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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,

and

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpao 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.

SACHS PLAINTIFFS' PROPOSED REDISTRICTING PRINCIPLES

Pursuant to Scheduling Order No. 2, issued by the Special Redistricting Panel (the "Panel") on August 24, 2021, Plaintiffs Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O'Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer (the "Sachs Plaintiffs") hereby submit the following proposed redistricting principles.

The parties invested substantial energy in working together collaboratively on potential stipulations for redistricting principles and details for plan submissions. Despite productive discussions, however, they were ultimately unable to reach agreement on precise language for most criteria—even as to items on which there appeared to be broad conceptual agreement—due to the number of parties and complexity of issues. The principles on which the parties were able to agree are addressed in the parties' concurrently

filed Stipulation Regarding Proposed Redistricting Principles. The Sachs Plaintiffs adopt those stipulated proposed principles by reference, and address below additional principles they propose on which the parties could not reach agreement.

The Sachs Plaintiffs further request oral argument on the issue of redistricting principles. *See* Scheduling Order No. 2 at 3 (Aug. 24, 2021).

ADDITIONAL PROPOSED REDISTRICTING PRINCIPLES

I. Congressional Districts

1. The congressional districts shall be as nearly equal in population as is practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7–8, 84 S. Ct. 526, 530 (1964); *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 5). Because a court-ordered redistricting plan must conform to a higher standard of population equality than a redistricting plan created by a legislature, absolute population equality shall be the goal. *Abrams v. Johnson*, 521 U.S. 74, 98, 117 S. Ct. 1925, 1939 (1997). Because Minnesota's total population is not divisible into eight congressional districts of equal population, the ideal result is six districts of 713,312 persons and two districts of 713,311 persons.

2. Congressional districts shall consist of convenient, contiguous territory. Minn. Stat. § 2.91, subd. 2. Contiguity by water is sufficient if the body of water does not pose a serious obstacle to travel within the district. Congressional districts with areas that connect only at a single point shall not be considered contiguous.

3. Congressional districts shall 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 and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq. Consistent with these laws, congressional districts must provide each such minority group with an equal opportunity to participate in the political process and elect a candidate of its choice, whether alone or in a coalition with others. Where possible, members of minority groups that constitute less than a voting-age majority of a district's population should have an opportunity to influence the outcome of an election.

4. Congressional districts shall attempt to preserve identifiable communities of interest. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006) (*LULAC*) (stating that "maintaining communities of interest" is a traditional redistricting principle); *Miller v. Johnson*, 515 U.S. 900, 916, 115 S. Ct. 2475, 2488 (1995) (including respect for "communities defined by actual shared interests" in list of "traditional race-neutral districting principles"). For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, regional, cultural, historic, ethnic, socioeconomic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate applicable law.

5. A federally recognized American Indian reservation shall not be divided into more than one district except as necessary to meet constitutional requirements. When a federally recognized American Indian reservation must be divided into more than one

district, it should be divided into as few districts as possible. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 20) (noting that judicially adopted congressional districts "respect[ed] the reservation boundaries of federally recognized Indian tribes").

6. Political subdivisions shall not be divided more than necessary to meet constitutional or minority representation requirements; form districts that are composed of convenient, contiguous territory; or preserve communities of interest.

7. Congressional districts shall be structured into compact units as measured using one or more statistical tests. *See Shaw v. Reno*, 509 U.S. 630, 646, 113 S. Ct. 2816, 2826 (1993).

8. Congressional districts shall not be drawn for the purpose or effect of promoting, protecting, or defeating any incumbent, candidate, or party. But the impact of redistricting on incumbent officeholders is a factor subordinate to all redistricting criteria that the panel may consider to determine whether proposed plans result in either undue incumbent protection or excessive incumbent conflicts.

II. Legislative Districts

1. The legislative districts shall be numbered in a regular series, beginning with House District lA in the northwest corner of the state and proceeding across the state from west to east, north to south, but 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 (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).

