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,

WATTSON PLAINTIFFS' PROPOSED CONGRESSIONAL AND LEGISLATIVE DISTRICTING PRINCIPLES

ORAL ARGUMENT REQUESTED

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.

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I. INTRODUCTION

Plaintiffs 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 ("Wattson Plaintiffs") submit these proposed congressional and legislative districting principles attached as **Exhibit A** pursuant to the State of Minnesota Special Redistricting Panel's ("Panel") Order dated August 24, 2021. The Wattson Plaintiffs also submit proposed Plan Submission Requirements attached as **Exhibit B** to aid the Panel in determining how submissions are presented to the Panel.

While redistricting is meant to be a legislative function in Minnesota, over the past five decades (this being the sixth) courts have had to intervene due to the inability of the legislature to complete this task. During this period of court intervention, redistricting principles have varied to some degree, and courts have shown a willingness to vary these principles from one decade to the next. That said, due to our legislature's inability to complete the redistricting task or pass any legislation to account for technological and other changes, our state's redistricting principles have remained remnants of the past in a rapidly changing society. While the Wattson Plaintiffs agree with the proposition that court-ordered redistricting plans are subject to greater scrutiny than a plan adopted by the legislature, this does not mean that court-ordered plans are limited to principles grounded in constitutional and statutory law. This is made apparent by the court's prior use of principles related to compactness, communities of interest, and incumbents.

Given that court-ordered redistricting is not a once in a lifetime phenomenon in Minnesota, but instead a ritual that takes place every ten years, the Wattson Plaintiffs believe that it is time for the Panel to adopt principles that take advantage of available technology, are more in line with the changes in redistricting that are taking place in the rest of the country, and prevent partisan gerrymandering that has become all too common in redistricting.

Districting principles that prevent favoring political parties and encourage electoral competition are the only way that this Panel can identify and prevent the parties from submitting maps that are highly partisan. By excluding these principles, the Panel has no way to know if a party to this litigation has submitted a plan that drastically favors one political party or another, making the parties free to favor the party of their choice as much as they wish. The Wattson Plaintiffs believe that the entire state benefits if this Panel takes steps to combat partisan gerrymanders in court-ordered redistricting plans. The only way to accomplish this is with principles that expressly permit the Panel to identify and defeat districts drawn with the intent or effect of favoring or disfavoring a political party. We now have the technology and data to generate reports that can accurately measure partisanship in a plan and the Wattson Plaintiffs are asking the Panel to use these tools to create maps that result in equal and fair representation for all Minnesotans. Confidence in elections will increase if the Panel directs the parties, through redistricting principles, to not submit hyper-partisan plans.

While the Wattson Plaintiffs' proposed principles expand upon and modify the principles in *Hippert v. Richie*, No. A11-152, 813 N.W.2d 374, 813 N.W.2d 391 (Minn.

Spec. Redist. Panel 2012) (hereinafter "*Hippert*"), they also include much of the same language as the principles adopted in *Hippert*. *See Hippert*, Order Stating Redistricting Principles and Requirements for Plan Submissions (Minn. Spec. Redist. Panel Nov. 4, 2011) (hereinafter "*Hippert Principles Order"*). The Wattson Plaintiffs' changes and additions to the *Hippert* principles reflect districting principles used by courts or adopted by constitutional amendments in other states since 2011, and the Wattson Plaintiffs respectfully request that the Panel adopt their proposed districting principles in their entirety.

II. PROPOSED DISTRICTING PRINCIPLES

The arguments below only address districting principles to which the parties did not stipulate in the parties October 12, 2021 Stipulation. The parties stipulated to principles 1(a), 1(b), 2, and 3(a) in the Wattson Plaintiffs' Exhibit A.

A. Skipping over the Twin Cities Metropolitan area when numbering state legislative districts was a judicially created scheme that currently has no rational justification. It has created confusion among voters and anyone else who wants to know where a district is.

The Wattson Plaintiffs propose changing the *Hippert* panel's numbering scheme by omitting the requirement that district numbers bypass the metropolitan area until the southeast corner has been reached, then number districts in the metropolitan area outside Minneapolis and St. Paul, and end with numbering districts in Minneapolis and St. Paul. This scheme of skipping the twin cities metropolitan area has been the numbering scheme since a three-judge federal court first drew a legislative plan in 1972. The Wattson Plaintiffs propose the following principle:

> Legislative district numbers must begin with House District 1A in the northwest corner of the state and proceed across the state from west to east, north to south. In a county or city that includes more than one whole senate district, the whole districts must be numbered consecutively.

The change in numbering would affect the portion of the state south of St. Cloud, renumbering districts 16 to 67. Those district numbers currently must skip the twin cities metropolitan area on their way to the southeast corner of the state. This scheme of skipping the twin cities metro is why District 28 is in Houston County, and District 29 is a third of the state away, in Wright County. A district's number south of St. Cloud currently gives little clue to where in the state it might be.

An examination of maps of legislative districts since 1897 shows that, until the federal court panel drew the legislative plan in 1972, senate districts had been numbered from southeast to northwest, with Hennepin and Ramsey counties each allocated a certain number of consecutively numbered districts. *Legislative Coordinating Commission: Geospatial Information*, MINNESOTA LEGISLATURE, https://www.gis.leg.mn/html/maps/leg_districts.html; Affidavit of Peter S. Wattson dated October 12, 2021 ("Wattson Affidavit"), ¶ 11. The 1972 plan used the system of skipping the twin cities metropolitan area which has been in place for the past five redistricting cycles. The post-1972 requirement to skip numbering senate districts in Minneapolis and St. Paul until after the rest of the metro area has been numbered makes it impossible to number all the senate districts in Hennepin and Ramsey Counties consecutively.

A review of maps suggests that one of the reasons for the separate numbering of those areas was that there were separate paper maps for them available from the

Metropolitan Council, upon which the court drew its lines.[1] Wattson Affidavit, ¶ 11. The districts were numbered in accordance with the paper technology then in use. *Id.* The drawing of congressional and legislative district boundaries is no longer constrained by paper technology. Thus, no cogent reason exists to prevent the numbering of the districts consecutively, all the way from the northwest to the southeast. Doing so, such as is proposed by the Wattson Plaintiffs, would result in a district's number indicating where it is located.

The proposed numbering system for legislative districts meets the requirement of Minn. Const. art. IV, § 3, that the senate districts be numbered in a regular series. It is the same numbering system in 2021 H.F. No. 2594 § 1 and the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. *See* 2017 S.F. No 605, art. 2, § 1, subd. 5(a), except that the requirement that counties with more than one whole senate district have them numbered consecutively also applies to cities with more than one whole senate district.

B. Absolute equality for congressional districts is not required by any U.S. Supreme Court precedent. The Panel should defer judging population deviations in a congressional plan until the parties have had an opportunity to justify them. Legislative districts should achieve the goal of population equality with little more than de minimis variation and must not deviate from the ideal by more than two percent, plus or minus.

Congressional Districts

In their Statements of Unresolved Issues, some of the parties have asked this Panel

[1] The maps of the court's plan on the website do not show the Metropolitan Council's logo, but the maps the legislative staff were working on did. Wattson Affidavit, ¶ 12.

to impose a maximum deviation of +/- 1 person for congressional districts. Adopting such a rigid approach before the parties have submitted their maps and offered evidence justifying any variation has no support in caselaw.

The law regarding deviations in congressional redistricting plans is well settled. "First, the court must consider whether the population differences among districts could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). If the party challenging the apportionment deviations "can establish that the population differences were not the result of a good-faith effort to achieve equality", then "the State must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal." *Id.* at 731. While the test in *Karcher* was discussed in the context of a congressional redistricting plan adopted by a legislature, the United Supreme Court has also applied this test to congressional redistricting plans drawn by a panel of federal judges. *See Abrams v. Johnson*, 521 U.S. 74 (1997) (citing *Karcher* and upholding a court-ordered congressional redistricting plan with an overall deviation of 0.35% and average deviation of 0.11%). While the *Abrams* court did acknowledge that "court-ordered districts are held to higher standards of population equality than legislative ones", it still permitted a deviation where justification was provided by the court. 521 U.S. at 98-100.

> The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors.

Karcher, 462 U.S. at 741.

Legitimate state objectives include "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." *Id.* at 740-41.

