

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

C-8-91-985

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.

PRETRIAL ORDER NO. 5

Joan Growe, 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.

At oral argument on October 16, 1991, this panel requested that the parties reserve Thursday, November 14, 1991, for additional argument if required. To assist the panel in its review of Minnesota Laws, 1991, Chapter 246, and its development of a constitutionally sound, redistricting plan, the panel orders that a supplemental oral argument shall be held on November 14, 1991, at 1:30 p.m., in the Minnesota Judicial Center, Courtroom 200, to consider the following issues:

I.

Voting Rights Act Challenges

The parties have previously argued the applicability and justiciability of Voting Rights claims in this proceeding. The upcoming hearing is intended as a final opportunity to specify all particular challenges to Chapter 246 under the Voting Rights Act.

II.

Legislative History of Chapter 246

The parties should address the propriety of relying on legislative history to avoid, modify, or correct constitutional or other defects in Chapter 246. References have been made to various maps used in committee and presented during floor debate on Chapter 246. The panel requires information on the existence and availability of any redistricting maps and population data tables used in the legislative process before and during enactment of Chapter 246. The parties should focus on whether such maps or tables

- i. constitute part of the redistricting law itself;

- ii. constitute part of the law's legislative history;
and
- iii. whether the maps can be used, if part of the law's legislative history, only to resolve ambiguities or more generally to avoid specific findings of unconstitutionality.

All such maps and tables should be submitted to the panel at or before the hearing scheduled for November 14, 1991. The parties are encouraged to stipulate to the authenticity and appropriate use of such materials. Absent agreement, however, the court requests submission of appropriate, authenticating affidavits.

III.

Specific Problems

Through the parties various submissions and an independent review of Chapter 246, the panel has identified numerous errors in the text of the redistricting plan. Not all of these defects are of constitutional significance. The following is a partial, categorized list of problems to which the parties should respond in two ways: first, by addressing generally the scope of the court's authority to resolve each type of defect; and, second, by specifying appropriate corrections for each defect. This list is illustrative only; the parties are strongly encouraged to submit their own detailed lists of errors and recommended remedies.

A. Clarifications.

Many of the problems in Chapter 246 involve ambiguities that can be resolved by reference to the surrounding text. The panel is inclined to treat such problems as technical errors warranting clarification but not requiring particularized justification. See Silver v. Brown, 48 Cal. Rptr. 609, 409 P.2d 689 (1966); Miller v. Schaffer, 320 A.2d 1 (Conn. 1972). Examples include:

1. Senate district 51. The description of the boundary around the portion of the city of Hugo included in this district is ambiguous, but the street references are sufficiently clear that the intended boundary is discernible. A minor directional clarification would correct the problem.

2. Senate district 53. Chapter 246 erroneously refers to Otter "Tail" Road. There is no such road in the area being described; however, reference to an ordinary street map indicates that Otter Lake Road was apparently intended. The similarity in names seemingly permits minor correction.

3. Senate district 54. Atlantic Street and the railroad right-of-way described do not meet, but both are plausible boundaries, and an intersection between the two could be accomplished by implying a straight-line extension from each.

B. Noncontiguous districts.

Chapter 246 contains some defects that create noncontiguous districts, in violation of Minn. Const. Art. IV, § 3. Examples include:

1. Senate districts 53, 54 and 55. The boundary between senate districts 54 and 55 is specifically described under each, but the descriptions do not coincide. A gap consisting of the block between Atlantic Street and Chamber Street results. Any portion of the city of Maplewood not included in senate districts 54, 55, or 57 is assigned to senate district 53. Because this particular block is not connected to the rest of senate district 53, the district is not contiguous.

2. Senate district 5. Angora Township is specifically included in senate district 5, but the unorganized territories surrounding this township--Vermillion Lake, Sand Lake, and East Sand Lake--are not included in this district. By residual clause, they fall into senate district 6. Consequently, senate district 5 is

not contiguous.

3. Senate district 31. Portions of Olmstead County not included in senate districts 28 or 30 are assigned to district 31. However, some of these areas, including portions of Cascade, Rochester, and Marion Townships are surrounded by areas included in senate district 30, leaving senate district 31 noncontiguous.

The parties should propose remedies for each of these and other contiguity problems and cite the justifications for their proposals.

C. Ambiguous boundaries, unassigned areas, and other geographic problems.

Various other defects in Chapter 246 affect not only the dividing lines between districts but also the district populations and the court's ability to calculate population deviations from ideal district size. Examples include:

1. House districts 52A and 52B. The description of the portion of New Brighton to be included in this district is vague. Even assuming that the legislature intended the line described to move easterly along 16th Street Northwest, this rectangular portion of the city creates a district of minimal contiguity--house district 52A--and a large disparity in populations between the two house districts.

2. Senate district 53. This district contains numerous problems. The line surrounding the portion of Blaine to be included is ambiguous, particularly near Flowerfield Road, and does not include the section of Blaine north of Circle Pines that the legislature's proposed plan includes in this district. The "extension" of County Road H2 to the shore of Bald Eagle Lake is indeterminate. The boundary around Gervais Lake, shared by senate district 54, is unclear and appears to leave lake-shore area

unassigned.

3. Senate districts 25 and 35. The section of New Prague in Scott County is assigned to both of these districts.

The parties should address these and all other similar problems in Chapter 246 and recommend appropriate corrections with supporting rationale.

IV.

Legal Descriptions and Computer Files of Plans Submitted

The possibility that the nature and scope of the defects in Chapter 246 will invalidate the entire law, although remote, requires detailed review of each of the parties' alternative redistricting plan. Maps and tables for the alternative plans have been submitted, in general accordance with the format for submission previously established by the panel. However, to improve the panel's ability to analyze these proposals, the panel has also found it necessary to request (1) computer access to each proposed plan file; and (2) legal descriptions of both plans.

The first of these requirements has been accomplished, although the parties have not afforded similar access to each other. The parties are directed to authorize mutual access to their respective computer plan files as soon as is reasonably possible.

The legislature has previously submitted a legal description of its proposed plan. The panel requests that the plaintiff-intervenor submit a similarly detailed, legal description of their proposed plan by November 14, 1991.

IT IS SO ORDERED.

Dated: November 8, 1991

BY THE COURT:

Honorable Harriet Lansing

Honorable Kenneth J. Maas, Jr.

Honorable William E. Walker

Memorandum

In Pretrial Order No. 4, this panel concluded that, due to certain obvious defects, Minnesota Laws 1991, Chapter 246, is unconstitutional on its face. In such a case, a court's first responsibility is to determine whether the errors in the plan are so pervasive as to invalidate it entirely, requiring adoption of an alternate plan; if the plan is not uncorrectably invalid, the court must ascertain the nature and scope of each error and modify the legislature's plan to the extent necessary to correct such defects. See Upham v. Seamon, 456 U.S. 37, 40-41, 102 S. Ct. 1518, 1520-21 (1982); Cook v. Lockett, 735 F.2d 912 (5th Cir. 1984).

Detailed analysis of Chapter 246 suggests that, although the law contains numerous errors affecting a significant number of districts, the defects are not so pervasive as to abridge the overarching requirement of judicial deference to legislative policy decisions, see White v. Weiser, 412 U.S. 783, 93 S. Ct. 2348 (1973), by developing an independent alternative plan. Absent persuasive argument establishing far-reaching, uncorrectable defects in Chapter 246, this panel is obliged to affirm those portions of the law that meet constitutional and statutory requirements and to limit the scope of its remedy to those areas in which substantial defects are present. The parties are accordingly advised of the court's evaluations in order to assist them to direct their arguments to issues properly within our scope of resolution.