

Districting Principles in Minnesota Courts

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Introduction

Districting principles have been used, to a greater or lesser extent, throughout the United States since its earliest days. They have become increasingly important since the 1960s, when courts began to order state legislatures to redraw the boundaries of legislative and congressional districts, and to redraw boundaries themselves when legislatures failed to do so.

The purpose of districting principles is to deter those who are drawing redistricting plans from engaging in gerrymandering. See Peter S. Wattson, *How to Draw Redistricting Plans That Will Stand Up in Court* 3-6 (Apr. 30, 2013)

<https://paulsimoninstitute.siu.edu/common/documents/illinois-redistricting/wattson-draw.pdf>.

The purpose of this paper is to explain how Minnesota courts arrived at the principles they are using today. The online version includes embedded hyperlinks to virtually all the previous Minnesota court orders that established principles for legislative or congressional plans.

I. Districting Principles in the United States

There is a brief discussion of the origin and meaning of the term “traditional districting principles” in [REDISTRICTING LAW 2010](#), 105-14 (Peter S. Wattson, ed., National Conference of State Legislatures 2009). A table and appendix showing the districting principles used by the 50 States for redistricting after the 2010 census is available at:

<http://www.ncsl.org/research/redistricting/districting-principles-for-2010-and-beyond.aspx>

An examination of the table and appendix shows that, while the principles used in one state may be quite different from those used in another, most states use a set of principles that are roughly the same and are similar to those used in Minnesota.

II. Districting Principles in Minnesota

When the courts have adopted principles to govern their drawing of Minnesota’s legislative and congressional districts, they have first looked to what has been set forth in the Minnesota Constitution and Minnesota Statutes.

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III. Districting Principles in the Minnesota Constitution

A. Number of Members

“The number of members who compose the senate and house of representatives shall be prescribed by law.” [Minn. Const. art. IV](#), § 2.

B. Equal Population

“The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.” [Minn. Const. art. IV](#), § 2.

C. Single-Member Districts; Convenient, Contiguous Territory

“Senators shall be chosen by single districts of convenient contiguous territory.” [Minn. Const. art. IV](#), § 3.

D. Nesting

“No representative district shall be divided in the formation of a senate district.” [Minn. Const. art. IV](#), § 3.

E. Numbering

“The senate districts shall be numbered in a regular series.” [Minn. Const. art. IV](#), § 3.

IV. Districting Principles in Minnesota Statutes

A. Number of Members

“For each legislature, until a new apportionment shall have been made, the senate is composed of 67 members and the house of representatives is composed of 134 members.” [Minn. Stat. § 2.021](#).

B. Single-Member Districts

“The representatives in the senate and house of representatives are apportioned throughout the state in 67 senate districts and 134 house of representatives districts. Each senate district is entitled to elect one senator and each house of representatives district is entitled to elect one representative.” [Minn. Stat. § 2.031, subd. 1](#).

C. Equal Population

“The legislature intends that . . . all districts consist of . . . territory substantially equal in population . . .” [Minn. Stat. § 2.091, subd. 2](#).

D. Convenient, Contiguous Territory

“The legislature intends that . . . all districts consist of convenient contiguous territory” [Minn. Stat. § 2.091, subd. 2.](#)

E. Preserving Political Subdivisions

“The legislature intends . . . that political subdivisions not be divided more than necessary to meet constitutional requirements.” [Minn. Stat. § 2.091, subd. 2.](#)

V. Districting Principles in Minnesota Courts

A. Five Decades of Principles

Minnesota courts have been adopting principles to govern legislative and congressional redistricting plans since a three-judge federal panel became the first court to assume responsibility for drawing a legislative plan in the fall of 1971. *See Beens v. Erdahl*, [Order](#), No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971).

A three-judge federal panel adopted similar “criteria” in preparation for drawing both legislative and congressional plans in 1982. *See LaComb v. Growe*, [Order](#), Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#), Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981), quoted in 541 F. Supp. 145, 148n.5 (D. Minn. Mar. 11, 1982) (congressional).

