatives must be composed of 134 members.
2. Each district is entitled to elect a single member.
3. A representative district may not be divided in the formation of a Senate district.
4. The districts must be substantially equal in population. The population of a district must not deviate from the ideal by more than two percent. Because a court-ordered reapportionment plan must conform to a higher standard of population equality than a legislative reapportionment plan, de minimis deviation from the population norm will be the goal for establishing districts. See Charman, 420 U.S. 1, 95 S. Ct. 751; Connor, 431 U.S. 407, 97 S. Ct. 1828.
5. The districts must be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.
6. 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 in Minneapolis and St. Paul.
7. The districts must not dilute the voting strength of racial or language minority populations. Where a concentration of a racial or

language minority makes it possible, the districts must increase the probability that members of the minority will be elected. Any plan adopted by the court shall comply with the applicable provisions of the Federal Voting Rights Act, 42 U.S.C. § 1971, et seq.

8. 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 practicable. Reynolds v. Sims, 377 U.S. 533, 578-79, 84 S. Ct. 1362, 1390-91 (1964); Swann v. Adams, 385 U.S. 440, 444, 87 S. Ct. 569, 572 (1967).

9. The districts should attempt to preserve communities of interest when that can be done in compliance with the preceding standards. The panel may recognize a community's character as urban, suburban or rural. See Skolnick v. State Electoral Bd. of Ill., 336 F. Supp. 839 (N.D. Ill. 1971); LaComb v. Growe, 541 F. Supp. 145 (D. Minn. 1982); LaComb v. Growe, 541 F. Supp. 160 (D. Minn. 1982); Maryland Citizens Comm. for Fair Congressional Redistricting, Inc. v. Taves, 253 F. Supp. 731 (D. Md. 1966), aff'd sub. nom. Alton v. Taves, 384 U.S. 315, 86 S. Ct. 1590 (1966). Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law.

10. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

13. Subsequently, the panel adopted an additional criterion that all submitted plans should be based on Chapter 246. Defendant-intervenors, joined by other parties, urged the panel to adopt, as a criterion, certain "curative amendments" to

Chapter 246. The amendments had passed out of the special redistricting committees of both houses on August 26, 1991, after the legislature had adjourned. However, the amendments had not been passed by the full bodies of either house, nor had they been presented to the governor for his signature. The panel declined to adopt as a criterion the legislative committees' proposed corrections to Chapter 246.

14. The August 29, 1991 Pretrial Order No. 3 also ordered suspension, until further order of the panel, of the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 (Supp. 1991). The pretrial order designated the format for submission of redistricting plans and directed oral argument on various motions, including whether Chapter 246 violates the Minnesota or United States Constitutions or the Federal Voting Rights Act. Finally, recognizing that the time requirements for congressional redistricting are less stringent, the panel deferred submission of congressional redistricting plans.

15. Following submissions from the parties, the panel issued Pretrial Order No. 4, on October 1, 1991, which (a) denied plaintiff-intervenors' motion to stay this proceeding; (b) declared that the numerous facial infirmities in Chapter 246, including noncontiguous districts, violate Article IV, sections 2 and 3 of the Minnesota Constitution; and (c) declared that facial

infirmities also violate the equality of representation requirement of the fourteenth amendment to the United States Constitution. The panel denied plaintiff's motion to enforce Chapter 246, together with its "curative amendments", as the reapportionment plan for the State of Minnesota. Because no party submitted specific allegations of Voting Rights Act violations, the panel ordered submission of any Chapter 246 violations of the Federal Voting Rights Act without waiver of jurisdictional objections by October 7, 1991.

16. On October 7, 1991, defendant-intervenors, the Minnesota Legislature, renewed its submission of Chapter 246 together with the curative amendments adopted by the Senate and House Committees on Redistricting; plaintiffs proposed adoption of the legislature's plan, with curative amendments, as the court-ordered legislative redistricting plan; defendant Secretary of State Grove supported the submission of the legislature; defendant Hennepin County Auditor supported the submission of the legislature; and plaintiff-intervenors submitted a proposed legislative redistricting plan. The panel received additional submissions from citizens groups and individual legislators, only one of which was made part of the record.