In 2012, a congressional plan with an overall range of 4,871 persons withstood an equal-population challenge because it used whole counties, avoided contests between incumbents, and moved fewer people from one district to another than plans with lower overall ranges. *Tennant v. Jefferson County Comm'n*, 567 U.S. 758 (2012) (per curiam). Importantly, in 1982, the court ordered congressional redistricting plan for Minnesota had an overall range of 46 people. *LaComb v. Growe*, 541 F. Supp. 145, 149 (D. Minn. Mar. 11, 1982) *aff'd sub nom. Orwoll v. LaComb*, 456 U.S. 966 (1982) (Appendix A, unpublished) (In its opinion, the Court tells only the sum of all the deviations, 76 people, and refers to it as the "total population deviation.")

For plans based on the 2010 Census, in addition to West Virginia, whose plan was challenged and upheld, 13 states drew congressional plans with an overall range of more than one person that were not challenged. *See 2010 Redistricting Deviation Table*, NATIONAL CONFERENCE OF STATE LEGISLATURES ("NCSL") (Jan. 15, 2020) https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx; *Action on Redistricting Plans: 2011-20*, NCSL (Nov. 24, 2020) https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_actionplan_2010thru2020.pdf.

For congressional plans based on the 2000 Census, Georgia and Kansas withstood equal-population challenges because their plans achieved other legitimate state objectives. *See Larios v. Cox*, 300 F. Supp.2d 1320, 1322 (N.D. Ga. 2004), *aff'd*, 542 U.S. 947 (2004) ("the very small population deviations [an overall range of 72 persons] are supported by legitimate state interests in avoiding additional precinct-splitting and in ensuring that those precincts that are divided are split along easily recognizable boundaries wherever possible"); *Graham v. Thornburgh*, 207 F. Supp. 2d 1280 (D. Kan. 2002) (plan with overall range of 33 people moved fewer persons into new districts than other plans with lower overall ranges, and plans with districts that were more compact split more voting districts and moved more persons into new districts). In addition to Georgia and Kansas, whose plans were challenged and upheld, 23 states drew congressional plans based on the 2000 Census with an overall range of more than one person that were not challenged. *See Redistricting Law 2010*, NCSL, p. 47, table 3, Population Equality of 2000s Districts (November 2009) https://www.ncsl.org/Portals/1/Documents/Redistricting/Redistricting_2010.pdf; *Action on Redistricting Plans: 2001-07*, NCSL (Aug. 8, 2017) https://www.ncsl.org/Portals/1/Documents/Elections/Updated_action2000_31520.pdf.

The Wattson Plaintiffs are not asking the Panel to set some arbitrary allowable deviation for congressional plans. The Wattson Plaintiffs are merely requesting that the Panel refrain from prohibiting any deviation at this point in the litigation because it would be premature for the Panel to disallow a deviation before the parties have had the opportunity to submit plans and provide evidence and justification for any deviations.

Thus, the Wattson Plaintiffs propose the following principle:

> Congressional districts must be as nearly equal in total population as is practicable. U.S. Const. art. I, § 2; *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964); *see also Tennant v. Jefferson County Comm'n*, 567 U.S. 758 (2012) (per curiam). 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 is the goal. *Abrams v. Johnson*, 521 U.S. 74, 98 (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.* A deviation in population equality is permitted if "each significant variance between districts was necessary to achieve some legitimate goal." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). "Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. . . .The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors." *Id.* at 740-41; *see also Abrams*, 521 U.S. at 99-101 (citing *Karcher* and upholding a court ordered congressional redistricting plan with an average deviation of 0.11% where proper showing of justification was made).

The Wattson Plaintiffs have added the word "total" in the first sentence which prohibits measuring population equality by some other count, such as voting-age population or citizen voting-age population. The second and third sentences are from the *Hippert* panel.

This principle restates the well-settled law on population deviations in congressional redistricting plans. The citations to *Karcher,* 462 U.S. 725 and *Abrams,* 521 U.S. 74 support the position of the Wattson Plaintiffs that absolute equality is not always mandated in

congressional plans, and courts can deviate from absolute population equality upon making the proper showing justifying the deviation.

The Wattson Plaintiffs submit that justifications include keeping counties, minor civil divisions (cities, townships and unorganized territories), and voting districts (precincts) whole when drawing congressional districts because it serves the public interest by: (1) making it easier for voters to identify the boundaries of the district where they must vote; (2) making it easier for election officials to assign each voter to the correct precinct and find a suitable polling place; (3) making it harder for the parties proposing plans to draw a partisan gerrymander; and (4) avoiding the waste of time and money by the parties, the Panel, and the public purse when all are required to pursue the illusion of perfection by finding that last census block to make the population of each district "ideal," almost two years after the 2020 Census was taken and the actual population of each district has changed.

A very recent article from the Star Tribune demonstrates the real-world impact of dividing minor civil divisions. In 2012, redistricting maps split the east and west sides of Webster Township between the First District and the Second District. Briana Bierschbach, *Split Minnesota Communities Plead to become Whole in New Redistricting Maps*, STAR TRIBUNE, Sept. 27, 2021, *available at* https://m.startribune.com/split-minnesota-communities-plead-to-become-whole-in-new-redistricting-maps/600101334/?clmob=y&c=n. Wattson Affidavit, Exhibit 1. "In communities like Webster Township, being divided means extra work for often part-time volunteer township officials. Some communities must set up extra polling places, find and train more election

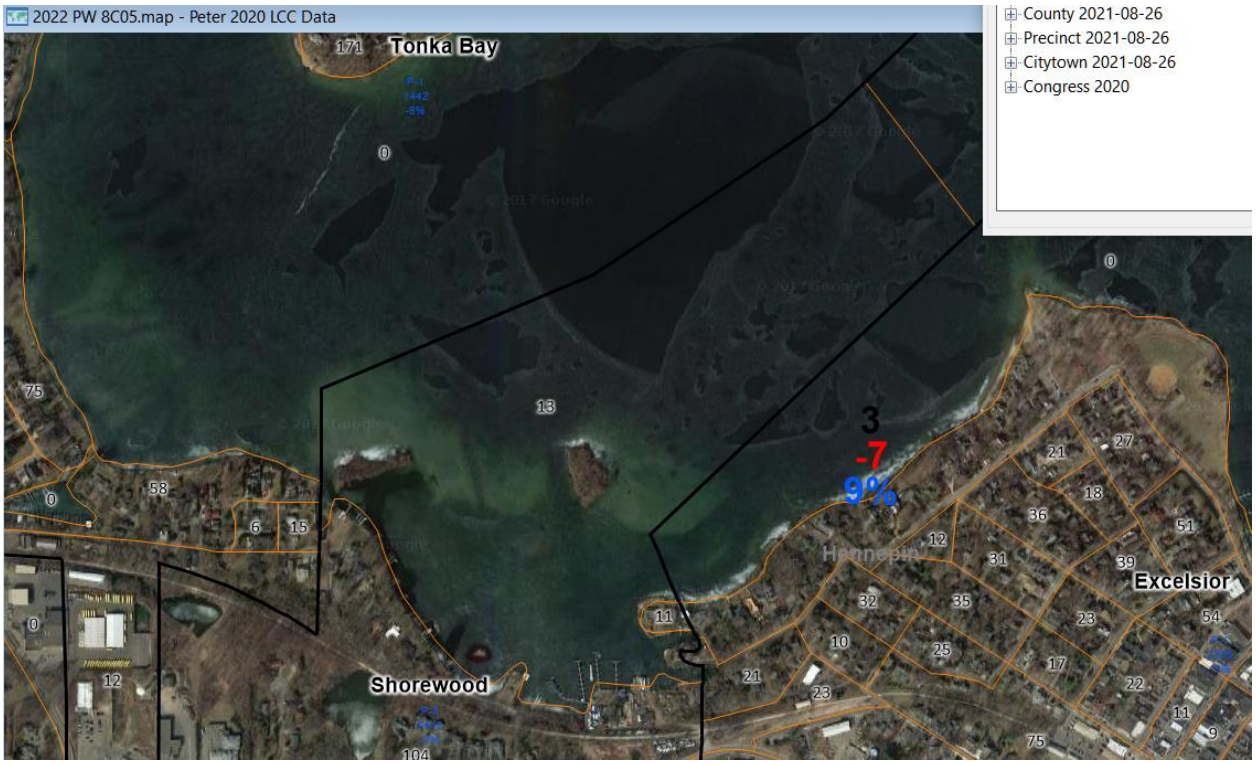
judges and print separate sets of ballots, sometimes for just a small fraction of voters. Webster has four ballots depending on congressional and school district divisions, including one ballot printed up for only two voters." *Id.* According to the Rice County property tax and elections director, "Getting a ballot different from their close neighbors' is confusing for voters." *Id.* "In Webster Township, if they want something done, they've got two people that they have to reach out to, and it's hard enough getting through to one" *Id.* As a result, the township and the county passed resolutions asking to return to one district and the Rice County property tax and elections director has been working for over two years to unify Webster Township. *Id.*

