

# WEINBLATT & GAYLORD PLC

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Of Counsel

August 16, 2001

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

OFFICE OF  
APPELLATE COURTS

AUG 16 2001

FILED

Re: Zachman v. Kiffmeyer  
Case No. C0-01-160

Mr. Grittner:

Enclosed herewith for filing and distribution to the members of the Special Redistricting Panel, please find an original and five copies of Memorandum of Intervenors Cotlow et al In Support Of Plaintiffs Motion For A Scheduling Order, together with my Affidavit of Service.

A handwritten signature in cursive script that reads "Alan W. Weinblatt".

ALAN W. WEINBLATT  
FOR  
WEINBLATT & GAYLORD PLC

AWW:wmf

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
C0-01-160

OFFICE OF  
APPELLATE COURTS

AUG 16 2001

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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,

FILED

Plaintiffs,

MEMORANDUM OF INTERVENORS  
COTLOW ET AL IN SUPPORT OF  
PLAINTIFFS MOTION FOR A  
SCHEDULING ORDER

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.

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To: The Honorable Edward Toussaint, Jr., Honorable Thomas J. Kalitowski,  
Honorable Gary J. Pagliaccetti, Honorable Heidi S. Schellhas, Honorable Renee L.  
Worke; to Plaintiffs and their attorneys, Thomas B. Heffelfinger, Best & Flanagan  
LLP and Charles R. Shreffler, Shreffler Law Firm, P.A.; to Defendant, Mary  
Kiffmeyer, Secretary of State and to her Attorneys The Honorable Mike Hatch,  
Attorney General of Minnesota, Allan Gilbert, Deputy Attorney General and Mark  
B. Levinger, Deputy Attorney General; to Defendant, Doug Gruber, Wright Country  
Auditor and to his Attorney Brian J. Asleson, Chief Deputy Wright County  
Attorney;

INTERVENORS 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 hereby support the Plaintiffs' Motion for Entry of a Scheduling Order as the same should be modified herein for the reason that an orderly scheduling of the processing of this case is essential to the rights of intervenors to have in place full, fair, complete and final plans of legislative and congressional apportionment for the State of Minnesota, no later than March 31, 2002.

In support of this Memorandum, plaintiff intervenors state as follows:-

1. Both initial census data and final census data were available to the Minnesota Senate and Minnesota House of Representatives prior to commencement of the 2001 legislative session;
2. The Minnesota legislature was in session for more than four months during the year 2001 including a regular session and a special session. In neither of those sessions was a plan of congressional or legislative redistricting put before the bodies which has the support of a majority of the Minnesota State Senate and a majority of the Minnesota House of Representatives.
3. For the reason set forth in Plaintiffs Zachman et al Memorandum in Support of Scheduling Order, history has shown that the legislature has proven to be

incapable of passing reapportionment or redistricting plans, absent a court Order.

4. In all events, any plan that is adopted by this court would be subject to being superseded by a valid and constitutional plan or plans adopted by the Minnesota Senate and Minnesota House of Representatives and signed by the Governor or re-passed over his veto.
5. On the other hand, if no plan is timely adopted by this court, the political processes including re-drawing of precinct boundary lines, endorsement of legislative and congressional candidates and individual determination of intention to seek public office will be irrevocably injured for the following reasons:
  - (a) Persons who may desire to run for the Minnesota Senate, the Minnesota House of Representatives or the United States House of Representatives will not know, in a timely manner, the boundaries of the districts in which they have to run. Hence, their decision making process will be delayed and, as potential challengers, they may be thus harmed.
  - (b) Those cities, counties and other municipalities responsible for re-drawing of precinct boundaries will not be able to timely accomplish their work if a reasonable and constitutionally valid plan is not in place.

- (c) One or more parties may seek timely appellate review of this court's final judgement which will require additional time .
6. Further delay will mean that the rights of the intervenors, Cotlow et al, to have meaningful, constitutional legislative and congressional districting plans in place will be frustrated.

For all the foregoing reasons, request is made that this court adopt a reasonable and timely Scheduling Order.

