

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
Case Type: Civil Other/Miscellaneous

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,

Court File No.: _____
Honorable _____

Plaintiffs,

vs.

COMPLAINT

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.

Plaintiffs, for their Complaint against Defendants, state and allege as follows:

JURISDICTION

1. This Court has authority as a court of general jurisdiction to redress Plaintiffs' claims regarding violations of the Minnesota State Constitution ("Minnesota Constitution") and authority to grant declaratory relief under the provisions of Minnesota Statutes §§ 555.01 et. seq.

2. This Court has jurisdiction under 42 U.S.C. §§ 1983 and 1988 to redress Plaintiffs' claims of violations of the Constitution of the United States ("United States Constitution").

PARTIES

3. Plaintiffs are citizens of the United States and qualified voters of the State of Minnesota. Plaintiffs reside in the following cities, counties, congressional districts, and legislative

districts in the State of Minnesota:

<u>Plaintiff</u>	<u>City, County</u>	<u>Congressional</u>	<u>Senate</u>	<u>House</u>
Peter S. Wattson	Shorewood, Hennepin	3	33	33B
Douglas W. Backstrom	Chanhassen, Carver	3	33	33B
Joseph Mansky	Oakdale, Washington	4	43	43B
Nancy B. Greenwood	Minneapolis, Hennepin	5	61	61B
Mary E. Kupper	Otsego, Wright	6	30	30B
James E. Hougas III	Woodbury, Washington	4	53	53B

4. Plaintiff Peter S. Wattson is a retired, itinerant, redistricting aficionado. He is beginning his sixth decade of redistricting litigation in Minnesota courts.¹ He served as Senate Counsel to the Minnesota Senate from 1971 to 2011 and as General Counsel to Governor Mark Dayton from January to June 2011. He assisted with drawing, attacking, and defending redistricting plans throughout that time. He served as Staff Chair of the National Conference of State Legislatures' (NCSL) Reapportionment Task Force in 1989, its Redistricting Task Force in 1999, and its Committee on Redistricting and Elections in 2009. Since retiring in 2011, he has participated in redistricting lawsuits in Arkansas, Kentucky, and Florida, and lectured regularly at NCSL seminars on redistricting. He has written, and regularly updated over the decades, a number of papers on redistricting law. Those papers include: How to Draw Redistricting Plans that Will Stand Up in Court, NCSL (first presented Apr. 1, 1989, New Orleans, LA, most recent update, NCSL National Online Seminar, Jan. 17, 2021); Districting Principles for 2010 and Beyond, NCSL (last update Oct. 22, 2019); Redistricting Case Summaries|2010 to Present, NCSL (last update Dec. 1, 2020); and Districting Principles in Minnesota Courts, Minn. Leg. Ref. Lib. (last update Sept. 19, 2018). He was assistant editor of NCSL's publication Redistricting Law 1990 and general

¹ His father, Marshman S. Wattson, a law professor and attorney who served as Executive Secretary of the Minnesota Branch of the American Civil Liberties Union, participated in *Magraw v. Donovan*, 163 F. Supp. 184 (D. Minn. 1958), the first malapportionment case to be successful in a federal court and an inspiration for *Baker v. Carr*, 369 U.S. 186 (1962).

editor of Redistricting Law 2000 and Redistricting Law 2010. Redistricting Law 2020, to which he was a substantial contributor, is dedicated to him. Since hyperlinks to these online resources may not be permitted in this complaint, their URLs are listed below:

https://www.ncsl.org/Portals/1/Documents/Redistricting/How_to_draw_redistricting_plans_PeterWattson.pdf

<https://www.ncsl.org/Portals/1/Documents/Redistricting/DistrictingPrinciplesFor2010andBeyond-7-1-4.pdf>

<https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>

<https://www.leg.mn.gov/docs/NonMNpub/oclc1044746779.pdf>

https://house.louisiana.gov/H_Redistricting2011/NewsPDF/Redistricting%20Law-2010%20-%20Red%20Book_fnl.pdf

5. Plaintiff Joseph Mansky was an election official in Minnesota for 35 years. He was Minnesota state election director from 1988 to 1999 and was Ramsey County elections manager from 2002 to 2019. He was also manager of Governor Jesse Ventura's Citizen Advisory Commission on Redistricting from 2000 to 2002. Mr. Mansky prepared the congressional and legislative redistricting plans that were submitted to the Special Redistricting Panel on behalf of Governor Ventura in 2001-2002. He also prepared the congressional and legislative redistricting plans that were submitted to the Special Redistricting Panel in 2011-2012 on behalf of the Minnesota county auditors. Mr. Mansky prepared the ward redistricting plans on behalf of the Saint Paul Charter Commission in 2002 and 2011-2012 and for the City of White Bear Lake in 2012. He also prepared the county commissioner redistricting plans on behalf of the Ramsey County Board of Commissioners in 2002 and 2012. He prepared the initial supervisor districting plan for the Ramsey Conservation District in 2016. Mr. Mansky has administered the post-redistricting process of reassigning voters to the new precincts and election districts for the

secretary of state in 1992 and for Ramsey County in 2002 and 2012. In 2002 and 2012, Mr. Mansky created the new precinct plans for the City of Saint Paul and other cities that contract with Ramsey County for election services.

6. Plaintiffs bring this action individually and on behalf of themselves and all other voters who reside in the State of Minnesota and who are similarly situated as having been denied equal protection of the laws as further stated herein. This class is so numerous as to make joinder impossible and impractical; there are common questions of law and fact which predominate over individual questions of law and fact; the claims of the named individuals are typical of the claims of the members of this class; and these Plaintiffs will fairly and adequately represent and protect the interests of the class. In addition, the prosecution of separate actions by individual members of the class would create a risk of inconsistency or varying adjudications that would establish incompatible standards of conduct for the named Defendants. The common questions of law that predominate are the constitutionality of the current plan of legislative and congressional districts established by the Minnesota Special Redistricting Panel (hereinafter the “Panel”) in *Hippert v. Ritchie*, No. A11-152, 813 N.W.2d 374 (Minn. 2012) (Final Orders dated Feb. 21, 2012) (hereinafter “*Hippert*”), which is being enforced by the Defendants.

7. Defendants are each citizens of the United States who reside in the State of Minnesota. Defendant Steve Simon is the duly elected and qualified Secretary of State of the State of Minnesota. In his official capacity, under Minnesota Statutes Chapters 200 through 211B (the “Minnesota Election Law”), Secretary of State Simon is the chief election officer of the State of Minnesota and is responsible for a variety of election duties, including giving notice of offices to be voted on in the next election, accepting affidavits of candidacy from candidates for certain public offices, supervising the preparation and distribution of ballots, receiving election returns,

issuing certificates of election to certain successful candidates, distributing information on certain election laws, serving on the State Canvassing Board and other duties necessary for the conduct of elections in the State of Minnesota. Following the completion of legislative redistricting, Minn. Stat. § 204B.145 authorizes the secretary of state to “coordinate and facilitate the exchange of information between the legislative redistricting computer system, the statewide voter registration system, and a computer system developed to assist the counties, municipalities, and school districts in redrawing election districts and establishing election precincts.” Minn. Stat. § 204B.146 requires the secretary of state to instruct county and local election officials on how to redraw precinct and election district boundaries to reflect the new redistricting plans, to provide local officials with maps and an electronic database of the new boundaries, and to make certain corrections to election district boundaries when municipal boundaries are changed.

8. Defendant Kendra Olson is the duly qualified and acting Elections and Licensing Manager of Carver County, State of Minnesota. Ms. Olson is thus the chief election officer for Carver County and performs the statutory duties of the county auditor for Carver County. Among other duties, when a precinct boundary must be changed as a result of congressional or legislative redistricting, Minn. Stat. § 204B.14 requires the county auditor to work with the municipal clerk to create a corrected precinct map and then “correct the precinct finder in the statewide voter registration system and make the corrected map and precinct finder available for public inspection, and to the secretary of state, who shall update the precinct boundary database.” This action is brought against Defendant Kendra Olson as Carver County Elections and Licensing Manager, individually and as representative of all other county auditors or chief county election officers similarly situated in the State of Minnesota, those persons being so numerous as to make it impracticable to bring them all before the Court by way of joinder. Furthermore, there are

predominant common questions of law, namely the constitutionality of the current plans of legislative and congressional districts ordered in *Hippert*. The defenses of the named Defendants will fairly and adequately protect the interests of the class. Finally, the prosecution of separate actions against individual members of the class would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for the parties here.

COUNT 1
CONGRESSIONAL DISTRICTS - UNITED STATES AND
MINNESOTA CONSTITUTIONS

9. The above-numbered paragraphs 1-8 are incorporated herein by reference.

10. Article I, § 2 of the United States Constitution provides that:

The House of Representatives shall be composed of members chosen every second Year by the People of the several States.... Representatives...shall be apportioned among the several States...according to their respective Numbers....

11. This provision guarantees to citizens of the United States who reside in each state that their vote will be as equally effective as any other vote cast in an election and that congressional representatives will be elected on the basis of equal representation of the individual voters in the state. Furthermore, this provision guarantees that congressional representation will be equally apportioned throughout a state in districts of equal population.

12. Article IV, § 3 of the Minnesota Constitution provides:

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of congressional...districts.

13. Any plan of Minnesota congressional districts that does not meet constitutional standards unlawfully discriminates against voters in more highly populated districts while exaggerating the power of voters in less populated districts in violation of the rights guaranteed under the Article I, § 2 of the United States Constitution and Article IV, § 3 of the Minnesota

Constitution. Any action of Defendants to enforce or implement that plan violates the rights of Plaintiffs and other similarly situated voters who reside in Minnesota.

14. Minnesota's current congressional districts were established and remain in force by order of the Panel in *Hippert*. The Panel had found that the 2010 apportionment of seats in Congress entitled Minnesota to retain the eight districts it had been apportioned since the 1960 Census. It found that the 2010 Census population of Minnesota was 5,303,925. Because that number was not equally divisible by eight, the Panel ordered five congressional districts with a population of 662,991 and three districts with a population of 662,990.

15. With the passage of time, Minnesota's population has grown. By July 1, 2018, the Minnesota State Demographer estimated it was 5,629,416.² Hence, the ideal population for each of Minnesota's eight congressional districts was 703,677.

16. Attached hereto as Exhibit A-1 is a map that shows the State Demographer's 2018 population estimates for Minnesota's congressional districts as ordered in *Hippert*, as well as the percentage range that each district's 2018 population was above or below the ideal. Exhibit A-2 shows for each district the number of people and the percentage by which the district deviates from the ideal. (Plan 2020 PW CBase is the *Hippert* Panel's plan from 2012 as used for the 2020 general election and its 2018 population.) The unequal populations of the congressional districts ordered in *Hippert* deprive Plaintiffs and all other similarly situated voters who reside in over-populated congressional districts 2, 3, 4, 5, and 6 of the rights guaranteed to them under the United States Constitution and the Minnesota Constitution.

17. That is not the only problem with the congressional districts ordered in *Hippert*. On

² See 2018 Congressional District Population Estimates from the Minnesota State Demographic Center, <https://www.gis.leg.mn/pdf/pop/2018CNGPopEst.pdf>, attached as Exhibit A-1.

December 22, 2020, the United States Department of Commerce, Bureau of the Census, reported that the estimated population of the State of Minnesota as of July 1, 2020 was 5,657,342.³ That is significant growth since 2010 and thus a significant change from 2010 in the ideal population of a congressional district.

18. But the Census Bureau's report also showed that the populations of other states have grown since 2010 faster than Minnesota so that, if these relative rates of population growth are confirmed by the 2020 Census (which the Bureau has announced will be reported by April 30, 2021⁴), Minnesota may be apportioned only seven congressional districts.⁵ If that happens, and new congressional districts are not drawn by the Minnesota Legislature or this Court, Defendants will have no choice but to hold a congressional election in 2022 where all candidates run at large, as happened in 1932.⁶

19. Minn. Stat. § 204B.14 provides as follows (emphasis added):

Subd. 1a. **Legislative policy.** It is the intention of the legislature to complete congressional and legislative redistricting activities in time to permit counties and municipalities to begin the process of reestablishing precinct boundaries as soon as possible after the adoption of the congressional and legislative redistricting plans but in *no case later than 25 weeks before the state primary election in the year ending in two.*

Under this statute, the deadline for drawing redistricting plans is February 15, 2022.

20. On information and belief, a failure to meet this deadline would jeopardize the

³ See Kimball W. Brace, New Population Estimates Point to Significant Issues in Recent Supreme Court Case, ELECTION DATA SERVICES, Dec. 22, 2020, at 7, https://www.electiondataservices.com/wp-content/uploads/2020/12/NR_Appor20wTableMaps.pdf.

⁴ Hansi Lo Wang, 6-Month Delay In Census Redistricting Data Could Throw Elections Into Chaos, National Public Radio, Feb. 12, 2021, <https://www.npr.org/2021/02/12/965823150/6-month-delay-in-census-redistricting-data-could-throw-elections-into-chaos>.

⁵ *Id.* at 4.

⁶ See, *Smiley v. Holm*, 285 U.S. 355 (1932).

ability of the county auditors to conduct the state primary in the manner provided by law. A failure would also have a severe impact on prospective candidates seeking election from state, county, or municipal election districts, since their eligibility depends on the new district where they reside. It would likewise have a severe impact on voters, since the place where they are eligible to vote - the polling place for their precinct – depends on where the congressional and legislative district boundaries are drawn.

21. On information and belief, the Minnesota Legislature has failed and will continue to fail to timely equalize the populations of Minnesota's congressional districts in conformity with Article I, § 2 of the United States Constitution and Article IV, § 3 of the Minnesota Constitution. It will likewise fail to accommodate Minnesota's congressional districts to its 2020 apportionment of congressional seats.

22. Plaintiff Peter S. Wattson has provided to the members of the redistricting committees of the senate and house, as well as many other members of the senate and house, copies of the congressional plans attached to this complaint as Exhibit A. At the time of filing, he does not expect either the senate or the house to take substantial action toward enacting a congressional redistricting plan during the 2021 regular session of the legislature. Indeed, based on their decades-long record of failure, he believes they may do nothing substantial before October 2021, if then.

23. The unequal populations of Minnesota's congressional districts as ordered in *Hippert* deprive Plaintiffs and all other similarly situated voters who reside in congressional districts 2, 3, 4, 5, and 6 of the rights guaranteed to them under Article I, § 2 of the United States Constitution and Article IV, § 3 of the Minnesota Constitution.

24. The Minnesota Legislature has not and, on information and belief, will not enact a law equalizing the populations of Minnesota's congressional districts in conformity with the

United States Constitution and the Minnesota Constitution and in conformity with Minnesota's 2020 apportionment of congressional seats. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2022 United States House of Representatives (and future congressional elections) on the basis of the congressional districts ordered in *Hippert*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the United States House of Representatives.

25. Plaintiffs further allege that they intend to and will vote in the year 2022 Minnesota primary and general elections and thereafter for candidates for the United States House of Representatives from Minnesota, and that elections conducted in accordance with *Hippert* will continue to deprive Plaintiffs and all other similarly situated voters who reside in congressional districts 2, 3, 4, 5, and 6 of rights guaranteed under the United States Constitution and the Minnesota Constitution.

26. In the absence of equalizing the populations of Minnesota's congressional districts in conformity with the United States Constitution and the 2020 apportionment of congressional seats to the State of Minnesota, the actions of these Defendants in conducting future elections for members of the United States House of Representatives in accordance with the congressional districts ordered in *Hippert* will deprive Plaintiffs and all other similarly situated voters who reside in congressional districts 2, 3, 4, 5, and 6 of their constitutional rights under Article I, Section 2 of the United States Constitution and Article IV, Section 3 of the Minnesota Constitution.

27. By the current and anticipated failure of the Minnesota Legislature to equalize the populations of the congressional districts of the state in conformity with the United States Constitution and the Minnesota Constitution and the 2020 apportionment of congressional seats to

the State of Minnesota, the Minnesota Legislature will cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly-situated voters who reside in congressional districts 2, 3, 4, 5 and 6.

28. Plaintiffs' preliminary proposed remedy is a congressional plan of seven districts whose populations have been equalized based on the 2018 population estimates of the State Demographer. The plan (2022 PW 7C01) is attached as Plaintiffs' Exhibits A-3 (state and metro map) and A-4 (population). The plan was drafted in accordance with the districting principles set forth article 1, § 3 of Plaintiffs' Exhibit D. The etymology of the principles is set forth in Plaintiffs' Exhibit E. Their main points are highlighted in Plaintiffs' Exhibit F.

29. Plaintiffs will update this preliminary plan in the months to come. The first update will be with the 2019 population estimates previously reported by the State Demographer and the 2020 Census TIGER geography from the Census Bureau. The Census Bureau has announced that all states will receive their 2020 TIGER geography toward the end of February. The second update will be with the redistricting data delivered to the state under Public Law 94-171 (the population counts with race and ethnicity data at the level of a census block). The Census Bureau has announced that the redistricting data will be delivered to all states by September 30, 2021.⁷ The third update will be when this Court solicits from each of the parties redistricting plans the Court may consult in drawing its own plans.

COUNT 2

LEGISLATIVE DISTRICTS - MINNESOTA CONSTITUTION

30. The above-numbered paragraphs 1-29 are incorporated herein by reference.

⁷ Hansi Lo Wang, 6-Month Delay In Census Redistricting Data Could Throw Elections Into Chaos, National Public Radio, Feb. 12, 2021, <https://www.npr.org/2021/02/12/965823150/6-month-delay-in-census-redistricting-data-could-throw-elections-into-chaos>.

31. Article IV, § 2 of the Minnesota Constitution provides (emphasis added):

The number of members who compose the senate and house of representatives shall be prescribed by law. The representation in both houses *shall be apportioned equally* throughout the different sections of the state in proportion to the population thereof.

32. Article IV, § 3 of the Minnesota Constitution provides (in part):

At its first session after each enumeration of the inhabitants of this state made by the authority of the United States, the legislature shall have the power to prescribe the bounds of...legislative districts....

33. Through these provisions, the Minnesota Constitution guarantees to the voters of the State of Minnesota that their vote will be equally as effective as any other vote cast in an election for members of the Minnesota Legislature. Furthermore, these provisions require that the Minnesota Legislature equally apportion state legislative representation throughout the State of Minnesota by districts of equal population.

34. Plaintiffs, as citizens of the United States and residents of the State of Minnesota, have the right under the Minnesota Constitution to have the members of the Minnesota Legislature equally apportioned and elected on the basis of the United States Census for the year 2020 (the “2020 Census”). On information and belief, based on the 2018 and 2019 population estimates of the Minnesota State Demographer, Minnesota’s legislative districts ordered in *Hippert* are unequal in population (as discussed below).

35. The Minnesota Legislature has a record of 140 years of failure to timely enact legislative redistricting plans. Since 1881, the Minnesota Legislature has never enacted a legislative redistricting plan at its first session following a United States Census in accordance with the Minnesota Constitution, Article IV, § 3 (except in 1992, when the plan passed by the legislature and vetoed by the governor was put in place by order of the Supreme Court of the

United States⁸). Even then, the plan enacted by the legislature was not made constitutional and cleared for use in the 1992 election until corrected by an order of the state court. *See Cotlow v. Growe*, No. C8-91-985 (Minn. Spec. Redis. Panel, Dec. 9, 1991), https://www.lrl.mn.gov/webcontent/lrl/guides/Redistricting/Cotlow_1991-12-09_C8-91-985.pdf, and (Jan. 30, 1992), <https://www.leg.mn.gov/archive/clippings/233587-27626.pdf>.

36. Since 1971, the legislative plan has been drawn by a federal or state court, in whole or in part, in accordance with timelines shown on the attached Plaintiffs' Exhibit G.

37. Since 2012, when the Panel ordered the current legislative districts, the Minnesota Legislature has not redrawn the legislative districts to equalize their populations. The 2021 Minnesota Legislature has so far failed and neglected to equalize the populations of Minnesota's legislative districts and will, on information and belief, continue to fail to redraw those districts in a manner that reflects the mandate of Article IV, § 2 of the Minnesota Constitution that they be "equally apportioned."

38. Plaintiff Peter S. Wattson has provided to the members of the redistricting committees of the senate and house, as well as many other members of the senate and house, copies of the senate plan attached to this complaint as Exhibit B (2022 PW L02S) and the house plan attached as Exhibit C (2022 PW L02H). At the time of filing, he does not expect either the senate or the house to take substantial action toward enacting a legislative redistricting plan during the 2021 regular session of the legislature. Indeed, based on their decades-long record of failure, he believes they may do nothing substantial before October 2021, if then.

39. Minnesota's current legislative districts were established and remain in force by

⁸ *See Growe v. Emison*, No. No. 91-1420, Blackmun, J., in chambers (U.S. Mar. 11, 1992); *Growe v. Emison*, 507 U.S. 25 (1993).

order of the Panel in *Hippert*. The *Hippert* Panel ordered senate districts with an ideal population of 79,163 persons (with a mean deviation of 163 persons, or 0.21%) and house districts with an ideal population of 39,582 persons (with a mean deviation of 115 persons, or 0.29%) (Final Order Adopting a Legislative Redistricting Plan, dated February 21, 2012).

