

# FAEGRE & BENSON LLP

2200 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET  
MINNEAPOLIS, MINNESOTA 55402-3901  
TELEPHONE 612.766.7000  
FACSIMILE 612.766.1600

OFFICE OF  
APPELLATE COURTS  
OCT 17 2001

FILED

17 October 2001

**Brian Melendez**  
Direct Dial No. 612.766.7309  
E-mail [bmelendez@faegre.com](mailto:bmelendez@faegre.com)

Mr. Frederick K. Grittner,  
Clerk of Appellate Courts  
305 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

BY MESSENGER

Re: Zachman v. Kiffmeyer, No. C0-01-160 (Minn. Special Redistricting Panel)  
Faegre File No. 57455/240154

Dear Mr. Grittner:

Please file the enclosed Moe Intervenors' Statement of Unresolved Issues and Comments Regarding Timetable, together with the accompanying affidavits of service.

Grittner: 17 October 2001

2

Thank you very much. Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads "Brian Melendez". The signature is written in a cursive style with a long horizontal line extending to the right.

Brian Melendez  
Attorney for  
Moe Intervenors

enclosures

cc (w/ encs.):

Brian J. Asleson  
John D. French  
Alan I. Gilbert  
Timothy D. Kelly  
Marianne D. Short/Michelle B. Frazier  
Alan W. Weinblatt

M1:806264.01

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

Susan M. Zachman, et al.,

No. C0-01-160

Plaintiffs,

vs.

OFFICE OF  
APPELLATE COURTS

OCT 17 2001

Mary Kiffmeyer, et al.,

FILED

Defendants.

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**MOE INTERVENORS'  
STATEMENT OF UNRESOLVED ISSUES  
AND  
COMMENTS REGARDING TIMETABLE**

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Pursuant to the Order Granting Motions for Permissive Intervention, Directing Filing of Stipulation and Statement of Unresolved Issues, and Stating Preliminary Timetable at 9-10 (Oct. 9, 2001), the Moe Intervenors respectfully submit this statement of unresolved issues, including their comments regarding the Panel's timetable.

**Statement of Unresolved Issues**

The Order directed that

In lieu of summary judgment motions or answers at this early stage of the proceedings, we ask the parties to instead work toward a stipulation on certain issues. These issues might include, but are not limited to:

- Whether this panel has subject matter jurisdiction and under what authority
- Whether the current districts are unconstitutionally flawed in light of the 2000 census
- Which census data and geographic maps should be used and as of what date
- Ideal populations for congressional, senate, and house districts

- The maximum tolerable percentage deviation from the ideal for legislative districts

All parties should participate in working toward this stipulation. . . .

To the extent any party disagrees with a group's stipulation, or to the extent the parties cannot agree at all on a particular issue, a disagreeing party shall submit a concise Statement of Unresolved Issues . . . .<sup>1</sup>

The Parties have accordingly reached a stipulation that addresses the first four out of the five issues that the Panel listed.

The Parties have not reached any agreement on the fifth issue, "The maximum tolerable percentage deviation from the ideal for legislative districts." The Moe Intervenors' view is that there is no absolute "maximum tolerable deviation" in the abstract, in isolation from the other criteria that must be considered in reapportioning the congressional and legislative districts. A larger deviation may be "tolerable" in a particular case if it results from the satisfaction of some other important criterion or criteria. The issue of deviation therefore ought to be considered in the next phase when the Parties offer their proposed criteria for reapportionment.

This Panel's predecessor found that, in legislative redistricting, "[t]he population of a district must not deviate from the ideal by more than two percent."<sup>2</sup> The Moe Intervenors have no objection to that standard applying again in this proceeding, and do not know of any reason why this Panel ought to allow a different deviation than its predecessor allowed.

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<sup>1</sup>Order at 8-9 (10/9/01).

