STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CASE TYPE: OTHER CIVIL

SPECIAL DISTRICT APPORTIONMENT PANEL

Patricia Cotlow, Phillip Krass, Sharon LaComb, James Stein, and Theodore Suss, individually and on behalf of all Citizens of Minnesota similarly situated, Plaintiffs, John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh, Intervening Plaintiffs, v. Joan Growe, Secretary of State of Minnesota, and Dale G. Folstad, Hennepin County Auditor, individually and on behalf of all Minnesota county chief election officers, Defendants, The Seventy-seventh Minnesota State House of Representatives and the Seventy-seventh Minnesota State Senate, Defendant-Intervenors.	Civil File No. MX 91-001562 INTERVENING PLAINTIFFS' RESPONSES TO SUGGESTED REDISTRICTING CRITERIA OF DEFENDANT-INTERVENORS, PLAINTIFFS, AND DEFENDANT FOLSTAD AND INTERVENING PLAINTIFFS' SUGGESTED ADDITIONAL CRITERIA

Intervening plaintiffs John Walker, Howard Miller, Don Sudor, and Nkajlo Vangh, for their responses to the suggested redistricting criteria of defendant-intervenors, plaintiffs, and defendant Folstad and for their suggested additional criteria, state:

Intervening plaintiffs respectfully suggest that the end to be sought in this action should be the adoption of a fair and impartial redistricting plan for the state of Minnesota, by the terms of which the votes of all voters are given equal weight. To that end, intervening plaintiffs further suggest that in order for redistricting criteria to be applied uniformly and even-handedly throughout the state, it is necessary that the Court prioritize the variable criteria it adopts. Not to do so allows different criteria to be made senior in different parts of the state, creating the appearance if not the fact of unfairness and disparate treatment of voters who should be treated alike. Intervening plaintiffs will propose herein what they believe to be appropriate prioritizations. However, for the sake of the Court's convenience, intervening plaintiffs will in each instance first respond to defendant-intervenors' standards for the drafting of legislative and congressional redistricting plans in the order they are presented in defendant-intervenors' memorandum dated August 8, 1991.

Intervening plaintiffs also will respond briefly to the unsolicited proposed criteria received from other parties.

Although not provided for in the Court's order of July 29, 1991, intervening plaintiffs believe that the Court should allow oral argument by the parties on proposed redistricting criteria and hereby request that opportunity.

I. LEGISLATIVE REDISTRICTING.

A. Responses to Defendant-Intervenors' Standards for Legislative Redistricting Plans and Proposed Additional Criteria.

1. Intervening plaintiffs concur with defendant-intervenors' legislative redistricting standards numbered 1, 2, 3, 6, 7, and 10.

2. Unless this Court approves the new legislative redistricting law in precisely the form in which it passed the legislature, any plan adopted by the Court will be by definition a court-ordered plan. Therefore, with respect to defendant-intervenors' standard number 4, intervening plaintiffs submit that the maximum allowable deviation from the population norm for both Senate districts and House districts should be at most one percent (1%), plus or minus, which could easily be accomplished with current technology.

Intervening plaintiffs submit that the higher standard of population equality required of any court-ordered plan of reapportionment, as distinguished from a legislative plan, is that all districts must be of substantially equal population, allowing only de minimis deviation from the population norm and resulting as nearly as practicable in mathematical equality among the districts. Reynolds v. Sims, 377 U.S. 533, 577 (1964); Swann v. Adams, 385 U.S. 440, 444 (1967); Chapman v. Meier, 420 U.S. 1 (1975); Connor v. Finch, 431 U.S. 407, 414 (1977); Beens v. Erdahl, 336 F.Supp. 715, 719 (D. Minn. 1972), rev'd on other grounds, 406 U.S. 187 (1972). Any deviation from

approximate population equality must be supported by historically significant state policy or unique features. In each instance, a court has the burden of articulating the precise reasons why a minimal population deviation plan cannot be adopted. Chapman v. Meier, supra, 420 U.S. at 26-27.