Dividing the lines of small communities is also prone to error, such as when the 2012 redistricting panel divided about 200 properties from the rest of Northern Township by apparently mistaking a large drainage ditch for a road when setting the boundary. *Id.* In the last round of redistricting, more than a dozen communities across the state were split between two congressional districts. *Id.*

Achieving "absolute equality" by using 2020 Census block population counts is not possible because 2020 is the first decennial census to use a process called "Differential Privacy" to adjust block population counts to obscure the racial and ethnic information of individual residents of a census block in order to prevent users of census data from identifying individual census respondents. *See Protecting the Confidentiality of the 2020 Census Redistricting Data*, UNITED STATES CENSUS BUREAU (August 12, 2021) https://www.census.gov/content/dam/Census/library/factsheets/2021/protecting-the-confidentiality-of-the-2020-census-redistricting-data.pdf. "[B]lock-level data are noisy

and should be aggregated before use." *Id.*

An example of this "noise" is in the waters of Gideons Bay of Lake Minnetonka and two uninhabited islands, Duck Island and Frog Island. Wattson Affidavit, ¶ 12.



There are certainly no persons living in this water block. The official 2020 Census reports its population as 13: 11 non-Hispanic Whites and 2 Hispanics. The voting-age population is officially reported as 7 non-Hispanic Whites and 2 Hispanics. Those people live somewhere else, probably not far away, but Differential Privacy has placed them in the water. The population in the location where these 13 people actually live is 13 persons more than reported by the 2020 Census.

That is why the Census Bureau has been warning those drawing redistricting plans not to rely on population counts at the block level. "[A] minimum total population between 200 and 249 provides reliable characteristics for . . . minor civil divisions" (in Minnesota,

this means cities, townships, and unorganized territories) and "a minimum total population between 450 and 499 is sufficient to provide reliable characteristics of various demographic groups" for block groups. *Id.* Drawing districts at the precinct level and above is likely to reduce, if not eliminate, the population inaccuracies caused by Differential Privacy.

The Wattson Plaintiffs provide these reasons for justifying deviations in congressional districts to demonstrate that the proper showing can be made in the state of Minnesota, and the Wattson Plaintiffs should not be prevented from having the opportunity to make that showing prior to submitting their proposed maps. Consistent with United States Supreme Court precedent, the Wattson Plaintiffs respectfully request that the Panel allow them the opportunity to make the showing required for a deviation in congressional population.

Legislative Districts

The Wattson Plaintiffs propose the following principle for legislative districts:

> Legislative districts must be substantially equal in population. U.S. Const. amend. XIV, § 1; Minn. Const. art. IV, § 2 ("The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof."); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) ("The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens . . . ."); *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975) (stating that a court-created redistricting plan for a state legislature "must ordinarily achieve the goal of population equality with little more than de minimis variation" from the ideal district population). The population of a legislative district must not deviate from the ideal by more than two percent, plus or minus. *See Hippert v. Richie*, A11-152, Order Stating Redistricting Principles and Requirements for Plan Submissions (Minn. Spec. Redist. Panel Nov. 4, 2011) (hereinafter "*Hippert Principles Order"*); *Zachman v. Kiffmeyer*, No. C0-01-160, Order Stating Redistricting Principles and Requirements for Plan Submissions, p. 3 ¶ 3

(Minn. Special Redistricting Panel Dec. 11, 2001); *Cotlow v. Growe*, No. MX-91-1562, Pretrial Order No. 2, p. 4 ¶ 4 (Minn. Special Redistricting Panel Aug. 16, 1991).

The *Hippert* panel permitted deviations from population equality not to exceed two percent, plus or minus (an overall range of four percent), just as have all other panels since 1972. But, as had the panels before it, the *Hippert* panel also said, "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." *Hippert Principles Order*, p. 8. Thus, the panels have always attempted to make the districts as equal in population as possible, while still avoiding the division of counties, cities, and towns.

C. Any redistricting plan should provide powerful protections for minority groups under the Constitution and Voting Rights Act.

The *Hippert* principles required that the districts "not be drawn with either the purpose or effect of denying or abridging the 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…." *Hippert Principles Order*, pp. 5 ¶ 3, 8 ¶ 5.

The *Hippert* language was a necessary paraphrase of the first part of § 2 of the Voting Rights Act of 1965, which says that, "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color [or membership in a

language minority group]." 52 U.S.C. § 10301(a). The Wattson Plaintiffs propose the following:

> Districts must not be drawn with the intent or effect to deny or abridge the equal opportunity of racial, ethnic, or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice. U.S. Const. arts. XIV, XV; Voting Rights Act of 1965, as amended, 52 U.S. Code § 10301; s*ee Hippert*, Order of Nov. 4, 2011, pp. 5-6 ¶ 5, 8 ¶ 5; *Zachman*, Order of Dec. 11, 2001, pp. 2 ¶ 5, 4 ¶ 6; *Cotlow*, Order of Aug. 16, 1991, pp. 3 ¶ 5, 5 ¶ 7.

The *Hippert* panel's paraphrase referred to "denial or abridgment of the right of any citizen of the United States on account of race, ethnicity, or membership in a language minority group." Compared to the language of § 2, the *Hippert* panel omitted "to vote" and "or color," and added "ethnicity." *Hippert Principles Order*, pp. 2 ¶ 5, 8 ¶ 5. Omitting "or color" is appropriate, even though it is used in § 2, because it is included in the Census Bureau's definition of the categories of "race."

The *Hippert* panel's principle added that the districts "must otherwise comply with the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act of 1965, as amended…." *Id.* This goes without saying and, unlike the first sentence, it does not paraphrase the constitutional or statutory requirements to make them easier to understand. Therefore, it is omitted from this principle.

The language in the Wattson Plaintiffs' proposed principle is based on the 2010 Fair Districts Amendments to the Florida Constitution, Art. III, §§ 20(a) ("districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice") and 21(a), as interpreted by the Florida Supreme Court in

2012. *In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, 83 So.3d 597, 619-27 (Fla. Mar. 9, 2012). The Court held that language gave minorities protection equivalent to the Voting Rights Act, both § 2 (which applies nationwide whether included in Minnesota's districting principles or not), and § 5 (which has never applied to Minnesota).

The Wattson Plaintiffs' requirement that districts not be drawn "to diminish their ability to elect a representative of their choice" would prohibit a redistricting plan that made a racial, ethnic, or language minority group less able to elect representatives of their choice than under the previous plan. This was the law in effect for certain "covered jurisdictions" under § 5 of the Voting Rights Act, before it was made inoperable by *Shelby County v. Holder*, 570 U.S. 529 (2013).

D. Compactness is not a statutory or constitutional requirement and should have lower priority than convenience and contiguity, which are set forth in the Minnesota Constitution.

The Wattson Plaintiffs propose the following:

> The districts must be composed of convenient contiguous territory that allows for easy travel throughout the district. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2; *Shaw v. Reno*, 509 U.S. 630, 646 (1993); *Reynolds*, 377 U.S. at 578-79 (stating that a legitimate districting principle is to provide for compact districts of contiguous territory). Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district. Districts with areas that touch only at a point are not contiguous.

This is essentially the language used by the *Hippert* panel but adding that a district allow for easy travel throughout the district, as required by 2021 H.F. No. 2594 § 2, subd. 6, and moving the compactness requirement into a separate, lower priority principle, as in 2021 H.F. No. 2594 § subd. 10. Convenience and contiguity are required by our state

Constitution and statutes, whereas compactness is not required by either. *See* Minn. Const. art. IV, § 3; Minn. Stat. § 2.91. The language added is to clarify the meaning of "convenient," which has traditionally depended on factors like the methods, routes, and timing of transportation within the district. *See, e.g., Zachman v. Kiffmeyer*, No. C0-01-160, Final Order Adopting a Congressional Redistricting Plan, p. 5 ¶ 1 (Minn. Spec. Redist. Panel March 19, 2002) (drawing Congressional District 1 along Interstate 90 because "[i]n part, convenient means that a district must be [w]ithin easy reach; easily accessible") (alteration in original) (internal quotation marks and citation omitted); s*ee also, e.g., Hippert*, Final Order Adopting a Congressional Redistricting Plan dated February 21, 2012, p. 18 ¶ 1 (drawing Congressional District 2 to encompass all of Wabasha County because "[u]nlike its southern neighbors of Olmsted and Winona counties, Wabasha County is not conveniently connected to the first congressional district by Interstate Highway 90").