2. Redistricting plans for state legislatures shall faithfully adhere to the concept of population-based representation. *Roman v. Sincock*, 377 U.S. 695, 710, 84 S. Ct. 1449, 1458 (1964); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 8). Because a court-ordered redistricting plan must conform to a higher standard of population equality than a plan created by a legislature, de minimis deviation from the ideal district population shall be the goal. *Connor v. Finch*, 431 U.S. 407, 414, 97 S. Ct. 1828, 1833 (1977); *Chapman v. Meier*, 420 U.S. 1, 26–27, 95 S. Ct. 751, 766 (1975). The population of a legislative district shall not deviate by more than two percent from the population of the ideal district. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 8); *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 3); *Cotlow v. Growe*, No. MX-91-1562 (Minn. Special Redistricting Panel Aug. 16, 1991) (Pretrial Order No. 2 at 4).

3. Legislative districts shall consist of convenient, contiguous territory. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2. Contiguity by water is sufficient if the body of water does not pose a serious obstacle to travel within the district. Legislative districts with areas that connect only at a single point shall not be considered contiguous.

4. Legislative districts shall 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 and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq. Consistent with these laws, legislative districts must provide each such minority group with an equal opportunity to participate in the political process and elect a candidate of its choice, whether alone or in a coalition with others. Where possible, members of minority groups that constitute less than a voting-age majority of a district's population should have an opportunity to influence the outcome of an election.

5. Legislative districts shall attempt to preserve identifiable communities of interest. *See LULAC*, 548 U.S. at 433, 126 S. Ct. at 2618; *Miller*, 515 U.S. at 916, 115 S. Ct. at 2488. For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, regional, cultural, historic, ethnic, socioeconomic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate applicable law.

6. A federally recognized American Indian reservation shall not be divided into more than one district except as necessary to meet constitutional requirements. When a federally recognized American Indian reservation must be divided into more than one district, it should be divided into as few districts as possible. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative

Redistricting Plan at 17) (noting that judicially adopted legislative districts "demonstrate[d] a respect for the reservation boundaries of federally recognized Indian tribes").

7. Political subdivisions shall not be divided more than necessary to meet constitutional or minority representation requirements; form districts that are composed of convenient, contiguous territory; or preserve communities of interest.

8. Legislative districts shall be structured into compact units as measured using one or more statistical tests. *See Reynolds v. Sims*, 377 U.S. 533, 578–79, 84 S. Ct. 1362, 1390 (1964).

9. Legislative districts shall not be drawn for the purpose or effect of promoting, protecting, or defeating any incumbent, candidate, or party. But the impact of redistricting on incumbent officeholders is a factor subordinate to all redistricting criteria that the panel may consider to determine whether proposed plans result in either undue incumbent protection or excessive incumbent conflicts.

ARGUMENT

I. Numbering of Legislative Districts

> **Proposed Principle:** The legislative districts shall be numbered in a regular series, beginning with House District lA in the northwest corner of the state and proceeding across the state from west to east, north to south, but 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 (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).

The Panel should adopt the same numbering scheme previously used for legislative districts. By statute, the state senate and state house are composed of 67 and 134 members, respectively. Minn. Stat. §§ 2.021, 2.031, subd. 1. The special redistricting panel during the last redistricting cycle (the "*Hippert* panel") numbered legislative districts "in a regular series, beginning with House District 1A in the northwest comer of the state and proceeding across the state from west to east, north to south, but 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." *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 7) (citing Minn. Const. art. IV, § 3; Minn. Stat. § 200.02, subd. 24). While district boundaries will change to reflect population shifts, there is no reason to alter this well-established numbering scheme.

II. Equal Population

> **Proposed Congressional Principle:** The congressional districts shall be as nearly equal in population as is practicable. *Wesberry v. Sanders*, 376 U.S. 1, 7–8, 84 S. Ct. 526, 530 (1964); *Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 5). Because a court-ordered redistricting plan must conform to a higher standard of population equality than a redistricting plan created by a legislature, absolute population equality shall be the goal. *Abrams v. Johnson*, 521 U.S. 74, 98, 117 S. Ct. 1925, 1939 (1997). Because Minnesota's total population is not divisible into eight congressional districts of equal population, the ideal result is six districts of 713,312 persons and two districts of 713,311 persons.
>
> **Proposed Legislative Principle:** Redistricting plans for state legislatures shall faithfully adhere to the concept of population-

