

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
CO-01-160

Susan M. Zachman, Maryland Lucky R.
Rosenbloom, Victor L.M. Gomez,
Gregory G. Edeen, Jeffrey E. Karlson,
Diane V. Bratlie, Brian J. LeClair and
Gregory Ravenhorst, individually and on
Behalf of all citizens and voting residents of
Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Thomas L. Weisbecker,
Theresa Silka, Geri Boice, William English,
Benjamin Gross, Thomas R. Dietz, John Raplinger,
individually and on behalf of all citizens and
voting residents of Minnesota similarly situated,

Plaintiffs-Intervenors,

and

Jesse Ventura,

Plaintiff-Intervenor,

and

Roger D. Moe, Thomas W. Pugh, Betty
McColum, Martin Olav Sabo, Bill Luther,
Collin C. Peterson and James L. Oberstar,

Plaintiffs-Intervenors,

vs.

Mary Kiffmeyer, Secretary of State of
Minnesota; and Doug Gruber, Wright
County Auditor, individually and on behalf
of all Minnesota county chief election
officers,

Defendants.

**RESPONSE OF
COTLOW PLAINTIFFS
TO PROPOSED
REDISTRICTING
CRITERIA**

INTRODUCTION

This Memorandum is submitted pursuant to Pre-Trial Order No. 2. Its purpose is to set forth the Cotlow Plaintiffs' response to the Unagreed Redistricting Criteria Issues.

I. Permissible Deviation

The various parties to this case have made arguments in support of differing proposed permissible deviations from absolute equality for legislative district plans.¹ The positions of the parties are as follows:

Zachman Plaintiffs	+ or - .75%
Cotlow Plaintiffs	+ or - 2.0%
Moe Intervenors	+ or - 2.0%
Ventura Intervenor	+ or - 2.0%

The Cotlow Plaintiffs submit that the Zachman plaintiffs have not submitted sufficient credible arguments to justify a departure from three decades of Minnesota precedent recognizing an acceptable legislative districting plan with a population deviation of up to plus or minus 2.0%.²

Because the current state of the law recognizes the constitutional validity of a plan with a deviation a plus or minus 10% (under certain specific

¹ There is no dispute among the parties that the United States Constitution requires absolute equality of population among congressional districts.

² *Beens v. Erdahl*, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971); *LaComb v. Growe*, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981), *Cotlow v. Growe*, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991).

circumstances),³ because no good reason has been put forward to justify deviation from that standard and because adoption of a 2.0% standard will not estop any party from submitting a plan containing a deviation of less than plus or minus 2.0%, that figure should be adopted as a reasonable criteria. In addition, the Zachman plaintiffs have not made any credible case for selecting a .75% deviation criteria. Even if their arguments in opposition to a 2.0% standard are accepted, they still have not shown any basis in law or in fact for choosing a .75% deviation as compared to a plus or minus .25%, or plus or minus .50%, or plus or minus .1%. Indeed, since the primary argument of the Zachman plaintiffs appears to be that computers now enable redistricters to achieve a lower deviation, then why not a zero deviation? There is simply no basis in law or in fact for selection of a .75% deviation. The Cotlow Plaintiffs therefore join in the arguments of the Moe Intervenors and Intervenor Ventura in support of plus or minus 2.0%.

II. Political Competitiveness

Intervenor Jesse Ventura urges the adoption of an undefined criteria of "political competitiveness." That proposed criteria is opposed by the Zachman plaintiffs and the Cotlow plaintiffs. The Moe intervenors have not stated a position regarding the issue.

Intervenor Ventura has not set forth any proposed measure of "political competitiveness." It thus remains a vague and ethereal concept, not objectively

³ Brown v. Thomson, 462 U.S. 835, 842, 103 S.Ct. 2690, 2696 (1983); Gaffney v. Cummings, 412 U.S. 735, 742 (1973) (noting "mathematical exactness or precision is hardly a workable constitutional requirement").

measurable in any meaningful manner. As noted in the Cotlow plaintiffs' initial memorandum on criteria, the adoption of "political competitiveness" leads the Court inextricably down an obscure, nebulous and imprecise path into an unknown political thicket. It is not an appropriate criteria for a judicially created plan of legislative redistricting.