<sup>2</sup>Findings Fact, Conclusions Law, & Order J. Legislative Redistricting, Findings of Fact 12(4), *Cotlow v. Grove*, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991), available at <http://www.senate.leg.state.mn.us/departments/scr/redist/cotlo129.htm>.

### Comments Regarding Timetable

The Moe Intervenors agree with the Panel's provisional timetable.<sup>3</sup> They join the other Parties in the stipulation asking that the closing date for the Parties' responses to each other's plans ought to be January 11, 2002, instead of January 7, 2002.

The Moe Intervenors particularly agree with the timetable's date of March 19, 2002, for the issuance of a final order and redistricting plan. The Moe Intervenors understand that other Parties are seeking an earlier date for the issuance of a final order and redistricting plan—as early as January 2002, in the case of one other Party. But the Legislature, for whose primacy in reapportionment the Minnesota Constitution<sup>4</sup> and the Order establishing this proceeding<sup>5</sup> both explicitly provide, will not reconvene until January 29, 2002. This Panel, both in the interest of deference to the coordinate branch of the government that is primarily charged with reapportionment and in the interest of conserving judicial resources,<sup>6</sup> ought not to issue a plan until the Legislature has enjoyed a reasonable chance for playing its constitutional role in reapportionment. The Legislature has set March 19, 2002—seven weeks after its next session begins—as its

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<sup>3</sup>See Order at 9-10 (10/9/01).

<sup>4</sup>Minn. Const., art. IV, § 3 (“At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts.”).

<sup>5</sup>Order (7/12/01) (“the special redistricting panel shall release a redistricting plan that satisfies constitutional and statutory requirements only in the event a legislative redistricting plan is not enacted in a timely manner”).

<sup>6</sup>Findings Fact, Conclusions Law, & Order J. Legislative Redistricting, Conclusions of Law 3, *Cotlow v. Growe*, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991), available at <http://www.senate.leg.state.mn.us/departments/scr/redist/cotlo129.htm> (“Unless a legislative plan is incorrectly invalid, a court may not simply substitute its own reapportionment preferences for those of the state legislature.”).

target for completing legislative and congressional redistricting.<sup>7</sup> This Panel, in conformity with the Chief Justice's order "that the special redistricting panel shall release a redistricting plan . . . only in the event a legislative redistricting plan is not enacted in a timely manner,"<sup>8</sup> ought not to issue a plan before then.

Finally, the Moe Intervenors ask that the Panel provide for the submission and consideration of any legislative plan for redistricting that may appear after the timetable's closing date for submission of proposed plans on December 28, 2001. The Legislature will reconvene on January 29 and, sometime afterward, either chamber (or each chamber) may adopt a plan for redistricting for the other chamber's consideration. The Governor is also holding hearings on reapportionment, and may recommend to the Legislature a plan for redistricting.<sup>9</sup> Of course, any such plan will not take effect unless the Senate, the House of Representatives, and the Governor all concur (or the Legislature overrides a gubernatorial veto). If a judicial solution is necessary, then the benefit of a plan adopted by either chamber or recommended by the Governor will surely inform this Panel's process.

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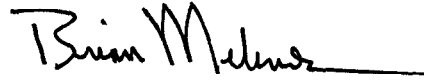
<sup>7</sup>Legislative Coordinating Commission, Geographic Information Systems, Minnesota Redistricting Timetable, *available at* <http://www.commissions.leg.state.mn.us/gis/html/redtime.htm>.

<sup>8</sup>Order at 2 (7/12/01).

<sup>9</sup>*See* Minn. Const., art. V, § 3 ("The governor shall communicate by message to each session of the legislature information touching the state and country.").

October 17, 2001.

FAEGRE & BENSON LLP



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John D. French, No. 31914  
Brian Melendez, No. 223633  
Lianne C. Knych, No. 268896  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
Ph. 612.766.7309  
Fax 612.766.1600

Attorneys for  
Moe Intervenors

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