

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF WRIGHT

TENTH JUDICIAL DISTRICT

Case Type: Other Civil

Court File No. CX-01-116

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,

Plaintiffs,

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.

**MEMORANDUM OF STATE OF
MINNESOTA IN SUPPORT
OF MOTION TO DISMISS**

INTRODUCTION

Plaintiffs bring this action seeking to have this Court assume jurisdiction over the redistricting process underway in the Minnesota Legislature. They allege that the legislature has “failed and neglected to equally apportion” legislative and congressional districts by not adopting a legislative apportionment plan since 1991, and that “on information and belief” the legislature will fail in the future to pass laws equally apportioning such districts. Plaintiffs seek a declaratory judgment that the current districts are unconstitutional and an injunction preventing the current plans from being used again. They also ask that the Court retain jurisdiction to determine if the legislature enacts and the Governor signs appropriate constitutional legislation; and, if they fail to do so, that the Court establish districts that comply with constitutional

requirements. Both defendants have now brought motions to dismiss on the grounds that the claims are not ripe for adjudication.

Subsequent to the filing of this suit, plaintiffs requested that the Chief Justice of the Minnesota Supreme Court appoint a three-judge special panel to hear all redistricting matters, including this case. They have requested that this motion be heard by that panel. As of this date, no panel has been appointed.

FACTS

The legislative district plan currently in effect was enacted into law in 1994. Act of May 9, 1994, ch. 612, 1994 Minn. Laws 1308, codified as Minn. Stat. §§ 2.043-2.703 (2000). The congressional redistricting plan that is currently in effect was also passed in 1994. Act of April 11, 1994, ch. 406, 1994 Minn. Laws 94, codified as Minn. Stat. §§ 2.742-2.812 (2000).¹

Both houses of the Minnesota Legislature and the Governor have begun the process of preparing for redistricting legislative and congressional district lines pursuant to figures in the 2000 census. Specifically, the State Senate has formed a Subcommittee on Redistricting within the Committee on Rules and Administration, the House of Representatives has established a Committee on Redistricting, and Governor Ventura has established an Advisory Committee on Redistricting. Affidavit of Peter S. Wattson, ¶¶ 2-4. The Governor's advisory committee is composed of representatives of the political parties and of public groups such as Common Cause and the League of Women Voters. *Id.* ¶ 4. In preparation for the redistricting process, the Legislature has purchased sophisticated software designed to enable the process to go more

¹ The 1994 laws are based in substantial part on decisions rendered in *Cotlow v Growe*, No. C8-91-985 (Minn. Spec. Redist. Panel). The decisions of December 9, 1991, and April 15, 1992 in that case are attached hereto, and are discussed *infra* at 8.

smoothly, and staff of the Legislature, Governor, and Secretary of State are being trained in how to use that software. *Id.* ¶ 7.

The only official 2000 census figures available at this time are for the State of Minnesota as a whole. *Id.* ¶ 6. There are no official census figures for counties, cities, towns, or any other geographic area in the State. *Id.* The Census Bureau has informed the Legislature that official census figures will not be available until sometime in March, 2001. *Id.*²

ARGUMENT

Plaintiffs' claims are not ripe for adjudication. There may be no need for adjudication at all, or the issues to be adjudicated may be substantially changed after the legislature has had an opportunity to act. The need for this Court (or any court) to be involved in the redistricting process is contingent upon the occurrence of an event in the future, namely, that the legislature and the Governor fail in efforts to enact constitutional districting plans to replace the current plans. If they succeed in those efforts, courts will not have to be involved at all. Furthermore, even if the legislature and Governor enact new plans which Plaintiffs or other voters believe to be unconstitutional, the current plans would no longer exist and there would be no need for litigation involving the current plans. Any litigation involving new plans would by necessity be substantially different than the current litigation.

Plaintiffs may claim that certain portions of their case are ripe at this time: the issues of the constitutionality of the current plans and the need for an injunction to enjoin their use in the future. However, these issues are no more ripe than Plaintiffs' request for this Court to draw

² There are also no estimates available upon which to draw accurate redistricting lines. As explained in more detail in the affidavit of Senate counsel Peter S. Wattson, the lack of estimates of how population has shifted within larger cities makes it impossible to draw accurate legislative lines within such cities. Wattson Aff., ¶ 8.

plans itself. Plaintiffs' constitutional rights cannot be violated until the legislature has had an adequate opportunity to redistrict and has failed to do so.

As explained below, both federal and state courts are well aware that redistricting is a function left to the other branches of government, and courts should insert themselves into the process only when absolutely necessary. It is an affront to those branches of government for this Court to take jurisdiction and render any decisions at this time before the legislature and Governor have had an adequate opportunity to act.