In 1991, the Minnesota Senate and House of Representatives passed, without dissent, concurrent resolutions establishing redistricting “standards” for legislative and congressional plans. *See House Con. Res. No. 1* (congressional), JOURNAL OF THE HOUSE 5291 (May 13, 1991) (voice vote), JOURNAL OF THE SENATE 3312 (May 13, 1991) (51-0); *House Con. Res. No. 2* (legislative), JOURNAL OF THE HOUSE 5292 (May 13, 1991) (voice vote), JOURNAL OF THE SENATE 3313 (May 13, 1991) (53-0). Those standards governed the legislative plan, which became law when the governor failed to veto it on time. *See Seventy-Seventh Minnesota State Senate v. Carlson*, [No. C3-91-7547](#) (2nd Dist. Ramsey County Aug. 2, 1991). The congressional plan used for the election in 1992 was drawn by a three-judge federal panel, *see Emison v. Growe*, 782 F. Supp. 427 (D. Minn. 1992), using “criteria” similar to the “standards” adopted by the Legislature. *See Emison v. Growe*, [Order](#) (D. Minn. Oct. 21, 1991). That plan was thrown out by the U.S. Supreme Court, *Growe v. Emison*, [507 U.S. 25](#) (1993). It was replaced for the 1994 election by a plan based on criteria adopted by a three-judge state panel. *See Cotlow v. Growe*, [Pretrial Order No. 2](#), No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991); [Pretrial Order No. 3](#) (Sept. 13, 1991); [Final Order](#) (Apr. 15, 1992). Those criteria were likewise similar to the “standards” adopted by the Legislature.

In 2001, the Minnesota Senate and House of Representatives each passed a joint resolution establishing redistricting “principles” for legislative and congressional plans. *See* 2001 S.F. No. 1326. The resolution went to conference committee, *see* [2001 S.F. No. 1326, Revisor’s Full-Text Side-by-Side](#) (May 2, 2001), but was never agreed to. The plans drawn by the five-judge state court panel were based on principles adopted in *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#), No. C0-01-160 (Minn. Spec.

Redis. Panel, Dec. 11, 2001). Those principles drew both from past court “criteria” and from the Senate and House versions of the 2001 resolution.

In 2011, the Legislature passed and sent to Governor Dayton two redistricting bills, [H.F. No. 1425](#), relating to legislative districts, and [H.F. No. 1426](#), relating to congressional districts. Both bills established the same temporary districting principles, to expire June 1, 1012. [H.F. No. 1425, § 3](#); [H.F. No. 1426, § 3](#). The governor vetoed both bills because they had been drawn for the purpose of defeating Democratic incumbents and had received no DFL votes in either the House or the Senate. [JOURNAL OF THE HOUSE 4984](#) (May 23, 2011). The plans drawn by the five-judge state court panel were based on principles adopted in *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 7 ¶ 3, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

B. Derivation of 2011 Principles

What were called “criteria” in the 1970s and 1980s, and “standards” in 1991, were denominated “traditional districting principles” by the U.S. Supreme Court in *Shaw v. Reno*, [509 U.S. 630 at 647](#) (1993). Following is the derivation of each principle adopted by the Minnesota Special Redistricting Panel in 2011.

1. Number of Districts; Number of Members

a. **Congressional.** The number of congressional districts is established in accordance with the U.S. Census.

b. **Legislative.** The Minnesota Constitution, [art. 4, § 3](#), requires that Senate districts elect a single member. Legislative plans enacted before 1972 included some multimember House districts. Since the first court-imposed plan of 1972, House districts have all been single-member. The number of Senate and House districts is now set by Minn. Stat. § [2.031, subd. 1](#), which entitles each district to elect one member.

2. **Nesting.** The Minnesota Constitution, [art. 4, § 3](#), requires that “No representative district shall be divided in the formation of a senate district.” (Most states do not have this requirement.)

