UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

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 State of the State of North Dakota, Defendants, and The Mandan, Hidatsa and Arikara Nation, Cesar Alvarez, and Lisa Deville Defendant-Intervenors.	CASE NO: 1:22-CV-00031-CRH

PLAINTIFFS' MEMORANDUM IN RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Charles Walen and Paul Henderson submit this Memorandum in opposition to Defendants' Doug Burgum and Michael Howe's Motion for Summary Judgment. Summary judgment in favor of Plaintiffs is appropriate in this matter, as the evidentiary record is closed. The legislative redistricting process was completed in November of 2021, and the Legislative Assembly's basis for subdividing Districts 4 and 9 is limited only to the testimony and evidence in the legislative record. The evidence from the redistricting process proves the Legislative Assembly invoked the Voting Rights Act,

thereby prioritizing race in subdividing Districts 4 and 9, and it failed to conduct a proper Gingles analysis necessary to withstand strict scrutiny. Accordingly, Defendants' Motion for Summary Judgment must denied. Instead, Plaintiffs respectfully request an order from the Court granting their Motion for Summary Judgment.

For purpose of this Response, Plaintiffs incorporate the facts and argument in their Memorandum in Support of Motion for Summary Judgment. See Doc. 99.

I. Race was the predominant factor motivating the Legislature's creation of Subdistricts in Districts 4 and 9.

A. Invoking the Voting Rights Act as justification for the creation of race-based Subdistricts establishes race was the predominant factor motivating the Legislature's decision.

The Legislative Assembly invoked the Voting Rights Act ("VRA") as its justification to create the challenged Subdistricts in Districts 4 and 9. By invoking the VRA, the Legislative Assembly was required by law to establish the Subdistricts are narrowly tailored to achieve a compelling government interest. Because the Assembly did not do so, Defendants' arguments regarding Plaintiffs' duty to establish race as a predominant factor in subdividing Districts 4 and 9 misses the mark, and Defendants' Motion for Summary Judgment must be denied.

The Equal Protection Clause of the Fourteenth Amendment prevents a State, in the absence of sufficient justification, from separating its citizens into different voting districts on the basis of race. Cooper v. Harris, 581 U.S. 285, 291 (2017). When a voter sues state officials for drawing such race-based lines, a court must conduct a two-step analysis. Id. First, the plaintiff must prove that "race was the predominant factor motivating the

legislature's decision to place a significant number of voters within or without a particular district." Id. (citing Miller v. Johnson, 515 U.S. 900, 916 (1995)). Second, if racial considerations did predominate, the state must prove the district meets strict scrutiny by showing that its race-based sorting of voters serves a compelling interest and is narrowly tailored to that end. Id. at 292.

The ultimate objective of a racial predominance inquiry is to determine the legislature's motive for the design of the district. Bethune-Hill v. Virginia State Board of Elections, 580 U.S. 178, 192 (2017). A plaintiff may meet the burden to prove that "race was the predominant factor motivating the legislature's decision" by presenting evidence of a state's focus on race during the redistricting process. See Wisconsin Legislature v. Wisconsin Elections Comm'n, 142 S.Ct. 1245, 1249 (2022); see also Cooper, 581 U.S. at 292. A plaintiff may make the required showing through direct evidence of the legislative intent, circumstantial evidence of a district's shape and demographics, or a mix of both. Cooper, 581 U.S. at 291. However, this burden may also be met where a plaintiff demonstrates a state invoked the VRA to justify its race-based districting. Id. The Supreme Court has found that when a state invokes the VRA to justify race-based districting, it must withstand strict scrutiny by proving that it had a strong basis in evidence for concluding that the VRA required its action. Cooper, 581 U.S. at 292. "To have a strong basis in evidence to conclude that § 2 [of the VRA] demands such race-based steps, the State must carefully evaluate whether a plaintiff could establish the Gingles preconditions—including effective white bloc-voting—in a new district created without those measures." Id. at 304.

If a state does not prove the Gingles preconditions have been met, it cannot enact a race-based district under the Equal Protection Clause. Id.

In Cooper, North Carolina invoked the VRA to justify its enactment of two majority-minority districts. Id. at 299. There, the evidentiary record demonstrated North Carolina's Legislature believed the VRA required the creation of two majority African American districts. Id. As the Supreme Court noted, North Carolina was honest about this fact:

> Senator Rucho and Representative Lewis were not coy in expressing that goal. They repeatedly told their colleagues that District 1 had to be majority-minority, so as to comply with the VRA. During a Senate debate, for example, Rucho explained that District 1 "must include a sufficient number of African–Americans" to make it "a majority black district." App. 689–690. Similarly, Lewis informed the House and Senate redistricting committees that the district must have a majority black voting age population.

Id., Because North Carolina invoked the VRA to justify its race-based districting, the Court held the State was required to satisfy the strict scrutiny requirements of the Equal Protection Clause:

> Faced with this body of evidence – showing an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites – the District court did not clearly err in finding that race predominated in drawing District 1. Indeed, as all three judges recognized, the court could hardly have concluded anything but.

Id. at 301-302.

In Wisconsin Legislature v. Wisconsin Election Comm'n, 142 S. Ct. 1245 (2022), the Supreme Court reaffirmed Cooper following the Wisconsin's Governor veto of the redistricting maps proposed by the Wisconsin Legislature and the proposal of his own map, which included one additional majority-black district. Id. The Governor argued the

additional majority-minority district was needed to comply with the VRA. Id. On appeal, the United States Supreme Court held the Governor's invocation of the VRA to justify the majority-black district triggered strict scrutiny. Id. at 1249. "We said in Cooper that when a State invokes § 2 to justify race-based districting, it must show (to meet the 'narrow tailoring' requirement) that it had 'a strong basis in evidence' for concluding that the statute required its action." Id. The Supreme Court found the Wisconsin Governor provided no evidence or analysis supporting his claim that the VRA required the majority-black district. Id. With this lack of evidence, the Court concluded the Governor's plan was not narrowly tailored. Id.

In this case, Defendants assert the Redistricting Committee ("Committee") adhered to race-neutral redistricting principles to draw the Subdistricts. But a thorough review of the legislative record reveals race was the sole focus of the Committee while drawing the Subdistricts. Again and again, the Committee invoked the VRA while discussing these Subdistricts. As the Court explained in Cooper and reaffirmed in Wisconsin Legislature, by relying on the VRA the Committee triggered strict scrutiny for these Subdistricts. Id. at 292.

The transcripts of the Committee hearings affirmatively establish the Committee invoked the VRA to justify its race-based districting. For example, in the motion to approve the Subdistricts, Committee Vice Chairman Holmberg explicitly stated the VRA was the basis for creation of the Subdistricts:

> [SENATOR HOLMBERG]: So, Mr. Chairman, I would move that we subdivide what is District 9 on this particular map and District 4 **under the provisions of the Voting Rights Act**.

Doc. 100 at #6 (*emphasis added)*. Similarly, while introducing the Subdistricts on the House floor for final passage, Chairman Devlin invoked the VRA while explaining why the Committee created the Subdistricts:

> So the committee put it [the subdistricts] in because it is settled federal law. The Voting Act was passed by Congress and signed by the President of the United States.
> . . .
> **We are putting in the subdistricts because that is a requirement of the Voting Rights Act.**
> . . .
> I'm not going to stand here and tell you to ignore federal law. I care too much about this country to do that. I am firmly convinced that we have no choice under the federal law and the constitution.

Doc. 100, #8 at 17:16 - 18:23 (*emphasis added*). These statements by the Chairman and Vice Chairman are direct evidence the state invoked the VRA to justify the drawing of Districts 4 and 9. Further, the statements of the Chairman and Vice Chairman are also more direct invocations of the VRA than those made by the legislators that the Supreme Court relied on in Cooper to conclude North Carolina's redistricting plan was subject to strict scrutiny.

Along with the comments by the Chairman and Vice Chairman, statements by other members of the Committee show the Committee relied on the VRA to justify the drawing of Districts 4 and 9:

> REPRESENTATIVE SCHAUER: And just to be clear on this, this is numbers driven. This is what we have to do following the Voting Right Act. Doc. 100, #7 at 23:14 – 17.
> . . .
> [REPRESENTATIVE NATHE]: The districts meet the criteria as set by the voters rights act as we did it. We had a lot of discussions. It meets the Gingles

> requirements. We discussed that probably all morning one day. So we have gone through this very, very thoroughly. Doc. 100, #8 at 11:8 – 19.
> . . .
> [REPRESENTATIVE MONSON]: Now, we have – we have kept the reservations whole, giving them a big advantage in that, and a lot of their residents in that district that we have created or drawn at this point, they are Indian Americans. They are not on the reservation per se, but they're in the same district as the reservation. So we – at the hesitation of using the word "gerrymander," we have not gerrymandered. We have actually, I think, gerrymandered to give them every opportunity to get as many Indian Americans into that district and give them the advantage, especially when we keep the reservations whole. So would the courts look at that and say, you've – you've given them every opportunity to put up their own candidate? Doc. 100, #7 at 26:24 – 37:13.

The legislative record is clear on this point. The Committee enacted the challenged Subdistricts in an effort to comply with the VRA. There can be no reasonable argument to the contrary.

B. Race was the predominant factor in the creation of the Subdistricts, not traditional redistricting principles.

The legislative record plainly establishes the Committee prioritized race as a predominant factor in subdividing districts 4 and 9. Defendants' argument that Plaintiffs have failed to show the Legislature subordinated traditional and race-neutral redistricting principles to racial considerations is refuted by the legislative record. Notably, Defendants have failed to cite any relevant portions of the legislative record to support their assertion. Defendants have even gone so far to cite testimony that is unrelated to subdistricts 4 and 9 in their attempt to purposefully mislead this Court about the legislative record. If Defendants had any relevant testimony to support their position, they would have cited the same. The glaring absence of any such testimony is fatal.

This Court can easily determine whether race was the predominant factor in the Committee's creation of the Subdistricts by reviewing the transcript of the Committee hearings of September 28 and 29, 2021, when the Committee debated and voted on creation of the Subdistricts. In the discussion on those two days, the Committee referenced the VRA twenty times and the Gingles factors nine times. See Doc. 100, #6 at 21:1 – 44:4; see also Doc. 100, #7 at 16:4 – 41:19. Conversely, the Committee did not mention the traditional redistricting principles of contiguity, preservation of counties or communities of interest, or protection of incumbents a single time in debating the creation of Subdistricts. Id. Compactness was only mentioned on a single occasion when a member asked legislative counsel whether the term "gerrymandering," refers to the configuration of the boundaries of a district not being compact or whether it refers to a population statistic not being compact. See Doc. 100, #7 at 23:24 – 24:5. On September 28th, the Vice-Chairman of the Committee made the motion "that we subdivide what is District 9 on this particular map and District 4 under the provisions of the **Voting Rights Act**." Doc. 100, #6 at 22:14 – 17. It is important to recognize the motion was not to create the Subdistricts to comply with traditional redistricting principles. The vote was not held on September 28th because the Committee asked legislative counsel to prepare a memo on the VRA cases. Doc. 100, #6 at 42:12 – 43:20. Again, it is important to note that the Committee did not request research on contiguity or compactness of the Subdistricts. There would be no reason to discuss the VRA and Gingles if the Subdistricts were created to comply with traditional redistricting principles. No reasonable person could review the testimony of the Committee and reach

any conclusion other than race, specifically complying with the VRA, was the predominant factor in the Committee's decision to create the Subdistricts.

The Supreme Court has held "the racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality, did not." Bethune-Hill, 137 S.Ct. at 799. Defendants' arguments rely entirely on *post hoc* theories about the types of traditional redistricting principles the Committee should have considered, but in reality, did not. Defendants' attempts to twist the legislative record to support their case is textbook revisionist history. As a result, Defendants have intentionally misrepresented the legislative record to the Court. Defendants have identified instances in the record where the Committee discussed traditional redistricting principles, but have purposely and knowingly failed to admit that every Committee discussion cited regarding traditional redistricting principles concerned other districts not at issue in this case. See Doc. 102 at 22-30. None of the cited testimony in Defendants' Memorandum is related to or references the challenged Subdistricts.

For example, Defendants cite a comment made by Senator Sorvaag in which he says "they're [traditional principles] all coming into play at some point." Doc. 102 at 24. First, Senator Sorvaag made this comment during a presentation regarding several eastern districts, not Districts 4 or 9. See Doc. 100, #4 at 66:16 – 85:18. Defendants have also omitted the rest of Senator Sorvaag's comments:

> [SENATOR SORVAAG]: But I just think as we're spending a lot of discussion to prioritize [traditional redistricting principles], well I don't think you need to . . . So I would hope as this discussion goes forward, we don't

> spend too much time ranking these [traditional redistricting principles], and rather, look at the whole picture.

Id. at 85:6 – 18. Substantive portions of Senator Sorvaag's comments have been ignored or left out by Defendants because the comments contradict Defendants' manufactured narrative. Context matters, and Senator Sorvaag expressed his hope that the Committee would not spend "too much time" analyzing traditional redistricting principles. Id. Defendants' deliberate efforts to misrepresent the legislative record cannot be ignored and should not be rewarded by this Court.

Attempting to show race did not predominate the Committee's decision to subdivide Districts 4 and 9, Defendants have made individual arguments for each traditional redistricting principle:

1. Compactness

Despite arguing "the State considered the compactness of the Challenged Subdistricts in its consideration of House Bill 1504," Defendants have failed to provide any citation to the legislative record to support this self-serving conclusion. Doc. 102 at 25. Defendants' citation to an initial orientation presentation from Ben Williams, a representative from National Council of State Legislators, fails to admit his presentation lacked any analysis of the compactness of the legislative districts in North Dakota, including the Subdistricts in 4 or 9. See Doc. 100, #1 at 51:1 – 57:15. Thus, while Mr. Williams provided an overview of the traditional redistricting principles in his opening presentation to the Committee, he did not provide a statistical analysis of compactness.

Defendants have identified no other testimony or evidence in the legislative record regarding the compactness of the Subdistricts in Districts 4 and 9. Defendants have also failed to identify any testimony or evidence that the Committee directly discussed the compactness of the subdistricts in Districts 4 and 9. If such evidence or testimony existed, Defendants would have certainly provided direct citations to the Court for its consideration. Instead, Defendants rely on an orientation presentation that did not analyze the compactness of any legislative district in North Dakota. In turn, Defendants have failed to show the Committee considered compactness as the predominant factor in creating the challenged Subdistricts.

2. Contiguity

There is no evidence in the legislative record to support Defendants' argument the Committee considered or discussed the contiguity of the Subdistricts. For their baseless assertion that the Committee considered contiguity, Defendants again cite Mr. Williams initial orientation presentation in which he provided an overview of the traditional redistricting principles. Doc. 100, #1 at 51:1 – 57:15. Mr. Williams' presentation lacks any evidence the Subdistricts are contiguous. Defendants have cited no other testimony or evidence to support their assertion, and Defendants have failed to cite any testimony or discussion about contiguity. See Doc. 102 at 26. The failure to submit any competent, admissible evidence to support Defendants' position should be taken as an admission no such evidence exists. The legislative record definitively shows the Committee did not discuss the contiguity of the challenged Subdistricts.

3. Preservation of counties and political subdivisions

There is no evidence or testimony in the legislative record that the Committee considered the preservation of counties and subdivisions in drawing the challenged Subdistricts. Defendants' argument that the Committee considered the preservation of counties and political subdivisions in its drawing of the Subdistricts is nothing more than an unsupported, self-serving, and conclusory statement. Id. at 26-28. Defendants have cited no testimony by the Committee regarding the preservation of counties and subdivisions as the basis for enacting the Subdistricts. Defendants again cite comments from Mr. Williams, but these comments have nothing to do with the challenged Subdistricts. Doc. 102 at 27. Additionally, Defendants cite testimony from a representative of the North Dakota Association of Counties ("NDAC"), but that testimony was also unrelated to the challenged Subdistricts See Doc. 100, #4 at 4:8 – 8:4. In fact, in his testimony, NDAC's representative was clear the Association was not analyzing specific districts:

> [MR. BIRST]: The Association of Counties is not interested in particular plans. We're not advocating for any certain plan. What we would like to remind the committee, and you already know this, but we would like the committee to take into strong consideration that county lines are looked at when you are doing you redistricting.

Id. at 4:22 – 5:3. Defendants' reference to the NDAC's concerns is quite interesting considering Subdistrict 4A carves out portions of 4 different counties and fails to adhere to any county lines. See Doc. 12, #1. In short, Defendants have not identified and cannot identify any discussions in which the Committee considered the preservation of counties and subdivisions in its drawing of the challenged Subdistricts.

4. Preservation of communities of interest

Defendants' argument that the Subdistricts were enacted to preserve communities of interest is unsupported by the legislative record. Defendants are correct in that the Committee heard testimony from tribal leaders requesting that each reservation be kept whole and preserved. It is also undisputed that the boundaries of the Fort Berthold and Turtle Mountain Reservations were fully contained in their respective Subdistricts. See Doc. 12, #1. Even so, the drawing of Subdistricts around each Reservation is not evidence itself that the Committee considered any traditional redistricting principles. Rather, the drawing of subdistricts to encompass each Reservation proves the Committee prioritized race in enacting the Subdistricts.

