

**STATE OF MINNESOTA**  
**SPECIAL REDISTRICTING PANEL**

**C8-91-985**

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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.

**PRETRIAL ORDER NO. 4**

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.**

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At oral argument on September 24, 1991, the parties addressed the issues designated in Pretrial Order No. 3: (1) whether Minnesota Laws 1991, Chapter 246 violates the Minnesota or U.S. Constitutions or the Federal Voting Rights Act; (2) plaintiff-intervenors' motion to stay these proceedings and, if denied, to certify the issue to the Minnesota Supreme Court as important and doubtful or otherwise provide for direct appeal; (3) plaintiffs and defendant-intervenors' motion to adopt Minnesota Laws 1991, Chapter 246 and proposed legislative amendments as the redistricting plan; and (4) defendant-intervenors' motion to add a criterion that any court-adopted plan for redrawing state legislative districts be based on Minnesota Laws 1991, Chapter 246 and limited to changes necessary to correct defects.

Based on the arguments, the memoranda submitted, and the prior proceedings, the court concludes and orders as follows:

**I.**

**Constitutionality of**

**Minnesota Laws 1991, Chapter 246**

Article IV, section 2 of the Minnesota Constitution requires that representation in both the senate and house of representatives be "apportioned equally throughout the different sections of the state in proportion to the population thereof." Section 3 requires senators to be chosen "by single districts of convenient contiguous territory," with no representative district divided in the formation of a senate district.

All parties acknowledge that Minnesota Laws 1991,

Chapter 246 violates the constitutional commands of equal apportionment and contiguity. The parties disagree on whether the violations are technical or more deeply rooted. We conclude that numerous infirmities, including noncontiguous districts, invalidate Minnesota's present districting law, Minnesota Laws 1991, Chapter 246, under the Minnesota Constitution, Article IV, sections 2 and 3, and that further reapportionment is required to protect the rights of voters in this state.

We also conclude that Minnesota Laws 1991, Chapter 246 is invalid under the United States Constitution. The districting of Wayzata, Chatham Township, and New Hope, among others, violates the equality of representation requirement imposed by the fourteenth amendment to the United States Constitution. See Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362 (1964).

Plaintiff-intervenors have requested additional time to submit specific instances of violations of the Federal Voting Rights Act. This request was granted orally at the September 24 hearing.

## II.

### Motion to Stay

Plaintiff-intervenors move this court to stay its proceedings until completion of the proceedings of the United States District Court in Emison v. Growe, File No. 4-91-202 (D. Minn.). All other parties oppose this motion. Because of the length of the requested stay, the motion is essentially for dismissal. Plaintiff-intervenors have failed to demonstrate why the state should abdicate its responsibility to redistrict.

This court has a duty to hear and determine cases properly before it. This action, filed January 24, 1991, was pending when Emison v. Growe was filed. The interests represented in these two proceedings are similar but are not necessarily the same. The Hennepin County Auditor has not been permitted to intervene in

the federal suit and thus was unable to request the temporary stay of the local governments' time-restricted statutory obligation to redefine election districts, relief that this court granted in Pretrial Order No. 3. Plaintiff-intervenors have argued that violations of the Federal Voting Rights Act require federal jurisdiction, but acknowledge that their federal action does not include a claim that Chapter 246 violates that act.

The integrity of elections and the integrity of legislative apportionment are vital to this state's governance. The strong state interest in guaranteeing rights of political participation require maintaining control over reapportionment, a matter of particularly local concern. A state's judiciary, as well as its legislature, is charged with taking an active part in preserving these interests. See Scott v. Germano, 381 U.S. 407, 409, 85 S. Ct. 1525, 1527 (1965) ("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."); People v. Kerner, 32 Ill.2d 539, 546-49, 208 N.E.2d 561, 566-67 (1965); Kruidenier v. McCulloch, 257 Iowa 1315, 1318-19, 136 N.W.2d 546, 548 (Iowa 1965).

