

**FILED**

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STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

September 24, 2021

OFFICE OF  
APPELLATE COURTS

A21-0243  
A21-0546

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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, and League of Women Voters Minnesota,

**WATTSON PLAINTIFFS’  
STATEMENT OF UNRESOLVED  
ISSUES**

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors

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,

Defendants,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O’Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer,

Plaintiffs,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder  
Gillespie, Xiongpaoo Lee, Abdirazak  
Mahboub, Aida Simon, Beatriz Winters,  
Common Cause, OneMinnesota.org, and  
Voices for Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of  
Minnesota,

Defendant.

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Plaintiffs Peter S. Wattson *et al.* (“Wattson Plaintiffs”) submit this Statement of Unresolved Issues pursuant to the State of Minnesota Special Redistricting Panel’s (“Panel”) Order dated August 24, 2021.

**1. *Constitutionality of current legislative and congressional districts.*** The parties agree that Minnesota’s legislative and congressional plans ordered in *Hippert v. Ritchie*, 813 N.W.2d 374 (Minn. Spec. Redist. Panel 2012) and *Hippert v. Ritchie*, 813 N.W.2d 391 (Minn. Spec. Redist. Panel 2012) (hereinafter “*Hippert*”) are unequally apportioned based on the United States Census 2020 (“2020 Census”), and therefore, Minnesota’s current legislative and congressional plans need to be changed to reflect the 2020 Census for purposes of Minnesota’s 2022 legislative and congressional elections. The Wattson Plaintiffs submit that the current legislative and congressional districts will become unconstitutional upon the legislature’s failure to act within the timing requirements

set forth in Minn. Stat. § 204b.14, subd. 1a. *See Hippert*, Order Stating Redistricting Principles and Requirements for Plan Submissions, at 3 (Nov. 4, 2011) (“Until February 21, 2012, the issue of the constitutionality of the current districts is not ripe for our decision.”); 813 N.W.2d at 378 (“the population of the State of Minnesota is unconstitutionally malapportioned among the state’s current legislative districts....”); 813 N.W.2d at 394 (“the population of the State of Minnesota is unconstitutionally malapportioned among the state’s current congressional districts....”).

**2. *Tolerable deviation: congressional districts.*** Congressional districts must be as nearly equal in total population as is practicable. U.S. Const. art. I, § 2; *Wesberry v. Sanders*, 376 U.S. 1, 7-8, 84 S. Ct. 526, 530 (1964). The Wattson Plaintiffs submit that, if any precinct is divided, the maximum tolerable deviation for congressional districts is one person. Because Minnesota’s total population is not divisible into eight congressional districts of equal population, the ideal result is six districts of 713,312 persons and two districts of 713,311 persons.

The Wattson Plaintiffs submit that, if no precinct is divided, absolute population equality should not be required.

Keeping counties, minor civil divisions (cities, townships and unorganized territories), and voting districts (precincts) whole when drawing congressional districts serves the public interest by: (1) making it easier for voters to identify the boundaries of the district where they must vote; (2) making it easier for election officials to assign each voter to the correct precinct and find a suitable polling place; (3) making it harder for the parties proposing plans to draw a partisan gerrymander; and (4) avoiding the waste of time

and money by the parties, the Panel, and the public purse when all are required to pursue the illusion of perfection by finding that last block to make the population of each district “ideal,” almost two years after the 2020 Census was taken and the actual population of each district has changed.

Contrary to popular belief, mathematical equality is not required for a congressional plan that achieves other legitimate state objectives, such as “making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.” *Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983).

The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State’s interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors.

*Id.* at 741.

In 2012, a congressional plan with an overall range of 4,871 persons withstood an equal-population challenge because it used whole counties, avoided contests between incumbents, and moved fewer people from one district to another than plans with lower overall ranges. *Tennant v. Jefferson County Comm’n*, 567 U.S. 758 (2012) (per curiam).

For plans based on the 2010 Census, in addition to West Virginia, whose plan was challenged and upheld, 13 states drew congressional plans with an overall range of more than one person that were not challenged. See NATIONAL CONFERENCE OF STATE LEGISLATURES (“NCSL”), *2010 Redistricting Deviation Table*,

<https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>, (last update Jan. 15, 2020), and NCSL, *Action on Redistricting Plans: 2011-20*, [https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting\\_actionplan\\_2010thru2020.pdf](https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_actionplan_2010thru2020.pdf) (last update Nov. 24, 2020).

**3. Tolerable percentage deviation: legislative districts.** Legislative districts must be substantially equal in total population. U.S. Const. amend. XIV, § 1; Minn. Const. art. IV, § 2; *Reynolds v. Sims*, 377 U.S. 533, 568, 84 S. Ct. 1362, 1385 (1964). The acceptable deviation from the ideal population for a legislative district should be two percent, plus or minus. See *Hippert*, Order Stating Redistricting Principles and Requirements for Plan Submissions, at 8 (Nov. 4, 2011), (“The population of a legislative district shall not deviate by more than two percent from the population of the ideal district.”)

Respectfully Submitted,

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