Defendants do not cite any Committee discussion regarding the preservation of communities of interest in creating the Subdistricts. To support their argument, Defendants have identified testimony provided by interested parties requesting all the Reservations be kept whole. Doc. 102 at 29. To be clear, testimony from interested parties is not evidence of traditional redistricting principles. See Abbott v. Perez, 138 S.Ct. 2305, 2334 (2018) (holding that demands from interested parties are not part of a proper race-based redistricting analysis). However, in citing this testimony, Defendants have again misrepresented the legislative record. Defendants cite exclusively to written testimony provided in the Affidavit of Emily Thompson. Doc. 20. Almost none of the testimony cited by Defendants relates to Districts 4 or 9. For example, Defendants cite written testimony by a representative of North Dakota Farmers Union, Matt Perdue. Doc. 102 at 29. Mr. Perdue's testimony did not reference District 4 or 9, or the challenged Subdistricts. See

Doc. 20, #7. Similarly, Defendants point to written testimony given by members of the Spirit Lake Nation and Standing Rock Sioux Tribe. Doc. 102 at 29. As Defendants know, despite being communities of interest, neither Spirit Lake or Standing Rock tribal nations were given their own Subdistrict. See Doc. 20, #5, #14, #15, #16, #20, #22, #24, #25. Defendants' use of this testimony to support their argument that the Committee considered traditional redistricting principles as a basis for the creation of the Subdistricts in Districts 4 and 9 is not only misleading, but it fails as a matter of law. See Abbott, 138 S.Ct. at 2334.

Inexplicably, and contrary to their arguments, Defendants also cite the written testimony of Turtle Mountain Tribal Chairman Jamie Azure. Doc. 102 at 29. In his testimony, Chairman Azure states that the Turtle Mountain tribe is opposed the subdividing District 9:

> I am very concerned about the Committee's proposed District 9 that encompasses the Turtle Mountain reservation. The Committee's proposed district would dilute the Native American vote, would not provide our tribal members with the ability to elect the candidates of their choice.

See Doc. 20, #25. Chairman Azure also attached a letter to his written testimony in which he stated:

> At that Redistricting hearing, representatives from Spirit Lake Nation, Standing Rock Sioux Tribe, and Three Affiliated Tribes advocated for the creation of legislative subdistricts . . . 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 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 it will be struck down in court if it is adopted by the State Legislature**.

Id. Defendants reliance on Chairman Azure's testimony to support their position reveals how illogical the Defendants' argument is and how far Defendants are willing to go to distort the legislative record.

The legislative record simply does not support Defendants' contention that the Committee prioritized traditional redistricting principles in drawing the challenged Subdistricts. Rather, the drawing of the Subdistricts to encompass each Reservation is evidence of racial gerrymandering. For the first time in North Dakota's history the Legislative Assembly enacted Subdistricts. It is not coincidental the Committee chose only to subdivide Districts 4 and 9. As the Committee discussions reflect, Districts 4 and 9 were chosen because Fort Berthold and Turtle Mountain are the only Reservations in North Dakota with a Native American population large enough to encompass a single member subdistrict. The Committee was not coy on this point:

> SENATOR HOLMBERG: We've – we've has numerous discussion about the Voting Rights Act, the – Gingles reality, and when you look at the population of the reservations, it – it does lend itself to either legislative action or, at some other point, court action . . . [t]oday our populations in two areas, two reservations, appear to meet that threshold. The threshold – the ideal population for a subdistricts district is 8,453. And if you recall, the other day we were told that Fort Berthold has, in the County in Rollette County, 9,278 Native Americans identified, and in the Turtle Mountain Reservation there is – oh, excuse me. Excuse me. In Forth Berthold there is 8,350 Native Americans. So it would lend itself, I believe, those two falling under the requirements of the Voting Rights Act . . . If you recall, I – I read the – Some of the other [reservation] populations, and they don't rise to the 8,453-person level. Doc. 100, #6 at 21:4 – 22:13.
>
> . . .
>
> REPRESENTATIVE MONSON: So really what I'm hearing is you're saying there's one district that might -- or one reservation that might qualify by the Gingles Act for a subdistrict. The other ones probably don't make it because they aren't even close to half. Correct? Is that what I heard you say?

> Doc. 100, #4 at 25:17 - 23.
> . . .
> REPRESENTATIVE SCHAUER: And just to be clear on this, this is numbers driven. This is what we have to do following the Voting Rights Act. Doc. 100, #6 at 23:14 – 23:18.
> . . .
> [SENATOR HOLMBERG]: We do have a question regarding subdivisions. I would look at two districts which have native populations. One of them, District 9, has 9278 American Indian population. And then Fort Berthold has 8350 people living on the reservation itself. And I think that we would make a mistake as a legislature not recognizing what the courts have said, which is if you have a population beyond a certain amount, a percentage, then subdividing is the direction that Voting Rights Act Title 2 of Section 2, whatever it is, would mandate. Doc. 100, #5 at 47:7 – 24.
> . . .
> REPRESENTATIVE SCHAUER: Those advocating Subdistricts in North Dakota have a powerful legal case based on the census numbers, the Voting Rights act, and precedent setting legal cases from the U.S. Supreme Court. In District 4A, total population is 8,350. American Indian population is 5,537, which is 66 percent. District 9A, total population, 7,922; American Indian population, 6,460, which is 82 percent. The Equal Protection Clause of the 14th Amendment and the Voting Rights Act, Section 2 prohibits vote dilution . . . Let's do what is right both legally and in support of our tribal friends who are also North Dakotans. Doc. 100, #8 at 10:22 – 11:19.

The Committee expressed that its sole criterion for enacting the Subdistricts was the minority population on each Reservation. If preservation of communities of interest was at the heart of the Committee's decision, the Committee would not have left out the other three Reservations in North Dakota. Defendants' argument that the Subdistricts were enacted to preserve communities of interest is not supported by the legislative record.

5. Protection of incumbent legislators.

Reviewing the legislative record, it is evident the Committee did not consider protection of incumbents while subdividing Districts 4 and 9. Despite being reelected to a four-year term in 2020, Rep. Terry Jones, Rep. Clayton Fegley, and Sen. Jordan Kannianen

of District 4 were forced to run for reelection in 2022 as a result of the Subdistricts. Defendants' argument that the Committee considered protection of incumbent legislators in the drawing of Districts 4 and 9 is unsupported and Defendants have cited no testimony or evidence to support their conclusion.

C. The legislative record proves race was the Committee's predominant consideration.

The transcripts of the legislative record provide direct evidence of the Committee's reliance on race as the predominant factor for enactment of the Subdistricts. Defendants have preemptively declared that Plaintiffs will "cherry pick" quotes from individual legislators "to paint a false portrait . . . to make it appear race predominated." Doc. 102 at 30. Notably, despite having transcripts of the entire redistricting process, Defendants failed to identify any substantive quotes or discussions showing the Committee considered traditional redistricting principles with respect to Districts 4 and 9. Instead, Defendants have misrepresented isolated quotes about districts which are not being challenged here. Defendants have identified no quotes or discussions regarding any traditional redistricting principles that were analyzed for the challenged Subdistricts. This is because no such discussions took place.

The Supreme Court has held that quotes from legislators are often the best evidence to prove race predominated a state's decision. For example, in Cooper, 581 U.S. 285, the Court's racial predominance analysis focused on quotes from the co-chairmen of North Carolina's Redistricting Committee. There, the co-chairmen – Senator Richard Rucho and Representative David Lewis – openly advocated for the enactment of a number of majority-

black districts in order to allegedly comply with the VRA. Id. at 299-300. As the Court points out, "[u]ncontested evidence in the record shows that the State's mapmakers, in considering District 1, purposefully established a racial target: African–Americans should make up no less than a majority of the voting-age population." Id. at 299. The Court found the racial target set by Rucho and Lewis was direct evidence race predominated. Id. at 300. The Court focused on just two statements made by Rucho and Lewis to reach this conclusion:

> [Rucho and Lewis] repeatedly told their colleagues that District 1 had to be majority-minority, so as to comply with the VRA. During a Senate debate, for example, Rucho explained that District 1 'must include a sufficient number of African–Americans' to make it 'a majority black district.' Similarly, Lewis informed the House and Senate redistricting committees that the district must have 'a majority black voting age population.' . . . Faced with this body of evidence - showing an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites - the District Court did not clearly err in finding that race predominated in drawing District 1. Indeed, as all three judges recognized, the court could hardly have concluded anything but.

Id. at 300-301. Citing just two quotes from the co-chairmen of the North Carolina Redistricting Committee, the Supreme Court concluded the challenged map was a "textbook example of race-based districting." Id. at 301 (*quotations marks omitted)*.

In this case, both the Chairman and the Vice Chairman of the Committee established an explicit racial target for the Subdistricts. This racial target was two majority-minority Subdistricts in districts 4 and 9. Chairman Devlin admitted this on the House floor:

> [CHAIRMAN DEVLIN]: We are putting in the subdistricts because that is a requirement of the Voting Rights Act.

Doc. 100, #8 at 18:5 – 7. Additionally, Vice Chairman Holmberg announced The Committee's explicit racial target during a Committee hearing on September 23, 2021:

> [SENATOR HOLMBERG]: We do have a question regarding subdivisions. I would look at two districts which have native populations. One of them, District 9, has 9278 American Indian population. And then Fort Berthold has 8350 people living on the reservation itself. And I think that we would make a mistake as a legislature not recognizing what the courts have said, which is if you have a population beyond a certain amount, a percentage, then subdividing is the direction that Voting Rights Act Title 2 of Section 2, whatever it is, would mandate.

Doc. 100, #5 at 29:20 – 25. Based on the Supreme Court precedent, the establishment of a racial target by the Chairman and Vice Chairman proves race predominated the drawing of the Subdistricts. See Cooper, 581 U.S. at 301.

The legislative record is replete with statements from Committee hearings and floor sessions establishing race was the predominant factor in creating the Subdistricts. The following statements are direct evidence of Committee's intent:

> MR. SCHAUER: In those districts where it's heavily minority, is there pressure from the courts to break those districts down into subdivisions to make sure those mino- -- that minority populations is represented? Doc. 100, #1 at 38:10 - 14.
>
> . . .
>
> MR. HOLMBERG: Uh, and I would just wonder your observations about if we have districts that have a native population of 8,000 or 6,000, uh, how thin does the ice get if we decide not to do any subdistricting in those areas, as South Dakota has in two reservations. They have subdistricts in two legislative districts. How thin, if you're at 8,000, 9,000 people of a -- of a 16,000 district, is the ice getting pretty thin? Doc. 100, #1 at 39:12 – 40:18.
>
> . . .
>
> SENATOR HOLMBERG: -- and you've talked about the native [American] populations, would your group be critical of a legislature that would subdivide reservation A and not reservation B because reservation B gave us clear messages that they really don't want that? Doc. 100, #2 at 96:2 - 96:7.
>
> . . .
>
> REPRESENTATIVE NATHE: Thank you, Mr. Chairman. So when you talk

about better representation, do you have any information that shows in the past that anybody from these reservations haven't had a chance to run? Because it seems to me they've [Native Americans] had as much chance to run as anybody else. Id. at 100:2 - 8.

. . .

REPRESENTATIVE NATHE: So, Rick, I want to go back. Senator Oban talked about a chance to win. If we go to subdistricts, they have a better chance to win. Are you saying right now if a Native American ran in, say, District 31 in Standing Rock, they have less of a chance now than if we subdivide? Id. at 105:19 - 25.

. . .

REPRESENTATIVE SCHAUER: But a question for Ms. Ness, and I'm just trying to get a handle on this. If race is the reason to subdivide a district, then what mandates are there to make sure that a candidate is of that race? Id. at 112:15 - 19.

. . .

VICE CHAIRMAN HOLMBERG: First of all, this Committee is very sensitive to our duties under the Voting Rights act. We know that. We get that. There are things we have to do, and there are things we can do. And we certainly will take care of the have to do, I believe, but there are also, within that particular legislative, there are certain thresholds; and I don't have them in front of me. I mean, if you have a district that has 50 percent -- if you subdivided a district and the Native population was 50 percent, that's pretty easy to argue. When you get down to 23 percent, that's less arguable. So in other words, we know what -- I believe what we should do, but there are thresholds that we also have to consider. Doc. 100, #3 at 64:16 - 65:6.

. . .

REPRESENTATIVE NATHE: So Claire, help me understand. I'm just confused what trips the Gingles preconditions. So we're looking at a subdistrict and in some of the discussions, all of a sudden, we have -- say we have 9000 Native Americans, and we have 8000 non -- whites -- say whites. Well, doesn't that trip the Gingles the other way? I mean, isn't that discriminating against, you know, the other way? Doc. 100, #4 at 28:27 - 25.

. . .

[REPRESENTATIVE HEADLAND]: Senator Holmberg, would if be fair to say that we really don't know if the Court would weigh in, or we really don't know how they would respond? You know, I have some issues with subdivisions and dividing them based upon race, so I – I just don't think I can support the proposal to subdivide. Doc. 100, #6 at 23:22 - 24:2.

. . .

[REPRESENTATIVE MONSON]: Now, we have – we have kept the reservations whole, giving them a big advantage in that, and a lot of their residents in that district that we have created or drawn at this point, they are

> Indian Americans. They are not on the reservation per se, but they're in the same district as the reservation. So we – at the hesitation of using the word "gerrymander," we have not gerrymandered. We have actually, I think, gerrymandered to give them every opportunity to get as many Indian Americans into that district and give them the advantage, especially when we keep the reservations whole. So would the courts look at that and say, you've – you've given them every opportunity to put up their own candidate? And They've actually got over half of the population within a district in some cases that are Indian Americans that could vote for them if they wanted . . . I mean, I'm not thinking these should be color-blind. I mean, I don't – I don't think that race should be a factor, and I don't think we've made it a factor until they have asked for the reservations to be included, but – so have we not given them every opportunity by keeping them as cohesive as we can at this point? Doc. 100, #7 at 34:15 – 35:21.
>
> . . .
>
> [REPRESENTATIVE SCHAUER]: The Equal Protection clause of the 14th Amendment and the Voting Rights Act, Section 2, prohibits vote dilution, which happens when minority voters are dispersed or cracked among districts so that they are ineffective as a voting bloc. We may not like it for whatever reason. But it is the law . . . Let's learn from South Dakota's mistake. Let's put our state in the best possible position to defend itself if we are sued. Let's do what is right both legally and in support of our tribal friends who are also North Dakotans. Doc. 100, #8 at at 11:8 - 19.

The racial target set by the Chairman and Vice Chairman, and the Committee's focus on race is fatal to the Defendants' Motion for Summary Judgment. These comments by members of the Committee are not cherry-picked or isolated. Defendants have access to the entire legislative record. Rather than bring forth direct evidence to support their claims, Defendants deflect by accusing Plaintiffs of "cherry picking" quotes. In essence, Defendants are asking this Court to ignore the legislative record, that they fought so hard to hide from Plaintiffs in this case, in favor of some unknown evidence they have not identified. The quotes cited are direct evidence of what the Committee considered when drawing the challenged Subdistricts. Defendants' inability to cite any relevant or substantive testimony in support of the Committee's decision is an admission of merit.

In addition to the direct evidence cited above, the circumstantial evidence of the Subdistricts' boundaries and demographics establish race was the predominant factor in their creation. The design of Subdistricts 4A and 9A was created to have a majority Native American voting age population. The Subdistrict boundaries were specifically drawn to follow the Forth Berthold and Turtle Mountain Reservations' respective borders to accomplish creation of a Native American minority-majority district. No other district in the State was designed to create a majority population of minority voters. Three other reservations exist in North Dakota, but none of them were given special subdistricts to reflect "traditional redistricting principles". The circumstantial evidence of the design of the Subdistricts to follow Reservation boundaries and to create a majority population of Native American voters establishes race was the predominant factor in creating the Subdistricts.

There is no question race predominated the Committee's decision to subdivide Districts 4 and 9. Because race was the predominant factor here, Defendants' Motion for Summary Judgment must be denied.

II. The challenged Subdistricts are not narrowly tailored because the Legislature failed to conduct a proper Gingles analysis.

When a plaintiff meets his burden to show race was a predominant consideration or the VRA was invoked in the drawing of district, the configuration of the district must withstand strict scrutiny. Cooper, 581 U.S. at 292. That is, the burden shifts to the state to show the majority-minority district is narrowly tailored to achieve a compelling government interest. Wisconsin Legislature, 142 S.Ct. at 1248. The Supreme Court has

held that a race-based redistricting plan is only narrowly tailored if a legislature has a "strong basis in evidence" to believe the use of racial criteria is required to comply with the VRA. Alabama Black Legis. Caucus v. Alabama, 575 U.S. 254, 278 (2015). "To have a strong basis in evidence . . . the State must carefully evaluate whether a plaintiff could establish the Gingles preconditions – including effective white bloc-voting – in a new district created without those measures." Cooper, 581 U.S. at 304.

Here, the Committee did not conduct a proper Gingles analysis. In their Memorandum in Support of Motion for Summary Judgment, Defendants state:

> As an initial matter, Plaintiffs argue that the ND Legislature must have conducted a statistical analyses through experts prior to passing house Bill 1504 in order to justify the Challenged Subdistricts under the VRA. In other words, Plaintiffs essentially argue the Legislature is not allowed to use its own judgment based on the evidence it has received in seeking to make redistricting decisions, but rather that it must have relied on experts and expert analysis for such decisions.

Doc. 102 at 31. Defendants are correct on this point. The United States Supreme Court has found that, in order to have a strong basis in evidence to meet the Equal Protection Clause's strict scrutiny requirements, a thorough statistical analysis of the Gingles preconditions is required. Cooper, 518 U.S. at 304 (holding that unless each of the three Gingles prerequisites is established, there has neither been a wrong nor can there be a remedy.); see also Growe v. Emison, 507 U.S. 25, 41-42 (1993) (holding the Gingles preconditions had not been met because "**the record simply contains no statistical evidence of minority political cohesion or of majority bloc voting**.") (*emphasis added*); League of Latin Am. Citizens v. Perry, 548 U.S. 399, 427 (2006) (relying on statistical evidence to find the second and third Gingles preconditions were met). Importantly, in Gingles, the Court relied

on several statistical studies to conclude the preconditions were met. 478 U.S. at 52-53 (analyzing a "bivariate ecological regression analysis" to determine the existence of racial bloc voting and political cohesion).