40. The Minnesota State Demographer has estimated that the population of Minnesota was 5,680,337 on July 1, 2019. Hence, the ideal population for each of Minnesota's 67 senate districts was 84,781⁹, and the ideal population for each of Minnesota's 134 house districts was 42,391.¹⁰ Attached hereto are Exhibits B-1 and C-1, maps that show the State Demographer's 2019 populations for Minnesota's senate and house districts as ordered by the *Hippert* Panel, as well as the percentage range that each district's 2019 population was above or below the ideal. Plans 2020 PW LBaseS and 2020 PW LBaseH are the *Hippert* Panel's senate and house plans, respectively, from 2012 as used for the 2020 general election, showing their 2018 populations. Exhibits B-2 (senate plan 2020 PW LBaseS) and C-2 (house plan 2020 PW LBaseH) show for each senate and house district, respectively, the number of people and the percentage by which the district deviates from the ideal. The unequal populations of Plaintiffs' legislative districts ordered in *Hippert* deprive Plaintiffs and all other similarly situated voters who reside in over-populated Minnesota legislative districts of the rights guaranteed to them under the Minnesota Constitution.

41. The Minnesota Legislature has not enacted and, on information and belief, will not enact a law redrawing Minnesota's senate and house districts to equalize their populations in

⁹ See 2019 Minnesota Senate District Population Estimates from the Minnesota State Demographic Center, <https://www.gis.leg.mn/pdf/pop/2019SenatePopEst.pdf>, attached as Plaintiffs' Exhibit B-1.

¹⁰ See 2019 Minnesota House District Population Estimates from the Minnesota State Demographic Center, <https://www.gis.leg.mn/pdf/pop/2019HousePopEst.pdf>, attached as Plaintiffs' Exhibit C-1.

conformity with the Minnesota Constitution. Plaintiffs further allege, on information and belief, that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2022 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Hippert*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

42. Plaintiffs further allege that they intend to and will vote in the year 2022 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that elections conducted in accordance with the districts ordered in *Hippert* would deprive Plaintiffs of rights guaranteed under the Minnesota Constitution.

43. In the absence of redrawing the legislative districts of the State of Minnesota in conformity with the Minnesota Constitution, any action of these Defendants to conduct an election for members of the Minnesota Legislature in accordance with the districts ordered in *Hippert* would deprive Plaintiffs of their constitutional rights under Article IV, §§ 2 and 3 of the Minnesota Constitution.

44. By the current and anticipated failure of the Minnesota Legislature to redraw the legislative districts of the state to equalize their populations in conformity with the Minnesota Constitution, the Minnesota Legislature will cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly situated voters who reside in the over-populated legislative districts.

45. Plaintiffs' preliminary proposed remedies are senate and house plans whose populations have been equalized based on the 2018 populations of the State Demographer. The senate plan is attached as Plaintiffs' Exhibit B-3a (state map), B-3b (metro map), and B-4

(population). The house plan is attached as Plaintiffs' Exhibit C-3a (state map), C-3b (metro map), and C-4 (population). Plaintiffs will update these preliminary proposed remedial plans in the months to come, on the same schedule as Plaintiffs' preliminary proposed remedial congressional plan.

COUNT 3
LEGISLATIVE DISTRICTS - UNITED STATES CONSTITUTION

46. The above-numbered paragraphs 1-45 are incorporated herein by reference.

47. The Fourteenth Amendment, § 1 of the United States Constitution provides in pertinent part (emphasis added):

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the *equal protection of the laws*.

48. This provision of the United States Constitution guarantees to the citizens of the United States in each state the right to vote in state and federal elections and guarantees that the vote of each will be as equally effective as any other vote cast in those elections. Further, the United States Constitution guarantees that state legislative representation must be equally apportioned throughout a state in districts of equal population.

49. Any plan of Minnesota legislative districts that does not meet constitutional standards unlawfully discriminates against Plaintiffs and other similarly situated voters who reside in over-populated districts, while exaggerating the power of voters in under-populated districts, in violation of the rights guaranteed under the Fourteenth Amendment to the United States Constitution. Any action of Defendants to enforce or implement that plan violates the equal protection rights of Plaintiffs and other similarly situated voters who reside in Minnesota.

50. As described above, Minnesota's current legislative districts were established and remain in force by order of the Panel in *Hippert*. On information and belief, these districts exaggerate the power of voters in over-populated Minnesota legislative districts and unlawfully discriminate against Plaintiffs and other similarly situated voters who reside in over-populated Minnesota legislative districts.

51. On information and belief, by September 30, 2021, the United States Department of Commerce, Bureau of Census will issue redistricting data from the 2020 Census proving that Minnesota's legislative districts as ordered by the Panel in *Hippert* are no longer equally populated.

52. The Minnesota Legislature has failed and, on information and belief, will continue to fail to equalize the populations of Minnesota's legislative districts as required by the Fourteenth Amendment to the United States Constitution.

53. The unequal populations of the legislative districts ordered in *Hippert* deprive Plaintiffs and all other similarly situated voters who reside in over-populated Minnesota legislative districts of the rights guaranteed to them under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

54. On information and belief, Plaintiffs allege that all of the Defendants intend to and will, unless sooner restrained by an Order of this Court, conduct elections for the 2022 Minnesota Legislature (and future legislatures) on the basis of the legislative districts ordered in *Hippert*. The relief sought against Defendants in their official capacities relates to their respective jurisdictions in carrying out all matters relating to the election of members of the Minnesota Legislature.

55. Plaintiffs further allege that they intend to and will vote in the 2022 Minnesota primary and general elections and thereafter for candidates for the Minnesota Legislature, and that elections conducted in accordance with *Hippert* will continue to deprive Plaintiffs of rights

guaranteed under the United States Constitution.

56. In the absence of redrawing Minnesota's legislative districts in conformity with the United States Constitution, any action of these Defendants to conduct an election for members of the Minnesota Legislature in accordance with the districts ordered by *Hippert* will deprive Plaintiffs of their constitutional rights under the Fourteenth Amendment to the United States Constitution.

57. By the current and anticipated failure of the Minnesota Legislature to equalize the populations of the legislative districts of the state in conformity with the United States Constitution, the Minnesota Legislature will cause Defendants to violate the constitutional rights of Plaintiffs and all other similarly situated voters who reside in over-populated legislative districts in this state.

WHEREFORE, Plaintiffs pray for the following relief:

1. That this Court declare that the plans of congressional and legislative districts ordered in *Hippert* violate the rights of Plaintiffs and the class as follows:
 - (a) the present congressional district boundaries of the State of Minnesota violate the rights of Plaintiffs, and the class of voters they represent, who reside in over-populated districts, to equal representation as guaranteed by Article I, § 2 of the United States Constitution;
 - (b) the present congressional district boundaries of the State of Minnesota do not conform to the number of congressional seats that may be apportioned to the State of Minnesota by the 2020 Census;
 - (c) the present legislative district boundaries of the State of Minnesota violate the rights

of Plaintiffs, and the class of voters they represent, who reside in over-populated districts, to equal representation as guaranteed by Article IV, § 2 of the Minnesota Constitution; and

(d) the present legislative district boundaries of the State of Minnesota violate the rights of Plaintiffs, and the class of voters they represent, who reside in over-populated districts, to equal representation as guaranteed by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. That this Court issue a permanent injunction and judgment decreeing that Minnesota's current congressional and legislative districts are not now valid plans for state congressional and legislative districts.

3. That this Court issue a permanent injunction restraining Defendants and the class of persons they represent from taking any action related to carrying out their official duties in conducting primary or general elections based on the congressional or legislative districts ordered in *Hippert* for members of the United States House of Representatives from the State of Minnesota or members of the Minnesota Legislature.

4. That this Court retain jurisdiction of this action to determine whether the Legislature has enacted a law or laws establishing new Minnesota congressional and legislative districts in conformity with the Minnesota and United States Constitutions and the apportionment of congressional seats to the State of Minnesota.

5. That, if the Minnesota Legislature fails to enact a law or laws establishing new districts in accordance with constitutional requirements before February 15, 2022, this Court will consider evidence, determine, and order valid plans for new Minnesota congressional and legislative districts.

6. That this Court order Defendants to pay to Plaintiffs reasonable attorney fees and expenses, expert witness fees and costs and other expenses incurred in this action pursuant to 42 U.S.C. § 1988.

7. That this Court order any other and further relief that is just under the circumstances.

February 19, 2021

JAMES H. GILBERT LAW GROUP P.L.L.C

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ACKNOWLEDGEMENT REQUIRED UNDER MINN. STAT. § 549.211, SUBD. 1

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211, if factual contentions and legal arguments contained in this pleading are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

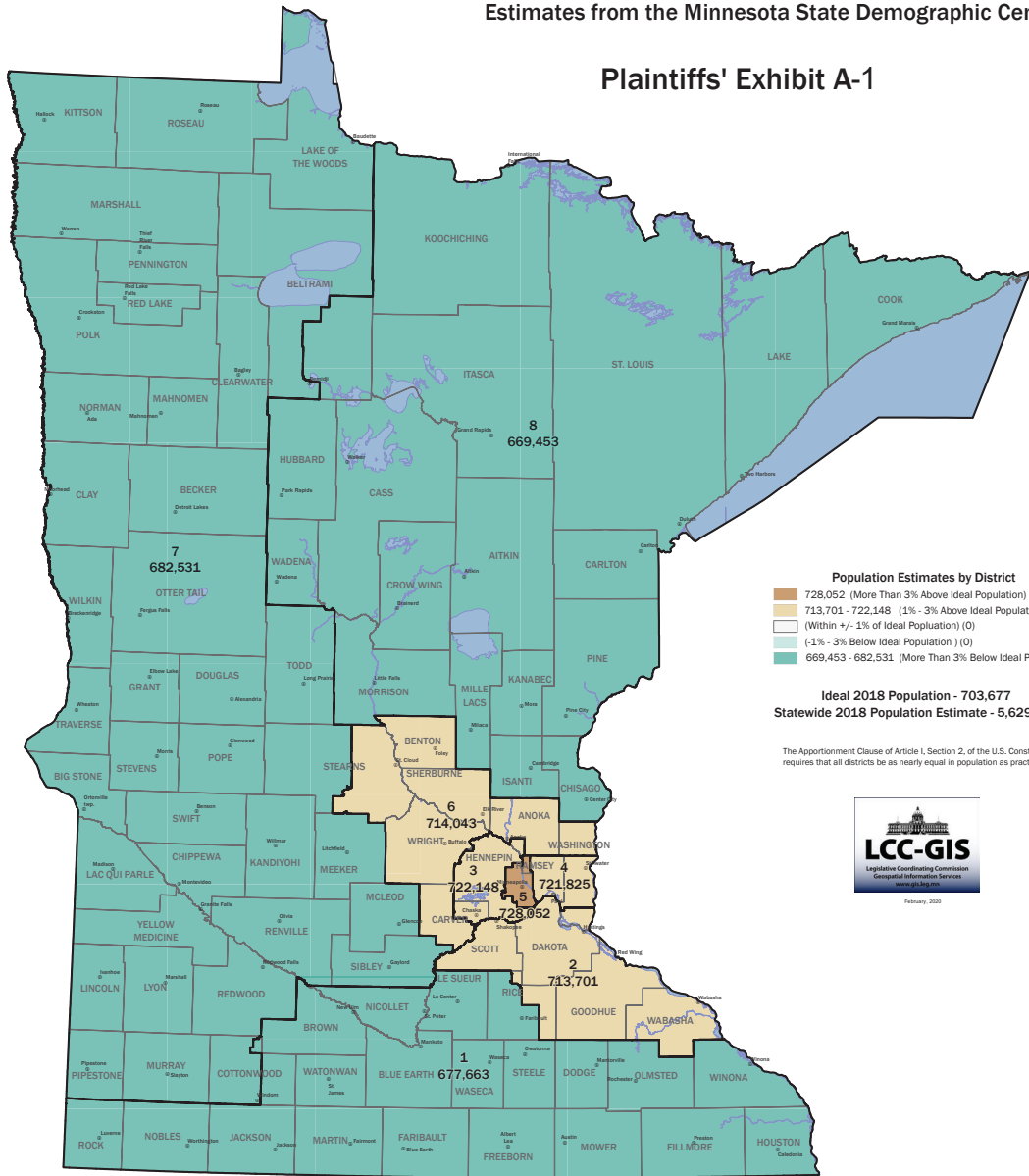
Date: February 19, 2021

/s/ James H. Gilbert
 James H. Gilbert (#34708)

2018 Congressional District Population

Estimates from the Minnesota State Demographic Center

Plaintiffs' Exhibit A-1

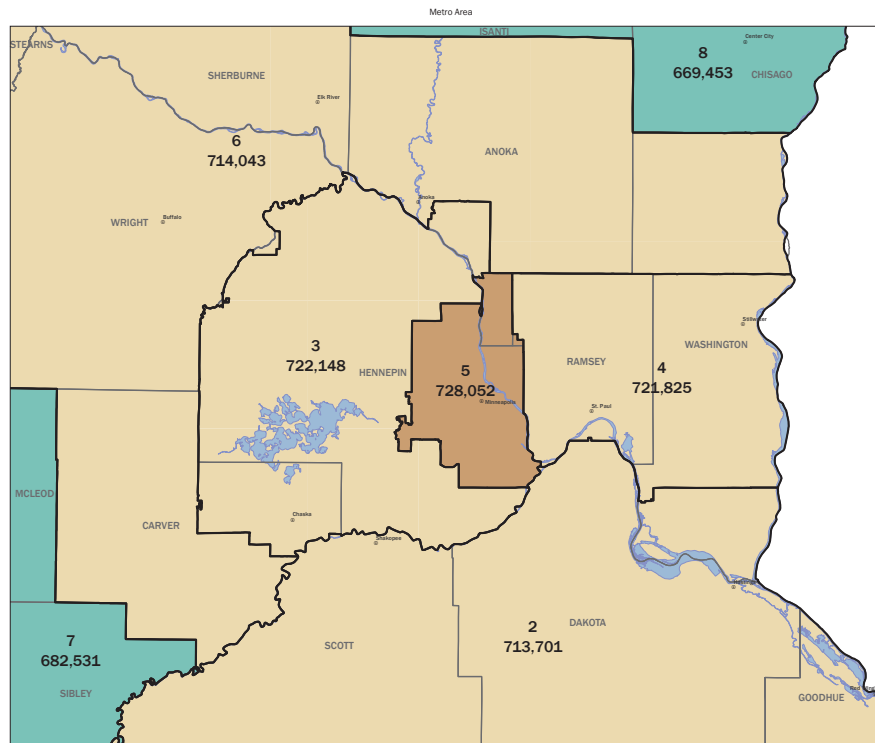
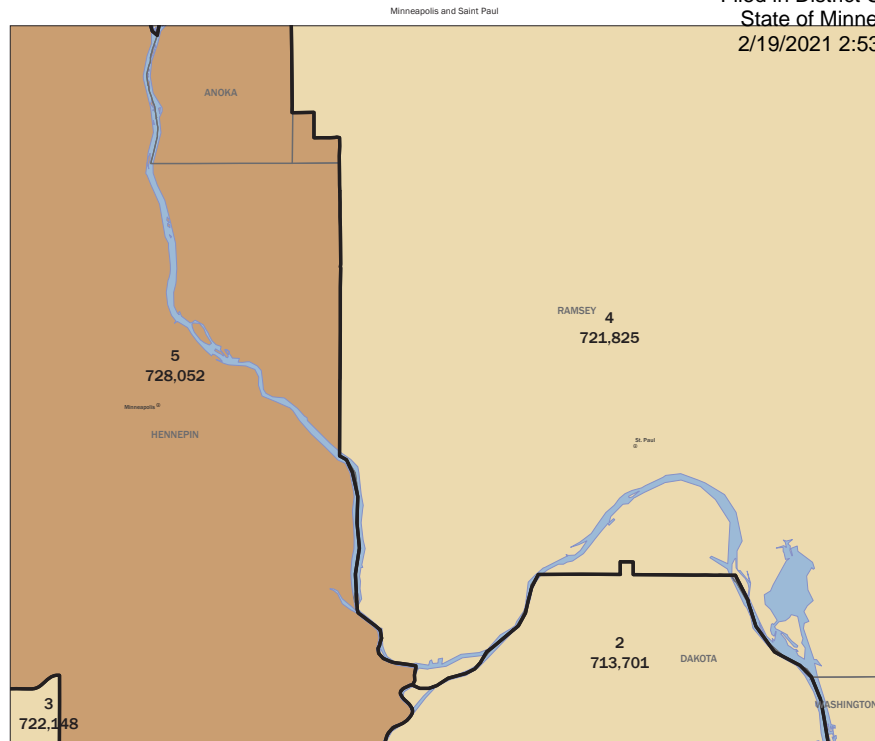
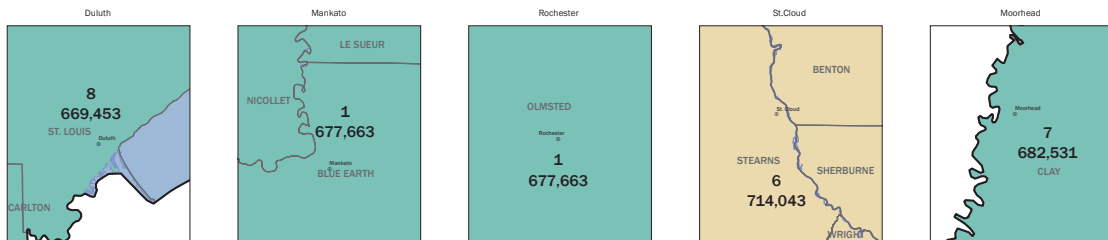


Population Estimates by District

- 728,052 (More Than 3% Above Ideal Population) (1)
- 713,701 - 722,148 (1% - 3% Above Ideal Population) (4)
- (Within +/- 1% of Ideal Population) (0)
- (-1% - 3% Below Ideal Population) (0)
- 669,453 - 682,531 (More Than 3% Below Ideal Population) (3)

Ideal 2018 Population - 703,677
 Statewide 2018 Population Estimate - 5,629,416

The Apportionment Clause of Article I, Section 2, of the U.S. Constitution requires that all districts be as nearly equal in population as practicable.



Population Summary

Thursday, January 14, 2021

8:26 AM

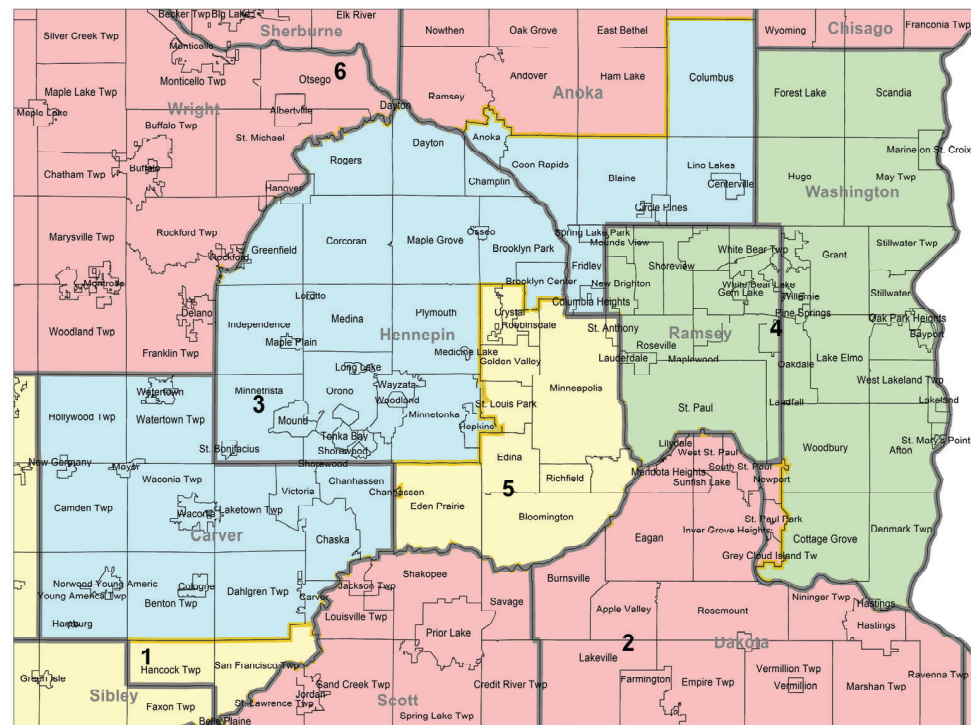
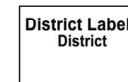
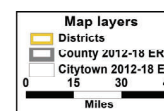
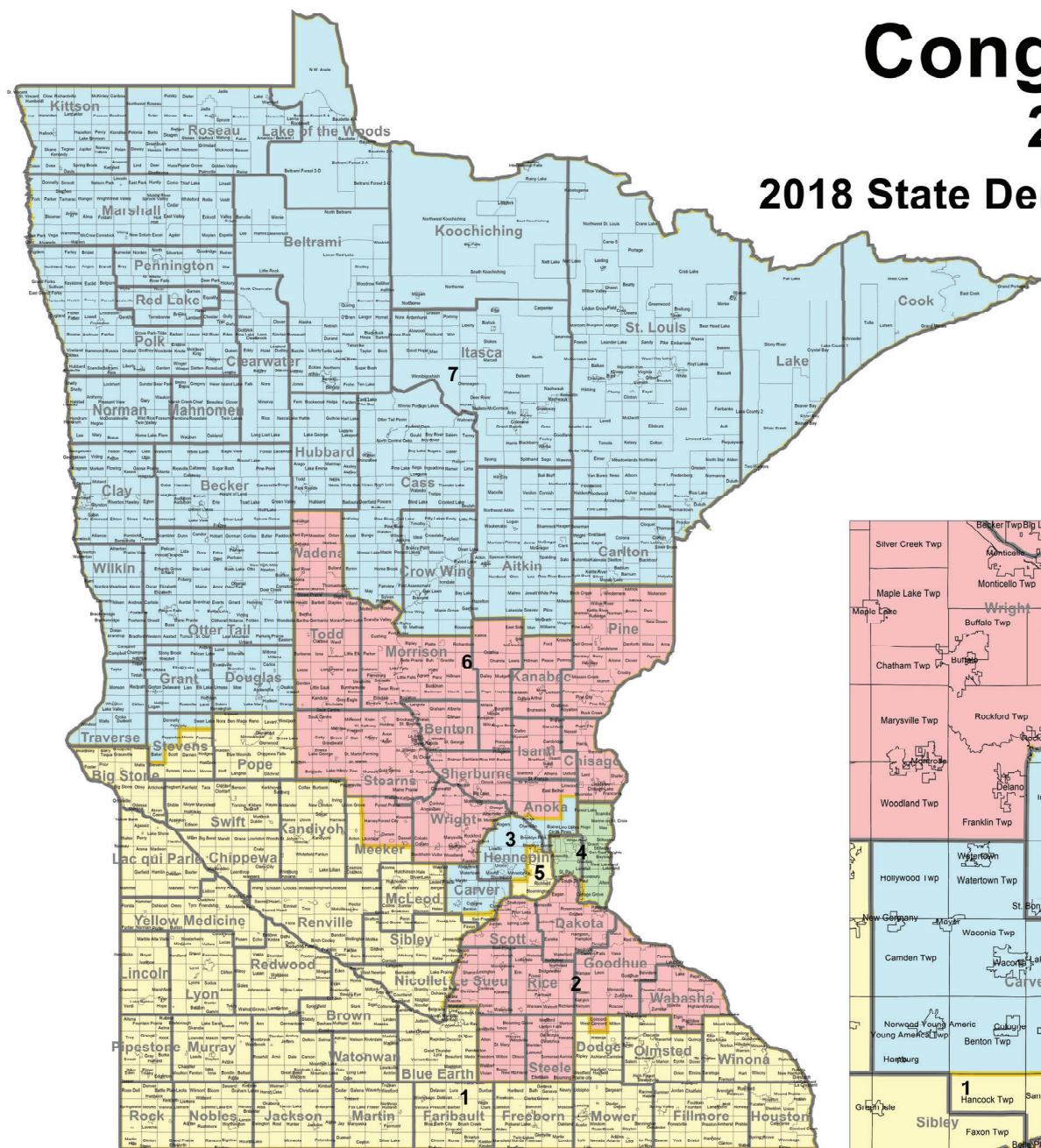
Overall Range:			8.47 Percent	59,583 Persons
Largest District:	727,900	Deviation:	3.44 Percent	24,223 Persons
Smallest District:	668,317	Deviation:	-5.03 Percent	-35,360 Persons
		Mean Deviation:	3.22 Percent	22,636 Persons
		Standard Deviation:	23,888	23888.09 Persons
Ideal District:	703,677			

