

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

Civil No: 1:22-CV-00031

Charles Walen, an individual; and Paul )  
Henderson, an individual, )  
 )  
Plaintiffs )

vs. )

Doug Burgum, in his official capacity as )  
Governor of the State of North Dakota; )  
Michael Howe, in his official capacity as )  
Secretary of the State of North Dakota, )  
 )  
Defendants )

**AFFIDAVIT OF  
BRADLEY N. WIEDERHOLT**

and )

The Mandan, Hidatsa and Arikara Nation; )  
Lisa DeVille, an individual; and )  
Cesareo Alvarez, Jr., an individual. )  
 )  
Defendants-Intervenors )

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STATE OF NORTH DAKOTA )  
 ) SS.  
COUNTY OF BURLEIGH )

Being duly sworn, Bradley N. Wiederholt, testifies:

1. I am an attorney duly licensed to practice law in the State of North Dakota and am admitted to practice before this Court.
2. I am a member of the firm of Bakke Grinolds Wiederholt, counsel of record designated as Special Assistants Attorneys General for Defendants Doug Burgum and Michael Howe, in their respective official capacities on behalf of the State of North Dakota, in this action. I have personal knowledge of the facts stated herein.

3. Attached hereto as ***Exhibit 1*** is a true and correct copy of House Bill 1397, signed by Governor Burgum on April 21, 2021.
4. Attached hereto as ***Exhibit 2*** is a true and correct copy of the meeting minutes of the July 29, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at <https://ndlegis.gov/assembly/67-2021/interim/23-5040-03000-meeting-minutes.pdf>
5. Attached hereto as ***Exhibit 3*** is a true and correct copy of the meetings minutes of the August 17, 2021 Tribal and State Relations Committee meeting. The meeting minutes are also contained in the publicly available legislative record at <https://ndlegis.gov/assembly/67-2021/interim/23-5049-03000-meeting-minutes.pdf>.
6. Attached hereto as ***Exhibit 4*** is a true and correct copy of the written testimony of Nicole Donaghy, Executive Director of the North Dakota Native Vote, provided at the August 17, 2021 Tribal and State Relations Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5049\\_03000appendixb.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5049_03000appendixb.pdf).
7. Attached hereto as ***Exhibit 5*** is a true and correct copy of the meetings minutes of the August 26, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at <https://ndlegis.gov/assembly/67-2021/interim/23-5024-03000-meeting-minutes.pdf>.
8. Attached hereto as ***Exhibit 6*** is a true and correct copy of the presentation provided by Ben Williams from the National Conference of State Legislatures. Mr. Williams' presentation is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixb.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixb.pdf).

9. Attached hereto as **Exhibit 7** is a true and correct copy of Legislative Redistricting – Background Memorandum presented by Emily Thompson from the North Dakota Legislative Council at the August 26, 2021 Redistricting Committee meeting. The Legislative Redistricting – Background Memorandum is also contained in the publicly available legislative record at: <https://ndlegis.gov/files/resource/committee-memorandum/23.9105.01000.pdf>.
10. Attached hereto as **Exhibit 8** is a true and correct copy of visual illustration of constitutional and statutory mapping requirements presented by Emily Thompson. The visual illustration is also contained in the publicly available record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixc.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixc.pdf)
11. Attached hereto as **Exhibit 9** is a true and correct copy of the written testimony of Collette Brown Executive Director at the Spirit Lake Casino and Resort, provided at the August 26, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixh.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixh.pdf).
12. Attached hereto as **Exhibit 10** is a true and correct copy of the written testimony of Karen Ehrens, Secretary of the League of Women Voters of North Dakota, provided at the August 26, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixe.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixe.pdf).
13. Attached hereto as **Exhibit 11** is a true and correct copy of the written testimony of Matt Perdue, on behalf of North Dakota Farmers Union, provided at the August 26, 2021 Redistricting Committee meeting. The written testimony is also contained in the

- publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixg.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixg.pdf).
14. Attached hereto as **Exhibit 12** is a true and correct copy of the written testimony of Rick Gion, Director of North Dakota Voters First, provided at the August 26, 2021 Redistricting Committee Meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5024\\_03000appendixf.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5024_03000appendixf.pdf).
  15. Attached hereto as **Exhibit 13** is a true and correct copy of meeting minutes of the August 31, 2021 Tribal and State Relations Committee meeting. The meeting minutes are also contained in the publicly available legislative record at: <https://ndlegis.gov/assembly/67-2021/interim/23-5056-03000-meeting-minutes.pdf>.
  16. Attached hereto as **Exhibit 14** is a true and correct copy of meeting minutes of the September 1, 2021 Tribal and State Relations Committee meeting. The meeting minutes are also contained in the publicly available legislative record at: <https://ndlegis.gov/assembly/67-2021/interim/23-5057-03000-meeting-minutes.pdf>.
  17. Attached hereto as **Exhibit 15** is a true and correct copy of the meeting minutes of the September 8, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at: <https://ndlegis.gov/assembly/67-2021/interim/23-5065-03000-meeting-minutes.pdf>.
  18. Attached hereto as **Exhibit 16** is a true and correct copy of the meeting minutes of the September 15-16, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at: <https://ndlegis.gov/assembly/67-2021/interim/23-5061-03000-meeting-minutes.pdf>.



19. Attached hereto as ***Exhibit 17*** is a true and correct copy of written testimony provided by Nicole Donaghy, Executive Director of North Dakota Native Vote, provided at the September 15-16, 2021 Redistricting Commission meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5061\\_03000appendixe.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5061_03000appendixe.pdf).
20. Attached hereto as ***Exhibit 18*** is a true and correct copy of written testimony of Collette Brown, Gaming Commission Executive Director at the Spirit Lake Casino and Resort, provided at the September 15-16, 2021 Redistricting Commission meeting. The written testimony is also contained in the publicly available legislative record at [https://www.ndlegis.gov/files/committees/67-2021/23\\_5061\\_03000appendixd.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5061_03000appendixd.pdf).
21. Attached hereto as ***Exhibit 19*** is a true and correct copy of written testimony of Mike Faith, Chairman for the Standing Rock Sioux Tribe, provided at the September 15-16, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at [https://www.ndlegis.gov/files/committees/67-2021/23\\_5061\\_03000appendixb.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5061_03000appendixb.pdf).
22. Attached hereto as ***Exhibit 20*** is a true and correct copy of written testimony of Charles Walker, Councilman for the Standing Rock Sioux Tribe, provided at the September 15-16, 2021 Redistricting Committee. The written testimony is also contained in the publicly available legislative record at [https://www.ndlegis.gov/files/committees/67-2021/23\\_5061\\_03000appendixc.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5061_03000appendixc.pdf).
23. Attached hereto as ***Exhibit 21*** is a true and correct copy of the meeting minutes of the September 22-23, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at:

- <https://ndlegis.gov/assembly/67-2021/interim/23-5062-03000-meeting-minutes.pdf>.
24. Attached hereto as **Exhibit 22** is a true and correct copy of the presentation on legal considerations for subdistricting provided by attorney Claire Ness from the North Dakota Legislative Council. The presentation is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5062\\_02000\\_1010presentation.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5062_02000_1010presentation.pdf)
25. Attached hereto as **Exhibit 23** is a true and correct copy of written testimony of Mark Fox, Chairman of the Tribal Business Council of the Mandan, Hidatsa and Arikara Nation, provided at the September 22-23, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at [https://www.ndlegis.gov/files/committees/67-2021/23\\_5062\\_03000appendixe.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5062_03000appendixe.pdf).
26. Attached hereto as **Exhibit 24** is a true and correct copy of the meeting minutes of the September 28-29, 2021 Redistricting Committee meeting. The meeting minutes are also contained in the publicly available legislative record at: <https://ndlegis.gov/assembly/67-2021/interim/23-5063-03000-meeting-minutes.pdf>.
27. Attached hereto as **Exhibit 25** is a true and correct copy of written testimony of Mike Faith provided at the September 28-29, 2021 Redistricting Committee Meeting. The written testimony is also contained in the publicly available legislative record at [https://www.ndlegis.gov/files/committees/67-2021/23\\_5063\\_03000appendixe.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixe.pdf).
28. Attached hereto as **Exhibit 26** is a true and correct copy of written testimony of Mark Fox provided at the September 28-29, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5063\\_03000appendixd.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixd.pdf).

29. Attached hereto as **Exhibit 27** is a true and correct copy of written testimony of Douglas Yankton provided at the September 28-29, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5063\\_03000appendixc.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixc.pdf),
30. Attached hereto as **Exhibit 28** is a true and correct copy of the written testimony of Lisa DeVille provided at the September 28-29, 2021 Redistricting Committee meeting. The written testimony is also contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5063\\_03000appendixb.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixb.pdf).
31. Attached hereto as **Exhibit 29** is a true and correct copy of email correspondence from Claire Ness to the Redistricting Committee members providing summaries of various court cases relating to Section 2 of the Voting Rights Act. Claire Ness' email correspondence is contained in the publicly available legislative record at: [https://www.ndlegis.gov/files/committees/67-2021/23\\_5063\\_03000appendixf.pdf](https://www.ndlegis.gov/files/committees/67-2021/23_5063_03000appendixf.pdf).
32. Attached hereto as **Exhibit 30** is a true and correct copy of the Redistricting Committee final report regarding redistricting submitted to the legislative management. This report is contained in the publicly available legislative record at: <https://ndlegis.gov/files/resource/67-2021/legislative-management-final-reports/2021ssfinalreport.pdf>
33. Attached hereto as **Exhibit 31** is a true and correct copy of Governor Doug Burgum's Executive Order 2021-17.
34. Attached hereto as **Exhibit 32** is a true and correct copy of the meeting minutes of the November 8, 2021 Joint Redistricting Committee meeting, with attachments. The minutes and all attachments are contained in the publicly available legislative record

- at: <https://www.ndlegis.gov/files/resource/67-2021/library/hb1504.pdf>
35. Attached hereto as **Exhibit 33** is a true and correct copy of select maps of the final statewide redistricting recommended by the Redistricting Committee. All of the maps are contained in the publicly available legislative record at: [https://ndlegis.gov/files/committees/67-2021/map\\_for\\_consideration\\_092921.pdf](https://ndlegis.gov/files/committees/67-2021/map_for_consideration_092921.pdf).
36. Attached hereto as **Exhibit 34** is a true and correct copy of press releases concerning the federal census and regarding redistricting software used by the State of North Dakota, both of which are publicly available at the following links: <https://www.census.gov/newsroom/press-releases/2021/news-conference-2020-census-redistricting-data.html> and <https://www.caliper.com/learning-redistricting/index.php/articles/when-will-i-receive-my-2020-redistricting-data/>.
37. Maps and related redistricting information, including information for the Challenged Subdistricts, is located at the publicly available legislative record at the following link: <https://www.ndlegis.gov/assembly/67-2021/special/approved-legislative-redistricting-maps>
38. Attached hereto as **Exhibit 35** is a true and correct copy of map entitled North Dakota Plan – House Bill No. 1504. This map is contained in the publicly available legislative record at: <https://www.ndlegis.gov/files/district-maps/2023-2032/finalmaphb1504.pdf>
39. Attached hereto as **Exhibit 36** is a true and correct copy of a statewide map of North Dakota. This information is contained in the publicly available legislative record at: <https://ndgov.maps.arcgis.com/home/webmap/templates/OnePane/basicviewer/embed.html?webmap=abb67d432e9242c4800374ba87763c80&gcsextent=-101.40,47.50,-101.20,49.30&displayslider=true&displaydetails=true&displaysearch=true>

40. Attached hereto as **Exhibit 37** is a true and correct copy of the deposition transcript of Charles Walen taken on December 7, 2022.
41. Attached hereto as **Exhibit 38** is a true and correct copy of the deposition transcript of Paul Henderson taken on December 7, 2022.
42. Attached hereto as **Exhibit 39** is a true and correct copy of Donna Henderson's biography on the North Dakota Legislature's website, which is located in the publicly available legislative record at: <https://www.ndlegis.gov/districts/2023-2032/district-9>; <https://www.ndlegis.gov/biography/donna-henderson> .
43. Attached hereto as **Exhibit 40** is a true and correct copy of a North Dakota Legislative Council memorandum regarding the 2020 Census population change, which is located in the publicly available record at: <https://www.ndlegis.gov/files/resource/committee-memorandum/23.9119.01000.pdf>
44. Attached hereto as **Exhibit 41** is a true and correct copy of the Expert Report of Dr. M.V. Hood III issued for the companion case, entitled, *Turtle Mountain Band of Chippewa Indians, et. al. v. Alvin Jaeger*, in his official capacity as Secretary of State of North Dakota, Case No. 3:22-cv-00022.
45. Attached hereto as **Exhibit 42** is a true and correct copy of the Expert Report of Dr. Loren Collingwood dated January 17, 2023 and issued in the instant action.
46. Attached hereto as **Exhibit 43** is a true and correct copy of the State redistricting map at issue, as well as the maps of Subdistricts 4A, 4B, 9A, and 9B, which maps are contained in the publicly available record at:  
<https://www.ndlegis.gov/files/district-maps/2023-2032/finalmaphb1504.pdf>;  
<https://www.ndlegis.gov/files/district-maps/2023-2032/4A.pdf>;



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF BRADLEY N. WIEDERHOLT** was on the 28<sup>th</sup> day of February, 2023, filed electronically with the Clerk of Court through ECF:

Paul Sanderson (#05830)  
Ryan Joyce (#09549)  
Evenson Sanderson PC  
1100 College Drive, Suite 5  
Bismarck, ND 58501  
[psanderson@esattorneys.com](mailto:psanderson@esattorneys.com)  
[rjoyce@esattorneys.com](mailto:rjoyce@esattorneys.com)

Robert Harms (#03666)  
815 N. Mandan St.  
Bismarck, ND 58501  
[robert@harmsgroup.net](mailto:robert@harmsgroup.net)

Mark P. Gaber (DC Bar No. 988077)  
Molly Danahy  
Nicole Hansen  
CAMPAIGN LEGAL CENTER  
1101 14th St. NW, Ste. 400  
Washington, DC 20005  
[mgaber@campaignlegal.org](mailto:mgaber@campaignlegal.org)  
[mdanahy@campaignlegalcenter.org](mailto:mdanahy@campaignlegalcenter.org)  
[nhansen@campaignlegalcenter.org](mailto:nhansen@campaignlegalcenter.org)

Michael S. Carter, OK No. 31961  
Matthew Lee Campbell  
NATIVE AMERICAN RIGHTS FUND  
1506 Broadway  
Boulder, CO 80301  
[carter@narf.org](mailto:carter@narf.org)  
[mcampbell@narf.org](mailto:mcampbell@narf.org)

Bryan L. Sells  
PO BOX 5493  
Atlanta, GA 31107-0493  
[bryan@bryansellsllaw.com](mailto:bryan@bryansellsllaw.com)

Samantha Blencke Kelty  
Native American Rights Fund  
1514 P Street NW, Suite D  
Washington, DC 20005  
[kelty@narf.org](mailto:kelty@narf.org)

By: /s/ Bradley N. Wiederholt  
Bradley N. Wiederholt



**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1397  
(Representatives Pollert, Louser)  
(Senators Klein, Wardner)

AN ACT to establish a legislative management redistricting committee, to provide for the implementation of a legislative redistricting plan, to exempt drafts of redistricting plans from open records requirements, to provide for public access to plans that are distributed or reported, and to provide for a special legislative session; to provide an expiration date; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE MANAGEMENT REDISTRICTING COMMITTEE - OPEN RECORDS EXEMPTION - SPECIAL LEGISLATIVE SESSION.**

1. The chairman of the legislative management shall appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The committee must consist of an equal number of members from the senate and the house of representatives appointed by the chairman of the legislative management.
2. The committee shall ensure any legislative redistricting plan submitted to the legislative assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the legislative assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the legislative management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the legislative council or a member of the legislative assembly is an exempt record as defined in section 44-04-17.1 until presented or distributed at a meeting of the legislative management, a legislative management committee, or the legislative assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the legislative management, a legislative management committee, or the legislative assembly is an exempt record.
5. The chairman of the legislative management shall request the governor to call a special session of the legislative assembly pursuant to section 7 of article V of the Constitution of North Dakota to allow the legislative assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2022, and after that date is ineffective.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

**Exhibit 1**

  
Speaker of the House

  
President of the Senate

  
Chief Clerk of the House

  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1397 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 90 Nays 3 Absent 1


  
Speaker of the House

  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.