As explained by the court in Connor v. Finch, supra, the higher standard imposed upon courts reflects the unusual position of courts as drafters of redistricting plans. Courts have no authority to compromise conflicting state redistricting policies in the name of the people. A court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, Connor v. Finch, supra, 431 U.S. at 415, and in a manner free from any taint of arbitrariness or discrimination. Roman v. Sincock, 377 U.S. 695, 710 (1964).

3. Intervening plaintiffs concur with legislative redistricting standard number 5, except to the extent that it makes compactness subservient to all other standards. Intervening plaintiffs very strongly disagree with that element of standard number 5 and believe that the criterion adopted by the Court should be: "The districts must be composed of compact convenient contiguous territory. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district."

The right to vote is the very foundation of democracy. However, by adopting the standard of "one-person, one-vote," the United States Supreme Court has recognized that to be effective,

the right to vote requires that all votes must be weighted as equally as possible. The establishment or use of criteria that frustrate in any way the goal of equality among votes is a wrongful infringement on the right to vote.

Equal population among districts is only half of the necessary equation. If it is not combined with maximum compactness of districts, a subjective element is introduced that represents a de facto opportunity to weigh the vote of one voter differently from that of another. Defendant-intervenors' standard makes compactness subservient to all other standards. This bears within it the invidious seed of political gerrymandering, which the United States Supreme Court has recognized as justiciable. See Davis v. Bandemer, 478 U.S. 109 (1986).

Absolute equality in the weight of votes would be achieved if legislators and congressional representatives were elected "at large." However, both the state and federal jurisdictions recognize the unacceptable confusion that would create among voters and require the creation of separate electoral districts. Nevertheless, redistricting criteria should seek to achieve to the maximum degree possible the same ethical and arithmetic perfection that is offered by an "at large" election, while at the same time providing simplicity and focus for voters. Electoral districts must permit contests between candidates in an area so geographically compact that potentially subjective standards are prevented from negatively

affecting the vote of any voter. If a state is not divided into electoral districts that are equal in population and are as well maximally compact geographically, elections are by definition less fair than they might be. The goal of this Court should be to achieve maximum fairness. No lesser standard is constitutionally acceptable.

4. With respect to defendant-intervenors' standard number 8, intervening plaintiffs submit that consistent with the criterion of equal population, the integrity of existing boundaries of counties, cities, and townships (there are no "towns" under Minnesota law) should be maintained. Beens v. Erdahl, 336 F.Supp. 715, 719, 722 (1972). Minor deviations from population equality not exceeding one percent (1%), plus or minus, should be permitted to the extent that such deviations further the maintenance of county, city, or township boundary lines.

No state policy exists that prefers the preservation of county boundary lines over that of city or township boundaries. Rather, cities and townships represent the level of government closest to the electors, their homes, and their neighborhoods. Therefore, the descending order of priority of maintenance of political subdivision lines should be: (1) cities; (2) townships; and (3) counties. Cf. Beens v. Erdahl, supra at 722.

Intervening plaintiffs further submit that the Court should adopt as a part of this criterion a statement that when any county, city, or township must be divided into more than one

district, it shall be divided into as few districts as practicable. Reynolds v. Sims, 377 U.S. 533, 578-579 (1964); Swann v. Adams, 385 U.S. 440, 444 (1967).

5. With respect to defendant-intervenors' standard number 9, intervening plaintiffs submit that if such a criterion is adopted by the Court, it should be, as defendant-intervenors' standard suggests, junior to all other criteria and to the extent that any consideration is given to a community of interest, the data or information upon which the consideration is based must be identified.

Because of the ephemeral nature of the term, a "community of interest" exists in the eye of the beholder. The use of such a subjective standard, like the abandonment of compactness as a primary criterion, permits the application of political bias to the redistricting process and the de facto gerrymandering of electoral districts. Further, local communities of interest are given electoral recognition in elections for officials of local government units.

