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November 18, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

A21-0243

A21-0546

Peter S. Wattson, Joseph Mansky,
Nancy B. Greenwood, Mary E. Kupper,
Douglas W. Backstrom, and James E. Hougas, III,
individually and on behalf of all citizens and
voting residents of Minnesota similarly situated,
and League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven,
Karen Lane, Joel Hineman, Carol Wegner,
and Daniel Schonhardt,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota;
and Kendra Olson, Carver County Elections and
Licensing Manager, individually and on behalf of all
Minnesota county chief election officers,

Defendants,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo,
Tanwi Prigge, Jennifer Guertin, Garrison O'Keith
McMurtrey, Mara Lee Glubka, Jeffrey Strand,
Danielle Main, and Wayne Grimmer,

Plaintiffs,

ORDER STATING
PRELIMINARY CONCLUSIONS,
REDISTRICTING PRINCIPLES,
AND REQUIREMENTS FOR
PLAN SUBMISSIONS

and

Dr. Bruce Corrie, Shelly Diaz,
Alberder Gillespie, Xiongpaoo Lee,
Abdirazak Mahboub, Aida Simon,
Beatriz Winters, Common Cause,
OneMinnesota.org, and Voices for
Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of Minnesota,

Defendant.

REDISTRICTING CONCLUSIONS AND PRINCIPLES

In the August 24, 2021 scheduling order, the panel directed the parties to this action to work toward a stipulation on preliminary matters and redistricting principles, and to submit separate written arguments on disputed issues. Based on those submissions and subsequent oral argument, the panel concludes as follows:

Preliminary Conclusions

1. *Jurisdiction.* The panel has subject-matter jurisdiction over this action, including all matters pertaining to legislative and congressional redistricting in the State of Minnesota. *Grove v. Emison*, 507 U.S. 25, 33-34 (1993); *see also Hippert v. Ritchie*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Oct. 29, 2001) (Scheduling Order No. 2). The panel was properly appointed pursuant to the power of the Chief Justice of the

Minnesota Supreme Court to assign judges to hear particular cases. Minn. Stat. §§ 2.724, subd. 1, 480.16 (2020).

2. *Constitutionality of Current Districts.* All parties agree that new legislative and congressional districts must be drawn because the 2020 Census revealed that the current districts are unequal in population. But only Frank Sachs, et al. (the Sachs plaintiffs) urge the panel to rule that the districts are presently unconstitutional. We decline to do so. The task of redrawing the districts falls to the legislature. Minn. Const. art. IV, § 3. The legislature has until February 15, 2022, to pass redistricting legislation and secure the governor's signature. Minn. Stat. § 204B.14, subd. 1a (2020) (setting the deadline for redistricting); see *Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 195 (1972) (recognizing that governor has power to veto redistricting legislation). Until that deadline has passed, the issue of the constitutionality of the current districts is not ripe for our decision. *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (quotation omitted)); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions).

3. *Population Data.* The panel and the parties will use the 2020 Census Redistricting Data (Public Law 94-171) Summary File for Minnesota, subject to correction of errors acknowledged by the United States Census Bureau, with population data determined to the census-block level. The appropriate data is available on the website of the Census Bureau's Redistricting Data Office and the website of the Geographic

Information Services Office of the Minnesota Legislative Coordinating Commission. The panel will use Maptitude for Redistricting software to review and analyze all proposed redistricting plans.

4. *Ideal Populations.* The total resident population of the State of Minnesota after the 2020 Census is 5,706,494 people. Minnesota has 8 congressional districts, 67 state senate districts, and 134 state house districts. Minn. Stat. §§ 2.031, subd. 1, .731 (2020). We calculate the ideal population for each type of election district by dividing the state's total population by the number of districts for the particular legislative body. Therefore, the ideal population of a Minnesota congressional district after the 2020 Census is 713,312; the ideal population of a Minnesota state senate district is 85,172; and the ideal population of a Minnesota state house district is 42,586.