Vote: Yeas 47 Nays 0 Absent 0

  
President of the Senate

  
Secretary of the Senate

Received by the Governor at 9:25 AM. on April 20, 2021.

Approved at 8:47 P. M. on April 21, 2021.

  
Governor

Filed in this office this 22nd day of April, 2021,

at 9:23 o'clock A. M.

  
Secretary of State



## REDISTRICTING COMMITTEE

Thursday, July 29, 2021  
Prairie Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Bill Devlin, Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, Austen Schauer; Senators Brad Bekkedahl, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, Ronald Sorvaag

**Member absent:** Senator Randy A. Burckhard

**Others present:** Representative Sebastian Ertelt, Lisbon

Chairman Devlin called the meeting to order and noted the meeting will consist of mapping training. Substantive discussion regarding redistricting and future scheduling of meeting dates and locations will take place at the committee's meeting on Thursday, August 26, 2021.

### MAPPING TRAINING

Chairman Devlin called on Mr. Stewart Berry, Vice President of Product Management, Caliper Corporation, to conduct a legislator training session on Maptitude software. Mr. Berry appeared remotely and provided interactive training on the features of Maptitude software, including how to create a new plan from an existing plan and how to create a new plan from a blank map.

No further business appearing, Chairman Devlin adjourned the meeting at 1:30 p.m.

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Emily L. Thompson  
Code Revisor

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Samantha E. Kramer  
Senior Counsel

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Claire Ness  
Counsel

## Exhibit 2





## TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, August 17, 2021

Training Room, Second Floor, Turtle Mountain Community College, 10145 BIA Road 7  
Belcourt, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Rich Wardner, Joan Heckaman, Dave Oehlke; Representatives Joshua A. Boschee, Terry B. Jones, Chet Pollert

**Member absent:** Senator Jessica Bell

**Others present:** Senator Richard Marcellais, Belcourt, and Representative Marvin E. Nelson, Rolla Nathan Davis, Executive Director, Indian Affairs Commission; Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians  
Vonette J. Richter, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

Ms. Jill Grossman, Counsel, Legislative Council, reviewed the [Tribal and State Relations Committee - Background Memorandum](#) and the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

### LEGISLATIVE REDISTRICTING AND TRIBAL CENSUS DATA

Chairman Wardner requested comments on legislative redistricting noting he would report any feedback received from the tribe to the Legislative Management's interim Redistricting Committee.

Representative Nelson noted the official census numbers have been released, and the Turtle Mountain Reservation's population appears to be inaccurate.

Ms. Alysia LaCounte, General Counsel, Turtle Mountain Band of Chippewa Indians, indicated tribal data collected by the tribe's research group is more accurate than the census data.

Ms. Nicole Donaghy, Executive Director, North Dakota Native Vote, presented testimony ([Appendix B](#)) regarding legislative redistricting. She noted the Legislative Assembly should comply with the Voting Rights Act and consult with tribal governments for feedback. She noted the Turtle Mountain Reservation is its own community of interest and should remain a single legislative district.

Chairman Azure noted:

- There was dialogue between the tribe and the United States Census Bureau.
- There was a push to get an accurate count of tribal members, but members continue to mistrust the federal and state governments due to historical trauma.
- The pandemic also affected the census collection.
- The United States Census Bureau did not reach out to the Indian Health Service or the tribe's research group for supplemental tribal records or data.

Chairman Wardner noted people's reluctance to provide personal information to others likely was a hindrance for the census calculation, and he would visit with the Chairman of the Redistricting Committee regarding concerns that the reservation's population is likely higher than the census data indicates.

## **INDIAN BOARDING SCHOOLS AND BURIAL SITES**

Chairman Azure noted concerns regarding the possibility that members of the Turtle Mountain Reservation are buried on Indian boarding schools' land and requested support for the effort to bring those individuals back to their families for appropriate ceremonies and burials.

In response to a question from a committee member, Chairman Azure noted the state could help by asking the North Dakota congressional delegation for assistance in bringing any remains back to the tribe.

Ms. LaCounte noted the tribe would like support with the tribe's request for any pertinent records from the State Historical Society regarding the Fort Totten Indian School because many tribal members attended the school.

In response to a question from a committee member, Ms. LaCounte noted the tribe has not requested such records from the State Historical Society due to a lack of manpower.

Chairman Wardner suggested the State Historical Society be requested to present to the committee at a subsequent meeting regarding this issue.

## **MISSING AND MURDERED INDIGENOUS PERSONS**

Chairman Azure noted concerns regarding missing and murdered indigenous persons and problems associated with a lack of communication and cooperation between federal, state, and tribal agencies and law enforcement.

Senator Marcellais presented testimony ([Appendix C](#)) on missing and murdered indigenous persons.

Ms. Jessica Marcellais-Zaste, Ms. Beverly Gouneau, Ms. Pauline Trottier, and Mr. Glenn Longie provided testimony regarding missing and murdered family members and concerns that law enforcement officials did not sufficiently investigate or provide information to family members.

Mr. Davis noted there is interest among the tribal nations in partnerships with the State Highway Patrol.

Chairman Wardner suggested the State Highway Patrol be requested to present to the committee at a subsequent meeting regarding this issue.

## **LAW ENFORCEMENT SHORTAGE AND DRUG TASK FORCE**

Chairman Azure noted drug use is prevalent on the reservation, there is a shortage of law enforcement officials, and a drug task force should be formed as more resources are needed to combat drug activity.

Mr. Nathan Gustafson, Sheriff, Rolette County, provided testimony regarding the shortage of law enforcement officials in the community, the rampant drug activity and associated crime, and officer safety concerns.

Mr. Brock Baker, Juvenile Probation Officer, Turtle Mountain Reservation, provided testimony regarding law enforcement officials' desire to cooperate and the challenges in working with other agencies and navigating various jurisdictions' policies and procedures.

## **GAMING AND ELECTRONIC PULL-TAB DEVICES**

Chairman Azure noted electronic pull-tab devices largely are unregulated by the state, and the devices' implementation has impacted tribal economies, which rely heavily on gaming revenue. He suggested the state impose a limit on the number of devices at each site and require surveillance at each location.

Senator Heckaman noted additional full-time employees were allocated recently to the Gaming Division of the Attorney General's office to provide more oversight over electronic pull-tab devices.

Representative Pollert noted some legislators tried to pass legislation regarding this issue, but were unable to get sufficient support to enact the legislation.

## **TRENTON SERVICE AREA WATER ISSUE**

Ms. April Walker, Turtle Mountain Reservation Consultant, provided testimony regarding the Trenton Service Area's water needs. She noted the City of Williston has been treating water for the Trenton Service Area, but recently there has been pressure to negotiate with the Northwest Area Water Supply, rather than the Western Area Water Supply Authority.

No further business appearing, Chairman Wardner adjourned the meeting at 3:37 p.m.

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Jill Grossman  
Counsel

ATTACH:3



North Dakota Native Vote  
PO Box 226  
Bismarck, North Dakota  
58502  
[info@ndnativevote.org](mailto:info@ndnativevote.org)

Boozhoo Mr. Chairman Azure, members of the Turtle Mountain Band of Chippewa Tribal Council, Chairman Wardner and members of the State and Tribal Relations Committee, my name is Nicole Donaghy, I am an enrolled citizen of Standing Rock Sioux Tribe and a descendant of the Turtle Mountain Band of Chippewa as well as the MHA people in Fort Berthold. I am also the Executive Director of North Dakota Native Vote. Thank you for the opportunity to discuss legislative redistricting in the homelands of the Anishinabek people.

North Dakota Native Vote is a non-profit, non-partisan grassroots organization that initially formed in response to the 2018 US Supreme Court decision to uphold the voter identification law that had the potential to disenfranchise over 5,000 Native American voters in North Dakota. Our mission is to create and affect policy to promote equitable representation for the Native people of North Dakota. We do this by fostering sustainable positive social change in our communities through community organizing, mobilization, leadership development, and policy advocacy.

According to 2010 Census information, the population of Turtle Mountain Band Reservation was approximately 8,612, the land base is six mile by twelve-mile land base and is considered one of the most densely populated Reservations, per square mile, in the United States. If the Turtle Mountain Reservation was listed as a city, it would be the 5th largest city in North Dakota.

As the state of North Dakota undertakes its redistricting process, the Legislature should take several steps.

First, the Legislature should comply with the Voting Rights Act.

This may include moving away from at-large districts for the State House of Representatives. Where there are tribal communities, there should be single member House districts to ensure tribal communities have equitable representation. Failure to draw single-member House districts dilutes the Native vote and may violate the Voting Rights Act.

Second, a “Community of Interest” standard should be utilized in redistricting, which will take into consideration groups of similar language, culture and identity, to keep them together within legislative districts.



North Dakota Native Vote  
PO Box 226  
Bismarck, North Dakota  
58502  
[info@ndnativevote.org](mailto:info@ndnativevote.org)

---

Turtle Mountain is its own community of interest and should remain in a single legislative district. Splitting the reservation into multiple districts would dilute the ability of tribal members to elect the representative of their choice.

Third, even though the redistricting schedule is abbreviated, it is of the utmost importance to consult with the tribal governments as well as their citizens to take the tribal perspective into account in the redistricting process. In as many ways as possible. Many other states have already begun holding redistricting hearings to get feedback directly from citizens and tribes. This process is far too important to ignore the perspective of tribal communities.

While we are thankful for your attendance here today, and your commitment to improving the state's relationship with the Tribe, we also expect the same courtesy from the redistricting committee. We thank you for your consideration of these important issues. We hope that this committee will be an ally and advocate for the tribes through the redistricting process and beyond. We are happy to address any questions or discuss these issues further.

Nicole Donaghy  
Executive Director  
North Dakota Native Vote  
[ndonaghy@ndnativevote.org](mailto:ndonaghy@ndnativevote.org)





## REDISTRICTING COMMITTEE

Thursday, August 26, 2021  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Bill Devlin, Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson, Mike Nathe, Austen Schauer; Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, Ronald Sorvaag

**Members absent:** None

**Others present:** Representatives Jim Schmidt, Huff; and Kim Koppelman, West Fargo; and Senator Donald Schaible, Mott; members of the Legislative Management  
John Bjornson, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

It was moved by Representative Lefor, seconded by Senator Bekkedahl, and carried on a voice vote that the minutes of the July 29, 2021, meeting be approved as distributed.

Ms. Emily L. Thompson, Code Revisor, Legislative Council, presented a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

## REDISTRICTING OVERVIEW

Mr. Ben Williams, Program Principal, Elections and Redistricting, National Conference of State Legislatures, provided testimony ([Appendix B](#)) regarding redistricting fundamentals, the 2020 Census, legal doctrines that govern redistricting, and redistricting criteria. He noted the National Conference of State Legislatures does not provide specific policy advice, but provides 50-state information that might be helpful to decisionmakers tasked with making policy choices.

In response to questions from committee members, Mr. Williams noted:

- There is not a set threshold regarding the percentage minority population of which a legislative district must be composed for a redistricting plan to be challenged by a minority group that is alleging vote dilution.
- In regard to reservations with larger populations that are seeking the formation of subdistricts, the total population of the reservation in relation to the total population of the legislative district is not the sole determinative factor when analyzing a redistricting plan. Any additional analysis would need to be applied, such as the political cohesion of the minority group.
- Political cohesion can be determined by political scientists when conducting a racial voting block analysis.

In response to a question from a committee member, Mr. Williams indicated he would review cases from other states that have applied subdistricts and provide information regarding the factors the courts used when analyzing redistricting plans that included subdistricts.

In response to a question from a committee member, Mr. Williams noted:

- The use of census block groups versus individual census blocks will result in more accurate data due to the United States Census Bureau's application of differential privacy to the 2020 Census data.

- He would not be surprised if litigation arises regarding the inaccuracy of the 2020 Census data as a result of the application of differential privacy.
- The National Conference of State Legislatures sent letters to the United States Census Bureau and Congress in 2020 highlighting concerns with the use of differential privacy.

Ms. Thompson presented a memorandum entitled *Legislative Redistricting - Background Memorandum*, which outlined the constitutional and statutory requirements for redistricting in North Dakota, the history of redistricting in North Dakota, and applicable federal law. She also presented a visual illustration ([Appendix C](#)) of constitutional and statutory mapping requirements.

In response to a question from a committee member, Ms. Thompson indicated the Legislative Council staff would provide committee members a list of the population of the portion of each reservation in the state.

Ms. Samantha E. Kramer, Senior Counsel, Legislative Council, presented a memorandum entitled *2020 Census - Population Change Summary*, which outlined the change in population between the 2010 Census and the 2020 Census for legislative districts, counties, and cities. She reviewed the ideal district size for each of the constitutionally permissible number of legislative districts that may be included in a redistricting plan.

Ms. Claire Ness, Counsel, Legislative Council, presented information ([Appendix D](#)) regarding the development and maintenance of redistricting records and the differing levels of legislative privilege that may apply to open records requests versus records requested during the course of litigation.

In response to a question from a committee member, Mr. John Bjornson, Director, Legislative Council, noted the state briefly was engaged in litigation in 1991. He said the plaintiffs to the litigation brought a claim in federal district court seeking to use the river to connect the Standing Rock Reservation and the Fort Berthold Reservation into a single legislative subdistrict. He noted the lawsuit was dismissed.

In response to a question from a committee member, Ms. Ness noted the majority of lawsuits are filed after a plan is adopted; however, a lawsuit may be filed at any point.

Ms. Thompson conducted a brief demonstration of the features of the Maptitude for Redistricting mapping software.

Ms. Ness reviewed the types of reports that can be generated using the software.

Ms. Thompson noted a free online redistricting product known as "Dave's Redistricting" is available to members of the public.

## COMMENTS FROM INTERESTED PARTIES

Chairman Devlin called for comments from interested persons regarding redistricting.

The Legislative Council staff distributed testimony (Appendices [E](#) and [F](#)) submitted by Ms. Karen Ehrens, Secretary, League of Women Voters of North Dakota, and Mr. Rick Gion, Director, North Dakota Voters First.

Mr. Matt Perdue, Lobbyist, North Dakota Farmers Union, provided testimony ([Appendix G](#)) encouraging the committee to cross as few county lines as possible, retain communities of common interest within district boundaries, and provide geographical balance to the Legislative Assembly when redrawing legislative district lines. He noted the North Dakota Farmers Union is particularly concerned with the potential loss of rural representation in the Legislative Assembly.

Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Casino and Resort, provided testimony ([Appendix H](#)) outlining the recent history of the tribe's fight for voting rights. She noted it is critical for the Legislative Assembly to comply with the Voting Rights Act and encouraged the committee members to draw a plan that moves away from the use of at-large state legislative districts for the House of Representatives to avoid diluting the minority vote. She also encouraged committee members to consider communities of interest when preparing a legislative redistricting plan.

Mr. Nathan Davis, Executive Director, Indian Affairs Commission, noted the interim Tribal and State Relations Committee is meeting with tribal nations to receive feedback on redistricting concerns. He offered the assistance of the Indian Affairs Commission in facilitating communication between the committee and the tribal nations.

Chairman Devlin noted the committee will contact the Indian Affairs Commission to coordinate a time for each tribal nation to address the committee.

### COMMITTEE DISCUSSION

**It was moved by Senator Holmberg and seconded by Representative Bellew that the committee proceed with a 47-district plan for planning purposes.**

Some committee members questioned whether it was premature to settle on the number of districts to be included in a redistricting plan this early in the process. Other committee members noted a decision regarding the number of districts to include in a redistricting plan was determined early during the last redistricting cycle and the committee's abbreviated timeline in which to complete a redistricting plan warrants an expedited decision on the number of districts that should be included in plans submitted to the committee.

At the request of Chairman Devlin, Ms. Thompson reviewed information presented to the 2011 Redistricting Committee, which indicated the cost to add an additional legislative district was estimated at \$1.2 million for a 10-year period.

Chairman Devlin noted the committee will not strictly be precluded from considering plans consisting of other than 47 districts.