District	Population	Deviation	% Devn.
1	680,714	-22,963	-3.26%
2	713,456	9,779	1.39%
3	722,302	18,625	2.65%
4	721,802	18,125	2.58%
5	727,900	24,223	3.44%
6	723,467	19,790	2.81%
7	668,317	-35,360	-5.03%
8	671,458	-32,219	-4.58%
State Total:	5,629,416		

Congressional Plan 2022 PW 7C01

2018 State Demographer Population Estimate

Whole Precincts



Population Summary

Thursday, January 14, 2021

9:05 AM

Overall Range:			0.03 Percent	279 Persons
Largest District:	804,362	Deviation:	0.02 Percent	160 Persons
Smallest District:	804,083	Deviation:	-0.01 Percent	-119 Persons
		Mean Deviation:	0.01 Percent	60 Persons
		Standard Deviation:	82	82.29 Persons
Ideal District:	804,202			

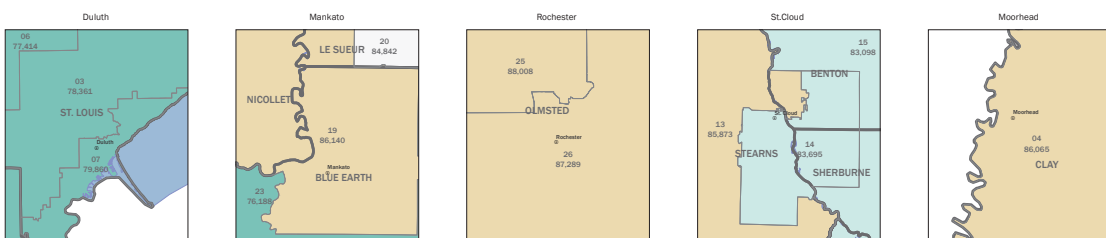
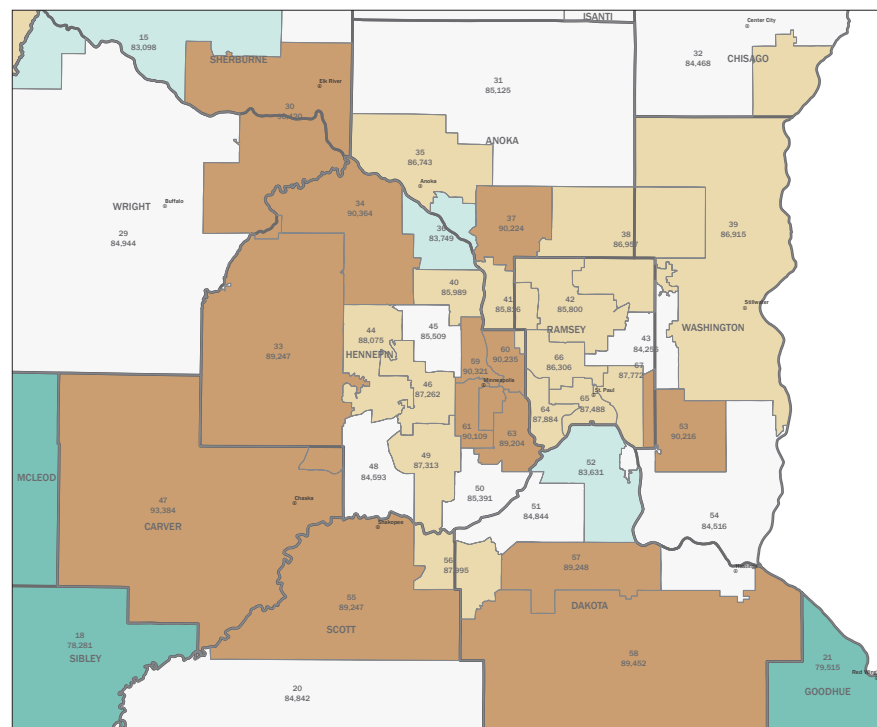
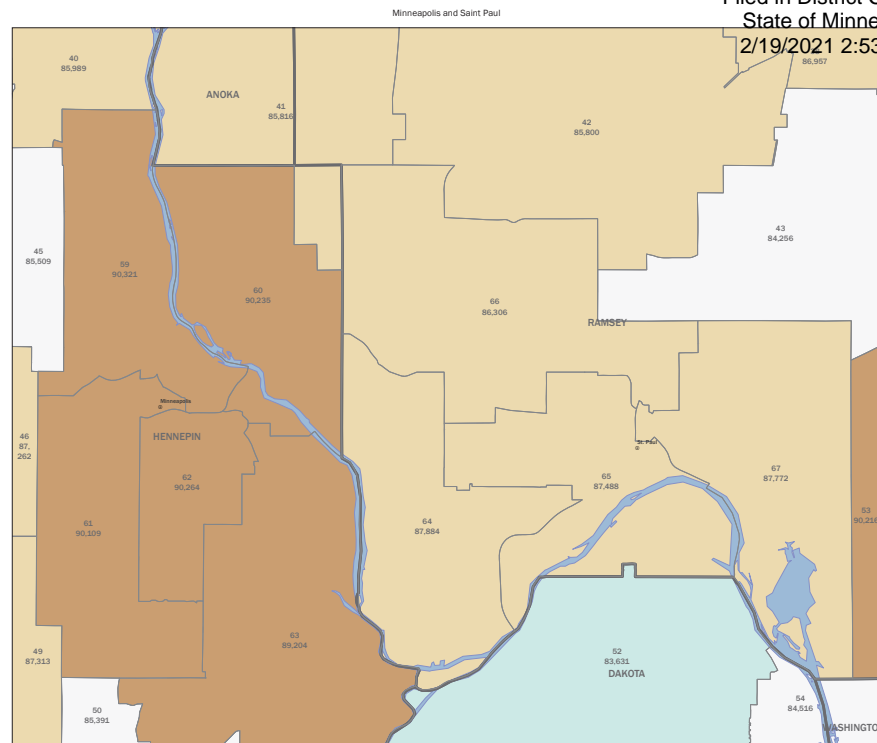
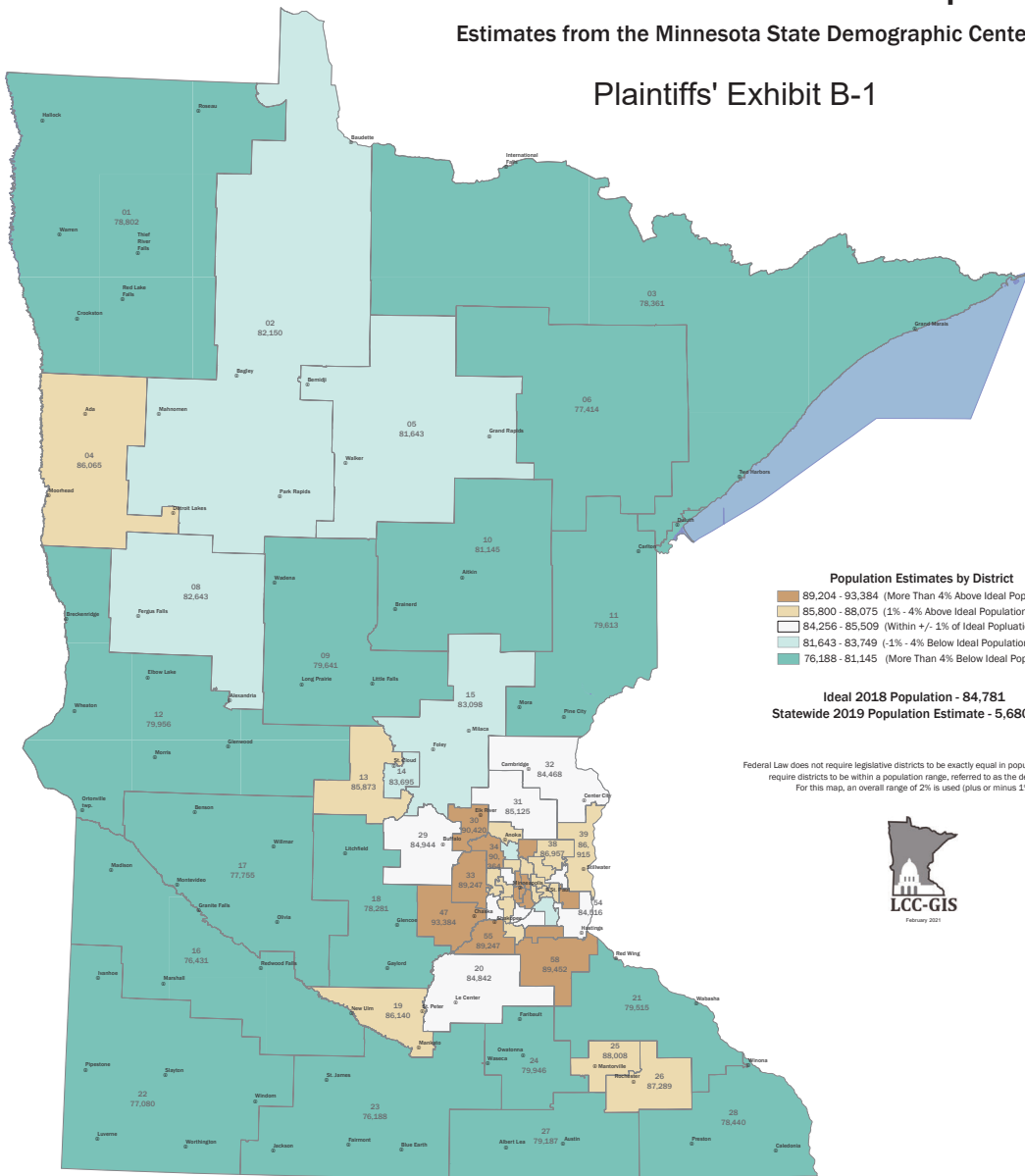
District	Population	Deviation	% Devn.
1	804,362	160	0.02%
2	804,204	2	0.00%
3	804,131	-71	-0.01%
4	804,185	-17	0.00%
5	804,083	-119	-0.01%
6	804,250	48	0.01%
7	804,201	-1	0.00%

State Total: 5,629,416

2019 Minnesota Senate District Population

Estimates from the Minnesota State Demographic Center

Plaintiffs' Exhibit B-1



Population Summary

Wednesday, February 3, 2021 7:21 PM

Overall Range:			66.50 Percent	55,873 Persons
Largest District:	119,018	Deviation:	41.65 Percent	34,997 Persons
Smallest District:	63,145	Deviation:	-24.85 Percent	-20,876 Persons
		Mean Deviation:	5.90 Percent	4,958 Persons
		Standard Deviation:	7,723	7723.37 Persons
Ideal District:	84,021			

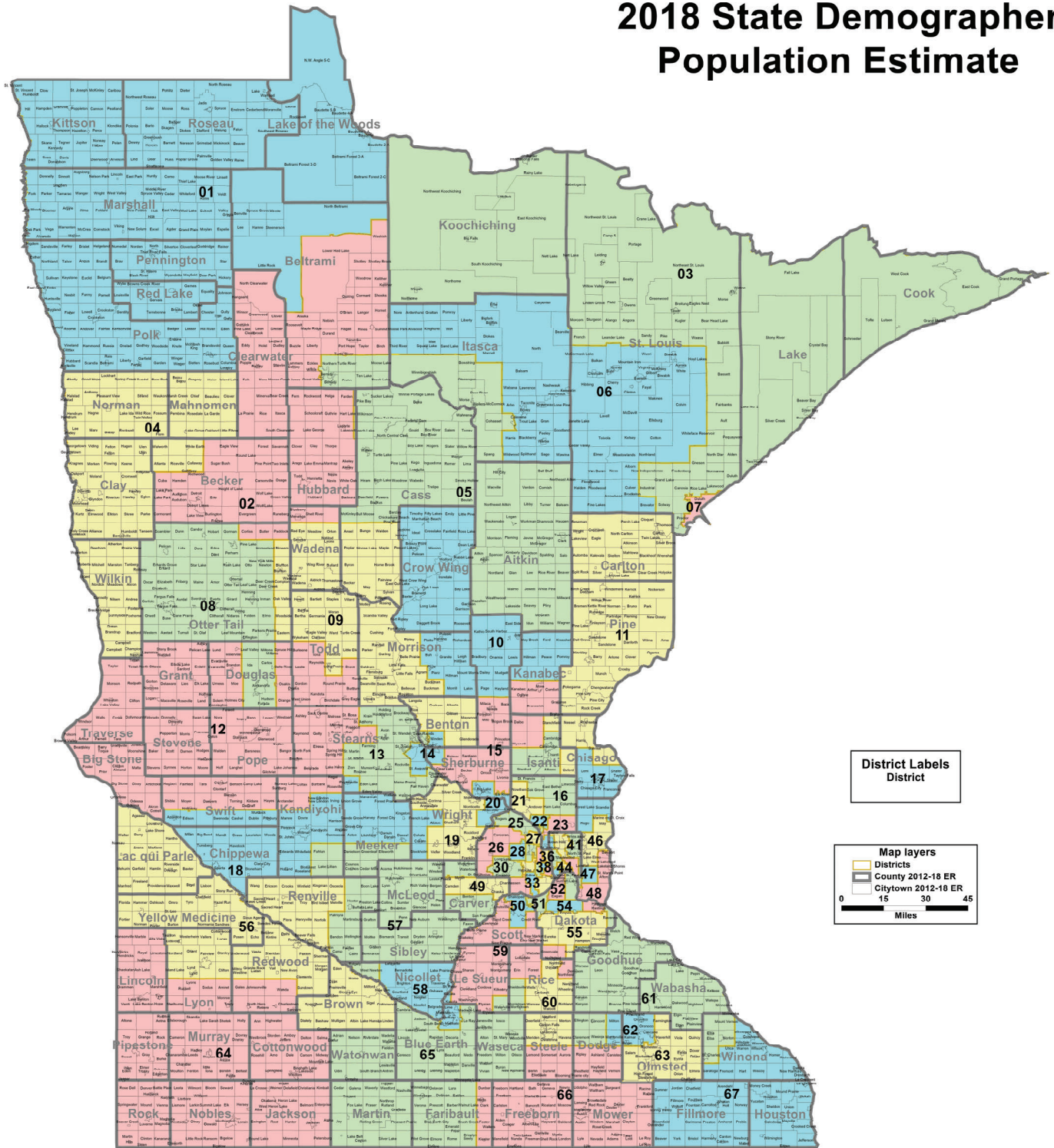
District	Population	Deviation	% Devn.
01	78,842	-5,179	-6.16%
02	82,067	-1,954	-2.33%
03	78,868	-5,153	-6.13%
04	85,276	1,255	1.49%
05	81,298	-2,723	-3.24%
06	77,801	-6,220	-7.40%
07	79,633	-4,388	-5.22%
08	82,476	-1,545	-1.84%
09	79,249	-4,772	-5.68%
10	80,871	-3,150	-3.75%
11	79,498	-4,523	-5.38%
12	79,729	-4,292	-5.11%
13	85,197	1,176	1.40%
14	82,946	-1,075	-1.28%
15	82,504	-1,517	-1.81%
16	76,818	-7,203	-8.57%
17	77,678	-6,343	-7.55%
18	78,308	-5,713	-6.80%
19	85,110	1,089	1.30%
20	83,878	-143	-0.17%
21	79,602	-4,419	-5.26%
22	77,434	-6,587	-7.84%
23	76,401	-7,620	-9.07%
24	79,717	-4,304	-5.12%
25	86,171	2,150	2.56%
26	86,039	2,018	2.40%
27	79,228	-4,793	-5.70%
28	78,522	-5,499	-6.54%
29	84,132	111	0.13%
30	88,716	4,695	5.59%
31	84,440	419	0.50%

District	Population	Deviation	% Devn.
32	83,251	-770	-0.92%
33	87,151	3,130	3.73%
34	88,643	4,622	5.50%
35	87,435	3,414	4.06%
36	90,999	6,978	8.31%
37	87,296	3,275	3.90%
38	86,624	2,603	3.10%
39	86,664	2,643	3.15%
40	75,934	-8,087	-9.62%
41	84,432	411	0.49%
42	85,430	1,409	1.68%
43	83,652	-369	-0.44%
44	88,932	4,911	5.84%
45	82,465	-1,556	-1.85%
46	85,811	1,790	2.13%
47	92,896	8,875	10.56%
48	82,953	-1,068	-1.27%
49	91,191	7,170	8.53%
50	79,602	-4,419	-5.26%
51	84,562	541	0.64%
52	84,232	211	0.25%
53	89,406	5,385	6.41%
54	83,229	-792	-0.94%
55	87,970	3,949	4.70%
56	86,193	2,172	2.59%
57	87,937	3,916	4.66%
58	87,450	3,429	4.08%
59	71,071	-12,950	-15.41%
60	88,111	4,090	4.87%
61	111,685	27,664	32.93%
62	72,472	-11,549	-13.75%
63	99,624	15,603	18.57%
64	119,018	34,997	41.65%
65	83,225	-796	-0.95%
66	80,276	-3,745	-4.46%
67	63,145	-20,876	-24.85%

State Total: 5,629,416

10-CV-21-127

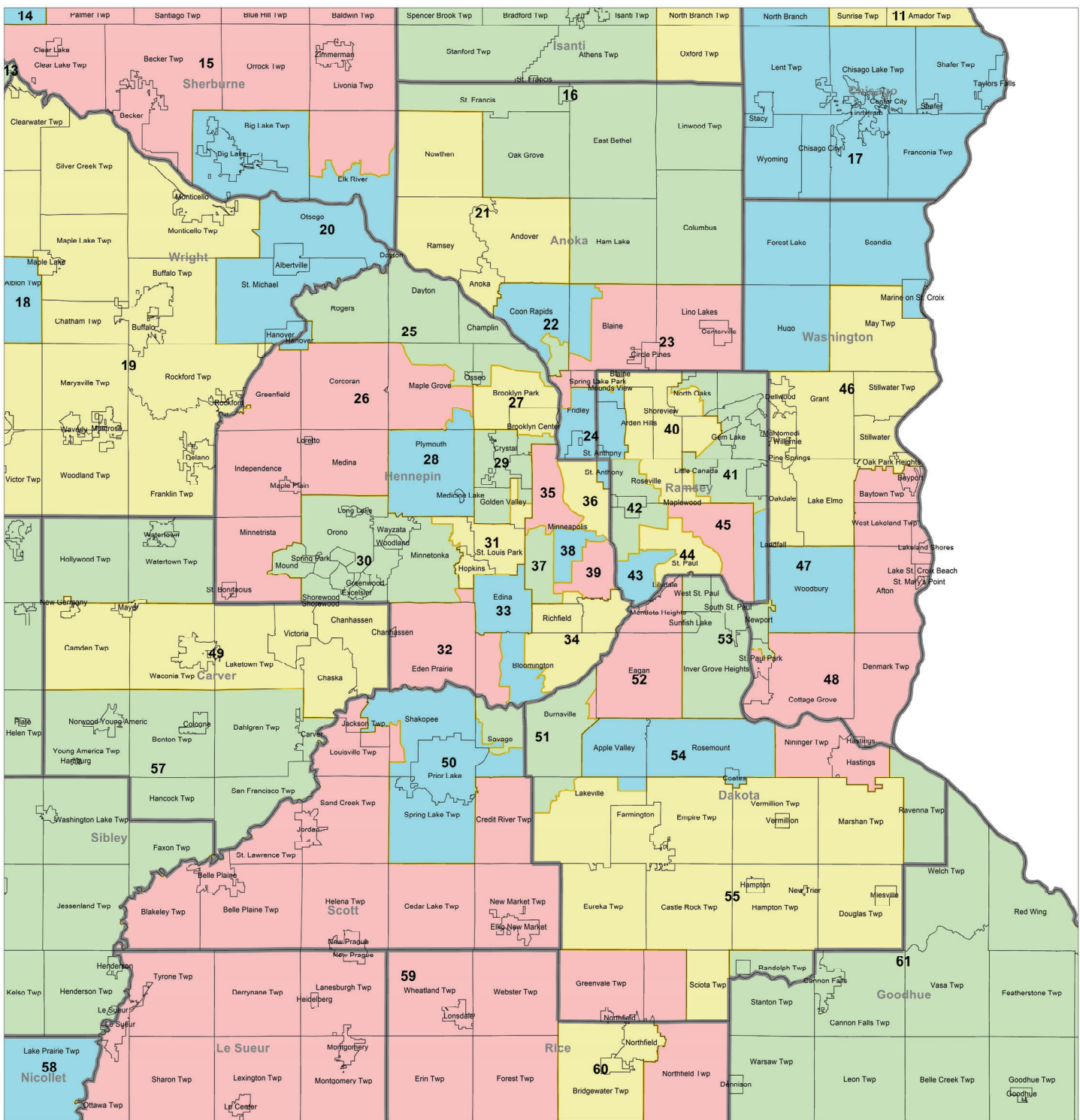
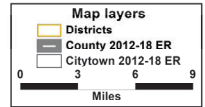
Senate Plan 2022 PW L02S 2018 State Demographer Population Estimate