3. Population Equality

a. **Congressional.** The 2011 principles for congressional districts required that they be “as nearly equal in population as is practicable.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 5 ¶ 2, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

This is the standard set forth by the U.S. Supreme Court in *Wesberry v. Sanders*, [376 U.S. 1, 8](#) (1964). The federal court’s 1981 Minnesota criteria had said that, “The population of the districts shall be as nearly equal as possible. The maximum permissible deviation from population equality will be plus or minus one quarter of one percent (.25 percent), or 1,274 people.” The U.S. Supreme Court’s decision in *Karcher v. Daggett*, [462 U.S. 725, 734-41](#) (1983), made clear that there was no permissible deviation from population equality that could

be practicably avoided, except as necessary to achieve “some legitimate state objective,” such as making districts compact or respecting municipal boundaries.

The 1991 concurrent resolution, [House Con. Res. No. 1](#) ¶ 2, JOURNAL OF THE HOUSE 5291 (May 13, 1991); and the 2001 state court order required that, “The districts must be as nearly equal in population as is practicable.” *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 2 ¶ 2, No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001). All parties in both decades proposed plans with a deviation no greater than one person.

The following table shows the degree of population equality actually achieved in congressional plans since 1980.

Overall Range of Minnesota Congressional Plans

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

b. **Legislative.** The 2011 principles for legislative districts required that, “The population of a legislative district shall not deviate by more than two percent from the population of the ideal district.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 8 ¶ 4, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011). They also provided 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.” *Id.*

The Minnesota Constitution, [art. 4](#), § 2, requires that, “The representation in both houses shall be apportioned equally throughout the different sections of the state in proportion to the population thereof.” The U.S. Supreme Court in *Reynolds v. Sims*, [377 U.S. 533, 579](#) (1964), required that legislative plans achieve “substantial equality of population among the various districts.” “Substantial equality of population” has come to mean that a legislative plan will not be thrown out solely for inequality of population if its overall range is less than ten percent.²

The federal court criteria for legislative plans adopted in 1971, *Beens v. Erdahl*, [Order](#) at 1, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971); and 1981, *LaComb v. Growe*, [Order](#) 1 ¶ 1, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981); the 1991 concurrent resolution, [House Con. Res. No. 2](#) ¶ 4, JOURNAL OF THE HOUSE 5292 (May 13, 1991); and the 1991 state court, *Cotlow v. Growe*, [Pretrial Order No. 2](#) at 4 ¶ 4, No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991); and federal court criteria, *Emison v. Growe*, [Order](#) at 3 ¶ 4 (D. Minn. Oct. 21, 1991); and the state

² *Gaffney v. Cummings*, [412 U.S. 735](#) (1973); *White v. Regester*, [412 U.S. 755](#) (1973).

court principles adopted in 2001, *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 3 ¶ 3, No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001), permitted deviations from population equality not to exceed two percent, plus or minus, an overall range of four percent. The following table shows the degree of population equality actually achieved in legislative plans since 1950.

Overall Range of Minnesota Legislative Plans

Year	Senate	House
2012	1.42%	1.60%
2002	1.35%	1.56%
1994	3.53%	5.27% ³
1991	3.42%	5.90% ²
1982	3.41%	3.97%
1972	3.71%	3.96%
1962	411.49%	672.13%
1952	909.20%	1471.14%

4. **Numbering Districts.** The Minnesota Constitution, [art. 4](#), § 3, requires that “Senate districts shall be numbered in a regular series.”

An examination of maps of legislative districts since 1897, available on the Legislature’s web site at: https://www.gis.leg.mn/html/maps/leg_districts.html, shows that, until the federal court panel drew the legislative plan in 1972, the districts had been numbered from southeast to northwest, with Hennepin and Ramsey counties each allocated a certain number of consecutively numbered Senate 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 Minneapolis and St. Paul, and ending in Minneapolis and St. Paul. My review of the maps (which I 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 maps for them available from the Metropolitan Council,⁴ upon which the court drew its lines. The districts were numbered in accordance with the paper technology then in use.

