

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

OFFICE OF  
APPELLATE COURTS

NOV - 9 2011

A11-152

**FILED**

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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,

and

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,

Intervenors,

and

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

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.

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**HIPPERT PLAINTIFFS'  
OBJECTION TO COMMON CAUSE  
AMICUS REQUEST**

On November 8, 2011, Common Cause filed a Request for Leave to Participate as Amicus Curiae, stating that its “concerns are not confined to one particular issue,” but that Common Cause wishes to file maps after all other parties’ submissions and to comment generally on the parties’ map submissions. The Hippert Plaintiffs have previously argued that amicus status should be granted only when the proposed participation is consistent with long-standing court rules for amici. *See* Plaintiffs’ Response to Amicus Request (Aug. 23, 2011). Common Cause’s proposed participation is inconsistent with the requirement that an amicus must add specific facts or legal matters to a proceeding, with this Panel’s prior Orders, and with fundamental fairness principles. Accordingly, Plaintiffs respectfully submit that Common Cause’s request should be denied.

As Common Cause acknowledges, the *Zachman* Panel addressed when amicus participation is appropriate in redistricting proceedings. In its 2002 Order permitting the Minnesota Women’s Campaign Fund (“MWCF”) to participate in that redistricting cycle, the *Zachman* Panel stated that “[t]he purpose of an amicus brief is to inform the court of factual or legal matters that might otherwise evade its consideration, not to repeat arguments a party has already made.” *Zachman v. Kiffmeyer*, Order at 2 (Jan. 7, 2002) (citing *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.”)). The *Zachman* Panel went on to grant MWCF amicus status because that group proposed to submit “a brief discussing gender issues... a topic

that the parties to this case have not previously raised.” *Id.* Thus, MWCF proposed to participate with regard to a specific, identified issue, that (i) was not otherwise addressed by the parties or the Panel, (ii) would be addressed by amicus within the timeframes previously established by the Panel and (iii) would not affect the number or timing of maps that would be submitted to the Panel. Common Cause’s Request to Participate satisfies none of these considerations.

First and most importantly, Common Cause states no specific or identifiable mapping issue that would justify amicus participation. Indeed, Common Cause acknowledges that it does not wish to address the Panel with regard to any specific mapping or criteria concern. *See* Common Cause Request for Leave to Participate as Amicus Curiae, at 4 (Nov. 8, 2011) (“Request for Leave”) (noting that its concerns “are not confined to one issue” as with the MWCF amicus petition, and failing to specify issues Common Cause wishes to address.) Rather, Common Cause essentially seeks broad discretion to comment on any subject it wishes, which is not consistent with the limited purpose of amicus participation. *Finley*, 64 N.W.2d at 773.

Common Cause also notes that its “goal” as an amicus would be “to assist the Panel in reaching a result that gives voice to all Minnesotans, regardless of political persuasion.” Request for Leave at 4. This goal is not only broad and nonspecific, but also adds nothing new to the process. This Panel previously stated its intention to hear from the public, and established a public hearing and comment process that made it possible for all Minnesotans to speak to the Panel directly. *Hippert v. Ritchie*, Scheduling Order No. 1 (July 18, 2011). Consequently, Common Cause’s stated goal of

speaking *for* the public, without specifying which members of the public or on which issues (and without identifying any agenda Common Cause may have in its own right), does not offer the Panel facts or legal arguments that have escaped the Panel's notice.<sup>1</sup>

In any event, Common Cause acknowledges that it had the opportunity to make its own voice heard through the public hearing process, and in fact submitted individual comments to the Panel. Request for Leave at 3; *see also* Testimony of Mike Dean, St. Paul Hearing (Oct. 5, 2011). Common Cause further provided commentary and maps to the Panel through the larger Draw the Line Minnesota submission – which was completed prior to the closure of the public comment process.<sup>2</sup> And while Common Cause proposes to provide commentary specific to the parties' November 18 map submissions, the failure to identify a particular area of concern contrasts sharply with the narrow purpose of MWCF. In short, Common Cause's proposal to submit general critiques of other parties' maps (after the public hearing process) indicates a desire to act like a party, without having sought to intervene pursuant to the Panel's prior orders or following any of the other rules applicable to the parties.

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<sup>1</sup> To the extent Common Cause also wishes to reiterate that communities of interest should be elevated above other redistricting criteria, the Martin Intervenors have fully taken up and briefed that position for the Panel. As a result, it is not a new legal or factual issue for the Panel.