#### **INSUFFICIENCY OF ZACHMAN TIMETABLE**

The foregoing have been argued, intervening plaintiffs, Cotlow et al, do not necessarily agree with particular terms of the Scheduling Order proposed by plaintiffs, Zachman et al, for the reason that portions of the suggested timetable are not necessary nor are they reasonable under all of the circumstances.

#### **OBJECTIONS TO PLAINTIFFS' PROPOSED SCHEDULE**

Intervenors object to the proposed Scheduling Order attached to the plaintiffs' Motion upon the following grounds:

1. There is no need to delay all action on this matter until October 1, 2001;

2. There is no need for factual discovery related to redistricting criteria. The redistricting criteria to be adopted by the court are **legal criteria**, not factual ones. The applicable criteria can be suggested by the parties based upon the law and previous redistricting cases.
3. There is no need for expert witnesses to develop redistricting principles or criteria since they are matters of law. Expert testimony may be appropriate regarding particular redistricting plans to be proposed but not otherwise.
4. There is no need or reason for discovery. This is not a case of who got to the intersection first but rather addresses an appropriate remedy for a constitutional violation.
5. An excessive number of court hearings will be unseemly and inappropriate. A five judge court is not an appropriate venue for such things as non-dispositive motion or jury trial.
6. In the final analysis, it will be this Court's Order which will determine the appropriate plan of legislative and congressional redistricting. Such relief is not the proper subject for a disputed contested jury trial.

#### **INTERVENOR PLAINTIFFS' PROPOSED SCHEDULE**

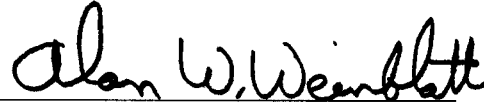
Plaintiff Intervenors propose their alternative schedule as follows:

1. Not later than August 31, 2001, the parties and all prospective intervenors shall stipulate in writing that the present legislative and congressional districts as set forth in Minnesota Statutes §§ 2.043 through 2.703 and 2.742 though 2.812 are unconstitutional and may not be used for any electoral purpose without further order of the Court.
2. No later than September 15, 2001, all present parties and proposed intervenors shall meet and confer regarding proposed scheduling and shall attempt in good faith to propose a joint Scheduling Order. If a joint Scheduling Order is not submitted by September 15, 2001, each present party and proposed intervenor shall submit their own proposed Scheduling Order to the Court no later than September 21, 2001.
3. October 1, 2001 - Each party shall submit its proposed redistricting criteria together with its legal memorandum in support of those proposed criteria.
4. October 15, 2001 - The Court shall conduct a hearing on proposed redistricting criteria.
5. October 31, 2001 - The Court shall adopt redistricting criteria.
6. November 30, 2001 - Deadline for submission of proposed plans including maps and all other supporting memoranda and authority.
7. January 15, 2002 - Final adoption of congressional and legislative plans by the Court.

The forgoing proposed Schedule is reasonable and is intended to result in a final judgement of this Court leaving time for appellate review with final implementation no later than March 31, 2001.

Respectfully submitted,

Dated: August 16, 2001



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STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
C0-01-160

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Susan M. Zachman, Maryland Lucky R.  
Rosenbloom, Victor L.M. Gomez, Gergory 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  
Plaintiffs,

AFFIDAVIT OF  
SERVICE

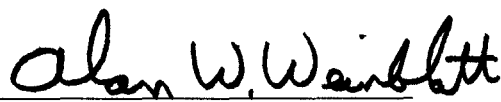
vs.

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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Alan W. Weinblatt, being first duly sworn, deposes and says that on August 16, 2001, I served upon each of the persons listed in Exhibit A attached hereto by United States Mail and by facsimile a true and correct copy of the attached Memorandum Of Intervenors Cotlow et al In Support Of Plaintiffs Motion For A Scheduling Order

  
Alan W. Weinblatt

Subscribed and sworn to before me  
this 16th day of August, 2001.

  
Notary Public



## EXHIBIT A

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