

**FILED**

September 24, 2021

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**STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL  
A21-0243  
A21-0546**

**OFFICE OF  
APPELLATE COURTS**

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Peter S. Wattson, et al.,

Plaintiffs,

and

Paul Anderson, et al.,

Plaintiff-Intervenors,

vs.

Steve Simon, et al.,

Defendants.

and

Frank Sachs, et al.,

Plaintiffs,

and

Dr. Bruce Corrie, et al.,

Plaintiff-Intervenors,

vs.

Steve Simon,

Defendant.

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**SECRETARY'S POSITION  
STATEMENT REGARDING  
CURRENT CONSTITUTIONALITY  
OF CONGRESSIONAL AND  
LEGISLATIVE DISTRICTS**

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The Panel asked the parties to address whether the state’s current congressional and legislative districts “are unconstitutionally flawed in light of the 2010 census.” The parties could not reach consensus on this issue. Defendant Secretary of State Steve Simon’s position is that the districts are not currently unconstitutional and will be unconstitutional only if used to conduct regular primary or general elections in August or November 2022.

**I. THE DISTRICTS ARE NOT CURRENTLY “UNCONSTITUTIONALLY FLAWED.”**

While the Secretary agrees that redistricting is necessary, Minnesota’s election districts are not now unconstitutional because they will not be used for Minnesota’s 2022 regular elections. The Panel should conclude that the districts will only become unconstitutional if they are not revised in time for the August 2022 statewide primary.

The legislature has the power of reapportionment after each Census enumeration. Minn. Const. art. IV, § 3. The state constitution directs “an entire new election of all the senators at the first election of representatives after each new legislative apportionment provided for in this article.” *Id.* § 4. Reapportionment must be completed at least 25 weeks before the statewide primary. Minn. Stat. § 204B.14, subd. 1a (2020). Read together, these provisions contemplate redistricting every ten years for use in the next regular election after a redistricting plan is adopted—here, the August 2022 statewide primary.

Both federal and state courts have recognized that elections can validly be held in Minnesota using existing district boundaries between the time Census data are released and a new redistricting plan is adopted. In other words, the release of Census data does not immediately render existing districts unconstitutional. For example, courts rejected challenges to the validity of city-council elections held in 2001 after the release of the 2000

Census data but before the 2002 adoption of a new redistricting plan. *Kahn v. Griffin*, No. 03-5037, 2004 WL 1635846, \*7-12 (D. Minn. Jul. 20, 2004) (rejecting federal constitutional challenge); *Kahn v. Griffin*, 701 N.W.2d 815, 835 (Minn. 2005) (rejecting challenge under Minnesota Constitution). That the next city-council elections would not be held for four years was of no constitutional import. *Kahn*, 2004 WL 1635846, at \*6-7. As reflected by both the historical redistricting process and Minnesota's established redistricting timelines, the redistricting process is "designed simply to ensure that redistricting occurs promptly after every decennial census, so that new districts are established in time to be used in *regular elections* taking place in years ending in two." *Kahn*, 701 N.W.2d at 835.<sup>1</sup> The Panel has also recognized that the constitutionality of current districts is not ripe between the release of Census data and the deadline for completing redistricting. Order Stating Redistricting Principles and Requirements for Plan Submissions at 3, *Hippert v. Ritchie*, No. A11-152 (Minn. Nov. 4, 2011).

Consistent with these cases, the current districts are not unconstitutional and the Panel's process fulfills the constitutional requirements to ensure that Minnesota will have new districts for use in the 2022 regular elections. The current districts will be revised ten years after their adoption in 2012, and new districts based on the 2020 Census data will go

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<sup>1</sup> Other courts have reached similar conclusions. See *French v. Boner*, 963 F.2d 890 (6th Cir. 1992) (holding city was not constitutionally required to re-run elections held just after new decennial census data became available, but before old apportionment plan could be changed); *Political Action Conj of Illinois v. Daley*, 976 F.2d 335 (7th Cir. 1992) (holding no constitutional violation resulted from four-year delay between decennial reapportionment and elections using new districts); *Gaona v. Anderson*, 989 F.2d 299 (9th Cir. 1993) (rejecting Voting Rights Act challenge to California using old district in special election to fill vacant state senate seat).

into effect in the 2022 regular statewide elections. *Cf. Hippert v. Ritchie*, 813 N.W.2d 374, 386 (Minn. 2012) (enjoining use of then-existing districts in “the 2012 primary and general elections”). In short, a redistricting cycle lasts ten years, not nine. As a result, the districts are not currently unconstitutional.

