STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg, and Debra Hasskamp, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiff-Intervenors,

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiff-Intervenors,

vs.

Mark Ritchie, Secretary of State of Minnesota; and Robert Hiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

BRITTON INTERVENORS' RESPONSE TO MOTIONS TO ADOPT REDISTRICTING CRITERIA

Plaintiff-Intervenors Audrey Britton, *et al.* respectfully submit this Response to the Motions to Adopt Redistricting Criteria submitted by the other parties in this litigation. It is clear to Plaintiff-Intervenors Audrey Britton, *et al.* that all of the Plaintiffs' and

Intervenors' proposals have more in common than they have differences. Only the Defendant Ritchie continues to look solely backward.

The following is the Britton, *et al.* analysis of the parties' respective positions.

A. **Population Deviation.**

1. Congressional Districts.

All parties agree that population equality for all eight congressional districts is the standard. The only deviation permitted is that required by the fact that the state's total population is not exactly divisible by 8, i.e., plus or minus one person.

All parties likewise agree that population equality is the overriding criterion.

2. Legislative Districts.

All parties also appear to agree that population equality is the overriding criterion for legislative redistricting plans. The devil, as often, is in the details.

a. Defendant Ritchie urges a maximum permitted deviation of plus or minus 2% solely because that was the permitted deviation allowed by prior Minnesota state and federal panels in the years 1971 through 2001.

Britton Response. For the reasons stated in the Memorandum of Intervenors Britton, *et al.* in Support of Criteria, Defendants' proposal does not meet the constitutional standard of *de minimis*. As noted therein, the 2001 Special Redistricting Panel in fact achieved a deviation of less than plus or minus 1%. Furthermore, all of the other parties agree that we can do better than 2%. If the Panel agrees, it should adopt the Britton proposal of equality subject to a maximum deviation of plus or minus .5%. Since

the Defendant Ritchie is not likely to submit a plan for new redistricting, his view should be given *de minimis* weight.

b. Plaintiffs, Hippert *et al.*, also appear to disagree with the Defendants' 2% criterion. They also appear to agree with a *de minimis* standard which they define to be plus or minus 1%. While more acceptable than the Defendants' proposed standard, Intervenors Britton, *et al.* respectfully submit that we can do better. If population equality is the goal, as well as the overriding criterion, why not try? The Republican partisan plan vetoed by Governor Dayton used a 1% deviation to gerrymander the heck out of the state. Smaller deviations will not affect the Republican plaintiffs' ability to make whatever proposals they want. On the other hand, adoption of the Britton proposal will show the state's citizens that equality means equality.

c. Plaintiff-Intervenors Ken Martin, *et al.* unfortunately do not provide the Panel or the other parties with any guidance or recommendation for legislative districting population criteria. This leaves the Panel with only the three stated options or its own best legal judgment.

d. Plaintiff-Intervenors Britton, *et al.* propose an "as nearly as possible" population equality standard with a maximum deviation, but not a safe harbor, of plus or minus one-half (.5%) percent. While absolute equality of population should be the goal, reality and the existence of other worthwhile substantive criteria, e.g., recognition of communities of interest, minimal impact on existing political boundaries and recognition of minority opportunity districts, suggest that some small amount of play be allowed if shown to be reasonable. Furthermore, the plans submitted should not pit the criterion

against one another; nor should they be prioritized in some rank order. All of the factors suggested by the Britton Intervenors should be considered.

B. **Communities of Interest.**

All parties agree that the Panel should consider the impact of each proposed plan on recognized or demonstrated communities of interest based on social, ethnic, geographic, political, cultural, economic and neighborhood considerations as well as transportation corridors, among other factors. The difference among the parties on this point, however, is not minor.

1. Defendant Ritchie would have this Panel not consider any factors other than those set forth in the Order of the Special Redistricting Panel filed in *Zachman v. Kiffmeyer,* No. C0-01-160 (Dec. 11, 2001), and attached to the Ritchie Motion. Plaintiff-Intervenors Britton, *et al.* respectfully suggest that Paragraph 8 (P. 5) of that Order and its adoption by Defendant Ritchie means that he accepts maintaining communities of interest as a criterion. That is all that Plaintiff-Intervenors Britton, *et al.* ask.

2. Plaintiff-Intervenors Hippert, *et al.* do not dispute the community of interest criterion. However, they rank it as being of lower importance than maintaining county, city or township boundaries. To Plaintiff-Intervenors Britton, *et al.* this "ranking" smacks of political game playing. There is no need to rank this factor lower than (or higher than) maintenance of identifiable political boundaries. On this point, Britton, *et al.* are in agreement with the Martin Intervenors. Legislators represent people, not trees, acres, nor political subdivisions.

3. Plaintiff-Intervenors Martin, *et al.* place great focus on maintenance of communities of interest. Britton, *et al.* strongly agree with that criterion for the reasons stated in the Martin *et al.* Memorandum, among other reasons. However, to the extent that the Martin Intervenors attempt to elevate that criterion over the equally legitimate criterion of only reasonable splitting of county, municipal and township boundaries, that effort should be also rejected.