In addition, the Minnesota Constitution, while delegating the primary responsibility for reapportionment to the legislature, imposes various restrictions on redistricting plans, and it is the duty of state courts to ensure adherence to these constitutional mandates. See generally Minnesota State Bd. of Health v. City of Brainerd, 308 Minn. 24, 40 n. 5, 241 N.W.2d 624, 633 n. 5 (1976).

Judicial economy and the potential duplication of proceedings are important considerations. However, our review of the cases persuades us that when state court proceedings over reapportionment have begun, those proceedings are rarely stayed and it is

the federal courts that traditionally abstain. See Scott, 381 U.S. 407, 85 S. Ct. 1525; Badham v. United States Dist. Court, 721 F.2d 1170 (9th Cir. 1983); Grivetti v. Illinois State Electoral Bd., 335 F. Supp. 779 (N.D. Ill. 1971); Mahoney v. Burkhardt, 299 F. Supp. 787 (D. N.J. 1969); Ince v. Rockefeller, 290 F. Supp. 878 (S.D. N.Y. 1968); Silver v. Jordan, 274 F. Supp. 882 (C.D. Cal. 1967); Kerner, 32 Ill.2d 539, 208 N.E.2d 561; Kruidenier, 136 N.W.2d 546; see also Bianchi v. Griffing, 393 F.2d 457 (2d Cir. 1968) (challenging county reapportionment); Board of County Comm'rs v. Hayden, 715 F. Supp. 313 (D. Kan. 1989) (challenging state census); Henson v. Atchley, 453 F. Supp. 555 (E.D. Tenn. 1978). But see Davis v. Mann, 377 U.S. 678, 84 S. Ct. 1441 (1964) (abstention not warranted when state law is unambiguous and no similar state court proceeding was pending); Ryan v. State Bd. of Elections, 661 F.2d 1130 (7th Cir. 1981) (abstention not warranted when no issues of state law are involved); Farnum v. Burns, 561 F. Supp. 83 (D. R.I. 1983) (no pending state action or ambiguous state law); Cummings v. Meskill, 341 F. Supp. 139 (D. Conn. 1972), rev. on other grounds 412 U.S. 735, 93 S. Ct. 2321 (1973); see also Licht v. Quattrocchi, 454 A.2d 1210 (R.I. 1982) (based on same facts as Farnum).

Plaintiff-intervenors have also moved to stay this proceeding to allow the legislature and governor opportunity to revise Minnesota Laws 1991, Chapter 246. There is no doubt that the legislature has the primary duty to apportion. See White v. Weiser, 412 U.S. 783, 794-95, 93 S. Ct. 2348, 2354 (1973). However, the state judiciary, as well as the state legislature, is under a duty to preserve proper and timely voting procedures to ensure the state's constitutional government.

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. Candidates require time to assess and communicate with their constituencies and to establish residency. Voters require time to evaluate candidates and their positions. A valid plan must be in place in time for precincts to be drawn and for precinct caucuses to be conducted on schedule. This court is proceeding with a plan and timetable that will recognize these interests and still permit the legislature an opportunity to act.

### III.

#### Appeal of Denial of Stay

Plaintiff-intervenors request that denial of their motion to stay be certified to the supreme court or that this court authorize a direct and expedited appeal. The decision to stay a proceeding is generally left to the discretion of the trial court. See Danner v. Capehart, 41 Minn. 294, 42 N.W.2d 1062 (1889); Green Tree Acceptance, Inc. v. Midwest Fed. Sav. & Loan Ass'n, 433 N.W.2d 140 (Minn. App. 1988). The denial of a motion to stay is not expressly appealable but could presumably be certified for review as an "important" and "doubtful" question. See Minn. R. Civ. App. 103.03(h). We acknowledge the sensitivity of the federalism issue and its potential statewide impact; however, the propriety of a stay is not so doubtful as to warrant the extra delay that would result from appellate review of the issue. There will be adequate time for appeal of the final Order. Plaintiff-intervenors' motion is, therefore, denied.