> based representation. *Roman v. Sincock*, 377 U.S. 695, 710, 84 S. Ct. 1449, 1458 (1964); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 8). Because a court-ordered redistricting plan must conform to a higher standard of population equality than a plan created by a legislature, de minimis deviation from the ideal district population shall be the goal. *Connor v. Finch*, 431 U.S. 407, 414, 97 S. Ct. 1828, 1833 (1977); *Chapman v. Meier*, 420 U.S. 1, 26–27, 95 S. Ct. 751, 766 (1975). The population of a legislative district shall not deviate by more than two percent from the population of the ideal district. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 8); *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 3); *Cotlow v. Growe*, No. MX-91-1562 (Minn. Special Redistricting Panel Aug. 16, 1991) (Pretrial Order No. 2 at 4).

These proposed principles are nearly identical to those adopted by the *Hippert* panel. *See* No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 5, 8). The only changes are to update the ideal congressional district population based on the results of the 2020 census and to include citations to the *Hippert* panel's order stating redistricting principles.

III. Convenient, Contiguous Territory

> **Proposed Congressional Principle:** Congressional districts shall consist of convenient, contiguous territory. Minn. Stat. § 2.91, subd. 2. Contiguity by water is sufficient if the body of water does not pose a serious obstacle to travel within the district. Congressional districts with areas that connect only at a single point shall not be considered contiguous.

> **Proposed Legislative Principle:** Legislative districts shall consist of convenient, contiguous territory. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2. Contiguity by water is

> sufficient if the body of water does not pose a serious obstacle to travel within the district. Legislative districts with areas that connect only at a single point shall not be considered contiguous.

The Minnesota Constitution requires that state senators be "chosen by single districts of convenient contiguous territory." Minn. Const. art. IV, § 3. Although this constitutional mandate does not apply to state house or congressional districts, Minnesota has, by statute, required that "*all* districts consist of convenient contiguous territory." Minn. Stat. § 2.91, subd. 2 (emphasis added).

Contiguity is one of the most common and uncontroversial rules for drawing district lines. *See, e.g.*, *Shaw*, 509 U.S. at 647, 113 S. Ct. at 2827 (identifying contiguity as traditional districting principle). A contiguous district generally can be defined as one in which "[a]ll parts . . . are connected geographically at some point with the rest of the district." Nat'l Conf. of State Legislatures, *Redistricting Law 2020* 258 (2019).

"Convenient," in turn, means "[w]ithin easy reach; easily accessible." *LaComb v. Growe*, 541 F. Supp. 145, 150 (D. Minn.) (three-judge panel) (quoting *Convenient*, *The Compact Edition of the Oxford English Dictionary* (1971)), *aff'd sub nom. Orwoll v. LaComb*, 456 U.S. 966 (1982).

The Sachs Plaintiffs' proposed principle is nearly identical to that adopted by the *Hippert* panel during the last cycle, with the exception of the language italicized below:

> [D]istricts shall consist of convenient, contiguous territory *structured into compact units*. Contiguity by water is sufficient if the body of water does not pose a serious obstacle to travel within the district. [D]istricts with areas that connect only at a single point shall not be considered contiguous.

No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 6, 8–9) (emphasis added) (citations omitted). The Sachs Plaintiffs therefore part ways with the *Hippert* panel's "contiguity" principle in only one, limited respect: this principle should not address "compactness." While compactness is a relevant redistricting criterion, as discussed in Part VIII below, there is no constitutional or statutory mandate that districts must be compact (unlike the contiguity requirement, which is mandated by the Minnesota Constitution and statute). Moreover, there are significant analytical issues with preferring compactness at the expense of other redistricting principles. Thus, while compactness is a relevant factor, it should not be placed on the same footing as the constitutionally and/or statutorily mandated contiguity requirement.