E. The *Hippert* language on political subdivisions removed important language from prior panels that further limited the division of counties, cities, and towns.

The Wattson Plaintiffs propose the following:

> A county, city, town, or precinct must not be divided into more than one district except as necessary to meet equal population or minority representation requirements or to form districts that are composed of convenient, contiguous territory. When a county, city, town, or precinct must be divided into more than one district, it must be divided into as few districts as possible. Minn. Stat. § 2.91, subd. 2; *Karcher*, 462 U.S. at 733 n.5, 740-41; *Reynolds*, 377 U.S. at 580-81; *Zachman*, Order of Dec. 11, 2001, pp. 2 ¶ 6, 4 ¶ 7.[2]

[2] The complex derivation of this language is described in Peter S. Wattson, *Districting Principles in Minnesota Courts*, pp. 9-11 (Sept. 19, 2018). Wattson Affidavit, ¶ 7.

This language is based on language from the *Zachman* panel's 2001 principle. The 2001 principle was based on language from a 2001 joint resolution to establish principles for congressional and legislative districts that died in conference committee. *See* 2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side, Senate ¶ (7) (May 2, 2001), *available at,* https://www.senate.mn/departments/scr/REDIST/Red2000/SF1326_conf_comm_05.02.2001.pdf; Wattson Affidavit, ¶¶ 9, 13. The *Hippert* panel's 2011 principles omitted the references to the political subdivisions that must not be split, the requirements that might justify a split, and that any division should be into as few districts as possible. *Hippert Principles Order*, pp. 6 ¶ 5, 9 ¶ 7. The *Hippert* principles were based on Minn. Stat. § 2.91, subd. 2, which was enacted by two separate laws in 1994. *See* Peter S. Wattson, *Enacting a Redistricting Plan*, SENATE COUNSEL TREATISES (March 18, 2021) https://www.senate.mn/departments/scr/REDIST/Enact.htm (Mar. 18, 2001); Laws 1994, ch. 406, § 9; Laws 1994, ch. 612, § 67; Wattson Affidavit, ¶ 14.

Respecting the boundaries of political subdivisions is a traditional districting principle. *Shaw*, 509 U.S. at 647. It is required in either congressional or legislative plans by 44 states. *Districting Principles for 2010 and Beyond*, NCSL, p. 1 (Oct. 22, 2019) https://www.ncsl.org/Portals/1/Documents/Redistricting/DistrictingPrinciplesFor2010andBeyond-7-1-4.pdf ("*Districting Principles for 2010 and Beyond*").

F. The *Hippert* Panel recognized the importance of American Indian reservations in redistricting. Limiting division of American Indian reservations should be added as a principle.

The *Hippert* panel's plans respected the boundaries of federally recognized American Indian reservations. *See Hippert,* Final Order Adopting a Congressional

Redistricting Plan dated February 21, 2012, pp. 8, 11, 13, 18, 19, 20; Final Order Adopting a Legislative Redistricting Plan dated February 21, 2012, pp. 9, 17-18. The principle proposed by the Wattson Plaintiffs prohibits dividing federally recognized American Indian reservations, which are *sovereign nations* and not political subdivisions, on terms similar to those for political subdivisions. Given Minnesota has a significant number of American Indians, tribes and reservations, Minnesota redistricting criteria should acknowledge and account for this group. The Wattson Plaintiffs propose the following:

> A federally recognized American Indian reservation must not be divided into more than one district except as necessary to meet equal population or minority representation requirements or to form districts that are composed of convenient, contiguous territory. When a federally recognized American Indian reservation must be divided into more than one district, it must be divided into as few districts as possible.

Respect for tribal sovereignty can simultaneously respect American Indian participation in congressional and legislative representation. *See McGirt v. Oklahoma*, 140 S. Ct. 2452, 2467 n.6 (2020) (noting the "foundational precedent that Congress can welcome Native Americans to participate in a broader political community without sacrificing their tribal sovereignty") (citing *United States v. Sandoval*, 231 U.S. 28, 47-48 (1913)).

G. Preserving communities of interest is an important and traditional redistricting principle.

The Wattson Plaintiffs propose the following with respect to communities of interest:

> Districts should attempt to preserve identifiable communities of interest. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (describing respect for "communities defined by actual shared interests" as a "traditional"

districting principle (quotation omitted)); *Wattson v. Simon*, No. A21-0243, Order Setting Schedule of Public Hearings, p. 3 (Minn. Spec. Redist. Panel, Sept. 13, 2021). A community of interest may include an ethnic or language group or any group with shared experiences and concerns, including but not limited to geographic, governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or transportation interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

This principle begins by urging that the districts "attempt to preserve identifiable communities of interest. A community of interest may include an ethnic or language group or any group with shared experiences and concerns, including but not limited to geographic, governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or transportation interests." This part is similar to the *Hippert* panel's 2011 principle, deleting *political*, changing *economic* to *socioeconomic*, and adding *governmental, regional, historic, occupational, trade* and *transportation*. *See Hippert Principles Order*, pp. 6 ¶ 6, 9 ¶ 8. The principle goes on to exclude "relationships with political parties, incumbents, or political candidates," as in 2021 H.F. No. 2594 § 2, subd. 8. Preserving communities of interest is required in either legislative or congressional plans by 27 states. *Districting Principles for 2010 and Beyond*, p. 1.

H. The priority of compactness should be below convenience and contiguity because it is not a constitutional or statutory principle.

The Wattson Plaintiffs propose the following:

Districts must be reasonably compact as determined by more than one measure of compactness that is accepted in political science and statistics literature.

This is a tweak of 2021 H.F. No. 2594 § 2, subd. 10. Compactness is a traditional districting principle. *Shaw*, 509 U.S. at 647. It is required in either legislative or

congressional plans by 40 states. *Districting Principles for 2010 and Beyond*, p. 1. But it should be lower in priority than the constitutional requirements of convenience and contiguity.

I. Incumbents.

The Wattson Plaintiffs propose the following:

> A district or plan must not be drawn with the intent to protect or defeat an incumbent.

This language is essentially the same as the first sentence of the *Hippert* panel's principles. *Hippert Principles Order*, pp. 7 ¶ 7, 9 ¶ 9; *see also Zachman*, Order of Dec. 11, 2001, pp. 3 ¶ 8, 5 ¶ 9. It omits the second sentence of the *Hippert* principle, which said, "The impact of redistricting on incumbent officeholders is a factor subordinate to all other redistricting criteria that the commission may consider to determine whether a proposed plan results in either undue incumbent protection or excessive incumbent conflicts." *Hippert Principles Order*, pp. 7 ¶ 7, 9 ¶ 9

A common practice, both for the state and federal court panels and for others who have drawn Minnesota plans, has been to draw a plan without knowledge of where incumbents reside, but then review the plan to see whether incumbents have been paired and make small adjustments to avoid pairing where deemed necessary.

Avoiding contests between incumbent representatives is a traditional districting principle. *Abrams*, 521 U.S. at 84. It is required in either legislative or congressional plans by 16 states. *Districting Principles for 2010 and Beyond*, p. 1.

J. There is momentum across the country to add districting principles that limit partisan bias. Evaluating and limiting partisan bias in plans will increase the electorate's confidence in the fairness of our elections.

Interest in adding a Minnesota principle that districts not favor a political party began in the 2001 legislative session. The 2001 joint resolutions passed by both the Senate and House of Representatives said, "The districts must not be created to unduly favor any political party." 2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side, Senate ¶ (9), House ¶ (7) (May 2, 2001); Wattson Affidavit, ¶ 9. The other differences between the Senate and House were not resolved, and the *Hippert* panel's 2001 and 2011 principles were silent on political parties.