10-CV-21-127

Senate Plan 2022 PW L02S 2018 State Demographer Population Estimate

District Labels
District



10-CV-21-127

Population Summary

Tuesday, January 26, 2021

10:14 PM

Overall Range:			2.98 Percent	2,505 Persons
Largest District:	85,311	Deviation:	1.54 Percent	1,290 Persons
Smallest District:	82,806	Deviation:	-1.45 Percent	-1,215 Persons
		Mean Deviation:	0.46 Percent	388 Persons
		Standard Deviation:	496	495.57 Persons
Ideal District:	84,021			

District	Population	Deviation	% Devn.
01	84,294	273	0.32%
02	84,162	141	0.17%
03	84,788	767	0.91%
04	84,021	0	0.00%
05	84,109	88	0.10%
06	83,655	-366	-0.44%
07	83,138	-883	-1.05%
08	84,107	86	0.10%
09	83,697	-324	-0.39%
10	84,081	60	0.07%
11	83,360	-661	-0.79%
12	84,325	304	0.36%
13	83,892	-129	-0.15%
14	83,276	-745	-0.89%
15	83,651	-370	-0.44%
16	84,141	120	0.14%
17	84,555	534	0.64%
18	84,546	525	0.62%
19	83,760	-261	-0.31%
20	83,604	-417	-0.50%
21	83,108	-913	-1.09%
22	85,311	1,290	1.54%
23	82,806	-1,215	-1.45%
24	83,639	-382	-0.45%
25	84,175	154	0.18%
26	83,368	-653	-0.78%
27	83,723	-298	-0.35%
28	83,956	-65	-0.08%
29	84,027	6	0.01%
30	84,501	480	0.57%
31	84,471	450	0.54%

District	Population	Deviation	% Devn.
32	84,198	177	0.21%
33	84,374	353	0.42%
34	83,370	-651	-0.77%
35	84,488	467	0.56%
36	84,282	261	0.31%
37	84,202	181	0.22%
38	84,430	409	0.49%
39	83,755	-266	-0.32%
40	84,835	814	0.97%
41	85,056	1,035	1.23%
42	83,940	-81	-0.10%
43	83,226	-795	-0.95%
44	83,953	-68	-0.08%
45	84,460	439	0.52%
46	84,601	580	0.69%
47	84,278	257	0.31%
48	83,604	-417	-0.50%
49	84,004	-17	-0.02%
50	83,890	-131	-0.16%
51	84,245	224	0.27%
52	84,913	892	1.06%
53	83,656	-365	-0.43%
54	83,954	-67	-0.08%
55	83,460	-561	-0.67%
56	84,130	109	0.13%
57	83,585	-436	-0.52%
58	84,589	568	0.68%
59	83,791	-230	-0.27%
60	84,168	147	0.17%
61	84,371	350	0.42%
62	83,916	-105	-0.12%
63	83,976	-45	-0.05%
64	84,132	111	0.13%
65	82,938	-1,083	-1.29%
66	84,223	202	0.24%
67	84,176	155	0.18%

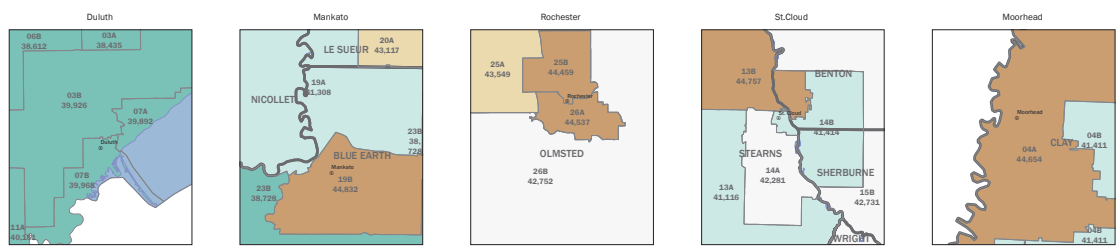
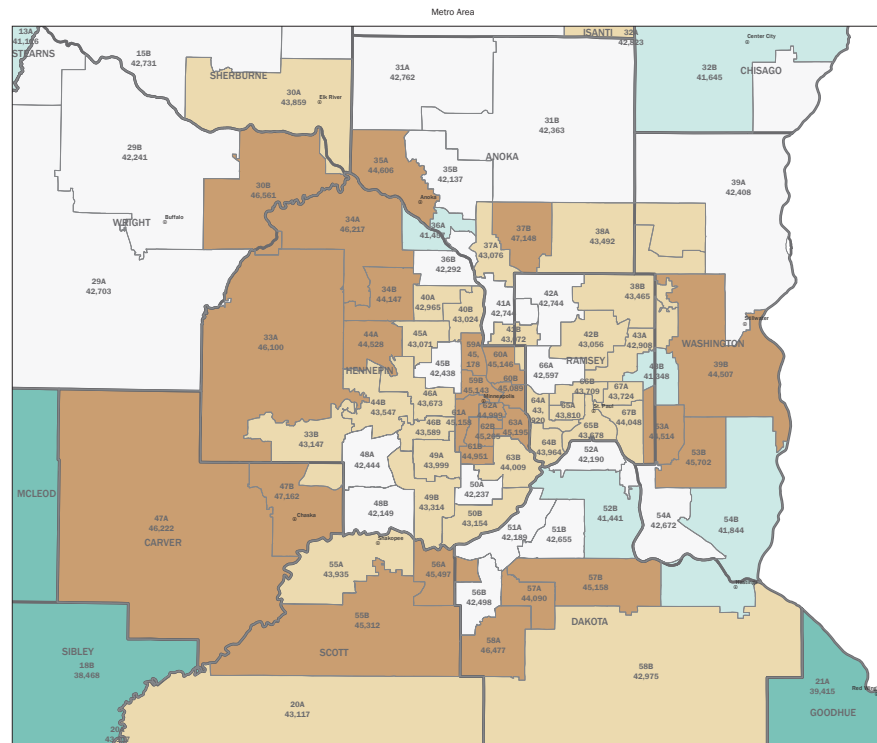
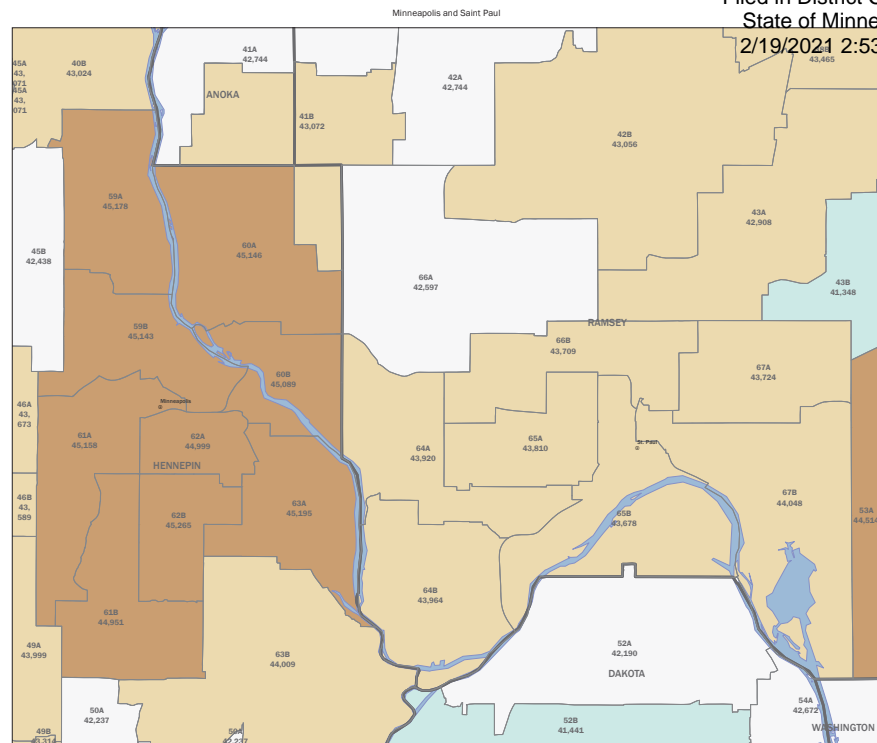
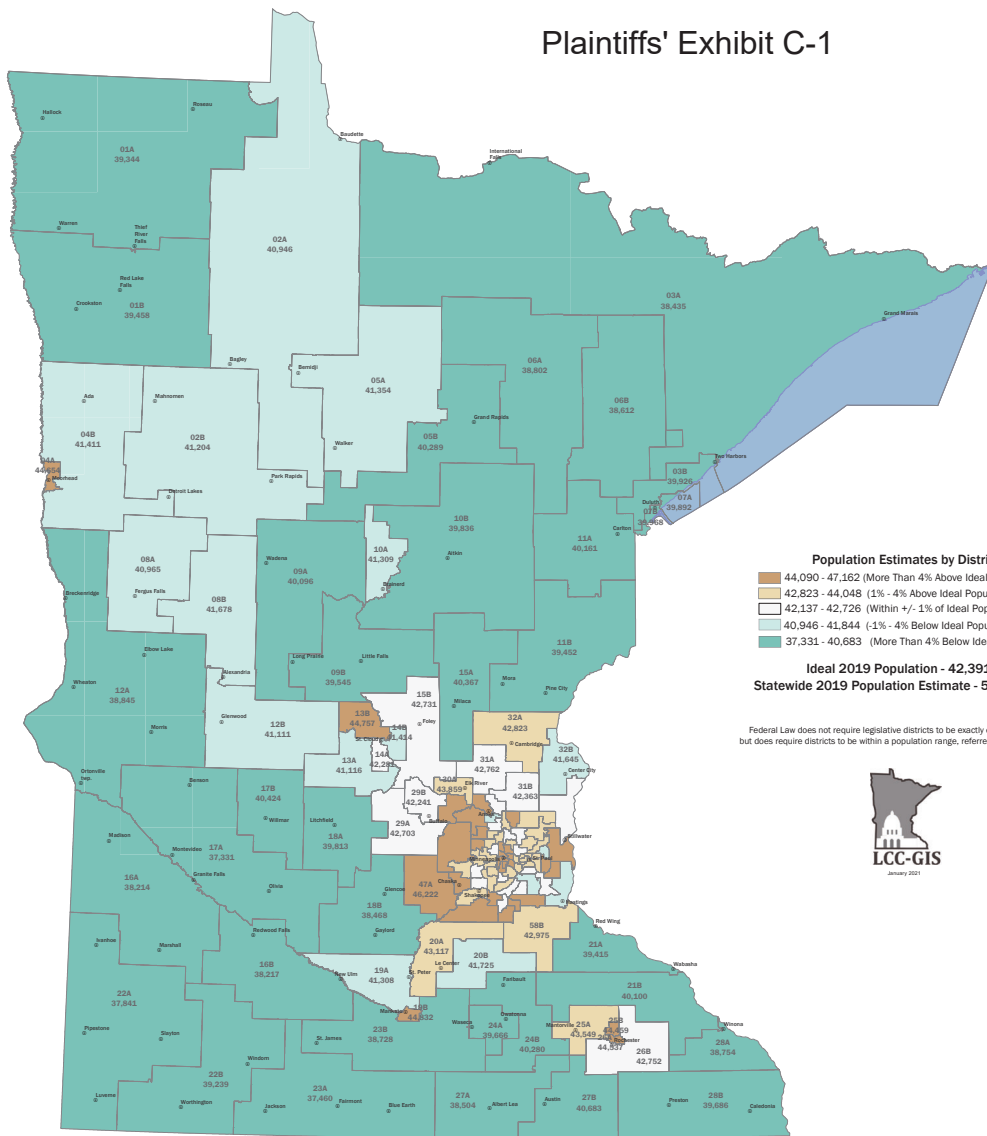
State Total: 5,629,416

10-CV-21-127

2019 Minnesota House District Population

Estimates from the Minnesota State Demographic Center

Plaintiffs' Exhibit C-1



Population Summary

Wednesday, February 3, 2021

7:25 PM

Overall Range:			75.45 Percent	31,698 Persons
Largest District:	61,413	Deviation:	46.18 Percent	19,402 Persons
Smallest District:	29,715	Deviation:	-29.27 Percent	-12,296 Persons
		Mean Deviation:	6.86 Percent	2,881 Persons
		Standard Deviation:	4,354	4353.73 Persons
Ideal District:	42,011			

District	Population	Deviation	% Devn.
01A	39,277	-2,734	-6.51%
01B	39,565	-2,446	-5.82%
02A	40,691	-1,320	-3.14%
02B	41,376	-635	-1.51%
03A	38,584	-3,427	-8.16%
03B	40,264	-1,747	-4.16%
04A	43,987	1,976	4.70%
04B	41,289	-722	-1.72%
05A	41,088	-923	-2.20%
05B	40,210	-1,801	-4.29%
06A	38,946	-3,065	-7.30%
06B	38,855	-3,156	-7.51%
07A	43,054	1,043	2.48%
07B	36,579	-5,432	-12.93%
08A	40,947	-1,064	-2.53%
08B	41,529	-482	-1.15%
09A	39,849	-2,162	-5.15%
09B	39,400	-2,611	-6.22%
10A	41,086	-925	-2.20%
10B	39,785	-2,226	-5.30%
11A	40,150	-1,861	-4.43%
11B	39,348	-2,663	-6.34%
12A	38,896	-3,115	-7.41%
12B	40,833	-1,178	-2.80%
13A	41,033	-978	-2.33%
13B	44,164	2,153	5.12%
14A	45,479	3,468	8.25%
14B	37,467	-4,544	-10.82%
15A	40,039	-1,972	-4.69%
15B	42,465	454	1.08%
16A	38,354	-3,657	-8.70%

10-CV-21-127

District	Population	Deviation	% Devn.
16B	38,464	-3,547	-8.44%
17A	37,505	-4,506	-10.73%
17B	40,173	-1,838	-4.38%
18A	39,844	-2,167	-5.16%
18B	38,464	-3,547	-8.44%
19A	42,462	451	1.07%
19B	42,648	637	1.52%
20A	42,688	677	1.61%
20B	41,190	-821	-1.95%
21A	39,535	-2,476	-5.89%
21B	40,067	-1,944	-4.63%
22A	38,039	-3,972	-9.45%
22B	39,395	-2,616	-6.23%
23A	37,633	-4,378	-10.42%
23B	38,768	-3,243	-7.72%
24A	39,497	-2,514	-5.98%
24B	40,220	-1,791	-4.26%
25A	43,115	1,104	2.63%
25B	43,056	1,045	2.49%
26A	38,229	-3,782	-9.00%
26B	47,810	5,799	13.80%
27A	38,656	-3,355	-7.99%
27B	40,572	-1,439	-3.43%
28A	38,800	-3,211	-7.64%
28B	39,722	-2,289	-5.45%
29A	42,220	209	0.50%
29B	41,932	-79	-0.19%
30A	43,335	1,324	3.15%
30B	45,381	3,370	8.02%
31A	42,103	92	0.22%
31B	42,337	326	0.78%
32A	42,658	647	1.54%
32B	40,593	-1,418	-3.38%
33A	45,209	3,198	7.61%
33B	41,942	-69	-0.16%
34A	44,235	2,224	5.29%
34B	44,408	2,397	5.71%
35A	44,010	1,999	4.76%
35B	43,425	1,414	3.37%
36A	40,757	-1,254	-2.98%
36B	50,242	8,231	19.59%
37A	40,704	-1,307	-3.11%
37B	46,592	4,581	10.90%

10-CV-21-127

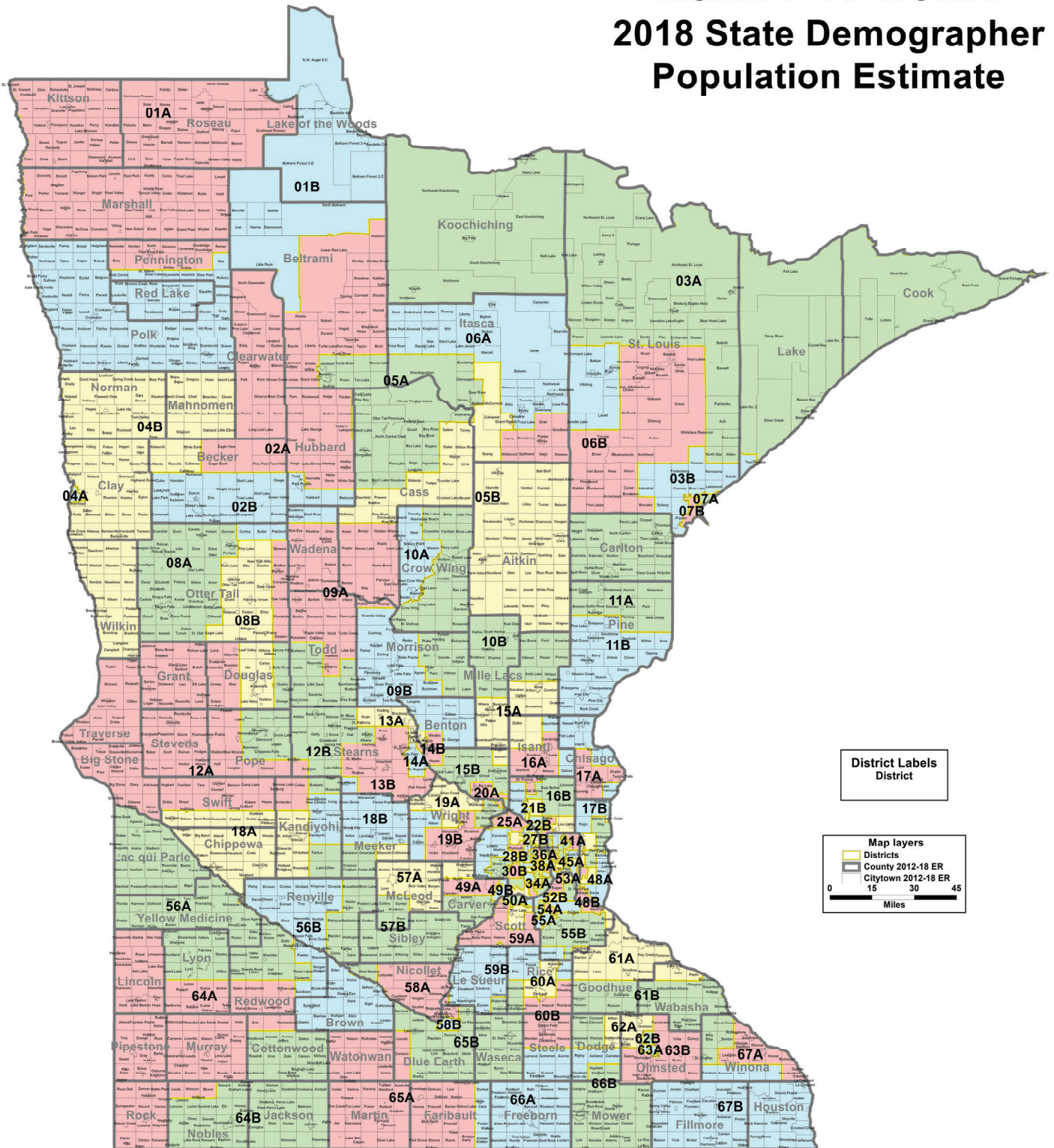
District	Population	Deviation	% Devn.
38A	43,402	1,391	3.31%
38B	43,222	1,211	2.88%
39A	43,466	1,455	3.46%
39B	43,198	1,187	2.83%
40A	33,393	-8,618	-20.51%
40B	42,541	530	1.26%
41A	42,701	690	1.64%
41B	41,731	-280	-0.67%
42A	42,720	709	1.69%
42B	42,710	699	1.66%
43A	42,437	426	1.01%
43B	41,215	-796	-1.89%
44A	46,151	4,140	9.85%
44B	42,781	770	1.83%
45A	40,828	-1,183	-2.82%
45B	41,637	-374	-0.89%
46A	41,605	-406	-0.97%
46B	44,206	2,195	5.22%
47A	46,808	4,797	11.42%
47B	46,088	4,077	9.70%
48A	42,827	816	1.94%
48B	40,126	-1,885	-4.49%
49A	43,786	1,775	4.23%
49B	47,405	5,394	12.84%
50A	38,101	-3,910	-9.31%
50B	41,501	-510	-1.21%
51A	40,345	-1,666	-3.97%
51B	44,217	2,206	5.25%
52A	43,001	990	2.36%
52B	41,231	-780	-1.86%
53A	41,339	-672	-1.60%
53B	48,067	6,056	14.42%
54A	41,424	-587	-1.40%
54B	41,805	-206	-0.49%
55A	43,925	1,914	4.56%
55B	44,045	2,034	4.84%
56A	44,138	2,127	5.06%
56B	42,055	44	0.10%
57A	44,465	2,454	5.84%
57B	43,472	1,461	3.48%
58A	44,677	2,666	6.35%
58B	42,773	762	1.81%
59A	29,715	-12,296	-29.27%

