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' RESPONSE TO 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 this response to the parties' proposed redistricting principles.

INTRODUCTION

The judicial redistricting process has served Minnesotans well for several decades—including ten years ago, when the special redistricting panel (the "*Hippert* panel") adopted principles that informed a diligent, careful, and prudent process and resulted in fair, impartial maps. The principles proposed by the Sachs Plaintiffs during this latest round of redistricting broadly reflect the *Hippert* panel's guiding criteria, with adjustments at the margins to embody the experience of the *Hippert* redistricting cycle, reflect continuing

long-term population shifts, and further ensure that all Minnesotans have the opportunity to participate meaningfully in the political process.

With limited exceptions, the parties agree in broad form as to overarching redistricting principles the Panel should adopt and implement during this cycle. What differences exist generally implicate two areas: the proper formulation of particular criteria and whether those criteria should be formally ranked in order of importance or application.

In addition to adopting the positions articulated in their own statement of proposed principles, *see generally* Sachs Pls.' Proposed Redistricting Principles ("Sachs Br."), the Sachs Plaintiffs submit that the Panel *should*:

- Recognize formally that ensuring minority representation encompasses utilization of coalition and influence districts;
- Recognize the preservation of communities of interest as an essential, objective criterion and not a secondary consideration;
- Preserve the boundaries of American Indian reservations;
- Acknowledge that a compactness criterion is not on the same constitutional and statutory footing as that of drawing convenient, contiguous districts;
- Recognize that political subdivisions may be split where needed to ensure contiguity and convenience and preserve communities of interest, in addition to achieving population equality; and
- Adopt a modified version of the *Hippert* panel's plan submission requirements that better reflects technological advances and contemporary practices.

On the other hand, the Panel *should not*:

- Replace the method of numbering legislative districts that Minnesota has used for decades in favor of the scheme proposed by Plaintiffs Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas

W. Backstrom, James E. Hougas III, and League of Women Voters Minnesota (the "Wattson Plaintiffs");

- Unnecessarily alter the way that redistricting panels have avoided gerrymandering by adopting additional principles proposed by parties regarding partisanship; or

- Arbitrarily and inflexibly order and prioritize principles.

ARGUMENT

I. Numbering of Legislative Districts

Most of the parties have proposed that the Panel adopt the *Hippert* panel's method of numbering legislative districts, which followed long-established practice. *See* Sachs Br. 5–6; Secretary's Proposed Redistricting Principles ("Sec'y Br.") 5; Anderson Pls.' Mem. Supp. Mot. to Adopt Proposed Redistricting Criteria ("Anderson Br."), Ex. A at 3; Corrie Pls.' Proposed Redistricting Principles & Plan Submission Requirements ("Corrie Br.") 4–5; *see also Hippert v. Ritchie*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 5). The Wattson Plaintiffs, by conspicuous contrast, have proposed a new numbering scheme that constitutes an unnecessary and disruptive departure from the status quo—one that will almost certainly confuse Minnesota voters who have become accustomed to a system that, as the Wattson Plaintiffs themselves note, "has been the numbering scheme since a three-judge federal court first drew a legislative plan in 1972." Wattson Pls.' Proposed Congressional & Legislative Districting Principles ("Wattson Br.") 3–5. There is, ultimately, no compelling justification for the Panel to depart from a longstanding scheme that has informed Minnesota legislative redistricting for half a century. Voters have

relied on this numbering scheme for decades and undertaking dramatic, unnecessary surgery on that scheme is a poor fit for a judicial process that relies on consistency, prudence, and restraint.[1]

Whatever the academic merits of their proposed numbering scheme, the Wattson Plaintiffs' proposal on this point underscores the fundamental flaw with their submission—and provides a contrast to the other parties' submissions, which propose only minor, marginal changes to the *Hippert* panel's earlier redistricting principles. Redistricting is a singularly complex process; regardless of how carefully calibrated a set of guiding principles might be, no map is perfect, and no map balances competing considerations in Platonic perfection. That said, the *Hippert* panel and its predecessors produced maps that made sound geographic sense at the time of adoption and allowed Minnesotans to obtain representation in basic consistency with their political preferences. Things change, and so the *Hippert* panel's maps are not and cannot be the maps for this cycle. But not *all* things change, and so while this Panel should revise the *Hippert* panel's principles in line with

