Minnesota Redistricting Cases: the 1990s

Seventy-Seventh Minnesota State Senate v. Carlson, 472 N.W.2d 99 (Minn. 1991)

Governor Arne H. Carlson had attempted to veto the legislative redistricting bill passed in May 1991. He signed a message vetoing bill at 9:02 p.m. on the third day after it was presented to him (Sundays excepted), the last day on which the bill could be vetoed. However, the Governor's staff did not return the bill and the veto message to the house of origin until the next day. The Senate and House of Representatives, having researched the presentment and return dates of many other bills that were vetoed under a variety of circumstances at the close of the 1991 session, found a total of 14 bills that had not been returned to their house of origin within the three days prescribed by the Constitution. They filed a petition for a writ of mandamus in the Minnesota Supreme Court. The Court held that the challenge must be brought in district court as a declaratory judgment action.

Seventy-Seventh Minnesota State Senate v. Carlson, No. C3-91-7547 (2nd Dist. Ramsey County Aug. 2, 1991)

After their petition to the Supreme Court was dismissed, *Seventy-Seventh Minnesota State Senate v. Carlson*, 472 N.W.2d 99 (Minn. 1991), the Senate and House of Representatives filed a declaratory judgment action in Ramsey County District Court seeking to have all 14 bills declared valid law in spite of the attempted vetoes. The Court found that there had been no improper conduct on the part of the legislative bodies that would have prevented Governor Carlson from returning the bills on time, and that with the passage of midnight on the last day for their return, each had become law without the Governor's signature. The Governor chose not to appeal.

Benson v. Growe, No. 4-91-603 (D. Minn.) *consol. with Emison v. Growe*

After the district court held that the redistricting bill had become law without the Governor's signature, the minority leader of the Senate and others filed an action in federal district court seeking to have the plan declared invalid because of a series of technical errors in the bill that caused it to have districts that were not compact, were not composed of contiguous territory, and were not substantially equal in population. The case was assigned to the three-judge district court that had been considering an equal-population challenge to the 1982 legislative and congressional plans, *Emison v. Growe*. The court consolidated the two cases.

Cotlow v. Growe, No. C8-91-985, Findings of Fact, Conclusions of Law, and Order for Judgment on Legislative Redistricting (Minn. Spec. Redis. Panel Dec. 9, 1991)

In January of 1991, plaintiffs aligned with the Democratic Farmer Labor Party had filed an action against Secretary of State Joan Growe in state district court seeking to have the legislative and congressional districts drawn by a three-judge federal court in 1982 declared in violation of the equal population requirements of both the state and federal constitutions, based on the preliminary results of the 1990 census. The Minnesota Supreme Court, at the request of the parties, appointed a Special Redistricting Panel of two district judges and one judge of the Court of Appeals to consider the challenge. In March of 1991, plaintiffs aligned with the Independent Republican Party filed suit in federal district court, *Emison v. Growe*, challenging the 1982 plans on similar grounds. Emison and others were permitted to intervene in the state court action. After a separate state district court had held the legislative redistricting bill to have become law without the Governor's signature, Emison sought in parallel proceedings in the state and federal court actions to have it held in violation of constitutional requirements for compactness, contiguity, and equal population. Cotlow asked the

federal court to abstain from further proceedings pending state court action, and asked the state court to construe the new law to correct its technical errors in a way that would cause the plan to meet constitutional requirements. On December 5, 1991, as the state court was about to issue its order construing the law in a way that corrected its constitutional flaws, the federal court enjoined the state court from issuing the order. The state court issued the order anyway, but subject to the federal court's injunction. The injunction was promptly vacated on appeal, *Cotlow v. Emison*, 502 U.S. 1022 (Jan. 10, 1992) (mem.), and the state court's December 9 order on the legislative plan went into effect.

