

# WEINBLATT & GAYLORD PLC

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Of Counsel

October 17, 2001

## Via Messenger

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

OFFICE OF  
APPELLATE COURTS  
OCT 17 2001

FILED

Re: Cotlow, et al. v. Kiffmeyer, et al.  
Case No. C0-01-160

Mr. Grittner:

Enclosed for filing in the above-entitled matter please find the original and nine (9) copies of The Cotlow Plaintiff's Statement of Unresolved Issues.

A handwritten signature in black ink that reads "Alan W. Weinblatt". The signature is fluid and cursive.

ALAN W. WEINBLATT  
FOR  
WEINBLATT & GAYLORD PLC

AWW:mrn

## Enclosure

cc: Alan I Gilbert (*via facsimile and U.S. Mail*)  
Mark B. Levinger (*via facsimile and U.S. Mail*)  
Brian J. Asleson (*via facsimile and U.S. Mail*)  
Brian Melendez (*via facsimile and U.S. Mail*)  
Marianne B. Short, Esq. (*via facsimile and U.S. Mail*)  
Tim Kelly (*via facsimile and U.S. Mail*)  
client list (*via U.S. Mail*)

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Of Counsel

## By Facsimile and U.S. Mail

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90 South Seventh St.  
Minneapolis, MN 55402-3901

Re: Cotlow, et al. v. Kiffmeyer, et al.  
Case No. C0-01-160

Dear Counsel:

Enclosed and served upon you by Facsimile Transmission and U.S. Mail is a copy of the Cotlow Plaintiffs' Statement of Unresolved Issues.

A handwritten signature in black ink that reads "Alan W. Weinblatt". The signature is written in a cursive, flowing style.

ALAN W. WEINBLATT  
FOR  
WEINBLATT & GAYLORD PLC

AWW:mrn

cc: client list  
Enclosure

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
C0-01-160

OFFICE OF  
APPELLATE COURTS  
OCT 17 2001

FILED

COTLOW PLAINTIFFS  
STATEMENT OF  
UNRESOLVED ISSUES

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

Plaintiffs,

and

Patricia Cotlow, Thomas L. Weisbecker,  
Theresa Silka, Geri Boice, William English,  
Benjamin Gross, Thomas R. Dietz, John Raplinger,  
individually and on behalf of all citizens and  
voting residents of Minnesota similarly situated,

Plaintiffs-Intervenors,

and

Jesse Ventura,

Plaintiff-Intervenor,

and

Roger D. Moe, Thomas W. Pugh, Betty  
McCollum, Martin Olav Sabo, Bill Luther,  
Collin C. Peterson and James L. Oberstar,

Plaintiffs-Intervenors,

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,

Defendants.

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The parties to this litigation through their respective counsel of record conferred individually and jointly on October 16 and October 17, 2001, and reached a consensus on most of the items contained in this Court's Order dated October 9, 2001. That consensus is contained in a Stipulation of even date filed with the Court joined in by the Cotlow Plaintiffs. This Statement of Unresolved Issues states the Cotlow Plaintiffs' position on the two issues left unresolved in the stipulation.

#### Tolerable Deviation

The parties were able to stipulate to a maximum one-person deviation for any plan of congressional redistricting. That minimal deviation is achievable<sup>1</sup> and the Cotlow plaintiffs urge its adoption. The parties however were not able to arrive at a stipulated maximum permissible population deviation for a court ordered plan of legislative redistricting and have agreed to postpone the issue until the adoption by the court of plan criteria. The Cotlow Plaintiffs support that delay in reaching a decision of this important issue in order to give the parties a reasonable time to brief the competing proposals.

#### Timetable

The other issue upon which the parties were not able to reach a consensus was the appropriate deadline date for issuance of a court ordered plan. For the reasons set forth below the Cotlow Plaintiffs respectfully request that the issue of new plans of congressional and legislative redistricting occur no later than February 14, 2002.

The Cotlow Plaintiffs concur with the general proposition that the job of remedying the admitted constitutional violations alleged in their Complaint lies with the political process, i.e., the Minnesota House, Senate and Governor. There is nothing in Baker v. Carr or any of its progeny that deprives the legislature and

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<sup>1</sup> See Cotlow v. Growe

governor from completing its constitutional and statutory mandates to redistrict. Hence, judicial deference to that process, as recognized in Chief Justice Blatz's Orders dated March 2, 2001 and July 12, 2001 is quite proper.

On the other hand, the history of redistricting in Minnesota since 1913 should remind the panel that plaintiffs' (including the Cotlow Plaintiffs) constitutional rights to Due Process and Equal Protection should not be denied and should not be needlessly suspended, delayed or deferred into a mere theoretical or philosophical preference. In order to strike a balance between a highly appropriate deference and a highly inappropriate delay, the Cotlow Plaintiffs urge that the Panel issue its plan no later than January 31, 2002, but stay its effective date until February 28, 2002. This proposal would:

- (a) insure that the legislature and the Governor would have an additional 4 weeks to complete their work (even after the initial 4 weeks following the opening of the 2002 session);
- (b) remind the legislature and Governor that the Court was, in fact, prepared to grant plaintiffs a meaningful remedy if the political process was not able to do so; and
- (b) enable the political parties to conduct their precinct caucuses and precinct and county meetings in the potential new district.

There is precedence for the above proposal. The three judge Special Redistricting Panel in Cotlow v. Growe distributed its preliminary Redistricting Plan on November 21, 1991, heard oral argument on the plan on December 7, 1991 and issued its final plan on December 20, 1991 (subject to the then pending Federal Court injunction). At each stage, the legislature was, and again here should be, advised that it can avoid a judicial remedy by adopting a legislative one. In this case, the maxim "justice delayed is justice denied" has special meaning.

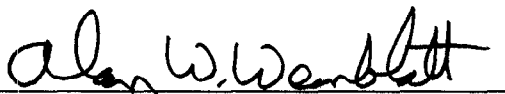
Other Matters

During the course of the discussions that led to the filed stipulation, one party suggested a period of "expert" depositions. The Cotlow Plaintiffs are opposed to such an exercise because:

- (a) It would degenerate this case into a "battle of experts";
- (b) There is not reasonable time to meaningfully prepare for, take and analyze the experts' depositions;
- (c) The adoption of plans of redistricting is a matter of judicial remedy, not evidentiary bickering. If this court is required, by legislative inaction, to grant these Plaintiffs, the other Plaintiffs and all citizens of Minnesota a judicial remedy, it should do so based upon legal principles - not on the basis of conflicting "experts".

Oral argument on all unresolved issues is respectfully requested.

Dated: October 17, 2001



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