

FILED

February 22, 2021

**OFFICE OF
APPELLATE COURTS**

**STATE OF MINNESOTA
IN SUPREME COURT**

Peter S. Wattson, Joseph Mansky, Nancy
B. Greenwood, Mary E. Kupper, Douglas
W. Backstrom and James E. Hougas III,
individually and on behalf of all citizens
and voting residents of Minnesota
similarly situated,

Petitioners,

vs.

Steve Simon, Secretary of State of
Minnesota; and Kendra Olson, Carver
County Elections and Licensing Manager,
individually and on behalf of all
Minnesota county chief election officers,

Respondents.

**PETITION FOR APPOINTMENT
OF SPECIAL
REDISTRICTING PANEL**

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 redrawing of Minnesota congressional and legislative districts based upon the 2020 Census.

The grounds for this Petition are:

1. There is pending in the First Judicial District, Carver County, the matter

captioned *Peter S. Wattson, et al. v. Steve Simon, et al.*, Court File No. 10-CV-21-127, an action seeking declaratory and injunctive relief regarding the malapportionment of congressional and legislative districts based on the 2020 Census. Petitioners here are the Plaintiffs in that suit. In the last three redistricting cycles in the State of Minnesota, redistricting has been an issue ultimately resolved by panels appointed by the Chief Justice of the Minnesota Supreme Court. *Hippert v. Ritchie*, Wright County District Court File No. 86-CV-11-433 (Order granting petition for, and staying appointment of, a special redistricting panel, dated February 14, 2011); *Zachman v. Kiffmeyer*, Wright County District Court File No. CX-01-116 (Order granting petition for, and staying 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).

2. In the first instance, however, it is the responsibility of the Minnesota Legislature and Governor to enact congressional and legislative redistricting plans that meet the requirements of the United States and Minnesota constitutions. Petitioners are not presently requesting this Court to intervene in the legislative process in the Minnesota Legislature. However, this Court should take jurisdiction and be prepared to act expeditiously to appoint a panel, if the legislature fails to enact constitutional congressional and legislative redistricting plans.

3. It is conceivable that other disenfranchised Minnesota voters may file actions in other Minnesota state district 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.

4. The interests of the public and the parties, and the efficient allocation of judicial resources, warrant that the Minnesota Supreme Court take jurisdiction over all congressional and legislative redistricting actions in state courts for the purpose of consolidating the judicial aspects of congressional and legislative redistricting.

5. It has failed for the last five decades. *See Beens v. Erdahl*, 349 F. Supp. 97 (D. Minn. June 2, 1972) (legislative); *LaComb v. Growe*, 541 F. Supp. 145 (D. Minn. Mar. 11, 1982) *aff'd sub nom. Orwoll v. LaComb*, 456 U.S. 966 (1982) (congressional); *LaComb v. Growe*, 541 F. Supp. 160 (D. Minn. Mar. 11, 1982) (legislative); *Growe v. Emison*, 507 U.S. 25 (Feb. 23, 1993) (congressional and legislative); *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Spec. Redist. Panel Mar. 19, 2002) (congressional and legislative); *Hippert v. Ritchie*, No. A11-152, 813 N.W.2d 374 (Minn. Feb. 21, 2012) (congressional and legislative).

6. While the Minnesota Legislature is in session, the judicial tasks concerning redistricting would most likely focus on determining whether the Minnesota congressional legislative and districts, as currently drawn based on the 2010 Census, meet constitutional requirements in light of recent population estimates and the 2020 Census.

7. Petitioners anticipate that there will be, in *Wattson v. Simon*, motions and evidentiary hearings on the constitutionality of the current congressional and legislative districts and adoption of districting principles to guide the drawing of new districts. There is no need to delay resolution of these issues while the Minnesota Legislature is in session. When and if the Minnesota Legislature completes its work on redistricting, the court in

Wattson v. Simon will likely be presented with, at a minimum, the task of reviewing the constitutionality of detailed redistricting plans.