IV. Minority Representation

> **Proposed Congressional Principle:** Congressional districts shall 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 and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq. Consistent with these laws, congressional districts must provide each such minority group with an equal opportunity to participate in the political process and elect a candidate of its choice, whether alone or in a coalition with others. Where possible, members of minority groups that constitute less than a voting-age majority of a district's population should have an opportunity to influence the outcome of an election.
>
> **Proposed Legislative Principle:** Legislative districts shall 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 and must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq. Consistent with these laws, legislative districts must provide each such minority group with an equal opportunity to participate in the political process and elect a candidate of its choice, whether alone or in a coalition with others. Where possible, members of minority groups that constitute less than a voting-age majority of a district's population should have an opportunity to influence the outcome of an election.

The first two sentences of these proposed principles are nearly identical to the criteria adopted by the *Hippert* panel, save for updated statutory citations. *See* No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 5–6, 8). The Sachs Plaintiffs' proposed additions more explicitly reflect the mandate of Section 2 of the Voting Rights Act, *see* 52 U.S.C. § 10301(b) (Section 2 is violated where "based on the totality of circumstances, it is shown that [the political process is] not equally open to participation by members of a [protected minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice"), and recognize that coalitions of minority groups can qualify for Section 2's protections. *See, e.g.*, *Holloway v. City of Virginia Beach*, No. 2:18-cv-69, 2021 WL 1226554, at *19–23 (E.D. Va. Mar. 31, 2021) (collecting cases), *appeal docketed*, No. 21-1533 (4th Cir. May 5, 2021). Finally, the proposed language regarding "influence districts" reflects that, while such districts might not be required by the Voting Rights Act, *see Bartlett v. Strickland*, 556 U.S. 1, 13, 129 S. Ct. 1231, 1242 (2009)

(plurality op.), they are nevertheless a powerful tool for vindicating the promise of political equality enshrined in the Fourteenth and Fifteenth Amendments to the United States Constitution. *See, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461, 482–83, 123 S. Ct. 2498, 2512–13 (2003) (exploring role of influence districts in previous Section 5 retrogression analysis).

The need for any plan adopted by the Panel to comply with the Voting Rights Act and the United States Constitution is obvious. Nonetheless, it is important for Minnesota to continue to emphasize its commitment to protecting the representational interests of the state's minority communities. The formulation of this commitment adopted by the *Hippert* panel, with the additions proposed by the Sachs Plaintiffs to reflect the vital mechanisms through which equal representation can be achieved, will readily serve this purpose.

V. Communities of Interest

> **Proposed Congressional Principle:** Congressional districts shall attempt to preserve identifiable communities of interest. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006) (*LULAC*) (stating that "maintaining communities of interest" is a traditional redistricting principle); *Miller v. Johnson*, 515 U.S. 900, 916, 115 S. Ct. 2475, 2488 (1995) (including respect for "communities defined by actual shared interests" in list of "traditional race-neutral districting principles"). For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, regional, cultural, historic, ethnic, socioeconomic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate applicable law.
>
> **Proposed Legislative Principle:** Legislative districts shall attempt to preserve identifiable communities of interest. *See*

> *LULAC*, 548 U.S. at 433, 126 S. Ct. at 2618; *Miller*, 515 U.S. at 916, 115 S. Ct. at 2488. For purposes of this principle, "communities of interest" include, but are not limited to, groups of Minnesotans with clearly recognizable similarities of social, geographic, regional, cultural, historic, ethnic, socioeconomic, occupational, trade, transportation, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate applicable law.

As the Panel has recognized, "preserving 'communities of interest'" is a "traditional aspect of the redistricting process." Order at 3 (Sept. 13, 2021). Indeed, the importance of preserving communities of interest has long been recognized in Minnesota; the special redistricting panels from the past three cycles all recognized this criterion as a key principle. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 6–7, 9); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 3, 5); *Cotlow*, No. MX 91-001562 (Minn. Special Redistricting Panel Aug. 16, 1991) (Pretrial Order No. 2 at 3–6). Similarly, the federal court that redistricted the state's legislative districts after the 1980 census drew districts "generally . . . along recognized neighborhood lines . . . . to join together identifiable neighborhoods with traditional ties." *LaComb v. Growe*, 541 F. Supp. 160, 164 (D. Minn. 1982).

