

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

Case No: 3:22-cv-00022

Turtle Mountain Band of Chippewa)
Indians, Spirit Lake Tribe, Wesley Davis,)
Zachary S. King, and Collette Brown.)

Plaintiffs,)

v.)

Michael Howe, in his official capacity as)
Secretary of State of North Dakota.)

Defendant.)

**AFFIDAVIT OF
EMILY THOMPSON**

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

Being duly sworn, Emily Thompson, testifies:

1. I am the Legal Division Director for the North Dakota Legislative Council.
2. This Affidavit is submitted in support of the North Dakota Legislative Assembly's Motion to Intervene, Joinder in the Secretary's Motion for Stay of Judgment Pending Appeal, and Response to the Plaintiffs' Motion to Amend Remedial Order.
3. Attached hereto as Exhibit # 1 is a true and correct copy of the November 30, 2023, Meeting Notice for the December 5, 2023, meeting of the Legislative Management.
4. Attached hereto as Exhibit # 2 is a true and correct copy of the Meeting Minutes from the December 5, 2023, meeting of the Legislative Management.

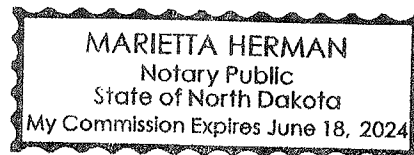
Dated this 8th day of December, 2023.

By Emily Thompson 12-08-23
Emily Thompson

On this 8th day of December, 2023, before me personally appeared Emily Thompson known to me to be the person described in the within and foregoing instrument and acknowledged to me that she executed the same.

Marietta Herman
Notary Public

County of Burleigh
State of North Dakota
Date 12/8/23



CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2023, a true and correct copy of the foregoing **AFFIDAVIT OF EMILY THOMPSON** was filed electronically with the Clerk of Court through ECF, and that ECF will send a Notice of Electronic Filing (NEF) to the following:

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By */s/ Brian D. Schmidt*

BRIAN D. SCHMIDT

25.5076.01000



North Dakota Legislative Council

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701.328.2916

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November 30, 2023

MEETING NOTICE

A meeting room will be available to the public for this meeting; however, this meeting will be held by Microsoft Teams and committee members will receive sign-in information 1 day before the meeting. A livestream of the meeting will be available to the public at: <https://video.ndlegis.gov>.

Representative Mike Lefor, Chairman, has called a meeting of the **LEGISLATIVE MANAGEMENT**.

Date: Tuesday, December 5, 2023

Time: 10:00 a.m.

Place: Harvest Room, State Capitol, Bismarck

Video: This meeting can be viewed online at <https://video.ndlegis.gov>.

Agenda: Discussion regarding litigation relating to legislative redistricting and the appointment of a redistricting committee. **The discussion will include an executive session for attorney consultation pursuant to North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2.**

Special Note: Anyone who plans to attend the meeting and needs assistance because of a disability should contact the Legislative Council staff as soon as possible.

Committee Members: Representatives Mike Lefor, Glenn Bosch, Josh Boschee, Zachary Ista, Dennis Johnson, Ben Koppelman, Emily O'Brien, Paul J. Thomas, Robin Weisz; Senators Brad Bekkedahl, Kyle Davison, Kathy Hogan, David Hogue, Jerry Klein, Tim Mathern, Janne Myrdal, Donald Schaible

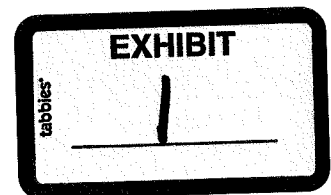
Staff Contact: John Bjornson, Director

Any member unable to attend this meeting is asked to notify this office as soon as possible.

Sincerely,

/S/
John Bjornson
Director

JB/CC



North Dakota Legislative Management

Meeting Minutes

25.5076.03000

Legislative Council

600 East Boulevard Avenue, Bismarck, ND 58505

LEGISLATIVE MANAGEMENT

Tuesday, December 5, 2023
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Mike Lefor, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Mike Lefor, Glenn Bosch*, Josh Boschee*, Zachary Ista*, Dennis Johnson, Ben Koppelman*, Emily O'Brien*, Paul J. Thomas*, Robin Weisz; Senators Brad Bekkedahl*, Kyle Davison*, Kathy Hogan, David Hogue*, Jerry Klein, Tim Mathern*, Janne Myrdal*, Donald Schaible*

Members absent: None

Others present: See Appendix A

*Attended remotely

OPENING REMARKS

Chairman Lefor noted the committee has the legal authority to conduct a closed meeting during an executive session pursuant to North Dakota Century Code Sections 44-04-19.1 and 44-04-19.2 for the purposes of attorney consultation regarding litigation relating to redistricting.

It was moved by Representative Weisz, seconded by Senator Hogan, and carried on a roll call vote that the Legislative Management hold an executive session for the purposes of attorney consultation regarding litigation relating to redistricting. Representatives Lefor, Bosch, Boschee, Ista, Johnson, Koppelman, O'Brien, Thomas, and Weisz and Senators Bekkedahl, Davison, Hogan, Hogue, Klein, Mathern, Myrdal, and Schaible voted "aye." No negative votes were cast.