[1] Along these lines, the Sachs Plaintiffs note the Wattson Plaintiffs' lengthy argument that the Panel need not pursue absolute equality in congressional districts because it is not required by U.S. Supreme Court precedent. *See* Wattson Br. 5–13. Irrespective of whether their preferred approach *might* withstand constitutional scrutiny, there is no reason for the Panel to depart from the principle that guided the *Hippert* panel. *See* No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan, App. B) (achieving maximum deviation of plus-or-minus one person). Nor, for that matter, are concerns about administrative costs and inconveniences, *see* Wattson Br. 10–11, sufficient justification to depart from the ideal of complete population equality—which ensures the bedrock one-person, one-vote principle that all votes should carry equal weight. *See Karcher v. Daggett*, 462 U.S. 725, 730, 103 S. Ct. 2653, 2658 (1983) ("Article I, § 2 establishes a 'high standard of justice and common sense' for the apportionment of congressional districts: 'equal representation for equal numbers of people.'" (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18, 84 S. Ct. 526, 535 (1964)).

the Sachs Plaintiffs' limited proposals to ensure fairer representation for all Minnesotans, it should not—as the Wattson Plaintiffs propose throughout their submission—wholly discard what has worked in the past.

II. Coalition & Influence Districts

Although all parties agree that an explicit principle should be adopted to ensure effective minority representation, they differ somewhat on the degree of specificity that that principle should contain. These proposals range from more basic recitations of federal requirements under the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments to the U.S. Constitution, *see* Sec'y Br. 2, 5–6; Anderson Br., Ex. A at 1, 3–4; Wattson Br., Ex. A, to—as the Sachs Plaintiffs and Plaintiff-Intervenors Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie, Xiongpao Lee, Abdirazak Mahboub, Aida Simon, Beatriz Winters, Common Cause, OneMinnesota.org, and Voices for Racial Justice (the "Corrie Plaintiffs") propose—a more fulsome description of the Voting Rights Act's protections and the means of safeguarding representation for sizeable minority communities that comprise less than a voting-age majority in a district, *see* Sachs Br. 3–4, 7; Corrie Br. 3, 5.

As the Sachs Plaintiffs discuss in their submission, *see* Sachs Br. 12–14, the Panel should expressly recognize that "[t]wo or more politically cohesive minority groups can bring a claim as a coalition under Section 2" of the Voting Rights Act. *Holloway v. City of Virginia Beach*, No. 2:18-cv-69, 2021 WL 1226554, at *18 (E.D. Va. Mar. 31, 2021), *appeal docketed*, No. 21-1533 (4th Cir. May 5, 2021); *accord Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990);

NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist., 462 F. Supp. 3d 368, 379–80 (S.D.N.Y. 2020). In a state like Minnesota, which contains smaller (but rapidly growing) populations of many minority groups, *see, e.g.*, *Age, Race, & Ethnicity*, Minn. State Demographic Ctr., https://mn.gov/admin/demography/data-by-topic/age-race-ethnicity (last visited Oct. 20, 2021), this nuance is especially critical.[2]

Moreover, for this same reason, the Panel should emphasize that even minority communities that constitute less than a voting-age majority of a district's population should nevertheless have a fair opportunity to influence elections. As the U.S. Supreme Court has observed, influence and crossover districts—where minority voters might not be in the majority but can "work together" with majority voters "toward a common goal"—"can lead to less racial isolation" and increased minority voting strength. *Bartlett v. Strickland*, 556 U.S. 1, 23, 129 S. Ct. 1231, 1248 (2009) (plurality op.).