5. *Numbering.* There will be a single representative for each congressional district, a single senator for each state senate district, and a single representative for each state house district. Minn. Stat. §§ 2.031, subd. 1, .731. The congressional district numbers will begin with District 1 in the southeast corner of the state and end with District 8 in the northeast corner of the state. Each state senate district will be composed of two nested house districts, A and B. *See* Minn. Const. art. IV, § 3 (requiring that no house district be divided in forming a senate district). The legislative districts will be numbered in a regular series, beginning with House District 1A in the northwest corner of the state and proceeding across the state from west to east, north to south, bypassing the 11-county metropolitan area until the southeast corner has been reached; then to the 11-county metropolitan area outside the cities of Minneapolis and Saint Paul; then to Minneapolis and Saint Paul. *See*

Minn. Const. art. IV, § 3 (requiring senate districts to be numbered in a regular series); Minn. Stat. § 200.02, subd. 24 (2020) (defining “[m]etropolitan area” for purposes of the Minnesota Election Law as the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright); *see also Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions).

Redistricting Principles

The panel adopts the following redistricting principles, which are listed in no particular order.

1. To afford each person equal representation, the congressional districts must be as nearly equal in population as is practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see* U.S. Const. art. I, § 2. Because a court-ordered redistricting plan must conform to a higher standard of population equality than a legislative redistricting plan, the goal is absolute population equality. *See Abrams v. Johnson*, 521 U.S. 74, 98 (1997). Minnesota’s total population is not divisible into eight congressional districts of equal population, making the ideal result six districts of 713,312 people and two districts of 713,311 people.

2. State legislative districts must also adhere to the concept of population-based representation. *Reynolds v. Sims*, 377 U.S. 533, 568 (1964); *see* U.S. Const. amend. XIV. Some deviation from perfect equality is permissible to accommodate a state’s clearly identified, legitimate policy objectives. *Reynolds*, 377 U.S. at 579. But a court performing the task of redistricting is held to a high standard of population equality. *Connor v. Finch*, 431 U.S. 407, 414 (1977). Accordingly, the goal is de minimis deviation from the ideal

district population. *Id.* The population of a legislative district must not deviate by more than two percent from the population of the ideal district. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). This is a maximum deviation, not a level under which all population deviations will be presumed acceptable.

3. Districts must not be drawn with either the purpose or effect of denying or abridging the voting rights of any United States citizen on account of race, ethnicity, or membership in a language minority group. U.S. Const. amends. XIV, XV; Voting Rights Act of 1965, 52 U.S.C. § 10301(a) (2018). Districts shall be drawn to protect the equal opportunity of racial, ethnic, and language minorities to participate in the political process and elect candidates of their choice, whether alone or in alliance with others. 52 U.S.C. § 10301(b) (2018).

4. The reservation lands of a federally recognized American Indian tribe will be preserved and must not be divided more than necessary to meet constitutional requirements. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (discussing sovereignty of recognized American Indian tribes). Placing discontinuous portions of reservation lands in separate districts does not constitute a division.

5. Districts must consist of convenient, contiguous territory. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2 (2020). Contiguity by water is sufficient if the body of

water does not pose a serious obstacle to travel within the district. Districts with areas that connect only at a single point will not be considered contiguous.

6. Political subdivisions must not be divided more than necessary to meet constitutional requirements. Minn. Stat. § 2.91, subd. 2; *see also Karcher v. Daggett*, 462 U.S. 725, 740-41 (1983); *Reynolds*, 377 U.S. at 580-81.

7. Communities of people with shared interests will be preserved whenever possible to do so in compliance with the preceding principles. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (describing respect for “communities defined by actual shared interests” as a traditional redistricting principle (quotation omitted)); *see also Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). For purposes of this principle, “communities of interest” include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, cultural, ethnic, economic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate the preceding principles or applicable law.

8. As a factor subordinate to all other redistricting principles, districts should be reasonably compact. *See Miller v. Johnson*, 515 U.S. 900, 916 (1995); *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

9. Districts must not be drawn with the purpose of protecting, promoting, or defeating any incumbent, candidate, or political party. The panel will not draw districts based on the residence of incumbent officeholders and will not consider past election results when drawing districts.

