

STATE OF MINNESOTA
COUNTY OF WRIGHT

DISTRICT COURT
TENTH JUDICIAL DISTRICT

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

Court File No. CX-01-116

Plaintiffs,

COMPLAINT

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.

Plaintiffs, for their Complaint against Defendants, state and allege as follows:

JURISDICTION

1. This Court has authority as a court of general jurisdiction to redress Plaintiffs' claims regarding violations of the Minnesota State Constitution ("Minnesota Constitution") and authority to grant declaratory relief under the provisions of Minnesota Statutes Section 555.01 *et. seq.*

2. This Court has jurisdiction under 42 U.S.C. §1983, to redress Plaintiffs' claims of violations of the Constitution of the United States ("United States Constitution").

PARTIES

3. Plaintiffs are citizens and qualified voters of the United States and the State of Minnesota. Plaintiffs reside in the following counties, legislative districts and congressional districts in the State of Minnesota:

<u>Plaintiff</u>	<u>County</u>	<u>Legislative Dist.</u>	<u>Cong. District</u>
Diana V. Bratlie	Dakota	37B	6
Gregory J. Edeen	Wright	19B	2
Victor L.M. Gomez	Ramsey	64A	4
Jeffrey E. Karlson	Wright	19B	2
Brian J. LeClair	Washington	56B	6
Gregory J. Ravenhorst	Cass	4B	8
Maryland Lucky R. Rosenbloom	Hennepin	61A	5
Susan M. Zachman	Wright	19B	2

4. Plaintiffs bring this action individually and on behalf of themselves and all other citizens and voters who reside in the State of Minnesota, United States of America, and who are similarly situated as having been denied equal protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named individuals are typical of the claims of the members of this class; and these Plaintiffs will fairly and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications which would establish incompatible standards of conduct for the named Defendants. The common questions of law which predominate are the constitutionality of the current legislative apportionment system and the current plan of congressional districts established by the three (3) member Special Redistricting Panel (hereinafter the "Panel") in *Cotlow v. Growe*, Civ. File No. C8-91-985 (Orders dated December 9, 1991 and April 15, 1992)(hereinafter "*Cotlow v. Growe*"), both of which are being enforced by the Defendants.

5. The Defendants are each citizens of the United States and of the State of Minnesota, residing in the State of Minnesota. Defendant Mary Kiffmeyer is the duly elected and qualified Secretary of State of the State of Minnesota. In her official capacity, under Chapters 200 through 211 of Minnesota Statutes (the "Minnesota Election Law"), Secretary of State Kiffmeyer is the chief election officer of the State of Minnesota and is responsible for a variety of election duties, including giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the preparation and distribution of ballots, receiving election returns, issuing certificates of election to certain successful candidates, distributing information on certain election laws, serving on the State Canvassing Board and other duties necessary for the conduct of elections in the State of Minnesota.

6. Defendant Doug Gruber is the duly qualified and acting Auditor of Wright County, State of Minnesota. As such, Mr. Gruber is the chief election officer for Wright County.

7. This action is brought against Defendant Doug Gruber as Wright County Auditor, individually and as representative of all other county auditors and/or chief county election officers similarly situated in the State of Minnesota, such persons being so numerous as to make it impracticable to bring them all before the Court by way of joinder. Furthermore, there are predominant common questions of law, namely the constitutionality of the current legislative apportionment system and the current plan of congressional districts ordered in *Cotlow v. Growe*. The defenses of the named Defendants will fairly and adequately protect the interests of the class. Finally, the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the parties here.

COUNT I
LEGISLATIVE APPORTIONMENT – MINNESOTA CONSTITUTION

8. The above-numbered paragraphs 1-7 are incorporated herein by reference.

9. Article IV, Section 2 of the Minnesota Constitution provides:

The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses *shall be apportioned equally* throughout the different sections of the state in proportion to the population thereof [emphasis added].

10. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional and legislative districts. . . .