10-CV-21-127

District	Population	Deviation	% Devn.
59B	41,356	-655	-1.56%
60A	46,771	4,760	11.33%
60B	41,340	-671	-1.60%
61A	58,714	16,703	39.76%
61B	52,971	10,960	26.09%
62A	31,124	-10,887	-25.91%
62B	41,348	-663	-1.58%
63A	50,713	8,702	20.71%
63B	48,911	6,900	16.42%
64A	57,605	15,594	37.12%
64B	61,413	19,402	46.18%
65A	37,714	-4,297	-10.23%
65B	45,511	3,500	8.33%
66A	44,691	2,680	6.38%
66B	35,585	-6,426	-15.30%
67A	29,736	-12,275	-29.22%
67B	33,409	-8,602	-20.48%

State Total: 5,629,416

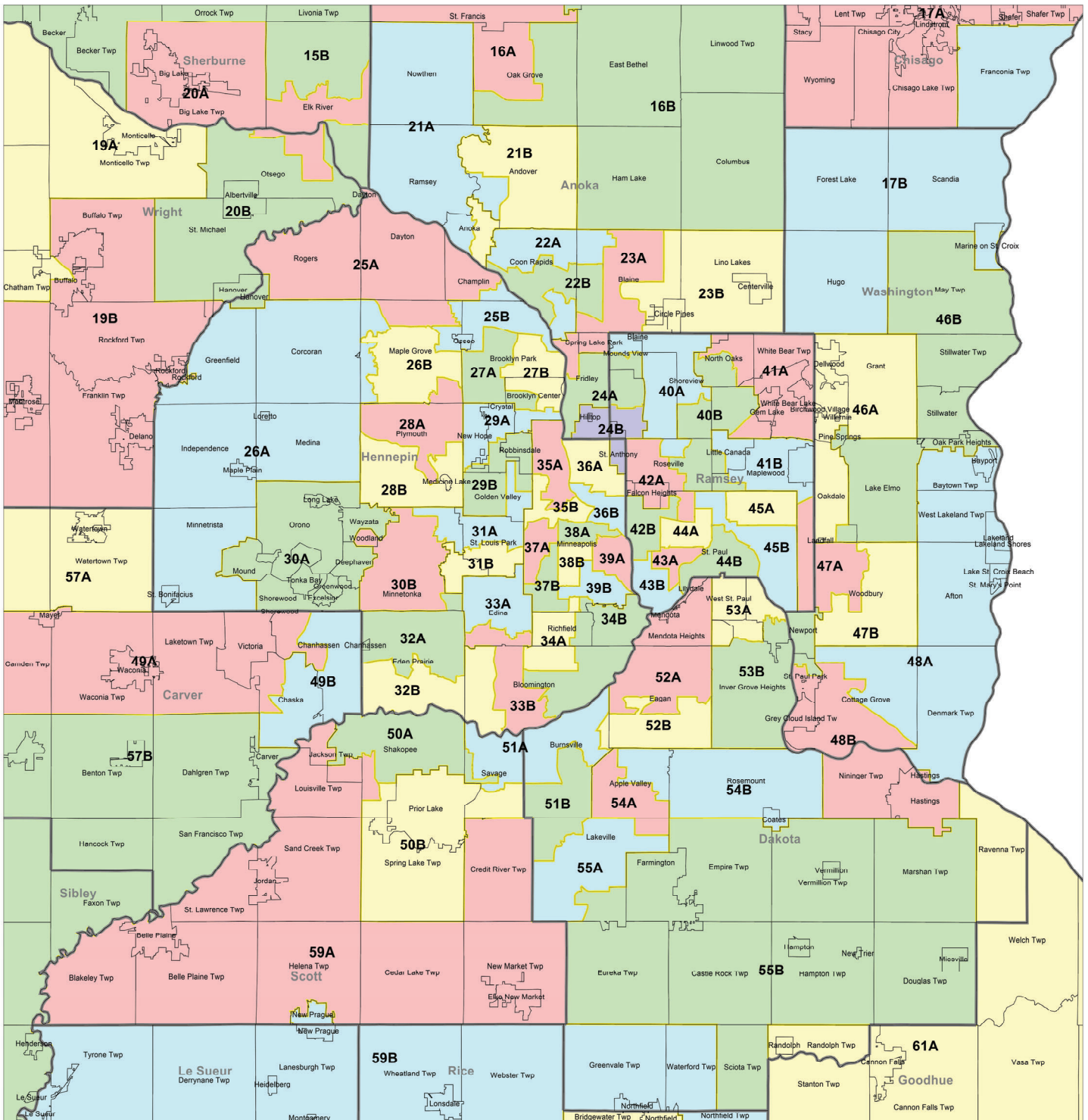
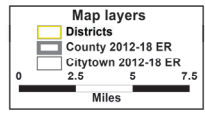
House Plan 2022 PW L02H 2018 State Demographer Population Estimate



10-CV-21-127

House Plan 2022 PW L02H 2018 State Demographer Population Estimate

District Labels
District



10-CV-21-127

Population Summary

Saturday, February 6, 2021

3:48 PM

Overall Range:			3.98 Percent	1,674 Persons
Largest District:	42,839	Deviation:	1.97 Percent	828 Persons
Smallest District:	41,165	Deviation:	-2.01 Percent	-846 Persons
		Mean Deviation:	0.85 Percent	358 Persons
		Standard Deviation:	429	428.91 Persons
Ideal District:	42,011			

District	Population	Deviation	% Devn.
01A	42,161	150	0.36%
01B	42,133	122	0.29%
02A	42,550	539	1.28%
02B	41,612	-399	-0.95%
03A	42,090	79	0.19%
03B	42,698	687	1.64%
04A	41,637	-374	-0.89%
04B	42,384	373	0.89%
05A	42,178	167	0.40%
05B	41,931	-80	-0.19%
06A	41,833	-178	-0.42%
06B	41,822	-189	-0.45%
07A	41,600	-411	-0.98%
07B	41,538	-473	-1.13%
08A	41,968	-43	-0.10%
08B	42,139	128	0.30%
09A	42,064	53	0.13%
09B	41,633	-378	-0.90%
10A	41,257	-754	-1.79%
10B	42,824	813	1.94%
11A	41,479	-532	-1.27%
11B	41,881	-130	-0.31%
12A	42,655	644	1.53%
12B	41,670	-341	-0.81%
13A	41,842	-169	-0.40%
13B	42,050	39	0.09%
14A	41,894	-117	-0.28%
14B	41,382	-629	-1.50%
15A	41,325	-686	-1.63%
15B	42,326	315	0.75%
16A	41,999	-12	-0.03%

District	Population	Deviation	% Devn.
16B	42,142	131	0.31%
17A	41,996	-15	-0.04%
17B	42,559	548	1.30%
18A	42,365	354	0.84%
18B	42,181	170	0.40%
19A	41,264	-747	-1.78%
19B	42,496	485	1.15%
20A	41,606	-405	-0.96%
20B	41,998	-13	-0.03%
21A	41,734	-277	-0.66%
21B	41,374	-637	-1.52%
22A	42,603	592	1.41%
22B	42,708	697	1.66%
23A	41,542	-469	-1.12%
23B	41,264	-747	-1.78%
24A	41,908	-103	-0.25%
24B	41,731	-280	-0.67%
25A	42,261	250	0.60%
25B	41,914	-97	-0.23%
26A	41,381	-630	-1.50%
26B	41,987	-24	-0.06%
27A	41,581	-430	-1.02%
27B	42,142	131	0.31%
28A	42,596	585	1.39%
28B	41,360	-651	-1.55%
29A	41,328	-683	-1.63%
29B	42,699	688	1.64%
30A	42,387	376	0.90%
30B	42,114	103	0.25%
31A	42,124	113	0.27%
31B	42,347	336	0.80%
32A	41,500	-511	-1.22%
32B	42,698	687	1.64%
33A	42,232	221	0.53%
33B	42,142	131	0.31%
34A	42,198	187	0.45%
34B	41,172	-839	-2.00%
35A	42,422	411	0.98%
35B	42,066	55	0.13%
36A	41,857	-154	-0.37%
36B	42,425	414	0.99%
37A	41,405	-606	-1.44%
37B	42,797	786	1.87%

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District	Population	Deviation	% Devn.
38A	42,083	72	0.17%
38B	42,347	336	0.80%
39A	41,366	-645	-1.54%
39B	42,389	378	0.90%
40A	42,413	402	0.96%
40B	42,422	411	0.98%
41A	42,460	449	1.07%
41B	42,596	585	1.39%
42A	41,672	-339	-0.81%
42B	42,268	257	0.61%
43A	41,772	-239	-0.57%
43B	41,454	-557	-1.33%
44A	41,685	-326	-0.78%
44B	42,268	257	0.61%
45A	42,227	216	0.51%
45B	42,233	222	0.53%
46A	42,532	521	1.24%
46B	42,069	58	0.14%
47A	41,728	-283	-0.67%
47B	42,550	539	1.28%
48A	41,402	-609	-1.45%
48B	42,202	191	0.45%
49A	42,839	828	1.97%
49B	41,165	-846	-2.01%
50A	42,607	596	1.42%
50B	41,283	-728	-1.73%
51A	42,190	179	0.43%
51B	42,055	44	0.10%
52A	42,198	187	0.45%
52B	42,715	704	1.68%
53A	41,704	-307	-0.73%
53B	41,952	-59	-0.14%
54A	41,507	-504	-1.20%
54B	42,447	436	1.04%
55A	41,882	-129	-0.31%
55B	41,578	-433	-1.03%
56A	41,401	-610	-1.45%
56B	42,729	718	1.71%
57A	42,195	184	0.44%
57B	41,390	-621	-1.48%
58A	41,941	-70	-0.17%
58B	42,648	637	1.52%
59A	41,593	-418	-0.99%

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District	Population	Deviation	% Devn.
59B	42,198	187	0.45%
60A	42,294	283	0.67%
60B	41,874	-137	-0.33%
61A	42,525	514	1.22%
61B	41,846	-165	-0.39%
62A	41,871	-140	-0.33%
62B	42,045	34	0.08%
63A	42,030	19	0.05%
63B	41,946	-65	-0.15%
64A	42,086	75	0.18%
64B	42,046	35	0.08%
65A	41,283	-728	-1.73%
65B	41,655	-356	-0.85%
66A	41,685	-326	-0.78%
66B	42,538	527	1.25%
67A	42,310	299	0.71%
67B	41,866	-145	-0.35%

State Total: 5,629,416

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Plaintiffs' Exhibit D

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A bill for an act

relating to redistricting; establishing a Redistricting Advisory Commission to draw congressional and legislative districts for the 2022 elections; establishing redistricting process and districting principles for congressional and legislative plans; assigning duties to the Legislative Coordinating Commission; proposing an amendment to the Minnesota Constitution, article IV, section 3, to transfer from the legislature to an independent redistricting commission responsibility for prescribing the boundaries of congressional and legislative districts after 2022; appropriating money; amending Minnesota Statutes 2022, section 2.032, subdivisions 1, as added if enacted, 10, as added if enacted; 2.034, subdivision 9, as added if enacted, and by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 2.

ARTICLE 1

REDISTRICTING ADVISORY COMMISSION

Section 1. [2.032] REDISTRICTING ADVISORY COMMISSION.

Subdivision 1. **Duties; membership.** In each year ending in one, the Redistricting Advisory Commission is created to draw the boundaries of congressional and legislative districts in accordance with the principles established in section 2.035. The commission consists of nine members: eight voting members and a nonvoting chair.

Subd. 2. **Appointment.** (a) By January 15 of each year ending in one, the majority and minority leaders of the senate and the speaker and minority leader of the house of representatives shall each appoint two commissioners. The appointments must, to the extent practical, reflect the geographic and demographic diversity of this state. Demographic diversity includes, but is not limited to, age, gender, race, language, ethnic heritage, and socioeconomic status. If any of the four leaders fails to make an appointment by the deadline, the supreme court must fill the vacancy by January 22 of that year. By February 1 of that year, the eight appointed commissioners must

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1 meet and, by a vote of at least six commissioners, choose the ninth commissioner. The ninth
2 commissioner must chair meetings of the commission but not vote on commission decisions.

3 (b) Notwithstanding paragraph (a), in 2021 only, after this section is effective, the first
4 appointments must be made within two weeks, any appointment by the supreme court necessary
5 to fill a vacancy must be made within three weeks, and the meeting to choose the ninth
6 commissioner must be held within four weeks.

7 Subd. 3. **Disqualifications.** (a) To be eligible to serve as a commissioner, a person must not:

8 (1) be ineligible to vote in this state;

9 (2) be under a contract with, or serving as a consultant or staff to, or who have an immediate
10 family relationship with the governor, a member of the legislature, or a member of Congress;

11 (3) have been a public official, as defined in section 10A.01, subdivision 35, during the six
12 years immediately preceding appointment, unless the person is a retired judge of the district courts
13 of this state who has not served in a party-designated or party-endorsed position, such as legislator,
14 and has not been disciplined by the supreme court or the Board on Judicial Standards; or

15 (4) have done any of the following, nor have an immediate family member who has done any
16 of the following, during the six years immediately preceding appointment or while serving as a
17 commissioner:

18 (i) been appointed to, elected to, or a candidate for federal or state office;

19 (ii) served as an officer, employee, or paid consultant of a political party or of the campaign

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1 committee of a candidate for elective federal or state office;

2 (iii) served as an elected or appointed member of a political party's state committee, as defined

3 in section 10A.01, subdivision 36, or as a delegate to a national convention of a political party;

4 (iv) registered as a lobbyist, registrant, or client with the federal government under the

5 Lobbying Disclosure Act of 1995, United States Code, title 2, chapter 26, or as a lobbyist or

6 principal with the Campaign Finance and Public Disclosure Board under chapter 10A;

7 (v) served as paid congressional or legislative staff; or

8 (vi) been found by the Campaign Finance and Public Disclosure Board to have violated

9 section 10A.27.

10 (c) For purposes of this subdivision, "immediate family" means a sibling, spouse, parent or

11 stepparent, child or stepchild, or in-law.

12 (d) While in office, a commissioner must not campaign for elective office or actively

13 participate in or contribute to a political campaign.

14 Subd. 4. **Removal; filing vacancies.** (a) After notice and a hearing, by a vote of at least six of

15 its members, the commission may remove a commissioner for reasons that would justify recall of a

16 state official under section 211C.02.

17 (b) The commission must remove a commissioner who participates in a communication that

18 violates subdivision 8 or 9.

19 (c) Except for vacancies filled by the supreme court, vacancies on the commission must be

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1 filled within 30 days after the vacancy occurs by the appointing authority that made the initial
2 appointment.

3 Subd. 5. **Compensation and expenses.** Commissioners must be compensated for their
4 commission activity as provided in section 15.059, subdivision 3.

5 Subd. 6. **Code of conduct.** A commissioner is a public officer governed by sections 609.415
6 to 609.475.

7 Subd. 7. **Lobbyist registration.** Action of the commission to submit a redistricting plan to
8 the legislature is an administrative action for purposes of section 10A.01, subdivisions 2 and 21,
9 requiring certain persons to register as a lobbyist.

10 Subd. 8. **Expiration.** (a) The commission expires when both congressional and legislative
11 redistricting plans have been enacted into law or adopted by court order and any legal challenges
12 to the plans have been resolved.

13 (b) If use of a plan is enjoined after the commission expires, the court enjoining the plan may
14 direct that a new commission be appointed under this section to draft a remedial plan for
15 presentation to the legislature in accordance with deadlines established by order of the court.

16 Sec. 2. **[2.034] REDISTRICTING PROCESS.**

17 Subdivision 1. **Open records.** The commission is subject to chapter 13, except that a plan is
18 not public data until it has been submitted to the commission for its consideration.

19 Subd. 2. **Open meetings.** The commission is subject to chapter 13D.

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1 Subd. 3. **Internal communications.** (a) The commission may designate one or more
2 commission staff to communicate with commissioners regarding administrative matters and may
3 define the scope of the permitted communication.

4 (b) A commissioner must not direct, request, suggest, or recommend to commission staff an
5 interpretation of a districting principle or a change to a district boundary, except during an open
6 meeting of the commission.

7 Subd. 4. **External communications.** (a) Commissioners and commission staff must not
8 communicate with anyone outside the commission regarding the content of a plan, except at an
9 open meeting of the commission or when soliciting or receiving written communications
10 regarding a plan that is the subject of a public hearing.

11 (b) The following external communications are expressly permitted:

12 (1) a communication of general information about the commission, proceedings of the
13 commission, or redistricting, including questions or requests for information and responses to or
14 from commission staff;

15 (2) testimony or documents submitted by a person at a public hearing;

16 (3) a report submitted under subdivision 5; and

17 (4) a communication required by chapter 13 or chapter 13D.

18 Subd. 5. **Reports of improper activity.** (a) Commission staff shall report to the commission
19 any attempt to exert improper influence over the staff in drafting plans.

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1 (b) A commissioner or commission staff shall report to the commission any prohibited
2 communication. The report must include a copy of a written communication or a written
3 summary of an oral communication.

4 (c) A report under this subdivision must be made no later than three business days after the
5 attempt to exert improper influence or the prohibited communication, or before the next meeting
6 of the commission, whichever is earlier. If special circumstances make this requirement
7 impractical, the report must be made at the following meeting of the commission.

8 Subd. 6. **Plans submitted to commission.** The commission must adopt a schedule for
9 interested persons to submit proposed plans to the commission and to respond to plans proposed
10 by others. The commission must adopt standards to govern the format of plans submitted to it. The
11 schedule and standards adopted by the commission under this subdivision are not rules for purposes
12 of chapter 14, and section 14.386 does not apply.

13 Subd. 7. **Public hearings.** (a) The commission must hold at least one public hearing in each
14 congressional district before proposing the first congressional and legislative redistricting plans.
15 The hearings must be conducted in the congressional districts used for the preceding
16 congressional election. The primary purpose of the first hearing is to provide residents of that
17 congressional district an opportunity to advise the commission on how to define communities of
18 interest.

19 (b) The commission must hold another hearing in each congressional district after proposing
20 a preliminary congressional or legislative plan but before it is adopted. The primary purpose of
21 the additional public hearing is to provide residents of that congressional district an opportunity to

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1 advise the commission on how well the plan succeeds at meeting the goals identified at the first
2 public hearing and to make any other comments on the plan that residents desire.

3 (c) The commission must publish on its website the proposed preliminary draft and its
4 accompanying reports at least two weeks before the additional public hearing and must accept
5 comments on the plan for at least two weeks after the hearing and before adopting a final plan.

6 (d) The commission must make reasonable efforts to allow the public to submit written
7 testimony before a hearing and make copies of that testimony available to all commissioners and
8 the public at the hearing. The commission must publish copies of written testimony on its website
9 as soon as practical.

10 (e) All hearings must be video and audio recorded. The commission must provide access on
11 its website to a video and audio live stream of each hearing and an archive of minutes and
12 recordings of past hearings.

13 Subd. 8. **Proposal and adoption of plans.** Passage of a motion to propose a preliminary plan
14 or adopt a final plan requires the affirmative vote of at least six commissioners.

15 Subd. 9. **Deadlines.** (a) By November 1, 2021, and September 1 of each year ending in one
16 thereafter, the commission must adopt and submit to the legislature plans for congressional and
17 legislative districts. If the commission fails to submit a plan by the deadline, the supreme court
18 must adopt a replacement for the missing plan by 25 weeks before the state primary in the year
19 ending in two.

20 (b) Each plan submitted to the legislature must be accompanied by a report summarizing

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1 information and testimony received by the commission in the course of the hearings and including any
2 comments and conclusions the commissioners deem appropriate on the information and testimony
3 received at the hearings or otherwise presented to the commission.

4 (c) The legislature intends that a bill be introduced to enact each plan and that the bill be
5 brought to a vote in either the senate or the house of representatives, under a procedure or rule
6 permitting no amendments except those of a purely corrective nature, not less than one week after
7 the report of the commission was received and made available to the members of the legislature. The
8 legislature further intends that the bill be brought to a vote in the second house within one week
9 after final passage in the first house under a similar procedure or rule. If either the senate or the
10 house of representatives fails to approve a first plan submitted by the commission, within one
11 week after the failure the secretary of the senate or the chief clerk of the house, as applicable, must
12 notify the commission of the failure, including any information that the senate or house may direct by
13 resolution regarding reasons why the plan was not approved. If the governor vetoes a plan, the veto
14 message serves as the notice.

15 (d) The commission shall submit a second plan within two weeks after it received the notice.
16 The legislature intends that a second plan be considered by the legislature under the same
17 procedure as provided for a first plan under paragraph (c).

18 (e) If the commission fails to submit a plan by either of these two deadlines, the legislature may
19 proceed to enact a plan in place of the missing plan without waiting for the commission to submit a
20 plan.