This principle as articulated by the Sachs Plaintiffs generally reflects the language adopted by the *Hippert* panel, with two notable updates.

First, the revised principle adds additional enumerated interests—regional, historic, socioeconomic, occupational, trade, and transportation—to better reflect the range of

issues around which communities might form, and which have been recognized by courts in general and in judicially adopted Minnesota plans in particular. *See, e.g.*, *Bush v. Vera*, 517 U.S. 952, 964, 116 S. Ct. 1941, 1954 (1996) (plurality op.) (listing "shared broadcast and print media, public transport infrastructure, and institutions such as schools and churches" as examples of "manifestations of community of interest"); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 11) (noting that panel drew district that "ke[pt] together the communities of interest that have developed around the mining, timber, and tourism industries of northeastern Minnesota"); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan at 19–20) (noting that districts were responsive to public testimony about "interconnected nature of" and "strong ties between" particular communities on various dimensions).

Second, by adjusting the ordering of principles and altering the first sentence of this criterion, the Sachs Plaintiffs emphasize that this principle should not be formally subordinated to other considerations. In particular, they submit that long-term technological and political trends continue to heighten the importance of preserving communities of interest while, at the same time, rendering political subdivision boundaries of relatively less importance.

Geographers and political scientists have long observed that people sort themselves into neighborhoods and communities with others who share similar attitudes and behaviors. *See, e.g.*, Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 Harv. L. Rev. 1903, 1915 & n.33 (2012) ("People tend to live near other people who are similar to them (a phenomenon

that geographers refer to as 'Tobler's First Law').") (footnote omitted); W.R. Tobler, *A Computer Movie Simulating Urban Growth in the Detroit Region*, 46 Econ. Geography 234, 236 (1970) ("[E]verything is related to everything else, but near things are more related than distant things."). Because people sort themselves into communities of interest, they typically feel best represented when their voting districts match their communities.

By contrast, research suggests that districts that "fragment neighborhoods and combine different communities into heterogeneous units" cause individuals to "feel unrepresented." Richard Briffault, *Lani Guinier and the Dilemmas of American Democracy*, 95 Colum. L. Rev. 418, 431–32, 443 (1995) (reviewing Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy* (1994)). Where "proximate and contiguous natural communities of interest" are divided, voters' ability to "collectively organize [and] influence their current representatives" is diminished. Bernard Grofman, *Would Vince Lombardi Have Been Right if He Had Said: "When It Comes to Redistricting, Race Isn't Everything, It's the* Only *Thing?"*, 14 Cardozo L. Rev. 1237, 1262–63 (1993). Likewise, a single representative will struggle to represent their entire district when it contains an amalgam of disparate and discrete communities of interest. Ultimately, fair representation of all citizens in a district cannot be achieved if a district consists of "communities with interests in common . . . being thrown in with [other] very unlike components." Charles Backstrom et al., *Establishing a Statewide Electoral Effects Baseline*, in *Political Gerrymandering and the Courts* 145, 153 (Bernard Grofman ed., 1990).

The necessary corollary of this research is that individuals do not necessarily share similar interests simply because they reside within the same political subdivision. To be sure, a community of interest *might* correlate with an extant political subdivision, which can thus serve as a unifying, geographically defined unit. But "respect for subdivision lines in districting does not in itself demonstrate a substantive theory of group representation" because "[s]ubstate territorial boundaries, after all, do not necessarily coincide with identifiable or unitary communities of interest." Nancy Maveety, *Representation Rights and the Burger Years* 39 (1991); *see also* Daniel H. Lowenstein & Jonathan Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory?*, 33 UCLA L. Rev. 1, 34 (1985) ("The boundaries of racial, social, and economic communities may be sharp or barely perceptible, but in either event, there is no evidence that they conveniently coincide with municipal boundaries."); Gordon E. Baker, *The "Totality of Circumstances" Approach*, in *Political Gerrymandering and the Courts*, *supra*, at 203, 207 (recognizing that "[s]ome 'functional' communities can transcend county lines and make more reasonable borders for district boundaries than others," such as "[t]ransportation and communication networks [or] common social and economic interests").