III. Communities of Interest

While all parties agree that the Panel should attempt to preserve communities of interest when drawing maps, they disagree on the degree to which this goal should be pursued. The Sachs Plaintiffs maintain that the principle the Panel adopts should both expand upon the enumerated categories of potential shared interests and emphasize that communities of interest should not be formally subordinated to other considerations,

[2] As an illustrative example, recent census data revealed that St. Paul is now a majority-minority city, even though no one minority population exceeds 20 percent of the city's total. *See* Dave Orrick, *Minorities Are Now the Majority in St. Paul, Census Shows*, St. Paul Pioneer Press (Aug. 12, 2021), https://www.twincities.com/2021/08/12/minorities-are-now-the-majority-in-st-paul-census-shows.

particularly given 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." Sachs Br. 14–21.[3]

The submission to the Panel filed by Plaintiff-Intervenors Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt (the "Anderson Plaintiffs") betrays the greatest antipathy to this principle, suggesting that communities of interest are not "capable of objective definition and delineation." Anderson Br. 12–14. They contend that "[t]he difficult and subjective nature of identifying and delineating 'communities of interest' . . . . leaves it ripe for partisan and political manipulation." *Id.* at 13. Not so; as discussed below, panels have considered and sought to preserve communities of interest for decades, and the Panel obviously will not manipulate the redistricting process to benefit one party over another.

The Panel is not a legislature. It is an appointed, nonpartisan judicial body that has conducted its business transparently and in a nonpartisan manner. The plans created by the Panel at the end of this process will be debated and adopted in the open. The parties will submit explanatory memoranda in support of their proposed plans, and the Panel will hear oral argument and issue written orders adopting its own plans. And unlike a legislature, the

[3] Other parties similarly offered expanded lists of enumerated interests and emphasized the importance of this principle. *See* Corrie Br. 3–4, 6 (proposing that "[c]ommunities of interest shall be respected to the maximum extent possible" and listing "geographic, governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or transportation interests" as potential areas of "shared experiences and concerns"); Wattson Br., Ex. A (listing same illustrative examples and proposing that "[d]istricts should attempt to preserve identifiable communities of interest").

Panel must and will eschew political considerations when drawing its redistricting plans. Courts "left with the unwelcome obligation of performing in the legislature's stead . . . lack[] the political authoritativeness that the legislature can bring to the task." *Connor v. Finch*, 431 U.S. 407, 415, 97 S. Ct. 1828, 1834 (1977). Consequently, "a court is forbidden to take into account the purely political considerations that might be appropriate for legislative bodies." *Wyche v. Madison Par. Police Jury*, 635 F.2d 1151, 1160 (5th Cir. 1981). As the Fifth Circuit succinctly stated: "We are not legislatures." *Marshall v. Edwards*, 582 F.2d 927, 937 (5th Cir. 1978). Simply put, there is little danger here that the Panel will invidiously draw districts for partisan gain.

Indeed, Minnesota courts have time and again recognized preservation of communities of interests as an appropriate and important redistricting criterion and have taken pains to receive public input across the state to, in large measure, learn about such communities. *See* Order at 3 (Sept. 13, 2021) ("One traditional aspect of the redistricting process is preserving 'communities of interest' . . . . Receiving information from members of the public is vital to identifying these communities."); *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Sept. 13, 2011) (Amended Order Setting Public Hearing Schedule at 2) (recognizing "preservation of 'communities of interest'" as "a well-established redistricting principle" and "seek[ing] public comment about communities of interest that should be identified and preserved in the redistricting process"); *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, 5) (including preservation of communities of interest as redistricting principle); *see also Ziols v. Rice*

Cnty. Bd. of Comm'rs, 661 N.W.2d 283, 289 (Minn. Ct. App. 2003) (noting with approval board of commissioners' consideration of relevant redistricting factors, including "tak[ing] into account communities of interest"); *Johnson-Lee v. City of Minneapolis*, No. 02-1139(JRT/FLN), 2004 WL 2212044, at *6 (D. Minn. Sept. 30, 2004) (discussing Minneapolis Charter Commission's determination that keeping housing project intact was "important goal" that warranted altering tentative redistricting plan that would have split project between two wards); *LaComb v. Growe*, 541 F. Supp. 160, 164 (D. Minn. 1982) (three-judge panel) (noting that court "attempted, where practicable," to maintain communities of interest).[4] Accordingly, the Anderson Plaintiffs' suggestion that the Panel should pay little heed to communities of interest would amount to a significant departure from prior processes and reflects unwarranted skepticism about the integrity of the judicial process.