To the extent that such a criterion is adopted by the Court, intervening plaintiffs submit that appropriate recognizable communities of interest are urban, suburban, and rural.

6. Intervening plaintiffs submit that in addition to the standards described by defendant-intervenors, the Court should adopt a criterion that no election data shall be used in drawing redistricting plans. If the Court utilizes the

legislature's computer system, information access should be limited to population data only. Beens v. Erdahl, supra at 719; Klahr v. Williams, 313 F.Supp. 148 (D. Ariz. 1970), aff'd on other grounds, sub. nom., Ely v. Klahr, 403 U.S. 108 (1971); Winter v. Docking, 356 F.Supp. 88 (D. Kans. 1973); see also Connor v. Finch, 431 U.S. at 415, 422, 425. However, the Court may consider racial data included within the census data in order to preserve the voting strength of sizeable concentrations of minority populations within the state to increase the probability that they may be represented in the legislature. Beens v. Erdahl, D. Minn. No. 4-71-Civ. 151 (Order, June 2, 1972).

7. Intervening plaintiffs further submit that the Court should adopt as a criterion that no information regarding the residence of incumbents may be used in drawing redistricting plans. Beens v. Erdahl, supra at 719; Klahr v. Williams, 313 F.Supp. 148 (D. Ariz. 1970); League of Nebraska Municipalities v. Marsh, 209 F.Supp. 189 (D. Neb. 1962); Winter v. Docking, 356 F.Supp. 88 (D. Kans. 1973); White v. Cromwell, 434 F.Supp. 1119 (W.D. Tenn. 1977).

8. Intervening plaintiffs submit that the redistricting standards discussed above break into two categories: "fixed" standards and "variable" standards. Fixed standards are those that are mandated by the letter of a constitutiona provision or statute or do not require any discretion in application and, therefore, do not require prioritization. Variable standards

are those that do require discretionary application and should be prioritized in order to ensure fair and even-handed application in all parts of the state. Intervening plaintiffs suggest that the following are fixed standards:

- The Senate must be composed of 67 members, and the House of Representatives must be composed of 134 members;
- Each district is entitled to elect a single member;
- A representative district may not be divided in the formation of a Senate district;
- No election data shall be used in drawing redistricting plans;
- No information regarding the residence of incumbents may be used in drawing redistricting plans;
- The geographic areas and population counts used in maps, tables, and legal descriptions of districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting; and
- Districts must be numbered in the manner proposed by defendant-intervenors' standard number 6.

Intervening plaintiffs submit that variable standards or criteria should be applied in the following priority:

(1) The districts must be equal in population and composed of compact convenient contiguous territory, as discussed in paragraphs I(A)(2) and (3) above;

(2) The districts must not dilute the voting strength of racial or language minority populations, as described in defendant-intervenors' standard number 7;[1/]

1/ Given the concentrations of Minnesota's minority populations, it would be possible for the Court to reconcile this criterion with that listed immediately above by, for example, beginning the redistricting process by first creating compact districts of ideal population in areas of maximum minority population concentrations and then proceeding to redistrict the balance of the state using equal population and compactness as primary standards.

(3) The integrity of existing boundaries of political subdivisions should be maintained, as discussed in paragraph I(A)(4) above; and

(4) Districts should attempt to preserve communities of interest where that can be done in compliance with other criteria, as discussed in paragraph I(A)(5) above.

B. Responses to Plaintiffs' Proposed Criteria for Redistricting.

1. Intervening plaintiffs incorporate herein their responses above to defendant-intervenors' redistricting standards.

2. Intervening plaintiffs submit that paragraph 8 of Plaintiffs' Proposed Criteria for Redistricting is not a redistricting criterion, but rather purports to state the legal effect of a redistricting plan, and is therefore not an appropriate criterion for adoption by the Court.

3. Intervening plaintiffs submit that paragraph 18, appearing on pages 4-6 of Plaintiffs' Proposed Criteria for Redistricting, is not a redistricting criterion, but rather addresses the separate and discrete issue of a format for redistricting plans, which appropriately should be the subject of a separate solicitation by the Court of the views of the parties once redistricting criteria have been adopted.