21 (f) If the secretary of the senate or the chief clerk of the house notifies the commission that a

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1 second plan has failed, or the governor vetoes a second plan, the commission shall submit a third
2 plan within two weeks after it received the notice. The third plan is subject to the same procedure as
3 provided for first and second plans under paragraph (c), except that amendments are not limited.

4 Sec. 3. **[2.036] DISTRICTING PRINCIPLES.**

5 Subdivision 1. **Application.** The principles in this section apply to congressional and
6 legislative districts.

7 Subd. 2. **Population equality.** (a) Congressional districts must be as nearly equal in total
8 population as practicable without dividing a precinct into more than one district.

9 (b) Legislative districts must be substantially equal in total population. The population of a
10 legislative district must not deviate from the ideal by more than one percent, plus or minus, or two
11 percent, if the plan does not split a precinct.

12 Subd. 3. **Minority representation.** Districts must not be drawn with the intent or effect to
13 deny or abridge the equal opportunity of racial or language minorities to participate in the
14 political process or to diminish their ability to elect representatives of their choice.

15 Subd. 4. **Convenience and contiguity.** The districts must be composed of convenient
16 contiguous territory that allows for easy travel throughout the district. Contiguity by water is
17 sufficient if the water is not a serious obstacle to travel within the district. Districts with areas that
18 touch only at a point are not contiguous.

19 Subd. 5. **Political subdivisions.** A county, city, town, or precinct must not be divided into
20 more than one district except as necessary to meet equal population requirements or to form

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1 districts that are composed of convenient, contiguous, and compact territory. When a county, city,
2 town, or precinct must be divided into more than one district, it must be divided into as few districts
3 as possible.

4 Subd. 6. **Compactness.** Districts must be reasonably compact as determined by more than one
5 measure of compactness that is accepted in political science and statistics literature.

6 Subd. 7. **American Indian reservations.** A federally recognized American Indian
7 reservation must not be divided into more than one district except as necessary to meet equal
8 population requirements or to form districts that are composed of convenient, contiguous, and
9 compact territory. When a federally recognized American Indian reservation must be divided into
10 more than one district, it must be divided into as few districts as possible.

11 Subd. 8. **Communities of interest.** Districts should attempt to preserve identifiable
12 communities of interest. A community of interest may include an ethnic or language group or any
13 group with shared experiences and concerns, including but not limited to geographic,
14 governmental, regional, social, cultural, historic, socioeconomic, occupational, trade, or
15 transportation interests. Communities of interest do not include relationships with political parties,
16 incumbents, or political candidates.

17 Subd. 9. **Incumbents.** A district or plan must not be drawn with the intent to protect or defeat
18 an incumbent.

19 Subd. 10. **Partisanship.** A district or plan must not be drawn with the intent or effect to
20 unduly favor or disfavor a political party. The commission must use judicial standards and the

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1 best available scientific and statistical methods, including more than one measure of partisan
2 effect, to assess compliance with this principle.

3 Subd. 11. **Competition.** Districts should be drawn to encourage electoral competition. A
4 district is competitive if the plurality of the winning political party in the territory encompassed
5 by the district, based on statewide state and federal partisan general election results during the last
6 ten years, has historically been no more than eight percent.

7 Subd. 12. **Numbering.** (a) Congressional district numbers must begin with district one in the
8 southeast corner of the state and end with the district with the highest number in the northeast
9 corner of the state.

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

13 Subd. 13. **Priority of principles.** Where it is not possible to fully comply with the principles
14 in this section, a redistricting plan must give priority to those principles in the order in which they
15 are listed, except to the extent that doing so would violate federal law.

16 Sec. 4. **[2.038] REDISTRICTING SUPPORT.**

17 Subdivision 1. **Administrative support.** The Legislative Coordinating Commission must
18 provide administrative support to any redistricting commission created by law. In each year
19 ending in one, the director of the Legislative Coordinating Commission must convene the first
20 meeting of any redistricting commission created by law.

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1 Subd. 2. **Database.** (a) For purposes of creating congressional and legislative districts in this
2 state, the geographic areas and population counts used in maps, tables, and legal descriptions of the
3 districts must be those used by the Geographic Information Services (GIS) Office of the Legislative
4 Coordinating Commission. The population counts must be the block population counts provided
5 to the state under Public Law 94-171 after each decennial census, subject to correction of any
6 errors acknowledged by the United States Census Bureau.

7 (b) The database used by the commission to draw plans may include election results used to
8 test the partisan bias of a plan, but must not include data on voter registration or voting history. It
9 must not include campaign finance data subject to reporting or regulation under chapter 10A, 26
10 United States Code subtitle H, or 52 United States Code chapter 301; or presidential primary
11 political party selection data under section 201.091, subdivision 4a.

12 (c) The GIS Office must make the redistricting database available to the public on its website.

13 Subd. 3. **Partisan index.** The GIS Office, in consultation with the legislative caucus leaders,
14 shall develop an index of election results to use in measuring the partisanship of a plan.

15 Subd. 4. **Publication; consideration of plans.** A congressional or legislative redistricting plan
16 must not be considered for adoption by the commission until the redistricting plan's block
17 equivalency file has been submitted to the GIS Office in a form prescribed by the GIS Office and
18 the plan has been published on the GIS Office website. The block equivalency file must show the
19 district to which each census block has been assigned.

20 Subd. 5. **Reports.** Publication of a plan must include the reports described in this subdivision.

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1 (1) A population equality report, listing each district in the plan, its population as the total
2 number of persons, and deviations from the ideal as both a number of persons and as a percentage
3 of the population. The report must also show the populations of the largest and smallest districts
4 and the overall range of deviations of the districts.

5 (2) A minority representation report, listing for each district the voting-age population of each
6 racial or language minority and the total minority voting-age population, according to the
7 categories recommended by the United States Department of Justice. The report must also
8 highlight each district with 30 percent or more total minority voting-age population.

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

12 (4) A political subdivision splits report, listing any split counties, cities, towns, unorganized
13 territories, and precincts, and the district to which each portion of a split subdivision is assigned. The
14 report must also show the number of subdivisions split and the number of times a subdivision is
15 split.

16 (5) A compactness report, listing for each district the results of more than one measure of
17 compactness that is accepted in political science and statistics literature, as chosen by the GIS
18 Office. The report must also state for all the districts in a plan the sum of its perimeters and the
19 mean of its other measurements.

20 (6) An American Indian reservation splits report, listing any split American Indian

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1 reservation and the district to which each portion of a split reservation is assigned. The report
2 must also show the number of reservations split and the number of times a reservation is split.

3 (7) If the sponsor of a plan asserts that it preserves a community of interest, maps of the plan
4 must include a layer identifying the census blocks within the community of interest. The plan
5 must be accompanied by a description of the research process used to identify the community of
6 interest and a communities of interest report listing any district or districts to which the
7 community of interest has been assigned. The report must also show the number of communities
8 of interest that are split and the number of times a community of interest is split.

9 (8) A core constituencies report, listing for each district the total population, voting-age
10 population, and percentage of the population taken from the territory of a prior district, and the
11 number of persons that were moved into the district and thus not part of its core. The report must
12 also show the number of districts changed from a prior district, the number of persons moved
13 from one district to another, and the average percentage core of a prior district's voting-age
14 population for all districts in the plan.

15 (9) An incumbents report, listing for each district any incumbents residing in it, their political
16 party, and the number of the prior district in which they resided. The report must also show the
17 number of incumbents paired, whether they have been paired with an incumbent of their own
18 party or of another party, and the number of open seats.

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

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1 in this state but must not recently have been a public official or deeply engaged in partisan
2 politics. A commissioner may not be a candidate for a legislative district whose boundaries were
3 drawn by a commission on which they served. The members may be subject to additional
4 qualifications as provided by law. By September 15 of each year ending in zero, the majority and
5 minority leaders of the senate and the speaker and minority leader of the house of representatives
6 for the session beginning in the year ending in zero must each appoint two commissioners. The
7 appointments must, to the extent practical, reflect the geographic and demographic diversity of
8 this state. If any of the four leaders fails to make an appointment by the deadline, the supreme
9 court must fill the vacancy by September 22 of that year. By October 1 of that year, the eight
10 appointed commissioners must meet and, by a vote of at least six commissioners, choose the ninth
11 commissioner. The ninth commissioner must chair commission meetings but not vote on
12 commission decisions.

13 (b) The legislature must appropriate money to enable the commission to carry out its duties.

14 (c) After notice and a hearing, by a vote of at least six of its members, the commission may
15 remove a commissioner for reasons that would justify recall of a state official other than a judge
16 under article VIII, section 6. Except for vacancies filled by the supreme court, vacancies on the
17 commission must be filled within 30 days after the vacancy occurs by the appointing authority
18 that made the initial appointment.

19 (d) The commission must hold at least one public hearing in each congressional district
20 before proposing the first congressional and legislative redistricting plans. The commission must
21 hold another hearing in each congressional district after proposing a preliminary congressional or

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1 legislative plan but before it is adopted.

2 (e) Passage of a motion to propose a preliminary plan or adopt a final plan requires the
3 affirmative vote of at least six commissioners.

4 (f) By September 1 of each year ending in one, the commission must adopt, deposit in the
5 office of the secretary of state, and submit to the legislature plans prescribing the bounds of
6 congressional and legislative districts. If the commission fails to submit a plan by the deadline,
7 the supreme court must adopt a replacement for the missing plan by a date provided by law. The
8 secretary of state may correct errors in plan boundaries as provided by law.

9 (g) The legislature may amend a redistricting plan adopted by the commission, but must do so
10 by a two-thirds vote of the members elected to each house. The amendment must have passed
11 both houses and been deposited in the office of the secretary of state by the end of the 30th
12 calendar day of the first session convened after the commission adopted the plan. The plan
13 adopted by the commission, with any amendment approved by the legislature, becomes a law
14 upon approval of the amendment and its deposit in the office of the secretary of state or after
15 expiration of the time provided for legislative amendment, whichever occurs first.

16 (h) A redistricting plan and any amendment to a plan are not subject to sections 23 or 24 of
17 this article.

18 (i) The commission expires when both congressional and legislative redistricting plans have
19 been enacted into law or adopted by court order and any legal challenges to the plans have been
20 resolved. If use of a plan is enjoined after the commission expires, the court enjoining the plan

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1 may direct that a new commission be appointed under this section to draft a remedial plan for
2 presentation to the secretary of state in accordance with deadlines established by order of the
3 court.

4 (j) ~~Senators shall~~ must be chosen by single districts of convenient contiguous territory.

5 (k) ~~No A~~ representative district ~~shall~~ must not be divided in the formation of a senate district.

6 (l) The senate districts ~~shall~~ must be numbered in a regular series.

7 (m) Additional districting principles may be provided by law, but have a lower priority than those
8 in this section.

9 Sec. 2. **SUBMISSION TO VOTERS.**

10 The proposed amendment must be submitted to the people at the 2022 general election. The
11 question submitted must be:

12 “Shall the Minnesota Constitution be amended to transfer from the legislature to an
13 independent redistricting commission the power to draw congressional and legislative districts?

14 Yes

15 No”

16 **ARTICLE 3**

17 **CONFORMING LEGISLATION**

18 Section 1. Minnesota Statutes 2022, section 2.032, subdivision 1, if enacted, is amended to

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1 read:

2 Subdivision 1. **Duties; membership.** In each year ending in one, the Redistricting Advisory
3 Commission is created by the Minnesota Constitution, article IV, section 3, paragraph (a), to draw
4 the boundaries of congressional and legislative districts in accordance with the principles
5 established in section 2.035. The commission consists of nine members: eight voting members
6 and a nonvoting chair.

7 Sec. 2. Minnesota Statutes 2022, section 2.032, subdivision 3, if enacted, is amended to read:

8 Subd. 3. **Disqualifications.** (a) To be eligible to serve as a commissioner, a person must not:

9 (1) be ineligible to vote in this state;

10 (2) be under a contract with, or serving as a consultant or staff to, or who have an immediate
11 family relationship with the governor, a member of the legislature, or a member of Congress;

12 (3) have served as a public official, as defined in section 10A.01, subdivision 35, during the
13 six years immediately preceding appointment, unless the person is a retired judge of the district
14 courts of this state who has not served in a party-designated or party-endorsed position, such as
15 legislator, and has not been disciplined by the supreme court or the Board on Judicial Standards;
16 or

17 (4) have done any of the following during the six years immediately preceding appointment
18 or while serving as a commissioner:

19 (i) been appointed to, elected to, or a candidate for federal or state office;

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1 (ii) served as an officer, employee, or paid consultant of a political party or of the campaign
2 committee of a candidate for elective federal or state office;

3 (iii) served as an elected or appointed member of a political party's state committee, as
4 defined in section 10A.01, subdivision 36, or as a delegate to a national convention of a political
5 party;

6 (iv) registered as a lobbyist, registrant, or client with the federal government under the
7 Lobbying Disclosure Act of 1995, United States Code, title 2, chapter 26, or as a lobbyist or
8 principal with the Campaign Finance and Public Disclosure Board under chapter 10A;

9 (v) served as paid congressional or legislative staff; or

10 (vi) been found by the Campaign Finance and Public Disclosure Board to have violated
11 section 10A.27.

12 (c) For purposes of this subdivision, "immediate family" means a sibling, spouse, parent or
13 stepparent, child or stepchild, or in-law.

14 (d) While in office, a commissioner must not campaign for elective office or actively
15 participate in or contribute to a political campaign.

16 (e) A commissioner may not be a candidate for a legislative district whose boundaries were
17 drawn by a commission on which they served.

18 Sec. 3. Minnesota Statutes 2022, section 2.032, subdivision 5, if enacted, is amended to read:

19 Subd. 5. **Compensation and expenses.** Commissioners must be compensated for their

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1 commission activity as provided in section ~~15.059~~15.0575, subdivision 3.

2 Sec. 4. Minnesota Statutes 2022, section 2.034, subdivision 9, if enacted, is amended to read:

3 Subd. 9. **Deadlines.** (a) By September 1 of each year ending in one, the commission must
4 adopt, deposit in the office of the secretary of state, and submit to the legislature plans for
5 congressional and legislative districts. If the commission fails to submit a plan by the deadline,
6 the supreme court must adopt a replacement for the missing plan by 25 weeks before the state
7 primary in the year ending in two.

8 (b) Each plan submitted to the legislature must be accompanied by a report summarizing
9 information and testimony received by the commission in the course of the hearings and
10 including any comments and conclusions the commissioners deem appropriate on the information
11 and testimony received at the hearings or otherwise presented to the commission.

12 ~~(c) The legislature intends that a bill be introduced to enact each plan and that the bill be~~
13 ~~brought to a vote in either the senate or the house of representatives, under a procedure or rule~~
14 ~~permitting no amendments except those of a purely corrective nature, not less than one week after~~
15 ~~the report of the commission was received and made available to the members of the legislature.~~
16 ~~The legislature further intends that the bill be brought to a vote in the second house within one~~
17 ~~week after final passage in the first house under a similar procedure or rule. If either the senate or~~
18 ~~the house of representatives fails to approve a first plan submitted by the commission, within one~~
19 ~~week after the failure the secretary of the senate or the chief clerk of the house, as the case may~~
20 ~~be, must notify the commission of the failure, including any information that the senate or house~~
21 ~~may direct by resolution regarding reasons why the plan was not approved. If the governor vetoes~~

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1 ~~a plan, the veto message serves as the notice.~~

2 ~~(d) The commission shall submit a second plan within two weeks after it received the notice,~~
3 ~~unless by then the legislature has adjourned the regular session in the year ending in one, in which~~
4 ~~case the second plan must be submitted to the legislature at the opening of its regular session in~~
5 ~~the year ending in two. The legislature intends that a second plan be considered by the legislature~~
6 ~~under the same procedure as provided for a first plan under paragraph (b).~~

7 ~~(e) If the commission fails to submit a plan by either of these two deadlines, the legislature~~
8 ~~may proceed to enact a plan in place of the missing plan without waiting for the commission to~~
9 ~~submit a plan.~~

10 ~~(f) If the secretary of the senate or the chief clerk of the house notifies the commission that a~~
11 ~~second plan has failed, or the governor vetoes a second plan, the commission shall submit a third~~
12 ~~plan within two weeks after it received the notice, unless by then the legislature has adjourned the~~
13 ~~regular session in the year ending in one, in which case the third plan must be submitted to the~~
14 ~~legislature at the opening of its regular session in the year ending in two. The third plan is subject~~
15 ~~to the same procedure as provided for first and second plans under paragraph (b), except that~~
16 ~~amendments are not limited.~~

17 Sec. 5. Minnesota Statutes 2022, section 2.034, if enacted, is amended by adding a
18 subdivision to read:

19 Subd. 10. **Amendments.** After the commission submits a plan to the legislature, the
20 legislature has 30 calendar days during the next regular or special session to amend the

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1 commission's plan. A legislative amendment to a commission plan must not move more than one-
2 half percent of the population of a congressional or legislative district to another district and must
3 be approved by the affirmative vote of two-thirds of the members elected to each house. The
4 legislature must deposit the amended plan in the Office of the Secretary of State.

5 Sec. 6. Minnesota Statutes 2022, section 2.034, if enacted, is amended by adding a
6 subdivision to read:

7 Subd. 11. **Effective date.** The plan adopted by the commission, with any amendment
8 approved by the legislature, becomes a law upon approval of the amendment or after expiration of
9 the time provided for legislative amendment, whichever occurs first, and is effective for the next
10 congressional and legislative elections held in the year ending in two.

11 Sec. 7. **EFFECTIVE DATE.**

12 This article is effective upon adoption of the constitutional amendment proposed by article 2.

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Redistricting Commission

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Summary

Peter S. Wattson¹

Overview

This bill would create a redistricting advisory commission of nine members to draw the boundaries of congressional and legislative districts. Each of the four caucus leaders would appoint two voting members. Those eight would choose the ninth member, the nonvoting chair. The redistricting plans would be presented to the legislature by November 1, 2021 to enact plans to govern the 2022 elections. In later decades, the deadline would be September 1.

The bill would place on the ballot in November 2022 a constitutional amendment to transfer from the legislature to the commission the power to draw congressional and legislative districts in future decades. Plans would become effective on filing with the secretary of state, subject only to limited amendments by the legislature.

The bill would enact a statutory process and principles to govern how redistricting plans are drawn. The principles reflect the [principles adopted by the five-judge state court special redistricting panel](#) that drew congressional and legislative plans in 2011 in *Hippert v. Ritchie*, No. A11-152, as well as districting principles used by courts or adopted by constitutional amendments in other states since that time.

Appointment of Members

To be eligible for appointment, a person must be eligible to vote in this state but must not have been a public official or deeply engaged in partisan politics during the six years before appointment, except that a retired state district court judge who had not served in a party-designated or party-endorsed position and had not been disciplined by the supreme court or the board on judicial standards would not be subject to the six-year lookback. If the constitutional amendment is adopted, a commissioner would be prohibited from being a candidate for a legislative district whose boundaries were drawn by their commission. Appointments by the caucus leaders must, to the extent practical, reflect the geographic and demographic diversity of this state.

¹Peter S. Wattson is beginning his sixth decade of redistricting. He served as Senate Counsel to the Minnesota Senate from 1971 to 2011 and as General Counsel to Governor Mark Dayton from January to June 2011. He assisted with drawing, attacking, and defending redistricting plans throughout that time. He has written extensively on redistricting law. Since retiring in 2011, he has participated in redistricting lawsuits in Arkansas, Kentucky, and Florida, and lectured regularly at NCSL seminars on redistricting.

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The four caucus leaders would make their appointments by January 15 of the year ending in one. (In 2021, the deadline would be two weeks after final enactment of the law.) A vacancy created by a leader's failure to make an appointment by the deadline would be filled by the supreme court by January 22 (three weeks after enactment in 2021). The first eight commissioners would choose the nonvoting chair and convene their first meeting by February 1 (four weeks after enactment in 2021).

Removal; Vacancies

The commission, by a vote of at least six members, could remove a member for cause. A vacancy would be filled by the appointing authority.

Compensation

Commissioners would be paid a per diem and expenses like members of an advisory board, and would receive administrative support from the legislative coordinating commission.

Code of Conduct

In performing their duties, commissioners would be considered public officers within the meaning of §§ [609.415](#) to 609.4751, which govern such crimes as bribery and misconduct of a public officer.

Expiration

The commission would expire when both congressional and legislative redistricting plans were enacted into law or adopted by court order and any legal challenges to the plans had been resolved. The commission could be reconstituted by court order if a plan were enjoined after the commission had expired, so a new plan was needed.

Openness

The records, meetings, and communications of the commission would be open to the public, except that a plan would not be public until submitted to the commission for its consideration. Communications between the commission and others regarding the content of a plan would be limited to open meetings of the commission and written communications regarding a plan that is the subject of a public hearing.

Public Hearings

The commission would be required to hold at least one public hearing in each congressional district before proposing its first congressional and legislative plans and another hearing in each congressional district after proposing but before adopting a plan.

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Vote Required

Passage of a motion to propose a preliminary plan or adopt a final plan would require the affirmative vote of at least six commissioners.

Deadlines

(a) Advisory Commission

The advisory commission would submit to the legislature for its approval or rejection, but not for modification, plans for congressional and legislative districts by September 1 of the year ending in one (November 1 in 2021). If a plan submitted by the commission were rejected by the legislature, the commission would submit a second plan for approval or rejection, but not for modification, within two weeks. If a second plan were rejected by the legislature, the commission would submit a third plan within two weeks, which might be accepted, rejected, or modified by the legislature.