<sup>2</sup> See "Citizens Commission Report" of Draw the Line Minnesota at 2 (Oct. 21, 2011) (noting that members of its network include Common Cause Minnesota); *see also* <http://drawthelinemidwest.org/minnesota/> (accessed Nov. 8, 2011) (identifying Common Cause as a "Partner in Minnesota"); Letter to Members of the House Redistricting Committee at 1 (Mar. 13, 2011). Notably, Draw the Line's proposed maps were criticized by certain members of that "commission" for several reasons, not least because the group did not act in a non-partisan manner and dissenting voices of commission members were not heard. Letter from Kent Kaiser, PhD to Minnesota Special Redistricting Panel (Oct. 21, 2011). Such dissent further highlights the importance of enabling members of the public to speak to the Panel directly, rather than allowing a group without any direct authority to purport to give voice to "all Minnesotans."

Furthermore, Common Cause's proposal to submit another new map to the Panel at the very end of the process is suspect, and contradicts Common Cause's own stated desire to give the public a fully active role in the redistricting process. Common Cause proposes to submit a map to the Panel after the public comment period, after the parties to this litigation have submitted their own maps, *and* at a time when the other parties and the public would have no opportunity to submit a response. Thus, the timing of Common Cause's proposed submission is not only inconsistent with the Panel's Orders and the purpose of amicus participation, it is fundamentally unfair to the parties and to potentially dissenting members of the public.

There is no reason why Common Cause could not have submitted its map earlier. According to its "Draw Minnesota" website, the contest challenging Minnesotans to submit redistricting maps to Common Cause was announced over two months ago – after the Panel issued its Scheduling Order announcing the intervention deadline and public hearing dates. *Contrast* <http://www.drawminnesota.org/2011/08/contest-challenges-minnesotans-to-draw-their-own-redistricting-map/> (last visited Nov. 8, 2011) (press release dated August 29, 2011 soliciting contest submission) *with* Scheduling Order No. 1 at pp. 2, 4 (July 18, 2011). As a result, Common Cause had the opportunity to intervene in the litigation or to establish contest deadlines consistent with the Panel's public comment period, but chose not to do so.

Finally, the criteria for the contest maps is quite different than the criteria adopted by this Panel. <http://www.drawminnesota.org/contest/criteria/> (last visited Nov. 8, 2011). By giving more "points" for greater "competitiveness" and "partisan

representation parity” (*id.*), Common Cause diverges from and conflicts with the Panel’s adopted criteria. Thus, even if Common Cause submitted the winning map in a timely manner, it is not clear what relevance it would have for the Panel proceeding.<sup>3</sup>

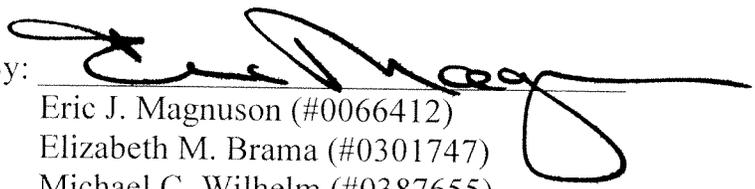
It is not Plaintiffs’ position that Common Cause could never have had a larger role in this litigation. Rather, Common Cause did not intervene and chose not to submit its map during the public comment period. Furthermore, Common Cause’s proposal to submit its own redistricting plans and broad-based critiques of some or all party maps is not consistent with the role of an amicus curiae, as Common Cause has not identified any subject matter the Panel has not heard from the public or will hear from parties to the proceeding. Finally, Common Cause’s proposal to submit maps at the very end of the process deprives not only the public, but also the parties, of a fair opportunity to respond to the late-filed maps. Accordingly, Plaintiffs respectfully request that the Request to Participate should be denied.

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<sup>3</sup> Plaintiffs considered whether they could support Common Cause submitting the winning citizen’s map(s) at the same time as the other parties submitted their maps. This change would resolve the timing problem, but not several other key concerns. First, the map would have limited relevance, as it was not drawn with attention to the Panel’s criteria. Second, it is not clear why Common Cause should be exempted from the Panel’s Orders regarding the requirements for public and party submissions. And even if Common Cause’s map was accepted for its limited purpose, this would not warrant carte blanche for an amicus to brief issues and act like a party intervenor thereafter.

Dated: November 9, 2011

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