The 1982 plan drawn by the federal court used the same system.

The resolutions introduced early in the 1991 session⁵ to set standards for legislative and

³ The House plans in 1991 and 1994 exceeded four percent (plus or minus two) because of errors in the plans that were not so severe as to require correction.

⁴ The maps of the court’s plan on the website don’t show the Metropolitan Council’s logo, but the maps the rest of us were working on did.

⁵ [House Con. Res. No. 1](#) (congressional), JOURNAL OF THE HOUSE 245 (Feb. 7, 1991); [House Con. Res. No. 2](#) (legislative), JOURNAL OF THE HOUSE 284 (Feb. 14, 1991).

congressional redistricting plans did not include a system for numbering the districts. As the caucuses began to draw their plans, I noticed that different numbering systems were being used, not just from caucus to caucus but from plan to plan. In comparing plans, I could compare the district boundaries when overlaid on a map, but comparing statistical reports was difficult when the numbering systems were wildly different. I took it upon myself to articulate the system used by the courts in 1972 and 1982. That system was added to the resolutions by amendments recommended by the House Committee on Redistricting, adopted by the House March 21, 1991. See JOURNAL OF THE House 665 (congressional), 666 (legislative). Both the state and federal court panels in 1991 used the system set forth in the concurrent resolutions. *Cotlow v. Growe*, [Pretrial Order No. 2](#) at 5 ¶ 6, No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991); *Emison v. Growe*, No. Civil 4-91-202, [Order](#) at 3 ¶ 7 (D. Minn. Oct. 21, 1991).

The 2001 court principles required the continued use of the same system. *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 4 ¶ 4, No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001).

The 2011 court principles changed the size of the metropolitan area from seven counties to 11 counties. *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 7 ¶ 3, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

5. Convenient, Contiguous, Compact Territory. The 2011 principles required the districts to “consist of convenient, contiguous territory structured into compact units. Contiguity by water is sufficient if the body of water does not pose a serious obstacle to travel within the district. Districts with areas that touch only at a point shall not be considered contiguous.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 6 ¶ 4 (congressional), 8 ¶ 6 (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

The Minnesota Constitution, [art. 4](#), § 3, requires that Senate districts be composed of “convenient contiguous territory.” The constitutional provision does not apply to House districts or congressional districts.

The 1971 federal court criteria for both Senate and House districts required that they “consist of a compact and contiguous area.” *Beens v. Erdahl*, [Order](#) at 1, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971).

The 1981 federal court criteria for both legislative and congressional districts said that, “The districts shall be single-member, compact, and contiguous.” *LaComb v. Growe*, [Order](#) 2 ¶ 2, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#) 2 ¶ 2, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981) (congressional).

The Legislative Coordinating Commission’s Subcommittee on Redistricting recommended to both houses the concurrent resolutions that were adopted without dissent in the 1991 session. Those resolutions said that, “The districts must be composed of convenient contiguous territory. To the extent consistent with the other standards in this resolution, districts should be compact. Contiguity by water is sufficient if the water is not a serious obstacle to

travel within the district.” [House Con. Res. No. 1](#) ¶ 3 (congressional), JOURNAL OF THE HOUSE 5291 (May 13, 1991); [House Con. Res. No. 2](#) ¶ 5 (legislative), JOURNAL OF THE HOUSE 5292 (May 13, 1991). The sentence on contiguity by water was added on the recommendation of Senator (later Judge) Randolph W. Peterson when he chaired the Subcommittee during the 1990 interim.

Both the state and federal court panels in 1991 used language similar to that set forth in the concurrent resolutions. *Cotlow v. Growe*, [Pretrial Order No. 2](#) at 3 § 3 (congressional) 4 ¶ 5 (legislative) (“The districts will be composed of convenient contiguous territory structured into compact units. Contiguity by water is sufficient if the water is not a serious obstacle to travel within the district.”), No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991); *Emison v. Growe*, No. Civil 4-91-202, [Order](#) at 3 ¶ 6 (legislative), 4 § 5 (congressional) (“The districts shall be compact and consist of convenient contiguous territory. Where contiguity of a district is interrupted by water, this criterion is satisfied if the water does not seriously impede travel within the district.”) (D. Minn. Oct. 21, 1991).

