

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ST. LOUIS

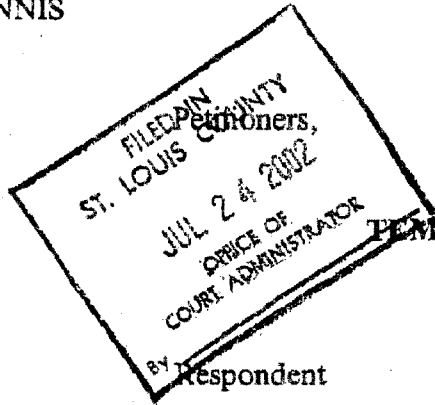
SIXTH JUDICIAL DISTRICT

FILE NO. C6-02-601529

JOANNE FAY and DENNIS  
FINK,

v.

ST. LOUIS COUNTY  
AUDITOR,



**TEMPORARY INJUNCTION**

The Court having determined grounds therefore have been established by Petitioners including that immediate and irreparable harm will befall Petitioners and the public should such relief not be granted, Respondent and all persons acting or purporting to act under his direction, authority or control are, absent further order of this Court herein, enjoined:

1. From acting in any manner to conduct an election of St. Louis County Commissioners under or with reference to the purported redistricting plan of said County acted upon by the St Louis County Board on May 28, 2002 which plan this Court found to be unlawful as contrary to Minnesota Statute Section 375.025 and the Minnesota and United States Constitutions in its Order and Judgment of July 1, 2002.

Dated at Duluth, Minnesota, this 24<sup>th</sup> day of July 2002.

BY THE COURT:

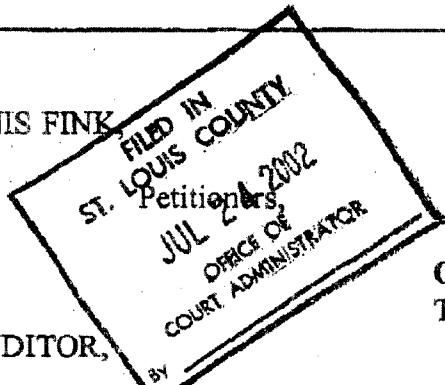


*Terry C. Hallenbeck*  
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 Terry C. Hallenbeck, District Court Judge

STATE OF MINNESOTA  
COUNTY OF ST. LOUIS

IN DISTRICT COURT  
SIXTH JUDICIAL DISTRICT  
FILE NO. C6-02-601529

JOANNE FAY and DENNIS FINK



v.

ST. LOUIS COUNTY AUDITOR,

**ORDER REGARDING  
TEMPORARY INJUNCTION**

Respondent


This matter came on for hearing before the undersigned upon petitioner's motion at the courthouse in Duluth on July 17, 2002. Petitioner appeared in person and by Mr. Kenneth Butler, her attorney. Respondent appeared in person and by Mr. Shaun Floerke, Assistant St. Louis County Attorney, his counsel. Dennis Fink appeared by Mr. John Fillenworth, his attorney and moved for permission to intervene as a co-petitioner herein. Petitioner had no objection to such intervention but respondent objected thereto. The Court granted Mr. Fink's consent to intervene in his capacity as an individual provided he would assert no grounds for relief other than those referenced by petitioner in her moving papers herein. In view of the fact the parties have had the opportunity to provide the Court with Memoranda, affidavits and a record hearing, and to more clearly ripen their rights to immediate appeal, the Court has regarded the proceedings as an application for a Temporary Injunction. The Court, being familiar with its files herein and with the files in companion matters tangentially related to these proceedings, having had benefit of the thoughtful arguments of counsel, having reviewed the written submissions presented with regard to the issues now in question and being duly informed in the premises does now, hereby, make and enter the following:

**ORDER**

1. A Temporary Injunction in the form of that attached hereto as Exhibit A shall issue;
2. Respondent shall post as security the sum of \$500, or in lieu thereof a bond in said amount of \$500 with a surety satisfactory to the Court, as security against damages that may be incurred by respondent should it subsequently be determined said Temporary Injunction was improvidently granted. Said Temporary Injunction shall not be effective until such security has been posted with the Court Administrator.
3. The attached Memorandum outlining the Court's analysis shall constitute part of this Order, including such facts as may be found therein.