8. If the Minnesota Legislature fails to enact without court assistance a legislative plan (as has occurred every decade since 1971), or a congressional plan (as has occurred every decade since 1981), then the *Wattson v. Simon* court will be tasked with drafting new congressional and legislative district boundaries.

9. Minnesota redistricting faces two additional challenges this decade: one it has not faced since 1961 and a second totally new.

10. Minnesota's apportionment of congressional seats was reduced from ten to nine in 1931. The governor's veto of the legislature's congressional redistricting plan and subsequent litigation over the validity of the veto, as described in *Smiley v. Holm*, 285 U.S. 355 (1932), led to candidates for the nine seats running at large at the 1932 election. Minnesota's apportionment of congressional seats was reduced from nine to eight in 1961. The legislative process worked, though slowly, and Laws 1961, 2nd Ex. Sess. ch. 2, was approved on December 20, 1961.

11. This decade, delivery of 2020 Census data to the states has been delayed, as it has never been before, due to the COVID-19 pandemic.

12. On December 22, 2020, the United States Department of Commerce, Bureau of the Census, reported that the estimated population of the State of Minnesota, as of July 1, 2020, was 5,657,342.¹ That is significant growth since 2010 and thus a significant

¹ See Kimball W. Brace, *New Population Estimates Point to Significant Issues in Recent Supreme Court Case*, ELECTION DATA SERVICES, Dec. 22, 2020, at 7,

change from 2010 in the ideal population of a congressional district. But the Census Bureau's report also showed that the populations of other states have grown since 2010 faster than Minnesota so that, if these relative rates of population growth are confirmed by the 2020 Census, Minnesota will be apportioned only seven congressional districts.² If that happens, and new congressional districts are not drawn by the Minnesota Legislature or this Court, the Defendants in *Wattson v. Simon* will have no choice but to hold a congressional election in 2022 where all candidates run at large, as happened in 1932.

13. On February 12, 2021, the Census Bureau announced that the 2020 Census state populations used to calculate the apportionment of congressional seats will not be released until sometime between April 16 and April 30, 2021. Hansi Lo Wang, *6-Month Delay In Census Redistricting Data Could Throw Elections Into Chaos*, NATIONAL PUBLIC RADIO, Feb. 12, 2021, <https://www.npr.org/2021/02/12/965823150/6-month-delay-in-census-redistricting-data-could-throw-elections-into-chaos>. We will know then whether Minnesota's congressional districts will need only to be adjusted, if we have eight, or completely redrawn, if we have seven.

14. At the same time, the Census Bureau announced that the block population counts from the 2020 Census, provided to the states under Public Law 94-171 for use in drawing the new congressional and legislative districts, will not be delivered to the states until as late as September 30, 2021. *Id.* Not being prepared to draw districts in a hurry could

https://www.electiondataservices.com/wp-content/uploads/2020/12/NR_Appor20wTableMaps.pdf.

² *Id.* at 4.

throw the 2022 Minnesota elections into chaos.

15. 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 early in this litigation, not in mid-course.

16. Prompt appointment of a special redistricting panel will 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 plans are enacted, to complete the work of adopting plans that meet the requirements of the United States and Minnesota constitutions in time for election officials to prepare for the 2022 elections.

17. 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.*

18. Under this statute, the deadline for drawing redistricting plans is *February 15, 2022*. Minnesota courts need to be prepared to act promptly whenever it appears there is a substantial risk the legislative process will fail to enact constitutional plans.

19. For the foregoing reasons, Petitioners request the Chief Justice issue an order taking jurisdiction over all congressional and legislative redistricting actions in state courts. The panel would be appointed under Minn. Stat. § 2.724 to hear and decide all matters, including all pretrial and trial motions relative to *Wattson v. Simon* or any other action that

may arise relative to congressional and legislative redistricting based on the 2020 Census.

Respectfully Submitted,

Date: February 22, 2021

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