EXECUTIVE SESSION

The Legislative Management went into executive session from 10:07 a.m. to 10:35 a.m. All committee members were present for the executive session. During the executive session, the Legislative Management consulted with outside legal counsel and the Legislative Council staff regarding potential litigation relating to redistricting, including receipt of advice regarding legal strategies and strengths and weakness of legal arguments.

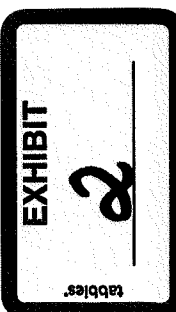
COMMITTEE DISCUSSION

Chairman Lefor reconvened the public portion of the meeting at 10:38 a.m. He reminded committee members not to discuss any of the litigation issues discussed during the executive session. He noted the committee received testimony (Appendix B) from Mr. Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians, and Ms. Lonna Street, Chairwoman, Spirit Lake Nation, and called for a short recess to allow committee members time to review the testimony.

Chairman Lefor called for discussion regarding next steps on behalf of the Legislative Assembly.

It was moved by Senator Hogue, seconded by Senator Myrdal, and carried on a roll call vote that the Legislative Assembly intervene in the case of *Turtle Mountain Band of Chippewa Indians et al v. Howe* and retain Mr. Scott Porsborg and Mr. Brian Schmidt as outside counsel to provide any assistance regarding the litigation and to request a stay. Representatives Lefor, Bosch, Johnson, Koppelman, O'Brien, Thomas, and Weisz and Senators Bekkedahl, Davison, Hogue, Klein, Myrdal, and Schaible voted "aye." Representatives Boschee and Ista and Senators Hogan and Mathern voted "nay."

A committee member noted it is the committee's intent to form a redistricting committee so work on an alternative remedial map can commence while any motions related to the case are pending.



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Legislative Management

In response to a question from a committee member, Mr. John Bjornson, Director, Legislative Council, noted the exact costs of litigation are unknown, but funds sufficient to cover the costs are available among the amount budgeted for the next legislative session and the amount remaining in carryover funds.

Chairman Lefor noted he elected to form a Redistricting Committee after discussions with the Senate Majority Leader and Minority Leadership. The membership of the committee is provided in Appendix C.

It was moved by Senator Hogue, seconded by Representative Weisz, and carried on a roll call vote that the Chairman of the Legislative Management, in consultation with the Legislative Council, be authorized to issue a request for proposals for the purpose of engaging an expert to help the newly formed Redistricting Committee with its analysis. Representatives Lefor, Bosch, Boschee, Ista, Johnson, Koppelman, O'Brien, Thomas, and Weisz and Senators Bekkedahl, Davison, Hogan, Hogue, Klein, Mathern, Myrdal, and Schaible voted "aye." No negative votes were cast.

No further business appearing, Chairman Lefor adjourned the meeting at 10:57 a.m.

John Bjornson
Director

ATTACH:3

**Testimony of Turtle Mountain Band of Chippewa Indians Chairman Jamie Azure
and Spirit Lake Nation Chairwoman Lonna Street
Before the North Dakota Legislative Assembly Legislative Management
Committee
December 5, 2023**

Chairman Lefor and members of the Legislative Management Committee, we are Jamie Azure, Chairman of the Turtle Mountain Band of Chippewa Indians, and Lonna Street, Chairwoman of the Spirit Lake Nation. We submit this testimony jointly on behalf of our respective Tribes. As you know, the United States District Court for the District of North Dakota recently found that the Legislative Assembly's 2021 redistricting plan violates the federal Voting Rights Act ("VRA") by unlawfully diluting the voting strength of Native American voters who live on and around the Turtle Mountain and Spirit Lake reservations. We submit testimony once again to respectfully request that the Legislature follow the law and fix its map to provide fair representation to the Native American voters living in Legislative Districts 9 and 15.

After conducting a trial, the District Court on November 17, 2023 found that the Legislature's "2021 redistricting plan, as to districts 9 and 15 and subdistricts 9A and 9B, prevents Native American voters from having an equal opportunity to elect candidates of their choice in violation of Section 2 of the VRA." Judgment, 3:22-CV-00022-PDW-APS, ECF No. 126 at 2. The court permanently enjoined the Secretary of State from permitting any elections to take place in Districts 9 and 15

December 5, 2023 of Testimony of Chairman Jamie Azure and Chairwoman Lonna Street
until a legal map is in place. The Secretary of State and the Legislative Assembly have been given until December 22, 2023 to adopt a new map.

We were saddened to see that rather than seeking to correct the unlawful vote dilution being suffered by the Native American voters in districts 9 and 15, the Secretary of State announced he will be appealing the District Court's decision. Though seeming to lack a substantive argument that unlawful vote dilution is not occurring, it appears that the appeal will seek to have the case dismissed based on a procedural argument that the tribal member voters, and the Tribes on their behalf, do not have the authority to challenge violations of their own voting rights.