Two examples illustrated the disconnect between how people define themselves as communities and the political subdivisions in which they technically reside.

First, the borders of many political subdivisions are historic relics rather than manifestations of cohesive communities in modern Minnesota. Indeed, most Minnesota counties were created in the territorial period that ended in 1857. *See Minnesota Counties*, Ass'n of Minn. Cntys., https://www.mncounties.org/aboutmnc/counties/index.php (last

visited Oct. 12, 2021). Factors that went into their shape include (1) adherence to the survey of the Louisiana Purchase ordered by President Thomas Jefferson, reflecting his belief that counties should be small enough that a citizen could travel on horseback to and from the county seat in one day; (2) natural boundaries that could not easily be crossed at the time; and (3) the regional economics of the fur trade, large tract agriculture, mining, and the lumber industry. James Mulder, *Minnesota County Government: A History of Accomplishment, a Commitment to the Future* 96–97, Rural Minn. J. (Jan. 2006), https://www.ruralmn.org/wp-content/uploads/2011/03/Minnesota-County-Government.pdf. There are often a great number of things that bind two individuals together more closely than the accident of residing in the same county that was created a century and a half ago. Thus, while counties still serve as essential governmental units, they play a fundamentally different role in individuals' conceptions of their communities when a state is connected by media, internet service, highways, and commuter rail, rather than being traversable only by horse or on foot. Likewise, people residing in the same general area but in different political subdivisions will be unified by access to common sources of information, such as newspapers, radio, and television stations. Grofman, *supra*, at 1262.

Second, municipalities often do not align with communities of interest. With increasing regularity, suburban and exurban growth in Minnesota has led to annexation of noncontiguous territory that might have little in common with the annexing jurisdiction. Likewise, in an era of urban sprawl, the line between different cities blurs—and sometimes fades to the vanishing point. If the nearest community center or park is technically across a municipal border, that fact might matter little to the average voter.

In short, the goal of drawing a fair district map is not to achieve some abstract geographic ideal, but to ensure that a state's voters are fairly represented:

> [O]ne of the . . . bases of representation in our culture is territorial—not of arbitrary aggregations of geography for the purpose of conducting elections, but as meaningful entities that have legitimate collective interests arising from the identity of citizens with real places and areas. If districts ignore the neighborhood or community within which most people carry out their daily lives, the representative, even in a strongly partisan district, may be faced with difficult conflicts of interest between people in disparate parts of the district; and citizens in those isolated parts of a district may come to feel that their community is unrepresented, even if their ideology is being represented.

Richard Morrill, *A Geographer's Perspective*, in *Political Gerrymandering and the Courts*, *supra*, at 212, 216–17.

While an expansive analysis of particular communities of interest in Minnesota will best be conducted following the ongoing public hearings, the Sachs Plaintiffs urge the Panel to recognize certain general communities of interest identified by prior redistricting panels.

Well-established natural divisions. Both the *Hippert* panel and the special redistricting panel convened following the 2000 census (the "*Zachman* panel") identified several well-recognized and distinct regions of the state, including the Red River Valley, the Iron Range, and the St. Croix River Valley. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan at 11, 19–20); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan at 9); *Zachman*, No. C0-01-160

(Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 5).

Transportation corridors. While transportation corridors are not themselves communities of interest, they do serve as an important means of unifying and creating communities of interest in Minnesota because (1) the state's population is clustered in its southeastern center, flowing from the Twin Cities along major thoroughfares, rail lines, and other transportation links, and (2) rural areas of the state are, in some areas, readily traversable only along major transportation corridors. As a result, previous panels recognized that communities of interest may coalesce along the state's transportation corridors. *See, e.g.*, *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 17); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan at 5–6, 10).

Neighborhoods. As discussed above, local neighborhoods provide some of the most obvious communities of interest, as the nearer two individuals reside, the more closely aligned their interests tend to be. *See, e.g.*, Morrill, *supra*, at 216–17. Both the *Hippert* and *Zachman* panels specifically noted that, in mapping legislative districts in the Twin Cities metropolitan area, their plans preserved neighborhood boundaries to the extent possible. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan at 20); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 5).