Ten years ago, the *Hippert* panel "received comments about communities of interest that span counties, communities of interest that exist within a single county or among several county subdivisions, and communities of interest—such as neighborhoods and planning districts—that exist within a single municipality." No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting

[4] The U.S. Supreme Court and other courts have also recognized that preservation of communities of interests is a legitimate and objective redistricting principle. *See, e.g.*, *Bush v. Vera*, 517 U.S. 952, 964, 116 S. Ct. 1941, 1954 (1996) (plurality op.) (noting "the legitimate role of communities of interest in our system of representative democracy"); *Prejean v. Foster*, 227 F.3d 504, 512 (5th Cir. 2000) (noting that traditional redistricting principles such as maintaining communities of interest "are important 'not because they are constitutionally required . . . but because they are objective factors'" (alteration in original) (quoting *Shaw v. Reno*, 509 U.S. 630, 647, 113 S. Ct. 2816, 2827 (1993))).

Plan at 8). This Panel is no doubt receiving similarly instructive and informative comments during its own public hearings, which will allow it to do what prior panels have done: ensure that communities of interest are preserved during the redistricting process.

IV. American Indian Reservations

All parties generally agree that the Panel should adopt a principle to ensure that federally recognized American Indian reservations are divided no more than necessary to meet constitutional requirements, though the Anderson Plaintiffs do not propose a distinct principle on this issue. *See* Sachs Br. 4–5, 7–8; Sec'y Br. 3, 6; Corrie Br. 4, 6; Wattson Br., Ex. A; Anderson Br. 11 & n.2 (recognizing American Indian reservations as akin to political subdivisions that must be protected).

The Sachs Plaintiffs maintain that this Panel should make explicit what previous panels have recognized: that "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." Sachs Br. 23; *see also Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 8) (recognizing "the sovereignty and interests of federally recognized Indian tribes"). Moreover, contrary to the Anderson Plaintiffs' proposal, this should be a principle distinct from protection of political subdivisions. All parties agree that tribal reservations should be divided *only* to meet constitutional requirements. Political subdivisions, by contrast, might be split for other reasons. *See* Sachs Br. 23–25. Preservation of tribal reservations should thus be a separate principle.

V. Compactness

All parties propose the uncontroversial proposition that compactness is a relevant criterion. They disagree as to whether compactness should be a separate principle subordinated beneath the related (but distinct) concepts of convenience and contiguity. *Compare* Sachs Br. 5, 8 (separating compactness from convenience and contiguity), Sec'y Br. 3–4, 6–7 (same), Corrie Br. 3, 6 (same), *and* Wattson Br., Ex. A (same), *with* Anderson Br., Ex. A at 1, 4 (combining compactness with convenience and contiguity). The Sachs Plaintiffs agree with the Secretary of State (the "Secretary"), the Corrie Plaintiffs, and the Wattson Plaintiffs: compactness should be addressed in a separate principle.

There are two primary reasons for this distinction and subordination. First, while the convenience and contiguity of districts are mandated by the Minnesota Constitution and statute, there is no constitutional or statutory mandate for compactness. *See* Sachs Br. 10–12; Wattson Br. 16–17. Second, there are significant analytical issues with preferring compactness at the expense of other redistricting principles; even the term itself has yielded dozens of potential definitions and differing methodological approaches. *See* Sachs Br. 25–27; 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) (noting that measuring compactness "has proven complicated in redistricting" and that term "has been defined in terms as varied as 'spatial nature,' '[socioeconomic] characteristics,' and 'state law'").

Ultimately, while compactness is undoubtedly a relevant consideration in the redistricting context, the absence of both a legal mandate and a consistent, coherent

analytical approach justifies what has been proposed by most of the parties in this action: distinguishing compactness from convenience and contiguity.