With the increase in concern about partisan gerrymandering since the 2010 Census, 17 other states now have a similar requirement. *Districting Principles for 2010 and Beyond*, p. 1.[3] The development of judicial standards for evaluating whether a particular plan is a partisan gerrymander is explained in *How to Draw Redistricting Plans That Will Stand Up in Court*, Peter S. Wattson, NATIONAL CONFERENCE OF STATE LEGISLATORS ONLINE REDISTRICTING SEMINAR, pp. 43-56, (January 17 2021), https://www.ncsl.org/Portals/1/Documents/Redistricting/How_to_draw_redistricting_pla

[3] The state of Nebraska says, "the intention of." The six states of California, Colorado, Iowa, Montana, New York and Oregon say, "for the purpose of." Washington says, "purposely." Delaware, Hawaii, Ohio (congressional only), and Utah say, "unduly favor." For legislative plans, Ohio says "primarily to favor", Idaho says, "Counties shall not be divided to protect a particular political party . . . .", and Michigan says, "Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness." Missouri likewise requires "partisan fairness."

ns_PeterWattson.pdf. Wattson Affidavit, ¶ 8. The Wattson Plaintiffs propose the following with respect to partisan fairness:

> A district or plan must not be drawn with the intent or effect to unduly favor or disfavor a political party. A plan should make it more likely than not that the political party whose candidates receive a plurality of the statewide votes for seats in a legislative body will win a plurality of seats in the body. The partisan index of election results used to measure the partisanship of a plan must be based on all the statewide state and federal partisan general and special election results during the ten years since the last congressional and legislative redistricting, except the U.S. Senate general elections of 2012 and 2018.

This principle first requires that districts and plans not unduly favor or disfavor a political party and then provides a method for measuring undue partisan bias. The first sentence of the proposed principle is based on the Florida Constitution, Art. III, §§ 20(a), 21(a), as added by the Fair Districts Amendments of 2010 ("No apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party…."). It has been interpreted and enforced by the Florida Supreme Court in a series of eight decisions on challenges to the congressional and legislative plans enacted by the Florida Legislature in 2012. *See Redistricting Case Summaries | 2010-Present*, NCSL (Dec. 1, 2020) https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx. It was successful in curtailing partisan gerrymanders in both congressional and legislative plans.

The addition of "unduly" is based on the 2001 joint resolutions, the four other states that include it, and 2021 H.F. No. 2594 § 2, subd. 11. The second sentence, urging a plan to "make it more likely than not that the political party whose candidates receive a plurality

of the statewide votes for seats in a legislative body will win a plurality of seats in the body," is new. It is based on the observation of Chief Justice Earl Warren that:

> Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. . . . Since legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will.

Reynolds, 377 U.S. at 565.

In Minnesota, where third parties have sometimes drawn a significant portion of the vote, the winning party may have only achieved a plurality, not a majority. The second sentence accommodates that possibility. This principle does not require proportional representation. Rather, it is a pass/fail test: the party whose candidates win the most votes statewide should usually, but not necessarily always, win the most seats.

The third sentence, requiring that the likely winners of elections under the plan be measured by the results of elections during the decade since the previous plan was enacted, originated with a provision in the Ohio Constitution, as amended in 2015: "The statewide proportion of districts whose voters, based on statewide state and federal partisan general election results during the last ten years, favor each political party shall correspond closely to the statewide preferences of the voters of Ohio." Ohio Const. art. XI, § 6(B) (2015). The third sentence follows advice from redistricting experts to use:

> 1. Statewide elections, not congressional or legislative district elections, because the district elections tend to turn more on the strengths of the individual candidates than on their party affiliation;
>
> 2. Top of the ballot, high-turnout elections that are a fair test of party strength;

3. Elections for minor constitutional officers, where voters tend to know less about the candidates than about their party affiliations; and

4. To not use races that were not close.

In 2001, Governor Ventura's redistricting commission followed this advice when adopting the index it used to measure plans, both its own and those submitted by others. Wattson Affidavit, ¶ 16.

This principle would include 14 of the 16 races of the last decade. It includes the U.S. Senate special election of 2018 (Smith 53% v. Housley 42%), which was a high-visibility election held at the same time as the general election; but excludes the U.S. Senate general elections of 2012 (Klobuchar 65% v. Bills 31%) and 2018 (Klobuchar 60% v. Newberger 36%), which were not close.

This principle is placed near the end because it has never been adopted by the legislature or a court in this state. Today, within minutes of a plan's block-equivalency file being made public, an analysis of the plan's partisan bias may be posted on a public website. *See, e.g.*, Campaign Legal Center, Plan Score, *Minnesota League of Women Voters – 2022 PW 8C05 LCC* (Sept. 9, 2021), https://planscore.campaignlegal.org/plan.html?20210910T033316.239104892Z. Given these gains in technology, public awareness of partisan bias and continual efforts to gain electoral advantages through partisan gerrymanders, now is the time to adopt a principle that addresses these issues.

K. Encouraging competition and political engagement is undoubtedly positive and will result in better representation and more ideas and leaders.

Interest in adding a Minnesota principle that districts encourage electoral competition began with Governor Jesse Ventura in the 2001 legislative session. The 2001 joint resolutions passed by both the senate and house of representatives said, "The districts must not be created to unduly favor any political party." 2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side, Senate ¶ (9), House ¶ (7) (May 2, 2001); Wattson Affidavit, ¶ 9. In response to the concern expressed by Governor Ventura that districts be politically competitive, the resolution passed by the Senate also said, "The districts should be politically competitive, where that can be done in compliance with the preceding principles." *Id.* at Senate ¶ (9). The differences between the senate and house were not resolved, and the panel's 2001 and 2011 principles were silent on both parties and competition.

Increasing competition was recommended by the Mondale-Carlson coalition in their 2008 *Redistricting Reform Report*, https://conservancy.umn.edu/handle/11299/184709. Former Governor Arne Carlson said, "More competition means more leaders and more ideas." *Id.* at 2. Former Speaker of the House Steve Sviggum said, "Increased competition encourages balance in legislative decisions and helps lawmakers more effectively serve Minnesotans' interests." *Id.* And former Senate Majority Leader Roger D. Moe said, "even if just a handful of seats become more competitive, control in the legislature will have shifted, not necessarily right, left, or center, but more towards our constituents. Even a marginally more competitive statehouse and Congress will be forced to refocus its agenda

back on more broad-based, bread-and-butter issues and the environment will shift, [increasing] the chances of making progress on these issues." *Hearing on Redistricting Commission Bills Before the Senate Comm. on State and Local Gov't Op's and Oversight, Minnesota Senate Audio recording*, MINNESOTA STATE LEGISLATURE, at 00:41:11 (Jan. 11, 2008) https://www.leg.state.mn.us/senateaudio/2008/cmte_stgov_011108.mp3; *Transcription of Hearing on Redistricting Commission Bills Before the Senate Comm. on State and Local Gov't Op's and Oversight*, Peter S. Wattson, p. 10 (Dec. 21, 2018) https://www.leg.state.mn.us/archive/clippings/196717-19976.pdf.

2009 S.F. No. 182, based on the recommendations of the Mondale-Carlson coalition, passed the senate on a bipartisan vote of 39-28 (34 DFL and 5 Republicans in favor, 16 Republicans and 12 DFL opposed) JOURNAL OF THE SENATE 5773 (May 15, 2009). It was never heard in the house. Section 1, subd. 9, provided that, "The districts must be created to encourage political competitiveness, as defined by the commission…." The Wattson Plaintiffs propose the following principle with respect to competition:

> Districts should be drawn to encourage electoral competition. A district is competitive if the plurality of the winning political party in the territory encompassed by the district, based on the index used to measure partisanship, has historically been no more than eight percent.

The language of this principle is based on Wash. Rev. Code § 44.05.090. ("The commission shall exercise its powers to provide fair and effective representation and to encourage electoral competition.").

This principle substitutes "electoral competition," as used in the Washington statute, for "political competitiveness," as used in 2009 S.F. No.182, because it seems a bit more

positive. It uses the hortatory "should" draw districts to encourage electoral competition rather than the imperative "shall" or "must," because Minnesota's political geography does not permit all districts to be competitive. Democrats are so dominant in Minneapolis and St. Paul and their inner-ring suburbs, and Republicans are so dominant in some outer-ring suburbs and areas of Greater Minnesota, that it is impossible to draw competitive districts there without violating the principles of compactness and preserving political subdivisions.

Governor Ventura's Citizen Advisory Commission on Redistricting defined "competitive" as "if two political parties have a difference of eight percentage points or less in nominal support." *Redistricting Principles and Standards*, directory 7.1 compressed file at 5 (Apr. 4, 2001), http://www2.mnhs.org/library/findaids/gr00558.xml#a9.

On the other hand, the Arizona Independent Redistricting Commission has used a seven percent difference. It says that, "If the expected Democratic vote as a percentage of the two major political parties falls within the range of 46.5 to 53.5% [the district is] competitive." Dr. Michael P. McDonald, *Report to the Ariz. Ind. Redistricting Comm'n on Recommended Competitiveness Baseline for State Legislative Districts*, p. 1 (Feb. 9, 2004), http://azredistricting.org/2001/2004newlegtests/batch1/20040209%20Competitiveness%20Report.pdf. The Wattson Plaintiffs' principle uses the Minnesota number.