Dated at Duluth, Minnesota, this 24<sup>th</sup> day of July 2002.

BY THE COURT:



Terry C. Hallenbeck, District Court Judge

**Exhibit A**

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

FILE NO. C6-02-601529

JOANNE FAY and DENNIS  
FINK,

Petitioners,

v.

**TEMPORARY INJUNCTION**

ST. LOUIS COUNTY  
AUDITOR,

Respondent

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Dated at Duluth, Minnesota, this 24<sup>th</sup> day of July 2002.

BY THE COURT:

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Terry C. Hallenbeck, District Court Judge

## MEMORANDUM

### 1. PROCEDURAL STATUS

Petitioner Fay began this matter pursuant to Minnesota Statute Section 204B.44 seeking to prevent Respondent from launching the St. Louis County Commissioner election process under a redistricting plan acted upon by the St. Louis County Board (Board) on May 28, 2002 (Plan) because the Plan was being challenged as unlawful. Fay's original request for relief was not acted upon at the originally scheduled hearing herein as the parties agreed this matter was not yet ripe in view of the fact the challenge to the Plan had not been ruled upon by the Court. Further, Respondent in any event had already taken certain of the predicate steps applicable to the election process that Petitioner Fay sought to preclude. In the time intervening the Court has found the Plan null and void and the Board, in response to an Order of the Court, has developed a revised redistricting plan. It has been filed with the Court but not yet with Respondent's office.

Respondent is mindful that his office acts with regard to elections in response to redistricting actions of the Board. Thus far, since the Board had not yet filed the revised redistricting plan with his office, he has proceeded with the election process with regard to the Plan despite its declared unlawful status. In other words, although aware of the declared unlawful status of the Plan and mindful he was not a party to the proceedings in which the Plan was found unlawful, he has considered it his legal obligation to continue his election process responsibilities with regard to the Plan. Respondent is prepared to carry out his statutory responsibilities but finds himself in uncharted waters in trying to do so.

Petitioners have thus sought Rule 65 relief herein to provide Respondent some guidance in the accomplishment of his statutory obligations and to protect the public interest in a fair and lawful election process. They have proceeded under Minnesota Statute Section 204B.44 to secure an order of this Court specifically directed to Respondent and clarifying his responsibilities in these difficult circumstances not of his making. In fact in his advisory capacity to the Board he advised it that the Plan was unlawful and should not be adopted. That

advice was not heeded. Thus even though, in the Court's view, he gave sound advice on this issue from the outset he has nonetheless found his office in the difficult position it now confronts.

Because Petitioners have, as discussed below, shown grounds for such relief exist the Court has issued its Temporary Injunction herein specifically directing that Respondent, and all persons purporting to act under the authority of his office, may not conduct an election based upon election districts established under the Plan.

## 2. THE DAHLBERG FACTORS

### A. Relationship Between the Parties and Relative Harm

Respondent's Memorandum in Opposition to the relief requested herein thoughtfully details the nature of the relationship between the Auditor's office and the Board. The Court concurs Respondent has duties, responsibilities and authority independent of the Board and in certain respects superior to it. But that relationship is not that here in question, except tangentially. The relationship that must be considered is that between Petitioners as citizens and voters and Respondent as the officer charged with duties related to the election process.

In his hearing argument Respondent took the position that the issuance of even a temporary order would in effect be a final order due to the time constraints imposed upon him under the election-governing statutes. While not necessarily agreeing with Respondent's position in this regard, in light of Respondent's position the Court's analysis considers the issues as though it was issuing a permanent, rather than a temporary, injunction.

Under an Order of even date herewith the Court has directed the Board to file the revised plan, XI, with Respondent. A copy thereof is attached hereto. This is the plan the Board propounded in response to the Court's direction to it in an Order and Judgment (Order) dated July 1, 2002. Under the Order Petitioners in that proceeding had ten days after service of the revised plan upon them to object thereto after which period the Court indicated it would forward

the revised plan to the Secretary of State in contemplation of further proceedings relative to the election process.