VI. Political Subdivisions

The parties disagree as to when it might be appropriate to split a political subdivision. *See* Sachs Br. 5, 8 ("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."); Corrie Br. 3, 6 (same); Wattson Br., Ex. A ("[Political subdivisions] 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."); Sec'y Br. 3, 6 ("Political subdivisions shall not be divided more than necessary to meet constitutional requirements."); Anderson Br., Ex. A at 2, 4 (same).

The Sachs Plaintiffs reiterate the points made in their submission: that while "[p]olitical subdivisions derive their importance as a traditional redistricting principle primarily from being well-defined and clearly identifiable communities of interest," the Panel should adopt a principle that reflects the other instances when splitting a political subdivision might be required or advisable—namely, to ensure effective minority representation; draw convenient, contiguous districts; and, like the special districting panel that drew maps following the 2000 census (the "*Zachman* panel"), preserve communities of interest. Sachs Br. 23–25 (citing *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan

Submissions at 11); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Congressional Redistricting Plan at 3–4)).

VII. Measuring Partisanship

All parties generally agree that the Panel should adopt a criterion to ensure that the new maps do not unfairly benefit any particular party, candidate, or incumbent. This is appropriate to formally acknowledge the Panel's role as a neutral, nonpartisan actor. At the same time, it is prudent for the Panel to ensure (as previous panels did) that a plan it adopts does not inadvertently and excessively favor one group over another. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 7, 9) ("[D]istricts shall not be drawn for the purpose of protecting or defeating incumbents."); *Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Dec. 11, 2001) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 3, 5) (similar); *see also, e.g.*, *Arizonans for Fair Representation v. Symington*, 828 F. Supp. 684, 688–89 (D. Ariz. 1992) (three-judge panel) ("The court [plan] also should avoid unnecessary or invidious outdistricting of incumbents."), *aff'd sub nom. Hispanic Chamber of Com. v. Arizonans for Fair Representation*, 507 U.S. 981 (1993). But the parties disagree on the issues of subordination and whether additional partisanship-focused principles should be adopted.

Most of the parties agree that an effort to avoid significant, inadvertent partisan impacts should be subordinated to other redistricting principles. *See* Sachs Br. 5, 8; Sec'y Br. 3–4, 6–7; Anderson Br., Ex. A at 2, 4. The Corrie Plaintiffs and Wattson Plaintiffs, however, do not similarly propose to subordinate this factor. *See* Corrie Br. 4, 7; Wattson

Br., Ex. A. The Sachs Plaintiffs reiterate their view—the Panel should ensure a map it *has* drawn does not unfairly advantage or disadvantage incumbents or potential challengers; it should not *draw* a map in the first instance with an eye toward its political effects. That is because this criterion "is inherently more political than factors such as communities of interest and compactness" and thus poses risks for a nonpartisan judicial redistricting body. *Johnson v. Miller*, 922 F. Supp. 1556, 1565 (S.D. Ga. 1995) (three-judge panel), *aff'd sub nom. Abrams v. Johnson*, 521 U.S. 74 (1997); *see also Dillard v. City of Greensboro*, 956 F. Supp. 1576, 1581 (M.D. Ala. 1997); *LaComb*, 541 F. Supp. at 165. The Panel should therefore subordinate this factor, as both the *Hippert* and *Zachman* panels did before it. *See Hippert*, No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 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).

Furthermore, the Panel should reject as unnecessary additional factors that would require it to engage in express measuring and weighing of partisan considerations and calculations. Both the Secretary and the Wattson Plaintiffs propose principles to "encourage electoral competition" by ensuring that, in each district, "the plurality of the winning political party in the territory encompassed by the district, based on statewide state and federal partisan general and special election results during the last ten years, has historically been no more than eight percent." Sec'y Br. 4, 7; *see also* Wattson Br., Ex. A. The Wattson Plaintiffs further urge the Panel to adopt a partisan index for purposes of measuring the degree to which districts favor one political party over another, *see* Wattson

Br., Ex. A, while the Secretary rather vaguely suggests that the Panel "use judicial standards and the best available scientific and statistical methods to assess whether a plan unduly favors or disfavors a political party," Sec'y Br. 4, 7.