17. No violations of the Federal Voting Rights Act were asserted.

18. On October 15, 1991, defendant-intervenors submitted a written response to the plaintiff-intervenors' proposed legislative redistricting plan. On October 16, defendant Grove submitted a

written response to plaintiff-intervenors' proposed legislative redistricting plan; plaintiff-intervenors submitted a written response to the legislature's redistricting plan; and defendant Hennepin County Auditor submitted a written analysis of the plaintiff-intervenors' plan. On October 17 and 18, 1991, defendant-intervenors submitted additional responses to the plaintiff-intervenors' redistricting plan.

19. On November 4, 1991, defendant-intervenors submitted a congressional redistricting plan. The plan is based on S.F. No. 1597/H.F. No. 1728, adopted by the House of Representatives Committee on Redistricting and the Senate Committee on Redistricting on October 30 and 31, 1991, and referred to the full House and Senate for consideration in early January, 1992.

20. On November 8, 1991, the panel issued Pretrial Order No. 5 ordering final oral argument on (a) the existence and use of any legislative history of Chapter 246, including maps, and (b) the application of the rules of statutory interpretation to avoid, modify, or correct constitutional or other defects in Chapter 246. In addition, the panel ordered that all parties have computer access to each proposed plan file and written geographic description of both plans.

21. On November 14, 1991, defendant-intervenors submitted a memorandum on Chapter 246's legislative history, appending affidavits of State Representative Peter Rodosovich, State Senator Lawrence J. Pogemiller, and Craig Lindeke from the Revisor of

Statutes Office. The panel has adopted the following as relevant pieces of legislative history:

a. A set of two small black and white maps, one of the state and one of the metropolitan area. These maps were distributed to each member of the House in the House chamber on May 18, 1991, before the members voted on Chapter 246. These two maps were also distributed to each member of the Senate in the Senate chambers on May 16, 1991, before the members voted on Chapter 246. In each instance, the chief authors of the bill represented that the proposed redistricting plan was depicted in the two black and white maps.

b. A second map group consisting of four large color maps depicting respectively the areas of (1) the State of Minnesota, (2) the seven-county metropolitan area, (3) the City of Minneapolis, and (4) the City of St. Paul. The maps were used in both the House and Senate committees and displayed in the House retiring room on May 17, 1991, the House chamber on May 18, 1991, the Senate retiring room on May 16, 1991, and in the Senate chamber on May 16, 1991.

c. A group of seven reports, primarily population tables. Three of the reports were distributed to members of the House on May 18, 1991, before they voted on Chapter 246. Three of the reports were distributed to all members of the Senate on May 18, 1991, before they voted on Chapter 246. The

remaining report was distributed to the members of the Senate Redistricting Committee on May 3, 1991.

CONCLUSIONS OF LAW

1. Minnesota Laws 1991, Chapter 246, violates Article IV, sections 2 and 3 of the Minnesota Constitution because, among other defects, it creates noncontiguous districts.

2. Minnesota Laws 1991, Chapter 246, violates the equality of representation requirement of the fourteenth amendment of the United States Constitution.

3. Unless a legislative plan is incorrectly invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature. See Upham v. Seamon, 456 U.S. 37, 40-42, 102 S. Ct. 1518, 1520-21 (1982). Courts are not permitted to disregard state apportionment policy or plans without solid constitutional grounds for doing so. White v. Weiser, 412 U.S. 783, 795, 93 S. Ct. 2348, 2355 (1973) (citing Whitcomb v. Chavis, 403 U.S. 124, 160, 91 S. Ct. 1858, 1878 (1971)). The court must reconcile constitutional requirements with the goals of state political policy by limiting its modifications "to those necessary to cure any constitutional or statutory defect." Upham 456 at 43, 102 S. Ct. at 1522; see also Rybicki v. State Bd. of Elections, 574 F. Supp. 1082 (N.D. Ill. 1982) (making only those corrections necessary to remove unconstitutional defects). Such deference does not extend to the curative amendments, as they have not been adopted into law.

