STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A11-152

OFFICE OF
APPELLATE COURTS

SEP 12 2011

FILED

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,

Plaintiffs-Intervenors,

and

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

Plaintiffs-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.

TIMOTHY D. UTZ
AMICUS CURIAE ORDER

ORDER

Pursuant to Minn. R. Civ. App. P. 129.01, Timothy D. Utz, pro se, requests leave to file a brief as amicus curiae discussing which governmental branches have constitutional authority to perform redistricting. Plaintiffs Sara Hippert et al. (the Hippert plaintiffs) oppose the motion.

> The ordinary purpose of an *amicus curiae* 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 and regarding which it appears to be in danger of making a wrong interpretation.

State v. Finley, 242 Minn. 288, 294–95, 64 N.W.2d 769, 773 (1954). Because the Special Redistricting Panel (the panel) is well aware of the constitutional roles of the legislative, executive, and judicial branches in performing redistricting, we conclude that the proposed brief is not consistent with the purpose of amicus participation.

Redistricting is primarily the responsibility of the Legislature and the Governor. *See White v. Weiser*, 412 U.S. 783, 794, 93 S. Ct. 2348, 2354 (1973) (stating that redistricting is "primarily a matter for legislative consideration and determination" (quotation omitted)). The Minnesota Constitution provides: "After its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts." Minn. Const. art. IV, § 3. "Each order, resolution or vote requiring the concurrence of the two houses . . . shall be presented to the governor and is subject to his veto . . . ." *Id.* § 24; *see also Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187,

195, 92 S. Ct. 1477, 1483 (1972) (stating that Governor's veto nullified Legislature's efforts to fulfill its redistricting obligations).

If the Legislature and the Governor do not reach a timely agreement on redistricting, it is the role of the judicial branch to prepare and order the adoption of valid redistricting plans so that constitutional and statutory requirements are fulfilled. *See, e.g.*, *Gray v. Sanders*, 372 U.S. 368, 381, 83 S. Ct. 801, 809 (1963) (holding that United States Constitution requires "one person, one vote"). In *Growe v. Emison*, the United States Supreme Court held that the Minnesota Special Redistricting Panel's issuance of a redistricting plan, which was conditioned on the Legislature's failure to enact a constitutionally acceptable plan, was "precisely the sort of state judicial supervision of redistricting" that the Supreme Court has encouraged. 507 U.S. 25, 34, 113 S. Ct. 1075, 1081 (1993); *see Scott v. Germano*, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965) (per curiam) ("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 States in such cases has been specifically encouraged."); *Md. Comm. for Fair Representation v. Tawes*, 377 U.S. 656, 676, 84 S. Ct. 1429, 1440 (1964) (concluding that state judicial branch should take redistricting action only if state legislative branch fails to timely enact a valid redistricting scheme). In the last four redistricting cycles, the federal and state courts have established Minnesota's congressional and state legislative districts when the Legislature and Governor did not reach a timely agreement on redistricting. *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional

Redistricting Plan); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan); *Cotlow v. Growe*, C8-91-985 (Minn. Special Redistricting Panel Apr. 15, 1992) (ordering final judgment as to congressional redistricting); *Cotlow*, C8-91-985 (Minn. Special Redistricting Panel Jan. 31, 1992) (ordering final judgment as to state legislative redistricting); *see also LaComb v. Growe*, 541 F. Supp. 160 (D. Minn. 1982) (mem.) (adopting legislative plan); *LaComb*, 541 F. Supp. 145 (D. Minn. 1982) (mem.) (adopting congressional plan); *Beens v. Erdahl*, 349 F. Supp. 97 (D. Minn. 1972) (per curiam) (adopting legislative plan).

The Hippert plaintiffs filed this action in Wright County District Court in January 2011 and subsequently petitioned Chief Justice Lorie S. Gildea for appointment of a special redistricting panel to decide challenges to the validity of the current congressional and state legislative districts based on the 2010 census. On February 14, 2011, the Chief Justice granted the petition. *Hippert v. Ritchie*, No. A11-152 (Minn. Feb. 14, 2011) (Order of Chief Justice). The Chief Justice also stayed the matter to provide an opportunity for redistricting legislation to be enacted, explaining:

> While the need to have state legislative and congressional district lines drawn in time for the 2012 election cycle imposes undeniable time constraints on this process, it is important that the primacy of the legislative role in the redistricting process be honored and that the judiciary not be drawn prematurely into that process.

Id.

After the legislative session ended without the legislative and executive branches reaching an agreement on redistricting legislation, the Chief Justice issued an order lifting

the stay and appointing the panel. *Hippert*, No. A11-152 (Minn. June 1, 2011) (Order of Chief Justice). The June 1, 2011 order acknowledges that, although future agreement on redistricting legislation by the legislative and executive branches remains a possibility, the panel must be prepared to order the implementation of judicially determined redistricting plans "in the event that the Legislature and Governor have not in a timely manner enacted redistricting plans that satisfy constitutional and statutory requirements." *Id.*

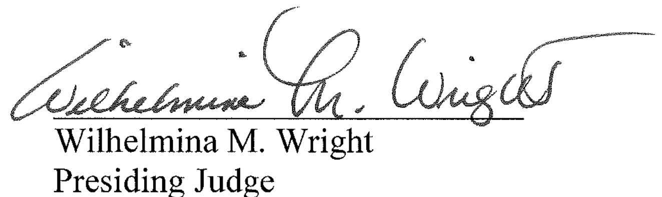
We are mindful of the panel's role in redistricting and particularly of the primacy of the legislative and executive branches. No aspect of our work precludes the Legislature and Governor from reaching an agreement on redistricting legislation. We will order the adoption of redistricting plans only if no agreement is reached by February 21, 2012, the statutory date by which the Legislature anticipated the completion of redistricting in this decennium. *See* Minn. Stat. § 204B.14, subd. 1a (2010).

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED the request of Timothy D. Utz for leave to file an amicus brief is DENIED.

Dated: September 12, 2011

BY THE PANEL:



Wilhelmina M. Wright
Presiding Judge