

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C8-91-985

Patricia Cotlow, Phillip Krass
Sharon LaComb, James Stein, and
Theodore Suss, individually and
on behalf of all Citizens of
Minnesota similarly situated,

Plaintiffs,

and

John Walker, Howard Miller,
Don Sudor, and Nkajlo Vangh,

Plaintiff-Intervenors,

vs.

Joan Grove, Secretary of State
of Minnesota; and Patrick H.
O'Connor, Hennepin County Auditor,
individually and on behalf of all
Minnesota county chief election
officers,

Defendants,

and

The Seventy-seventh Minnesota
State House of Representatives
and the Seventy-seventh Minnesota
State Senate,

Defendant-Intervenors.

PRETRIAL ORDER NO. 3

Establishing Final Criteria
for Redistricting, Staying
the Time Periods for Local
Governmental Units to
Redefine Their Local
Election Districts,
Accelerating Time Schedule
for Completing the
Legislative Redistricting
Plan, Designating Form for
Submission of Plans,
Granting Motions to Amend
Defendant-Intervenors
Complaint, and Designating
Issues for Oral Argument
on September 24, 1991

I.

Criteria

Pretrial Order No. 2 established preliminary criteria for redistricting, but reserved four issues for further argument by the parties. The parties submitted memoranda and addressed the

reserved issues in oral argument on August 29, 1991. Based on the written and oral submissions, the panel orders the following:

Congressional

1. The preliminary congressional criteria in paragraphs 1 through 7 of Pretrial Order No. 2 are adopted as final criteria.

2. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

Legislative

3. The preliminary legislative criteria in paragraphs 1 through 9 of Pretrial Order No. 2 are adopted as final criteria.

4. Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.

II.

5. An additional criterion proposed by plaintiffs and defendant-intervenors, requesting that any plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and necessary changes, is consolidated for consideration with motions to be argued on September 24, 1991.

III.

Motion to Stay Time Period for Local
Governments to Redefine Their Local Election Districts

6. The Hennepin County Auditor, on behalf of all chief election officials, requests an order to stay the time periods for local governments to redefine their local election districts.

Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 require local governmental units to redefine their local election districts within specific time periods following final redistricting.

These time periods were previously stayed on July 24, 1991 by order of the Ramsey County District Court. Judge Smith's determination in Seventy-seventh Minn. State Senate v. Carlson, No. C3-91-7547 (Minn. Dist. Ct., 2d Judicial Dist., Aug. 2, 1991) that Senate File No. 1571 (Chapter 246) and House File No. 635 (Chapter 349) were validly enacted into law implicitly requires the local governmental units to begin redistricting. The Hennepin County Auditor asserts that corrections affecting 17 counties, 44 cities and 17 towns must be made before local redistricting is possible. These corrections cannot be made by the legislature before it reconvenes in January.

The panel orders that the time periods within which local units of government are required to complete the redefining of the boundaries of election precincts, wards, or other local election districts pursuant to Minn. Stat. §§ 204B.135, 204B.14, 205.84, 205A.12, and 375.02 as amended by Minnesota Laws 1991, Chapter 349, are suspended until further order of this court.

IV.

Time Schedule

7. A majority of the parties to this action have requested that the panel accelerate the date for completion of the legislative redistricting process to allow for orderly planning by

local officials and candidates and proper notice to voters.

The panel recognizes the validity of these concerns and orders the following changes to the time schedule:

September 24, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Oral argument on issues designated in section VII.
October 7, 1991	Submission of proposed legislative redistricting plan.
October 16, 1991 1:30 - Courtroom 200 Minnesota Judicial Building	Submission of parties' written reaction to each other's plans and oral arguments contrasting, comparing and analyzing the plans.
November 20, 1991	Distribution of panel's legislative redistricting plan.
November 27, 1991	Submission of parties' written responses to legislative redistricting plan.
December 3, 1991	Oral arguments on redistricting plan.

The revised schedule will permit the panel to have a target date for completion of the legislative redistricting plan in the first week in December.

V.

Population Figures and Forms for Submission

8. The parties have agreed that the following population figures and base maps be used for purposes of the redistricting plan:

Census of Population and Housing, 1990: Public Law
(P.L.) 94-171 (Minnesota) [machine-readable data
files]/prepared by the Bureau of Census.

TIGER/Line Census Files, 1990 [machine-readable data
files]/prepared by the Bureau of Census.

9. The legislative redistricting plans to be submitted on
October 7, 1991 shall include the following:

- a. a map of the state showing proposed districts and minor civil division boundaries in counties that are split between districts;
- b. a map of the seven-county metropolitan area showing proposed districts, minor civil division boundaries, and census tract boundaries;
- c. a map of the cities of St. Paul and Minneapolis showing city boundaries, street names, and census tract boundaries and, where census tracts are split, block boundaries;
- d. a map of each municipality not wholly within one district or containing more than one whole district, showing census tract or enumeration district, block groups and block boundaries, where available;
- e. a table showing the name or number designation and population of all proposed districts; the numerical and percentage deviation from the ideal district size of each district, the average deviation for all districts, and the total deviation for the state;

- f. a table showing each county, minor civil division, and census tract that will lie in more than one proposed legislative district and including the population of each subunit so divided;
- g. an additional table showing and report explaining how the parts of any divided unit add up to equal the populations of other complete districts and explaining discrepancies, if any, and a final addition of all district populations to a state total;
- h. a table divided by legislative house ranking each district by percentage deviation and showing the district number, its population, and its population or numerical deviation;
- i. a calculation of the population required to elect a majority of each legislative body;
- j. a calculation of the ratio between the highest and lowest population district; and
- k. a calculation of the mean deviation of all districts.