These parties fight a problem that scarcely exists. Unlike many states whose districts have been gerrymandered to the point of absurdity, Minnesota's court-drawn maps have led to balanced congressional delegations and divided state legislatures that mirror the state's political fault lines. The concerns described by these parties are not new; they exist during every redistricting cycle. And both the *Hippert* and *Zachman* panels adopted a simple principle to combat partisan influence in redistricting, one that led to maps that effectively reflected the political preferences of Minnesotans. This approach led to political competition without immersing judicial panels in the political thicket, and that same approach should be adopted here. The Panel should therefore decline any invitation to depart so dramatically from this earlier principle and risk wading into political waters that it must assiduously avoid.

Indeed, the Court should be particularly skeptical of the Wattson Plaintiffs' proposal that the Panel utilize a "partisan index of election results" that "has never been adopted by the legislature or a court in this state." Wattson Br. 22–25. Again, no party appearing before this Panel is arguing that past panels drew partisan gerrymanders. Nor could they—there is no basis for such a claim. The approach of past panels is not broken. This Panel need not "fix" it.

VIII. Ordering of Principles

Both the Secretary and the Wattson Plaintiffs seek to formally rank redistricting criteria in order of importance. *See* Sec'y Br. 4, 7; Wattson Br., Ex. A. This overly mechanistic approach to redistricting is inappropriate.

The underlying purpose of redistricting is to ensure fair representation for all Minnesotans. Redistricting is a complex task that requires full consideration of relevant factors because, as the *Hippert* panel recognized, "the adoption of redistricting criteria involves a number of competing considerations." No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 15). Depending on particular circumstances, it might make sense to prioritize one criterion over another in one instance, but not in another. The determination of whether to prioritize one competing consideration over another cannot be made in the abstract and must be premised in specific cases on the geography and demographics of Minnesota and the wishes of Minnesotans as expressed in the public testimony being heard by the Panel. The suggestion that the Panel should formally rank the criteria in order of importance or application would unnecessarily limit the Panel's flexibility in this balancing process.

The actions and justifications of past special redistricting panels are instructive. For example, in enacting the current Sixth Congressional District, the *Hippert* panel adopted a district that split Stearns County in order to "achieve population equality" and "respect the differences between the rural, western part of the county (which the panel places within the seventh congressional district) and the eastern part of the county, which includes Saint

Cloud and its surrounding communities of interest." No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 14). Ten years earlier, the *Zachman* panel discussed how it weighed conflicting considerations in particular cases. For example, based on public feedback, that panel placed the township of Breckenridge (in Wilkin County) in a Red River Valley senate district that included portions of Clay County. *See Zachman*, No. C0-01-160 (Minn. Special Redistricting Panel Mar. 19, 2002) (Final Order Adopting a Legislative Redistricting Plan at 5 n.3). As the *Zachman* panel noted, this decision "illustrate[d] the frequent choices between accommodating communities of interest and creating tidy district[] boundaries." *Id.* In short, drawing statewide maps inevitably necessitates making context-specific tradeoffs. The fact that conflicting criteria will require such choices to be made is precisely the reason the Panel should not rank redistricting principles—an approach consistent with settled redistricting jurisprudence both in Minnesota and elsewhere.[5]

In sum, the Panel should adopt a set of redistricting principles, consider the public testimony and the plans submitted to it by the parties, and then draw maps that make the most sense in light of the criteria adopted and testimony heard. That might require balancing and weighing principles to achieve a result in the interests of all Minnesotans. The Panel need not and should not formally prioritize particular principles over others.

[5] *See, e.g.*, *Larios v. Cox*, 314 F. Supp. 2d 1357, 1362 (N.D. Ga. 2004) (per curiam) (three-judge panel) (putting on equal footing "the traditional state interests of compactness, contiguity, minimizing the splits of counties, municipalities, and precincts, recognizing communities of interest, and avoiding multi-member districts"); *Carstens v. Lamm*, 543 F. Supp. 68, 93–94 (D. Colo. 1982) (three-judge panel) (noting efforts to "achieve[] a balance among the many communities of interest affected by congressional redistricting").