The Board served the revised plan on the Petitioners in that proceeding by mail on July 10, 2002. Under applicable court rules they thus had 13 calendar days to move the Court to disapprove the revised plan. Only Petitioner Fay requested such relief. Because Fay's challenges do not attack the facially valid status of the revised plan, the Court is forwarding it to the Secretary of State and has directed the Board to immediately file it with Respondent herein, reserving to Fay the right to a subsequent hearing on her stated objections. The Court has determined an election may proceed under the revised plan, prior to a final determination of the other challenges raised by Fay, given its presumptively valid status because it meets the de minimus population deviation standard.

Petitioners and all voters of the County are entitled to participate in a valid election process regarding the selection of Board members. Respondent has the obligation to act to accord them that opportunity. The Court concludes sufficient time remains that such an election can occur with the regularly scheduled general election in 2002 thereby avoiding any term of vacancy in any Board position. Respondent will now have a revised plan, facially complying with the ten percent de minimus population deviation requirement and thus presumptively valid, to proceed under. Even absent any redistricting at all, districts were previously in existence. Statutory avenues exist for Respondent to request the Secretary of State to adopt special rules for the conduct of an election where the order of a state court renders it impossible to conduct an election in strict accord with customary procedures. MINN. STAT. § 204B.47 (West 2002). Ultimate responsibility for the election process within the State lies with the Secretary and avenues in addition to Minnesota Statute Section 204B.47 may well also be available to assure a prompt, fair and constitutional election may be held. Respondent is at liberty to pursue the assistance of the Secretary to whom the Court has forwarded a certified copy of the revised plan pursuant to the Order.

Respondent suggests the revised plan may not be the basis for an election in calendar 2002 since it was not filed at least thirty days prior to the first day candidates may file for office.

MINN. STAT. §§ 375.025, 204B.09, subd.1 (West 2002). The Court concludes the thirty-day filing requirement is among those provisions with reference to which the Secretary may adopt special rules if required because of the issuance of a court order impacting the election process.

The parties herein and in the related proceedings all agree redistricting was required in light of the 2000 Federal Census. Under the prior districts some voters' ballots carried less weight than those of voters in other districts. While apparently more representative than the prior districts, the Plan did not adequately address the constitutional and statutory requirements. The Court has declared the Plan null and void. The Board has not appealed that ruling.<sup>1</sup>

Given the state of the proceedings there will thus be irreparable harm to Petitioners and other voters of the county if an election is conducted under the flawed Plan. Commissioners will be elected under a voting scheme in which some citizens' votes carry less weight than the votes of others. The offices will be filled and a Board elected under such flawed process will govern until a new election. That Board will undoubtedly take actions affecting every citizen in the county in the meantime. The Court concludes the right to proportionate representation is so vital to our form of government that it is proper to conclude irreparable harm would accrue to Petitioners and other citizens of the county should Commissioners be elected under the Plan given its unlawful character. Respondent will suffer no harm by the Court prohibiting him from holding an election under the Plan since it is his responsibility to conduct elections in a lawful manner and avenues exist to enable him to do so. He further will be proceeding pursuant to a directive of the Court. In terms of relative harm, therefore, the Court concludes significantly more harm would befall Petitioners and other voters should an injunction not issue than will befall Respondent under the injunction issued.

#### **B. Likelihood Of Success On The Merits**

Respondent suggests Petitioners are not likely to succeed on the merits since the revised plan by definition will not have been filed with Respondent not less than thirty days before the first date candidates may file for office. In most cases that date is supplied by Minnesota Statute Section 204B.09, subdivision 1. Under that statute in this election cycle the operative date was

July 2, 2002, seventy days before the primary which will be held September 10, 2002. He suggests Petitioners cannot be successful in requiring an election in 2002 under the revised plan because the governing deadline came and went before the revised plan was filed.