The "political compactness" criteria that the Governor seeks to have the Court adopt is not clear. If by "political compactness" he means a criteria that "incumbent protection is a political consideration that is inappropriate in judicial redistricting proceedings" (Intervenor Ventura's Statement of Unresolved Issues Relating to Criteria at page 4), the Cotlow plaintiffs are in agreement, but only to the extent that "past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of the plans submitted to the court." Cotlow v. Grove, No. C8-91-985 (Minn. Special Redistricting Panel Dec. 9, 1991) (emphasis added).

III. Compactness

Intervenor Ventura also proposes a criteria of "compactness." That proposed criteria is not supported by the Zachman plaintiffs, the Cotlow plaintiffs or the Moe intervenors.

As in the case of "political competitiveness," intervenor Ventura does not propose any particular measure of compactness. As demonstrated in the Cotlow plaintiffs' initial brief in support of their proposed redistricting criteria, there are at least 36 measures of "political compactness," each created and adopted with its own special political purpose and agenda in mind. Interestingly enough,

Intervenor Ventura has demonstrated that "compactness" is not a criteria mandated by the Minnesota Constitution, Article IV, Section 3. Similarly, Minn. Stat. Sec. 2.91, subd. 2 (2000), which describes requirements for redistricting plans, provides that all districts should consist of convenient, contiguous territories substantially equal in population. "Compactness" is conspicuous by its absence.

IV. Contiguity

The Moe intervenors suggest an additional criteria of "point contiguity." Specifically, they propose that an additional sentence be added to Item 4 of the Stipulation on Redistricting Criteria, which additional sentence would read:

Territory that touches only at a point is not contiguous, unless the territory is within the same city, town or unorganized territory.

The Cotlow plaintiffs concur with that suggested modification to the Stipulation, although the reason for the "unless" clause is not clear.

V. Additional Criteria

The Moe intervenors also propose "geographic communities" as an additional community of interest. To the extent that geographic communities include neighborhoods or other interests "that are linked by common transportation or communication," the Cotlow plaintiffs are in total agreement with that proposal

and with the arguments made in support of it. Recognized neighborhoods certainly are a protectable community of interest. The only problem is deciding what is a recognized neighborhood. Likewise, geographic areas that are linked by common transportation or communication are certainly a community of interest deserving of recognition in the adoption of criteria.

The Cotlow plaintiffs do not object to any plan which proffers recognition of existing legislative districts as a factor to be considered. However, to the extent that protection of existing legislative and congressional districts is elevated to the level of a criteria, other recognized communities of interest would be in danger of being ignored.

It is the belief of the Cotlow plaintiffs that the concept of communities of interest should not be limited to major political subdivisions, existing legislative districts or "core districts." The existing legislative and congressional districts have no particular force of law or community of interest behind them. Indeed, in many cases, they have been determined to be in violation of the Minnesota and/or United States Constitution by virtue of their current makeup. It would therefore seem irrational to grant those same old districts any priority of interest when drawing new districts. Furthermore, blind adherence to existing municipal lines


offers greater opportunity for ignoring other equally important factors including historical migration of ethnic, racial and economic groups within Minnesota. Simply put, there is no evidence, actual or historical, that puts preservation of major political subdivisions in a separate, higher class of interests to be protected.

On the other hand, it would be just as unreasonable to ignore the fact that existing cities of towns may have certain similarities and differences which should be honored. See e.g., Brown and McAuliffe, **Census Survey Reflects Not-Exactly-Identical Twin Cities**, *Star Tribune*, November 20, 2001 (p. 1) (major differences between St. Paul and Minneapolis).

Based upon the existing state of the law, the Cotlow plaintiffs urge that this Court should allow plans submitted to it to be based, in whole or in part, upon existing legislative and/or congressional districts, but should give no greater weight to that factor than to any other individual community of interest. This proposed standard is suggested as a reasonable compromise between those parties who would totally ignore current districts and those parties who would elevate those districts to a level of importance not recognized by law or fact.

Respectfully submitted,

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