C. Responses to Proposed Criteria from Hennepin County Auditor.

1. Intervening plaintiffs incorporate herein their responses above to defendant-intervenors' standards for legislative redistricting plans.

2. Intervening plaintiffs strongly object to the Hennepin County Auditor's proposed criterion that the Court should consider preserving the cores of existing districts. The goal of representation is just representation of the people and not protection of incumbents or party strength. Klahr v. Williams, 313 F.Supp. 148 (D. Ariz. 1970); League of Nebraska Municipalities v. Marsh, 242 F.Supp. 357 (D. Neb. 1965). Courts are forbidden from incorporating in reapportionment plans "purely political considerations." Wyche v. Madison Parish Police Jury, 635 F.2d 1151, 1160 (5th Cir. 1981).

Voters clearly are accustomed to the prospect of finding themselves in new districts every ten years. Intervening plaintiffs do not believe there is any substantiation for the Hennepin County Auditor's assertion that the preservation of the cores of existing districts would encourage voter participation and interest. Further, the "familiarity" that is important for election judges is familiarity with the election process, not with the number of the district in which they serve or with the candidates standing for election.

II. CONGRESSIONAL REDISTRICTING.

Without conceding that this Court has the authority to vary the terms of the continuing federal court order by which

Minnesota's current congressional districts exist, intervening plaintiffs, in compliance with this Court's order of July 29, 1991, will offer their responses and suggested additional criteria for congressional redistricting.

A. Responses to Defendant-Intervenors' Standards for The Drafting of Congressional Redistricting Plans and Proposed Additional Criteria.

1. Intervening plaintiffs concur with defendant-intervenors' congressional redistricting standards numbered 1, 4, 5, and 8.

2. With respect to standard number 2, intervening plaintiffs submit that congressional districts must be as nearly equal in population as possible. The Court is not here reviewing a congressional redistricting plan drafted by the legislature. Unlike a legislature, a court has no authority to compromise conflicting state redistricting policies in the people's name. See Connor v. Finch, 431 U.S. 407 (1977). Defendants-intervenors' citation of Karcher v. Daggett, 462 U.S. 725 (1983), for the proposition that deviation from population equality is permissible to achieve "some legitimate state objective" is thereby inappropriate in the case before the Court, since Karcher involved judicial review of a legislatively-drafted plan.

3. With respect to standard number 3, intervening plaintiffs incorporate herein their comments to the parallel legislative redistricting standard, set forth in paragraph I(A)(3) above.

4. With respect to standard number 6, intervening plaintiffs incorporate herein their responses to the parallel standard for legislative redistricting, set forth in paragraph I(A)(4) above.

5. With respect to standard number 7, intervening plaintiffs incorporate herein their responses to the parallel standard for legislative redistricting, set forth in paragraph I(A)(5) above.

6. Intervening plaintiffs submit that in addition to the standards described by defendant-intervenors, the Court should adopt a criterion that no election data shall be used in drawing redistricting plans. If the Court in fact utilizes the state computer system, information access should be limited to population data only. Beens v. Erdahl, 336 F.Supp. at 719; Klahr v. Williams, 313 F.Supp. 148 (D. Ariz. 1970), aff'd on other grounds, sub. nom., Ely v. Klahr, 403 U.S. 108 (1971); Winter v. Docking, 356 F.Supp. 88 (D. Kansas 1973); see also Connor v. Finch, 431 U.S. at 415, 422, 425. However, the Court may consider racial data included within the census data in order to preserve the voting strength of sizeable concentrations of minority populations within the state to increase the probability that members of a minority may be elected. Beens v. Erdahl, D. Minn. No. 4-71-Civ. 151 (Order, June 2, 1972).