We hope the Secretary of State and the Legislative Assembly have considered that a prior unsuccessful motion to dismiss filed in the case already resolved the plaintiffs' right to sue on grounds that are unaffected by the Eighth Circuit's recent decision, which the Secretary has cited as the basis for his forthcoming appeal; but we hope more that the Legislature will decide to do the right thing for the Native American voters and who have only ever asked for one thing – that the Legislature simply follow the law.

On November 1, 2021, the Legislative Management Redistricting Committee (“Redistricting Committee”) was notified by a letter from the Tribes that the Redistricting Committee's proposed redistricting plan, if enacted, would violate the VRA. A true and correct copy of the letter is attached to this testimony as

December 5, 2023 of Testimony of Chairman Jamie Azure and Chairwoman Lonna Street

Attachment 1. The letter included a detailed VRA election analysis and a proposed alternative map that would satisfy the VRA. The VRA analysis submitted by four North Dakota Tribes (Spirit Lake Nation, Turtle Mountain Band of Chippewa Indians, MHA Nation and Standing Rock Sioux Tribe) and tribal members throughout the redistricting process is the only known VRA analysis to have been reviewed by the Redistricting Committee. There is no evidence in the legislative record that the Legislature or the Redistricting Committee engaged a VRA expert to conduct its own analysis, which could have corroborated the Tribes' analysis and perhaps prevented this violation from occurring in the first place.

In fact, in the recent *Walen v. Burgum* case, in which the Mandan, Hidatsa and Arikara ("MHA") Nation intervened to defend Subdistrict 4A, the District Court relied on the abundant analysis and testimony supplied by the tribes in the legislative record in upholding the Subdistrict 4A as reasonably necessary to comply with the VRA.

Besides providing the Redistricting Committee with the VRA analysis and a proposed remedy map, the letter from the Tribes also put the Redistricting Committee on notice that its map "is illegally drawn and we believe will be struck down in court if it is adopted by the State Legislature." The Redistricting Committee and a majority of the Legislature failed to heed this warning. A proposed amendment

December 5, 2023 of Testimony of Chairman Jamie Azure and Chairwoman Lonna Street

to the Redistricting Committee's plan, which would have prevented this foreseeable violation, was voted down by the Redistricting Committee and then by the Senate.

In review of the map proposed by the Tribes to the Legislature, as well as another similar map proposed by the Tribes during the litigation, the District Court found:

The evidence at trial shows that the Tribes' proposed plans comport with traditional redistricting principles, including compactness, contiguity, respect for political boundaries, and keeping together communities of interest . . . Indeed, the evidence at trial demonstrated that the proposed districts did not appear more oddly shaped than other districts, and both proposed districts are reasonably compact. The proposed plans are also comparatively compact when viewed against other districts in the 2021 redistricting plan. (citations omitted).

Findings of Fact and Conclusions of Law, 3:22-CV-00022-PDW-APS, ECF No. 125 at 18-19. A true and correct copy of the map proposed by the Tribes in the District Court is attached to this testimony combined as Attachment 2.

It was not too late to do the right thing when the Tribes brought their VRA analysis to the Redistricting Committee in 2021, and it is not too late now to ensure that the 2024 elections will respect the voting rights of Native Americans. As in 2021, we once again ask that the Legislature adopt a redistricting plan that complies with the VRA and protects the right to vote of all voters.

Thank you for your consideration of this request.

ATTACHMENT 1



November 1, 2021

The Honorable Doug Burgum
Governor of the State of North Dakota
600 East Boulevard Ave.
Bismarck, ND 58505

The Honorable Joshua Boschee
Minority Leader
North Dakota House of Representatives
600 East Boulevard Ave.
Bismarck, ND 58505

The Honorable Kim Koppelman
Speaker
North Dakota House of Representatives
600 East Boulevard Ave.
Bismarck, ND 58505

The Honorable Rich Wardner
Majority Leader
North Dakota State Senate
600 East Boulevard Ave.
Bismarck, ND 58505

The Honorable Chet Pollert
Majority Leader
North Dakota House of Representatives
600 East Boulevard Ave.
Bismarck, ND 58505

The Honorable Joan Heckaman
Minority Leader
North Dakota State Senate
600 East Boulevard Ave.
Bismarck, ND 58505

Dear Governor Burgum, Speaker Koppelman, and Leaders Pollert, Boschee, Wardner and Heckaman:

On behalf of the Turtle Mountain Band of Chippewa Indians ("Turtle Mountain") and the Spirit Lake Nation ("Spirit Lake"), we write to express concerns with the proposed legislative map to be considered for approval by the State Legislature on November 8, and to respectfully request that our Tribal Nations be incorporated into the same legislative district.