## **II. A HOLDING THAT THE CURRENT DISTRICTS ARE UNCONSTITUTIONAL MAY UNCONSTITUTIONALLY ALTER INTERVENING SPECIAL ELECTIONS.**

The Secretary’s position is not academic. Holding that Minnesota’s districts are now unconstitutional would risk chaos in any special elections that may occur before the 2022 statewide elections. *See* Minn. Stat. §§ 204D.17-.29 (2020) (governing special elections to fill congressional and legislative vacancies). If districts are currently unconstitutional, yet no redistricting plan has been adopted, it is unclear how the election could proceed.<sup>2</sup> And there is a substantial likelihood that such elections will be necessary: in the past two redistricting periods in 2001-02 and 2011-12, Minnesota held nine special elections to fill legislative seats within the ten months before the biannual August statewide primary. (*See* Minn. Legislative Reference Library, *Results of Special Elections for the Minnesota Legislature, 1849-present*, <https://www.lrl.mn.gov/history/spelect> (detailing four special elections between October 2001 and July 2002 and five between October 2011 and July 2012).) If the current districts are unconstitutional, all of those elections (and many more

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<sup>2</sup> Even after a new redistricting plan is established, many other administrative steps are required to ensure an orderly election, such as establishing voting precincts, updating voter-registration data, and notifying voters of changes to their districts and precincts. Additionally, candidates seeking office in regular elections must file affidavits of candidacy during a two-week period that begins in mid-May. *See* Minn. Stat. § 204B.09, subd. 1(a) (2020). These facts are part of the reason the legislature has established a 25-week lead time between the adoption of the plan and its use in the August primary.

throughout state history) were conducted in districts that were unconstitutional for the same reasons.

Holding that Minnesota's election districts are currently unconstitutional could lead to arguments that districts must be redrawn before a special election can occur. This would be contrary to applicable law. *See, e.g., Kahn*, 701 N.W.2d at 833 (holding that “mathematical equality in representation is not required at all times during the census and election cycles and, further, those concerns cannot outweigh all other factors”). Just as important, redrawing districts for use months before regular statewide elections could violate one-person-one-vote principles, because special elections using new districts would result in the dual representation of some voters and the disenfranchisement of others. *See Wesberry v. Sanders*, 376 U.S. 1, 7-9 (1964) (recognizing “one person, one vote” as central to redistricting); *Gaona*, 989 F.2d at 303 (“[M]itigating vote deferral by holding the special election in the new [district] will simply create vote deferral elsewhere.”).

Finally, courts should not reach the constitutionality of an issue unless it is absolutely necessary. *E.g., Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988); *Minn. Sands, LLC v. Cnty. of Winona*, 940 N.W.2d 183, 191 (Minn. 2020). Here, the Panel need not reach the question of the current constitutionality of Minnesota's election districts to provide effectual relief, including newly drawn districts, to the plaintiffs. If the Panel elects to reach the question, for the reasons provided above the Panel

should hold that the districts will be unconstitutional only if they are not revised in time for the 2022 statewide primary election.<sup>3</sup>

Dated: September 24, 2021

Respectfully submitted,

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<sup>3</sup> On one other issue that the parties could not reach agreement on, the Secretary believes that, based on prior precedent, two percent is the maximum tolerable population deviation for legislative districts. *See Hippert*, 813 N.W.2d at 379; Order Stating Redistricting Principles and Requirements for Plan Submissions at 3, *Zachman v. Kiffmeyer*, No. C0-01-160 (Minn. Dec. 11, 2001).