7. Intervening plaintiffs further submit that the Court should adopt as a criterion that no information regarding the residence of incumbents may be used in drawing redistricting

plans. Beens v. Erdahl, 336 F.Supp. at 719; Klahr v. Williams, 313 F.Supp. 148 (D. Ariz. 1970); League of Nebraska Municipalities v. Marsh, 209 F.Supp. 189 (D. Neb. 1962); Winter v. Docking, 356 F.Supp. 88 (D. Kansas 1973); White v. Cromwell, 434 F.Supp. 1119 (W.D. Tenn. 1977).

8. Intervening plaintiffs submit that the redistricting standards discussed above break into two categories: "fixed" standards and "variable" standards. Fixed standards are those that are mandated by the letter of a constitutional provision or statute or do not require any discretion in application and, therefore, do not require prioritization. Variable standards are those that do require discretionary application and should be prioritized in order to ensure fair and even-handed application in all parts of the state. Intervening plaintiffs suggest that the following are fixed standards:

- There must be eight districts, each entitled to elect a single member;
- No election data must be used in drawing redistricting plans;
- No information regarding the residence of incumbents may be used in drawing redistricting plans;
- Districts must be numbered in the manner proposed by defendant-intervenors' standard number 4; and
- The geographic areas and population counts used in maps, tables, and legal descriptions of the districts must be those used by the Legislative Coordinating Commission's Subcommittee on Redistricting.

Intervening plaintiffs submit that variable standards or criteria should be applied in the following priority:

(1) The districts must be as nearly equal in population as possible and must be composed of compact convenient contiguous territory, as described in paragraphs II(A)(2) and I(A)(3) above;

(2) The districts must not dilute the voting strength of racial or language minority populations, as described in defendant-intervenors' standard number 5;[2/]

(3) Consistent with the requirement of equal population, the integrity of existing subdivision boundaries should be maintained, as described in paragraph I(A)(4) above; and

(4) The districts should attempt to preserve communities of interest where that can be done in compliance with other criteria, as discussed in paragraph I(A)(5) above.

B. Responses to Plaintiffs' Proposed Criteria for Redistricting.

1. Intervening plaintiffs incorporate herein their responses above to defendant-intervenors' congressional redistricting standards.

2. With respect to criterion number 11, intervening plaintiffs submit that population equality is an overriding criterion in any court-ordered congressional redistricting plan and may not constitutionally be made subservient to other criteria, as suggested by plaintiffs.

2/ Unlike legislative districts, the size and geographic areas of concentration of Minnesota's minority populations do not allow for the creation of a congressional district or districts in which minority group members would constitute a majority or substantial plurality of the population. Therefore, intervening plaintiffs do not suggest here that the Court begin with the creation of congressional districts in areas of greatest minority group population.

3. With respect to paragraph 14, intervening plaintiffs submit that the paragraph is not a redistricting criterion, but rather purports to state the legal effect of a redistricting plan, and is therefore not an appropriate criterion for adoption by the Court.

C. Responses to Proposed Criteria from Hennepin County Auditor.

1. Intervening plaintiffs incorporate herein their responses above to defendant-intervenors' standards for congressional redistricting plans.

2. Intervening plaintiffs incorporate herein their response to the Hennepin County Auditor's suggestion that the Court should consider preserving the cores of existing districts set forth in paragraph I(C)(2) above.

CONCLUSION

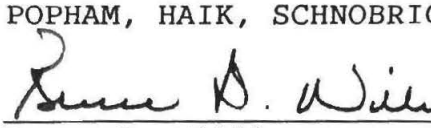
Intervening plaintiffs strongly believe that the foregoing modifications and additions to the standards adopted and proposed by defendant-intervenors are appropriate and are necessary for the adoption of redistricting plans that are not only fair in appearance but also are fair in fact and that will "assuage suspicion that the districts are drawn in order to weaken the voting strength of a particular ethnic, racial or

political group." (See Proposed Criteria from Hennepin County Auditor, p. 5.)

Dated: August 13, 1991

Respectfully submitted,

POPHAM, HAIK, SCHNOBRICH & KAUFMAN, Ltd.

By 

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