Throughout the redistricting process, the Tribes of North Dakota made numerous requests to the Legislature's Redistricting Committee to hold redistricting hearings on and near reservations to allow tribal members an opportunity to be heard on how their state legislative representation will be guided for the next ten years. Those requests fell on deaf ears. Many of our tribal members lack the means to travel to Bismarck and were therefore shut out of the redistricting process. Also concerning was the Redistricting Committee's position that the Tribal and State Relations Committee could report back to it if any redistricting comments happened to be brought up during the Tribal and State Relations Committee meetings. That approach was wholly inadequate. Despite repeated requests, the only outreach from the

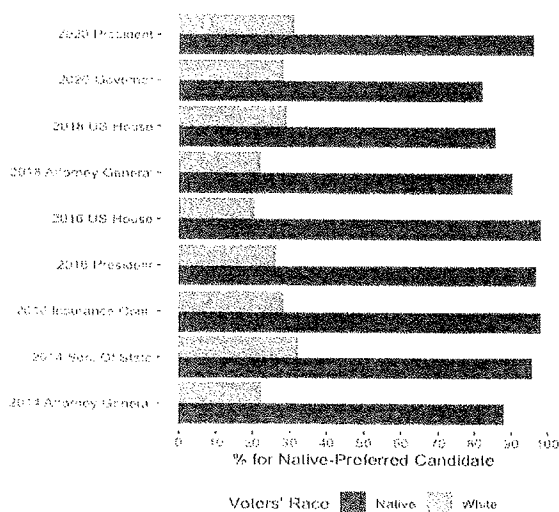
Redistricting Committee was the e-mailing of a hearing notice to the Tribes with one day's notice. Of course, given the short notice, not all of the Tribes were able to make it to Bismarck to attend the hearing. Indeed, we as tribal leaders are governing in the middle of a pandemic with limited resources, and so one day's notice is far from sufficient.

At that redistricting hearing, representatives from the Spirit Lake Nation, Standing Rock Sioux Tribe, and Three Affiliated Tribes advocated for the creation of legislative subdistricts to improve their representation. Of these requests, only a subdistrict for the Three Affiliated Tribes reservation area was approved by the Redistricting Committee. The Committee, however, also decided to create subdistricts in the Turtle Mountain reservation area, even though no subdistricts were ever requested by Turtle Mountain to the Redistricting Committee.

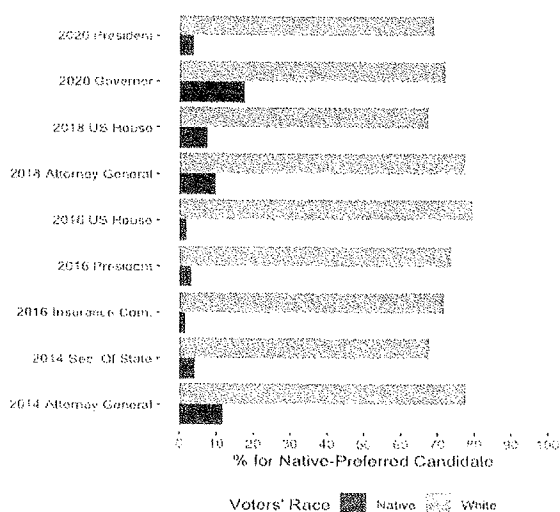
As a result of the poor outreach to our Tribal Nations, despite our repeated requests, the Redistricting Committee's proposed District 9, containing the Turtle Mountain reservation, is illegally drawn and we believe will be struck down in court if it is adopted by the State Legislature. To remedy this situation, and to also allow the members of Turtle Mountain and Spirit Lake to be able to elect the representatives of their choice in accordance with federal law, we have developed a proposed district containing the Turtle Mountain and Spirit Lake reservations. (Attached as **Figure 1**).

Given that our Tribal communities together would be sufficiently large and geographically compact to form a majority-minority district, and given the racially polarized voting that exists when comparing our communities to the surrounding areas, our proposed district satisfies the Voting Rights Act, and would negate the need for a subdistrict. To illustrate, the below charts show the differences between Native American and non-Native American voting patterns in 2016 and 2020 state-wide elections for the precincts within the district we have proposed. Our Tribal communities have voted cohesively in favor of clearly identified Native American preferred candidates. On the other hand, the non-Native American voters have, without exception, overwhelmingly voted against the Native American candidate of choice.

Racially Polarized Voting Analysis:
Support for Native-Preferred Candidates



Racially Polarized Voting Analysis:
Support for White-Preferred Candidates

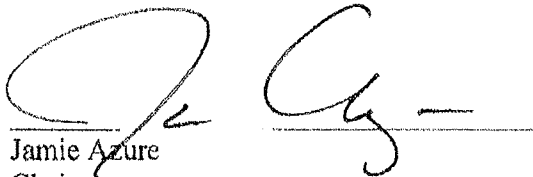


The disparity is even more severe when Native American candidates have run for office. In the 2016 election for the United States House of Representatives, a Native American candidate, Chase Iron Eyes, was preferred by an estimated 98 percent of Native American voters, but received only 21 percent of the vote from white voters. The vast majority of white voters rallied behind the eventual winner of the race, Kevin Cramer, who received only an estimated 2 percent of the Native American vote. A similar pattern is visible in the 2016 race for Insurance Commissioner, where an estimated 98 percent of Native American voters cast a ballot in favor of the Native American candidate, Ruth Buffalo, while being favored by only 28 percent of white voters.