PLAN SUBMISSION REQUIREMENTS

In the October 26, 2021 scheduling order, the panel directed the parties to submit motions to adopt proposed redistricting plans and supporting memoranda by Tuesday, December 7, 2021. The parties must submit their proposed redistricting plans as follows.

General Requirements

1. Each party may submit one proposed redistricting plan for the United States House of Representatives, one plan for the Minnesota Senate, and one plan for the Minnesota House of Representatives.
2. Submissions must include electronic files, paper maps, Maptitude-generated reports, and supporting memorandum that includes an explanation of how each report supports the proposed plans.
3. Parties must file their submissions with the Clerk of Appellate Courts.

Electronic Redistricting Plans

1. The parties must submit each electronic redistricting plan in the form of a separate block-equivalency file. Each file must be in comma-delimited format (.csv) or Excel format (.xlsx) and contain two fields: one that identifies all census blocks in the state, and another that identifies the district to which each census block has been assigned. The parties must not use file-compression software.

2. Each block-equivalency file must assign district numbers using the following conventions:

- Congressional district numbers must contain one character and be labeled 1 through 8.
- State senate district numbers must contain two characters and be labeled 01 through 67.
- State house district numbers must contain three characters and be labeled 01A through 67B.

3. Each party must submit its block-equivalency files via email to StateRedistrictingPanel@courts.state.mn.us.

Paper Maps

1. The parties also must submit one paper original and eight paper copies of each congressional and state legislative map. Senate and house plans must be combined on a single map. Maps must be plotted on 17" by 22" paper.

2. Each map must clearly state whether it shows congressional or state legislative districts and identify the party submitting the map.

3. For its proposed congressional plan, each party must include paper maps of (1) the entire state and (2) the 11-county metropolitan area. Each district must be labeled with its district number and population.

4. For its proposed state legislative plan, each party must include paper maps of (1) the entire state; (2) the 11-county metropolitan area; and (3) the cities of Duluth, Mankato, Moorhead, Rochester, and Saint Cloud. Maps of the 11-county metropolitan area and of individual cities must show the names and boundaries of counties, cities, and

townships. On all legislative maps, senate-district areas must be shown as a color-themed area on the bottom layer with house-district boundaries shown as overlying lines. Each house district must be labeled with its district number (01A through 67B). A separate senate-district label need not be used.

5. All paper maps must include county names and boundaries and the names and boundaries of the reservations of federally recognized American Indian tribes. The parties are encouraged to include major bodies of water, interstate highways, and U.S. highways.

6. The paper maps may include such other details as the parties wish to add, so long as the above boundaries, areas, lines, and labels are discernible.

Reports

For each proposed congressional, senate, and house redistricting plan, each party must submit the following Maptitude reports, including the components listed below and standard summary data:

- *Population Summary Report* showing district populations as the total number of persons, and deviations from the ideal as both a number of persons and as a percentage of the population.
- *Plan Components Report* (short format) listing the names and populations of counties within each district and, where a county is split between or among districts, the names and populations of the portion of the split county and each of the split county's whole or partial minor civil divisions (cities and townships) within each district.
- *Contiguity Report* listing all districts and the number of distinct areas within each district.

- *Political Subdivisions Splits Report* listing the split counties, cities, townships, and voting districts (precincts), and the district to which each portion of a split political subdivision or voting district is assigned.
- *Minority Voting-Age Population Report* listing for each district the voting-age population of each racial, ethnic, or language minority, and the total minority voting-age population according to the categories recommended by the United States Department of Justice.
- *Measures of Compactness Reports* stating the results of the Polsby-Popper, Area/Convex Hull, Reock, Population Polygon, and Population Circles measures of compactness for each district.

Any party asserting that its plan preserves a community of interest must also include the following Maptitude report:

- *Community of Interest Report* identifying any community of interest included as a layer in the plan, the census blocks within the community of interest, and the district or districts to which the community of interest has been assigned. The report must also show the number of communities of interest that are split and the number of times a community of interest is split.

Each party must label every page of a report with the report's name, the corresponding proposed plan, and the party submitting the plan.

Additional Requirements

These are the minimum requirements for the parties that submit proposed redistricting plans. The parties may submit additional maps, reports, or justification for their proposed redistricting plans.