**The motion carried on a roll call vote.** Representatives Devlin, Bellew, Boschee, Headland, Lefor, Monson, Nathe, and Schauer and Senators Bekkedahl, Burckhard, Erbele, Holmberg, Klein, Oban, Poolman, and Sorvaag voted "aye." No negative votes were cast.

Chairman Devlin called for committee discussion of future meeting dates and locations.

Some committee members favored traveling to locations other than Bismarck to increase the public's access to the committee. Interest was expressed in traveling to Fargo because Cass County contains a quarter of the state's population. Other committee members noted past Redistricting Committee meetings held in locations other than Bismarck were sparsely attended and the public has the option of livestreaming meetings from any location.

Committee members also discussed the option of providing Teams links to members of the public wishing to provide testimony at future meetings. Some committee members were in favor of providing Teams links to members of the public who provided the committee advanced notice of their intent to provide testimony.

Committee members selected September 8, 2021, for the committee's next meeting, which will be held in Fargo; and September 15-16, 2021, September 22-23, 2021, and September 28-29, 2021, for the committee's remaining meetings, all of which will be held in Bismarck.

Chairman Devlin noted the committee will aim to conclude its work by the end of September.

Committee members were encouraged to keep traditional redistricting principles in mind when completing their redistricting plans in addition to complying with statutory and constitutional requirements.

No further business appearing, Chairman Devlin adjourned the meeting at 2:45 p.m.

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Emily L. Thompson  
Code Revisor

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Samantha E. Kramer  
Senior Counsel

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Claire Ness  
Counsel

ATTACH:8

APPENDIX B



# Redistricting Presentation to the North Dakota Legislature

Ben Williams

Program Principal, Elections and Redistricting, NCSL

August 26, 2021

**Exhibit 6**



Strengthening  
the legislative  
institution.

Serving 7,383  
legislators and  
25,000 staff.



# Today's Outline



Fundamentals & Census

Legal Doctrines


Criteria/Principles

Why We Redistrict

ONE  
PERSON

★ ★ ★

ONE  
VOTE

 NCSL

## Fundamentals: Who is a person?



- Supreme Court has never answered definitively
- Assumption since reconstruction has been all residents of the United States
- Key Case: *Evenwel v. Abbott* (2016)
  - Person = total population, regardless of legal status or age
  - But left door open to other interpretations...



# Fundamentals: Who Draws Legislative Districts



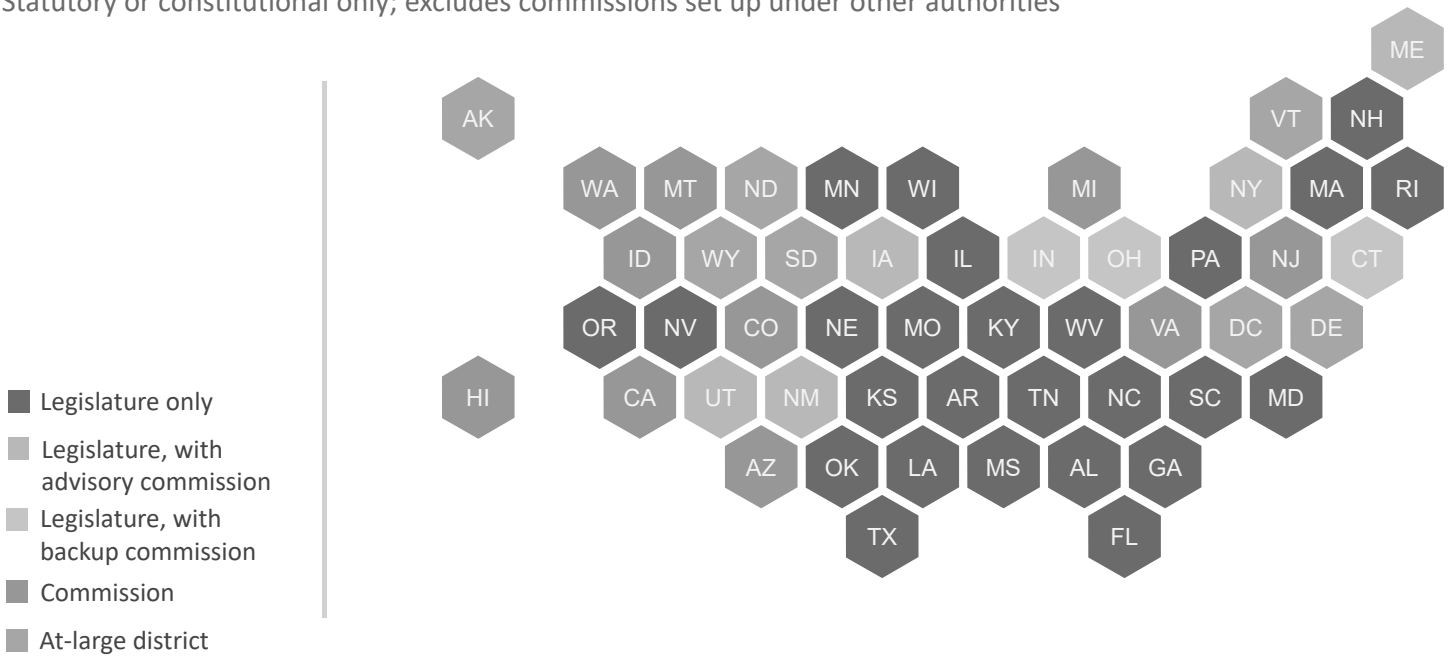
Statutory or constitutional only; excludes commissions set up under other authorities



# Fundamentals: Who Draws Congressional Districts



Statutory or constitutional only; excludes commissions set up under other authorities



- People living in the United States: 331,449,281
- Growth since 2010: 7.4%
- Nearly all population increase in metropolitan and micropolitan areas; ND is major exception to this!
- 47/50 states saw population growth this decade
- Only three states saw their populations shrink this decade:
  - Illinois (-0.1%)
  - Mississippi (-0.2%)
  - West Virginia (-3.2%)



## 2020 Census Takeaways

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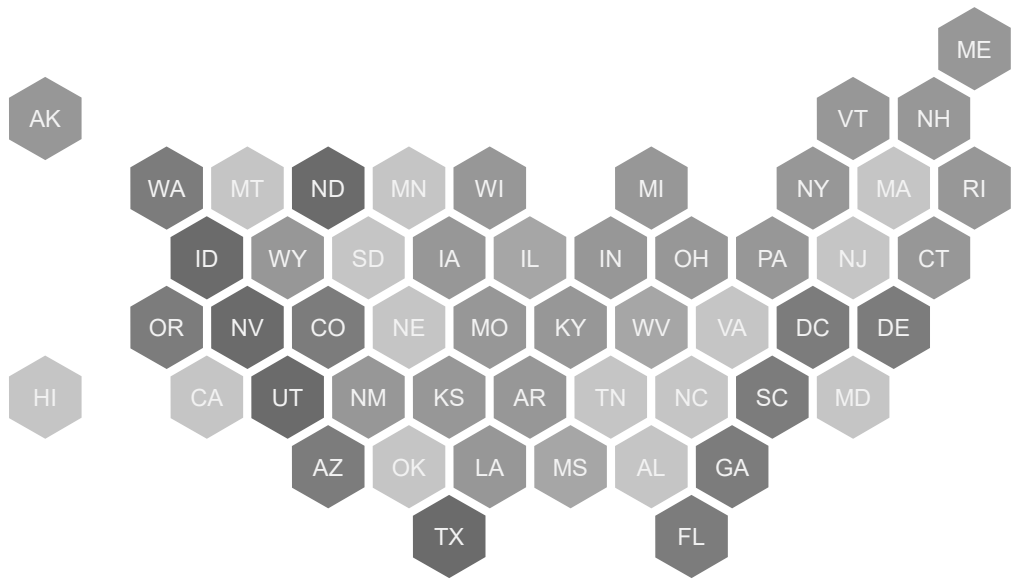
# 2020 Census Results



## Population Changes by State

North Dakota's population grew by 15.8% between 2010 and 2020.

- + > 15% (Very Fast Growth)
- + 10-15% (Fast Growth)
- + 5-10% (Moderate Growth)
- + 0-5% (Slow Growth)
- Population Decrease

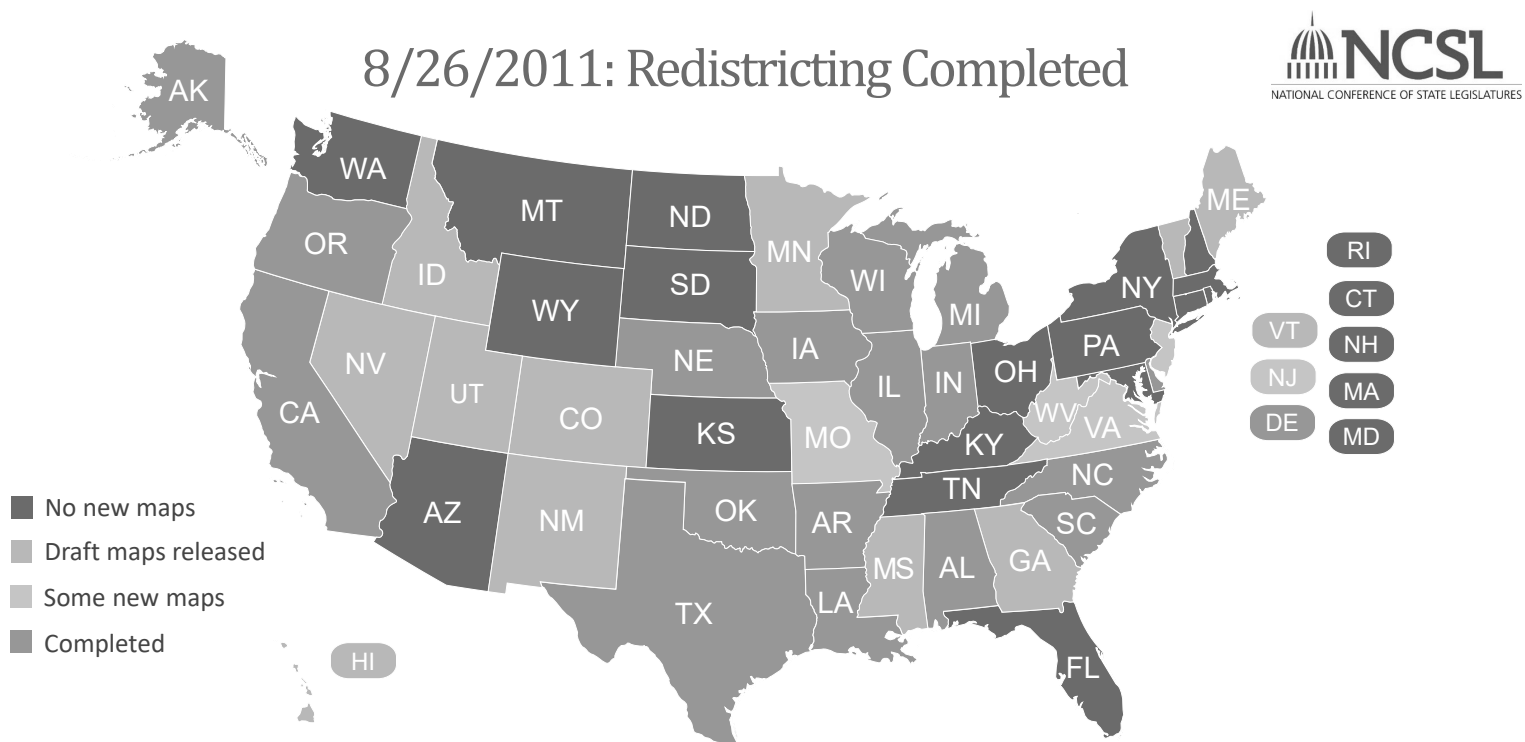


- The pandemic
- Fires
- Floods
- Policy changes



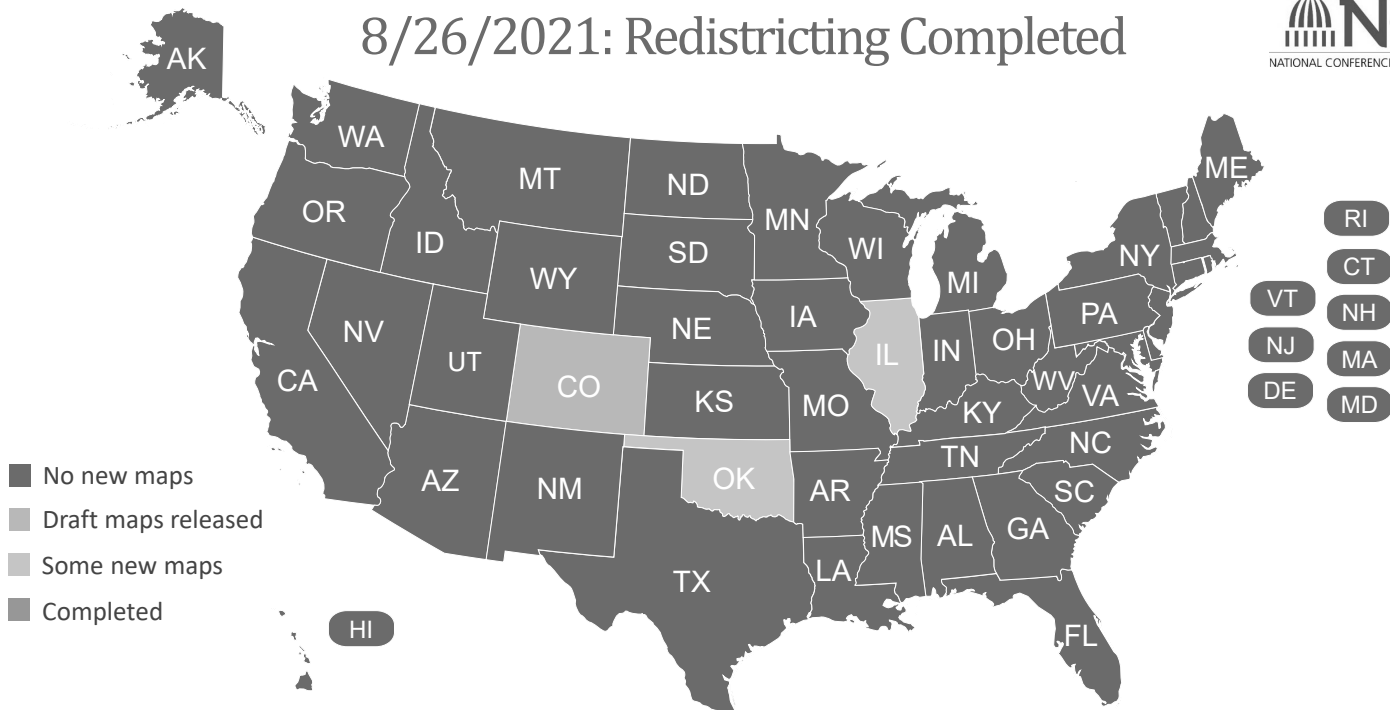
## Delays

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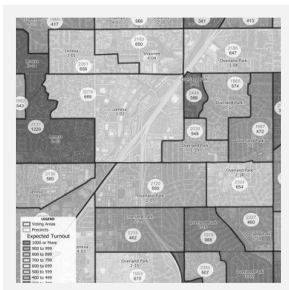
Source: All About Redistricting; Ballotpedia