(b) Independent Commission

If the constitutional amendment is adopted at the 2022 general election, the commission would have until September 1 of the year ending in one to deposit its plans in the office of the secretary of state and also submit them to the legislature. The plans would not be subject to veto by the governor. If the commission missed the deadline for either plan, the supreme court would have until 25 weeks before the state primary in the year ending in two to adopt a replacement for the missing plan.

Amendment of Plans

If the constitutional amendment is adopted, the legislature would have the first 30 calendar days of its next session to amend a plan filed with the secretary of state, but only by a two-thirds vote of the members elected to each house. The amendment must not move more than one-half percent of the population of a congressional or legislative district. The current authority of the secretary of state to correct errors in plan boundaries would continue.

Effective Dates

Article 1, which creates the redistricting advisory commission, is effective the day following final enactment. The advisory commission would begin meeting four weeks after enactment.

Articles 2 and 3 are effective upon adoption of the constitutional amendment. Its fate may be known on election night in November 2022, but will not be official until the state canvass has been completed later that month or in December.

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Structure of the Bill

Article 1 is the redistricting advisory commission.

Article 2 is the constitutional amendment. It would transfer responsibility for drawing congressional and legislative districts from the legislature to the commission, which would cease to be advisory only.

Article 3 contains conforming statutory amendments to reflect the transfer of responsibilities made by the constitutional amendment.

Section-by-Section Summary

Article 1

REDISTRICTING ADVISORY COMMISSION

Section 1 [2.032] REDISTRICTING ADVISORY COMMISSION, creates the advisory commission, as described above. Additional background on some of the provisions follows.

Subdivision 2, Appointment, begins the process on January 15 of the year ending in one. (Two weeks after enactment in 2021.) The appointments must attempt to reflect the geographic and demographic diversity of the state.

Subdivision 3, Disqualifications, details what it means for a commissioner to not “recently have served as a public official or been deeply engaged in partisan politics.” The disqualifications are substantially the same as those in Rep. Klevorn’s 2019 [H.F. No. 1605](#) § 1, subd. 2(d), with several adjustments: the ten-year lookback has been shortened to six years and does not apply to a retired judge of the district courts of this state who has not served in a party-designated or party-endorsed position and has not been disciplined by the supreme court or the Board on Judicial Standards; a commissioner must not have been a public official during the lookback; the qualifications continue while serving as a commissioner; and a commissioner must not campaign for elective office or actively participate in or contribute to a political campaign while in office.

Subdivision 4, Removal; filling vacancies. A commissioner may be removed, after notice and a hearing, for reasons that would justify recall of a state official under Minn. Stat. § [211C.02](#). Those reasons are “serious malfeasance or nonfeasance during the term of office in the performance of the duties of the office or conviction during the term of office for a serious crime.” Removal would be by a vote of at least six commissioners. The vacancy would be filled by the appointing authority that made the appointment.

Subdivision 5, Compensation and expenses, provides for commissioners to be paid a per diem and expenses like members of an advisory board.

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Subdivision 6, Code of Conduct, specifies that the criminal code for public officers and employees applies to all commissioners.

Subdivision 7, Lobbyist registration, requires those who are paid more than a certain amount to persuade the commission to adopt their plan to register as a lobbyist.

Subdivision 8, Expiration, allows the commission to continue in existence until any legal challenges have been resolved.

Section 2. [2.034] REDISTRICTING PROCESS.

Subdivision 1, Open records, taken from 2019 [H.F. No. 1605](#) § 1, subd. 6, subjects the commission to Minn. Stats. [ch. 13](#), the Minnesota Government Data Practices Act, except that a plan is not public data until it has been submitted to the commission for its consideration.

Subdivision 2, Open meetings, taken from 2019 [H.F. No. 1605](#) § 1, subd. 7, subjects the commission to Minn. Stats. [ch. 13D](#), the Minnesota Open Meeting Law.

Subdivision 3, Internal communications, taken from 2019 [H.F. No. 1605](#) § 1, subd. 8, with some tweaking, restricts communications between commissioners and commission staff. They may communicate on administrative matters but must not communicate about the content of a plan except at an open meeting of the commission.

Subdivision 4, External communications, also taken from 2019 [H.F. No. 1605](#) § 1, subd. 8, with some tweaking, requires that communications between the commission and outsiders regarding the content of a plan be limited to open meetings of the commission and written communications regarding a plan that is the subject of a public hearing.

Subdivision 5, Reports of improper activity, details the content of the report required in 2019 [H.F. No. 1605](#) § 1, subd. 8(c), of attempts to exert improper influence over the staff in drafting plans. The report must include a copy of a written communication or a written summary of an oral communication and be made no later than three business days after the attempt to exert improper influence or the prohibited communication, or before the next meeting of the commission, whichever is earlier.

Subdivision 6, Plans submitted to commission, requires the commission to provide a procedure for interested persons to submit plans for consideration by the commission.

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Subdivision 7, Public hearings, requires the commission to hold at least one public hearing in each current congressional district before proposing the first plans and another hearing in each congressional district after proposing a plan but before it is adopted. The commission must publish the plan on its website at least two weeks before the hearing and accept comments on the plan for at least two weeks after the hearing and before adopting a final plan. It must make reasonable efforts to allow the public to submit written testimony before a hearing, make copies of that testimony available to all commissioners and the public at the hearing, and publish copies of written testimony on its website as soon as practical. All hearings must be video and audio recorded. The commission must provide access on its website to a video and audio live stream of each hearing and an archive of minutes and recordings of past hearings.

Subdivision 8, Proposal and adoption of plans, requires the affirmative vote of at least six commissioners (which means at least two from each party) to propose or adopt a plan.

Subdivision 9, Deadlines. The commission must adopt and submit congressional and legislative plans to the legislature by September 1 of the year ending in one (November 1 in 2021).

For the advisory commission, the procedure for submitting the plans borrows heavily from the procedure set forth in Iowa Code sections [42.2](#), [42.3](#), and [42.6](#), but is slightly different because of a difference in the way the Iowa commission works.

The Iowa commission does not draw a plan; that is done by staff in the nonpartisan Iowa Legislative Services Agency. After the plan has been presented to the Iowa General Assembly, the legislative commission holds three hearings around the state on the plan, prepares a report summarizing the testimony received and making any recommendations the commission deems appropriate, and submits it to the general assembly within 14 days after the plan was received. The plan must then be brought to a vote in either the senate or the house not less than three days after the report was received.

This bill requires the Minnesota commission to hold at least one hearing in each congressional district before the first plan is proposed and another hearing after it is proposed but before it is adopted by the commission. It requires a plan submitted to the legislature to be “accompanied by a report summarizing information and testimony received by the commission in the course of the hearings and including any comments and conclusions its members deem appropriate on the information and testimony received at the hearings or otherwise presented to the commission.” It then requires the legislature to bring a bill enacting the plan to a vote in either the senate or the house of representatives not less than three days after the report was received “under a procedure or rule permitting no amendments except those of a purely corrective nature,” and gives the second house one additional week to bring the bill to a vote under a similar procedure.

This bill provides that, “If either the senate or the house of representatives fails to approve a first plan submitted by the commission, within one week after the failure the secretary of the senate or the chief clerk of the house, as applicable, must notify the commission of the failure, including any information that the senate or house may direct by resolution regarding reasons why

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the plan was not approved. If the governor vetoes a plan, the veto message serves as the notice.” This is substantially the same as the Iowa procedure. The commission then has two weeks after the date the notice was received to submit a new plan.

As in Iowa, the second and third plans, if necessary, follow the same procedure as the first plans, except that there is no restriction on amendments to third plans.

It also permits the commission to be reconstituted by order of the court if a plan is enjoined after the commission has expired. This addresses a problem that occurred in other states during the 2010s, including Pennsylvania, Virginia, and North Carolina, where plans were struck down late in the decade and needed to be redrawn. The Pennsylvania and Virginia courts redrew the plans. The North Carolina court permitted the general assembly to redraw them. This would permit the court to set a schedule for the commission to draw new plans, as necessary.

Section 3 [2.036] DISTRICTING PRINCIPLES.

This section establishes statutory principles to govern the drawing of congressional and legislative district boundaries. These are in addition to the principles in MINN. CONST. [art. IV](#), § 3, requiring that senators be chosen from single-member districts and that house districts be nested within senate districts, and in Minn. Stat. [§ 2.031](#), subd. 1, requiring that representatives be chosen from single-member districts.

The principles in this bill began with those adopted by the state court special redistricting panel in 2011. *See Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011). The derivation of the *Hippert* court’s principles is set forth in Peter S. Wattson, *Districting Principles in Minnesota Courts*,

<https://www.leg.state.mn.us/docs/NonMNpub/oclc1044746779.pdf> (Sept. 19, 2018).

In this bill, the *Hippert* principles have been supplemented and updated to reflect districting principles used by courts or adopted by constitutional amendments in other states since 2011.

Subdivision 1, Application, provides that the principles apply to congressional and legislative redistricting plans.

Subdivision 2, Population equality, sets the degree of population equality required in congressional and legislative plans.

Paragraph (a) requires that congressional districts be “as nearly equal in total population as practicable without dividing a precinct into more than one district.”

The first part of this language, “as nearly equal in population as practicable,” is the same as used by the *Hippert* court, which resulted in all parties proposing plans that had a deviation no greater than one person. The following table shows the degree of population equality actually achieved in congressional plans since 1980.

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Year	Overall Range
2012	1 person
2002	1 person
1994	1 person
1992	1 person
1982	46 persons

The second part, “without dividing a precinct into more than one district,” relaxes the standard for congressional district population equality to permit deviations from mathematical equality if no precincts are divided. This could make drafting congressional plans substantially faster, avoiding the long search for that last block to make each district’s population ideal, as well as deter the gerrymandering that occurs when precincts are divided on racial or partisan lines. A drafter would be free to split a precinct, but would then have to reduce the deviation in all districts to no more than one person.

The addition of “total” population prohibits measuring population equality by some other count, such as voting-age population or citizen voting-age population.

Paragraph (b) requires that legislative districts “be substantially equal in total population” and “not deviate from the ideal by more than one percent, plus or minus, or two percent, if the plan does not split a precinct.”

The *Hippert* court permitted deviations from population equality not to exceed two percent, plus or minus (an overall range of four percent), just as have all other courts since 1972. But, as had the courts before it, the *Hippert* court also said that, “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.” Thus, the courts have always attempted to make the districts as equal in population as possible, while still avoiding the division of counties, cities, and towns. The following table shows the degree of population equality actually achieved in legislative plans since 1950.

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Year	Senate	House
2012	1.42%	1.60%
2002	1.35%	1.56%
1994	3.53%	5.27%
1991	3.42%	5.90%
1982	3.41%	3.97%
1972	3.71%	3.96%
1962	411.49%	672.13%
1952	909.20%	1471.14%

This history shows that, with the advent of improved computer redistricting technology in the 2000s, it has been possible to keep deviations below plus or minus 1% (an overall range of 2%), while still avoiding the division of counties, cities, and towns. This bill sets the limit at that level, but permits a deviation of 2%, if the plan does not split a precinct. Preserving whole precincts is desirable, but may not be possible with a deviation of only 1%.

Subdivision 3, Minority representation, requires that districts “not be drawn with the intent or effect to deny or abridge 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.”

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, 42 U.S.C. §§ 1973-1973aa-6.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 5 ¶ 3 (congressional), 8 ¶ 5 (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

The *Hippert* language was a necessary paraphrase of the first part of § 2 of the Voting Rights Act of 1965,² 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

² Codified as amended at [52 U.S.C. § 10301](#).

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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].”

The *Hippert* court’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* court omitted “to vote” and “or color,” and added “ethnicity.” 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.” Omitting “ethnicity” is appropriate, because the concept of ethnicity is included in the Voting Rights Act’s definition of “language minorities.”³ Also, ethnicity may be the basis of a “community of interest” under subdivision 8.

The *Hippert* court’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, 42 U.S.C. §§ 1973-1973aa-6.” 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 subdivision.

The language in this subdivision is based on the 2010 Fair Districts Amendments to the Florida Constitution, Art. III, §§ 20(a), 21(a), as interpreted by the Florida Supreme Court in 2012. *In re Senate Joint Resolution of Legislative Apportionment 1176 (Apportionment I)*, No. SC12-1, slip op. at 48-67, 83 So.3d 597, __ (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 prohibition “to diminish their ability to elect a representative of their choice” prohibits the commission from adopting a redistricting plan that makes a racial or language minority group less able to elect representatives of their choice than under the previous plan.

Subdivision 4, Convenience and contiguity, requires the districts to “be composed of convenient contiguous territory that allows for easy travel throughout the district. Contiguity by water is sufficient if the water does not pose a serious obstacle to travel within the district. Districts with areas that touch only at a point are not contiguous.”

This is the language used by the *Hippert* court, but adding that a district allow for easy travel throughout the district, as required by Rep. Klevorn’s 2019 [H.F. No. 1605](#) § 2, subdivision 5, and moving the compactness requirement into a separate subdivision, as in her subdivision 10.

³ “The term ‘language minorities’ or ‘language minority group’ means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.” 52 U.S.C. § 10310(c)(3).

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Contiguity is a traditional districting principle. *Shaw v. Reno*, [509 U.S. 630, 647](#) (1993). Contiguity is required in either legislative or congressional plans by all 50 states. NATIONAL CONFERENCE OF STATE LEGISLATURES, *Districting Principles for 2010 and Beyond*, <https://www.ncsl.org/research/redistricting/districting-principles-for-2010-and-beyond.aspx> (last update June 4, 2019) at 1. Minnesota's requirement is in the CONSTITUTION, [art. IV](#), § 3.

Subdivision 5, Political subdivisions, requires that counties, cities, towns, and precincts “not be divided into more than one district except as necessary to meet equal-population requirements or to form districts that are composed of convenient, contiguous, and compact 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.”

The complex derivation of this language is described in [Districting Principles in Minnesota Courts](#) at 9-11. It is based on language from the state court's 2001 principles, because its 2011 principles omitted the references to the political subdivisions that must not be split, the constitutional requirements that might justify a split, and that any division should be into as few districts as possible.

Respecting the boundaries of political subdivisions is a traditional districting principle. *Shaw v. Reno* at [647](#). It is required in either legislative or congressional plans by 44 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 6, Compactness, requires that districts “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 2019 [H.F. No. 1605](#) § 2, subd. 10.

Compactness is a traditional districting principle. *Shaw v. Reno*, [509 U.S. 630, 647](#) (1993). It is required in either legislative or congressional plans by 40 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 7, Indian reservations, prohibits dividing federally recognized American Indian reservations, which are sovereign nations, on terms similar to those for political subdivisions.

Subdivision 8, Communities of interest, 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* court's 2011 principle, deleting *political*, changing *economic* to *socioeconomic*, and adding *governmental*, *regional*, *historic*, *occupational*, *trade* and *transportation*. The subdivision goes on to exclude “relationships with political parties, incumbents, or political candidates,” as in 2019 [H.F. No. 1605](#) § 2, subd. 7.

Preserving communities of interest is a traditional districting principle. *Bush v. Vera*, [517 U.S. 952, 977](#) (1996). It is required in either legislative or congressional plans by 26 states. [Districting Principles for 2010 and Beyond](#) at 1.

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Subdivision 9, Incumbents, requires that the districts “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* court’s principles. It omits the second sentence of the *Hippert* principles, 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.”

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 where deemed necessary. Omission of the *Hippert* court’s second sentence is intended to discourage that practice from continuing.

Avoiding contests between incumbent representatives is a traditional districting principle. *Abrams v. Johnson*, [521 U.S. 74, 84](#) (1997). It is required in either legislative or congressional plans by 16 states. [Districting Principles for 2010 and Beyond](#) at 1.

Subdivision 10, Partisanship, first requires that districts “not be drawn with the intent or effect to unduly favor or disfavor a political party.” The second sentence requires the commission to “use judicial standards and the best available scientific and statistical methods, including more than one measure of partisan effect, to assess compliance with this principle.”

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). The other differences between the Senate and House were not resolved, and the court’s 2001 and 2011 principles were silent on political parties.

With the increase in partisan gerrymandering since the 2010 Census, 17 other states now have a similar requirement. See [Districting Principles for 2010 and Beyond](#) at 1,⁴ and *Common Cause v. Lewis*, [No. 18 CVS 014001](#), slip op. at 355 (N.C. Super. Ct. Wake County, Sept. 3, 2019) (“Partisan considerations and election results data *shall not* be used in the drawing of legislative districts in the Remedial Maps.”)

⁴ NE says “the intention of.” Six states say “for the purpose of”: CA, CO, IA, MT, NY, OR. Washington says “purposely.” Four states say “unduly favor”: DE, HI, OH (congressional only), UT. For legislative plans, OH says “primarily to favor.” ID says, “Counties shall not be divided to protect a particular political party” MI 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.” MO likewise requires “partisan fairness.”

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The first sentence is based on the FLORIDA CONSTITUTION, Art. III, §§ [20\(a\)](#), [21\(a\)](#), as added by the Fair Districts Amendments of 2010. 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* National Conference of State Legislatures, *Redistricting Case Summaries | 2010-Present* <https://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx> (last updated Jan. 31, 2020). It was successful in curtailing partisan gerrymanders in both congressional and legislative plans. Mr. Wattson is not aware of a case from a state other than Florida interpreting a similar constitutional or statutory prohibition.

The addition of “unduly” is based on the 2001 joint resolutions, the four other states that include it, and 2019 [H.F. No. 1605](#) § 2, subd. 11.

The second sentence, on using statistical methods to assess partisan bias, is a tweak of 2019 [H.F. No. 1605](#) § 2, subd. 11.

This principle is placed near the end because it has never been adopted by the legislature or a court in this state, it is less commonly accepted than most of the principles above it, and proving the extent to which a plan’s partisan effect is caused by the evildoing of the plan’s drafters, rather than by the state’s political geography, is more difficult than proving violations of the principles above it.

Subdivision 11, Competition, urges that the districts “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 statewide state and federal partisan general election results during the last ten years, has historically been no more than eight percent.”

The language in this subdivision 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.”)

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 had said that, “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). 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 court’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](#). 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

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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*, Minn. Senate, audio recording at 00:41:11, https://www.leg.state.mn.us/senateaudio/2008/cmte_stgov_011108.mp3 (Jan. 11, 2008), Peter S. Wattson transcription, <https://www.leg.state.mn.us/archive/clippings/196717-19976.pdf> (Dec. 21, 2018).

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, subdivision 9, provided that, “The districts must be created to encourage political competitiveness, as defined by the commission”

This bill 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* at 5 (Apr. 4, 2001), directory 7.1 compressed file, <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* at 1 (Feb. 9, 2004), <http://azredistricting.org/2001/2004newlegtests/batch1/20040209%20Competitiveness%20Report.pdf>.

This subdivision uses the Minnesota number and puts it in the statute. **Section 4, subdivision 3**, instructs the legislature’s Geographic Information Services Office, in consultation with the four legislative caucus leaders, to develop an index of election results to use in measuring the competitiveness of districts.

Five other states require that legislative or congressional districts, or both, be competitive. [Districting Principles for 2010 and Beyond](#) at 1.

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Courts in Minnesota have never required, or even urged, that districts be competitive.

But a three-judge federal court in North Carolina found that a lack of competitive districts in the 2016 congressional plan “drove down voter registration, voter turnout, and cross-party political discussion and compromise. Furthermore, the disfavored political party suffered from statewide decreases in fundraising and candidate recruitment, while at the same time incurring increased statewide costs for voter education and recruitment.” *Common Cause v. Rucho*, No. 1:16-cv-1026, [Mem. Op. at 33](#) n.8 (M.D.N.C. Jan. 9, 2018). This violated plaintiffs’ First Amendment right to Freedom of Association. *Id.* at [166-68](#), [on remand](#) (M.D.N.C. Aug. 27, 2018), *vacated & remanded with instructions to dismiss for lack of jurisdiction*, [No. 18-422](#) (U.S. June 27, 2019).

Likewise, a three-judge federal district court in Maryland was unanimous in holding that packing and cracking Republicans in the 2011 congressional plan violated their First Amendment right to associate with each other for political ends. The court found that, where districts were drawn so that Republican candidates either won or lost by large margins, Republican candidates found it difficult to raise money and find volunteers to work on their campaigns, and Republican voters were discouraged from voting because they thought their votes would make no difference in the outcome. *Benisek v. Lamone*, No. 1:13-cv-3233, [Mem. Op. at 65-67](#) (D. Md. Nov. 7, 2018), *vacated & remanded with instructions to dismiss for lack of jurisdiction*, [No. 18-422](#) (U.S. June 27, 2019).

After the U.S. Supreme Court held that federal courts no longer have jurisdiction to consider partisan discrimination claims, *Rucho v. Common Cause*, [No. 18-422](#) (U.S. June 27, 2019), 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). 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). The general assembly did so. [N.C. Sess. Laws 2019-249](#) (Nov. 15, 2019).

Subdivision 12, Numbering, meets the requirement of MINN. CONST. [art. IV](#), § 3, that the districts be numbered in a regular series, setting forth separate systems for congressional and legislative districts. It is the same numbering system as in 2019 [H.F. No. 1605](#) § 2, subd. 12, 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.

Paragraph (a) requires that congressional district numbers begin with district one in the southeast corner of the state and end with the district with the highest number in the northeast corner of the state.

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This is the language from 2009 [S.F. No. 182](#), anticipating that Minnesota might someday lose its eighth seat in Congress. (The *Hippert* court, which knew Minnesota would retain its eighth seat, used “District 8.”) The Census Bureau’s July 2020 population estimates have Minnesota losing its eighth seat by 25,554 people. Kimball W. Brace, [New Population Estimates Point to Significant Issues in Recent Supreme Court Case](#), ELECTION DATA SERVICES, Dec. 22, 2020, at 4. This is close enough that, if Minnesotans count themselves better than other states, we might still be able to keep the eighth seat when the 2020 Census apportionment numbers are released by April 30, 2021.