11. Through the above provisions, the Minnesota Constitution guarantees to the residents of the State of Minnesota that their vote shall be equally as effective as any other vote cast in an election for members of the Minnesota Legislature. Furthermore, these provisions require that the Minnesota Legislature equally apportion state legislative representation throughout the State of Minnesota by districts of equal population.

12. Plaintiffs as citizens of the United States and residents of the State of Minnesota have the right under the Minnesota Constitution to have the members of the Minnesota Legislature equally apportioned and elected on the basis of the United States Census for the year 2000 (the “2000 Census”). On information and belief, the 2000 Census shows that the state legislative districts ordered in *Cotlow v. Growe* are unequally apportioned. Furthermore, the Minnesota Legislature has not adopted a legislative apportionment system since 1991, when the Panel ordered the current legislative districts. The Minnesota Legislature has failed and neglected to equally apportion the legislative districts in the State of Minnesota and will, on information and belief, continue to fail to

apportion said districts in a manner which reflects the mandate of Article IV, Section 2 of the Minnesota Constitution that they be "equally apportioned."

13. Minnesota's current state legislative districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 32,694 persons, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

14. The unequal apportionment of Minnesota's legislative districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters in highly-populated Minnesota legislative districts of the rights guaranteed to them under the Minnesota Constitution.

15. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning itself in conformity with the Minnesota Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

16. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that

said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the Minnesota Constitution.

17. In the absence of reapportionment of the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Rights and Privileges clause (Article I, Section 2) and the Equal Apportionment clause (Article IV, Section 2) of the Minnesota Constitution.

18. By the current and anticipated failure of the Minnesota Legislature to equally apportion the legislative districts of the state in conformity with the Minnesota Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

COUNT II
LEGISLATIVE APPORTIONMENT – UNITED STATES CONSTITUTION

19. The above-numbered paragraphs 1-18 are incorporated herein by reference.

20. The Fourteenth Amendment, Section 1 of the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

21. The Fifth Amendment to the United States Constitution provides in pertinent part, “No person shall . . . be deprived of life, liberty or property without due process of law.”

22. The above provisions of the United States Constitution guarantee to the citizens of the United States in each state the right to vote in State and Federal elections and guarantees that the

vote of each shall be as equally effective as any other vote cast in such elections. Further, the United States Constitution guarantees that state legislative representation shall be equally apportioned throughout a state in districts in equal population.

23. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of . . . legislative districts.

24. Any plan of Minnesota legislative districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights guaranteed under the Fourteenth Amendment. Any action of Defendants in enforcing or implementing such a plan violates the equal protection and due process rights of Plaintiffs and other similarly-situated United States citizens residing and voting in Minnesota.

25. Minnesota's current state legislative districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 32,694 persons, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000. On information and belief, these districts exaggerate the power of voters in less populated Minnesota legislative districts and unlawfully discriminate against voters in more highly populated Minnesota

legislative districts. Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota house districts, as estimated for the year 1999 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size legislative district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

26. On information and belief, the United States Department of Commerce, Bureau of Census will soon issue data from the 2000 Census showing that Minnesota's legislative districts as ordered by the Panel in *Cotlow v. Growe* are no longer equally apportioned.

27. The Minnesota Legislature has failed and will, on information and belief, continue to fail to equally apportion Minnesota's legislative districts in conformity with the Fifth and Fourteenth Amendments to the United States Constitution.

28. The unequal apportionment of Minnesota's legislative districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters of highly-populated Minnesota legislative districts of the rights guaranteed to them under Equal Protection and Due Process clauses of the United States Constitution.

29. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning itself in conformity with the United States Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

30. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the United States Constitution.

31. In the absence of reapportionment of Minnesota's legislative districts in conformity with the United States Constitution, any action of these Defendants in conducting an election for members of the Minnesota Legislature in accordance with the districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

32. By the current and anticipated failure of the Minnesota Legislature to equally apportion the legislative districts of the state in conformity with the United States Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

COUNT III
CONGRESSIONAL DISTRICTS – UNITED STATES CONSTITUTION

33. The above-numbered paragraphs 1-33 are incorporated herein by reference.

34. Article I, Section 2 of the United States Constitution provides that:

The House of Representatives shall be composed of members chosen every second Year by the People of the several States. . . .