# 8/26/2021: Redistricting Completed



## The Problem With Delays: Less Time to Redistrict

It isn't just drawing new maps



Processing



Filing Deadlines



Residency



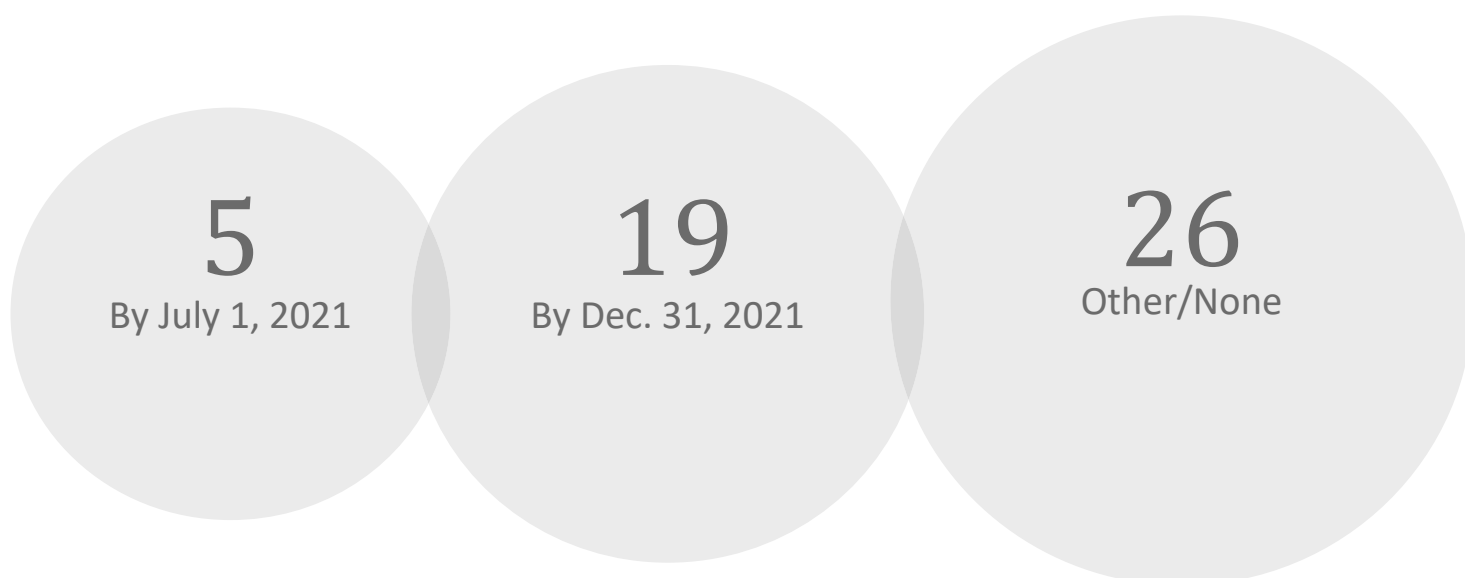
Local Prep



Primaries



## State Redistricting Deadlines by Date



## Disclosure avoidance

- Federal statutes require the protection of respondents' information\*
- The previous system proved to be breakable
- Any system to protect privacy reduces accuracy and usability

*\*There's a federal requirement to provide population data at the block level too*



## Data Suppression



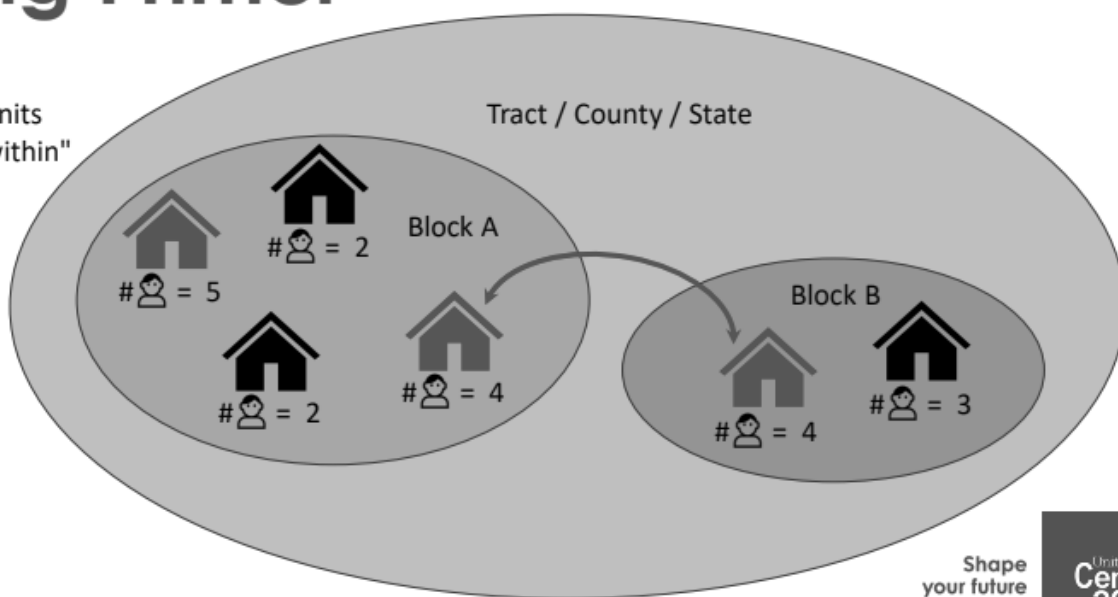
Fake Census Block Populations				
8	18	13	2	15
42	1	3	16	18
4	14	15	6	3
24	18	6	1	3
14	4	8	2	3

Fake Census Block Populations				
8	18	13	2	15
42	S	3	16	18
4	14	15	6	3
24	18	6	S	3
14	4	8	S	3

- Data that could expose personal information is simply not provided
- Used in 1980 for individual cells and for whole tables

# Swapping Primer


1. Determine key to match units
2. Choose "between" and "within" geographies
3. Determine units to swap
4. Select swap rate
5. Find swap pairs



# Noise

Inserting error to increase uncertainty.

14	41	50	58	65
15	24	26	30	25
52	53	66	47	51
68	6	44	17	32
38	26	33	42	64



13	41	51	58	65
15	24	25	30	24
51	54	66	48	51
68	6	44	16	32
38	25	33	42	65



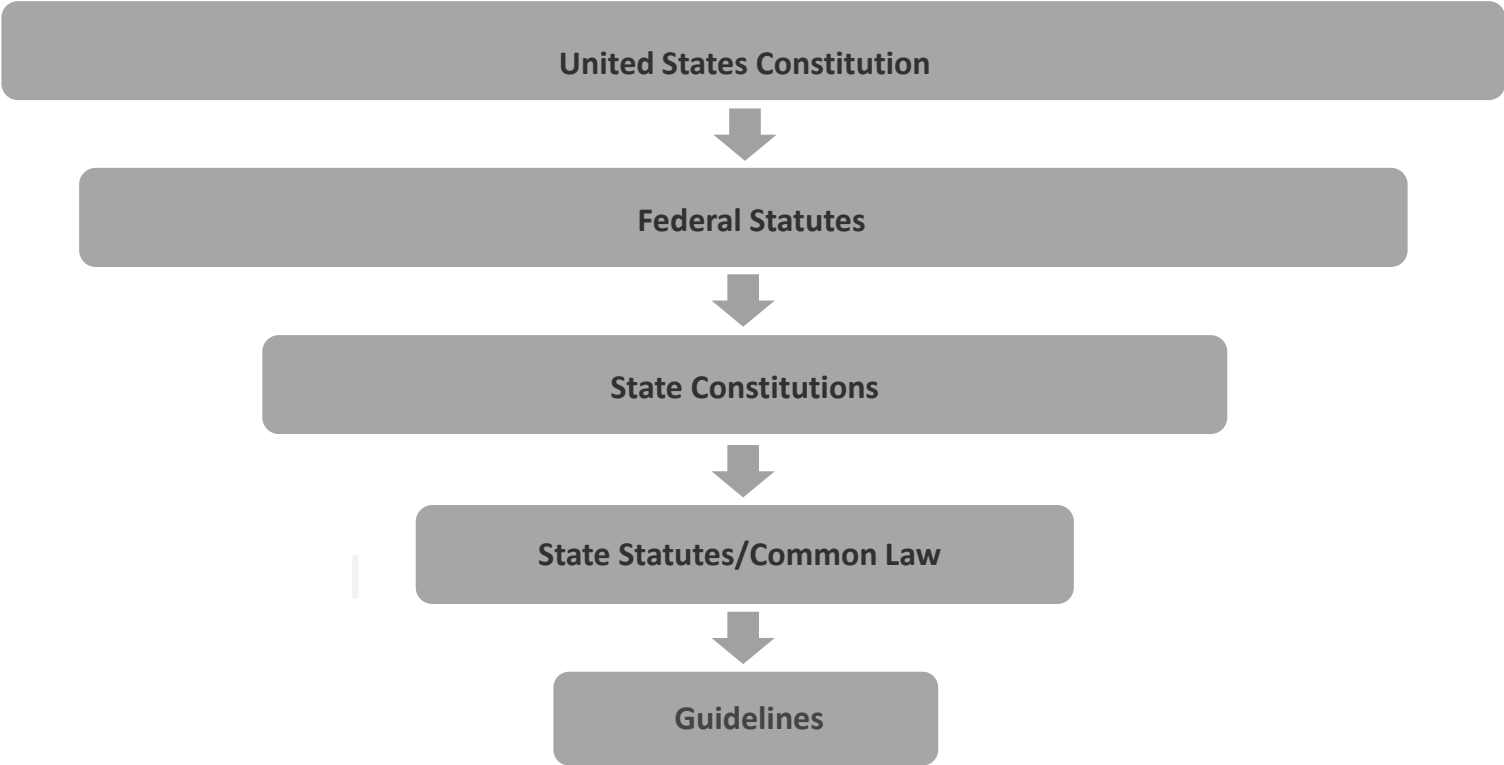
## Using differential privacy to protect data means...

- Only state total population will be reported without “noise”
- Distortions in rural areas are likely to be greater than in urban areas
- Distortions in small racial/ethnic groups are likely to be larger than in others

# Legal Doctrines

Federal and State





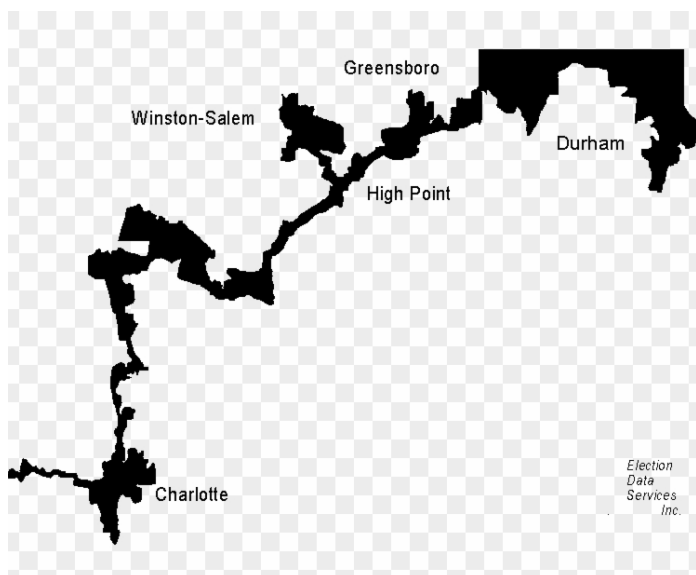


## US Constitution: One Person, One Vote



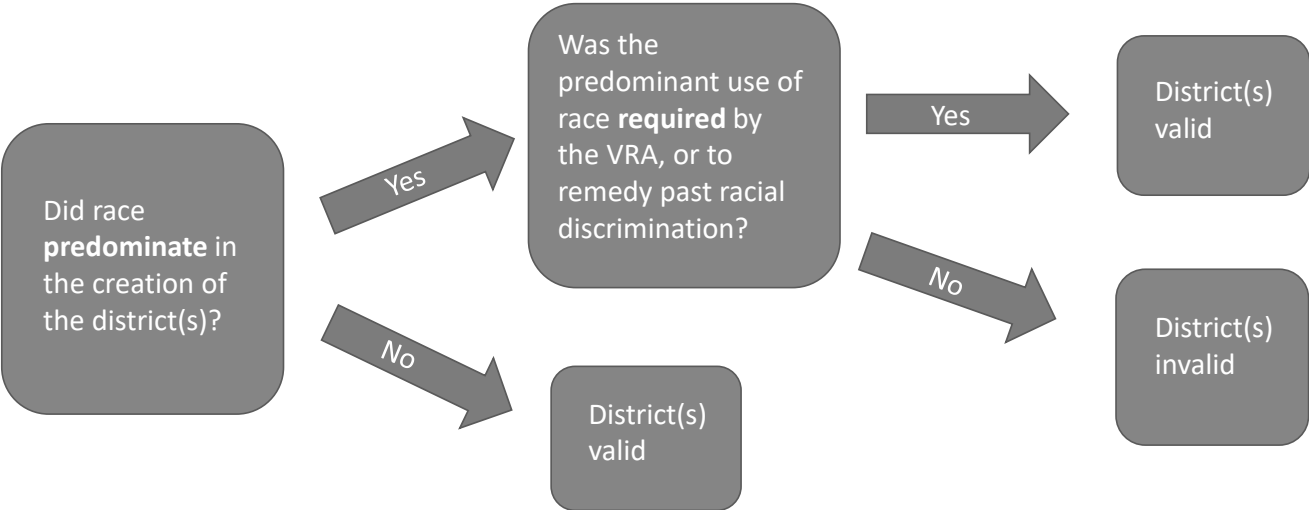
- **Principle:** Equal Protection requires that votes for legislators and congressmembers hold equal weight
  - Congressional Districts: *Wesberry v. Sanders* (1964)
  - State Legislative Districts: *Reynolds v. Sims* (1964)
- **Application:** Varies depending on district type
  - Congressional Districts: Exact numerical equality
  - State Legislative Districts: 10% deviation if justified by compliance with traditional criteria

## US Constitution: Racial Gerrymandering



- Equal Protection Clause claim
- Origin: *Shaw v. Reno* (1993)
- Claim has evolved over time
- Test: **Predominance**
  - Was race the predominant factor in the construction of a particular district?

# US Constitution: Racial Gerrymandering



## US Constitution: Partisan Gerrymandering



- Major focus at SCOTUS this decade
- Claims based on 1<sup>st</sup> and 14<sup>th</sup> Amendments
- No longer justiciable in federal courts
- But theories from these cases have successfully been used in state courts



## Key Sections of the VRA

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### Section 2

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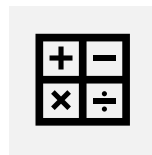
Private and Federal Cause of Action



### Section 3

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The "Bail-In" Remedy for Violating Federal Law



### Section 4

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The Preclearance Coverage Formula



### Section 5

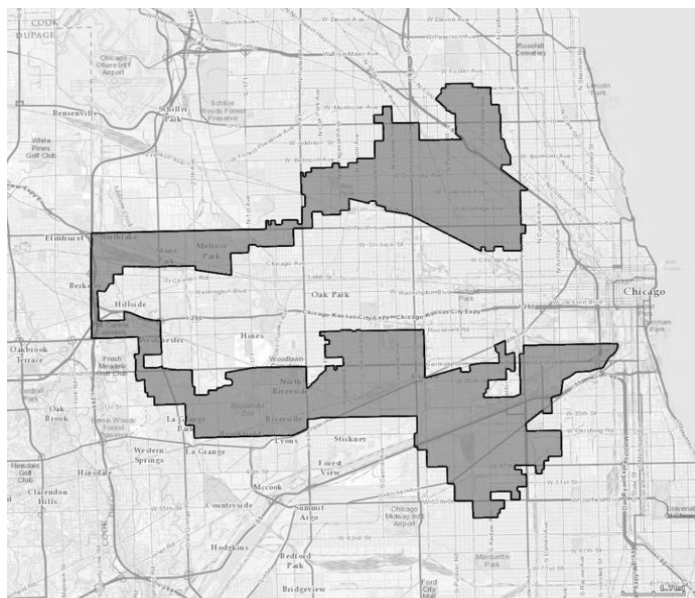
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The Preclearance Regime

## Section 2: Overview



- Prohibits Vote Dilution
- Applies Nationwide
- Requires litigation (not prophylactic)
- Burden of Proof: Discriminatory Effect
  - Plaintiffs do not need to prove discriminatory intent



## Section 2: When Applies

### *Gingles* Preconditions

**Sufficiently large and geographically compact** to constitute majority

Minority group is **politically cohesive**

**White voters act as a bloc** to defeat minority group's candidate of choice

### Senate Factors

- History of official discrimination
- Racially polarized voting in the state
- Minority vote diluting election procedures
- Minority exclusion from the candidate slating process
- Discrimination in health education and employment
- Subtle or overt racial appeals in campaigns
- Extent of minority success being elected to public office