VI.

Pending Motions

Defendant-Intervenors' Motion to Amend

10. The Minnesota Legislature has moved to supplement and amend its answer by adding a claim for declaratory judgment. The counterclaim seeks a declaration that any court-ordered state legislative redistricting plan must make only those changes to Minnesota Laws 1991, Chapter 246 which are (1) necessary to correct

constitutional or Voting Rights Act defects, (2) which respect the integrity of that law, and (3) which are consistent with the legislative history.

The counterclaim relates to events which have occurred since the date of the party's original pleading. Although significant issues have been raised relating to the propriety of granting a declaratory judgment, amendment is ordinarily freely granted, unless doing so would result in undue prejudice to the adverse party. See Wilson v. City of Eagan, 297 N.W.2d 146, 151 (Minn. 1980).

Neither the plaintiffs nor the plaintiff-intervenors would be significantly prejudiced by our allowing the requested amendment at this time. Accordingly, permission to amend to add a counterclaim for declaratory judgment is granted. However, we caution that, by granting the defendants' motion, we express no opinion on the merits of the claim.

Plaintiff's Motions

11. Plaintiffs Cotlow, Krass, LaComb, Stein, and Suss have requested that the panel rule on whether Minnesota Laws 1991, Chapter 246 meets the requirements of the Federal Voting Rights Act, 42 U.S.C. §1973 (1988). Specifically, plaintiffs move the court to (a) affirm Minnesota Laws 1991, Chapter 246 as recommended for correction by the August 26, 1991 action of the Minnesota House of Representatives and Minnesota Senate Committees on Redistricting as the sole and exclusive plan of legislative redistricting for use by the State of Minnesota. In the alternative, the plaintiffs move

the court to (b) adopt Chapter 246 and its corrections and any modifications required by the Voting Rights Act or the Minnesota and U.S. Constitutions, or to (c) adopt Minnesota Laws 1991, Chapter 246 as recommended for correction as the court's plan.

These motions and related issues are set for oral argument on September 24, 1991 at 1:30 in Courtroom 200 of the Minnesota Judicial Building.

Plaintiff-Intervenors' Motion

12. On September 11, 1991, plaintiff-intervenors moved to stay the state court redistricting proceedings.

VII.

September 24, 1991 Oral Argument

13. At the oral argument on September 24, 1991, the parties are asked to address the following issues:

- a. Whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act.
- b. The pending motions described in Section VI.
- c. The panel's proposed schedule and the concept of a plan with a delayed effective date.

VIII.

Miscellaneous

14. The caption is amended to substitute the name of the present Hennepin County Auditor, Patrick H. O'Connor, for the former Hennepin County Auditor, Dale G. Folstad.

15. Peter S. Wattson, Senate Counsel, Minnesota State Senate is added as attorney of record for the Minnesota State Senate, in association with John D. French and Michael Cheever in this proceeding.

Dated: September 13, 1991

BY THE COURT:

**Honorable Harriet Lansing
Honorable Kenneth J. Maas, Jr.
Honorable William E. Walker**

Memorandum

In staying the time period for local governmental units to redefine their local election districts and in accelerating the schedule to complete a legislative redistricting plan, the panel is responding to two valid concerns. First, local officials must have adequate time to redraw ward and precinct boundaries, establish precinct polling locations, prepare for elections, and inform voters of all changes. Potential candidates must have adequate time to determine who their constituents will be and to establish residency. Voters must have adequate time to learn about the candidates and their positions. These interests require the court to act swiftly in resolving any disputes relating to a final redistricting plan. Second, we recognize that the Minnesota Constitution places the power and the responsibility of redistricting with the state legislature and governor. They cannot act until January, 1992.

To balance the need for expediency with the appropriate deference to the legislative function, the panel is now

considering, if no pending motions are dispositive, a delayed effective date of the legislative redistricting plan. This procedure would permit the legislature and governor the maximum opportunity to act and would also provide adequate notice to all concerned persons of the alternative in the event the legislature and governor cannot agree upon a constitutional plan. All persons would have sufficient time to thoroughly analyze the plan, so that any review of it could be expedited. This procedure would eliminate any concern about the timeliness of the state court proceeding and allow for orderly expedition of any appeal. These accommodations would permit important state issues to be determined within the state courts and prevent a duplication of time and effort in other forums.

The time requirements for fashioning a congressional redistricting plan are not so immediate. In considering the schedule for congressional redistricting, the panel, because of the reduced time pressure, is not required to act until the legislature has had an opportunity to complete a congressional redistricting plan.