Paragraph (b) requires that legislative district numbers begin with House District 1A in the northwest corner of the state and proceed across the state from west to east, north to south.

This language changes the *Hippert* court’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. That has been the numbering scheme since a three-judge federal court first drew a legislative plan in 1972.

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 metropolitan area on their way to the southeast corner. That 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 gives little clue to where in the state it might be. Why is our numbering so confusing?

An examination of maps of legislative districts since 1897, available on the legislature’s website at: https://www.gis.leg.mn/html/maps/leg_districts.html, 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. The 1972 plan used the system seen today, starting in the northwest and proceeding to the southeast, but bypassing the metropolitan area until the southeast corner had been reached, then in the metropolitan area outside the cities of Minneapolis and St. Paul, and ending in Minneapolis and St. Paul.

Mr. Wattson’s review of the maps (which he used to draw legal descriptions for the legislature’s 1971 plan vetoed by the governor) 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,⁵ upon which the court drew its lines. The districts were numbered in accordance with the paper technology then in use.

Mr. Wattson notes that we are no longer constrained by paper technology. He says there is no reason why we could not number the districts consecutively, all the way from the northwest to

⁵ The maps of the court’s plan on the website don’t show the Metropolitan Council’s logo, but the maps the legislative staff were working on did.

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the southeast. Doing so would give us a better idea, from a district's number, where it might be. That is the proposal in this subdivision.

The subdivision also requires that, in a county or city that includes more than one whole senate district, the whole districts must be numbered consecutively. (The current requirement to skip numbering senate districts in Minneapolis and St. Paul until after the rest of the metro area has been numbered makes that impossible.)

Language deleting the requirement that district numbers end in Minneapolis and St. Paul and requiring that, in a county that includes more than one whole senate district, the districts must be numbered consecutively, was included in the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. *See* [S.F. No 605](#), art. 2, § 1, subd. 5(a). Applying that requirement to cities with more than one whole senate district would affect only Minneapolis and St. Paul and continue past practice.

Subdivision 13, Priority of principles, provides that, “Where it is not possible to fully comply with the principles in this section, 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 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). 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 2019 [H.F. No. 1605](#) § 2, subd. 3.

The current language omits a prohibition against violating state law, since this is state law.

Section 4 [2.038] REDISTRICTING SUPPORT.

This section sets forth the responsibilities of the Legislative Coordinating Commission (LCC) for congressional and legislative redistricting.

Subdivision 1, Administrative support, requires the LCC to provide administrative support to the Redistricting Commission and requires the director of the Legislative Coordinating Commission to convene the first meeting of the commission each decade.

The first sentence is from 2009 [S.F. No. 182](#) § 2, subdivision 4, and the second sentence is from subdivision 1. They are moved from the section on the commission to a separate section on the LCC to accommodate additional duties assigned to the LCC by the bill.

Subdivision 2, Database, paragraph (a) requires that the geographic areas and population counts used in maps, tables, and legal descriptions of the districts be those used by the Geographic Information Services (GIS) Office of the Legislative Coordinating Commission. The population counts must be the block population counts provided to the state under Public Law 94-171 after each decennial census, subject to correction of any errors acknowledged by the Census Bureau.

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The language of paragraph (a) is from the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. *See* [S.F. No 605](#), art. 2, § 1, subd. 10.

Similar language was in the 1991 concurrent resolutions adopted by the senate and house, *see* [House Con. Res. No. 1](#) ¶ (8) (congressional); [House Con. Res. No. 2](#) ¶ (10) (legislative); the 2001 joint resolutions that died in conference committee, *see* [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (11), House ¶ (10) (May 2, 2001); and the 2011 congressional and legislative redistricting bills vetoed by the governor. *See* [H.F. No. 1425](#) § 3, subd. 9 (legislative); [H.F. No. 1426](#) § 3, subd. 9 (congressional).

Paragraph (b) says, “The database used by the commission to draw plans may include election results used to test the partisan bias of a plan, but must not include data on voter registration or voting history.” It also prohibits the inclusion of campaign finance data on state or federal candidates, or presidential primary political party ballot selection data. It is a rewrite of the prohibitions in 2019 [H.F. No. 1605](#) § 2, subd. 2(b).

Paragraph (c) requires the database to be made available to the public on the GIS Office website, as has been the practice.

Subdivision 3, Partisan index, instructs the GIS Office, in consultation with the four legislative caucus leaders, to develop an index of election results to use in measuring the partisanship of a plan.

This language is new, codifying past practice. It describes the method used to reach agreement among the four caucuses on which election results to use in calculating the partisan index used to measure which districts each party is likely to win, how the number of seats likely to be won compares to the party’s share of the statewide vote, and which districts are likely to be competitive.

Subdivision 4, Publication; consideration of plans, requires that a congressional or legislative redistricting plan not be considered for adoption by the commission until a block equivalency file showing the district to which each census block has been assigned, in a form prescribed by the GIS Office, has been filed with the office and the plan has been published on the office website. This is a codification of the practice almost always followed in the past for plans considered by the legislature.

Like **subdivision 2**, the language requiring that a plan be filed with the GIS Office is based on the 2017 Omnibus State Government Appropriations bill vetoed by Governor Dayton. *See* [S.F. No 605](#) art. 2, § 1, subd. 11. Similar language was in the 2001 joint resolutions that died in conference committee, *see* [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (12), House ¶ (11) (May 2, 2001); and the 2011 congressional and legislative redistricting bills vetoed by the governor. *See* [H.F. No. 1425](#) § 3, subd. 10 (legislative); [H.F. No. 1426](#) § 3, subd. 10 (congressional).

The language requiring that the plan be published on the office website is from the senate language in the 2001 conference committee. *See* [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side](#), Senate ¶ (12(c)).

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Since the bill proposing the adoption of a plan does so by reference to the plan as published by the office on a certain date, *see, e.g.*, 2011 [H.F. No. 1425](#) §1, subd. 1(b) (legislative); and 2011 [H.F. No. 1426](#) §1, subd. 1(b) (congressional); and most legislators and members of the public will not be able to see the plan until it has been published, it makes sense to require publication before the plan may be considered.

Subdivision 5, Reports, describes the reports that must accompany a plan when it is submitted to the legislature.

The federal and state court panels that have drawn Minnesota's redistricting plans since 1972 have specified various reports that the parties and amici submitting a plan must file with the court for its use in preparing the court's own plan. The reports required by this subdivision continue that practice with regard to plans submitted by the redistricting commission to the legislature. **Section 1, subdivision 13**, allows the commission to adopt its own standards to govern the format of plans submitted to it. Presumably, the commission will want something similar to the reports in this subdivision.

The report on **Minority Representation**, using voting-age population, has traditionally been published on the GIS Office website, but was not required by the 2011 *Hippert* court or previous Minnesota state or federal courts, perhaps 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. "Minority Representation – Voting-Age Population," is one of two reports that can be run by the Minnesota Redistricting Tools included in Maptitude for Redistricting 2020. (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 required by this bill.

The reports on **Population Equality, Contiguity, 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* court to accompany the plans submitted to it.

The *Hippert* court's specification for the **contiguity report** refers to "polygons." A polygon is "a plane figure with at least three straight sides and angles." It is a generic term that GIS experts use to describe the areas found in a map. This bill 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 this bill does 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.

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The *Hippert* court 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. A ninth measure, Minimum Convex Hull, was added to Maptitude for Redistricting 2017. Those nine are shown in the table below. Two more measures, Alternative Schwartzberg and Cut Edges, were added to Maptitude for Redistricting 2019.

How each measure is computed is explained on pages 143 to 145 of the Maptitude for Redistricting 2020 Supplemental User Guide. The Guide does not say how long each measure takes to run. On Mr. Wattson's PC in 2020, the times on a Minnesota House plan were as follows:

Higher Number is Better					Lower Number is Better			
Reock	Polsby-Popper	Minimum Convex Hull	Population Polygon	Population Circle	Ehrenburg	Schwartzberg	Perimeter	Length-Width
2 seconds	2 seconds	2 seconds	70 seconds	80 seconds	190 seconds	2 seconds	2 seconds	3 seconds

Running all the reports together took more than 7 minutes. Omitting Population Polygon, Population Circle, and Ehrenburg cut the time to about 4 seconds.

Gary King and his colleagues at Harvard have proposed a new measure that, if it gains acceptance, might be the only measure a person needs. Aaron Kaufman, Gary King, and Mayya Komisarchik, forthcoming, *How to Measure Legislative District Compactness if You Only Know It When You See It*, AMERICAN JOURNAL OF POLITICAL SCIENCE, copy at, <https://gking.harvard.edu/files/gking/files/compact.pdf> (Harvard, Dec. 29, 2020).

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 Conference of State Legislatures, National Redistricting Seminar (Austin, Tex. Mar. 28, 2010) (slide presentation), <https://www.ncsl.org/documents/redistricting/Compactness-March-2010Hofeller.pdf>.

In light of the continuing development of these measures, the bill leaves to the GIS Office the decision on which measures to publish on the plans it posts.

The report on **American Indian reservation splits** 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. Even though not previously required 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 on **communities of interest** is optional, necessary only when the sponsor of the plan asserts that it preserves a community of interest. The Maptitude for Redistricting 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

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the communities. 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. 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 had said that, “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*, [Order](#) at 2, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#) at 2, Civ. No. 4-81-414 (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 requirement that the community of interest be displayed on a map and its preservation analyzed by a report should make arguments about it significantly more rigorous.

The report on **core constituencies** has not been required by Minnesota’s court panels. 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 number of districts changed from a prior district (which may well be all of them), the number of persons moved from one district to another (to see the overall scale of disruption), and 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).

The report on **incumbents by district** has not been required by Minnesota’s court panels. It has been posted on the GIS Office website for many plans, but not all. It is required by this bill in order to assist with enforcement of the principle that the districts not be drawn with the intent to protect or defeat an incumbent.

The report on **partisanship** is an expansion of the Political Competitiveness report that Caliper Corporation developed at Mr. Wattson’s direction for the Minnesota Legislature in 2001. 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 court panels, who have avoided considering the partisan impact of a plan, except on incumbents. The language is a tweak of 2019 [H.F. No. 1605](#), § 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*, No. 15-cv-421, [Op. & Order](#) (W.D. Wis. Nov. 21, 2016), Mr. Wattson modified the report to include a measure of the “efficiency gap” considered by the court in that case. [Slip op. at 80-83](#). In October 2017, based on a review of the 50 briefs

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filed with the U.S. Supreme Court in the *Whitford* case, [No. 16-1161](#), proposing various other measures of partisan fairness, he added several of those accepted in the political science and statistics literature. To encompass the wider scope of the report, he renamed it the Partisanship report.

This bill proposes to use the 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 GIS Office has contracted with Caliper Corporation to modify the Partisanship report to include the measures required by this bill, and others accepted in the political science and statistics literature. “Partisanship” is one of two reports that can be run by the Minnesota Redistricting Tools included in Maptitude for Redistricting 2020. (The other is “Minority Representation – Voting-Age Population.”)

Section 5. APPROPRIATIONS.

The appropriation to the Legislative Coordinating Commission to support the redistricting advisory commission is \$362,000.

The appropriation is based on the fiscal note for [2019 H.F. 1603-1E](#) (Apr. 2, 2019), the Omnibus Elections Bill of Rep. Dehn in the State Government Finance Division. H.F. 1603 included a redistricting advisory commission similar to the one in this article, except that it had eight more public members and was required to hold only one public meeting in each congressional district, rather than two. The computation of the appropriations is shown below.

	2021	2022	2023
Total Cost for HF 1603-1E	218,000	190,000	0
RC Member Participation Cost Reduction			
17 members	60,000	88,000	0
<u>9 Members</u>	<u>32,000</u>	<u>47,000</u>	
Savings	28,000	41,000	
Public Hearing Cost Increase	<u>23,000</u>	<u>0</u>	<u>0</u>
Total Cost for PW08	\$213,000	\$149,000	0
Total for 2021-22 Biennium		\$362,000	

Detail of Cost of 8 more hearings for 9 members

Per Diem	\$55
Mileage	\$81
Meals	\$36
<u>Lodging</u>	<u>\$150</u>
Total	\$322/member x 8 meetings = \$2,576 per member x 9 members = \$23,184, rounded to \$23,000

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The fiscal note assumed that all the public hearings would be held in FY 21. That made sense with a deadline to submit plans to the legislature by April 30, 2021, as required by HF 1603. For the commission in this bill, whose deadline is November 1, 2021, some of the hearings may occur from July to October 2021, which are in fiscal year 2022. The appropriation is available until June 30, 2022.

Attorney's fees paid by the state to the plaintiffs and plaintiff-intervenors before the state court panel in 2012 were [\\$345,000](#). Of course, that does not include the costs to the legislature of drawing and passing the plans that were vetoed by Governor Dayton and then drawing and presenting different plans to the state court panel.

Attorney's fees paid by the state to the plaintiffs and plaintiff-intervenors in 2002 were [\\$368,430.68](#).

Section 6, EFFECTIVE DATE, makes the article effective the day following final enactment.

Article 2

CONSTITUTIONAL REDISTRICTING COMMISSION

Section 1, CONSTITUTIONAL AMENDMENT PROPOSED, transfers from the legislature to the redistricting commission the power to draw congressional and legislative district boundaries.

In the amendment to section 3 of the constitution, the appointment and qualifications of commission members set forth in **paragraph (a)** are the same as for the redistricting advisory commission, stated in summary form, except that a commissioner is prohibited from being a candidate for a legislative district whose boundaries were drawn by a commission on which they served.

Similar prohibitions on future public service apply to commissioners in seven other states: ALASKA [CONST. art. 6, § 8](#) (in the general election following adoption of the redistricting plan); CAL. CONST. [art. XXI](#) (hold elective public office at the federal, state, county, or city level in California for 10 years after appointment); HAW. CONST. [art. IV](#), (in the two elections following redistricting); IDAHO CONST. art. III, [§ 2](#) (for five years following service); MICH. CONST. art. IV, [§ 6](#) (partisan elective office at the state, county, city, village, or township level in Michigan for five years after appointment); MO. CONST. [art. III, § 3\(c\)](#), [§ 7](#) (for four years after a plan is adopted); MONT. CONST. art. V, [§ 14](#) (for two years after a plan is effective); Utah Code [§ 20A-19-201](#) (not deeply engaged in partisan politics for four years after appointment).

The prohibition is limited to legislative candidates because qualifications for congressional candidates are set by the U.S. Constitution and cannot be supplemented by qualifications imposed by a state. *U.S. Term Limits, Inc. v. Thornton*, [514 U.S. 779](#) (1995).

Paragraph (b) requires that "The legislature must appropriate money to enable the commission to carry out its duties." This is based on the [Washington Constitution](#), art. II, § 43(4).

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Paragraphs (c), (d), and (e), on removal of a member, public hearings around the state, and the six-vote requirement for proposing or adopting a plan are the same as for the advisory commission.

Paragraph (f), the deadline for the commission to adopt plans, is the same as for the advisory commission in decades after this. If a plan misses the deadline, the supreme court must adopt a replacement by a date provided by law (set forth in article 1 as 25 weeks before the state primary in the year ending in two), which would be February 15, 2022. The authority of the secretary of state to correct plan boundaries, as currently provided in Minn. Stat. [§ 2.91](#), is continued.

Paragraph (g) permits the legislature to amend a plan, but only by a two-thirds vote of each house in the first 30 days of its next session after the plan was adopted. This is based on the [Washington Constitution](#), art. II, § 43(7).

Paragraph (h) says a plan is not subject to veto by the governor. This is based on the [Washington Constitution](#), art. II, § 43(11).

Paragraph (i) says the commission expires when all plans have been adopted and no longer subject to any legal challenges, but can be reconstituted by court order if it is necessary to draw a remedial plan after the commission has expired. This is the same as for the advisory commission.

The amendment does not add any districting principles to the constitution, but **paragraph (m)** authorizes the legislature to adopt additional principles that have a lower priority than those already in the constitution.

Section 2, BALLOT QUESTION, states the ballot question: “Shall the Minnesota Constitution be amended to transfer from the legislature to an independent redistricting commission the power to draw congressional and legislative districts?”

Section 3, SCHEDULE, provides for the advisory commissioners to continue as the independent commissioners if the constitutional amendment is adopted.

Article 3

CONFORMING LEGISLATION

This article amends the statutes creating the redistricting advisory commission to reflect the additional powers it will have if the constitutional amendment in article 2 is adopted.

Section 1 strikes “advisory” from its name and refers to the constitutional language that transfers to it the power to draw congressional and legislative districts.

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Section 2, Subdivision 3, Disqualifications, paragraph (e), provides that a commissioner may not be a candidate for a legislative district whose boundaries were drawn by a commission on which they served. The qualifications for legislative candidates are set by MINN. CONST. [art. IV](#), § 6, which would be supplemented by the amendment in this bill to MINN. CONST. [art. IV](#), § 3.

Section 3 amends the statute governing compensation of commission members from 15.059, which governs advisory commissions, to 15.0575, which governs administrative commissions, to reflect the change of the commission from advisory to independent.

Section 4, paragraph (a), requires that plans be deposited in the office of the secretary of state, since they will become law without further action if the legislature does not amend a plan in the first 30 calendar days of its next regular or special session.

Paragraphs (c) to (f) strike the procedure for the legislature to consider a plan submitted by the advisory commission.

Section 5, Subdivision 18, Amendments, is taken from the Washington commission's statutory procedures, RCW [§ 44.05.100\(2\)](#), for the legislature to consider amendments to a plan. They clarify that a "session" may be either a regular or a special session. Washington's two-percent limit on the population of a district that may be included in an amendment is changed to a one-half percent limit on the population that may be moved. The report on Core Constituencies calculates and displays this number for each district. Washington's "legislators" is changed to "members" and a requirement to deposit the amended plan in the office of the secretary of state is added to parallel Minnesota's procedure for overriding a governor's veto. MINN. CONST. [art. IV](#), § 23.

Section 6, Subdivision 19, Effective date, is likewise Washington language, RCW [§ 44.05.100\(3\)](#), adapted to Minnesota.

Section 7, Effective date, makes the article effective upon adoption of the constitutional amendment.

PW08 Talking Points

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Redistricting Commission PW08

Advisory Commission

1. **The current system doesn't work.** Court intervention since **1958**
2. **A bipartisan commission** could draw maps without court intervention
3. **People**
 - a. **4 caucus leaders** each appoint 2 voting members not recently a public official or deeply engaged in partisan politics (total of 8 members)
 - i. Six-year lookback, except for a retired judge of state district court
 - b. Those 8 choose the ninth, a **nonvoting chair**
4. **Plans** adopted by a **vote of at least 6 members** (3/4 of commission)
 - a. 6 votes would mean **at least 2 from each party**
5. **Deadlines**
 - a. Appointments begin **two weeks after enactment**
 - b. Eight members meet to appoint non-voting chair **four weeks after enactment**
 - c. **Advisory commission** plans presented to legislature by **November 1, 2021**
 - (1) First two recommendations get only up or down vote
 - (2) Third recommendation open to amendment
 - d. If commission fails, **Supreme Court** would have until **February 15, 2022**
6. **Process - 2 public hearings** in each current congressional district
 - a. 1 before plan proposed
 - b. 1 before plan adopted
7. **Districting principles**
 - a. Traditional
 - i. Population equality
 - (1) Legislative: **1%, or 2% if no precinct split**
 - (2) Congressional: **incentive to split no precinct**
 - ii. Minority representation
 - iii. Contiguity
 - iv. Political subdivisions
 - v. Compactness
 - vi. Communities of interest
 - vii. Incumbents not protected or targeted for defeat
 - b. **New**
 - i. Not split **American Indian Reservations**
 - ii. Political **parties not unduly favored or disfavored**
 - iii. **Competition** encouraged

Peter S. Wattson

PLAINTIFFS' EXHIBIT F

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Independent commission

8. **Constitutional amendment** on ballot in **2022**
9. People, process, deadlines same as advisory commission
10. **Commissioner not a candidate for a legislative district they drew**
11. **Plans** effective when **filed with Secretary of State**, subject to limited amendments by legislature
12. Legislative **amendments** to commission plans
 - a. **2/3 vote of each house**
 - b. Only in **first 30 days of next session**
 - c. Not move more than **.5% population** of a district

PLAINTIFFS' EXHIBIT G

Minnesota Courts
Redistricting Timeline

Year	Case Name	Court	Complaint Filed	Panel Appointed	Principles Adopted	Oral Argument on Plans	Public Testimony	Final Plan Adopted
1971	<i>Beens v. Erdahl</i>	Federal	9-Apr-1971	25-Jun-1971	26-Nov-1971	none	none	2-Jun-1972
1981	<i>LaComb v. Growe</i>	Federal	26-Mar-1981		29-Dec-1981	none	none	11-Mar-1982
1991	<i>Cotlow v. Growe</i>	State	24-Jan-1991	4-Jun-1991	16-Aug-1991	7-Dec-1991	none	30-Jan-1992
	<i>Emison v. Growe</i>	Federal	18-Mar-1991	8-Apr-1991	21-Oct-1991	4-Feb-1992	none	19-Feb-1992
2001	<i>Zachman v. Kiffmeyer</i>	State	4-Jan-2001	12-Jul-2001	11-Dec-2002	16-Jan-2002	Feb 4-6, 2002	19-Mar-2002
2011	<i>Britton v. Ritchie</i>	Federal	12-Jan-2011	none				
	<i>Hippert v. Ritchie</i>	State	21-Jan-2011	1-Jun-2011	4-Nov-2011	4-Jan-2012	Oct 4-14, 2011	21-Feb-2012