The state court’s 2001 principles added that, “Districts with areas that connect at only a single point will be considered noncontiguous.” *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 2 ¶ 4 (congressional), 4 ¶ 5 (legislative), No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001).

The 2011 principles rephrased that as “shall not be considered contiguous.”

The 2001 principles required that the reports on a plan include the results of the “Roeck [properly spelled ‘Reock’], Perimeter, Polsby-Popper, and Population Circle measures of compactness.” *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 7 at ¶ 4, No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001). The 2011 principles added the Schwartzberg, Length-Width, Population Polygon, and Ehrenburg measures. *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 12 at ¶ 4, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

For a discussion, with pictures, of how those 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):

<http://www.ncsl.org/documents/redistricting/Compactness-March-2010Hofeller.pdf>.

The Maptitude for Redistricting 2017 software includes all eight of these measures, plus a Minimum Convex Polygon (or “Hull”) measurement. How each is computed is explained on pages 120 to 122 of the Maptitude for Redistricting 2017 User Guide. The Guide does not say how long each measure takes to run. On my PC in 2017, the times on a Minnesota House plan were as follows:

Reock	Schwartzberg	Perimeter	Polsby-Popper	Length-Width	Population Polygon	Population Circle	Ehrenburg	Minimum Convex Hull
2 seconds	45 seconds	2 seconds	2 seconds	3 seconds	1 minute	2 minutes	2 minutes	2 seconds

To run the Reock, Perimeter, Polsby-Popper, Length-Width, and Convex Hull measures in one report took 4 seconds. To run all the measures in one report took 6 minutes and 30 seconds.

6. Minority Voting Rights. The 2011 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 federal court’s criteria adopted in 1981 had said that, “Districts shall preserve the voting strength of minority populations and will, wherever possible, increase the probability of minority representation from areas of sizable concentrations of minority population.” *LaComb v. Growe*, [Order](#) at 2 ¶ 5, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#) at 2 ¶ 4, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981) (congressional). The federal court criteria went beyond the minimum requirement of § 2 of the Voting Rights Act of 1965,⁶ that the voting strength of minority populations not be diluted, by imposing an affirmative obligation to increase the probability of minority representation.

The 1991 resolutions, [House Con. Res. No. 1](#) ¶ 5 (congressional), JOURNAL OF THE HOUSE 5291 (May 13, 1991); [House Con. Res. No. 2](#) ¶ 7 (legislative), JOURNAL OF THE HOUSE 5292 (May 13, 1991); and the criteria adopted by both the federal and state court panels, continued that affirmative obligation.

The 2001 resolution passed by the Senate continued the affirmative obligation, but the resolution passed by the House did not. See [2001 S.F. No. 1326, Revisor’s Full-Text Side-by-Side R1](#) ¶ (6) (Senate), ¶ (5) (House) (May 2, 2001). The state court’s 2001 principles omitted it. *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 2 ¶ 5 (congressional), 4 ¶ 6 (legislative), No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001).

The 2011 bills vetoed by the governor, [H.F. No. 1425](#) 2, subd. 6 (legislative), and [H.F. No. 1426](#) 2, subd. 6 (congressional); and state court principles, all omitted the affirmative obligation.

For a discussion of Section 2 of the Voting Rights Act of 1965 and how it applies to redistricting plans, see Wattson, [How to Draw Plans](#), *supra* 16-24.

7. Political Subdivisions. The 2011 principles required that, “Political subdivisions shall not be divided more than necessary to meet constitutional requirements.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 6 ¶ 5 (congressional), 9 ¶ 7 (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

⁶ Codified as amended at [52 U.S.C. § 10301](#).