## Key Distinction: Vote Denial vs. Vote Dilution



### Vote Denial (Elections)

- Applies to laws denying or abridging the right to vote on account of race or color
- Localized or statewide impact of challenged law on denial of right to vote
- Key Supreme Court case:
  - *Brnovich v. Democratic National Committee* (2021)

### Vote Dilution (Redistricting)

- Applies to districting plans that hinder a minority group's opportunity to elect its candidate of choice
- Individual district-by-district analysis
- Some key Supreme Court cases:
  - *Mobile v. Bolden* (1980)
  - *Thornburg v. Gingles* (1986)
  - *Bartlett v. Strickland* (2009)



## Section 3: “Bail-In”

- **What:** Remedy available from courts who find violation Fourteenth or Fifteenth Amendments to U.S. Constitution.
- **How:** Judge orders jurisdiction subject to preclearance for future election law changes *if* it finds proof of discriminatory intent by a defendant.
- **When:** Limited duration set by judge; not permanent like Sections 4 and 5. Judge has significant discretion in crafting remedy.
- **Prevalence:** Rare



## Sections 4 and 5



### SUPREME COURT OF THE UNITED STATES

Syllabus

SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY  
GENERAL, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U.S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race



## States Subject to Section 5 in 2013



## State Constitutions: Free and Equal Elections Clauses



### POLITICO



The request to stay the ruling from the Pennsylvania state Supreme Court was denied without comment or recorded dissent. | Jacqueline Martin/AP Photo

#### **Supreme Court won't block new Pennsylvania congressional map**

By ELENA SCHNEIDER and STEVEN SHEPARD | 03/19/2018 03:51 PM EDT | Updated 03/19/2018

- 30 state constitutions require elections to be some combination of free, equal and fair
- PA and NC courts read this clause to include prohibition on partisan gerrymandering
- North Dakota's constitution does not contain this clause



# Criteria/Principles

## Federal Statute: Single-Member Districts



“In each State entitled . . . to more than one Representative . . . there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more than one Representative.” – 2 U.S.C. 2a

## \*Criteria/Principles: Compactness



○ Common traditional principle (40 states)

○ Two common ways to measure:

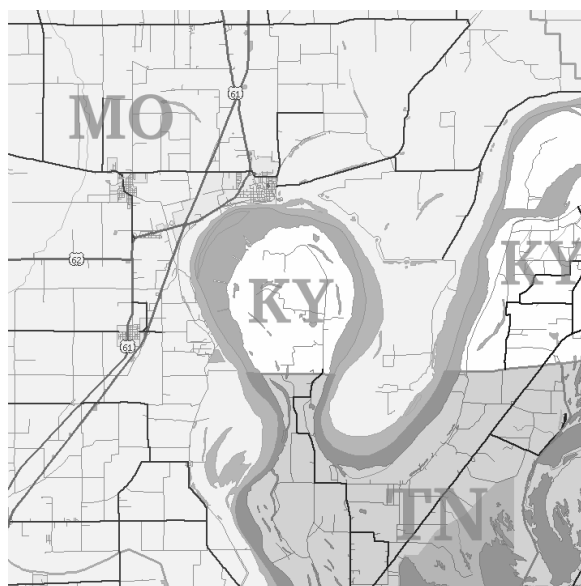
- Polsby-Popper :  $\frac{\text{Area of District}}{\text{Area of Circle with Same Perimeter as District}}$
- Reock :  $\frac{\text{Area of District}}{\text{Area of Smallest Encompassing Circle}}$



## \*Criteria/Principles: Contiguity



- Most common principle (all 50 states)
- **General Rule:** Must be able to go to every part of the district without leaving it
- Where issues arise:
  - Non-contiguous locality boundaries (usually arises with annexations)
  - Water





## Criteria/Principles: Preserving Political Subdivisions



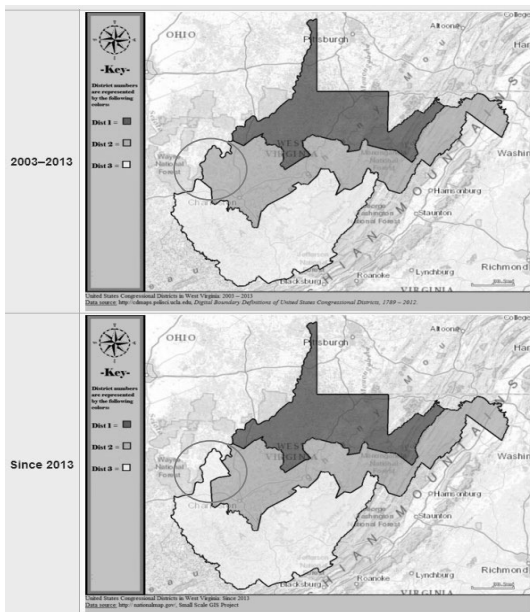
### General Application

- Common traditional principle (45 states)
- Unless specified, could refer to any type of subdivision
  - County, City, School District, City Council Wards, etc.
- A stand-in for communities of interest or compactness?
- Importance of local political boundaries varies throughout the U.S.

### Specific Application: Counties

- Sometimes codified (e.g., Idaho)
- Sometimes judicial (e.g., North Carolina)
- **General Idea:** keep counties or groups of counties together wherever possible. Only deviate from county borders when necessary to comply with federal laws like the Voting Rights Act or One Person, One Vote

## Criteria/Principles: Preserving Cores of Prior Districts



- Somewhat infrequent traditional principle (10 states)
- Rationale: don't unnecessarily break up peoples' relationships with their representatives
- Usually permitted but not required
- Some states (e.g., Arizona) explicitly reject this principle and draw districts anew each decade

## Other criteria NCSL tracks



- Preserving communities of interest (25 states)
- Prohibition on favoring/disfavoring an incumbent/party/candidate (17 states)
- Avoid pairing incumbents (11 states)
- Prohibition on using partisan data (5 states)
- Competitiveness (5 states)
- Proportionality (2 states)
- Symmetry (0 states, after repealed by Missouri voters in 2020)

## All of this could change via litigation...



- Legal doctrines are always evolving; what's true today may not be tomorrow
- Already there's litigation about:
  - Census Bureau's failure to deliver redistricting data on schedule
    - Alabama
    - Ohio
  - Use of alternative data
    - Illinois
  - Predicted failure to redistrict
    - Minnesota
    - Louisiana
    - Wisconsin
    - Pennsylvania

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**Ben Williams**  
Program Principal, Elections and  
Redistricting



**Reach out anytime!**

Email

[ben.williams@ncsl.org](mailto:ben.williams@ncsl.org)

Phone

303.856.1648



# North Dakota Legislative Council

Prepared for the Redistricting Committee  
LC# 23.9105.01000  
August 2021

## LEGISLATIVE REDISTRICTING - BACKGROUND MEMORANDUM

House Bill No. 1397 (2021) requires the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2022 primary election. The bill provides:

1. The committee must consist of an equal number of members from the Senate and the House of Representatives appointed by the Chairman of the Legislative Management.
2. The committee shall ensure any legislative redistricting plan submitted to the Legislative Assembly for consideration must be of compact and contiguous territory and conform to all constitutional requirements with respect to population equality. The committee may adopt additional constitutionally recognized redistricting guidelines and principles to implement in preparing a legislative redistricting plan for submission to the Legislative Assembly.
3. The committee shall submit a redistricting plan and legislation to implement the plan to the Legislative Management by November 30, 2021.
4. A draft of the legislative redistricting plan created by the Legislative Council or a member of the Legislative Assembly is an exempt record as defined in North Dakota Century Code Section 44-04-17.1 until presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly, at which time the presented or distributed draft is an open record. If possible, the presented or distributed draft must be made accessible to the public on the legislative branch website such as through the use of hyperlinks in the online meeting agenda. Any version of a redistricting plan other than the version presented or distributed at a meeting of the Legislative Management, a Legislative Management committee, or the Legislative Assembly is an exempt record.
5. The Chairman of the Legislative Management shall request the Governor to call a special session of the Legislative Assembly pursuant to Section 7 of Article V of the Constitution of North Dakota to allow the Legislative Assembly to adopt a redistricting plan to be implemented in time for use in the 2022 primary election and to address any other issue that may be necessary.

## REDISTRICTING IN NORTH DAKOTA North Dakota Law

### Constitutional Provisions

Section 1 of Article IV of the Constitution of North Dakota provides the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Section 2 of Article IV requires the Legislative Assembly to "fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators." The section provides districts ascertained after the 1990 federal decennial census must "continue until the adjournment of the first regular session after each federal decennial census, or until changed by law."

Section 2 further requires the Legislative Assembly to "guarantee, as nearly as practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates." This section requires the apportionment of one senator and at least two representatives to each senatorial district. This section also provides that two senatorial districts may be combined when a single-member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Section 3 of Article IV requires the Legislative Assembly to establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

## Statutory Provisions

In addition to the constitutional requirements, Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide that the Senate consist of 47 members and the House consist of 94 members. The plan must ensure legislative districts be as nearly equal in population as is practicable and population deviation from district to district be kept at a minimum. Additionally, the total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

Sections 54-03-01.8 and 54-03-01.10 provided for the staggering of Senate and House terms after redistricting in 2001. Section 54-03-01.8, which addressed the staggering of Senate terms, was found to be, in part, an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years. House Bill No. 1473 (2011) repealed Sections 54-03-01.8 and 54-03-01.10 and created a new section regarding the staggering of terms. Section 54-03-01.13 provides senators and representatives from even-numbered districts must be elected in 2012 for 4-year terms; senators and representatives from odd-numbered districts must be elected in 2014 for 4-year terms, except the senator and two representatives from District 7 must be elected in 2012 for a term of 2 years; the term of office of a member of the Legislative Assembly elected in an odd-numbered district in 2010 for a term of 4 years and who as a result of legislative redistricting is placed in an even-numbered district terminates December 1, 2012, subject to certain change in residency exceptions; the term of office of a member of the Legislative Assembly in an odd-numbered district with new geographic area that was not in that member's district for the 2010 election and which new geographic area has a 2010 population that is more than 25 percent of the ideal district population terminates on December 1, 2012; and a vacancy caused in an odd-numbered district as a result of legislative redistricting must be filled at the 2012 general election by electing a member to a 2-year term of office.

Section 16.1-01-02.2 pertains to procedures regarding special elections. As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the Legislative Assembly amended Section 16.1-01-02.2 during the November 1991 special session. The amendment provided "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan." This 30- to 50-day timetable was later amended to 90 days in 2007.

Section 16.1-03-17 provides if redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the political parties in the newly established precincts and districts shall reorganize as closely as possible in conformance with Chapter 16.1-03 to assure compliance with primary election filing deadlines.

## Redistricting History in North Dakota

### 1931-62

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided:

1. The Legislative Assembly must apportion itself after each federal decennial census; and
2. If the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment.

Because the 1961 Legislative Assembly did not apportion itself following the 1960 Census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the Majority and Minority Leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined the plan was unconstitutional and the 1931 plan continued to be law.

### 1963

In 1963 the Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of Article II of the Constitution of North Dakota were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F.Supp. 183 (1964). The 1931 plan also was held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded adequate time was not available with which to formulate a proper plan for the 1964 election and the Legislative Assembly should promptly devise a constitutional plan.



## 1965

A conference committee during the 1965 legislative session consisting of the Majority and Minority Leaders of each house and the Chairmen of the State and Federal Government Committees produced a redistricting plan. In *Paulson v. Meier*, 246 F.Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced during the 1965 legislative session and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council and the Legislative Management) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the Legislative Assembly in 1965. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

## 1971

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued the multimembership violated Section 29 of Article II of the Constitution of North Dakota, which provided each senatorial district "shall be represented by one senator and no more." The court held Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

In 1971 the Legislative Assembly failed to redistrict itself after the 1970 Census and an action was brought in federal district court which requested the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional, and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

## 1973-75

In 1973 the Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council Chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F.Supp. 371 (1974) made the "Dobson" plan permanent. However, on appeal, the United States Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

In 1975 the Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F.Supp. 649 (1975), the court held the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

## 1981

In 1981 the Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council Chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee.

The committee considered a total of 12 legislative redistricting bills. The reconvened session adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities, and each elected two senators and four representatives at large.

#### **1991-95**

In 1991 the Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative redistricting study. The committee consisted of eight senators and eight representatives. The Legislative Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 (1991) split the two Air Force bases so neither base would be included with another district to form a multisenate district. Senate Bill No. 2598 (1991) placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. The bill was heard by the Joint Legislative Redistricting Committee. The bill also was amended to provide any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of 4 years, to provide the senator from a new district created in Fargo had to be elected in 1992 for a term of 2 years, and to include an effective date

of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

The Legislative Council again contracted with Mr. Hickok to provide services for the subdistrict study. After conducting the subdistrict study, the interim committee recommended House Bill No. 1050 (1993) to establish House subdistricts within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. In 1993 the Legislative Assembly did not adopt the subdistricting plan.

In 1995 the Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

## 2001

In 2001, the Legislative Assembly budgeted \$200,000 for a special session for redistricting and adopted House Concurrent Resolution No. 3003, which provided for a study and the development of a legislative redistricting plan or plans for use in the 2002 primary election. The Legislative Council appointed an interim Legislative Redistricting Committee consisting of 15 members to conduct the study. The Legislative Redistricting Committee began its work on July 9, 2001, and submitted its final report to the Legislative Council on November 6, 2001.

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses. In addition, each caucus was provided a color printer.

The Legislative Redistricting Committee considered redistricting plans based on 45, 47, 49, 51, and 52 districts. The committee determined the various plans should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible.
3. Provide for a population variance of under 10 percent.

The interim committee recommended Senate Bill No. 2456 (2001), which established 47 legislative districts. The bill repealed the existing legislative redistricting plan, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The bill also addressed the staggering of terms in even-numbered and odd-numbered districts.

Under the 47-district plan, the ideal district size was 13,664. Under the plan recommended by the committee, the largest district had a population of 14,249 and the smallest district had a population of 13,053. Thus, the largest district was 4.28 percent over the ideal district size and the smallest district was 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent.

In a special session held November 26-30, 2001, the Legislative Assembly adopted the 47-district plan included in Senate Bill No. 2456 (2001) with amendments, most notably amendments to the provisions relating to the staggering of terms. The bill was heard by the Joint Legislative Redistricting Committee. The term-staggering provisions provided a senator and a representative from an odd-numbered district must be elected in 2002 for a term of 4 years and a senator and a representative from an even-numbered district must be elected in 2004 for a term of 4 years. The bill further included provisions to address situations in which multiple incumbents were placed within the same district and in which there were fewer incumbents than the number of seats available. In *Kelsh v. Jaeger*, 641 N.W.2d 100 (2002), the North Dakota Supreme Court found a portion of the staggering provisions to be an impermissible delegation of legislative authority in that it allowed an incumbent senator to decide whether to stop an election for the Senate in a district that had two incumbent senators with terms expiring in different years.

## 2011

In 2011, the Legislative Assembly passed House Bill No. 1267 (2011), which directed the Chairman of the Legislative Management to appoint a committee to develop a legislative redistricting plan to be implemented in time for use in the 2012 primary election. The Legislative Redistricting Committee consisted of 16 members and held its first meeting on June 16, 2011. The committee concluded its work on October 12, 2011, and submitted its final report to the Legislative Management on November 3, 2011.

The Legislative Council purchased a personal computer and a license for the Maptitude for Redistricting software for use by each of the four caucuses represented on the committee. In addition, because there were significantly more members of the majority party caucuses on the committee, the Legislative Council purchased an additional computer and redistricting software license for the shared use of the members of those groups. A template of the existing legislative districts was provided in the redistricting software to use as a starting point in creating districts because the committee members generally agreed potential redistricting plans should be based upon the cores of existing districts.

The committee considered increasing the number of districts and received information regarding the estimated cost of a district based on a 77-day legislative session, which amounted to approximately \$1,190,170 for the decade. The committee elected to maintain a 47-district plan and determined the plan should adhere to the following criteria:

1. Preserve existing district boundaries to the extent possible.
2. Preserve political subdivision boundaries to the extent possible and preserve the boundaries of the Indian reservations.
3. Provide for a population variance of 9 percent or less.

