

DORSEY & WHITNEY LLP

MINNEAPOLIS
NEW YORK
SEATTLE
DENVER
WASHINGTON, D.C.
NORTHERN VIRGINIA
DES MOINES
LONDON
ANCHORAGE
SALT LAKE CITY
BRUSSELS

SUITE 1500
50 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-1498
TELEPHONE: (612) 340-2600
FAX: (612) 340-2868
www.dorseylaw.com

MICHELLE B. FRAZIER
(612) 340-7847
FAX (612) 340-2807
frazier.michelle@dorseylaw.com

OFFICE OF
APPELLATE COURTS
OCT 17 2001
FILED (H)

COSTA MESA
BILLINGS
FARGO
HONG KONG
GREAT FALLS
ROCHESTER
TOKYO
MISSOULA
VANCOUVER
TORONTO
SHANGHAI

October 17, 2001

VIA MESSENGER

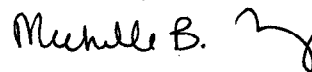
Clerk of Appellate Courts Office
25 Constitution Avenue
Suite 305
St. Paul, MN 55155

Re: Susan M. Zachman, et al. v. Mary Kiffmeyer, et al.
Special Redistricting Panel, File No. C0-01-160

Dear Clerk:

Enclosed for filing in the above matter please find the original and nine (9) copies of the Statement of Unresolved Issues and Argument in Support of Timetable.

Sincerely,



Michelle B. Frazier

MBF/sg

cc: All Counsel of Record
Enclosures (1)

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
CO-01-160

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,

v.

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.

OFFICE OF
APPELLATE COURT

OCT 17 2001 (H)

FILED

**STATEMENT OF
UNRESOLVED ISSUES
AND ARGUMENT IN
SUPPORT OF
TIMETABLE**

Pursuant to the Special Redistricting Panel's Order dated October 9, 2001, Plaintiff-Intervenor Jesse Ventura submits this Statement of Unresolved Issues and Argument In Support of the Timetable set forth in this Panel's Order. Although Plaintiff-Intervenor Ventura joins the parties in the joint Stipulation filed with this Panel, he submits this Statement to address the issues not resolved by the Stipulation.

I. Maximum Tolerable Percentage Deviation From Ideal For Congressional and Legislative Districts.

Redistricting actions rest on the overriding concern for fair and effective representation for all citizens. Wesberry v. Sanders, 376 U.S. 1, 7-8, 84 S.Ct. 526, 530 (1964); Reynolds v. Sims, 377 U.S. 533, 568, 84 S.Ct. 1362, 1385 (1963). Given this basic concern, census numbers and mathematical equality are the initial considerations in constructing or evaluating redistricting plans. Hastert v. State Bd. of Elections, 777 F.Supp. 634, 643-44 (N.D.Ill. 1991) (citing Chapman v. Meier, 420 U.S. 1, 23, 95 S.Ct. 751, 764 (1975) for proposition that pre-eminent criterion on which to evaluate redistricting plan's constitutionality is mathematical equality). For congressional plans, apportionment must be "as nearly equal as practicable;" for legislative plans, drawings must achieve "substantial equality of population among the various districts." Wesberry, 376 U.S. at 7-8, 84 S.Ct. at 530 (setting forth congressional standard); Reynolds, 377 U.S. at 577, 84 S.Ct. at 1390 (setting for legislative standard); see Connor v. Finch, 431 U.S. 407, 418, 97 S.Ct. 1828, 1835 (1977) (recognizing population deviations of 10% or less in legislative redistricting plans do not affect plans' constitutionality).

In light of these standards, deviations from mathematical equality are permitted only if necessary to further sound legislative policy. Karcher v. Daggett, 462 U.S. 725, 740, 103 S.Ct. 2653, 2663 (1983); see Connor, 431 U.S. at 417, 97 S.Ct. at 1835 (noting deviations must be supported by historically significant state policy). Allowable deviations are based on the idea that:

an unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge those other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operations are important to an acceptable representation and apportionment arrangement.

Brown v. Thomson, 462 U.S. 835, 842, 103 S.Ct. 2690, 2696 (1983) (quoting Gaffney, 412 U.S. at 749, 93 S.Ct. at 2329). Redistricting principles historically considered in evaluating deviations center around the “one person, one vote” principle and further the overall purpose of creating a politically fair or competitive result.

Plaintiff-Intervenor Ventura agrees that the maximum tolerable deviations for the state’s congressional and legislative districts must be as small as possible. But it is difficult to determine the “maximum tolerable percentage deviation” before determining the appropriate criteria to be considered in Minnesota’s redistricting efforts. At this time, therefore, Plaintiff-Intervenor Ventura agrees with the parties that the maximum deviation from the ideal population for a Congressional District in any plan be plus or minus one (1) person. For Legislative Districts, Plaintiff-Intervenor Ventura submits a maximum percentage deviation of (+) or (-) 2%, which was the standard adopted by the Special Redistricting Panel in Cotlow v. Growe, and used as the standard for the redistricting plan approved by the Senate Redistricting Committee and adopted by the Senate on May 17, 2001. Cotlow v. Growe, No. 98-91-985 (Minn. Special Redist. Panel, Order, Jan. 31, 1998, p. 16); S.F. No. 2377, 82nd Session (2001). Because this standard may vary depending on the criteria adopted by the Panel, however, Plaintiff-Intervenor Ventura joins the parties in deferring this determination until the Panel’s final adoption of criteria.