This principle began with the criterion adopted by the federal court in 1971 that said that the districts would “respect the integrity of existing boundaries of political subdivisions of the State.” *Beens v. Erdahl*, [Order](#) at 1, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971).

The 1981 federal court criteria said that, “The integrity of existing boundaries of political subdivisions of the state will be respected to the extent practicable to minimize division in the formation of a district.” *LaComb v. Growe*, [Order](#) at 2 ¶ 4, Civ. No. 4-81-152 (D. Minn. Dec. 29, 1981) (legislative); *LaComb v. Growe*, [Order](#) at 2 ¶ 3, Civ. No. 4-81-414 (D. Minn. Dec. 29, 1981) (congressional).

As the concurrent resolutions of 1991 were being developed, there was some discussion of what effort should be made not to divide school districts. After all, they are political subdivisions, as are hospital districts, watershed districts, sanitary districts, and other special purpose districts. To focus on only the general purpose governmental units, the concurrent resolutions of 1991 identified the political subdivisions that must be respected and specified the reasons that might justify a split: “A county, city, or town should 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 territory.” [House Con. Res. No. 1](#) ¶6 (congressional), JOURNAL OF THE HOUSE 5291 (May 13, 1991); [House Con. Res. No. 2](#) ¶ 8 (legislative), JOURNAL OF THE HOUSE 5292 (May 13, 1991).

During the 1991 legislative session, I observed the practice of those drawing plans, once they had divided a particular county or city, to divide it many times, because a count was being kept of the number of units divided, but not of the number of times they were divided. I thought it would be desirable to put a limit on that. As proposed by the Intervening Plaintiffs in *Cotlow v. Growe*, [Intervening Plaintiffs’ Responses to Suggested Redistricting Criteria of Defendant-Intervenors, Plaintiffs, and Defendant Kolstad and Intervening Plaintiffs’ Suggested Additional Criteria](#) at 6 ¶ 4 (Aug. 13, 1991), the state court’s 1991 principles added the requirement that, “When any county, city or township must be divided into one or more districts, it will be divided into as few districts as practicable.” *Cotlow v. Growe*, [Pretrial Order No. 2](#) at 3 § 6 (congressional), 5 ¶ 8 (legislative), No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991).

During the 2001 session, I worked with Caliper Corporation to modify the Maptitude report on political subdivision splits to count the number of splits, as well as the number of units split, so there was a mechanism to enforce the court’s principle. The state court’s 2001 principle said that:

The districts will be drawn with attention to county, city, and township boundaries. A county, city, or township will 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 any county, city, or township must be divided into one or more districts, it will be divided into as few districts as possible.

Zachman v. Kiffmeyer, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 2 ¶ 6 (congressional), 4 ¶ 7 (legislative), No. C0-01-160 (Minn. Spec. Redis. Panel,

Dec. 11, 2001).

In 2011, both the Republican plaintiffs and the DFL intervenors proposed deleting the last sentence. See *Hippert v. Ritchie*, [Hippert Plaintiffs' Motion to Adopt Proposed Redistricting Criteria 15](#), [Martin Intervenors' Motion to Adopt Proposed Redistricting Criteria 12](#), No. A11-152 (Minn. Spec. Redis. Panel, Oct. 5, 2011). The court's 2011 principles merely restated the requirement of [Minn. Stat. § 2.91, subd. 2](#), "that political subdivisions not be divided more than necessary to meet constitutional requirements." They 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. *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions 6 ¶ 5](#) (congressional), [9 ¶ 7](#) (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

8. Communities of Interest. The 2011 principles provided that, "Where possible in compliance with the preceding principles, communities of interest shall be preserved. (citations omitted) For purposes of this principle, 'communities of interest' include, but are not limited to, groups of Minnesota citizens with clearly recognizable similarities of social, geographic, political, cultural, ethnic, economic, or other interests. Additional communities of interest will be considered if persuasively established and if consideration thereof would not violate applicable law." *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions 6 § 6](#) (congressional), [9 ¶ 8](#) (legislative), No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

This principle began with the federal court's criterion of 1981 that said, "apportionment plans may recognize the preservation of communities of interest in the formation of districts. 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).