Five other states require that congressional or legislative districts, or both, be competitive. *Districting Principles for 2010 and Beyond*, p. 1.

A three-judge North Carolina state court found a lack of competitive districts to be one indication of partisan discrimination in the state's legislative districts. *Common Cause v. Lewis*, No. 18 CVS 014001, slip op. at 109-238 (N.C. Super. Ct. Wake County Sept. 3,

2019), *available at* https://www.brennancenter.org/sites/default/files/legal-work/2019-09-03-Judgment.pdf. It struck them down under the state constitution.

The same three-judge state court observed it was likely to strike down the congressional districts for reasons similar to those for which it had struck down the legislative districts, and suggested the general assembly draw a remedial map on its own initiative. *Harper v. Lewis*, No. 19 CVS 012667 (N.C. Super. Ct. Wake County Oct. 28, 2019), *available at* https://www.brennancenter.org/sites/default/files/2019-10/2019-10-28-Harper%20v_%20Lewis-Order.pdf. The general assembly did so. N.C. Sess. Laws 2019-249 (Nov. 15, 2019).

As with partisanship, the public will quickly learn whether the districts drawn are competitive. Encouraging that competitive district be drawn, where that can be done in compliance with the preceding principles, will increase public confidence that the plans are not politically biased in favor of one party or another.

L. Prioritizing principles gives greatest weight to the Minnesota and United States Constitutions and statutes, which is proper for any redistricting plan.

The Wattson Plaintiffs propose the following:

> Where it is not possible to fully comply with all the foregoing principles, a redistricting plan must give priority to those principles in the order in which they are listed, except to the extent that doing so would violate federal or state law.

This language began with a joint resolution passed by the house in 2001 that died in conference committee. *See* 2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side, House ¶ (12) (May 2, 2001); Wattson Affidavit, ¶ 9. It was included in 2009 S.F. No. 182 § 1, subd. 11, which died in the house. It was included in the 2011 bills vetoed by the governor.

See H.F. No. 1425 § 3, subd. 11 (legislative), and H.F. No. 1426 § 3, subd. 11 (congressional). Similar language is in 2021 H.F. No. 2594 § 2, subd. 3. This language gives priority to constitutional and statutory provisions.

III. PROPOSED PLAN SUBMISSION REQUIREMENTS

A. General Requirements.

The Plan Submission requirements proposed by the Wattson Plaintiffs in Exhibit B are similar to those adopted in the *Hippert Principles Order*. The remainder of this memorandum focuses on aspects of the Wattson Plaintiffs' proposal that are different from the *Hippert* panel's requirements.

B. Electronic Redistricting Plans.

1. In addition to a block-equivalency file, the submission of a precinct-equivalency file is permitted for a plan that does not split a precinct. This revised requirement also changes the default format for a plan export file from comma-delimited (.csv), as it was in Maptitude 6.0 in 2011, to Excel (.xlsx), as it is in Maptitude for Redistricting 2021.

2. Adds a reference to the possibility of a precinct-equivalency file.

3. Updates the mode of delivery of an export file from outdated CD-ROM and DVD-ROM technology to current email technology and adds a reference to the possibility of a precinct-equivalency file.

C. Paper Maps.

Deletion of the section on paper maps recognizes the possibility that the Panel may decide that, with the advent of electronic filing and on-demand printing, and the Panel's desire to make electronic copies of filings in this case readily available to the public, submission of paper maps to the Panel may be neither necessary nor desirable. Of course, the Wattson Plaintiffs are happy to provide paper maps to the Panel if it desires.

D. Reports.

The reports titled **Population Summary**, **Contiguity**, **Measures of Compactness**, **Political Subdivision Splits**, and **Plan Components** are essentially the same as those that have been published on the GIS Office website for all plans since 2001 and were required by the 2011 *Hippert* panel to accompany the plans submitted to it.

1. **Population Summary**. Adds language to describe what has always been in the report, but not mentioned by the *Hippert* panel.

2. **Minority Representation**. The report described in this paragraph, using voting-age population, has traditionally been published on the GIS Office website, but was not required by the 2011 *Hippert* panel or previous Minnesota state or federal courts. Perhaps that was because it was not a standard report in Maptitude for Redistricting. Rather, it was a special report created for the Minnesota Legislature in 2001 by Caliper Corporation, the vendors of Maptitude for Redistricting. Minnesota users who purchased Maptitude for Redistricting from 2001 to 2020 were not given the Minority Representation report. They had to request it from, and be given it by, the Minnesota Legislature.

"Minority Representation – Voting-Age Population," is one of two reports that can be run by the Minnesota Redistricting Tools included in Maptitude for Redistricting 2021 ("MTR-2021"). The other is "Partisanship". The GIS Office has also traditionally published a report on Minority Total Population. Experience with the report since 2001 has shown that challenges to a plan based on its treatment of minority populations are almost always based on the voting-age population, rather than the total population. The Minority Total Population report is thus surplus and has been omitted from the reports developed by Caliper Corp. to be run using the Minnesota Redistricting Tools. In 2021, Caliper Corp. has been including the Minnesota Redistricting Tools in the download link given to Minnesota users (though occasionally it has inadvertently not been provided).

3. **Contiguity**. The *Hippert* panel's specification for the contiguity report referred to "polygons." A polygon is "a plane figure with at least three straight sides and angles." *Hippert Principles Order*, p. 12. It is a generic term that GIS experts use to describe the areas found in a map. The Wattson Plaintiffs' requirement uses the term "areas" rather than "polygons," to be more colloquial. As used to specify the content of the contiguity report, it is referring to the districts created by a plan. If a district has more than one area, it is not composed of contiguous territory, unless the principles permit point contiguity, which the Wattson Plaintiffs' proposed principles do not. If the report shows that any district has more than one area, the plan is invalid. The total number of districts with more than one area is shown at the beginning of the report. If the number is more than zero, the plan is invalid.

The summary information at the top of the report worked perfectly well in 2002 and 2012,[4] before Caliper Corp. converted its reports from Crystal Reports to DevExpress in 2018. Unfortunately, the conversion did not go well for the Contiguity report. The DevExpress version no longer shows the number of districts with more than one area unless the user permits point contiguity (which the Wattson Plaintiffs proposed principles would not).

A workaround for this is to first run the report without allowing point contiguity, verify by close inspection that no district has more than one area, change the plan settings to "Allow Point Contiguity," and run it again. The report shows the number of districts with more than one area as zero, with the caveat "(Point Contiguity is Allowed for this Plan)." Adobe Acrobat can then be used to edit the PDF to delete that sentence and changes the plan settings back to not allow point contiguity.

4. **Political Subdivision Splits**. This is the same report as run in 2002 and 2012, but it clarifies what are "minor civil divisions" (cities, townships, and unorganized territories) and describes the summary information at the top of the report.

5. **American Indian Reservation Splits**. This is separate from the report on political subdivision splits, both because a reservation is not a political subdivision and because its digital geography is not part of the Census Bureau's digital hierarchy for political subdivisions, so it cannot be added to the Political Subdivision Splits report in Maptitude for Redistricting. It must be run separately. Even though not previously required

[4]*See* Contiguity reports from the *Zachman* panel in 2002 (Exhibit C) and the *Hippert* panel in 2012 (Exhibit D).

by a court or by the legislature, a report on how a plan may or may not split a reservation has been run routinely for the last two decades using the Communities of Interest report.

The report has the summary information properly formatted (mostly) at the top of the report, but the split numbers are still incorrect. A user must do those counts by hand and edit the PDF to display the correct numbers. The report name must also be edited to say "American Indian Reservation Splits," instead of "Communities of Interest (Landscape, 11x8.5)."

6. **Measures of Compactness**. The *Hippert* panel required that plans submitted by the parties for its consideration be accompanied by the eight compactness measures included in Maptitude for Redistricting 6.0, which was the software used by the legislature, the parties, and the court to draw plans in 2011-12. *Hippert Principles Order*, p. 12. A ninth measure, Minimum Convex Hull, was added to Maptitude for Redistricting 2017. Two more measures, Alternative Schwartzberg and Cut Edges, were added to Maptitude for Redistricting 2019.

How each measure is computed is explained on pages 149 to 152 of the MTR-2021 Supplemental User Guide, which comes downloaded with each user's copy of MTR-2021.

The Wattson Plaintiffs propose that all the current MTR-2021 measures be included in the Compactness report, with permission to add new measures "accepted in political science and statistics literature." This principle lists them in the order they appear in the 2021 report.