The committee recommended a bill to repeal the existing redistricting plan, establish 47 legislative districts, provide for the staggering of terms of members of the Legislative Assembly, and authorize the Secretary of State to modify primary election deadlines and procedures if any delays arose in implementing the redistricting plan. Under the 47-district plan recommended by the committee, the ideal district size was 14,310. The population of the largest district was 14,897, which was 4.10 percent over the ideal district size, and the population of the smallest district was 13,697, which was 4.28 percent below the ideal district size, providing for an overall range of 8.38 percent. The plan included 33 counties that were not split, 3 counties that were split only to preserve the boundaries of the Fort Berthold Indian Reservation, and 3 counties that were split only because the counties included cities that were too large for one district.

The committee also recommended a bill draft to the Legislative Management which would have required each legislative district contain at least six precincts. The Legislative Management rejected the portion of the committee's report relating to this bill draft.

In a special session held November 7-11, 2011, the Legislative Assembly adopted the committee's 47-district plan included in House Bill No. 1473 (2011) with minor amendments to legislative district boundaries and a change in the effective date from December 1 to November 25, 2011. The bill was heard by the Joint Legislative Redistricting Committee and approved by the 62<sup>nd</sup> Legislative Assembly by a vote of 60 to 32 in the House and 33 to 14 in the Senate.

## FEDERAL LAW

Before 1962, the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

## Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held the equal protection clause of the 14<sup>th</sup> Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population--the total state population divided by the number of districts--of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is

the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions--*Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "[v]ery likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice William J. Brennan's dissents in *Gaffney* and *White* argued the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted the majority opinions provided states would be required to justify overall ranges of 10 percent or more. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the reasons given, which included an absence of a particular racial or political group whose power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded the constitutional policy of ensuring each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14<sup>th</sup> Amendment which requires justification by the state. However, the Court further concluded a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city--a regional entity. However, the Court held the city failed to sustain its burden of justifying the large deviation.

In a federal district court decision, *Quilter v. Voinovich*, 857 F.Supp. 579 (N.D. Ohio 1994), the court ruled a legislative district plan with an overall range of 13.81 percent for House districts and 10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated in the previous district court decision, the district court mistakenly held total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.



Although the federal courts generally have maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. In *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. Ga. 2004), a federal district court in Georgia found two legislative redistricting plans adopted by the Georgia General Assembly which had an overall range of 9.98 percent violated the "one person one vote" principle. Although legislators and redistricting staff indicated they prepared the plans under the belief that an overall range of 10 percent would be permissible without demonstrating a legitimate state interest, the district court found the objective of the plan, protection of certain geographic areas and protection of incumbents from one party did not justify the deviations from population inequality, particularly in light of the fact that plans with smaller deviations had been considered. With respect to protection of incumbents, the court indicated while it may be a legitimate state interest, in this case the protection was not accomplished in a consistent and neutral manner. Although protection of political subdivision boundaries is viewed as a traditional redistricting principle, the court held regional protectionism was not a legitimate justification for the deviations in the plans. The United States Supreme Court upheld the district court opinion in *Larios*.

In *Evenwel v. Abbot*, 136 S. Ct. 1120 (2016), the Texas Legislature redrew Senate districts based on total population, rather than registered voter population. Opponents of the redistricting plan argued the use of total population, rather than voter population, gave voters in districts with a large immigrant population a disproportionately weighted vote compared to voters in districts with a small immigrant population. The Supreme Court held states may, but are not required to, use total population when drawing districts to comply with the one-person, one-vote principles under the equal protection clause.

In *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301 (2016), the Supreme Court upheld a redistricting plan with an overall deviation of 8.8 percent. The Supreme Court held even though partisanship may have played a role in developing the plan "the population deviations were primarily a result of good-faith efforts to comply with the Voting Rights Act." The plaintiffs failed to meet the burden of showing it was more probable than not that the deviation predominately resulted from the use of illegitimate redistricting factors.

Case law has established if a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

### **Partisan Gerrymandering**

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated political gerrymandering is justiciable. However, the Court determined the challengers of the legislative redistricting plan failed to prove the plan denied them fair representation. The Court stated a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 2004 a sharply divided Supreme Court addressed a challenge to a congressional redistricting plan adopted in Pennsylvania. In *Vieth v. Jubelirer*, 541 U.S. 267 (2004), four of the justices concluded partisan gerrymandering cases are nonjusticiable due to a lack of judicially discernible and manageable standards for addressing the claims. One other justice concurred in the opinion, but on other grounds, and the remaining four justices issued three dissenting opinions. Despite the challenge being dismissed, a majority of the court--the four dissenting justices and the one justice concurring in the decision to dismiss the claim--continued to maintain partisan gerrymandering cases may be adjudicated by the courts.

The Supreme Court again issued a divided opinion 2 years later in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006). In that decision, six justices wrote opinions and five justices agreed partisan gerrymandering cases are justiciable. However, the court did not agree on a standard for addressing claims and the partisan gerrymandering claim was dismissed.

The question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court in 2019. In the consolidated case of *Rucho v. Common Cause*, 139 S. Ct. 2428 (2019), the congressional redistricting maps for North Carolina and Maryland were challenged as unconstitutional partisan gerrymanders. In *Rucho*, the Supreme Court held "partisan gerrymandering claims present political questions beyond the reach of the federal courts." The Court further stated, "the Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly." However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

Instances in which state courts have addressed partisan gerrymandering include *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015). In this case, the challengers of the plan alleged the congressional redistricting plan was drawn to favor incumbent lawmakers and the Republican Party in violation of the Fair Districts Amendment to the Constitution of Florida, which prohibits political consideration in redistricting. The Florida Supreme Court upheld the trial court's findings that the map was tainted by the unconstitutional intent alleged and the Legislature was required to redraw the boundaries of several districts.

Partisan gerrymandering also was addressed at the state level in *League of Women Voters of Pennsylvania v. Commonwealth*, 644 Pa. 287 (2018). In this case, the challengers of the plan alleged the state's 2011 congressional plan violated the Free and Equal Elections Clause of the Constitution of the Commonwealth of Pennsylvania by providing one party an unfair advantage. The Pennsylvania Supreme Court found the plan lacked compactness and split local jurisdiction boundaries to an inordinate degree. The court held application of traditional redistricting principles must be the overriding consideration when preparing a redistricting map to avoid a violation of the Free and Equal Elections Clause. The Supreme Court held the map unconstitutional and substituted the 2011 map with a remedial map drawn by a special master.

Thus, though now precluded at the federal level, partisan gerrymandering cases may be justiciable in state court.

### **Multimember Districts and Racial or Language Minorities**

According to data compiled by the National Conference of State Legislatures, North Dakota is 1 of 10 states that have multimember districts. Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage." A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Many decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated a minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

Until redistricting in the 1990s, racial gerrymandering--the deliberate distortion of boundaries for racial purposes--generally had been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district. As a result, a number of redistricting plans adopted in the 1990s were

challenged by white voters on equal protection grounds and the United States Supreme Court subsequently has held several redistricting plans to be unconstitutional as a result of racial gerrymandering.

In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear race-conscious redistricting may not be impermissible in all cases. However, the Court held the plan to a test of strict scrutiny and required the racial gerrymander be narrowly tailored to serve a compelling state interest. The Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, the Court indicated unless race was the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful. In addition, the Court articulated seven policies that have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

Section 5 of the Voting Rights Act requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. Section 5 of the Voting Rights Act applied to states and political subdivisions that demonstrated a history of voter discrimination. However, in 2013, the formula used to determine which jurisdictions were subject to the preclearance requirements in Section 5 was held unconstitutional by the Supreme Court in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Thus, states and jurisdictions formerly subject to review are no longer required to submit their redistricting plans for preclearance under Section 5.

### **POSSIBLE ISSUES TO ADDRESS**

The following are issues that may have to be addressed by the committee in beginning this study:

- What parameters should be followed in preparing plans?
- Should the committee limit consideration to plans that establish a certain number of districts?
- How should the Air Force base populations be addressed?
- How should the plan effectuate the staggering of terms of members of the Legislative Assembly?
- What will be the proper procedure for submitting proposed plans for consideration by the committee?
- How often should the committee meet?
- Should the committee meet in locations other than Bismarck?



# Redistricting Overview

Redistricting Committee  
August 2021



☎ 701.328.2916

✉ [council@nd.gov](mailto:council@nd.gov)

🌐 [www.legis.nd.gov](http://www.legis.nd.gov)

**Exhibit 8**

# Redistricting Plan Directive

## House Bill No. 1397 (2021)

- The Chairman of the Legislative Management must appoint a committee to develop a redistricting plan.
- Districts in the plan must be of a compact and contiguous nature and conform to constitutional requirements regarding population equality.
- The committee may adopt additional guidelines and principles in preparing the plan.
- The plan must be submitted to the Legislative Management by November 30, 2021.
- The Chairman of the Legislative Management shall request the Governor call a special session so the Legislative Assembly may adopt a redistricting plan in time for use in the 2022 primary election.

## Requirements of the Constitution of North Dakota

- Membership of the Senate must range between 40-54 members.
- Membership of the House must range between 80-108 members.
- The state must be divided into as many districts as there are senators and the districts must be of compact and contiguous territory.

## Requirements of the Constitution of North Dakota

- The Legislative Assembly must guarantee, as nearly as practicable, that every elector is equal to every other elector in the power to cast ballots for legislative candidates.
- One senator and at least two representatives must be apportioned to each senatorial district.
- Two senatorial districts may be combined when a single member senatorial district includes a federal facility or installation containing over two-thirds of the population of a single member senatorial district and elections may be at large or from subdistricts.

## Requirements of the Constitution of North Dakota

- Districts ascertained after the 1990 federal decennial census must continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.
- The Legislative Assembly must establish by law a procedure whereby one-half of the members of the Senate and one-half of the members of the House of Representatives, as nearly as practicable, are elected biennially.

## Requirements of the North Dakota Century Code

- In addition to the constitutional requirements, North Dakota Century Code Section 54-03-01.5 requires a legislative redistricting plan based on any census taken after 1999 must provide the Senate consist of 47 members and the House consist of 94 members.
- Legislative districts must be as nearly equal in population as is practicable and population deviations from district to district must be kept at a minimum.

## Requirements of the North Dakota Century Code

The total population variance of all districts from the average district population may not exceed recognized constitutional limitations.

- Overall range is the measure of population equality most commonly used by the courts, with a 10 percent standard first established in 1973.
- The overall range of a redistricting plan is the sum of the deviation from the ideal district population for the most and the least populous district.
  - For example, if the most populous district exceeds the ideal district population by 4.2 percent, and the least populous district falls short of the ideal district population by 4.1 percent, the overall range for the redistricting plan would be 8.3 percent.

## Requirements of the North Dakota Century Code

- Section 54-03-01.13 provides for the staggering of terms.
- Section 16.1-01-02.2 outlines procedures for special elections and allows the Governor to call a special election to be held 90 days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan.
- If redistricting of the Legislative Assembly becomes effective after the organization of political parties and before the primary or general election, Section 16.1-03-17 requires political parties in newly established precincts and districts to reorganize as closely as possible in conformance with Chapter 16.1-03 in order to comply with primary election filing deadlines.



## Redistricting History in North Dakota

### 1931-62

- The Legislative Assembly did not redistrict itself, despite the requirement in the Constitution of North Dakota for the Legislative Assembly to apportion itself after each federal decennial census.

### 1963-75

- Nearly constant state of litigation.

### 1981

- A 12-member interim committee used a consultant to assist in developing a 53-district plan. The redistricting plan was adopted during a reconvened session of the Legislative Assembly in November 1981.

## Redistricting History in North Dakota

### 1991

- A 16-member interim committee contracted with a consultant for computer-related services and developed a 49-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 1991.

### 2001

- A 15-member interim committee used laptops with redistricting software to develop a 47-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 2001.

### 2011

- A 16-member interim committee used laptops with redistricting software to develop a 47-district plan. The redistricting plan was adopted during a special session of the Legislative Assembly in November 2011.

## Federal Law

- 14<sup>th</sup> Amendment to the United States Constitution (1868)
  - Individuals are guaranteed equal protection under the law.
- 15<sup>th</sup> Amendment to the United States Constitution (1870)
  - “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”
- *Baker v. Carr*, 369 U.S. 186 (1962)
  - Determined the courts would provide relief in state legislative redistricting cases when there are constitutional violations.
- Voting Rights Act of 1965
  - Enacted as a tool to aid in the enforcement of the 14<sup>th</sup> and 15<sup>th</sup> Amendments.
  - Banned the use of literacy tests.
  - Provided federal oversight of voter registration in areas where less than 50 percent of the minority population had registered to vote.

## Federal Law – Population Equality

### *Reynolds v. Sims*, 377 U.S. 533 (1964)

- The equal protection clause of the 14<sup>th</sup> Amendment requires states to establish legislative districts substantially equal in population.
- Both houses of a bicameral legislature must be apportioned on a population basis.
- Overall range is the most commonly used measure of population equality.
  - Overall range equals the sum of the percentage deviation of the largest district and the percentage deviation of smallest district, disregarding plus and minus signs.

## Federal Law – Population Equality

- If a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate the plan is necessary to implement a rational state policy and the plan does not dilute or eliminate the voting strength of a particular group of citizens.
- A plan with an overall range of less than 10 percent may be subject to challenge if the justifications for the deviations are not deemed legitimate and plans with lower deviations have been considered.

## Federal Law – Partisan Gerrymandering

### *Rucho v. Common Cause*, 139 S.Ct. 2428 (2019)

- In 2019, the question of whether partisan gerrymandering cases are justiciable was settled by the Supreme Court, which stated "partisan gerrymandering claims present political questions beyond the reach of the federal courts."
- The Court further stated, "the [United States] Constitution supplies no objective measure for assessing whether a districting map treats a political party fairly."
- However, the Court noted state courts may look to state statutes and state constitutions for guidance and standards to apply in partisan gerrymandering cases.

## Federal Law – Multimember Districts and Racial or Language Minorities

- North Dakota is 1 of 10 states that have multimember districts.
- Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group.
  - A language minority group is defined as "persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage."

## Federal Law – Multimember Districts and Racial or Language Minorities

### *Thornburg v. Gingles*, 478 U.S. 39 (1986)

A minority group challenging a redistricting plan must prove:

1. The minority is sufficiently large and geographically compact to constitute a majority in a single-member district;
2. The minority is politically cohesive; and
3. In the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.



## Federal Law – Multimember Districts and Racial or Language Minorities

### *Shaw v. Reno*, 509 U.S. 630 (1993)

- If race was not the predominant factor in the creation of a district, a racial gerrymander challenge is not likely to be successful.
- If race was the predominant factor in the creation of a district, the district will be evaluated under a test of strict scrutiny, where it must be show the district was narrowly tailored to serve a compelling state interest.

Common types of gerrymandering include:

- Packing – overconcentrating a minority group into one or only a few districts.
- Cracking – splitting a geographically compact minority group into multiple districts in order to dilute the voting power of the minority group.

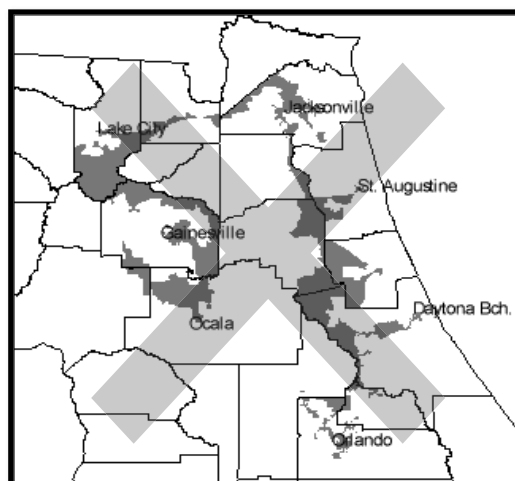
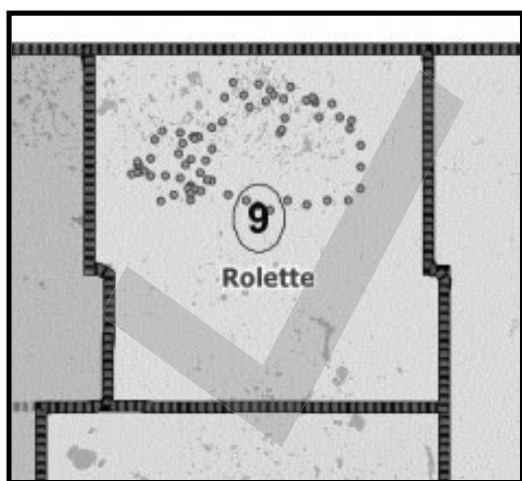
## Federal Law – Traditional Districting Principles

Items identified as traditional districting principles include:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.