### IV.

#### Adoption of Chapter 246 as Redistricting Plan

Both plaintiffs and defendant-intervenors have moved this court to accept the committee changes to Chapter 246 and hold, essentially, that Chapter 246, as amended and with any needed

technical modifications, be adopted as Minnesota's legislative redistricting plan. At this stage in the proceedings, the parties have not had an opportunity to present full argument or evidence on the extent of the infirmities in Chapter 246 and the significance of the proposed legislative amendments. The motion to adopt Chapter 246 and proposed amendments is premature and consequently denied. An order to show cause that would provide for arguments before the court would inject an additional stage in these proceedings which would cause delay. The objectives sought by the motion, if appropriate, can be achieved under the present schedule through alternative procedural means.

#### V.

#### Proposed Additional Criterion that Court-Adopted Plan be Based on Chapter 246

The defendant-intervenors have moved for the addition of a criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246. Case law compels us to adhere as closely as possible to the intent of the legislature, as embodied in the redistricting legislation. See *White*, 412 U.S. 783, 93 S. Ct. 2348. We adopt as an additional criterion that all submitted plans should be based on Minnesota Laws 1991, Chapter 246.

By adopting this criterion, we do not intend to restrict unduly the parties' right to challenge specific defects in the present redistricting plan or to recommend appropriate modifications. We decline to adopt the legislative committees' proposed corrections to Chapter 246 as criteria for the parties' plans. The parties may argue that these recommended amendments are appropriate and should be considered, but, because they were not enacted into law, we decline to accept the amendments as part of our criteria.

## VI.

### Summary

In summary, this court orders as follows:

1. The numerous defects, including noncontiguous districts, in Minnesota Laws 1991, Chapter 246 violate Article IV, sections 2 and 3 of the Minnesota Constitution. The current districting also violates the equality of representation requirement of the United States Constitution. A plan free from constitutional infirmities must be adopted.

2. Plaintiff-intervenors' motion to stay this proceeding is denied.

3. Plaintiff-intervenors' motion for this court to certify the propriety of a stay or, in the alternative, to authorize an expedited and direct appeal of this issue to the Minnesota Supreme Court is denied.

4. Defendant-intervenors' motion to adopt as an additional criterion that any court-adopted legislative plan be based on Minnesota Laws 1991, Chapter 246 is granted.

5. Plaintiffs' motion to enforce Minnesota Laws 1991, Chapter 246, together with amendments proposed by the legislative committees on redistricting, as the reapportionment plan for the State of Minnesota, is denied.

6. The parties' oral request for an alternative format for their proposed redistricting plan is granted. At a minimum, the submitted plans must include:

- a. A map of the state showing proposed districts, as well as counties and minor civil divisions (MCD's).
- b. A map of the seven-county metropolitan area showing proposed districts, as well as counties and MCD's.
- c. A map of the Cities of St. Paul and Minneapolis showing city boundaries, as well as MNDoT features and



annotations (highways, streets, roads, and their names).

d. Detailed maps and/or written descriptions defining the boundaries of proposed legislative districts that split a MCD along VTD (voting tally district or precinct) or tract block bounds.

e. A district population report showing the population for each district, the deviation from the standard for each district, average deviation for all districts, and total deviation for the state.

f. A district census units report showing each complete census unit (counties, MCD's, VTD's, and tract blocks) and the associated population for each proposed district.

g. A political subdivision splits report showing each county, MCD, or VTD that will lie in more than one proposed legislative district.

7. The parties' written arguments on Chapter 246 violations of the Federal Voting Rights Act must be submitted by October 7, 1991. Responses must be received by October 14, 1991.

**IT IS SO ORDERED.**

Dated: October 1, 1991

**BY THE COURT:**

**Honorable Harriet Lansing**

**Honorable Kenneth J. Maas, Jr.**

**Honorable William E. Walker**