For a discussion, with pictures, of how these and other compactness measures are calculated and used, *see* Thomas B. Hofeller, Ph.D., Redistricting Coordinator for the

Republican National Committee, *National Redistricting Seminar*, NCSL, slide presentation (Austin, Tex. Mar. 28, 2010), https://www.ncsl.org/documents/redistricting/Compactness-March-2010Hofeller.pdf.

7. **Communities of Interest**. The report on communities of interest is optional, necessary only when the sponsor of the plan asserts that it preserves a community of interest. The MTR-2021 Communities of Interest report works on a geographic layer in the database. A user of the software can easily create the layer, so long as the user has a map that clearly identifies the boundaries of the community. Once those boundaries have been added to the database, the user can run a report showing the district or districts to which each community has been assigned, and whether it has been split.

Since 2001, various community of interest reports showing, for example, the extent to which a plan splits Indian reservations or Minneapolis and St. Paul neighborhoods, have been run by plan drafters for their own use but have not been posted on the GIS Office website or required by the courts.

The 1981 federal court stated, "To the extent any consideration is given to a community of interest, the data or information upon which the consideration is based shall be identified." *LaComb v. Growe*, Civ. No. 4-81-152, p. 2 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, Civ. No. 4-81-414, p. 2 (D. Minn. Dec. 29, 1981) (congressional). That requirement was not repeated by any later court or legislature, and arguments about the virtues of a plan preserving communities of interest have been rather loose.

The Wattson Plaintiffs intend that the requirements that the community of interest be displayed on a map and its preservation be analyzed by a report will make arguments about it significantly more rigorous. The Communities of Interest report has the flaws noted above in connection with the American Indian Reservation Splits report, requiring user effort to get the correct numbers.

8. **Incumbents**. The Incumbents report has never been required by a Minnesota federal or state court panel. It has not been posted on the GIS Office website for plans considered by the legislature. The Wattson Plaintiffs propose that it be required in order to assist with enforcement of the principle that the districts not be drawn with the intent to protect or defeat an incumbent.

9. **Core Constituencies**. The report on core constituencies has never been required by Minnesota's federal or state court panels. Since 2011, it has been used by participants in the process to measure the degree to which competing plans have preserved district cores. In addition to details about each district, it must show the average percentage core of a prior district's voting-age population for all districts in the plan (to see how much of a voting base the average incumbent has retained), and the number of persons moved from one district to another (to see the overall scale of disruption).

The Core Constituencies report is significantly easier to read in 2021 than it was in 2011, but there were two casualties from the 2018 conversion from Crystal Reports to DevEspress: 1) the report no longer calculates the Average Core of Prior District; and 2) the report no longer calculates the Total Population Moved from one district to another. Exporting the report to Excel, creates the necessary two formulas to calculate the numbers,

and then the PDF version must be edited to add them to the report. The user must export the report to Excel, create the necessary two formulas to calculate the numbers, and then edit the PDF version to add them to the report

10. **Partisanship**. This requirement proposes to use a Partisanship report to measure the degree to which competing plans have achieved partisan fairness by not favoring or disfavoring a political party and by encouraging electoral competition.

The report on Partisanship is an expansion of the Political Competitiveness report that Caliper Corp. for the Minnesota Legislature in 2001. The purpose of the Political Competitiveness report was to measure compliance of a plan with the Competitiveness principle first advocated by Governor Jesse Ventura and his Commission on Redistricting. Competitiveness was included in the principles adopted by the Senate and proposed by the senate to the *Zachman* panel.

The Political Competitiveness report has been run, at the user's discretion, on all Minnesota plans since then. It has not been required by Minnesota's redistricting panels, who have avoided considering the partisan impact of a plan, except on incumbents. The language of this requirement is a tweak of 2021 H.F. No. 2594, § 3, subd 4(8).

The Political Competitiveness report used an index of the historical vote for each of the two largest parties and all other parties and write-in votes (grouped as "third parties") to determine the number of districts where each party had historically won a plurality, how many districts were competitive, the number of districts where the cumulative vote for each party had been over 54% and over 60%, and the statewide percentage of the cumulative vote for each party.

After the decision in *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016), the report was modified to include a measure of the "Efficiency Gap" considered by the court in that case. *See id.* at 903-06. Over the period from October 2017 to May 2021, four measures of partisan bias accepted in the political science and statistics literature have been added to the Partisanship report: 1) the Mean-Median Gap; 2) the Lopsided Wins Gap; 3) Declination; and 4) the Efficiency Gap. The Proportional Seat Gap was also added.

The report also counts the number of districts likely to be won by each party, the number of districts that are Competitive (an average historical winning margin of 8% or less), and the number that are Safe (an average historical winning margin of 20% or more). Not shown in the report is a count of the remaining districts, neither Competitive nor Safe.

From 2018 to 2021, the Minnesota Legislature's GIS Office contracted with Caliper Corp. to modify the DevExpress version of the Partisanship report to include the kind of measures required by this principle. The Partisanship report is one of two reports that can be run by the Minnesota Redistricting Tools, available to all Minnesota users, but not other users. (The other report is "Minority Representation – Voting-Age Population, discussed above.)

In addition to the Minnesota Tools, MTR-2021 has a report to calculate only the Efficiency Gap, and a Measures of Political Asymmetry report that calculates the Declination and the Mean-Median Difference of a plan, as well as comparing the percentage of seats won to the percentage of the vote won. The calculation and display of these measures in the standard Maptitude reports is slightly different from the measures in

the Minnesota Redistricting Tools report. Neither of the standard Maptitude reports calculates the Seat Gap or the Lopsided Wins Gap.

11. **Plan Components**. This is essentially the same report required by the *Hippert* panel. The description adds unorganized territories and voting districts (precincts) to the list of plan components that must be shown. They always have been. The *Hippert* panel required that every page of a report list the name of the report. *Hippert Principles Order*, p. 13. Past reports never have. Since at least 2001, the name of the report has been shown only on the first page. Instead, every page has shown the name of the party submitting the plan and the date and time the report was generated. This requirement conforms to past practice.

E. Additional Requirements

A reference to the possibility of a precinct-equivalency file is added for plan files provided to the Legislature and the Governor.

IV. CONCLUSION

For the foregoing reasons, the Wattson Plaintiffs respectfully request that this Panel adopt the Wattson proposed districting principles attached as Exhibit A and plan submission requirements attached as Exhibit B.

Dated October 12, 2021

Respectfully Submitted,

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EXHIBIT A

DISTRICTING PRINCIPLES

1.

a. There shall be eight congressional districts with a single representative for each district.

b. There shall be 67 state senate districts with one senator for each district. Minn. Stat. §§ 2.021, 2.031, subd. 1. There shall be 134 state house districts with one representative for each district. *Id.*

2. No state house district shall be divided in the formation of a state senate district. Minn. Const. art. IV, § 3.

3.

a. The district numbers shall begin with Congressional District 1 in the southeast corner of the state and end with Congressional District 8 in the northeast corner of the state.

b. Legislative district numbers must begin with House District 1A in the northwest corner of the state and proceed across the state from west to east, north to south. In a county or city that includes more than one whole senate district, the whole districts must be numbered consecutively.

4.

a. Congressional districts must be as nearly equal in total population as is practicable. U.S. Const. art. I, § 2; *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964) *see also Tennant v. Jefferson County Comm'n*, 567 U.S. 758 (2012) (per curiam). 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 is the goal. *Abrams v. Johnson,* 521 U.S. 74, 98 (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.* A deviation in population equality is permitted if "each significant variance between districts was necessary to achieve some legitimate goal." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). "Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives. . . .The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially

vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors." *Id.* at 740-41; *see also Abrams*, 521 U.S. at 99-101 (citing *Karcher* and upholding a court ordered congressional redistricting plan with an average deviation of 0.11% where proper showing of justification was made).

b. Legislative districts must be substantially equal in population. U.S. Const. amend. XIV, § 1; Minn. Const. art. IV, § 2 ("The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof."); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) ("The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens . . . ."); *Chapman v. Meier*, 420 U.S. 1, 26-27 (1975) (stating that a court-created redistricting plan for a state legislature "must ordinarily achieve the goal of population equality with little more than de minimis variation" from the ideal district population). The population of a legislative district must not deviate from the ideal by more than two percent, plus or minus. *See Hippert v. Richie*, A11-152, Order Stating Redistricting Principles and Requirements for Plan Submissions (Minn. Spec. Redist. Panel Nov. 4, 2011) (hereinafter "*Hippert Principles Order"*); *Zachman v. Kiffmeyer*, No. C0-01-160, Order Stating Redistricting Principles and Requirements for Plan Submissions, p. 3 ¶ 3 (Minn. Special Redistricting Panel Dec. 11, 2001); *Cotlow v. Growe,* No. MX-91-1562, Pretrial Order No. 2, p. 4 ¶ 4 (Minn. Special Redistricting Panel Aug. 16, 1991).