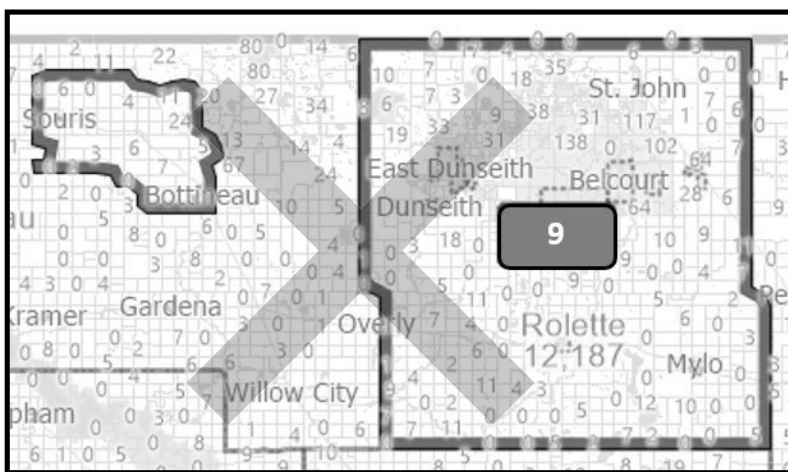
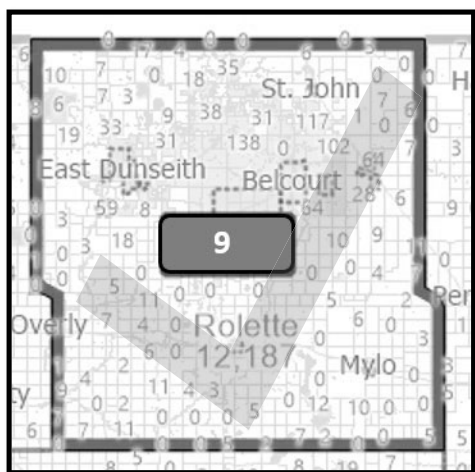
# 1. Compactness

Districts must be geographically compact.



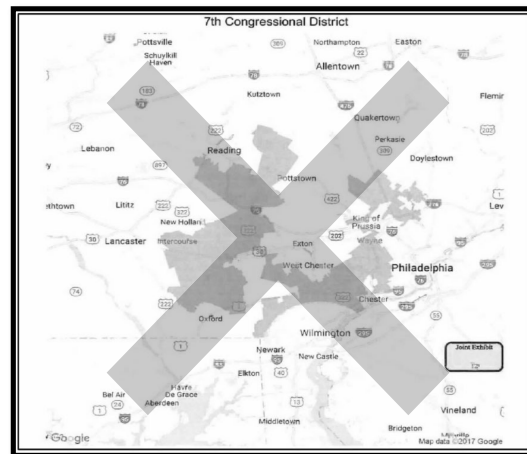
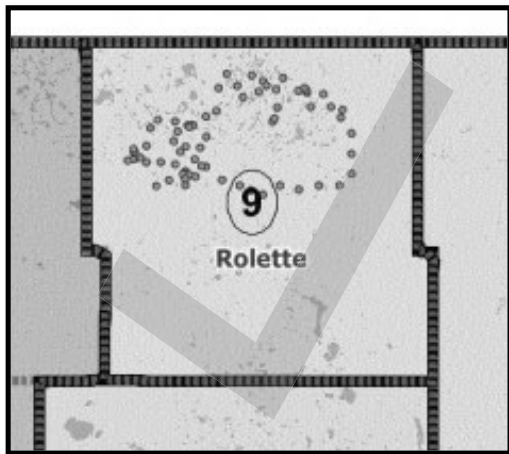
## 2. Contiguity

Districts must consist of a single shape with a connected boundary.



### 3. Preservation of Political Subdivision Boundaries

Avoid excessively splitting political subdivision boundaries.



## 4. Preservation of Communities of Interest

- Twenty-six states take into account preservation of communities of interest.
- Communities of interest are neighborhoods, communities, or groups of individuals who would benefit from being retained in a single district due to shared interests, policy concerns, or characteristics.
- They are often self-defined by the members of the community.
- Race and ethnicity can play a role in defining a community of interest, but cannot be the sole defining characteristic.

## 5. Preservation of Cores of Prior Districts

- Eleven states require prior districts to be maintained, to the extent possible after adjusting for population deviations, to maintain continuity of representation.
- One approach to preserving cores of prior districts is starting with existing boundary lines, rather than a blank map, and adjusting those boundaries to meet population equality requirements.

## 6. Protection of Incumbents

- Twelve states require drafters to avoid pairing incumbents.
- Placing two or more incumbents in a single district leads to one incumbent having to move, retire, or be defeated.
- The policy against pairing incumbents aims to promote continuity of representation.



## Issues to Address

- What parameters should be followed in preparing plans?
- Should the committee limit consideration to plans that establish a certain number of districts?
- How should the Air Force base populations be addressed?
- How should the plan effectuate the staggering of terms of members of the Legislative Assembly?
- What will be the proper procedure for submitting proposed plans for consideration by the committee?
- How often should the committee meet?
- Should the committee meet in locations other than Bismarck?

**Testimony of the Spirit Lake Nation Regarding Legislative Redistricting  
North Dakota Legislative Council Redistricting Committee  
August 26, 2021**

Introduction

Chairman Devlin and members of the Redistricting Committee, thank you for having me here today. I am Collette Brown, the Gaming Commission Executive Director at the Spirit Lake Casino and Resort, and will be testifying today on behalf of the Spirit Lake Nation. The Spirit Lake Nation is a federally recognized tribe located in the state of North Dakota, with an enrolled membership of 7,559 members as of January, 2021. According to the American Community Survey, there are almost 4,000 Native Americans currently living on our reservation in North Dakota. Spirit Lake is sovereign nation governed by its Tribal Council. Tribal operations include schools from elementary through community college, a radio station, and a resort and casino to name a few. The Tribe and its operations are major economic drivers in the greater Devil's Lake area, providing jobs and opportunities for many North Dakotans and Tribal members. I am here to advocate on behalf of the Tribe and its members: (1) for fair and legal voting systems; (2) for the Tribe's communities to be considered a community of interest that should not be split into multiple legislative districts; (3) for the use of single member districts to elect representatives to the State House; and (4) to demand the North Dakota Redistricting Committee listen to tribal input and hold redistricting meetings and tribal consultations on reservations.

Recent History of the Tribe's Fight for Voting Rights

Tribes across the nation have had to fight for their right to vote, and the Spirit Lake Nation has been at the forefront of that fight. In 2000, the United States sued Benson County due to the county's at-large election system, which diluted the voting power of Spirit Lake's members in violation of the Voting Rights Act. To settle the case, the county entered into a

consent decree, agreeing to abolish the at-large system and adopt five (5) single member districts with at least two (2) Native American minority majority districts. Despite entering into the consent decree, Benson County has gone back to implementing an at-large election system. As the Native American population has increased in Benson County in every census since at least 1990, this election system must be reviewed to ensure that it complies with the Voting Rights Act.

In 2016, the Tribe, on behalf of its members, sued the North Dakota Secretary of State over the state's illegal voter identification requirements that would make it impossible for many tribal members to vote. In 2020, the parties entered into a mutually agreed upon consent decree that would allow for the recognition of tribal ID's and allow tribal voters to identify their residence on a map due to many tribal members lacking a physical street address. The right to vote is a fundamental right in our democracy, and Spirit Lake will vigorously defend that right of its members.

#### North Dakota Legislative Redistricting

As the state of North Dakota undertakes its redistricting process, the Legislature should take several steps. First, it is critical that the Legislature comply with the Voting Rights Act. This includes moving away from at-large districts for the State House of Representatives, which may have a dilutive effect on minority votes. Where there are tribal communities such as Spirit Lake, the Legislature should carefully analyze whether there should be single member House districts to ensure tribal communities have equitable representation. Failure to draw single-member House districts can dilute the Native vote and may violate the Voting Rights Act.

Second, a "Community of Interest" standard should be utilized in redistricting, which can take into consideration communities that have similar language, culture, economics, and identity, to keep those communities together within legislative districts. Spirit Lake and its communities

are a community of interest and should remain in a single legislative district. Splitting the reservation or our communities into multiple districts would dilute the ability of tribal members to elect the representative of their choice.

Third, even though the redistricting schedule is abbreviated, there is no excuse for failing to consult with the tribes and take tribal input into account in the redistricting process. Many other states have already begun holding redistricting hearings to get feedback directly from citizens and tribal governments. This process is far too important to ignore the perspective of tribal communities.

I thank the members of the Committee for your consideration of these important issues. I am happy to address any questions or discuss these issues further.

Testimony in Support of Fair Redistricting  
August 26, 2021

Chair Devlin and Members of the Redistricting Committee:

**Fair. Open. Accessible.**

Good day. I am Karen Ehrens, a resident of Bismarck and Secretary of the League of Women Voters of North Dakota. As we embark on the once-in-a-decade opportunity to redraw legislative districts, we encourage you to ensure the process takes place in a **fair, open and accessible** manner. Redistricting impacts our lives in every way; the committee has responsibilities to all of us represented by this body.

While there will be a short timeframe in which to take the data obtained in the U.S. Census and prepare the districts in time for elections, a short timeframe is no excuse to deny input by the people of the state who will be impacted by these decisions for the next 10 years. With the new meeting technology in place, with planning, and with determination, the members of a redistricting committee can set up a process that is **fair, open and accessible**.

There are tools available to guide a redistricting process. The League of Women Voters of the United States partnered with the Campaign Legal Center (CLC) to produce a redistricting transparency report: *Designing a Transparent and Ethical Redistricting Process: A Guide to Ensuring that the Redistricting Process is Fair, Open, and Accessible*.

Key recommendations of this report are to hold a number of meetings or public hearings throughout the state, make the data used by the committee public in accessible formats, release all draft maps and reports on a publicly-accessible website, include a reasonable public comment period for proposed maps, and that all of you committee members act in an impartial way and follow ethical standards.

Please provide special consideration so that the members of the five tribal nations in the state of North Dakota have a role in the redistricting process, and that their communities are kept as intact as possible in the drawing of the districts.

We are watching and counting on you to make the redistricting process **fair, open and accessible**.

Karen Ehrens  
233 West Ave C  
Bismarck, ND 58501



Contact:  
**Matt Perdue, Lobbyist**  
[mperdue@ndfu.org](mailto:mperdue@ndfu.org) | 701.641.3303

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**Testimony of  
Matt Perdue  
North Dakota Farmers Union  
Before the  
Redistricting Committee  
August 26, 2021**

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Chairman Devlin and members of the committee,

Thank you for the opportunity to testify on the decennial redistricting process. My name is Matt Perdue, and I am testifying on behalf of North Dakota Farmers Union (NDFU). NDFU recognizes the challenging task before the committee and appreciates this and future opportunities to provide input.

NDFU's member-driven Policy and Action highlights three basic principles to guide reapportionment of legislative districts. Those principles state that districts should:

- Cross as few county lines as possible;
- Seek to retain communities of common interest within district boundaries; and
- Give geographical balance to our legislature.

NDFU is particularly concerned by the potential loss of rural representation in the legislature. As you are aware, North Dakota's population has grown by 15.8% or 106,503 residents. Most of that growth occurred in urban areas and oil-producing counties. At the same time, 30 counties lost population from 2010 to 2020.

As the legislative map gravitates toward urban areas, some rural districts are expected to become much larger geographically. NDFU members are concerned that the sheer size of some districts may limit opportunities for them to have direct access to their legislators. In addition, some North Dakotans who currently live in primarily rural districts may find themselves in districts that are majority urban. This is also concerning to our members, who worry their interests may be overshadowed by their urban counterparts.

Where districts may increase in size or include mixed urban and rural representation, NDFU encourages the committee to explore the possibility of subdividing those districts into separate house districts. North Dakota is one of only 10 states that elects house members from multi-member districts. Single-member house districts may provide more geographical balance to our legislature and better retain communities of common interest within those boundaries.



**Exhibit 11**



Thank you for the opportunity to testify today. Our members appreciate the committee's commitment to holding regional meetings. They look forward to providing specific feedback and sharing local and regional concerns at those meetings.







## **Redistricting Committee Testimony - Thursday, August 26, 2021**

To: Chairman Devlin and members of the Redistricting Committee:

My name is Rick Gion, and I live in Fargo, ND. I'm the director of North Dakota Voters First. We are a non-partisan, grassroots organization dedicated to strengthening democracy. Our organization focuses on educating and engaging North Dakota citizens to make elections and public policy more accountable, ethical, and transparent.

Thank you for the opportunity to submit testimony regarding the 2021 North Dakota legislative districting process. Our organization is urging fairness and transparency with this process. We are hopeful that you will be posting draft legislative maps on the legislative website as is alluded to in House Bill 1397 of the 2021 legislative session.

Re-drawing boundaries of legislative districts is one of the most important tasks required to maintain a well-functioning and representative government in our state. It only happens every 10 years. I believe that the goal of districting should be to work as much as we can to ensure that everyone's vote matters. That means districts are compact and contiguous, the number of people in each district is almost identical, existing boundaries are respected, and communities of interest are represented. I'd also suggest taking a look at splitting districts for the state House of Representatives. This would help give better representation in rural areas and with the state's Native American reservations.

One of the major problems to avoid is gerrymandered districts that are designed to produce electoral advantages for incumbents or the political party in power. Biased legislative districts favor powerful special interests instead of voters. Every vote no longer counts, because the system is rigged.

As a proud North Dakotan, I'm urging fairness in the 2021 districting process. Let's avoid gerrymandering and make sure that we have the best and most representational state government in the nation. Thank you for your time.

Sincerely,

Rick Gion (lobbyist #  
Director, North Dakota Voters First  
[rick@northdakotavotersfirst.org](mailto:rick@northdakotavotersfirst.org)

**Exhibit 12**





## TRIBAL AND STATE RELATIONS COMMITTEE

Tuesday, August 31, 2021  
Room 210, MHA Nation Interpretive Center  
9386 Lake Sakakawea Road  
New Town, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:10 a.m.

**Members present:** Senators Rich Wardner, Jessica Bell, Joan Heckaman, Dave Oehlke; Representatives Joshua A. Boschee, Terry B. Jones, Chet Pollert

**Members absent:** none

**Others present:** Representative Ruth Buffalo, Fargo  
Nathan Davis, Executive Director, Indian Affairs Commission; Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation  
See [appendix](#) for additional persons present.

**It was moved by Representative Boschee, seconded by Senator Oehlke, and carried on a voice vote that the minutes of the August 17, 2021, meeting be approved as distributed.**

### LEGISLATIVE REDISTRICTING

Chairman Fox noted tribal concerns regarding legislative redistricting:

- The Legislative Assembly should strongly consider tribal concerns.
- The Fort Berthold Reservation should be a single legislative district.
- The census data for the reservation likely is inaccurate due to tribal members being deterred from reporting.

In response to questions from committee members, Chairman Fox noted:

- The tribe likely would not be opposed to the inclusion of other like-minded communities, such as Watford City, where energy development also is prevalent.
- The most unfavorable outcome would be splitting the reservation into different districts because the tribe does not want to dilute its ability to collectively express tribal concerns.
- Many tribal members live in nearby communities, including Watford City, Stanley, and Minot.

Representative Boschee noted the Redistricting Committee is limited slightly by the number of laptops with the licensed redistricting software, but the tribe may contact committee members or the Legislative Council for more information and assistance.

Representative Buffalo noted although she represents District 27, she is approached often regarding tribal issues because she is an enrolled member and grew up on the reservation. She noted a common theme expressed by tribal members is the desire for the reservation to be its own legislative district.

In response to a question, Representative Boschee noted:

- The Redistricting Committee tasked the Tribal and State Relations Committee with collecting input from each tribe regarding redistricting and providing a report to the Redistricting Committee.
- The Redistricting Committee will conduct public hearings at which public input will be sought, and tribal members are encouraged to attend and be involved in those discussions.