Not only will adopting the district proposed by our Tribes allow the State of North Dakota to forgo costly litigation (which would likely result in the Redistricting Committee's map being overturned anyway), the proposed district can also be incorporated into the overall state-wide redistricting map very easily, with minimal impacts to the districts proposed by the Redistricting Committee for the rest of the state. We have taken the additional step of drawing a full state-wide map that incorporates our proposed district. (**Attached as Figure 2**). To illustrate this minimal impact, we have additionally provided a map that shows the lines of a proposed state-wide map that incorporates our proposed district, overlaid with the lines of the Redistricting Committee's proposed map. (**Attached as Figure 3**). As you can see, incorporation of our proposed district only creates small changes to the other districts proposed by the Redistricting Committee, and only in the northeast corner of the state.

We respectfully bring this request forward, not only as the leaders of sovereign Tribal Nations, but as fellow citizens of the State of North Dakota. All citizens deserve to have their voices heard and to be treated fairly and equally under the law. Our proposed district accomplishes this, which benefits our Tribes as well as the State of North Dakota and all of its citizens. We appreciate your thorough attention to this matter.

Sincerely,

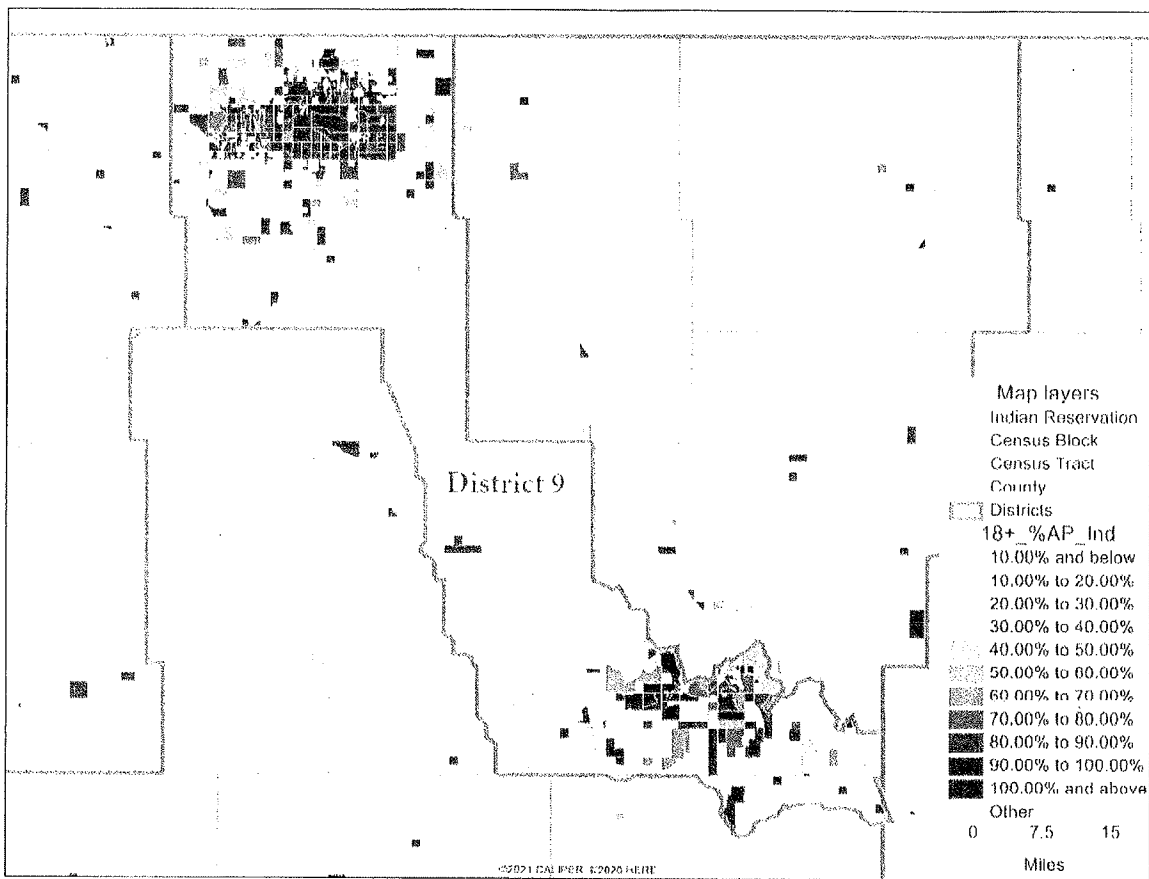


Jamie Azure
Chairman
Turtle Mountain Band of Chippewa Indians



Douglas Yankton, Sr.
Chairman
Spirit Lake Nation

Figure 1 – Proposed District Including Spirit Lake and Turtle Mountain Reservations