Cotlow v. Growe, No. C8-91-985, Final Order (Minn. Spec. Redis. Panel Apr. 15, 1992)

On January 10, 1992, when the Legislature passed a congressional redistricting plan, Governor Carlson returned it with his veto message the day it was presented to him. The same day, the U.S. Supreme Court vacated the federal court's injunction of the state court proceedings. The state court then proceeded to draw a congressional plan. On February 19, 1992, as the state court was about to issue its congressional plan, the federal court issued legislative and congressional plans of its own and enjoined Secretary of State Growe from holding the 1992 election using any plan other than the federal court's plan. Growe appealed the federal court's order, and on March 11, 1992, the U.S. Supreme Court stayed the order as to the legislative plan pending appeal. *Growe v. Emison*, No. 91-1420 (Mar. 11, 1992) (Blackmun, J., in chambers). On March 30, the Supreme Court noted probable jurisdiction. *Growe v. Emison*, 503 U.S. 958 (1992) (mem.). The state court issued its congressional plan, subject to the federal court's injunction. The 1992 election was held using the legislative plan enacted by the Legislature and corrected by the state court and using the congressional plan drawn by the federal court. On February 23, 1993, the Supreme Court reversed the federal district court in all respects. *Growe v. Emison*, 507 U.S. 25 (1993). The state court's congressional plan was used for the elections of 1994 and following.

Emison v. Growe, 782 F. Supp. 427 (D. Minn. 1992)

In March 1991, two months after plaintiffs aligned with the Democratic Farmer Labor Party had filed suit in state court challenging the 1982 court-drawn legislative and congressional plans as in violation of equal population requirements based on the preliminary results of the 1990 census, the Emison plaintiffs, aligned with the Independent Republican Party, filed suit in federal court challenging the 1982 plans on similar grounds. They also alleged that the 1982 legislative plan drawn by the federal court violated Section 2 of the Voting Rights Act because it split American Indian populations in northern Minnesota and south of downtown Minneapolis. After the Legislature passed a new legislative plan in May 1991, the Emison plaintiffs challenged it as in violation of state constitutional requirements for compactness and contiguity and in violation of federal and state constitutional requirements for equal population. In August 1991, the three-judge federal district court denied a motion by the Senate and House of Representatives, defendants in intervention, to abstain pending action by the Legislature at its 1992 session and the outcome of parallel proceedings in state court in *Cotlow v. Growe*. On December 5, 1991, as the state court was about to issue its order construing and correcting technical errors in the legislative plan enacted by the Legislature, the federal court enjoined the state court from further proceedings. The injunction was vacated on appeal. *Cotlow v. Emison*, 502 U.S. 1022 (Jan. 10, 1992) (mem.). On February 19, 1992, the federal court held the legislative plan in violation of Section 2 of the Voting Rights Act because it failed to create a majority-minority senate district in Minneapolis. The court then proceeded to redraw all 201 senate and house districts in the State. It also drew a congressional plan (the Legislature's plan had been vetoed by the Governor), and enjoined the Secretary of State from holding the 1992 election using any other plans. The Secretary of State appealed.

Growe v. Emison, 507 U.S. 25 (1993)

On appeal of *Emison v. Growe*, 782 F. Supp. 427 (D. Minn. 1992), the U.S. Supreme Court, in a unanimous opinion written by Justice Scalia, reversed and remanded with instructions to dismiss. The Court held that the federal district court had erred in not deferring to the state court. (The Court observed that this was an appropriate occasion for temporary "deferral," rather than permanent "abstention.") 507 U.S. 25, 37. The Court repeated its words from several previous cases that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court." 507 U.S. at 34. As the court said, "Minnesota can have only one set of legislative districts, and the primacy of the State in designing those districts compels a federal court to defer." 507 U.S. at 35. Rather than coming to the rescue of the Minnesota electoral process, the federal court had raced to beat the state court to the finish line, even tripping it along the way. 507 U.S. at 37. The Supreme Court found that the state court had been both willing and able to adopt a congressional plan in time for the elections. *Id.*

On the Voting Rights Act issue, the Court found that the *Gingles* preconditions, which it had previously applied only to challenges to multimember districts, also applied to single-member districts. 507 U.S. at 39-41. Applying the *Gingles* preconditions to the Minnesota plan, the Supreme Court found that they were unattainable. Even making the "dubious assumption" that the minority voters were geographically compact, there was no evidence of political cohesion within any of the three minority groups in the district (Blacks, American Indians, and Asians), nor was there any evidence of political cohesion between them. Likewise, there was no evidence of bloc voting by the white majority. In the absence of evidence to establish the preconditions, the Section 2 challenge failed. 507 U.S. 41-42. (The Court observed in a footnote that the usual measure for determining vote dilution is the minority population of voting age, not the total minority population used by this district court. 507 U.S. at 38 n.4.)

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