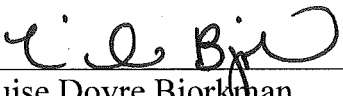
By stipulation, the parties have agreed to accept service of proposed plans, maps, and reports by email or other mutually agreeable form of electronic service.

The panel is mindful of its role in redistricting and particularly of the primacy of the legislative process. The parties will be filing their proposed redistricting plans by

December 7, 2021, more than one month before the next legislative session begins. To give the legislature and the governor an opportunity to review and consider those proposed plans, each party must provide the legislature and the governor with a block-equivalency file for each proposed plan.

Dated: November 18, 2021

BY THE PANEL:



Louise Dovre Bjorkman
Presiding Judge

Judge Diane B. Bratvold
Judge Jay D. Carlson
Judge Juanita C. Freeman
Judge Jodi L. Williamson

MEMORANDUM

The adoption of redistricting principles involves many competing considerations. We take this opportunity to address how we have resolved some of them.

First, we address our decision to draw districts to protect the equal opportunity of racial, ethnic, and language minorities to participate in the political process and to elect representatives of their choice, whether alone or in alliance with others. The “ultimate right” protected by section 2 of the Voting Rights Act is “equality of opportunity.” *League of United Latin Am. Citizens v. Perry (LULAC)*, 548 U.S. 399, 428 (2006) (quotation omitted); *see* 52 U.S.C. § 10301(b) (requiring that political processes be “equally open to participation by” racial, ethnic, and language minority voters). This does not mean that “minority-preferred candidates” are guaranteed electoral success. *LULAC*, 548 U.S. at 428 (quotation omitted).

Rather, it means that racial, ethnic, and language minority voters have a right to participate effectively in the political process. *See Thornburg v. Gingles*, 478 U.S. 30, 45 (1986) (discussing factors relevant to equality of opportunity such as the “ability to participate effectively in the political process” or the responsiveness of elected officials to particular voters’ needs). A critical part of effective political participation is the formation of alliances around shared interests. *See Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994) (stating that “minority voters are not immune from the obligation to pull, haul, and trade to find common political ground” and can influence elections through “coalitions with voters from other racial and ethnic groups”); *see also Miller*, 515 U.S. at 920 (stating that redistricters may not assume shared interests based on race but may “recognize

communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests”).¹

Second, we address our decision to adopt a principle of preserving the reservation lands of federally recognized American Indian tribes. Tribes are “separate sovereigns pre-existing the Constitution” and, as such, exercise “inherent sovereign authority.” *Bay Mills Indian Cmty.*, 572 U.S. at 788 (quotations omitted). This means that, unlike political subdivisions, tribes are “independent political communities, qualified to exercise many of the powers and prerogatives of self-government.” *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 327 (2008) (quotation and citation omitted); *cf. Reynolds*, 377 U.S. at 575 (stating that political subdivisions like cities and counties “never were and never have been considered as sovereign entities”).

Consistent with this status, Minnesota “acknowledges and supports” the tribes’ “absolute right to existence, self-governance, and self-determination.” 2021 Minn. Laws 1st Spec. Sess. ch. 14, art. 11, § 5, at 2369 (to be codified at Minn. Stat. § 10.65). And prior redistricting panels sought to draw district lines that respected reservation lands.

¹ We observe that the question whether a coalition of multiple racial, ethnic, or language minority groups can jointly assert a claim under section 2 of the Voting Rights Act is not before us and remains undecided. The Supreme Court has assumed without deciding that they can. *Grove*, 507 U.S. at 41. And the federal circuit courts of appeal are split, but most have either assumed or expressly held that a coalition claim is cognizable. *See Pope v. Cnty. of Albany*, 687 F.3d 565, 572-74 & n.5 (2d Cir. 2012) (assuming); *Frank v. Forest Cnty.*, 336 F.3d 570, 575 (7th Cir. 2003) (assuming); *Badillo v. City of Stockton*, 956 F.2d 884, 886 (9th Cir. 1992) (assuming); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990) (holding); *Campos v. City of Baytown, Texas*, 840 F.2d 1240, 1244 (5th Cir. 1988) (holding). *But see Nixon v. Kent Cnty.*, 76 F.3d 1381, 1387, 1393 (6th Cir. 1996) (en banc) (holding that the Voting Rights Act does not support coalition claims). The Eighth Circuit has not addressed the issue.