Numerous lower courts, including the Eight Circuit, have concluded a statistical analysis is needed to meet the Gingles preconditions. See Buckanaga v. Sisseton Indep. Sch. Dist., No. 54-5, S. Dakota, 804 F.2d 469, 473 (8th Cir. 1986) (holding the surest indication of race conscious politics is a pattern of racially polarized voting extending over time); see also Shirt v. Hazeltine, 336 F. Supp. 2d. 976, 1010 (S.D. Dist. Ct. 2004) (finding that no mathematical formula or simple doctrinal test is available . . . the inquiry therefore focuses on statistical evidence to discern the way voters voted); Sanchez v. State of Colo., 97 F.3d 1303 (10th Cir. 1996) (stating the heart of each inquiry requires a searching look into the statistical evidence to discern the way voters voted); Missouri State Conference of the Nat'l Ass'n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist., 201 F. Supp. 3d 1006, 1041 (E.D. Mo. 2016) (holding a state must consider a statistical and non-statistical evaluation of the voting behavior and election results in the relevant elections).

Defendants erroneously assert "the United States Supreme Court in Wisconsin Legislature did not require expert analyses and complex statistical calculations prior to the adoption of a redistricting plan." This assertion is demonstrably false. In Wisconsin Legislature, 142 S. Ct. 1245, the Supreme Court cited the lack of expert analysis in finding the Governor had not met the Gingles preconditions. Id. at 1250. For example, regarding the second precondition, the Court found that "the discussion of the second precondition

consisted of nothing but the statement that 'experts from multiple parties analyzed voting trends and concluded political cohesion existed.'" Id. The Court found that by simply citing to an expert report without any actual analysis, the lower court "made virtually no effort to parse the data . . . or respond to criticisms of the expert's analysis." Moreover, regarding the third precondition, the Court found that "while the [lower] court did cite one specific expert report for the third precondition" the court failed to properly analyze the data from that expert report. Id. In striking down the Governor's map, the Supreme Court directly rejected the lower court's lackluster statistical analysis:

> No single statistic provides courts with a shortcut to determine whether a set of single-member districts unlawfully dilutes minority voting strength . . . When the Wisconsin Supreme Court endeavored to undertake a full strict-scrutiny analysis, it did not do so properly under our precedents, and its judgment cannot stand.

Id. (*emphasis added*) Defendants argument that the Court in Wisconsin Legislature "did not require expert analyses and complex statistical calculations" is incorrect. Even the most cursory reading of the Court's opinion demonstrates the same.

In their Memorandum, Defendants briskly walk through the Gingles preconditions in an effort show each was met by the Committee. See Doc. 102 at 36. But Defendants fail to cite a single statistical or expert analysis considered by the Committee. There is no evidence the Committee parsed through data or even identified the data that was allegedly analyzed. Instead, Defendants exclaim the Committee should be "allowed to use its own judgment" to meet the Gingles preconditions. Id. at 31. In their summation of evidence on this point, the Defendants state: **"[i]t is well known in North Dakota that Native American populations tend to vote for the Democratic candidate and White**

populations tend to vote for the Republican candidate." It is incomprehensible the Governor and Secretary of State would make such a brazen proclamation to support their argument the Gingles factors were met. This unsupported statement exemplifies exactly why the Legislature's "own judgment" cannot justify race-based districting.

The legislative record is void of any evidence the Committee satisfied the Gingles preconditions. In erroneously arguing the second Gingles precondition was met, Defendants cite to a quote from an unidentified Senator. Doc. 102 at 36. Specifically, Defendants exclaim "Senator ____ [sic] stated the obvious fact for District 4 that not one Republican had been elected out that District in decades, and he stated what all of the State Senators knew: that the precincts on the reservation voted for and then which candidates won, right, so you which was the candidate of their choice." Id. This quote is not only a misstatement, but it lacks proper context. The quote Defendants appear to be referencing is from Senator Jordan Kannianen of District 4 during the Senate floor debate on the Subdistricts. While Defendants assert this quote supports their position, proper context shows it does not. Senator Kannianen was speaking about District 9 (not District 4, as Defendants allege), and he was arguing the Gingles preconditions were clearly not met:

> SENATOR KANNIANEN: Well, Mr. President, the redistricting committee heard about the Thornburg v. Gingles Supreme Court case from 1986 when it comes to determining what preconditions need to be met, what factors needs to be considered in establishing these types of subdistricts.
>
> Now the preconditions -- first, there are three preconditions. And, if all three of those are met, then there are other factors to also consider.
>
> . . .
>
> And the third [precondition] is that the majority group votes sufficient as a bloc. So, in other words, the non-Natives in the district vote sufficient as a bloc themselves to still -- as it says, "usually" defeat the minority's preferred

> candidate despite their bloc voting.
>
> Now, this third precondition, the big concern I have is that the Committee -- I didn't see, as the senator from District 3 mentioned, the polarization studies. This third precondition is not met.
> . . .
> And so then you look at what candidates – the precincts on the reservation voted for and the which candidates won, right, so you know which was the candidate of their choice.
> . . .
> And my contention simply is that all three preconditions in the Gingles case have not been met for either District 4 nor District 9. And it seems pretty clear that applying subdistricts to District 9 will have actually an adverse effect to the Native majority to the benefit of the non-Native majority. I don't think that's what we really want or the route we should be going either.

Doc. 100, #9 at 27:3 - 31:25. It is unclear why Defendants believe Senator Kannianen's statement supports their argument that the second Gingles factor was met. Simply reviewing the rest of Senator Kannianen's statement shows he was claiming the Committee did not satisfy the Gingles preconditions. In their Memorandum, Defendants identify no other evidence to support their contention the Committee satisfied the second Gingles precondition.

Similarly, Defendants cite no statistical or expert evidence to show the Committee satisfied the third Gingles precondition. As the Court is aware, to satisfy the third precondition a state must present evidence that a district's majority population votes sufficiently as a "bloc" to usually defeat the minority's preferred candidate. Cooper, 137 S. Ct. at 1470. A cursory reading of Defendants' Memorandum on this point shows no evidence supports such an argument. Defendants cite a quote from Chairman Devlin, in which he states:

> The Federal Voting Rights Act prohibits redistricting from diluting the vote of a racial minority by giving the racial minority less opportunity that other groups to elect a minority group's candidate of choice. The candidate of choice, as you well know, doesn't have to be a minority or tribal member. It can be anyone. But it is their choice.

Doc. 100, #8 at 20:8 – 16. It is unclear how this statement proves the Committee satisfied the third Gingles precondition, but it does show the Committee invoked the VRA in its creation of the Subdistricts in Districts 4 and 9. Other than this statement from the Chairman, Defendants have not directed the Court to any evidence in the record of majority bloc voting in either District. This is because none exists. Defendants lack of evidence for the Gingles preconditions is an admission such preconditions were not met.

In short, the legislative record proves the Committee did not conduct a proper Gingles analysis. The Defendants have failed to bring forth any evidence to show the Committee satisfied the Gingles preconditions. As a result, the Court should deny Defendants' Motion for Summary Judgment. Instead, summary judgment for Plaintiffs is appropriate.

III. The Equal Protection Clause requires permanent enjoinment of the Subdistricts.

Defendants argue "removal of the entirely lawful Subdistricts is not redressable in this action" because such removal "would violate the VRA". Doc. 102 at 38. Contrary to Defendants' argument, North Dakota's Constitution does not, and legally cannot, allow the for implementation of racially gerrymandered subdistricts in violation of the Equal Protection Clause. Any argument that North Dakota's Constitution permits the Assembly to racially gerrymander Districts 4 and 9 is erroneous.

To support their claims, Defendants point out that "North Dakota law expressly provides for subdistricting." Id. Defendants are correct that Article IV § 2 of North Dakota's Constitution allows for both at-large and single members representation in the House of Representatives. But, simply because the Committee can create subdistricts it does not empower the Committee to implement racially gerrymandered subdistricts in violation of the Equal Protection Clause. As this Court knows, the Equal Protection Clause's prohibition of racial gerrymandering applies on a state level and overrules any conflicting state law provisions. Cooper v. Aaron, 358 U.S. 1 (1958) (holding that the Fourteenth Amendment is the "supreme law of the land" and preempts any conflicting state laws). For this reason, Defendants' argument fails.

Moreover, Defendants' argument that enjoinment of the Subdistricts would violate the VRA is a legal fallacy. The Plaintiffs brought this lawsuit under the Equal Protection Clause. See Doc. 1. This lawsuit is not governed by the VRA, nor should it be. A VRA analysis should have occurred when the Committee enacted the Subdistricts. It is undisputed it did not. Defendants argue this Court cannot correct a blatant constitutional violation because it would allegedly violate a federal statute, the VRA. This argument is nonsensical. In essence, Defendants ask this Court to prioritize a federal statute over the Constitutional rights of over 30,000 voters in Districts 4 and 9.

Further, acceptance of Defendants' argument would require the Court to issue an order based on future speculation. That is, Defendants argue that if the Court enjoins the Subdistricts, another Court in the future **might** find that Districts 4 and 9 dilute the strength of Native American voters. This is not the standard. The Supreme Court routinely strikes

down racially drawn districts where a legislature fails to conduct a proper Gingles analysis. Under Defendants' theory, a court could not find a racially drawn district to be unconstitutional because a court in the future **might** find the districts pre-redistricting configuration results in vote dilution. The Court should reject this argument.

Finally, Defendants argue that "Dr. Hood indicates in his report that removal of the Subdivision in District 9 would result in Native American populations that would usually not be able to elect their candidate of choice, which would be a violation of Section 2 of the VRA." Doc. 102 at 39. Defendant's argument is disingenuous. As this Court is aware, there is currently a separate lawsuit ongoing regarding the drawing of District 9. See Turtle Mountain Band of Chippewa Indians, et al. v. Jaeger, No. 3:22-cv-00022-PDW-ARS (D.N.D. Feb. 7, 2022). In that case, Plaintiffs are alleging that District 9, as drawn, violates the VRA. Id. Defendants have retained Dr. Hood as their statistical expert in that case as well. In his expert report in the Turtle Mountain case, Dr. Hood opined the Gingles preconditions **cannot** be met in District 9. See Ex. A (State's Expert Report of Dr. Hood in the Turtle Mountain lawsuit.) Specifically, Dr. Hood states "the Native American candidate of choice is not typically defeated by the white voting bloc in [District 9]." Id. at 2. Dr. Hood concludes "There appears to be a decided lack of evidence by which prong 3 [of Gingles] might be substantiated in LD9." Dr. Hood's opinion is supported by the Intervenors' expert, Dr. Collingwood, who has concluded that from 1990 to 2022, District 9 elected a Native American candidate to the state senate, as well as two state representatives who were the candidates of choice of Native American voters. See Exhibit B (Dr. Collingwood rebuttal report). Despite their own expert's contradictory opinions,

Defendants represent to the Court it is "undisputed" the Committee satisfied the Gingles preconditions for Subdistricts 9A and 9B. Doc. 102 at 39. Defendants' argument is intellectually dishonest and should be rejected.

IV. Plaintiffs have standing to challenge the Legislative Assembly's violation of the Equal Protection Clause in District 9.

Defendants allege that Plaintiffs lack standing under Article III of the Constitution to challenge the creation of Subdistricts in District 9 as racial gerrymanders in violation of the Equal Protection Clause. Defendants' standing argument lacks merit. Plaintiff Paul Henderson is a resident of District 9, and therefore has the constitutional standing necessary to bring this claim. Accordingly, the Court should reject Defendants' standing argument.

The United States Supreme Court found that, in order to have constitutional standing under Article III, a Plaintiff must meet three requirements: 1) a plaintiff must have suffered an injury in fact; 2) a plaintiff must show there is some causal connection between the injury complained of and the conduct of the defendants; and 3) the alleged injury suffered by the plaintiff must be redressable by a favorable decision of the court. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992). The invasion of a legal protected interest must be "concrete and particularized" and cannot be "conjectural or hypothetical." Id. To be concrete or particularized, the injury in fact "must affect the plaintiff in a personal and individual way." Id.

In racial gerrymandering cases, the U.S. Supreme Court has found the "central purpose" of the Equal Protection Clause "is to prevent the States from purposefully discriminating between individuals on the basis of race." Shaw v. Reno, 509 U.S. 630,

643 (1993). The individual and personalized injuries that arise from a state's racial gerrymandering "include being personally subjected to a racial classification" and potentially "being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group." Bethune-Hill v. Virginia State Bd. of Elections, 580 U.S. 178 (2017) (citing Alabama Legislative Black Caucus v. Alabama, 575 U.S. 254, 263 (2015)). In a racial gerrymandering claim, the particular race of a plaintiff is not determinative of whether an injury has occurred. Abbott, 138 S.Ct. at 2314. Rather, the injury arises from the intentional assignment of the plaintiff to a voting district based on a racial classification. Id. For this reason, the Supreme Court has found that racial classifications of any kind "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Shaw, 509 U.S. at 643.

In order to have suffered a particularized injury in fact, a plaintiff must reside in the voting district that has allegedly been racially gerrymandered. United States v. Hays, 515 U.S. 737, 745 (1995). That is, a plaintiff must show he has "been subjected to a racial classification" based on his placement in a particular voting district. Id. When a plaintiff resides in voting district that has been drawn or split on the basis of race, he "has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action." Id.

a. Plaintiffs have suffered a constitutional injury in District 9.

In this case there is no question Plaintiffs meet the injury in fact requirements to establish constitutional standing in District 9. Plaintiffs' Complaint clearly establishes this cause of action challenges the subdivision of both Districts 4 and 9:

> [40] However, under the redistricting plan enacted by the Legislative Assembly, Districts 4 and 9 are now subdivided into Districts 4A and 4B, and 9A and 9B respectively. Under this place, Representatives from Districts 4 and 9 are no longer elected at-large, but are instead elected only by citizens in their respective Subdistrict.
> . . .
> [42] The creation of Subdistricts in Districts 4 and 9 is a racial gerrymander for which race was the predominant factor, and for which the Legislative Assembly had no compelling state interest.
> [43] As a result of the Legislative Assembly's racial gerrymander, citizens of Districts 4 and 9 will be denied equal representation under the law.

Doc. 1 (Complaint). Defendants' argument that this cause of action only challenges Subdistricts 4A and 9A is unsupported by the pleadings. When the Legislative Assembly subdivided each District on the basis of race, it subjected every citizen in those Districts to a racial classification. Citizens living in Subdistrict 9B suffered the same constitutional injury as citizens living in 9A.

Moreover, the Governor and Secretary of State's contention that only Subdistricts 4A and 9A can be challenged because they were drawn to encompass Native American Reservations is nonsensical. Defendants' argument continues to demonstrate their fixation with race. Defendants' argument fails to acknowledge that by subdividing District 9 on the basis of race, the State violated the Equal Protection Rights of every voting age citizen in the district; not just the citizens living on the Reservation in Subdistrict 9A.

In this case, it is undisputed that Plaintiff Paul Henderson is a resident of Subdistrict 9B. Doc. 105, #4 at 12:12 - 16. The Supreme Court has found that any citizen living in a gerrymandered district has standing to bring a claim for relief. Hays, 515 U.S. at 744-745 (holding where a plaintiff resides in a racially gerrymandered district, the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria, and therefore has standing to challenge the legislature's action); see also Rice v. Cayetano, 528 U.S. 495 (2000) (allowing voters of any race in Hawaii to challenge a state law allowing only citizens of traditional Hawaiian heritage to vote for certain elected positions). The Defendants' argument that Paul Henderson is excluded from challenging the Subdistricts in District 9 because he does not live on the Turtle Mountain Reservation defies logic. By being placed in District 9B, Henderson faced the same erroneous racial classification as citizens in 9A. As such, Henderson has suffered a concrete and personalized injury in fact under the Equal Protection Clause of the Fourteenth Amendment, and has standing to bring this action. See Shaw v. Hunt, 517 U.S. 899, 903 (1996).

b. Plaintiffs have shown a causal connection between the constitutional injury and the conduct of Defendants.

Along with showing a plaintiff has suffered an injury in fact, a plaintiff must demonstrate there is a causal connection between the injury and the conduct of the defendants. Lujan, 504 U.S. at 560. In order to show a causal connection, plaintiff must prove the alleged injury "is fairly traceable to the challenged action of the defendant[s], and not the result of the independent action of some third party not before the court." Id.

In this case, Defendants do not dispute Plaintiffs' constitutional injury is fairly traceable to the conduct of Defendants. The Defendants are the Governor and Secretary of State of the state of North Dakota. The entire redistricting process which resulted in the State's racial gerrymandering was set in motion by Governor Burgum when he signed House Bill 1397 into law during the regular session of the 67th Legislative Assembly. Doc. 37 at 2 (Order Denying Motion for Preliminary Injunction). House Bill 1397 established the interim Redistricting Committee and tasked the Committee with creating "a legislative redistricting plan to be implemented in time for use in the 2022 primary election." Id. Moreover, on October 29, 2021, Governor Burgum issued Executive Order 2021-17, which convened a special session of the Legislative Assembly for the purposes of redistricting government." Doc. 12 at (Memorandum in support of Motion for Preliminary Injunction). It was during this special session that the Legislative Assembly approved the final redistricting plan created by the Governor's Redistricting Committee. The final redistricting plan approved by the Assembly included the challenged Subdistricts, 4A, 4B, 9A, and 9B. Governor Burgum ultimately signed the final redistricting plan into law on November 11, 2021, which included the racially gerrymandered Subdistricts. Id. at 4. Plaintiffs have established a clear causal connection between Defendant Burgum's conduct and the constitutional injuries alleged.