Mr. Ted Lone Fight noted he is in favor of the reservation being its own legislative district.

Ms. Melanie Moniz noted she is a resident of District 4 and supports legislative subdistricts to ensure tribal voices are heard.

Ms. Joletta Bird Bear noted she is a resident of District 4 who regularly votes in tribal and state elections, but feels her vote is diluted due to the district's large size. She noted her preference to vote in a district where her vote carries tribal issues.

Ms. Lisa DeVille noted her support for legislative subdistricts to ensure tribal members are represented fairly.

**HEALTH CARE**

Dr. Monica Mayer, Councilwoman, Three Affiliated Tribes of the Fort Berthold Reservation, noted, as a physician, her primary concern is tribal members' health. She noted:

- The tribe has paid millions of dollars toward health care insurance premiums for tribal members, but members are not seeing the benefits.
- The tribe pays health care insurance premiums for members who are otherwise eligible for Medicaid because tribal elders face barriers when attempting to enroll in Medicaid, such as poor customer service from county social services.

Chairman Fox noted the federal government has failed to provide sufficient outreach to tribal members regarding Medicaid and Medicare eligibility and enrollment.

**ALCOHOL TAX AGREEMENT**

Chairman Fox noted the tribe may be interested in entering a state-tribal alcohol tax agreement, but the terms need to be more favorable to the tribe. He noted:

- Past negotiations and legislation have failed.
- No tribe has entered an alcohol tax agreement because the tax revenue allocation formula is not equitable to tribes and the regulation resides with the state rather than jointly between the state and the tribe.
- The failure to allow joint regulation of alcohol sales within reservation boundaries is an erosion of the tribe's sovereignty and its authority under federal law to tax nontribal members within reservation boundaries.

Mr. John Fredericks, legal counsel, Mandan, Hidatsa and Arikara Nation, noted the allocation formula needs to be revisited because the formula does not take into account the tribe's authority to tax nontribal members who consume alcohol on the reservation or the impact of alcohol use on the reservation.

**SALES AND USE TAX AGREEMENT**

Chairman Fox noted concerns regarding the unlawful collection of sales tax from tribal members' purchases on the reservation, and until a state-tribal sales and use tax agreement is entered, this will continue to be an issue.

**MOTOR FUELS AND BULK SALES**

Chairman Fox noted the current motor vehicle fuel tax agreement does not contemplate bulk fuel sales. He noted the tribe would like bulk fuel sales to be included because many vendors purchase fuel in bulk, and the tribe is losing an opportunity to collect tax revenue.

**TAXATION PROCESS FOR STRADDLE WELLS**

Chairman Fox noted oil and gas activity has increased after the resolution of the straddle wells issue, and straddle wells are no longer an issue of concern.

**STATE-TRIBAL POLICY**

Chairman Fox noted other states, including Montana, Nevada, and Washington, have laws outlining formal state-tribal relations policies. He noted enacting such legislation in North Dakota would be a positive step toward government-to-government relations.

Ms. Cynthia Monteau noted other states have formalized consultation policies in statute outlining how the state will consult with tribes on various issues and how tribal input is gathered.

**GAMING AND ELECTRONIC PULL TAB DEVICES**

Chairman Fox noted the implementation and expansion of electronic pull tab devices has severely impacted tribal gaming revenue. He noted:

- Many people do not travel to tribal casinos since games similar to slot machines are now available in their own communities.
- There is a limited number of people in the state who have the disposable income to play games of chance, and the total amount which can be spent on gaming is finite.
- Only a few charities control the vast majority of charitable gaming revenue.
- More stringent regulations and limitations should be imposed on electronic pull tab devices.

A few committee members expressed concern regarding the expansion of electronic pull tab devices and the desire to impose more regulations and limitations.

No further business appearing, Chairman Wardner adjourned the meeting at 2:54 p.m.

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Jill Grossman  
Counsel

ATTACH:1



## TRIBAL AND STATE RELATIONS COMMITTEE

Wednesday, September 1, 2021  
Walking Eagle Ballroom, Spirit Lake Casino and Resort  
7889 Highway 57  
St. Michael, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:04 a.m.

**Members present:** Senators Rich Wardner, Jessica Bell, Joan Heckaman, Dave Oehlke; Representatives Joshua A. Boschee, Terry B. Jones, Chet Pollert

**Members absent:** None

**Others present:** Representatives Ruth Buffalo, Fargo; Dennis Johnson, Devils Lake  
Nathan Davis, Executive Director, Indian Affairs Commission; Douglas Yankton, Sr., Chairman, Spirit Lake Tribe  
See [Appendix A](#) for additional persons present.

### LEGISLATIVE REDISTRICTING

Chairman Yankton noted the tribe sent a representative to a Redistricting Committee meeting to represent the tribe's interest in having the Spirit Lake Reservation be its own legislative district. He noted the reservation is the second smallest in the state, the majority of tribal land is located in one county, and the tribe may have a different opinion on redistricting compared to other tribes due to the reservation's unique geography.

Chairman Wardner noted tribes are encouraged to send representatives to Redistricting Committee meetings to provide tribal input, and the Tribal and State Relations Committee will report to the Redistricting Committee on tribal feedback regarding redistricting.

Representative Boschee noted the only out-of-town meeting approved by the Chairman of the Redistricting Committee is for Fargo, but he would visit with the Chairman regarding meeting in cities near or on reservations.

Chairman Yankton noted the tribe would prefer to be in a separate legislative district from Devils Lake. He also noted the tribe has discussed the concept of legislative subdistricts and may be open to the idea depending on how voting is structured.

Representative Boschee noted only United States census data may be used for redistricting purposes, but future legislation may want to allow census data to be supplemented with tribal enrollment data for more accurate numbers.

### STATE-TRIBAL TAX AGREEMENTS

Chairman Yankton noted the tribe may be interested in entering an alcohol or tobacco tax agreement if more favorable terms are negotiated because the current tax revenue allocation formula is not favorable to the tribe.

### TAXATION

Chairman Yankton noted concerns regarding the imposition of property tax assessed by the county on land situated within the boundaries of the reservation which is owned by enrolled tribal members. He noted the reservation is predominantly located in Benson County and the county provides services to the reservation, including the servicing of some roads, but the road servicing appears to fluctuate with the makeup of the county commission.

## Exhibit 14

**DRUG TRAFFICKING AND LAW ENFORCEMENT**

Chairman Yankton noted drug trafficking is an issue of serious concern on the reservation. He noted:

- There is a severe shortage of law enforcement officials to patrol the reservation.
- The biggest issue regarding criminal activity is jurisdictional issues.
- The tribe is interested in entering agreements with different law enforcement agencies to help deter crime.

Mr. Davis noted the tribe passed a resolution to form a law enforcement commission, has been meeting with various law enforcement entities, and the tribe's unique approach to this issue will set a precedent for other tribes.

**GAMING AND ELECTRONIC PULL-TAB DEVICES**

Chairman Yankton noted the implementation of electronic pull-tab devices has severely impacted tribal gaming revenue, and many tribal social programs are funded through gaming revenue.

Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Tribe, noted tribal gaming revenue decreased by 45 percent the 1<sup>st</sup> year after electronic pull-tab devices were implemented, and the Legislative Assembly should consider implementing more regulations.

Several committee members expressed concerns regarding electronic pull-tab devices and the desire to establish more regulations on the devices.

Several committee members expressed a desire to receive more information on the financial breakdown of charitable gaming.

**EDUCATION**

Dr. Cynthia Lindquist, President, Cankdeska Cikana Community College, provided testimony (Appendix B) regarding enrollment numbers and the need for more resources, staffing, construction, and student housing.

Dr. Lindquist noted the promising fall enrollment numbers likely are due to word of mouth, the college's social media presence, and federal COVID-19 relief funding that has been used to help students with tuition, fees, and books. She noted federal COVID-19 relief only could be used toward student retention and not for construction purposes.

**STATE CONSTITUTIONAL PROVISION REGARDING INDIAN LANDS AND RIGHTS**

Mr. Mark Van Norman, Special Counsel, Spirit Lake Nation, provided testimony (Appendix C) regarding amending the Constitution of North Dakota to restore original constitutional provisions relating to the recognition of Indian lands and rights.

**FISHING LICENSES**

Chairman Yankton noted the tribe has a fishing licensing system, but many individuals purchase a state fishing license rather than through the tribe, and the tribe does not receive a percentage of that revenue.

**MEDICAL MARIJUANA DISPENSARY**

Chairman Yankton noted he was unaware of a tribal reservation being awarded a medical marijuana dispensary and is interested in having a dispensary located in Indian country or in entering a state-tribal medical marijuana compact.

No further business appearing, Chairman Wardner adjourned the meeting at 2:30 p.m.

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Jill Grossman  
Counsel

ATTACH:3



## REDISTRICTING COMMITTEE

Wednesday, September 8, 2021  
Iris Room, Hilton Garden Inn, 4351 17<sup>th</sup> Avenue South  
Fargo, North Dakota

Representative Bill Devlin, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Representatives Bill Devlin, Larry Bellew, Joshua A. Boschee, Craig Headland, Mike Lefor, David Monson\*, Mike Nathe, Austen Schauer; Senators Brad Bekkedahl, Randy A. Burckhard, Robert Erbele, Ray Holmberg, Jerry Klein, Erin Oban, Nicole Poolman, Ronald Sorvaag

**Members absent:** None

**Others present:** Representatives Michael Howe and Kim Koppelman, West Fargo; members of the Legislative Management

John Bjornson, Legislative Council, Bismarck

See [appendix](#) for additional persons present.

*\*Attended remotely*

**It was moved by Senator Klein, seconded by Representative Bellew, and carried on a voice vote that the minutes of the August 26, 2021, meeting be approved as distributed.**

Dr. Tim Mahoney, Mayor, Fargo, provided testimony regarding the growth of Fargo's population and economy. He also welcomed the committee to Fargo and noted the city's appreciation for the work of the Legislative Assembly.

Mr. Bernie Dardis, Mayor, West Fargo, provided testimony regarding the growth of West Fargo's population and economy. He also noted the city's appreciation for the work of the Legislative Assembly.

### COMMITTEE DISCUSSION AND PRESENTATION OF REDISTRICTING MAPS

Senator Holmberg presented testimony regarding a draft [map](#) for redistricting the northeastern part of the state. The map included existing Districts 10, 17, 18, 19, 42, and 43. He noted the map was a concept he offered for discussion and feedback. He also noted:

- Although Rolette County currently comprises its own district, it does not have sufficient population to comprise a district using the 2020 Census data;
- There are four districts in Grand Forks; however, the city's population is less than the number needed for four districts. A number of people from outside the city need to be added to the city's districts;
- In some areas it is a challenge to find a sufficient number of people to fill a district and many of the redistricting decisions are based on finding ways to ensure the appropriate number of people are included in each district;
- The district boundaries in his concept often follow main thoroughfares and political subdivision boundaries; and
- Efforts were made to keep communities of interest, such as school districts, areas with economic ties, and rural populations, within the same district.

In response to questions from the committee, Senator Holmberg noted the Grand Forks Air Force Base may be kept in one district based on the distribution of the population in and around the base.

Senator Sorvaag presented testimony regarding a concept for redistricting the southeastern part of the state. He noted he wanted the residents of the area to provide input on redistricting. Regarding his concept, he noted:

- Richland County is within 47 people of the ideal population size for a district, so it likely should comprise its own district;
- Cass County has a sufficient population for 11 districts;
- Due to the need to provide equal populations in each district, District 24 would include part of southwest Cass County;
- Although District 45 would include two townships, most of the rest of the rural areas in Cass County would be included in District 22;
- Because the population within Cass County and Fargo in particular has shifted, some districts created in 2010 have too many people while other districts created in 2010 have too few;
- The population of West Fargo is too large to be contained in only two districts; and
- Efforts were made to keep districts compact and to keep communities of interest, such as school districts and neighborhood developments, within the same district.

In response to questions from members of the committee, Senator Sorvaag noted:

- The Lake Traverse Reservation could be in the same district with Sargent County; and
- The residents of certain rural communities in Districts 20 and 22 send their children to public schools in Fargo and have indicated they are amenable to being included in either urban or rural districts.

Representative Boschee presented testimony regarding maps of the southeastern part of the state. Regarding his maps, he noted:

- Efforts were made to use main thoroughfares, rivers, and railroad tracks as boundaries;
- The main campus of North Dakota State University would be included in District 44;
- District 27 would include parts of Fargo and West Fargo;
- A new district, which he labeled District 99 on his map, needs to be created in Cass County; and
- Because the population within Cass County has shifted, some current districts needed to add additional population.

In response to questions from committee members, Representative Boschee noted:

- Maintaining the current district cores was not a redistricting principle he used;
- If the city boundaries he followed in his concept fluctuate too often to be used as district boundaries, main thoroughfares would serve as good replacements; and
- Even though Horace is not rural, it would be included in a rural district because of the need to balance populations among districts.

Senator Bekkedahl presented testimony regarding a concept for redistricting the northwestern part of the state. He noted:

- The population of the current Districts 1 and 2 can be split among three new districts;
- The new District 1 could add individuals from the west and north;
- District 2 could be maintained as a rural district;
- The new district would be within Williston, which is where most of the population growth occurred;
- The boundaries of the districts are restricted by the northern and western borders of the state and the districts around Minot; and
- Redistricting of the area needs to take into account input from the residents of the Fort Berthold Reservation and include consideration of the reservation residents' economic ties to surrounding communities like Stanley.



In response to questions from committee members, Senator Bekkedahl noted:

- Williston doubled in population since the 2010 Census;
- More than half the growth in and around Williston is in rental units and apartments, and the community expects to continue to see that type of growth;
- His concept does not impact District 4 and the Fort Berthold Reservation would continue to be kept intact in one district; and
- Residents generally wish to stay within their current districts.

Representatives Lefor and Nathe noted they are working on redistricting concepts and plan to present them at the next meeting.

Senator Oban noted she is getting input from Lincoln regarding the city's wishes for redistricting.

Representative Boschee noted:

- The Tribal and State Relations Committee has met with the Turtle Mountain Band of Chippewa, Mandan, Hidatsa and Arikara Nation, and Spirit Lake Nation regarding redistricting and other matters;
- The Tribal and State Relations Committee hopes to meet with the Standing Rock Sioux Tribe and Sisseton Wahpeton Oyate Nation;
- The tribes expressed they do not want any of the reservations to be split into multiple districts;
- There has been some interest by tribal members in subdistricts, but tribal members have noted they want more information on how subdistricts would impact elections.

Chairman Devlin noted the committee will invite all the tribes to present input regarding redistricting at the next meeting and will reserve time at the beginning of that meeting for those presentations.

Ms. Emily L. Thompson, Code Revisor, Legislative Council, noted the maps presented at the meeting are available on the legislative branch website. She noted maps are linked to the agendas as soon as ready and are linked to the meeting minutes.

### **COMMENTS FROM INTERESTED PERSONS**

Mr. Tim Flakoll, Fargo, thanked the committee for its work.

Mr. Rick Gion, Director, North Dakota Voters First, noted North Dakota Voters First would like the committee to consider creating subdistricts for rural populations and tribal areas.

In response to questions from committee members, Mr. Gion also noted:

- If members of different tribes want different approaches to redistricting, North Dakota Voters First is open to discussions regarding those approaches;
- Minnesota has split districts;
- Nicole Donaghy of North Dakota Native Vote may be able to provide information regarding efforts by Native Americans to be elected as state legislators; and
- Although a subdistrict would have only one representative in the Legislative Assembly rather than two, the subdistrict would have better, more accessible representation and a candidate of choice.

Chairman Devlin noted the phrase "better representation" may not be accurate because all representatives try their best to represent all residents of their districts equally well.

In response to questions from committee members, Ms. Claire Ness, Senior Counsel, noted the phrase "candidate of choice" is a legal term and a tribe's candidate of choice need not be a member of the tribe or reside on a reservation.



No further business appearing, Chairman Devlin adjourned the meeting at 1:30 p.m.

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Emily L. Thompson  
Code Revisor

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Samantha E. Kramer  
Senior Counsel

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Claire Ness  
Senior Counsel

ATTACH:1