VI. American Indian Reservations

> **Proposed Congressional Principle:** A federally recognized American Indian reservation shall not be divided into more than one district except as necessary to meet constitutional requirements. When a federally recognized American Indian reservation must be divided into more than one district, it should be divided into as few districts as possible. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 20) (noting that judicially adopted congressional districts "respect[ed] the reservation boundaries of federally recognized Indian tribes").

> **Proposed Legislative Principle:** A federally recognized American Indian reservation shall not be divided into more than one district except as necessary to meet constitutional requirements. When a federally recognized American Indian reservation must be divided into more than one district, it should be divided into as few districts as possible. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan at 17) (noting that judicially adopted legislative districts "demonstrate[d] a respect for the reservation boundaries of federally recognized Indian tribes").

As the *Zachman* panel recognized two decades ago, American Indian reservations constitute some of "the state's largest communities of interest." No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan at 9). Prior panels have endeavored to preserve reservations when undertaking redistricting. *See id.* at 9; *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 4) ("As tribal leaders have requested, the White Earth and Red Earth Reservations are intact in a common senate district."); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan at 17–18).

This new proposed principle simply articulates the inevitable result of the related criteria adopted by previous panels: as both sovereign governments and some of the state's largest and most indispensable communities of interest, American Indian reservations should be kept intact whenever possible.

VII. Political Subdivisions

> **Proposed Principle:** Political subdivisions shall not be divided more than necessary to meet constitutional or minority representation requirements; form districts that are composed of convenient, contiguous territory; or preserve communities of interest.

Minnesota recognizes the importance of preserving political subdivisions where possible; if political subdivisions are split to advance other redistricting criteria, then they must not be divided more than necessary. *See* Minn. Stat. § 2.91.

Political subdivisions derive their importance as a traditional redistricting principle primarily from being well-defined and clearly identifiable communities of interest. Thus, as the *Zachman* panel recognized, "[c]ounties, cities, and townships constitute some of Minnesota's most fundamental communities of interest and centers of local government." No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 3) (citing *LaComb*, 541 F. Supp. at 163).

The *Hippert* panel adopted the same criterion on this issue for both congressional and legislative maps: "Political subdivisions shall not be divided more than necessary to meet constitutional requirements." No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 6, 9) (citing Minn. Stat. § 2.91, subd. 2.; *Karcher v. Daggett*, 462 U.S. 725, 733 n.5, 740–

41, 103 S. Ct. 2653, 2660 n.5, 2663–64 (1983); *Reynolds*, 377 U.S. at 580–81, 84 S. Ct. at 1391–92).

The Sachs Plaintiffs' proposed principle differs from the *Hippert* panel's in three respects. First, it specifically mentions that meeting minority representation requirements (in addition to constitutional requirements) may justify splitting a political subdivision, given that (1) some such requirements are codified in statutes rather than constitutional provisions, and (2) following political subdivision lines too rigidly might result in the inadvertent "cracking" of minority communities. Second, it states that it might be necessary to subordinate the preservation of political subdivisions to preserve contiguity; the *Zachman* panel recognized this need for subordination where, for example, political subdivisions are contiguous at only a single point. *See* No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 11). Third, it specifically provides that preservation of communities of interests may justify splitting political subdivisions, since political subdivisions should not be mechanistically preserved where doing so splits obvious communities of interest.

Ultimately, as the *Zachman* panel noted two cycles ago, "[s]ome political subdivisions . . . have to be split" in order to produce a "balanced" and "fundamentally fair" map. No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan at 3–4) (quoting *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 11)); *see also Zachman*, No. C0-01-160 (Minn.

Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 3–4) (discussing effort to respect political subdivisions while splitting them where necessary). The Sachs Plaintiffs' proposed principle expands on the *Hippert* panel's by articulating additional instances where such splitting might be appropriate.

VIII. Compactness

> **Proposed Congressional Principle:** Congressional districts shall be structured into compact units as measured using one or more statistical tests. *See Shaw v. Reno*, 509 U.S. 630, 646, 113 S. Ct. 2816, 2826 (1993).
>
> **Proposed Legislative Principle:** Legislative districts shall be structured into compact units as measured using one or more statistical tests. *See Reynolds v. Sims*, 377 U.S. 533, 578–79, 84 S. Ct. 1362, 1390 (1964).