There is also a clear causal connection to the conduct of the Secretary of State. The North Dakota Secretary of State is the official supervisor of all elections in North Dakota. N.D.C.C. § 16.1-01-01. The enactment of the challenged redistricting plan, including the Subdistricts, is enforced and overseen by the Secretary of State's office. Id. N.D.C.C. §

16.1-01-01 provides "the Secretary of State shall . . . publish and distribute . . . a map of all legislative districts." Thus, in this matter, Secretary of State Howe's office is solely responsible for publishing a map of the challenged Subdistricts and overseeing the administration of elections in those Subdistricts. Id. Thus, the conduct of Secretary of State Howe has a direct causal connection to Plaintiffs' constitutional injury.

The evidence establishes a clear causal connection between Plaintiffs' injury in fact and conduct of both Defendants Burgum and Howe. As such, Plaintiffs' have shown the second requirement needed for Article III standing. See Lujan, 504 U.S. at 560.

c. Plaintiffs' constitutional injury in fact is redressable by the Court.

The third and final requirement for a plaintiff to establish Article III standing is a showing that the alleged injury is redressable by a favorable decision in the case. Id. at 561. There is no question Plaintiffs' injury is redressable by a favorable decision from the Court.

Plaintiffs challenge the enactment of Subdistricts 4A, 4B, 9A, and 9B. Plaintiffs allege the Subdistricts are racial gerrymanders which are not narrowly tailored to achieve a compelling government interest. Plaintiffs request this Court to permanently enjoin the challenged Subdistricts, by removing the subdivision boundary that separates each neighboring Subdistrict. That is, Plaintiffs are requesting that the Court return Districts 4 and 9 to at-large contiguous districts. As previously established, the Court has the authority to redraw a legislative district to redress an Equal Protection Violation. See North Carolina v. Covington, 138 S.Ct. 2548, 2554 (2018); see also Upham v. Seamon, 456 U.S. 37, 39 (1982) (explaining that although a court must defer to legislative judgments on reapportionment as much as possible, it is forbidden to do so when the legislative plan

would not meet the special standards of population equality and racial fairness that are applicable to court-ordered plans). If the Court were to conclude the Challenged Subdistricts violate the Equal Protection Clause of the Fourteenth Amendment, the Court has the authority to directly redress Plaintiffs' constitutional injury.

Plaintiffs have shown they meet all three requirements necessary to establish Article III standing in Districts 4 and 9. As a result, the Court should reject Defendants' argument about the same, and deny Defendants' Motion for Summary Judgment.

CONCLUSION

There is no question of fact that the Committee invoked the VRA, focused entirely on race, and failed to narrowly tailor Districts 4 and 9. Despite having transcripts of the entire legislative record, Defendants have failed to bring forth any competent evidence to support their arguments. The Committee did not consider traditional redistricting principles in drawing the challenged Subdistricts. The Committee did not undertake any statistical or expert analyses to meet the Gingles preconditions—the existence of white bloc voting and political cohesion in Districts 4 and 9. As such, Defendants' Motion for Summary Judgment must be denied. Instead, Plaintiffs respectfully request an Order from the granting their Motion for Summary Judgment.

Respectfully submitted this 21st day of March, 2023.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, *et al.* *Plaintiffs,* v. ALVIN JAEGER, in his official capacity as Secretary of State for North Dakota, *Defendant.*	Civil Action No. 3:22-cv-00022-PDW-ARS

EXPERT REPORT OF M.V. HOOD III

I, M.V. Hood III, affirm the conclusions I express in this report are provided to a reasonable degree of professional certainty. In addition, I do hereby declare the following:

Exhibit A

I. INTRODUCTION AND BACKGROUND

My name is M.V. (Trey) Hood III, and I am a tenured professor at the University of Georgia with an appointment in the Department of Political Science. I have been a faculty member at the University of Georgia since 1999. I also serve as the Director of the School of Public and International Affairs Survey Research Center. I am an expert in American politics, specifically in the areas of electoral politics, racial politics, election administration, and Southern politics. I teach courses on American politics, Southern politics, and research methods and have taught graduate seminars on the topics of election administration and Southern politics.

I have received research grants to study election administration issues from the National Science Foundation, the Pew Charitable Trust, the Center for Election Innovation and Research, and the MIT Election Data and Science Lab. I have also published peer-reviewed journal articles specifically in the area of election administration, including redistricting. My academic publications are detailed in a copy of my vita that is attached to the end of this report. Currently, I serve on the editorial boards for *Social Science Quarterly* and *Election Law Journal*. The latter is a peer-reviewed academic journal focused on the area of election administration.

During the preceding five years, I have offered expert testimony (through deposition or at trial) in ten cases around the United States: *Ohio A. Philip Randolph Institute v. Ryan Smith*, 1:18-cv-357 (S.D. Ohio), *Libertarian Party of Arkansas v. Thurston*, 4:19-cv-00214 (E.D. Ark.); *Chestnut v. Merrill*, 2:18-cv-907 (N.D. Ala.), *Common Cause v. Lewis*, 18-CVS-014001 (Wake County Superior Court); *Nielsen v. DeSantis*, 4:20-cv-236 (N.D. Fla.); *Western Native Voice v. Stapleton*, DV-56-2020-377 (Montana Thirteenth Judicial District Court); *Driscoll v. Stapleton*, DV-20-0408 (Montana Thirteenth Judicial District Court); *North Carolina v. Holmes*, 18-CVS-15292 (Wake County Superior Court); *Caster v. Merrill*, 2:21-cv-1536 (S.D. Ala); and *Robinson v. Ardoin*, 3:22-cv-00211 (M.D. La.).

I am receiving $400 an hour for my work on this case and $400 an hour for any testimony associated with this work. In reaching my conclusions, I have drawn on my training, experience, and knowledge as a social scientist who has specifically conducted research in the area of redistricting. My compensation in this case is not dependent upon the outcome of the litigation or the substance of my opinions.

II. SCOPE AND OVERVIEW

Plaintiffs in this matter are alleging North Dakota's current legislative districting plan violates Section 2 of the Voting Rights Act by diluting the voting strength of Native Americans in LD 9 and LD 15. The relief sought involves the creation of a new LD 9 which incorporates both the Spirit Lake Reservation and the Turtle Mountain Reservation into a single district.[1] In this report, I am responding to Professor Collingwood's Expert Report of November 30, 2022 and also providing my expert opinion relating to other matters present in this case.

[1]Complaint in *Turtle Mountain Band of Chippewa Indians, et. al. v. Alvin Jaeger* [3:22-cv-00022]. February 7, 2022.

III. THE GINGLES TEST

In order to substantiate a claim of racial vote dilution, plaintiffs must rely on the now long-established *Gingles* test, which contains three prongs.[2] The three prongs are as follows:

1. The minority group must be of sufficient size and geographically compact enough to allow for the creation of a single-member district for the group in question.

2. It must be demonstrated that the minority group is politically cohesive.

3. It must further be demonstrated that the candidate of choice for the minority group is typically defeated by the majority voting bloc.

To prevail on a vote dilution claim, evidence must be provided that all three *Gingles* preconditions have been met. In addition to the *Gingles* preconditions, evidence of the lingering effects of discrimination, known as the *totality-of-the-circumstances test*, can also be used by the Court in making a determination of whether vote dilution in present.

IV. ANALYSIS OF LD 9

LD 9 in the enacted legislative plan[3] is comprised of 51.7% Native American voting age population.[4] As such, under Section 2 of the Voting Rights Act it would be described as a minority, opportunity-to-elect district.[5] LD is also subdivided into LD 9A and LD 9B` where each subdistrict serves as a single-member district for the purpose of electing members to the North Dakota House. Subdistrict 9A is 77.0% Native American VAP and LD 9B is 29.4% Native American VAP. Given LD 9 is majority Native American in terms of voting age, per prong 1 it is certainly possible to create a district where the minority group in question to comprises a majority of the district's population.

As related to Prong 2 of the *Gingles* analysis Professor Collingwood analyzes a total of 38 elections configured to the present boundaries of LD 9. Of these, he reports the presence of racially polarized voting in 36 of 38 races analyzed. Stated differently, a clear candidate of choice for Native Americans can be identified in almost all the elections he analyzes. Conversely, this also means that the white community has a different preferred candidate of choice.

Professor Collingwood then conducts what he terms a performance analysis in order to determine if the Native American candidate of choice is typically defeated for those races where racially polarized voting is present. From Professor Collingwood's report I have compiled the results of his analyses in Table 1 below. The results presented include all of the races he

[2]Established in *Thornburg v. Gingles*, 478 U.S. 30 (1986).
[3]Throughout this report the enacted plan refers to the legislative districting plan passed by the North Dakota Legislature following the 2020 Census that was in place for the 2022 election-cycle.
[4]Measured as single-race Native Americans of voting age population from the 2020 decennial Census. North Dakota 2022 Legislative Plan Statistics (https://www.ndlegis.gov/assembly/67-2021/session-interim/2021-legislative-redistricting-maps).
[5]See *Bartlett v. Strickland*, 556 U.S. 1 (2009).

analyzed across LD 9, LD 9A, and LD 9B. The key takeaway from the table is that although almost all the races analyzed by Professor Collingwood contain a clear candidate of choice for the Native American community in LD 9, the Native American candidate of choice is not typically defeated by the white voting bloc in the district. As summarized in Table 1, of the races analyzed by Professor Collingwood, the preferred Native American candidate loses less than a majority (38%) of the time. Thus, prong 3 of the *Gingles* test is not met. Perhaps this is not a surprise given the fact that LD 9 is already a Native American opportunity-to-elect district as defined by *Bartlett v. Strickland*. As such, it appears that Professor Collingwood's own analysis confirms that LD 9 is functioning as a district where the Native American community can typically elect its candidates of choice.

Table 1. Summary of Races Analyzed by Professor Collingwood (LD 9, LD 9A, LD 9B)

Contests	**Number**	**Percent**
Number of races analyzed	110	----
No clear Native American candidate of choice	2[6]	1.8%
Clear Native American candidate of choice	108	98.2%
Native American candidate wins	66	60.0%
Native American candidate defeated	42	**38.2%**

I have also compiled Professor Collingwood's results based solely on his analysis of LD 9, sans the LD 9A and LD 9B subdistricts (see Table 2 below). Looking at Table 2, the same pattern is revealed. Although almost all (95%) of races Professor Collingwood analyzes contain a clear Native American candidate of choice, more often than not these candidates are not defeated by the white voting bloc. Of the 38 races Professor Collingwood analyzes, the Native American preferred candidate is defeated only about a third of the time (34%). For the other cases, there was either no clearly defined Native American preferred candidate of choice (5%) or the Native American preferred candidate of choice prevailed (61%).

Table 2. Summary of Races Analyzed by Professor Collingwood (LD 9)

Contests	**Number**	**Percent**
Number of races analyzed	38	----
No clear Native American candidate of choice	2	5.3%
Clear Native American candidate of choice	36	94.7%
Native American candidate wins	23	60.5%
Native American candidate defeated	13	**34.2%**

Having examined the evidence proffered by Professor Collingwood on prongs 2 and 3 of the *Gingles* test, what conclusions can one draw? Hood, Morrison, and Bryan (2017) provide guidance on the manner in which one may determine if the second and third prongs have been substantiated in a particular matter.

> The *Gingles* test established by the Court makes clear that plaintiffs must show a *pattern* of vote dilution. What constitutes a pattern? The language used by the Court adds the qualifier *typically*—meaning the minority candidate of choice is *typically*

[6]Professor Collingwood reports that two of the races he analyzed did not exhibit racially polarized voting.

> defeated by the majority voting bloc. Operationally, one can define typically as meaning "more often than not." Accordingly, a plaintiff's expert must demonstrate that both prongs two and three are sustained in a numerical majority of cases considered for a vote dilution claim to have any merit.[7]

With these conditions in mind, it is clear that Professor Collingwood's analysis of LD 9 as currently configured does not meet the requirement for prong 3. While evidence of racially polarized voting is present in a majority of cases he analyzes, it is not the case that a majority of Native American candidates of choice are defeated by the white voting bloc in the district. Thus, there appears to be a decided lack of evidence by which prong 3 might be substantiated in LD 9.

V. ANALYSIS OF LD 15

Professor Collingwood also analyzes voting patterns in LD 15 in the enacted plan. The first prong of the *Gingles* inquiry, however, asks if the minority group is of sufficient size and geographically compact enough to allow for the creation of a majority-minority district for the racial group in question. In the case of LD 15, there is a geographic concentration of Native Americans located in and around the Spirit Lake Reservation. Outside of this concentration, there is little Native American population found within LD 15 (see Figure 1). From the 2020 Census, Native Americans of voting age make up 20.4% of the total VAP for enacted LD 15.[8] As related to *Gingles* prong 1, Native Americans within LD 15 then do not comprise a majority of the voting age population.

In his report Professor Collingwood concludes that racially polarized voting exists in 30 of 32 races analyzed for this district. He further concludes that the Native American candidate of choice would win only one of the thirty election contests analyzed where racially polarized voting is present in the current LD 15. Based on this analysis, prongs 2 and 3 of the *Gingles* test would appear to be met. However, in order for a vote dilution claim to be substantiated in part, there must be evidence to substantiate all three prongs, not one or two.

While racially polarized voting may, in fact, exist in LD 15; it is not possible for the State of North Dakota to create a minority opportunity-to-elect district in the vicinity of the Spirit Lake Reservation. Therefore, prong 1 of the *Gingles* test is not substantiated in the case of LD 15. With all three preconditions being requisite to proving a vote dilution claim, analysis need not proceed to the second and third *Gingles* prongs.

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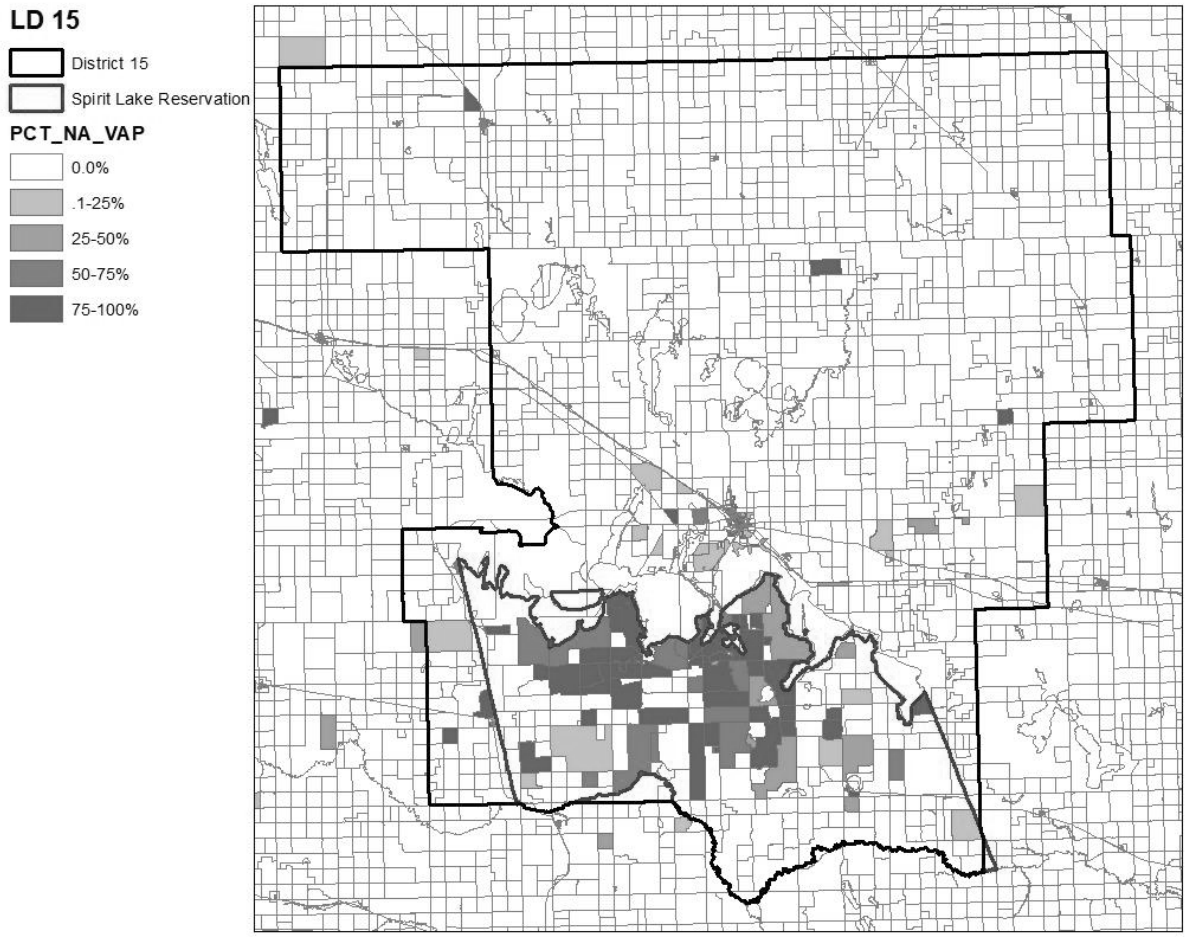
[7]Quoted material from page 545. M.V. Hood III, Peter A. Morrison, and Thomas M. Bryan. 2017. "From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses." *Social Science Quarterly* 99(2): 536-552.

[8]Even if LD 15 was partitioned, the Native American voting age population would not constitute a majority in either subdistrict.

Figure 1. Legislative District 15—Block-Level Native American Voting Age Population



VI. ILLUSTRATIVE DISTRICTS

Professor Collingwood examines two demonstrative districts created by the plaintiffs. Both these demonstrative districts represent newly created incarnations of LD 9. Below, I will discuss both of these illustrative districts in the context of a number of traditional redistricting criteria. It has long been recognized that when considering prong one of the *Gingles* test that traditional redistricting criteria cannot be ignored when creating a minority-majority district. For example, irregularly shaped and/or non-compact districts may raise questions concerning whether race was the predominant factor in the drawing of district lines.