I. THE STANDARD FOR RIPENESS.

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." *Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257, 1259 (1998) (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-81, 105 S. Ct. 3325, 3333 (1985), which in turn quotes 13A Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, *Federal Practice and Procedure* § 3532, p. 112 (1984)). The Minnesota Supreme Court has held that "a justiciable controversy must exist before the courts have jurisdiction to render a declaratory judgment regarding the constitutionality of statutes." *Baertsch v. Minnesota Department of Revenue*, 518 N.W.2d 21, 25 (Minn. 1994) (quoting *St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 587 (Minn. 1977)). There must be a "substantial and real controversy between the parties before a case will be considered by this court." *State v. Murphy*, 545 N.W.2d 909, 917 (Minn. 1996) (quoting *State v. Brown*, 216 Minn. 135, 138, 12 N.W.2d 180, 181 (1943)). For a real, justiciable controversy to exist, the plaintiff must "show that the statute is, or is about to be, applied to his disadvantage." *Baertsch*, 518 N.W.2d at 25 (quoting *Marzitelli*, 258 N.W.2d at 588), and show that there is a "direct and imminent injury which results from the alleged unconstitutional

[statute].” *Murphy*, 545 N.W.2d at 917. Finally, “[i]ssues which have no existence other than in the realm of the future are “purely hypothetical and are not justiciable. Neither the ripe nor the ripening seeds of controversy are present.” *Id.* (quoting *Lee v. Delmont*, 228 Minn. 101, 110, 36 N.W.2d 530, 537 (1949)).

Ripeness “requires [the] court to evaluate both the fitness of the issues for a judicial decision and the hardship to the parties of withholding court consideration.” *Texas v. United States*, 523 U.S. at 300-01, 118 S. Ct. at 1260 (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 149, 87 S. Ct. 1507, 1515 (1967)); *In the matter of the Quantification of Environmental Costs*, 578 N.W.2d 794, 798 (Minn. Ct. App. 1998), *rev. den’d* (Minn. August 18, 1998) (quoting *Abbott Laboratories*). In *Texas*, the Supreme Court upheld the district court’s refusal to issue a declaratory judgment that the pre-clearance provisions of Section 5 of the Voting Rights Act of 1965 do not apply to implementation of certain sections of the Texas Education Code permitting the state to sanction local school districts for failure to meet state-mandated educational achievement levels. 523 U.S. at 300-01, 118 S. Ct. at 1260. The Court held that the case was “not fit for adjudication” because it was not established that such a sanction would be ordered. *Id.* The Court further held that, even if there were greater certainty regarding ultimate implementation of such a sanction, the case would still not be ripe because the State of Texas was suffering no hardship in that no current state activities were being effected by the pre-clearance provisions. *Id.* at 301, 118 S. Ct. at 1260.

In *Murphy*, the Minnesota Supreme Court held to be not ripe the propriety of a particular condition of probation imposed upon a convicted defendant until he was actually released from prison and had the conditions imposed. 545 N.W.2d at 918. On the other hand, in *Baertsch*, the Minnesota Supreme Court held to be ripe plaintiffs’ claims that certain statutory provisions were

unconstitutional because plaintiffs had shown that they satisfied the factors which triggered the particular tax being challenged, and because the Department of Revenue, by letter, expressed its intent to enforce the statute against plaintiffs. 518 N.W.2d at 25.

II. PLAINTIFF'S CLAIMS ARE NOT RIPE.

The claims in this case are not ripe. First, under both state and federal law, state legislatures are not required to redistrict any more frequently than every ten years, and state legislatures must be given an opportunity to redistrict before courts take action. It has not been ten years since the last redistricting in Minnesota, and the legislature has been given no opportunity at all to redistrict.

Second, the claimed unconstitutionality of the current apportionment plans may never have to be adjudicated at all, because such issues will be moot if the legislature passes any redistricting plan to replace the current plans. Finally, there is no significant hardship to the Plaintiffs in having to wait to file suit until the legislature has had an opportunity to redistrict.

In *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1964), the Supreme Court made it clear that the Equal Protection Clause does not require:

[d]aily, monthly, annual or biennial reapportionment, so long as a state has a reasonably conceived plan for periodic readjustment of legislative representation. **While we do not intend to indicate that decennial reapportionment is a constitutional requisite, compliance with such an approach would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation.**

Id. at 583-84, 84 S. Ct. at 1392-93. (emphasis added). *Accord, Klahr v. Williams*, 339 F. Supp. 922, 925 (D. Ariz. 1972) (under *Reynolds*, the state cannot be required to make periodic determinations of state population between decennial censuses or required to make redistricting and reapportionment decisions promptly following such determinations); *Pohoryles v. Mandel*, 312 F. Supp. 334, 338-39 (D. Md. 1970) (increase in population alone is insufficient to require

immediate redistricting when the last plan had been adopted in 1965 and held constitutional in 1966).

