

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

A11-152

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

Petitioners,

vs.

**RESPONSE TO
AMICUS REQUEST**

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.

On August 2, 2011, Timothy Utz filed a Request for Leave to Participate as amicus curiae, specifying that his interest is to convince the Minnesota Supreme Court to enjoin the state legislature “to fulfill their Constitutional mandated re-districting obligations post hast [sic]...” Request for Leave to Participate at 1. While the Court has broad authority to entertain amicus requests, Plaintiffs respectfully suggest that Mr. Utz has not stated an appropriate basis to participate.

Plaintiffs agree that “redistricting is initially a legislative function.” Order of Chief Justice Lorie S. Gildea, *Hippert v. Ritchie*, Case No. A11-152 (Feb. 14, 2011); *White v. Weiser*, 412 U.S. 783, 794-95 (1973). However, it is equally well-established that state

courts must step in and undertake redistricting as necessary to preserve “one person, one vote” principles set forth in the United States Constitution. *Scott v. Germano*, 381 U.S. 407, 409 (1965) (“The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the State in such cases has been specifically encouraged.”). Consequently, Minnesota courts have effectively undertaken redistricting in each of the past several decades. *See e.g., Zachman v. Kiffmeyer*, 629 N.W.2d 98 (Minn. 2001); *Cotlow v. Growe*, No. C8-91-985 (Minnesota Special Redistricting Panel, Apr. 15, 1992); *LaComb v. Growe*, 541 F.Supp. 160 (D. Minn. 1982); *Beens v. Erdahl*, 349 F.Supp. 97 (D. Minn. 1972). Likewise, the February 14, 2011 and June 1, 2011 Orders of Minnesota Supreme Court Chief Justice Lorie Gildea specifically determined that the time has come for Minnesota courts to become involved in the current redistricting cycle. Mr. Utz’s position that Minnesota courts should never undertake redistricting is contrary to law and the Orders governing this Panel.

Moreover, Mr. Utz’s request to revisit a resolved issue is inconsistent with the purpose of amicus participation. *See State v. Finley*, 242 Minn. 288, 294, 64 N.W.2d 769, 773 (1954) (“The ordinary purpose of an amicus brief in civil actions...” is to “inform the court as to facts or situations which may have escaped consideration or to remind the court of legal matters which have escaped its notice.”). Mr. Utz requests a form of personal relief – an injunction requiring the legislature to reconvene – that is not sought by any party or intervenor and therefore is not available to non-party amicus.

Plaintiffs respectfully submit that Mr. Utz has not presented a valid basis for leave to participate in this litigation as an amicus, and that his request should be denied.

Dated: Aug. 10, 2011 **BRIGGS AND MORGAN, P.A.**

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