In a report issued by the North Dakota Redistricting Committee, the committee was charged by the Legislative Assembly to develop a legislative districting plan and, in doing so, to ensure

traditional redistricting criteria were followed. For example, the committee's plan should include districts which are compact, contiguous, and meet the legal requirement for population equality. Further, in developing the legislative districting plan the committee also considered other factors such as not splitting political subdivisions (e.g. counties and reservations) across legislative districts; preserving district cores; protecting incumbents; and respecting other communities of interest.[9]

A. Demonstrative District 1

Plaintiff's demonstrative District 1 (abbreviated D-D1) uses a land bridge to link Native American population clusters centered around the Turtle Mountain Reservation (currently in LD 9) and the Spirit Lake Reservation (currently in LD15). In fact, part of the boundary for the Spirit Lake Reservation is contiguous with a portion of the D-D1 boundary.

i. Population Deviation

The ideal district size of North Dakota legislative districts from the 2020 Census is 16,576 persons.[10] LD 9 under the enacted plan contains 16,158 people, producing a deviation of -2.52%. LD 9 under D-D1 would contain a population of 17,096, 3.14% over the ideal district size.

ii. Compactness

There are myriad measures of compactness to analyze legislative districts. For this report, I make use of three of the most commonly employed compactness scores: Reock, Polsby-Popper, and Schwartzberg. The Reock measure is also denoted as the smallest circle score in that it compares the area of the district to the area of a circle. More formally the Reock measure is the *ratio of the district area to the area of the minimum circumscribing circle*.[11] The Polsby-Popper measure, a perimeter-to-area comparison, calculates the *ratio of the district area to the area of a circle with the same perimeter*.[12] The Schwartzberg measure is a ratio that compares the perimeter of a district to the *perimeter of a circle of equal area*.[13]

The Reock and Polsby-Popper measures range between 0 and 1, with one an indication of perfect compactness. For both measures a district analogous to a circle would score a value of 1. A circle would also score a value of one on the Schwartzberg index and less compact shapes would be represented by values greater than one. I modified the standard Schwartzberg measure in order that it would range from 0 to 1, with higher scores an indication of greater compactness.[14] The

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[9]Interim Redistricting Committee Report, pp. 19-30. Found at: https://ndlegis.gov/files/resource/67-2021/legislative-management-final-reports/2021ssfinalreport.pdf.

[10]Based on total population.

[11]Quoted material from page 1160. Richard G. Niemi, Bernard Grofman, Carl Calucci, and Thomas Hofeller. 1990. "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering." *Journal of Politics* 52: 1155-1181.

[12]Quoted material from page 1160. Richard G. Niemi, Bernard Grofman, Carl Calucci, and Thomas Hofeller. 1990. "Measuring Compactness and the Role of a Compactness Standard in a Test for Partisan and Racial Gerrymandering." *Journal of Politics* 52: 1155-1181.

[13]Quoted material from page 44. Joseph E. Schwartzberg. "Reapportionment, Gerrymanders, and the Notion of 'Compactness.'" *Minnesota Law Review* 50:443-452.

[14]Adjusted Score = (1/Schwartzberg Score)^2. This adjustment has been previously suggested in the academic literature. For example, see Daniel D. Polsby and Robert D. Popper. 1991. "The Third Criterion: Compactness as a Procedural Safeguard against Partisan Gerrymandering." *Yale Law and Policy Review* 9: 301-335 and Christopher P.

adjusted Schwartzberg scores presented below are now scaled in the same manner as the Reock and Polsby-Popper measures.

Table 3 compares Reock, Polsby-Popper, and Schwartzberg (adjusted) measures for LD 9 in the plaintiff Demonstrative Plan-1 and under the enacted plan. Using the Reock, Polsby-Popper, or adjusted Schwartzberg compactness measures, LD 9 in Demonstrative Plan-1 is less compact as compared to LD 9 in the enacted plan. The Reock score difference is .14, for the Polsby-Popper score it is .37, and the Schwartzberg score it is .31. For the Reock metric there is a 36% decrease in compactness between the two districts; for the Polsby-Popper measure there is a 63% decrease; and for the Schwartzberg measure the decrease is over half (53%).

Within Demonstrative Plan-1 as a whole, LD 9 ranks 45th out of forty-seven districts using the Reock measure.[15] Using the Polsby-Popper measure, LD 9 ranks 44th in terms of compactness and for the Schwartzberg measure it ranks 45th in terms of compactness. For the enacted plan, LD 9 ranks 33rd in terms of compactness using the Reock measure; 5th using the Polsby-Popper measure; and 6th using the Schwartzberg measure. To summarize, using any of the three compactness measures deployed, LD 9 under plaintiff Demonstrative Plan-1 is less compact as compared to LD 9 under the enacted plan.

Table 3. Compactness Score Comparisons

Plan/District	Reock	Polsby-Popper	Schwartzberg-Adjusted
Demonstrative-1			
LD 9	.25	.22	.28
Rank	(45th)	(44th)	(45th)
Enacted			
LD 9	.39	.59	.59
Rank	(33rd)	(5th)	(6th)
Difference	.14	.37	.31

Note: A higher ranking indicates a less compact district. A ranking of one would be indicative of the most compact district and a ranking of 47th the least compact district.

iii. Communities of Interest

As a recognized traditional redistricting criteria, counties are important political subdivisions and, to the extent possible, should not be split across districts. On this metric the enacted plan splits 20 counties (38%), while Plan D-D1 splits 21 (40%). In the enacted plan, LD 9 splits only Towner County, while in plaintiff's D-D1 LD 9 splits three counties: Eddy, Pierce, and Rolette.

Chambers and Alan D. Miller. 2010. "A Measure of Bizarreness." *Quarterly Journal of Political Science* 5(1): 27-44.

[15]For these comparisons lower rankings are indicative of higher compactness. For example, a district ranking first would be the most compact district and a ranking of 47th would mean the district was the least compact.

iv. Core Retention

District core retention is another factor that can be considered under traditional redistricting criteria.[16] Core retention for the various plans is measured as the percentage of the population in a new district carried over from the corresponding 2011 (benchmark) district. As such, district core retention is a measure that ranges from 0% to 100%.[17] The higher the percentage, the more a district is representative of its former self. Under the enacted plan, district core retention for LD-9 was 75% using total population and 72% using voting age population. Under plaintiff's Plan D-D1, the core retention for LD 9 is 63% using total population and 63% using voting age population. In summary, core retention for LD 9 under D-D1 is lower than core retention for LD 9 under the enacted plan.

B. Demonstrative District 2

Plaintiff's demonstrative District 2 (abbreviated D-D2) is geographically similar to D-D1 in that it also links Native American population clusters centered around the Turtle Mountain Reservation (currently in LD 9) and the Spirit Lake Reservation (currently in LD15).

i. Population Deviation

Under the enacted plan LD 9 contains 16,158 people, producing a deviation of -2.52% from the ideal district size. D-D2 under plaintiff's illustrative plan would contain a population of 17,327, making it 4.53% over the ideal district size.

ii. Compactness

In this section I analyze compactness for D-D2 using the Reock, Polsby-Popper, and Schwartzberg measures (see Table 4). D-D2 has a Reock score of .20 compared to enacted LD 9 with a score of .39, producing a difference of .19. This equates to a drop of 49% in compactness. For the enacted plan, LD 9 ranks 33rd on compactness using the Reock score, while D-D2 ranks 45th on compactness using this measure (Again, a higher ranking equates with lower compactness). Looking at the Polsby-Popper measure LD 9 under D-D2 scores a .19, compared to enacted LD 9 at .59, for a difference of .40 (a 68% drop in compactness). LD 9 in the plaintiff illustrative plan ranks 46 out of 47 districts in terms of compactness (For reference, LD 9 in the enacted plan is the 5th most compact district on this measure). Finally, on the Schwartzberg measure, LD 9 under D-D2 has a value of .24, compared with .59 for LD-9 under the enacted plan, for a difference of .35. This equates to a decline of 59% in compactness. In comparison to the rest of plaintiff Illustrative Plan 2, D-D2 ranks 46th on the basis of the Schwartzberg measure, while LD 9 under the enacted plan ranks 6th.

[16]The presence of a district core is closely linked to incumbent electoral success and, as such, is an important element related to protecting incumbents across a redistricting cycle.

[17]District core retention is calculated using both total population and voting age population.

Table 4. Compactness Score Comparisons

Plan/District	Reock	Polsby-Popper	Schwartzberg-Adjusted
Demonstrative-2			
LD 9	.20	.19	.24
Rank	(45th)	(46th)	(46th)
Enacted			
LD 9	.39	.59	.59
Rank	(33rd)	(5th)	(6th)
Difference	.19	.40	.35

Note: A higher ranking indicates a less compact district. A ranking of one would be indicative of the most compact district and a ranking of 47th the least compact district.

iii. Communities of Interest

Under D-D2, a total of 20 counties are split across legislative districts, which is the same number of counties split under the state's enacted plan. However, where only Towner County is split under LD 9 in the enacted plan, LD 9 under D-D2 splits a total of three counties: Benson, Eddy, and Pierce.

iv. Core Retention

Under plaintiff's Demonstrative Plan D-D2, core retention for LD-9 is 70% using total population or 71% using voting age population. This represents some decline from that of enacted LD-9 which had core retention scores of 75% (Total Population) and 72% (Voting Age Population).

VII. SUMMARY AND CONCLUSIONS

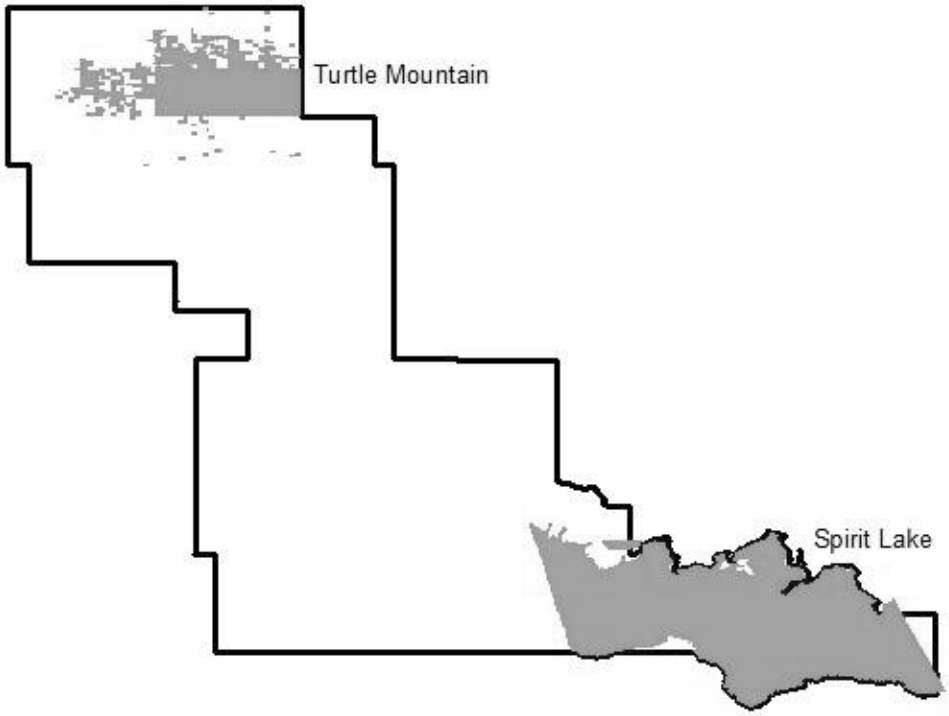
In his expert report Professor Loren Collingwood has performed an analysis of *Gingles* prongs 2 and 3 for LD 9 and LD 15 under the state's enacted legislative districting plan. In the case of LD 9, it appears that Professor Collingwood's own analysis demonstrates that Native American-preferred candidates are not typically defeated by a white voting bloc. Thus, prong three of the *Gingles* test is not substantiated. Turning to LD 15, *Native* Americans comprise a substantial minority of the district's population. As such, the *Gingles* analysis fails on prong one in the case of LD 15. A successful vote dilution claim requires one to verify all three *Gingles* prongs, not one or two. In my opinion, this bar has not been met by the plaintiffs as it relates to LD 9 and LD 15 under the state's enacted plan.

Plaintiffs have drawn two illustrative districts that create a reconfigured LD 9. Both these illustrative districts encompass the Spirit Lake and Turtle Mountain Reservations. Additionally, territory from enacted LD 9 (which contains the Turtle Lake Reservation) and enacted LD 15 (which contains the Spirit Lake Reservation) is connected via a land bridge (see Figures 2 and 3 for maps of these illustrative districts). Both these plans produce a newly drawn LD 9 that performs worse on some traditional redistricting criteria as compared to LD 9 under the enacted plan. For example, using any of the three measures of compactness employed in this report, LD 9 under either illustrative plan is less compact than LD 9 under the enacted plan. In addition,

population deviation, core retention, and respect for communities of interest also appears diminished under the plaintiff's demonstrative plans for LD 9.

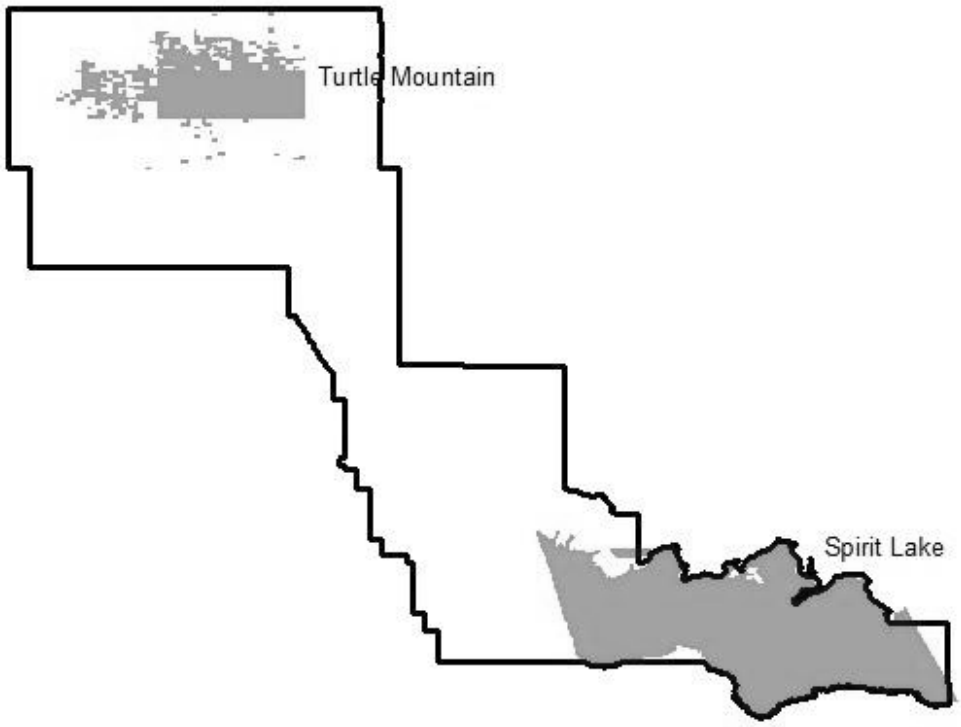
A degradation of traditional redistricting criteria, coupled with the fact that plaintiffs have drawn a district that specifically joins two Indian reservations along with pockets of surrounding Native American population via use of a land bridge, can certainly raise the question of whether the creation of LD 9 under the plaintiff demonstrative plans results in a racial gerrymander.[18]

Figure 2. Plaintiff Demonstrative District 1 (LD 9)



[18]Centroid to centroid the distance between the two reservations is 77 miles.

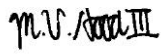
Figure 3. Plaintiff Demonstrative District 2 (LD9)



VIII. DECLARATION

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on January 17, 2023.



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Appendix: Reliance Materials

Expert Report of Professor Loren Collingwood. *Turtle Mountain Band of Chippewa Indians, et. al. v. Alvin Jaeger* [3:22-cv-00022]. November 30, 2022.

Plaintiff Illustrative Plan 1 Shapefile.

Plaintiff Illustrative Plan 2 Shapefile.

North Dakota 2022 Enacted Legislative Plan Shapefile (https://www.ndlegis.gov/assembly/67-2021/special/approved-legislative-redistricting-maps).

North Dakota 2022 Enacted Legislative Plan Statistics (https://www.ndlegis.gov/assembly/67-2021/session-interim/2021-legislative-redistricting-maps).

Interim Redistricting Committee Report (https://ndlegis.gov/files/resource/67-2021/legislative-management-final-reports/2021ssfinalreport.pdf).

U.S. Census Bureau. 2020 P.L. 94-171 Data for North Dakota (https://data.census.gov/table).

U.S. Census Tiger/Line Shapefiles (https://www.census.gov/geographies/mapping-files/time-series/geo/tiger-line-file.html).

Curriculum Vitae
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Academic Positions:
University of Georgia
- Director, SPIA Survey Research Center, 2016-present
- Director of Graduate Studies, 2011-2016
- Professor, 2013-present
- Associate Professor, 2005-2013
- Assistant Professor, 1999-2005

Texas Tech University
- Visiting Assistant Professor, 1997-1999

Education:

Ph.D.	Political Science	Texas Tech University	1997
M.A.	Political Science	Baylor University	1993
B.S.	Political Science	Texas A&M University	1991

Peer-Reviewed Books:
Rural Republican Realignment in the Modern South: The Untold Story. 2022. Columbia, SC: The University of South Carolina Press. (Seth C. McKee, co-author).

The Rational Southerner: Black Mobilization, Republican Growth, and the Partisan Transformation of the American South. 2012. New York: Oxford University Press. (Quentin Kidd and Irwin L. Morris, co-authors).
[Softcover version in 2014 with new Epilogue]

Peer-Reviewed Publications:
"The Hardest Path to Reelection: Dueling Incumbent House Primaries in 2022." 2022 (Online First). *The Forum*. (Seth C. McKee, co-author).

