

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

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,

Petitioners,

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,

Respondents.

PETITION FOR  
APPOINTMENT OF  
SPECIAL REDISTRICTING  
PANEL

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**FILED**

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**FILED**  
1-28-11

DISTRICT COURT  
WRIGHT COUNTY, MINNESOTA  
By RS

TO: Chief Justice, Minnesota Supreme Court

Petitioners respectfully request that the Chief Justice exercise the supervisory authority delegated under Minn. Stat. § 2.724 to appoint a Special Redistricting Panel to oversee the judicial aspects of the redistricting of Minnesota legislative and congressional districts based upon the 2010 Census.

The grounds for this Petition are:

1. There is already pending in the Tenth Judicial District, Wright County, the matter captioned *Sara Hippert et al. v. Mark Ritchie et al.*, Court File No. 86-CV-11-433, an action seeking declaratory and injunctive relief regarding the malapportionment of legislative and congressional districts based on the 2010 Census. Petitioners here are the plaintiffs in that suit. In the last two (2)

redistricting cycles in the State of Minnesota, redistricting is an issue which has been ultimately resolved by panels appointed by the Chief Justice of the Minnesota Supreme Court. (*Zachman v. Kiffmeyer*, Wright County District Court File No. CX-01-116 (Order granting petition for appointment of a special redistricting panel dated March 2, 2001) and *Cotlow v. Growe*, Hennepin County District File No. C8-91-985 (Order appointing special redistricting panel dated June 4, 1991). In the first instance, however, it is the responsibility of the Minnesota Legislature and Governor to enact legislative and congressional redistricting plans that meet requirements of the United States and Minnesota constitutions. Petitioners are not presently requesting this panel to intervene in the legislative process which is currently underway in the Minnesota Legislature; however, the panel should be appointed and prepared to act expeditiously if the legislative and executive branches fail to agree on constitutional legislative and congressional redistricting plans.

2. If the Chief Justice does not act promptly, there is a risk that Minnesota state courts may cede their primary responsibility for addressing redistricting matters to the federal court system. An action has been filed in United States District Court for the Federal District of Minnesota entitled *Audrey Britton et al. v. Mark Ritchie et al.*, Civil Action No: 11-cv-93 (the "Federal Litigation") requesting the federal district court to redress Minnesota's currently unconstitutional congressional and legislative district boundaries. The Chief Justice of the Eighth Circuit Court of Appeals has already appointed a three (3) judge panel to oversee the Federal Litigation. (Order dated January 19, 2011.) Petitioners have filed a motion with the federal district court seeking leave to intervene for the purposes of seeking a dismissal or, in the alternative, a stay of the Federal Litigation. In *Growe v. Emison*, 507 U.S. 25 (1993), the United States Supreme Court stated:

We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its legislature *or other body*, rather than of a federal court." *Chapman v. Meier*, 420 U.S. 1, 27 (1975). Absent evidence that these state branches will fail to timely perform that duty, a federal court

must neither affirmatively obstruct state reapportionment *nor permit federal litigation to be used to impede it.*

507 U.S. 25, 34 (1993) (emphasis added). *Grove* involved an appeal from an order of a panel of three (3) Minnesota federal district court judges that included an injunction against a plan adopted by a panel of Minnesota state court judges. The U.S. Supreme Court held that the Minnesota federal district court committed "clear error" when it failed to defer any action unless evidence existed that the Minnesota Special Redistricting Panel (composed of one Minnesota appellate judge and two Minnesota district judges) would not act in a timely manner. *Id.*

3. Based on *Grove*, Petitioners believe that their state court proceeding, and *not* the Federal Litigation, is the more desirable judicial forum for adjudication of Minnesota state legislative and congressional reapportionment (if the Minnesota Legislature and Governor fail to pass a legislative and/or congressional redistricting plan). Petitioners believe the best method to accomplish this is through appointment of a special redistricting panel in the same manner as the Minnesota Supreme Court Chief Justice did in 2001 and 1991. Accordingly, the Chief Justice should act expeditiously in appointing a special redistricting panel to avoid the federal court exercising authority over redistricting matters in the perceived absence of Minnesota state court action.

4. It is also conceivable that other disenfranchised Minnesota voters may file actions in other Minnesota state courts, thereby leading to duplicative and potentially contradictory litigation and results. Without a panel with statewide jurisdiction over all redistricting matters, there is a potential for confusing and overlapping litigation.

5. The interests of the public and the parties, and the efficient allocation of judicial resources, warrant that the Chief Justice appoint a new special panel for the purposes of consolidating the judicial aspects of legislative and congressional redistricting. While the Minnesota Legislature is in session, the judicial tasks concerning redistricting would most likely focus on

determining whether the Minnesota legislative and congressional districts, as currently drawn based on the 2000 Census, meet constitutional requirements in light of the 2010 Census. Petitioners anticipate that there will be, in *Hippert v. Ritchie*, motions and evidentiary hearings on the constitutionality of the current legislative and congressional districts and/or adoption of redistricting criteria. There is no need to delay resolution of these issues while the Minnesota Legislature is in session. When and if the Minnesota Legislature and Minnesota Governor complete their work on redistricting, the court in *Hippert v. Ritchie* will likely be presented with, at a minimum, the task of reviewing the constitutionality of a detailed redistricting plan. If the Minnesota Legislature and Minnesota Governor fail to agree on a plan (as occurred most recently in 2001), then the *Hippert v. Ritchie* court will be tasked with drafting new legislative and congressional district boundaries. Petitioners believe that it would be in the best interests of the public, and the most efficient use of judicial resources, for a special redistricting panel to be appointed by the Chief Justice at the start of this litigation, not in mid-course.

6. Prompt appointment of a special redistricting panel would provide the panel with adequate time to prepare for the task of constitutional review of redistricting plans enacted through the legislative process or, if no such plans are adopted, to complete the work of adopting a redistricting plan that meets the requirements of the United States and Minnesota constitutions in time for election officials to prepare for the 2012 elections. Minn. Stat. § 204B.14 provides as follows (emphasis added):

Subd. 1a. **Legislative policy.** It is the intention of the legislature to complete congressional and legislative redistricting activities in time to permit counties and municipalities to begin the process of reestablishing precinct boundaries as soon as possible after the adoption of the congressional and legislative redistricting plans but in no case later than 25 weeks before the state primary election in the year ending in two.

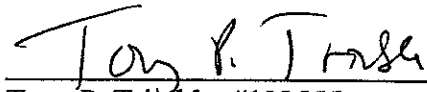
7. Based on the above statute, the current statutory deadline for drawing redistricting plans is February 21, 2012. This date is several weeks *earlier* than in decades past, because recent

statutory changes moved Minnesota's state primary from September to August. Hence, Minnesota courts will need to be prepared to act promptly upon adjournment of the Minnesota Legislature this spring if no plan is adopted or signed into law.

For the foregoing reasons, Petitioners request the Chief Justice to issue an order appointing a special redistricting panel, under Minn. Stat. § 2.724, to hear and decide all matters including all pretrial and trial motions relative to *Hippert v. Ritchie* or any other action that might arise relative to legislative and congressional redistricting based on the 2010 Census.

Respectfully submitted,

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