Representatives. . . shall be apportioned among the several States. . . according to their respective Numbers. . . .

35. The Fourteenth Amendment, Section 1 of the United States Constitution provides in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

36. The Fifth Amendment to the United States Constitution provides in pertinent part, “No person shall . . . be deprived of life, liberty or property without due process of law.”

37. The above provisions of the United States Constitution guarantee to the citizens of the United States in each state that their vote shall be as equally effective as any other vote cast in an election and that congressional representatives shall be elected on the basis of equal representation of the individual voters in the state. Furthermore, these provisions guarantee that congressional representation shall be equally apportioned throughout a state in districts of equal population.

38. Article IV, Section 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional . . . districts.

39. Any plan of Minnesota congressional districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights guaranteed under the Fourteenth Amendment. Any action of Defendants in enforcing or implementing such a plan violates the equal protection and due process rights of Plaintiffs and other similarly-situated United States citizens residing and voting in Minnesota.

40. Minnesota’s current state congressional districts were established and remain in force by order of the Panel in *Cotlow v. Growe*. The *Cotlow* Panel ordered legislative districts with an average population of 546,887 people, as set forth on Exhibit A. On information and belief, these districts exaggerate the power of voters in less populated Minnesota congressional districts and unlawfully discriminate against voters in more highly populated Minnesota congressional districts.

Attached hereto as Exhibit A are the current populations of certain of Plaintiffs' Minnesota congressional districts, as estimated for the year 1998 by the Minnesota Planning State Demographic Center. Additionally set forth on Exhibit A is the ideal size congressional district based on the preliminary results of the 2000 Census released by the Department of Commerce on December 28, 2000.

41. On information and belief, the United States Department of Commerce, Bureau of Census will soon issue data from the 2000 Census showing that Minnesota's congressional districts as ordered by the Panel in *Cotlow v. Growe* are no longer equally apportioned.

42. The Minnesota Legislature has failed and will, on information and belief, continue to fail to equally apportion Minnesota's congressional districts in conformity with the Fifth and Fourteenth Amendments to the United States Constitution.

43. The unequal apportionment of Minnesota's congressional districts ordered in *Cotlow v. Growe* deprives Plaintiffs and all other similarly-situated voters of highly-populated Minnesota congressional districts of the rights guaranteed to them under Equal Protection and Due Process clauses of the United States Constitution.

44. The Minnesota Legislature has not and, on information and belief, will not pass a law equally apportioning Minnesota's congressional districts in conformity with the United States Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2002 United States House of Representatives (and future congressional elections) on the basis of the congressional districts ordered in *Cotlow v. Growe*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the United States House of Representatives.

45. Plaintiffs further allege that they intend to and will vote in the year 2002 Minnesota primary and general elections and thereafter for candidates for the United States House of Representatives from Minnesota, and that said elections conducted in accordance with *Cotlow v. Growe* will continue to deprive Plaintiffs of rights guaranteed under the United States Constitution.

46. In the absence of reapportionment of Minnesota's congressional districts in conformity with the United States Constitution, any action of these Defendants in conducting an election for members of the United States House of Representatives in accordance with the congressional districts ordered by *Cotlow v. Growe* has deprived and will continue to deprive Plaintiffs of their constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution.

47. By the current and anticipated failure of the Minnesota Legislature to equally apportion the congressional districts of the state in conformity with the United States Constitution, the Minnesota Legislature has and will continue to cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated residents of the State of Minnesota.

WHEREFORE, plaintiffs pray for the following relief:

1. That this Court declare that the plan of legislative and congressional districts ordered in *Cotlow v. Growe* violates the rights of Plaintiffs and the class as follows:

- (a) the present legislative district boundaries in the State of Minnesota violate Plaintiffs' rights of equal representation and equal apportionment of legislative districts mandated by the Minnesota Constitution;
- (b) the present legislative district boundaries in the State of Minnesota violate Plaintiffs' rights to due process and equal protection guaranteed by the United States Constitution; and
- (c) the present congressional district boundaries in the State of Minnesota violate Plaintiffs' rights to due process and equal protection guaranteed by the United States Constitution.