"Postal Voting in the 2020 Election." 2022. *Journal of Election Administration, Research, and Practice* 1(1): 19-29. (Lonna Rae Atkeson, Colin Jones, Mason Reece, and Robert M. Stein, co-authors).

"Partisan Schism in America's Newest Swing State." 2022 (Online First). *Party Politics*. (Seth C. McKee, co-author).

"Getting the Message: Opinion Polarization over Election Law." 2022. *Election Law Journal* 21(2): 124-134. (Seth C. McKee, co-author).

"Tracking Hispanic Political Emergence in Georgia: An Update." 2021. *Social Science Quarterly* 102(1): 259-268. (Charles S. Bullock, III, co-author).

"Switching Sides but Still Fighting the Civil War in Southern Politics." 2020. *Politics, Groups, and Identities* 10(1): 100-116. (Christopher Cooper, Scott H. Huffmon, Quentin Kidd, Gibbs Knotts, Seth C. McKee, co-authors).

"The Election of African American State Legislators in the Modern South." 2020. *Legislative Studies Quarterly* 45(4): 581-608. (Charles S. Bullock, III, William Hicks, Seth C. McKee, Adam S. Myers, and Daniel A. Smith, co-authors).

"What's in a Name? Gauging the Effect of Labels on Third Party Vote Shares." 2022. *Journal of Elections, Public Opinion & Parties* 32(3): 542-555. (Seth C. McKee, co-author).

"Why Georgia, Why? Peach State Residents' Perceptions of Voting-Related Improprieties and their Impact on the 2018 Gubernatorial Election." 2019. *Social Science Quarterly* 100(5): 1828-1847. (Seth C. McKee, co-author).

"Palmetto Postmortem: Examining the Effects of the South Carolina Voter Identification Statute." 2019. *Political Research Quarterly* 73(2): 492-505. (Scott E. Buchanan, co-author).

"Contagious Republicanism in Louisiana, 1966-2008." 2018. *Political Geography* 66(Sept): 1-13. (Jamie Monogan, co-author).

"The Comeback Kid: Donald Trump on Election Day in 2016." 2019. *PS: Political Science and Politics* 52(2): 239-242. (Seth C. McKee and Daniel A. Smith, co-authors).

"Election Daze: Mode of Voting and Voter Preferences in the 2016 Presidential Election." 2017-2018. *Florida Political Chronicle* 25(2): 123-141. (Seth C. McKee and Daniel A. Smith, co-authors).

"Out of Step and Out of Touch: The Matter with Kansas in the 2014 Midterm." 2017. *The Forum* 15(2): 291-312. (Seth C. McKee and Ian Ostrander, co-authors).

"From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses." 2018. *Social Science Quarterly* 99(2): 536-552. (Peter A. Morrison and Thomas M. Bryan, co-authors).

"Race, Class, Religion and the Southern Party System: A Field Report from Dixie." 2016. *The Forum* 14(1): 83-96.

"*Black Votes Count*: The 2014 Republican Senate Nomination in Mississippi." 2017. *Social Science Quarterly* 98(1): 89-106. (Seth C. McKee, coauthor).

"Sunshine State Dilemma: Voting for the 2014 Governor of Florida." 2015. *Electoral Studies* 40: 293-299. (Seth C. McKee, co-author).

"Tea Leaves and Southern Politics: Explaining Tea Party Support Among Southern Republicans." 2015. *Social Science Quarterly* 96(4): 923-940. (Quentin Kidd and Irwin L. Morris, co-authors).

"True Colors: White Conservative Support for Minority Republican Candidates." 2015. *Public Opinion Quarterly* 79(1): 28-52. (Seth C. McKee, co-author).

"Race and the Tea Party in the Old Dominion: Split-Ticket Voting in the 2013 Virginia Elections." 2015. *PS: Political Science and Politics* 48(1):107-114. (Quentin Kidd and Irwin L. Morris, co-authors).

"The Damnedest Mess: An Empirical Evaluation of the 1966 Georgia Gubernatorial Election." 2014. *Social Science Quarterly* 96(1):104-118. (Charles S. Bullock, III, co-author).

"Candidates, Competition, and the Partisan Press: Congressional Elections in the Early Antebellum Era." 2014. *American Politics Research* 42(5):670-783. (Jamie L. Carson, co-author).
[Winner of the 2014 Hahn-Sigelman Prize]

"Strategic Voting in a U.S. Senate Election." 2013. *Political Behavior* 35(4):729-751. (Seth C. McKee, co-author).

"Unwelcome Constituents: Redistricting and Countervailing Partisan Tides." 2013. *State Politics and Policy Quarterly* 13(2):203-224. (Seth C. McKee, co-author).

"The Tea Party, Sarah Palin, and the 2010 Congressional Elections: The Aftermath of the Election of Barack Obama." 2012. *Social Science Quarterly* 93(5):1424-1435. (Charles S. Bullock, III, co-author).

"Much Ado About Nothing?: An Empirical Assessment of the Georgia Voter Identification Statute." 2012. *State Politics and Policy Quarterly* 12(4):394-314. (Charles S. Bullock, III, co-author).

"Achieving Validation: Barack Obama and Black Turnout in 2008." 2012. *State Politics and Policy Quarterly* 12:3-22. (Seth C. McKee and David Hill, co-authors).

"They Just Don't Vote Like They Used To: A Methodology to Empirically Assess Election Fraud." 2012. *Social Science Quarterly* 93:76-94. (William Gillespie, co-author).

"An Examination of Efforts to Encourage the Incidence of Early In-Person Voting in Georgia, 2008." 2011. *Election Law Journal* 10:103-113. (Charles S. Bullock, III, co-author).

"What Made Carolina Blue? In-migration and the 2008 North Carolina Presidential Vote." 2010. *American Politics Research* 38:266-302. (Seth C. McKee, co-author).

"Stranger Danger: Redistricting, Incumbent Recognition, and Vote Choice." 2010. *Social Science Quarterly* 91:344-358. (Seth C. McKee, co-author).

"Trying to Thread the Needle: The Effects of Redistricting in a Georgia Congressional District." 2009. *PS: Political Science and Politics* 42:679-687. (Seth C. McKee, co-author).

"Citizen, Defend Thyself: An Individual-Level Analysis of Concealed-Weapon Permit Holders." 2009. *Criminal Justice Studies* 22:73-89. (Grant W. Neeley, co-author).

"Two Sides of the Same Coin?: Employing Granger Causality Tests in a Time Series Cross-Section Framework." 2008. *Political Analysis* 16:324-344. (Quentin Kidd and Irwin L. Morris, co-authors).

"Worth a Thousand Words? : An Analysis of Georgia's Voter Identification Statute." 2008. *American Politics Research* 36:555-579. (Charles S. Bullock, III, co-author).

"Gerrymandering on Georgia's Mind: The Effects of Redistricting on Vote Choice in the 2006 Midterm Election." 2008. *Social Science Quarterly* 89:60-77 (Seth C. McKee, co-author).

"Examining Methods for Identifying Latino Voters." 2007. *Election Law Journal* 6:202-208. (Charles S. Bullock, III, co-author).

"A Mile-Wide Gap: The Evolution of Hispanic Political Emergence in the Deep South." 2006. *Social Science Quarterly* 87:1117-1135. (Charles S. Bullock, III, co-author).

"Punch Cards, Jim Crow, and Al Gore: Explaining Voter Trust in the Electoral System in Georgia, 2000." 2005. *State Politics and Policy Quarterly* 5:283-294. (Charles S. Bullock, III and Richard Clark, co-authors).

"When Southern Symbolism Meets the Pork Barrel: Opportunity for Executive Leadership." 2005. *Social Science Quarterly* 86:69-86. (Charles S. Bullock, III, co-author).

"Race and the Ideological Transformation of the Democratic Party: Evidence from the Bayou State." 2005. *American Review of Politics* 25:67-78.

"The Reintroduction of the *Elephas maximus* to the Southern United States: The Rise of Republican State Parties, 1960-2000." 2004. *American Politics Research* 31:68-101. (Quentin Kidd and Irwin Morris, co-authors).

"One Person, [No Vote; One Vote; Two Votes…]: Voting Methods, Ballot Types, and Undervote Frequency in the 2000 Presidential Election." 2002. *Social Science Quarterly* 83:981-993. (Charles S. Bullock, III, co-author).

"On the Prospect of Linking Religious Right Identification with Political Behavior: Panacea or Snipe Hunt?" 2002. *Journal for the Scientific Study of Religion* 41:697-710. (Mark C. Smith, co-author).

"The *Key* Issue: Constituency Effects and Southern Senators' Roll-Call Voting on Civil Rights." 2001. *Legislative Studies Quarterly* 26: 599-621. (Quentin Kidd and Irwin Morris, co-authors).

"Packin' in the Hood?: Examining Assumptions Underlying Concealed-Handgun Research." 2000. *Social Science Quarterly* 81:523-537. (Grant Neeley, co-author).

"Brother, Can You Spare a Dime? Racial/Ethnic Context and the Anglo Vote on Proposition 187." 2000. *Social Science Quarterly* 81:194-206. (Irwin Morris, co-author).

"Penny Pinching or Politics? The Line-Item Veto and Military Construction Appropriations." 1999. *Political Research Quarterly* 52:753-766. (Irwin Morris and Grant Neeley, co-authors).

"Of Byrds[s] and Bumpers: Using Democratic Senators to Analyze Political Change in the South, 1960-1995." 1999. *American Journal of Political Science* 43:465-487. (Quentin Kidd and Irwin Morris, co-authors).

"Bugs in the NRC's Doctoral Program Evaluation Data: From Mites to Hissing Cockroaches." 1998. *PS* 31:829-835. (Nelson Dometrius, Quentin Kidd, and Kurt Shirkey, co-authors).

"Boll Weevils and Roll-Call Voting: A Study in Time and Space." 1998. *Legislative Studies Quarterly* 23:245-269. (Irwin Morris, co-author).

"Give Us Your Tired, Your Poor,...But Make Sure They Have a Green Card: The Effects of Documented and Undocumented Migrant Context on Anglo Opinion Towards Immigration." 1998. *Political Behavior* 20:1-16. (Irwin Morris, co-author).

"¡Quedate o Vente!: Uncovering the Determinants of Hispanic Public Opinion Towards Immigration." 1997. *Political Research Quarterly* 50:627-647. (Irwin Morris and Kurt Shirkey, co-authors).

"¿Amigo o Enemigo?: Context, Attitudes, and Anglo Public Opinion toward Immigration." 1997. *Social Science Quarterly* 78: 309-323. (Irwin Morris, co-author).

Book Chapters:

"The 2020 Presidential Nomination Process." 2021. In *The 2020 Presidential Election in the South*, eds. Branwell DuBose Kapeluck and Scott E. Buchanan. Lanham, MD: Rowman & Littlefield. (Aaron A. Hitefield, co-author).

"Texas: A Shifting Republican Terrain." 2021. In *The New Politics of the Old South, 7th ed.*, Charles S. Bullock, III and Mark J. Rozell, editors. New York: Rowman and Littlefield Publishers, Inc. (Seth C. McKee, co-author).

"Texas: Big Red Rides On." 2018. In *The New Politics of the Old South, 6th ed.*, Charles S. Bullock, III and Mark J. Rozell, editors. New York: Rowman and Littlefield Publishers, Inc. (Seth C. McKee, co-author).

"The Participatory Consequences of Florida Redistricting." 2015. In *Jigsaw Puzzle Politics in the Sunshine State*, Seth C. McKee, editor. Gainesville, FL: University of Florida Press. (Danny Hayes and Seth C. McKee, co-authors).

"Texas: Political Change by the Numbers." 2014. In *The New Politics of the Old South, 5th ed.*, Charles S. Bullock, III and Mark J. Rozell, editors. New York: Rowman and Littlefield Publishers, Inc. (Seth C. McKee, co-author).

"The Republican Party in the South." 2012. In *Oxford Handbook of Southern Politics*, Charles S. Bullock, III and Mark J. Rozell, editors. New York: Oxford University Press. (Quentin Kidd and Irwin Morris, co-authors).

"The Reintroduction of the *Elephas maximus* to the Southern United States: The Rise of Republican State Parties, 1960-2000." 2010. In *Controversies in Voting Behavior*, 5th ed., David Kimball, Richard G. Niemi, and Herbert F. Weisberg, editors. Washington, DC: CQ Press. (Quentin Kidd and Irwin Morris, co-authors).
[Reprint of 2004 *APR* article with Epilogue containing updated analysis and other original material.]

"The Texas Governors." 1997. In *Texas Policy and Politics*, Mark Somma, editor. Needham Heights, MA: Simon & Schuster.

Book Reviews:

The Resilience of Southern Identity: Why the South Still Matters in the Minds of Its People. 2018. Reviewed for *The Journal of Southern History*.

Other Publications:

"Provisionally Admitted College Students: Do They Belong in a Research University?" 1998. In *Developmental Education: Preparing Successful College Students*, Jeanne Higbee and Patricia L. Dwinell, editors. Columbia, SC: National Resource Center for the First-Year Experience & Students in Transition (Don Garnett, co-author).

NES Technical Report No. 52. 1994. "The Reliability, Validity, and Scalability of the Indicators of Gender Role Beliefs and Feminism in the 1992 American National Election Study: A Report to the ANES Board of Overseers." (Sue Tolleson-Rinehart, Douglas R. Davenport, Terry L. Gilmour, William R. Moore, Kurt Shirkey, co-authors).

Grant-funded Research (UGA):

Co-Principal Investigator. "Georgia Absentee Ballot Signature Verfication Study." Budget: $36,950. 2021. (with Audrey Haynes and Charles Stewart III). Funded by the Georgia Secretary of State.

Co-Principal Investigator. "The Integrity of Mail Voting in the 2020 Election." Budget: $177,080. (with Lonna Atkeson and Robert Stein). Funded by the National Science Foundation.

Co-Principal Investigator. "Georgia Voter Verification Study." Budget: $52,060. 2020. (with Audrey Haynes). Funded by Center for Election Innovation and Research.

Co-Principal Investigator. "An Examination of Non-Precinct Voting in the State of Georgia." Budget: $47,000. October 2008-July 2009. (with Charles S. Bullock, III). Funded by the Pew Charitable Trust.

Co-Principal Investigator. "The Best Judges Money Can Buy?: Campaign Contributions and the Texas Supreme Court." (SES-0615838) Total Budget: $166,576; UGA Share: $69,974. September 2006-August 2008. (with Craig F. Emmert). Funded by the National Science Foundation. REU Supplemental Award (2008-2009): $6,300.

Principal Investigator. "Payola Justice or Just Plain 'Ole Politics Texas-Style?: Campaign Finance and the Texas Supreme Court." $5,175. January 2000-Januray 2001. Funded by the University of Georgia Research Foundation, Inc.

Curriculum Grants (UGA):

Learning Technology Grant: "Converting Ideas Into Effective Action: An Interactive Computer and Classroom Simulation for the Teaching of American Politics." $40,000. January-December 2004. (with Loch Johnson). Funded by the Office of Instructional Support and Technology, University of Georgia.

Dissertation:

"Capturing Bubba's Heart and Mind: Group Consciousness and the Political Identification of Southern White Males, 1972-1994."

Chair: Professor Sue Tolleson-Rinehart

Papers and Activities at Professional Meetings:

"Rural Voters in Southern U.S. House Elections." 2021. (with Seth C. McKee). Presented at the Virtual American Political History Conference. University of Georgia. Athens, GA.

"Mail It In: An Analysis of the Peach State's Response to the Coronavirus Pandemic." 2020. (with Audrey Haynes). Presented at the Election Science, Reform, and Administrative Conference. Gainesville, FL. [Virtually Presented].

"Presidential Republicanism and Democratic Darn Near Everything Else." 2020. (with Seth C. McKee). Presented at the Citadel Southern Politics Symposium. Charleston, SC.

"Why Georgia, Why? Peach State Residents' Perceptions of Voting-Related Improprieties and their Impact on the 2018 Gubernatorial Election." 2019. (with Seth C. McKee). Presented at the Election Science, Reform, and Administrative Conference. Philadelphia, PA.

"The Demise of White Class Polarization and the Newest American Politics." 2019. (with Seth C. McKee). Presented at the Annual Meeting of the Southern Political Science Association. Austin, TX.

"The Geography of Latino Growth in the American South." 2018. (with Seth C. McKee). State Politics and Policy Conference. State College, PA.

"A History and Analysis of Black Representation in Southern State Legislatures." 2018. (with Charles S. Bullock, III, William D. Hicks, Seth C. McKee, Adam S. Myers, and Daniel A. Smith). Presented at the Citadel Symposium on Southern Politics. Charleston, SC.

Discussant. Panel titled "Southern Distinctiveness?" 2018. The Citadel Symposium on Southern Politics. Charleston, SC.

Roundtable Participant. Panel titled "The 2018 Elections." 2018. The Citadel Symposium on Southern Politics. Charleston, SC.

"Still Fighting the Civil War?: Southern Opinions on the Confederate Legacy." 2018. (with Christopher A. Cooper, Scott H. Huffmon, Quentin Kidd, H. Gibbs Knotts, and Seth C. McKee). The Citadel Symposium on Southern Politics. Charleston, SC.

"Tracking Hispanic Growth in the American South." 2018. (with Seth C. McKee). Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.

"An Assessment of Online Voter Registration in Georgia." 2017. (with Greg Hawrelak and Colin Phillips). Presented at the Annual Meeting of Election Sciences, Reform, and Administration. Portland, Oregon.

Moderator. Panel titled "What Happens Next." 2017. The Annual Meeting of Election Sciences, Reform, and Administration. Portland, Oregon.

"Election Daze: Time of Vote, Mode of Voting, and Voter Preferences in the 2016 Presidential Election." 2017. (with Seth C. McKee and Dan Smith). Presented at the Annual Meeting of the State Politics and Policy Conference. St. Louis, MO.