4. Most of the constitutional and statutory defects in Minnesota Laws 1991, Chapter 246 can be cured by ascertaining and effectuating the legislative intent, see Minn. Stat. § 645.16 (Supp. 1991); and by applying canons of statutory construction, Minn. Stat. §§ 645.16-645.43 (Supp. 1991). The remaining defects require corrections and adjustments which are based on legislative policy and the court's redistricting criteria. These corrections and adjustments are made in the attached plan and explained in the accompanying annotations.

5. Minnesota Laws 1991, Chapter 246 complies with the Federal Voting Rights Act.

**BASED ON THE ENTIRE RECORD,
IT IS HEREBY ORDERED:**

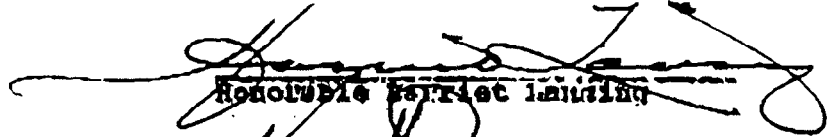
1. That subject to the stay issued by the United States District Court in Emison v. Grove, No. 4-91-202 (D. Minn. Dec. 5, 1991), and in conformity with Minn. R. Civ. P. 54.02 the following reapportionment of the Minnesota Legislature shall be final and effective beginning with the 1992 primary and general elections, unless a constitutional plan is enacted by the State of Minnesota. The stay of time periods for completion of redistricting for local units of government is dissolved.

2. Subject to the stay issued by the United States District Court in Emison v. Grove, No. 4-91-202 (D. Minn. Dec. 5, 1991), all plans for congressional redistricting shall be submitted to this panel on or before January 17, 1992.

3. The panel retains jurisdiction over this matter to ensure that any bill enacted into law complies with the Minnesota and United States Constitutions and the Federal Voting Rights Act.

Dated: December 2, 1991

BY THE COURT:



Honorable Patrick Leahy



Honorable Kenneth J. Mann



Honorable William H. Walker



Mary Kiffmeyer

MINNESOTA SECRETARY OF STATE

May 15, 2001

Representative Erik Paulsen
545 State Office Building
St. Paul, MN 55155

Dear Representative Paulsen:

I am writing to express my concern regarding the possibility that the legislature will adjourn next Monday without fulfilling its responsibility to adopt a redistricting plan. I believe that voters, candidates, election administrators and the greater public good will be served by the adoption of a legislative redistricting plan before May 21, 2001.

While the law may permit passage of a plan as late as March, 2002, prudent public policy demands that a redistricting plan be enacted long before that deadline. Because redistricting will result in significant changes to government boundaries at nearly every level, time is a critical element to managing these transitions.

Our democratic republic benefits from an informed electorate. Voters need information about their new election districts in order to make good decisions and know the candidates seeking to represent them. Furthermore, voter confusion and the potential for voting in the wrong precinct will be reduced if the redistricting plan is implemented as soon as possible, thus allowing polling place designations and the updating of voter registration records to proceed in a timely and organized manner. The potential risk for thousands of miscast ballots and disenfranchised voters should not be a casualty of the inability of the legislature or political parties to agree on a redistricting plan.

Likewise, early knowledge of election districts provides candidates with critical information needed to file for the September, 2002 primary elections and to conduct proper campaigns using the new boundaries. Also, political parties hold their precinct caucuses in early March to begin the process of electing delegates to endorsing conventions usually held in June. A plan delayed by court appeals could disrupt the campaign process.

As you can imagine, proper implementation of the redistricting plan will require a virtual army of state staff, county auditors, municipal and school district clerks and election judges in order to prepare and execute the many redistricting-related tasks. These already difficult duties are further stressed by a lack of adequate time.

I believe that the March 19, 2002 legislative redistricting deadline should be viewed as the most extreme scenario permitted by current law. It would be a far greater service to the citizens of this state for the legislature to adopt a redistricting plan before its adjournment on May 21, 2001. Informed voters and candidates, political party activities and a more accurate vote count may all result by the adoption of a plan before adjournment next Monday. I strongly urge you to take action before that deadline.

Sincerely,

Mary Kiffmeyer
Secretary of State

C: Governor Jesse Ventura