District	Population	Deviation	%Deviation	18+ Native American Population	% 18+Native American Population
9	17,341	765	4.62%	7,887	69.06%

Figure 2 – Proposed District as Incorporated Into State-Wide District Map

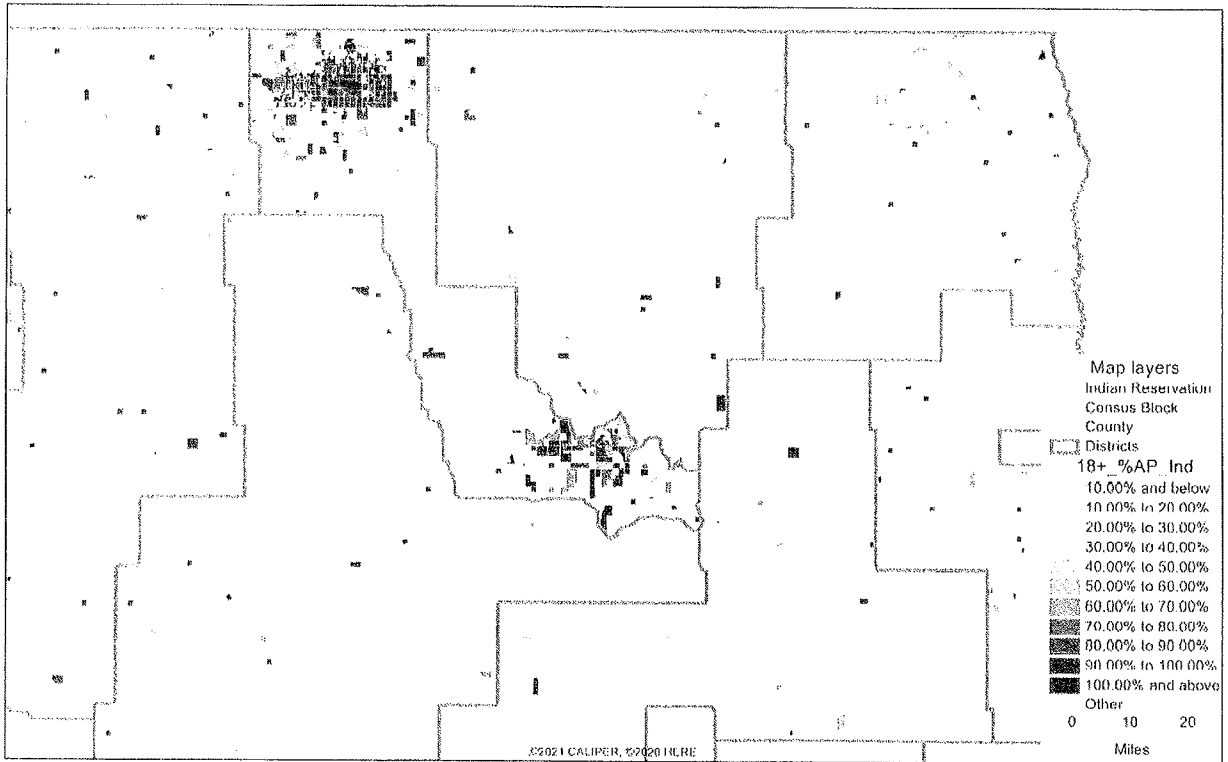
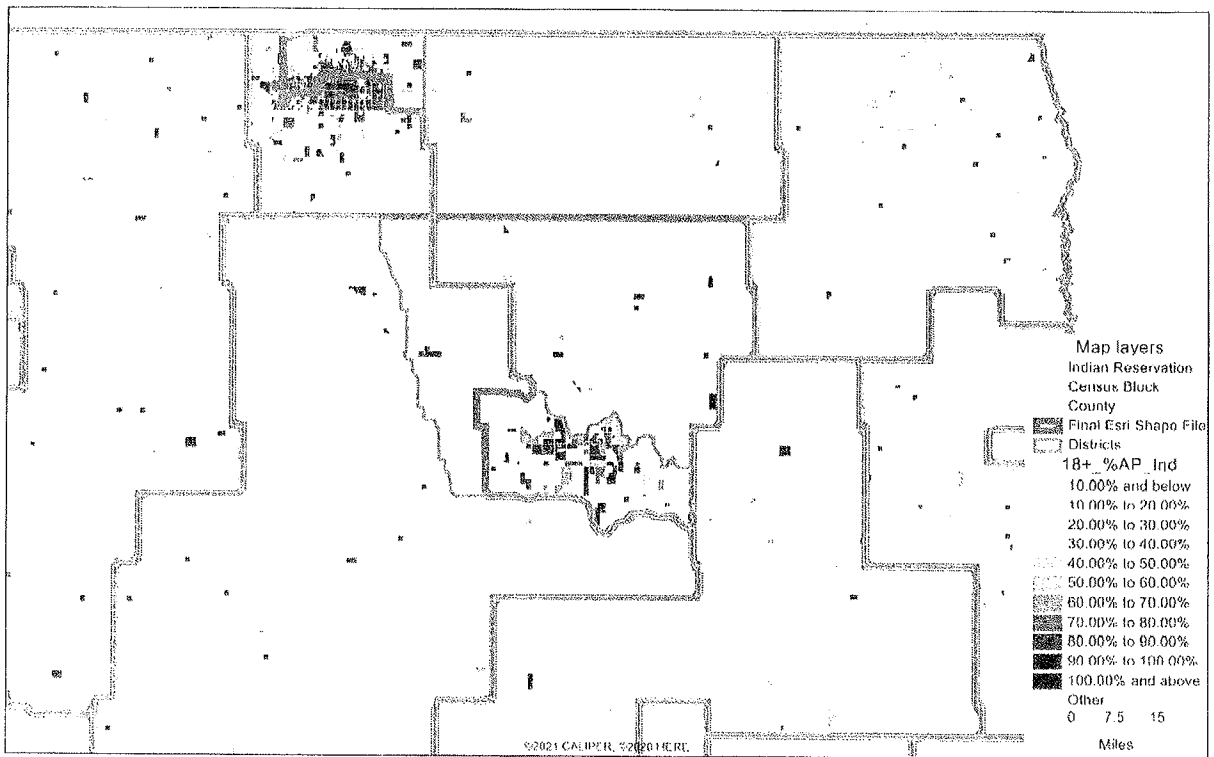
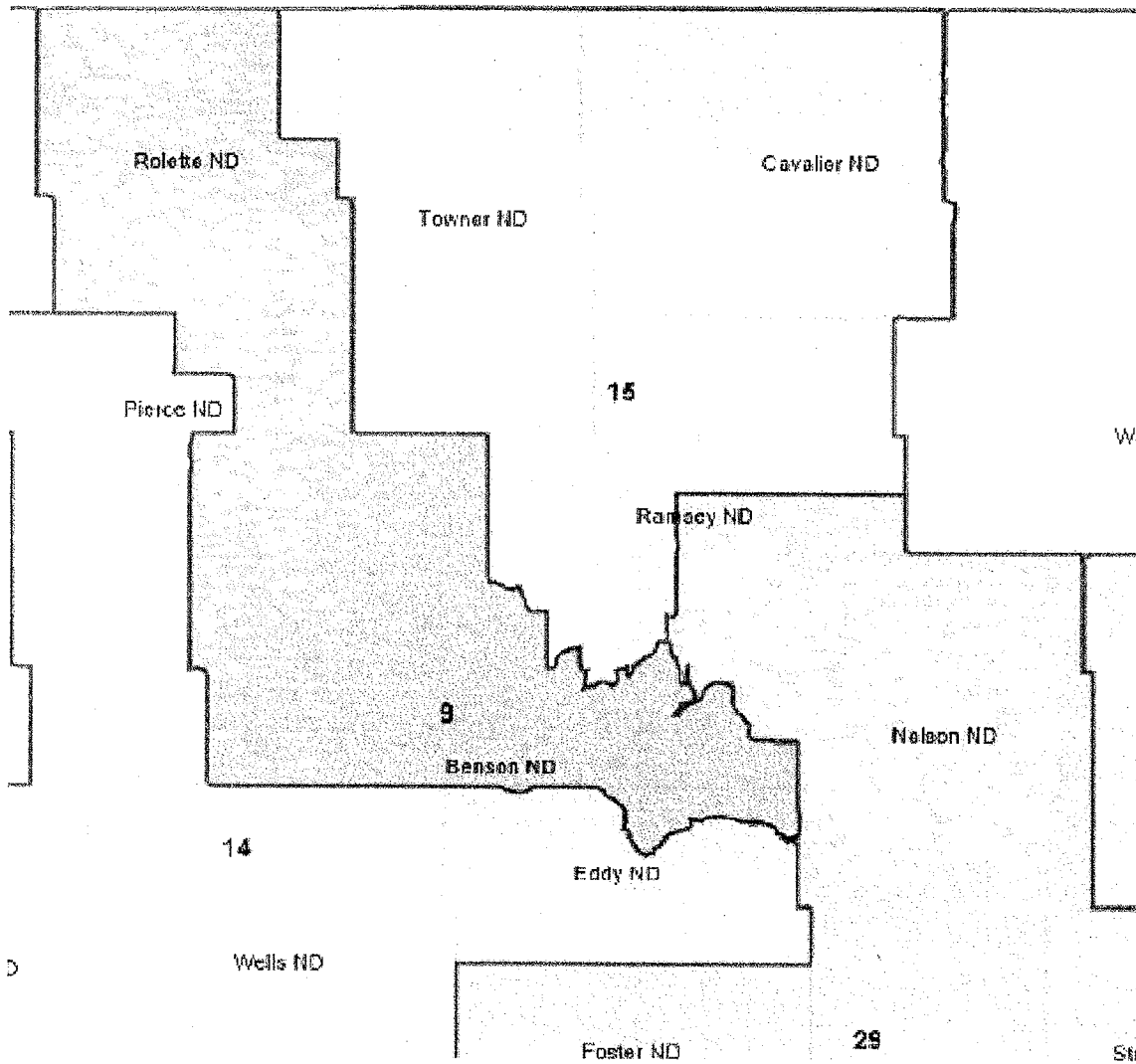