"Palmetto Postmortem: Examining the Effects of the South Carolina Voter Identification Statute." 2017. (with Scott E. Buchanan). Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.

Panel Chair and Presenter. Panel titled "Assessing the 2016 Presidential Election." 2017. UGA Elections Conference. Athens, GA.

Roundtable Discussant. Panel titled "Author Meets Critics: Robert Mickey's Paths Out of Dixie." 2017. The Annual Meeting of the Southern Political Science Association. New Orleans, LA.

"Out of Step and Out of Touch: The Matter with Kansas in the 2014 Midterm Election." (with Seth C. McKee and Ian Ostrander). 2016. Presented at the Annual Meeting of the Southern Political Science Association. San Juan, Puerto Rico.

"Contagious Republicanism in North Carolina and Louisiana, 1966-2008."(with Jamie Monogan). 2016. Presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"The Behavioral Implications of Racial Resentment in the South: The Intervening Influence of Party." (with Quentin Kidd and Irwin L. Morris). 2016. Presented at the Citadel Symposium on Southern Politics. Charleston, SC.

Discussant. Panel titled "Partisan Realignment in the South." 2016. The Citadel Symposium on Southern Politics. Charleston, SC.

"Electoral Implications of Racial Resentment in the South: The Influence of Party." (with Quentin Kidd and Irwin L. Morris). 2016. Presented at the Annual Meeting of the American Political Science Association. Philadelphia, PA.

"Racial Resentment and the Tea Party: Taking Regional Differences Seriously." (with Quentin Kidd an Irwin L. Morris). 2015. Poster presented at the Annual Meeting of the American Political Science Association. San Francisco, CA.

"Race and the Tea Party in the Palmetto State: Tim Scott, Nikki Haley, Bakari Sellers and the 2014 Elections in South Carolina." (with Quentin Kidd an Irwin L. Morris). 2015. Presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.

Participant. Roundtable on the 2014 Midterm Elections in the Deep South. Annual Meeting of the Southern Political Science Association. New Orleans, LA.

"Race and the Tea Party in the Old Dominion: Split-Ticket Voting in the 2013 Virginia Elections." (with Irwin L. Morris and Quentin Kidd). 2014. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"Race and the Tea Party in the Old Dominion: Down-Ticket Voting and Roll-Off in the 2013 Virginia Elections." (with Irwin L. Morris and Quentin Kidd). 2014. Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.

"Tea Leaves and Southern Politics: Explaining Tea Party Support Among Southern Republicans." (with Irwin L. Morris and Quentin Kidd). 2013. Paper presented at the Annual Meeting of the Southern Political Science Association. Orlando, FL.

"The Tea Party and the Southern GOP." (with Irwin L. Morris and Quentin Kidd). 2012. Research presented at the Effects of the 2012 Elections Conference. Athens, GA.

"Black Mobilization in the Modern South: When Does Empowerment Matter?" (with Irwin L. Morris and Quentin Kidd). 2012. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"The Legislature Chooses a Governor: Georgia's 1966 Gubernatorial Election." (with Charles S. Bullock, III). 2012. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"One-Stop to Victory? North Carolina, Obama, and the 2008 General Election." (with Justin Bullock, Paul Carlsen, Perry Joiner, and Mark Owens). 2011. Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans.

"Redistricting and Turnout in Black and White." (with Seth C. McKee and Danny Hayes). 2011. Paper presented the Annual Meeting of the Midwest Political Science Association. Chicago, IL.

"One-Stop to Victory? North Carolina, Obama, and the 2008 General Election." (with Justin Bullock, Paul Carlsen, Perry Joiner, Jeni McDermott, and Mark Owens). 2011. Paper presented at the Annual Meeting of the Midwest Political Science Association Meeting. Chicago, IL.

"Strategic Voting in the 2010 Florida Senate Election." (with Seth C. McKee). 2011. Paper Presented at the Annual Meeting of the Florida Political Science Association. Jupiter, FL.

"The Republican Bottleneck: Congressional Emergence Patterns in a Changing South." (with Christian R. Grose and Seth C. McKee). Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans, LA.

"Capturing the Obama Effect: Black Turnout in Presidential Elections." (with David Hill and Seth C. McKee) 2010. Paper presented at the Annual Meeting of the Florida Political Science Association. Jacksonville, FL.

"The Republican Bottleneck: Congressional Emergence Patterns in a Changing South." (with Seth C. McKee and Christian R. Grose). 2010. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"Black Mobilization and Republican Growth in the American South: The More Things

Change the More They Stay the Same?" (with Quentin Kidd and Irwin L. Morris). 2010. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"Unwelcome Constituents: Redistricting and Incumbent Vote Shares." (with Seth C. McKee). 2010. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta, GA.

"Black Mobilization and Republican Growth in the American South: The More Things Change the More They Stay the Same?" (with Quentin Kidd and Irwin L. Morris). 2010. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta, GA.

"The Impact of Efforts to Increase Early Voting in Georgia, 2008." (With Charles S. Bullock, III). 2009. Presentation made at the Annual Meeting of the Georgia Political Science Association. Callaway Gardens, GA.

"Encouraging Non-Precinct Voting in Georgia, 2008." (With Charles S. Bullock, III). 2009. Presentation made at the Time-Shifting The Vote Conference. Reed College, Portland, OR.

"What Made Carolina Blue? In-migration and the 2008 North Carolina Presidential Vote." (with Seth C. McKee). 2009. Paper presented at the Annual Meeting of the Florida Political Science Association. Orlando, FL.

"Swimming with the Tide: Redistricting and Voter Choice in the 2006 Midterm." (with Seth C. McKee). 2009. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"The Effect of the Partisan Press on U.S. House Elections, 1800-1820." (with Jamie Carson). 2008. Paper presented at the Annual Meeting of the History of Congress Conference. Washington, D.C.

"Backward Mapping: Exploring Questions of Representation via Spatial Analysis of Historical Congressional Districts." (Michael Crespin). 2008. Paper presented at the Annual Meeting of the History of Congress Conference. Washington, D.C.

"The Effect of the Partisan Press on U.S. House Elections, 1800-1820." (with Jamie Carson). 2008. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"The Rational Southerner: The Local Logic of Partisan Transformation in the South." (with Quentin Kidd and Irwin L. Morris). 2008. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"Stranger Danger: The Influence of Redistricting on Candidate Recognition and Vote Choice." (with Seth C. McKee). 2008. Paper presented at the Annual Meeting of the Southern Political Science Association. New Orleans.

"Backward Mapping: Exploring Questions of Representation via Spatial Analysis of Historical Congressional Districts." (with Michael Crespin). 2007. Paper presented at the Annual Meeting of the American Political Science Association. Chicago.

"Worth a Thousand Words? : An Analysis of Georgia's Voter Identification Statute." (with Charles S. Bullock, III). 2007. Paper presented at the Annual Meeting of the Southwestern Political Science Association. Albuquerque.

"Gerrymandering on Georgia's Mind: The Effects of Redistricting on Vote Choice in the 2006 Midterm Election." (with Seth C. McKee). 2007. Paper presented at the Annual Meeting of The Southern Political Science Association. New Orleans.

"Personalismo Politics: Partisanship, Presidential Popularity and 21st Century Southern Politics." (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Annual Meeting of the American Political Science Association. Philadelphia.

"Explaining Soft Money Transfers in State Gubernatorial Elections." (with William Gillespie and Troy Gibson). 2006. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"Two Sides of the Same Coin?: A Panel Granger Analysis of Black Electoral Mobilization and GOP Growth in the South, 1960-2004." (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Citadel Symposium on Southern Politics. Charleston, SC.

"Hispanic Political Emergence in the Deep South, 2000-2004." (With Charles S. Bullock, III). 2006. Paper presented at the Citadel Symposium on Southern Politics. Charleston.

"Black Mobilization and the Growth of Southern Republicanism: Two Sides of the Same Coin?" (with Quentin Kidd and Irwin L. Morris). 2006. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"Exploring the Linkage Between Black Turnout and Down-Ticket Challenges to Black Incumbents." (With Troy M. Gibson). 2006. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"Race and the Ideological Transformation of the Democratic Party: Evidence from the Bayou State." 2004. Paper presented at the Biennial Meeting of the Citadel Southern Politics Symposium. Charleston.

"Tracing the Evolution of Hispanic Political Emergence in the Deep South." 2004. (Charles S. Bullock, III). Paper presented at the Biennial Meeting of the Citadel Southern Politics Symposium. Charleston.

"Much Ado about Something? Religious Right Status in American Politics." 2003. (With Mark C. Smith). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"Tracking the Flow of Non-Federal Dollars in U. S. Senate Campaigns, 1992-2000." 2003. (With Janna Deitz and William Gillespie). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"PAC Cash and Votes: Can Money Rent a Vote?" 2002. (With William Gillespie). Paper presented at the Annual Meeting of the Southern Political Science Association. Savannah.

"What Can Gubernatorial Elections Teach Us About American Politics?: Exploiting and Underutilized Resource." 2002. (With Quentin Kidd and Irwin L. Morris). Paper presented at the Annual Meeting of the American Political Science Association. Boston.

"I Know I Voted, But I'm Not Sure It Got Counted." 2002. (With Charles S. Bullock, III and Richard Clark). Paper presented at the Annual Meeting of the Southwestern Social Science Association. New Orleans.

"Race and Southern Gubernatorial Elections: A 50-Year Assessment." 2002. (With Quentin Kidd and Irwin Morris). Paper presented at the Biennial Southern Politics Symposium. Charleston, SC.

"Top-Down or Bottom-Up?: An Integrated Explanation of Two-Party Development in the South, 1960-2000." 2001. Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"Cash, Congress, and Trade: Did Campaign Contributions Influence Congressional Support for Most Favored Nation Status in China?" 2001. (With William Gillespie). Paper presented at the Annual Meeting of the Southwestern Social Science Association. Fort Worth.

"Key 50 Years Later: Understanding the Racial Dynamics of 21st Century Southern Politics" 2001. (With Quentin Kidd and Irwin Morris). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"The VRA and Beyond: The Political Mobilization of African Americans in the Modern South." 2001. (With Quentin Kidd and Irwin Morris). Paper presented at the Annual Meeting of the American Political Science Association. San Francisco.

"Payola Justice or Just Plain 'Ole Politics Texas Style?: Campaign Finance and the Texas Supreme Court." 2001. (With Craig Emmert). Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"The VRA and Beyond: The Political Mobilization of African Americans in the Modern South." 2000. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"Where Have All the Republicans Gone? A State-Level Study of Southern Republicanism." 1999. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the Southern Political Science Association. Savannah.

"Elephants in Dixie: A State-Level Analysis of the Rise of the Republican Party in the Modern South." 1999. (With Irwin Morris and Quentin Kidd). Paper presented at the Annual Meeting of the American Political Science Association. Atlanta.

"Stimulant to Turnout or Merely a Convenience?: Developing an Early Voter Profile." 1998. (With Quentin Kidd and Grant Neeley). Paper presented at the Annual Meeting of the Southern Political Science Association. Atlanta.

"The Impact of the Texas Concealed Weapons Law on Crime Rates: A Policy Analysis for the City of Dallas, 1992-1997." 1998. (With Grant W. Neeley). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.

"Analyzing Anglo Voting on Proposition 187: Does Racial/Ethnic Context Really Matter?" 1997. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Norfolk.

"Capturing Bubba's Heart and Mind: Group Consciousness and the Political Identification of Southern White Males, 1972-1994." 1997. Paper presented at the Annual Meeting of the Midwest Political Science Association. Chicago.

"Of Byrds[s] and Bumpers: A Pooled Cross-Sectional Study of the Roll-Call Voting Behavior of Democratic Senators from the South, 1960-1995." 1996. (With Quentin Kidd and Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Atlanta.

"Pest Control: Southern Politics and the Eradication of the Boll Weevil." 1996. (With Irwin Morris). Paper presented to the Annual Meeting of the American Political Science Association. San Francisco.

"Fit for the Greater Functions of Politics: Gender, Participation, and Political Knowledge." 1996. (With Terry Gilmour, Kurt Shirkey, and Sue Tolleson-Rinehart). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.

"¿Amigo o Enemigo?: Racial Context, Attitudes, and White Public Opinion on Immigration." 1996. (With Irwin Morris). Paper presented to the Annual Meeting of the Midwest Political Science Association. Chicago.

"¡Quedate o Vente!: Uncovering the Determinants of Hispanic Public Opinion Towards Immigration." 1996. (With Irwin Morris and Kurt Shirkey). Paper presented to the Annual Meeting of the Southwestern Political Science Association. Houston.

"Downs Meets the Boll Weevil: When Southern Democrats Turn Left." 1995. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Tampa.

"¿Amigo o Enemigo?: Ideological Dispositions of Whites Residing in Heavily Hispanic Areas." 1995. (With Irwin Morris). Paper presented to the Annual Meeting of the Southern Political Science Association. Tampa.

Chair. Panel titled "Congress and Interest Groups in Institutional Settings." 1995. Annual Meeting of the Southwestern Political Science Association. Dallas.

"Death of the Boll Weevil?: The Decline of Conservative Democrats in the House." 1995. (With Kurt Shirkey). Paper presented to the Annual Meeting of the Southwestern Political Science Association. Dallas.

"Capturing Bubba's Heart and Mind: The Political Identification of Southern White Males." 1994. (With Sue Tolleson-Rinehart). Paper presented to the Annual Meeting of the Southern Political Science Association. Atlanta.

Areas of Teaching Competence:
American Politics: Behavior and Institutions
Public Policy
Scope, Methods, Techniques

Teaching Experience:
University of Georgia, 1999-present.
Graduate Faculty, 2003-present.
Provisional Graduate Faculty, 2000-2003.
Distance Education Faculty, 2000-present.

Texas Tech University, 1993-1999.
Visiting Faculty, 1997-1999.
Graduate Faculty, 1998-1999.
Extended Studies Faculty, 1997-1999.
Teaching Assistant, 1993-1997.

Courses Taught:
Undergraduate:
American Government and Politics, American Government and Politics (Honors), Legislative Process, Introduction to Political Analysis, American Public Policy, Political Psychology, Advanced Simulations in American Politics (Honors), Southern Politics, Southern Politics (Honors), Survey Research Internship

Graduate:
Election Administration and Related Issues (Election Sciences), Political Parties and Interest Groups, Legislative Process, Seminar in American Politics, Southern Politics; Publishing for Political Science

Editorial Boards:
Social Science Quarterly. Member. 2011-present.

Election Law Journal. Member. 2013-present.

Other Professional Service:
Listed expert. MIT Election Data and Science Lab.

Keynote Address. 2020 Symposium on Southern Politics. The Citadel. Charleston, SC.

Institutional Service (University-Level):
University Information Technology Committee, 2022-present.

University Promotion and Tenure Committee, 2019-2022.

University Program Review Committee, 2009-2011.
Chair, 2010-2011
Vice-Chair, 2009-2010.

Graduate Council, 2005-2008.
Program Committee, 2005-2008.
Chair, Program Committee, 2007-2008.

University Libraries Committee, 2004-2014.

Search Committee for University Librarian and Associate Provost, 2014.

EXHIBIT B

Rebuttal Expert Report of Dr. Loren Collingwood

Loren Collingwood

2023-02-16

Executive Summary

I previously provided a report in this matter, dated November 30, 2022. I refer to that report as the "Collingwood November 2022" report. Since then, the defense expert, Dr. M.V. (Trey) Hood III, provided his response report. This report is my rebuttal.

Key Findings:

- Dr. Hood incorrectly characterizes LD-9 as a Native American opportunity district because he fails to account for turnout differentials that make white voters a substantial majority of the usual electorate in the district.
- Dr. Hood's Gingles III analysis is methodologically flawed because (1) he equally weighs all elections even though some are significantly more probative than others, (2) he includes election results from packed subdistrict 9A in his combined analysis but excludes election results from cracked District 15 (3) he does not address subdistrict 9B alone, and (4) he fails to account for special circumstances that make the 2018 elections of little or no probative value.
- Dr. Hood's conclusion that LD-15 satisfies Gingles II and III but not Gingles I because the existing LD-15 is not majority NVAP is methodologically flawed. Gingles I looks to the possibility of an alternative majority minority district, not whether the challenged district itself is majority minority.
- Dr. Hood's analysis of Plaintiffs' Demonstrative Plans is flawed. The demonstrative districts satisfy population deviation goals, and are more compact than other adopted districts and districts that the Supreme Court has concluded to be reasonably compact for VRA purposes. Dr. Hood misreports the number of county splits in the enacted plan, and Demonstrative Plan 1 LD-9 splits the same number of counties as enacted LD-15 and the state house version of enacted LD-9. The demonstrative plan performs comparably or better on other districting criteria as well.

Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 40 peer-reviewed journal articles, and nearly a dozen

book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. I received a Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in Southern California. I am the redistricting consultant for the West Contra Costa Unified School District, CA, independent redistricting commission in which I am charged with drawing court-ordered single member districts.