Hippert, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Order Adopting Cong. Redistricting Plan); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Order Adopting Legis. Redistricting Plan). The parties agree that we should continue to do so. Respect for the inherent sovereignty of American Indian tribes persuades us to avoid dividing reservation land more than necessary to meet constitutional requirements.

Third, we address our determination that compactness is subordinate to all other redistricting principles. No federal or state law requires that districts be compact. *See Shaw v. Reno*, 509 U.S. 630, 647 (1993) (clarifying that compactness is a traditional principle but not “constitutionally required”). Nor does compactness necessarily benefit Minnesotans. Scientific compactness measures prize districts that form “regular” shapes, like circles or squares. But people do not live in circles or squares; they live in communities. Compactness is therefore not a goal in itself but a tool for ensuring districts have been drawn in accordance with neutral redistricting principles. We also observe that a regularly shaped district may be more easily traveled and therefore more convenient. *See* Minn. Const. art. IV, § 3 (requiring convenient senate districts); Minn. Stat. § 2.91, subd. 2 (requiring convenient congressional and legislative districts). For these reasons, we require that districts be reasonably compact and direct the parties to report on the five compactness measures, as noted above, that will best aid us in applying this principle.

Fourth, we address our principle that districts will not be drawn with the purpose of protecting, promoting, or defeating any incumbent, candidate, or political party. Redistricting is a political process with political consequences. *Connor*, 431 U.S. at 414-15. This is why the task of redistricting falls principally to the branch of government responsible for crafting policy—the legislature. *Id.* at 415. When legislators draw district lines, they not only may but commonly do “take partisan interests into account.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2497 (2019). And courts will not interfere with that practice. *Id.* at 2506-07 (holding that “partisan gerrymandering” claims present nonjusticiable political questions). But when courts draw district lines, they are not merely substitute legislators. Courts lack the “political authoritativeness” to make policy judgments. *Connor*, 431 U.S. at 415; *see also Abrams*, 521 U.S. at 79 (requiring redistricting courts to defer to the underlying policy judgments of their state “to the extent [they] do not lead to violations of the Constitution or the Voting Rights Act”). The role of the courts is simply to “say what the law is.” *Rucho*, 139 S. Ct. at 2508 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)); *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 625 (Minn. 2017) (same).

We recognize that prior redistricting panels have considered whether a proposed plan creates undue incumbent protection or excessive incumbent conflicts. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions). But ultimately, the *Hippert* panel

adopted redistricting plans that the public and the parties praise as fair and balanced by consistently applying neutral principles. *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan) (noting but not removing incumbent conflicts); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan) (same). As the *Hippert* panel observed, “districts do not exist for the benefit of any particular legislator” or “any political party.” *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Cong. Redistricting Plan); *Hippert*, No. A11-0152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Order Adopting Legis. Redistricting Plan). Consistent with that approach and *Rucho*’s clear instruction that courts not wade into political matters, if we are called upon to draw new districts, we will do so solely through application of our stated neutral redistricting principles.

Finally, we address the request of plaintiff-intervenors Dr. Bruce Corrie, et al. (the Corrie plaintiffs) that we deem individuals incarcerated at the time of the 2020 Census to be residing at their last known place of residence. This position, which they alone urge, is contrary to the parties’ stipulation that the panel and the parties will use the 2020 Census Redistricting Data, which places prisoners at the location of their incarceration. *See Karcher*, 462 U.S. at 738 (explaining that “the census data provide the only reliable—albeit less than perfect—indication of the districts’ ‘real’ relative population levels”). And the Corrie plaintiffs acknowledge that no existing law authorizes us to perform the requested reallocation. We conclude that reallocating prisoners constitutes a policy change that is the province of the legislature, not the courts. *See Connor*, 431 U.S. at 415.