The 1991 resolutions said that the "districts should attempt to preserve communities of interest where that can be done in compliance with the preceding standards." [House Con. Res. No. 1 ¶ 7](#) (congressional), JOURNAL OF THE HOUSE 5291 (May 13, 1991); [House Con. Res. No. 2 ¶ 9](#) (legislative), JOURNAL OF THE HOUSE 5292 (May 13, 1991). The 1991 state court criteria added that, "The panel may recognize a community's character as urban, suburban or rural. (citations omitted) Additional communities of interest shall be considered if persuasively established and not in violation of applicable case law." *Cotlow v. Growe*, [Pretrial Order No. 2](#) at 3 § 7 (congressional), [5 ¶ 9](#) (legislative), No. C8-91-985 (Minn. Spec. Redis. Panel Aug. 16, 1991).

The 2001 legislative resolutions attempted to identify the particular interests that would be considered. See [2001 S.F. No. 1326, Revisor's Full-Text Side-by-Side R2 ¶ \(8\)](#) (Senate), ¶ (6) (House) (May 2, 2001). The 2001 state panel's principle selected some interests from each house. See *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions 3 ¶ 7](#) (congressional), [5 ¶ 8](#) (legislative), No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001).

The court's principle of 2011 was essentially unchanged.

9. **Incumbents.** The 2011 principles required that the districts “not be drawn for the purpose of protecting or defeating an incumbent. But the impact of redistricting on incumbent officeholders is a factor subordinate to all redistricting criteria that the panel may consider to determine whether proposed plans result in either undue incumbent protection or excessive incumbent conflicts.” *Hippert v. Ritchie*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 9 ¶ 9, No. A11-152 (Minn. Spec. Redis. Panel, Nov. 4, 2011).

The federal court's 1971 criteria had said that “no consideration will be given to the residence of incumbent legislators or the voting pattern of electors.” *Beens v. Erdahl*, [Order](#) at 1, No. 4-71-Civil 151 (D. Minn. Nov. 26, 1971).

Its 1981 criteria said nothing about incumbents; but, when the court issued its legislative plan, it noted that, after drawing the plan without reference to incumbents, it did make six minor adjustments to boundary lines to eliminate unnecessary pairing of incumbents. *See LaComb v. Growe*, [541 F. Supp. 160](#), 165-66 (D. Minn. 1982).

In 1991, the legislative resolutions said nothing about incumbents.

The state court's 1991 criteria said that, “Past voting behavior and residency of incumbents shall not be used as criteria; however, they may be used to evaluate the fairness of plans submitted to the court.” [Pretrial Order No. 3](#) at 2 ¶ 2 (congressional); 2 ¶ 4 (legislative) (Sept. 13, 1991). The federal court's criterion for incumbents was similar. It said that, “Previous electorate voting behavior or residency of incumbents shall not be used in the development of any apportionment plan. This information may be used by the court, however, to evaluate the fairness and equity of plans submitted.” *Emison v. Growe*, No. Civil 4-91-202, [Order](#) 4 ¶ 10 (legislative), 5 § 9 (congressional) (D. Minn. Oct. 21, 1991).

The state court's 2001 principles said that, “Districts may not be drawn for the purpose of protecting or defeating an incumbent. However, as a factor subordinate to all redistricting criteria, the panel may view a proposed plan's effect on incumbents to determine whether the plan results in either undue incumbent protection or excessive incumbent conflicts.” *Zachman v. Kiffmeyer*, [Order Stating Redistricting Principles and Requirements for Plan Submissions](#) 3 ¶ 8 (congressional), 5 ¶ 9 (legislative), No. C0-01-160 (Minn. Spec. Redis. Panel, Dec. 11, 2001).

The court's 2011 principle was essentially the same.