No state statute or constitutional provision requires Minnesota's congressional and legislative districts to be compact, and there is no federal constitutional requirement that districts meet certain, definable standards of compactness. Consequently, the *Zachman* panel "recognize[d] the scholarly debate surrounding this criterion and the limitations of compactness as a singular basis for adopting or rejecting a particular plan." *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 11).

That said, Minnesota recognizes compactness as a relevant redistricting criterion. *See, e.g.*, *id.* at 11–12; *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 15–16). Indeed, the past five redistricting panels all included compactness among their criteria. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order

Stating Redistricting Principles and Requirements for Plan Submissions at 15–16). The Sachs Plaintiffs therefore submit that the Panel should consider the compactness of districts.

Generally speaking, compactness "refers to the regularity of the shape of [a] district, as well as some comparison of the perimeter of the district to its area." D. James Greiner, *The Quantitative Empirics of Redistricting Litigation: Knowledge, Threats to Knowledge, and the Need for Less Districting*, 29 Yale L. & Pol'y Rev. 527, 530 n.11 (2011). But beyond generalities, the term "has proven complicated in redistricting"; no one method of measuring compactness is standard, and "it has been defined in terms as varied as 'spatial nature,' '[socioeconomic] characteristics,' and 'state law.'" Frederick McBride & Meredith Bell-Platts, *Extreme Makeover: Racial Consideration and the Voting Rights Act in the Politics of Redistricting*, 1 Stan. J. C.R. & C.L. 327, 349–50 (2005). Indeed, political scientists have devised dozens of ways of measuring compactness. *See* Greiner, *supra*, at 530.

Because the concept can be difficult in practice to define, the Sachs Plaintiffs reference the use of one or more statistical tests to measure compactness, as previous panels have done. The *Hippert* panel, for example, used eight measures of compactness to evaluate its plans: (1) Reock; (2) Schwartzberg; (3) Perimeter; (4) Polsby-Popper; (5) Length-Width; (6) Population Polygon; (7) Population Circle; and (8) Ehrenburg. *See* No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan, Appendix D); *Hippert*, No. A11-152 (Minn. Special

Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative Redistricting Plan, Appendix D).

IX. Avoiding Unfair Results for Any Candidate or Party

> **Proposed Congressional Principle:** Congressional districts shall not be drawn for the purpose or effect of promoting, protecting, or defeating any incumbent, candidate, or party. But the impact of redistricting on incumbent officeholders is a factor subordinate to all redistricting criteria that the panel may consider to determine whether proposed plans result in either undue incumbent protection or excessive incumbent conflicts.

> **Proposed Legislative Principle:** Legislative districts shall not be drawn for the purpose or effect of promoting, protecting, or defeating any incumbent, candidate, or party. But the impact of redistricting on incumbent officeholders is a factor subordinate to all redistricting criteria that the panel may consider to determine whether proposed plans result in either undue incumbent protection or excessive incumbent conflicts.

These proposed criteria are similar to the criterion adopted by the *Hippert* panel. *See* No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 7, 9). As that panel recognized during the last redistricting cycle, "[t]his principle is necessary . . . to preserve the public's confidence and perception of fairness in the redistricting process." *Id.* at 16. That said, as the *Hippert* panel also recognized, drawing maps by reference only to the redistricting criteria discussed above—without *any* consideration of their political effects—might inadvertently result in adverse impacts on particular groups. *See id.* at 17 (citing *Gaffney v. Cummings*, 412 U.S. 735, 753, 93 S. Ct. 2321, 2331–32 (1973)).

To avoid such an outcome, the Sachs Plaintiffs propose that the Panel should consider not only whether a redistricting plan results in an unfair result for *incumbents*, as

panels have in prior cycles, but also whether it results in unfair outcomes for *any* candidate—or, for that matter, any party.

CONCLUSION

For the reasons stated above, the Panel should adopt the foregoing criteria to guide redistricting.

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Respectfully submitted,

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