In *MacGovern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986) (three-judge panel), plaintiffs sought reapportionment of legislative districts before the 1986 primary and general elections. Under Commonwealth of Massachusetts law, state census figures were compiled in 1975 and every ten years thereafter, and the legislature was required to enact new redistricting plans by January 1988. Plaintiffs argued that the existing plans (drawn up in 1977 based on 1975 figures) were unconstitutional under the 1985 state census figures, and also under the 1980 federal census figures. The court held that the claims based upon the 1985 census were premature in that the Commonwealth could not be said to have “failed to reapportion . . . in a timely manner” based on the 1985 census when that reapportionment was not due to be completed until January 1988. 637 F. Supp. at 114 (quoting *Reynolds*, 377 U.S. at 586, 84 S. Ct. at 1394).

The court held that:

[Plaintiffs] have failed to uncover any reason that this Court should intrude into a census and reapportionment process that is presumably preceding apace. To force a breathless reapportionment based on 1985 census figures when there is no reason to doubt that that reapportionment will happen, and happen constitutionally, in due course is plainly beyond the reasonable authority of this or any federal court. It would likewise be lawless to compel reapportionment based on the 1980 federal census figures, when they are not an aspect of the Commonwealth’s “reasonably conceived” and therefore presumptively valid -- periodic reapportionment plan.

Id. at 114-15 (quoting *Reynolds*, 377 U.S. at 583, 84 S. Ct. at 1392-93). ³

³ Two circuit courts of appeals have upheld state schemes which permitted elections to be held in such a way that redistricting plans based on a new federal census were not used for elections until approximately five years after the census was taken. *French v. Boner*, 963 F.2d 890 (6th Cir. 1992); *Political Action Conference of Illinois v. Daley*, 976 F.2d 335 (7th Cir. 1992).

Thus, it is clear that under federal case law the current redistricting lines are not unconstitutional. There is no requirement that the legislature have redistricted at this time. The current redistricting plans are not yet ten years old, and the legislature and Governor have begun the process of redistricting.

During the last redistricting cycle, state courts were also cognizant of the fact that redistricting is, in the first instance, a legislative function. A judicial action was filed early in 1991. *See Cotlow*, decision of December 9, 1991, at 2. However, the Supreme Court did not appoint a three-judge panel until June 4, 1991, subsequent to the legislature's adjournment after having passed Chapter 246, which was a legislative redistricting plan. *Id.*; *see* Act of May 29, 1991, ch. 246, 1991 Minn. Laws 741. The *Cotlow* panel continued to give deference to the legislature. Despite being strongly urged by the parties to proceed as rapidly as possible to draw legislative lines, the court proceeded to do so in December 1991 only because the legislature represented to the court that it only intended to make technical corrections to its former plan when it met in January 1992, and because the Governor represented that he would veto such a bill. *Cotlow*, decision of Dec. 9, 1991, memorandum at 8.

Further evidence of the deference paid to the legislature by the *Cotlow* panel is evident in the court's handling of redistricting of congressional district lines. Even as late as December 9, 1991, the panel declined to adopt a congressional plan because the legislature and Governor had not yet acted. *Id.* at 8-9. The court did not intend to act on a congressional plan until after the legislature met in January 1992 to consider congressional redistricting. It was only after the legislature enacted a bill in January which was vetoed by the governor did the court put into effect its own congressional districting plan. *Cotlow*, decision of April 15, 1992, at 2.

The legislature has obviously not had any opportunity to redistrict this year. The state Senate, the state House of Representatives, and the Governor have all established committees to work on redistricting. Affidavit of Peter Wattson, ¶¶ 2-4. In preparation for the redistricting process, the Legislature has purchased sophisticated software designed to enable the process to go more smoothly, and staff of the Legislature, Governor, and Secretary of State are being trained in how to use that software. *Id.* ¶ 7.

The only official 2000 census figures available at this time are for the State of Minnesota as a whole. *Id.* ¶ 6. There are no official census figures for counties, cities, towns, or any other geographic area in the State. *Id.* The Census Bureau has informed the Legislature that official census figures will not be available until sometime in March, 2001. *Id.*

If this lawsuit is permitted to continue, a major function of the legislature will be taken away. There will be no limit to how early similar lawsuits may be filed in the future. Permitting such premature lawsuits will subvert the orderly process of redistricting and subvert the intention of the Minnesota Constitution. Art. IV, § 3 of the Minnesota Constitution provides in part that:

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.

The first session of the legislature has barely begun. Certainly, the legislature is not in violation of the Minnesota Constitution at this time.

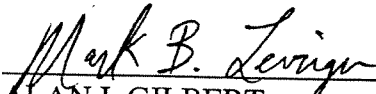
CONCLUSION

For the reasons stated above, Defendant State of Minnesota requests that this Court dismiss this action on the grounds that it is not ripe for adjudication at this time.

Dated: Feb. 13, 2001

Respectfully submitted,

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