5. Districts must not be drawn with the intent or effect to deny or abridge the equal opportunity of racial, ethnic, or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice. U.S. Const. arts. XIV, XV; Voting Rights Act of 1965, as amended, 52 U.S. Code § 10301; s*ee Hippert*, Order of Nov. 4, 2011, pp. 5-6 ¶ 5, 8 ¶ 5; *Zachman,* Order of Dec. 11, 2001, pp. 2 ¶ 5, 4 ¶ 6; *Cotlow,* Order of Aug. 16, 1991, pp. 3 ¶ 5, 5 ¶ 7.

6. The districts must be composed of convenient contiguous territory that allows for easy travel throughout the district. Minn. Const. art. IV, § 3; Minn. Stat. § 2.91, subd. 2; *Shaw v. Reno*, 509 U.S. 630, 646 (1993); *Reynolds*, 377 U.S. at 578-79 (stating that a legitimate districting principle is to provide for compact districts of contiguous territory). Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district. Districts with areas that touch only at a point are not contiguous.

7. A county, city, town, or precinct must not be divided into more than one district except as necessary to meet equal population or minority representation requirements or to form districts that are composed of convenient, contiguous territory. When a county, city, town, or precinct must be divided into more than one district, it must be divided into as

few districts as possible. Minn. Stat. § 2.91, subd. 2; *Karcher*, 462 U.S. at 733 n.5, 740-41; *Reynolds*, 377 U.S. at 580-81; *Zachman*, Order of Dec. 11, 2001, pp. 2 ¶ 6, 4 ¶ 7.

8. A federally recognized American Indian reservation must not be divided into more than one district except as necessary to meet equal population or minority representation requirements or to form districts that are composed of convenient, contiguous territory. When a federally recognized American Indian reservation must be divided into more than one district, it must be divided into as few districts as possible.

9. Districts should attempt to preserve identifiable communities of interest. *See Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015) (describing respect for "communities defined by actual shared interests" as a "traditional" districting principle (quotation omitted)); *Wattson v. Simon*, No. A21-0243, Order Setting Schedule of Public Hearings, p. 3 (Minn. Spec. Redist. Panel, Sept. 13, 2021). A community of interest may include an ethnic or language group or any group with shared experiences and concerns, including but not limited to geographic, governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or transportation interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

10. Districts must be reasonably compact as determined by more than one measure of compactness that is accepted in political science and statistics literature.

11. A district or plan must not be drawn with the intent to protect or defeat an incumbent.

12. A district or plan must not be drawn with the intent or effect to unduly favor or disfavor a political party. A plan should make it more likely than not that the political party whose candidates receive a plurality of the statewide votes for seats in a legislative body will win a plurality of seats in the body. The partisan index of election results used to measure the partisanship of a plan must be based on all the statewide state and federal partisan general and special election results during the ten years since the last congressional and legislative redistricting, except the U.S. Senate general elections of 2012 and 2018.

13. Districts should be drawn to encourage electoral competition. A district is competitive if the plurality of the winning political party in the territory encompassed by the district, based on the index used to measure partisanship, has historically been no more than eight percent.

14. Where it is not possible to fully comply with all the foregoing principles, a redistricting plan must give priority to those principles in the order in which they are listed, except to the extent that doing so would violate federal or state law.

EXHIBIT B

PLAN SUBMISSION REQUIREMENTS

General Requirements

1. Each party may submit no more than one proposed redistricting plan for the United States House of Representatives, one plan for the Minnesota Senate, and one plan for the Minnesota House of Representatives.

2. Submissions shall be filed with the Clerk of Appellate Courts.

3. Submissions shall include electronic files, Maptitude- generated reports, and any other submissions requested by the Panel.

Electronic Redistricting Plans

1. Unless otherwise directed by the Panel, each electronic redistricting plan must be in the form of a separate block-equivalency file (or a precinct-equivalency file if no precinct is divided). Each file must be in Excel format (.xlsx) and include, at a minimum, one field that identifies all census blocks (or precincts) in the state and another field for the district to which each census block (or precinct) has been assigned.

2. Each block-equivalency (or precinct-equivalency) file must assign district numbers using the following conventions:

   a. Congressional district numbers shall contain one character and be labeled 1 through 8;

   b. Senate district numbers shall contain two characters and be labeled 01 through 67; and

c. House district numbers shall contain three characters and be labeled 01A through 67B.

3. Each party's block-equivalency (or precinct-equivalency) files must be submitted by email, preferably a single Excel file containing all three proposed plans

Reports

Unless otherwise directed by the Panel, for each proposed congressional, senate, and house redistricting plan, each party shall submit the following Maptitude reports containing the components listed below as well as their standard summary data:

1. **Population Summary** report, showing each district in the plan, its population as the total number of persons, and deviations from the ideal as both a number of persons and as a percentage of the population. The report must also show the populations of the largest and smallest districts and the overall range of deviations of the districts.

2. **Minority Representation – Voting-Age Population** report, listing for each district the voting-age population of each racial or language minority and the total minority voting-age population, according to the categories recommended by the United States Department of Justice. The report must also highlight each district with 30 percent or more total minority voting-age population.

3. **Contiguity** report, listing for each district the number of areas within it that are distinct, either because they do not touch or touch only at a point. The report must also show the number of districts with more than one area (which must be none).

4. **Political Subdivision Splits** report, listing the split counties, minor civil

divisions (cities, townships, and unorganized territories), and voting districts (precincts), and the district to which each portion of a split minor civil division or voting district is assigned. The report must also show the number of subdivisions split and the number of times a subdivision is split.

5. **American Indian Reservation Splits** report, listing any split American Indian reservation and the district to which each portion of a split reservation is assigned. The report must also show the number of reservations split and the number of times a reservation is split.

6. **Community of Interest** report. If a party asserts that a plan preserves a community of interest, maps of the plan must include a layer identifying the precincts within the community of interest. If the plan divides a precinct, maps of the plan must include a layer identifying the census blocks within the community of interest. The plan must be accompanied by a description of the research process used to identify the community of interest and a Communities of Interest report listing any district or districts to which the community of interest has been assigned. The report must also show the number of communities of interest that are split and the number of times a community of interest is split.

7. **Measures of Compactness** reports, stating the results of more than one measure of compactness that is accepted in political science and statistics literature. The measures must include at least the Reock, Polsby Popper, Minimum Convex Hull, Population Polygon, Population Circle, Ehrenburg, Schwartzberg, Alternate Schwartzberg, Perimeter, and Length-Width measures of compactness for each district. The report must

also state for all the districts in a plan the number of its cut edges, the sum of its perimeters and the mean of its other measurements.

8. **Incumbents** report, listing for each district any incumbents residing in it, their political party, and the number of the prior district in which they resided. The report must also show the number of incumbents paired, whether they have been paired with an incumbent of their own party or of another party, and the number of open seats.

9. **Core Constituencies** report, listing for each district the total population, voting-age population, and percentage of the population taken from the territory of a prior district, and the number of persons that were moved into the district and thus not part of its core. The report must also show the number of persons moved from one district to another, and the average percentage core of a prior district's voting-age population for all districts in the plan.

10. **Partisanship** report, listing for each district and the plan as a whole its partisan lean. The report must also show more than one measure of partisan symmetry and may show other measures of partisan bias that are accepted in political science and statistics literature.

11. **Plan Components** report, listing the names and populations of counties within each district and, where a county is split between or among districts, the names and populations of the portion of the split county and each of the split county's whole or partial minor civil divisions (cities, townships, and unorganized territories), and voting districts (precincts) within each district.

Each party shall label every page of a report with the plan's name, the party

submitting the plan, and the date and time the report was generated.

Additional Requirements

Unless otherwise directed by the Panel, these requirements are the minimum submissions required of the parties that submit proposed redistricting plans. The parties may submit additional maps, reports, or justification for their proposed redistricting plans.

The parties have agreed to accept service of the above reports, maps, and proposed plans by email. The parties are not required to serve paper maps, reports, or proposed plans on each other.

Each party shall provide the Legislature and the Governor with a block-equivalency (or precinct-equivalency) file for each proposed plan.