Doing so would inappropriately tie the Panel's hands and impede efforts to ensure that the new congressional and legislative maps best reflect the demographic and geographical realities of Minnesota.

IX. Departures from Previous Maps

The Anderson Plaintiffs urge the Panel to "adopt the same restrained, deliberative, least-change approach that was taken ten years ago, and [] continue to utilize and prioritize constitutional requirements and objective standards in drawing district lines" and refrain from "break[ing] from established precedent." Anderson Br. 3–4. The Sachs Plaintiffs recognize, of course, that "[b]ecause courts engaged in redistricting lack the authority to make the political decisions that the Legislature and the Governor can make through their enactment of redistricting legislation, the plan established by the panel is a least-change plan to the extent feasible." *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 9). But the Sachs Plaintiffs stop short of endorsing the Anderson Plaintiffs' argument that "there is no reason in this redistricting cycle to depart from 20 years of neutral, objective principles." Anderson Br. 4.

Whatever map the Panel ultimately draws must be "consistent with the demographics underlying the distribution of eight districts across the state," *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 9); consequently, "[b]ecause of population shifts within the state . . . sometimes a least-change approach is not possible." *Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Legislative

Redistricting Plan at 11). Nor should inflexible devotion to a least-change approach be pursued when the results would divide communities of interest. *Cf. Hippert*, No. A11-152 (Minn. Special Redistricting Panel Feb. 21, 2012) (Final Order Adopting a Congressional Redistricting Plan at 12) (noting that option "more consistent with the panel's least-change approach[] would add all or part of Saint Cloud to the seventh congressional district" but declining to adopt that approach because it "did not receive any arguments from the parties to this action, public comment, or data demonstrating that the city of Saint Cloud's interests are aligned with the agriculturally based seventh congressional district").

Ultimately, in adopting and implementing its redistricting principles, the Panel should strike the necessary balance between a least-change approach and ensuring that all Minnesotans—particularly new and evolving communities of interest—are properly and fairly represented in the maps it draws. Some marginal departures from established precedent are therefore advisable to achieve this goal, which is consistent with the principles proposed by the Sachs Plaintiffs.

X. Plan Submission Requirements

The Sachs Plaintiffs generally favor the amendments to the *Hippert* panel's plan submission requirements proposed by the Corrie Plaintiffs, as these changes reflect the past decade's technological advancements while also ensuring flexibility for both the Panel and the parties. In particular, the Sachs Plaintiffs agree that the use of paper maps during this redistricting cycle is no longer needed, and that electronic transmission and submittal of plans and maps should be prescribed.

The Sachs Plaintiffs, however, are of the view that the Panel should mandate that the parties submit the same Maptitude reports required by the *Hippert* panel, and not require additional reports. *See* No. A11-152 (Minn. Special Redistricting Panel Nov. 4, 2011) (Order Stating Redistricting Principles and Requirements for Plan Submissions at 12–13).

CONCLUSION

For the reasons stated above and in the Sachs Plaintiffs' Proposed Redistricting Principles, the Panel should adopt the principles proposed by the Sachs Plaintiffs to guide redistricting.

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Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

s/Charles N. Nauen

Charles N. Nauen (#121216)
David J. Zoll (#0330681)
Kristen G. Marttila (#346007)
Rachel A. Kitze Collins (#0396555)
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401-2159
(612) 339-6900
cnnauen@locklaw.com
djzoll@locklaw.com
kgmarttila@locklaw.com
rakitzecollins@locklaw.com

Marc E. Elias*
Aria C. Branch*
Jyoti Jasrasaria*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
(202) 968-4490
MElias@elias.law
ABranch@elias.law
JJasrasaria@elias.law

Abha Khanna*
Ben Stafford*
Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
(206) 656-0177
AKhanna@elias.law
BStafford@elias.law
JHawley@elias.law

*Admitted pro hac vice

ATTORNEYS FOR 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