II. Current Timetable.

As noted in Chief Justice Blatz’s March 2, 2001 Order, “redistricting is primarily a legislative function.” See Growe v. Emison, 507 U.S. 25, 34, 113 S.Ct. 1075, 1081 (1993) (stating “reapportionment is primarily the duty and responsibility of the State through its

legislative or other body”) (quoting Chapman, 420 U.S. at 27, 95 S.Ct. at 766). Given this fact, Minn. Stat. § 204B.14, subd. 1a (2000) provides an extended timetable for adopting a redistricting plan and states that redistricting plans must be enacted three weeks before the state’s primary elections. In the current redistricting cycle, the statutory deadline under Minn. Stat. § 204B.14, subd. 1a is March 19, 2002.

Recognizing the importance of allowing the Legislature the maximum time available to fulfill their responsibility of adopting the state’s redistricting plans, the Special Districting Panel appropriately set the final release of its order and redistricting plan for March 19, 2002.

Although the Zachman Plaintiffs argue that this deadline is not sufficient to “allow enough time for election officials to accomplish the tasks that follow the adoption of new legislative and congressional plans,” this deadline follows a tight schedule for moving forward with the Panel’s redistricting efforts, while allowing the Legislature the maximum opportunity to fulfill its redistricting duties. [Motion to Lift Stay and Appoint Panel, June 8, 2001]. This timetable also permits the Panel to adhere to the primary concern reiterated by Chief Justice Blatz in her July 12, 2001 Order:

While the need to have state legislative and congressional district lines drawn in time for the 2002 election cycle imposes undeniable time constraints on this process, it is important that the primacy of the legislative role in the redistricting process be honored and that the judiciary not be drawn prematurely into that process.

Order of Chief Justice, No. C0-01-160 (Mar. 2, 2001). Under these circumstances, Plaintiff-Intervenor Ventura supports the Panel’s current timetable and requests oral argument on this issue.

III. Adoption of Redistricting Criteria.

As noted, the primary concern in this case is balancing the primacy of the Legislature with the statutory requirement that a redistricting plan shall be in place no later than March 19, 2001. [Order, Minnesota Special Redistricting Panel, October 9, 2001]. Given this concern, the

Panel stated that because this "is not a typical civil proceeding," the rules of civil procedure are secondary to the Panel's mandates or timelines. Id.

During the parties' negotiations, the Zachman Plaintiffs proposed taking depositions of the authors of all submitted redistricting plans. But, even assuming this is a typical civil proceeding, the proposed depositions are analogous to depositions of experts retained in preparation for trial, which are limited to exceptional circumstances under Minn. R. Civ. P. 26.02. Here, there are no exceptional circumstances supporting the proposed discovery. The Zachman Plaintiffs' proposal not only threatens to prolong a time-constricted process, but also is unnecessary.¹ Under the Panel's October 9, 2001 Order, the parties must submit supporting justification for their proposed redistricting plans by December 28, 2001. Moreover, the parties are allowed time to respond to plan justifications, and oral argument on the submitted plans and justifications. In light of these requirements, the proposed depositions (1) are redundant, (2) threaten to delay the process beyond the Panel's statutory deadline, and (3) could chill experts from providing candid opinions in support of plans.

Dated: October 17, 2001

DORSEY & WHITNEY LLP

By Marianne D. Short
Marianne D. Short #100596
Michelle Bergholz Frazier #285468
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-2600
Attorneys for Plaintiff-Applicant Intervener

¹ The Zachman Plaintiffs' make this time-consuming request in conjunction with their request for an expedited timetable.

CO-01-160

AFFIDAVIT OF SERVICE BY MAIL

OFFICE OF APPELLATE COURTS

OCT 18 2001

FILED

STATE OF MINNESOTA)

) ss

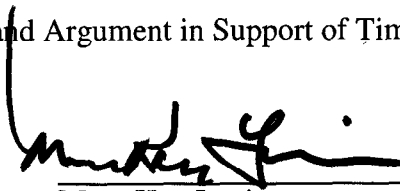
COUNTY OF Hennepin)

Mary Kay Levine, being first duly sworn, on oath, deposes and states that on the 17th day of October, 2001, s/he did deposit in the United States mail (an) envelope(s) properly sealed and with postage prepaid thereon, addressed to:

Timothy D. Kelly, Esq.
Kelly & Berens, P.A.
Suite 3720, IDS Center
80 South Eighth Street
Minneapolis, MN 55402

the last known address(es) of said addressee(s) in which envelope(s) s/he had first placed (a) true and correct (copy/copies) of the attached:

Statement of Unresolved Issues and Argument in Support of Timetable



Mary Kay Levine

Subscribed and sworn to before me this 17th day of October, 2001.