As above noted, the Court construes Minnesota Statute Section 204B.47 as according a mechanism whereby the date for candidate filing may be modified by the Secretary of State in proper cases. It is also of note that in setting the thirty day filing deadline Minnesota Statute 375.025, subdivision 4, does *not* require that the redistricting plan be filed by the date provided in Minnesota Statute 204B.09, subdivision 1. It requires filing not less than thirty days before *the first date candidates may file for office*. Under Minnesota Statute Section 204B.47, contained within the same chapter as Minnesota Statute Section 204B.09, subdivision 1, the Secretary may modify regular election procedures where required by court order. The first day to file could thus be declared by the Secretary to be thirty-one days after the revised plan is filed with Respondent. By so proceeding the Secretary could comply with the requirement of Minnesota Statute Section 375.025, subdivision 4.

The thrust of Respondent's argument is that an unlawful redistricting plan, unconstitutionally denying certain citizens entitled voting rights, must be followed in order that a date, capable of modification in proper circumstances, may be honored. The plan in question was adopted contrary to the advice of the attorney for the Board and contrary to Respondent's advice as well. It contravened precedent of the United States Supreme Court going back at least as far as 1977. See, Connor v. Finch, 431 U.S. 407, 418 (1977) (stating variances in population are not to exceed 10% deviation). It does not seem appropriate to so elevate form over substance that the citizens of the county should be without relief under these circumstances. The Court concurs with Petitioners that they are sufficiently likely to succeed on the merits that issuance of temporary relief is appropriate.

### C. Public Policy

All concur public policy is squarely in support of fair elections by voters whose voting weight is as nearly equal as possible, recognizing that in a mobile society absolute equality is

probably an unattainable goal. Respondent posits concern that should the Court's order require a special election voter turnout is likely to be significantly less than would occur at a general election. The Court acknowledges such may be the case. But that is not the fault, nor is it the responsibility, of Respondent, Petitioners or the Court.

The Court suspects recent events may cause a reappraisal of the importance of rights we hold dear, including the right to vote and that voter turnout may benefit thereby. In any event the Court's responsibility, within its limited role, is but to act so as to assure a lawful process is in place leaving to each citizen voter his and her responsibility to take advantage of the opportunity presented.

Public policy favors equal voting rights and the casting of ballots with equal weight. It is public policy, and the law, that properly constituted voting districts be employed in the election process and that proper and reasonable steps be taken to assure that occurs. With these tenants in mind the Court concludes its Order and the Temporary Injunction herein support, rather than contravene, public policy.

D. Court Administrative Burden In Enforcing The Order And Temporary Injunction

Respondent does not argue that any significant administrative burden would be placed upon the Court by issuance of a Temporary Injunction and the Court concurs. This is so because statutory procedures and well-defined processes for the conduct of elections even in special circumstances already exist. The Secretary of State, with knowledge and experience certainly greater than that of the Court in such matters, is available to Respondent as a resource. Thus while the Court retains continuing jurisdiction herein and may be required to hold further proceedings it does not regard the administrative burden as an impediment to issuance of its Order and the Temporary Injunction.

### 3. POSTING SECURITY

The Court has required Petitioners to post \$100.00, cash or bond with surety acceptable to the Court, as security for issuance of the Temporary Injunction. This is a sum far less than that suggested appropriate by Respondent. The issues presented herein are a matter of great public interest and requiring security in the sum requested by Respondent would have a chilling effect on the presentation of such matters to the Court for determination. The relief requested serves only to aid in addressing the harm the Court has found, in the related matters, would arise by proceeding under the Plan acted upon by the St. Louis County Board on May 28, 2002. To date there has been no appeal of the Court's ruling in that matter and the Board has since filed with the Court a revised plan the Court has found presumptively valid.

The Court has the authority in these circumstances to waive security entirely or to require a minimum amount. Given the issues, their import, and the procedural history and status of this matter and the related matter, the Court has found the amount of security required of Petitioners appropriate.

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<sup>1</sup> The Board has filed a request that the Court permit it to file a motion asking the Court to reconsider that portion of the Order holding that no election of Commissioners may be held under the Plan. In an order of even date herewith, and for reasons set forth therein, the Court has declined to grant the Board such permission. In any event even had such permission been given the time for appeal would not be stayed.