2. That this Court issue a permanent injunction and judgment decreeing that Minnesota's current legislative and congressional districts are not now valid plans of state legislative and congressional apportionment.

3. That this Court issue a permanent injunction enjoining Defendants and the class of persons they represent from taking any action related to carrying out their official duties in conducting primary or general elections for Minnesota state legislators and members of the United States House of Representatives from the State of Minnesota based on the legislative and congressional districts ordered in *Cotlow v. Grove*.

4. That this Court retain jurisdiction of this action to determine if the Legislature has passed and the Governor has signed legislation forming new Minnesota legislative and congressional districts in conformity with the Minnesota and United States Constitutions; that should the Legislature and Governor fail to enact such legislation, the Court will consider evidence, determine and order valid plans for Minnesota legislative and congressional districts.

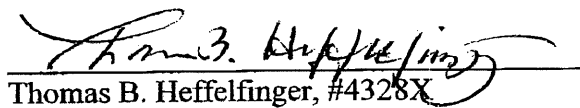
5. That this Court consider evidence, determine and order valid plans for new Minnesota legislative and congressional districts in the event the Minnesota Legislature and the Governor of the State of Minnesota fail to enact legislation establishing such districts in accordance with constitutional requirements.

6. That this Court order Defendants to pay to Plaintiffs' reasonable attorneys' fees and expenses, expert fees and costs and other expenses incurred in this action pursuant to 42 U.S.C. Section 1988.

7. That this Court order such other and future relief as is just in the circumstances.

Dated: January 4, 2000

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Dated: January 9, 2000

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ACKNOWLEDGMENT

Attorneys for Plaintiffs in the above matter hereby acknowledge, pursuant to Minnesota Statutes §549.211 that sanctions may be awarded to Defendants if it is found that claims contained in this pleading are not warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law and/or that the allegations and other factual contentions do not have evidentiary support.

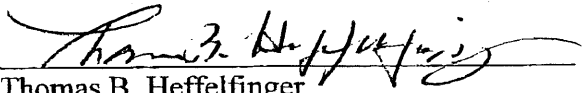

Thomas B. Heffelfinger

EXHIBIT A

Estimated Population Change

	<u>Average 1990 Population¹</u>	<u>Est. 1998/1999 Population^{1,2}</u>	<u>Est. Net Change</u>	<u>Est. % Change</u>
HD 19B	32,694	46,268	13,574	41.51%
HD 37B	32,694	58,933	26,239	71.08%
HD 56B	32,694	46,983	14,289	43.71%
HD 4B	32,694	38,015	5,321	16.28%
HD 12A	32,694	37,438	4,744	14.5%
CD 1	546,887	570,317	23,443	4.3%
CD 2	546,887	576,198	29,324	5.4%
CD 3	546,887	623,235	76,361	14.0%
CD 4	546,887	558,569	11,685	2.1%
CD 5	546,887	535,039	- 11,835	- 2.2%
CD 6	546,887	682,032	135,158	24.7%
CD 7	546,887	564,438	17,564	3.2%
CD 8	546,887	593,839	46,963	8.5%

Estimated Ideal District Population

Ideal 2000 congressional district: 614,935 (preliminary number of 4,919,479³ ÷ 8)
 Ideal 2000 state senate district: 73,245 (4,919,479 ÷ 67)
 Ideal 2000 state house district: 36,713 (4,919,479 ÷ 134)

¹Source: Minnesota Planning State Demographic Center. According to the United States Department of Commerce, U.S. Census Bureau, Minnesota's actual 1990 population was 4,375,099.

²For comparison purposes, the estimated 1998 statewide population was 4,703,760; the estimated 1998 ideal Minnesota congressional district was 587,970.

³Source: Preliminary number released by U.S. Department of Commerce, Census Bureau.