Figure 3 – Our Proposed District as Incorporated into State-Wide Map (Dark Brown Lines), Overlaid with and the Redistricting Committee’s Map (Green Lines)



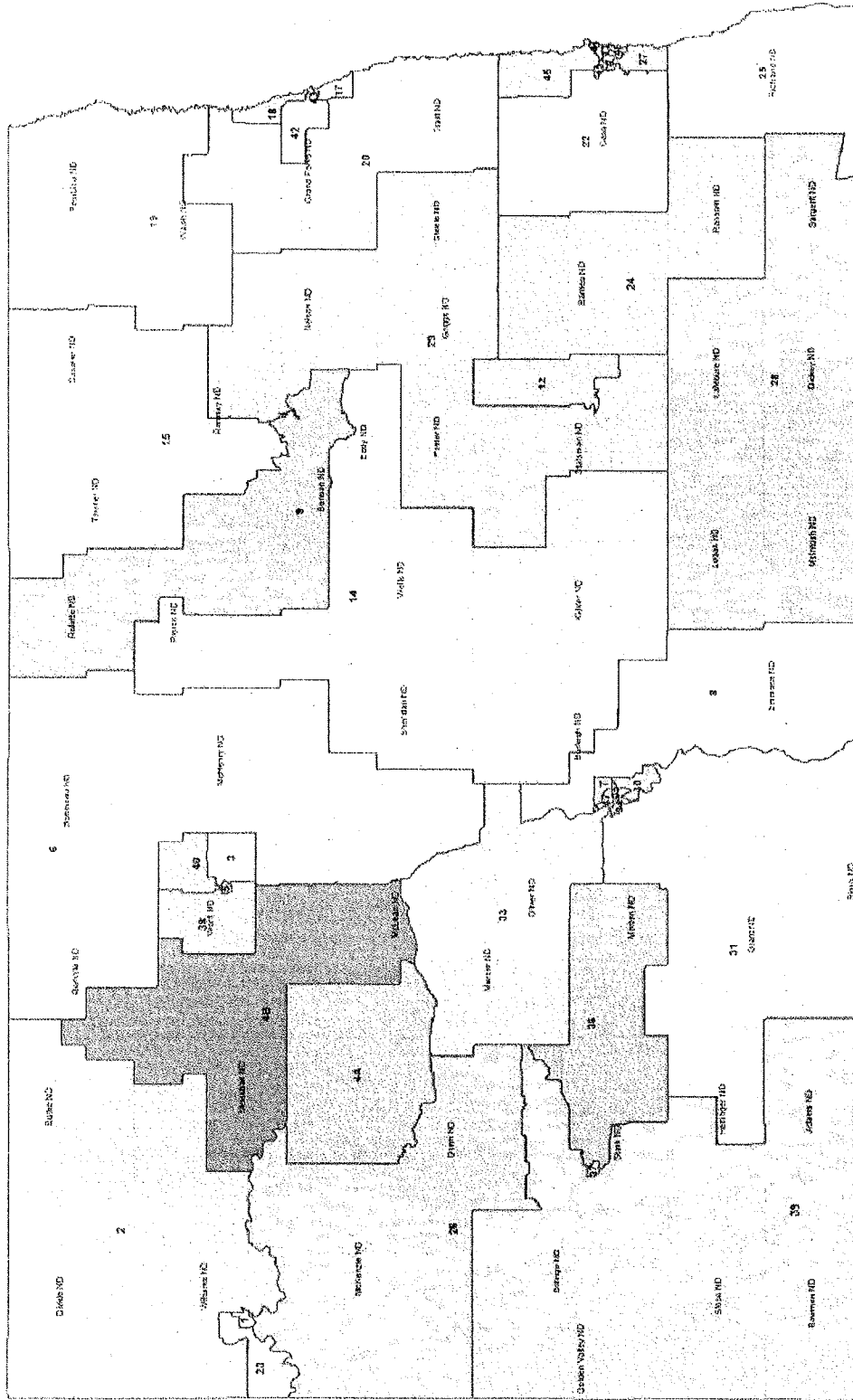
ATTACHMENT 2

ALTERNATIVE MAP PROPOSED
BY THE TRIBES IN DISTRICT COURT
District 9 Regional Map



ALTERNATIVE MAP PROPOSED BY THE TRIBES IN DISTRICT COURT

Statewide Map



Redistricting Committee Membership

House

Rep. Mike Lefor	Vice Chairman
Rep. Craig Headland	
Rep. Mike Nathe	
Rep. Austen Schauer	
Rep. Josh Boschee	

Senate

Sen. Ron Sorvaag	Chairman
Sen. Brad Bekkedahl	
Sen. Bob Erbele	
Sen. Dick Dever	
Sen. Kathy Hogan	