4. Plaintiff-Intervenors Britton, *et al.* agree that maintenance of communities of interest should be an important consideration but do not "rank" it any higher or lower than any of the other criteria, except that they respectfully submit that population equality must be the overriding goal consistent with reasonable efforts to avoid unnecessary splitting of counties, cities and townships and minimal splits of identifiable communities of interest.

In summary, to the extent that the Hippert, *et al.* Plaintiffs suggest maintenance of political boundaries as a talisman over other criteria, that suggestion should be rejected. To the extent that the Martin, *et al.* Intervenors suggest maintenance of "communities of interest" as a talisman without some regard to maintenance of reasonable political boundaries that concept, too, should be rejected. This Panel does not need to accept either of these criteria to the exclusion (or ranking) of the other. Neither of them should be considered to be, as Hippert, *et al.* contend, "separate and superior" to the other. Neither of them should be used as part of a partisan game of "gotcha."

C. **Compactness.**

None of the Plaintiffs or Intervenors appear to give the issue of "compactness" significant weight. Hippert Plaintiffs' Memorandum of Law at pp. 22-25. The Britton Intervenors agree. The Martin Intervenors correctly conclude that "Ultimately, in some sense, compactness often comes down to a judicial "eyeball test" that deems some districts unjustifiably bringing shaped." This is hardly a basis for judicial evaluation of proposed districts. For these reasons and those set forth in the Britton, *et al.* Motion, this factor should not be given any significant consideration unless it is first shown that a particular plan is racially regressive.

D. **Contiguity**

No party disputes the Minnesota Constitutional requirement that all districts be contiguous or that single point contiguity is insufficient.

E. **Minority Representation.**

No party disputes the Federal Constitutional and statutory, Voting Rights Act of 1965, requirement that racial and other minorities' ability to elect representatives of their own choice in a meaningful way not be diluted. Britton, *et al.* suggest that if possible, such opportunities should be enhanced.

F. **Other Undisputed Criteria.** No party appears to dispute:

1. Number of Districts:

8 Congressional
67 State Senate
134 State House of Representatives

2. Numbering. The same method as ordered in *Zachman v. Kiffmeyer*, No. C0-01-160 (Dec. 11, 2001) should be used.

The Hippert, *et al.* Plaintiffs, but no other party, ask this Panel to expand the Twin Cities metropolitan area from its current seven county base (Anoka, Carver, Dakota, Hennepin, Scott, Ramsey and Washington) by adding the four additional counties of Chisago, Isanti, Sherburne and Wright, most of which are essentially exurban and rural. (Hippert Memorandum, pp. 8-14).

The purpose of the proposed expansion is not expressly stated by Hippert, *et al.* but is clearly political. The Britton, *et al.* Plaintiffs oppose adding the counties of Chisago, Isanti, Sherburne and Wright to the Metropolitan District without the Hippert proponents first giving a candid statement of the reasons for so doing and without prior Metropolitan Council approval. If the Hippert group wants to propose an 11 county metropolitan Congressional District, they are free to do so, if their proposal meets the other criteria and has independent merit. Otherwise, adding these four counties accomplishes nothing. Simply calling them "metropolitan" is like calling a horse a camel. It does not increase the camel population by one (+ or -).

3. Nesting. Each Senate District shall contain precisely 2 House of Representative districts – no fewer and no more.

G. **Open Issues.**

1. Are the current congressional and legislative districts unconstitutional? All parties except the Secretary of State agree that the legislative and congressional districts created in *Zachman v. Kiffmeyer* are unconstitutional. The Secretary of State wrongly

contends that the Panel need not decide this issue until after the oral argument on the appropriate remedy because there will be no election until November 2012. Legal balderdash. If the districts are not unconstitutional, why is this judicial Panel going through all the remedial steps creating deadlines and taking public testimony? The parties and intervenors have brought a lawsuit seeking a declaratory judgment. Since the population facts are not at dispute, a judgment, as repeatedly requested by Plaintiff-Intervenors Britton, *et al.* determining the unconstitutionality of the current districts should be entered forthwith.

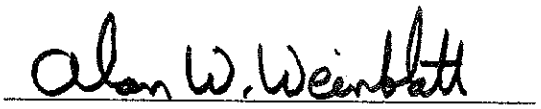
2. Avoiding "unfair" results for incumbents or potential challengers is a criterion suggested by Intervenors Martin, *et al.*

Plaintiffs Hippert, *et al.* do not comment on this issue. Intervenors Britton, *et al.* partially concur. Specifically, Britton, *et al.* suggest that in considering the consequences of any adopted plan, the Panel also consider the impact that the plan may have on incumbent legislators, but only after a plan is shown to meet all other criteria. The specific test should be: does the plan needlessly pit incumbents against each other, particularly minority incumbents and/or women incumbents, both of whom are seriously underrepresented in the Minnesota legislature?

While incumbent protection (or intentional incumbent harm) should not be a significant criterion, above all else, do no needless harm, intentionally.

Respectfully submitted,

Dated: October 19, 2011



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