I served as a testifying expert for the plaintiff in the Voting Rights Act Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.), on which I worked from 2018 to 2020. In that case, I used the statistical software eiCompare and WRU to implement Bayesian Improved Surname Geocoding (BISG) to identify the racial/ethnic demographics of voters and estimate candidate preference by race using ecological data. I am the quantitative expert in *LULAC vs. Pate (Iowa)*, 2021, and have filed an expert report in that case. I am the BISG expert in *LULAC Texas et al. v. John Scott et al. (1:21-cv-0786-XR)*, 2022. I filed two reports and have been deposed in that case. I am the RPV expert for Fair Maps plaintiff in *LULAC v. Abbott*. I have filed three reports and have been deposed in that case. I was the RPV expert for the plaintiff in *East St. Louis Branch NAACP, et al. vs. Illinois State Board of Elections, et al.*, having filed two reports in that case. I am the Senate Factors expert for plaintiff in *Pendergrass v. Raffensperger (N.D. Ga. 2021)*, having filed a report in that case. I was the RPV expert for intervenors in *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, having filed three reports in that case. I was the RPV expert for plaintiff in *Faith Rivera, et al. v. Scott Schwab and Michael Abbott*. I filed a report, was deposed, and testified at trial in that case. I served as the RPV expert for the intervenor in *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, where I filed a report and testified at a preliminary injunction hearing. I was the RPV expert in *Lower Brule Sioux Tribe v. Lyman County* where I filed a report and testified at trial. I am the RPV expert for plaintiff in *Soto Palmer et al. vs. Hobbs et al.* and have filed a report and been deposed. I am the RPV expert in *Dixon v. Lewisville Independent School District No. 4:22-cv-00304*, and have filed a report.

LD-9 is not a functioning Native American opportunity district

Dr. Hood argues that white-preferred candidates do not prevail more often than do Native-preferred candidates in the full District 9 and thus Gingles III is not triggered. I disagree for a variety of reasons.

To begin, Dr. Hood asserts that because LD-9 is over 50% Native American Voting Age Population (NVAP) it is definitionally a minority opportunity district – meaning that Native

voters have the ability to elect candidates of choice. But whether a district functions as a minority opportunity district depends upon more than demographics. One must account for variation in turnout by race, the degree of racially polarized voting, and importantly place greater weight on probative contests.

Typically, minority populations turn out to vote at lower rates than do white voters – due to their historical exclusion in the political process. In the South and around the country, white legislatures implemented laws to bar and/or limit minorities from voting. The literature is stacked on this but see Zelden (2004). The same was true for Native American voters across the country. This is an historical fact and undisputed in the literature.

Unfortunately, these imbalances in turnout by race continue through today. For instance, in the 2020 general election, according to the Current Population Survey (CPS), non-Hispanic whites turned out at 70.9%, Blacks at 62.6%, Asians at 59.7%, and Hispanics at 53.7% (see data provided for reference). The CPS does not provide readily available estimates for Native turnout; therefore, I conducted my own analysis of Native vs. white turnout in LD-9 over the past five election cycles, which demonstrates the flaw in Dr. Hood's opinion that LD-9 is a Native American opportunity district because it is bare majority Native American VAP.[1]

Using the same ecological inference methods as I used to estimate vote choice by race, I estimated voter turnout by race. The method is very similar to the RPV method, except I swap in voter turnout (total vote / total VAP) for candidate vote.

I then calculate the average turnout across each year's respective contests by racial group. I also gathered turnout data from the Secretary of State's website – which is readily available. Next, I plotted the data in a line graph, which conveys average turnout by race by year. These data rely on my EI estimates, but the RxC estimates are almost identical. The white turnout estimates are in purple, the Native American turnout estimates in navy blue, and statewide turnout numbers in peach.

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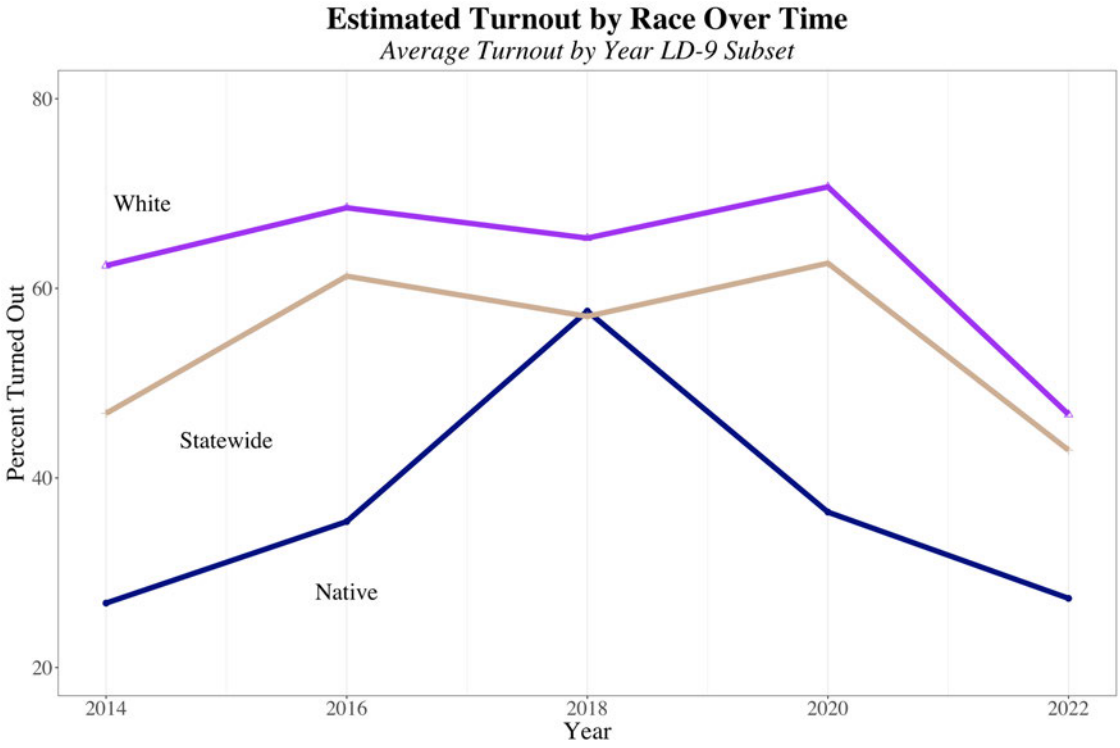
[1] In his report, Dr. Hood states that LD-9 is 51.7% Native VAP, using the single-race metric (*i.e.*, only those who identify as exclusively Native American). The figure is slightly different using the Census figure that the Supreme Court in *Georgia v. Ashcroft* indicated should be normally used in vote dilution cases (*i.e.*, those who identify as exclusively and part Native American); the figure is 54.5% under that measure. Because there is no dispute a majority-NVAP district can be drawn, the distinction is not particularly important in this case.

Figure 1. Voter Turnout by Race, 2014-2022 contests subset to LD-9. Statewide estimate is statewide turnout reported from ND Secretary of State.



Two points immediately emerge. First, white voters always cast ballots at significantly higher rates than do Native voters – usually in the neighborhood of 20-30 percentage points. Second, the 2018 election is an extreme anomaly. In that year, I place the Native turnout rate at 57.6% – which is higher than the statewide estimate of 57%. I have studied and conducted many turnout analyses using this method in areas with large shares of Native American eligible voters. In all the many elections in different jurisdiction that I have studied, I have never seen a Native American turnout number that begins to approach 60% in a federal, state, or local contest. Rather, the figures often hover around 30% – which is in line with my estimates in every other election year in LD-9.

This is anomalous for another reason—2018 was a midterm election. It is exceedingly unusual for any group to turn out at a higher rate in a midterm election than in a presidential election—let alone to have turnout that is over 50% higher in the midterm than in the presidential election. The graph below illustrates the anomaly; white turnout in LD-9 and statewide turnout was slightly higher in the 2016 and 2020 presidential elections than in the 2014, 2018, and 2022 midterm elections. That pattern was true for Native American voters in LD-9 for the 2014 and 2022 midterm elections versus the 2016 and 2020 presidential elections, but then was strikingly inverted for the 2018 midterm election. I address this data further below in the special circumstances discussion.

With these turnout estimates, I next estimate the Native American and white composition of the electorate for each election year.[2] To do so I multiply each group's share of the voting age population by each group's estimated turnout rate. For the 2014 election, 67% of LD-9's electorate was white and 33% was Native American. For the 2016 election, 63% of LD-9's electorate was white and 37% was Native American. For the 2018 election, 50% of LD-9's electorate was white and 50% was Native American. For the 2020 election, 63% of LD-9's electorate was white and 37% was Native American. And for the 2022 election, 60% of LD-9's electorate was white and 40% was Native American.

This illustrates the flaw in Dr. Hood's statement that LD-9 is necessarily a minority opportunity district merely because it has a bare majority NVAP. The usual electorate in the district has a substantial white majority, and even with unprecedented Native American turnout in 2018, that group still did not constitute a majority of the electorate.

In this regard, it is informative to evaluate LD-9 in the context of the other majority Native American state legislative districts across the country. There are 31 such districts, located in North Dakota, South Dakota, Montana, Wyoming, New Mexico, Arizona, and Alaska. Counting any person who identifies as Native American, *see* footnote 1, these districts range from 53.4% NVAP on the low end to 85.8% NVAP on the high end. The mean NVAP for a Native American majority legislative district in the country is 68.1% and the median Native American majority legislative district in the country has an NVAP of 66.7%.

Prior to the 2021 redistricting—when ND-9 was exclusively contained within Rolette County—its NVAP was 74.4%, slightly above the national mean and median. The 2021 redistricting drastically reduced that figure by twenty percentage points. Now, the enacted version of SD-9 has the second lowest NVAP of any majority Native American legislative district in the country. Meanwhile, subdistrict 9A has the fifth highest NVAP percentage in the nation (79.8%). By contrast, Plaintiffs' Demonstrative District 1 has an NVAP of 66.1%--nearly identical to the median district among the nation's 31 majority Native American legislative districts.

This national context—together with the turnout and actual electoral composition data of the district shown above—illustrates why LD-9 is not an effective Native American opportunity district and why Dr. Hood's conception is incorrect.

Dr. Hood's Gingles III Analysis Is Methodologically Flawed

Dr. Hood summed all the election data I included in my report (including by adding together the results for Districts 9, 9A, and 9B), equally weighed each election, and concluded that white voters do not usually defeat the candidates of choice of Native

[2] I use the more conservative NVAP estimate of 51.7% proffered in Dr. Hood's report and relied on by the state legislature.

American voters in LD-9. There are a number of serious methodological flaws in Dr. Hood's analysis and approach, which I address in turn below.

A. Equally Weighing the Elections Is Methodologically Incorrect.

First, it is methodologically flawed to equally weigh elections when conducting a Gingles III analysis. It is well established in court opinion and in the academic literature—including in literature written by Dr. Hood that he references in his report[3]—that certain elections are more probative than others in ascertaining whether white voters usually defeat the minority voters' preferred candidates. Endogenous elections (here, elections for the state legislature) are the most probative, and exogenous elections (*e.g.*, for President, Governor, U.S. Senator, etc.) are less probative. National and statewide candidates often are better funded and have elections decided on a different set of issues and circumstances than elections for lower office. In addition, recent elections are more probative than past elections. Finally, elections featuring a candidate of the race or ethnicity of the group bringing the Section 2 challenge are more probative than those featuring two white candidates.

As I discussed in my initial report, in each category of election that is considered most probative, there is a clear and compelling pattern of white voters usually defeating Native American voters' candidates of choice in District 9.

Endogenous Elections: The November 2022 elections were the first conducted under the new plan. Incumbent Native American Senator Richard Marcellais lost to his white opponent in District 9. This is the single most probative contests because it has all three probative characteristics—it is (1) endogenous, (2) the most recent, and (3) features a Native American candidate as the candidate of choice of Native American voters.

It bears noting that the defeat of Senator Marcellais marks the first time since the 1988 election—35 years ago—that a member of a North Dakota Tribe has not been elected to the state senate from District 9. From the election in District 9 of Daniel F. Jérome in 1990 to Les. J. LaFountain in 1994, Dennis Bercier in 1998, and Richard Marcellais in 2006, a member of a North Dakota Tribe has served in the state senate—until 2022 under the new district lines.[4] Statewide, the total NVAP share of the population grew from 5.1% to 5.9% from the 2010 to the 2020 Census. Proportionally, that would equate to 3 state senate seats and 6 state house seats. Following the 2022 elections, Native American candidates of choice are elected to 0 state senate seats and 2 state house seats.

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[3] M.V. Hood III, Peter A. Morrison, & Thomas M. Bryan, *From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analysis*, Social Science Quarterly, Vol. 99, No. 2 (2018).

[4] N.D. Legislature, http://www.ndlegis.gov/files/resource/library/dakota-lawmakers.pdf; https://ndlegis.gov/biography/dennis-bercier; https://www.ndlegis.gov/biography/les-j-lafountain; https://www.metismuseum.ca/resource.php/14232.

Similarly probative is the defeat of incumbent state representative Marvin Nelson—the Native American candidate of choice (who was also the candidate of choice when he ran for Governor in 2016) in subdistrict 9B. This race is both endogenous and the most recent.

Most Recent Elections: The Native American candidates of choice lost all 8 elections in 2022 in District 9. That is a 100% block rate. If we add the 2020 elections, then the Native American candidates of choice lost 10 of 14 elections. That is a 71% block rate.

Elections Featuring Native American Candidates: In the five elections featuring Native American candidates, the Native American candidates lost three, for a block rate of 60%.

Across the three most probative categories of elections, white voters' preferred candidates defeat Native American voters' preferred candidates at rates of 60%, 71%, and 100%. This is a clear Gingles III pattern.

Dr. Hood's approach of simply summing together all the election contests and equally weighing them—particularly where, as here, the most probative elections (of which there is a robust set of data spanning several election cycles) point clearly in the opposite direction of his conclusion—is methodologically incorrect.

B. Including Subdistrict 9A in the Gingles III Analysis is Methodologically Incorrect.

In Table 1 of his report, Dr. Hood added together all elections in Districts 9, 9A, and 9B to report that the Native American-preferred candidate was defeated in 38.2% of elections in the challenged districts, and thus Gingles III was not satisfied in his view.

But this is not the correct analysis. District 9A has a NVAP of 79.8%, *see* note 1, which is the fifth largest NVAP among all 31 Native American majority state legislative districts in the country. Of course white voters' preferred candidates do not usually—or ever—defeat Native American voters' preferred candidates in District 9A. It does not make sense to analyze Gingles III in the context of packed districts, but instead it is focused on districts where there is insufficient minority voting population to overcome white bloc voting. A map illustrating the cracking and packing of Native American voters across LD-9A, LD-9B, and LD-15 is attached as Appendix A.

When District 9 and 9B are summed without District 9A, then Native American preferred candidates win only 30 of 72 elections. This is a block rate by white preferred candidates of 58%.

The most sensible approach, however, is to sum District 9 and District 15 together, because the focus of the claim is on how the configuration of district lines in the region reduced from three to one the number of Native American preferred legislators elected. When that is done—even if all elections are weighed equally (which is not the correct approach), Native American preferred candidates lose 42 of 66 elections, for a block rate by white preferred candidates of 64%.

C. Dr. Hood Does Not Address District 9B.

Dr. Hood does not address District 9B at all in his analysis, other than to include it in his combined analysis of District 9, 9A, and 9B. But 9B is alleged to be a cracked district, and Gingles III is clearly established—Native American preferred candidates lost 81% of tested elections.

D. Dr. Hood Does Not Account for the Special Circumstances of the 2018 Election Cycle.

Dr. Hood's analysis is also methodologically flawed because he does not account for the special circumstances of the 2018 election cycle. As I discussed in my initial report and as the turnout data shows above, the 2018 election in North Dakota—including specifically in LD-9—was unlike any other election in that the Native American turnout rate exceeded the statewide rate and was over 50% higher than Native American turnout in the presidential elections. In my professional career, I have never seen an election in which Native American turnout even came close to being this high, and it runs in stark contrast to the usual trend of turnout increasing in presidential elections. There clearly was an overwhelming backlash to the voter ID law and the decision of the U.S. Supreme Court lifting the injunction on that law, aided by an intense get-out-the-vote effort that received national attention at the time.[5] This turnout pattern is not seen in prior or subsequent elections.

Given the stark departure from the ordinary electoral conditions, it would be appropriate to entirely disregard the 2018 elections in assessing whether candidates supported by white voters usually defeat Native American preferred candidates in LD-9. At the very least, the 2018 elections should be given very little weight. Not only are they skewed by extremely unusual circumstances, but there are no endogenous contests in the new district lines and no Native American candidates on the ballot that year.

Notably, if the 2018 elections are excluded or given little weight, then in the most recent three election cycles (2022, 2020, and 2016) the Native American preferred candidates lost in 12 of 21 elections, for a block rate by white preferred candidates of 57%. Again, that is without affording more probative value to the endogenous, most recent (2022), and racially contested elections. This is a clear pattern of Gingles III across these three election cycles in LD-9.

Dr. Hood's LD-15 Analysis Misapprehends Gingles I.

Dr. Hood's analysis of LD-15 misapprehends Gingles I. On page 4 of his report, Dr. Hood concedes that Gingles II and III are satisfied in LD-15, but he says that Gingles I is not

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[5] Roey Hadar, *North Dakota reservations see record voter turnout amid fears of suppression*, ABC News, https://abcnews.go.com/Politics/north-dakota-reservations-record-voter-turnout-amid-fears/story?id=59038845 (Nov. 7, 2018).

because LD-15 is not majority NVAP. But Gingles I is about whether an *alternative* district that is majority-minority can be drawn. It is not about whether the *challenged* district is majority minority. Plaintiffs' demonstrative districts, which include Spirit Lake (currently in LD-15), satisfy the Gingles I majority NVAP requirement.

Plaintiffs' Demonstrative Districts

In his report, Dr. Hood evaluates Plaintiffs' two demonstrative districts with respect to their adherence to a number of traditional districting criteria, including population deviation, compactness, communities of interest, and core retention. He contends that the demonstrative districts "degrade" on these criteria compared to enacted LD-9. His analysis is flawed with respect to each criterion he considers.

I will focus my discussion on Plaintiffs' Demonstrative District 1 to avoid repetition, but most of this discussion applies equally to Demonstrative District 2.

A. Population Deviation

Dr. Hood notes that Plaintiffs' Demonstrative Plan 1 LD-9 has a higher population deviation (+3.14%) than does enacted LD-9 (-2.52%). This is not a degradation of traditional district criteria. The North Dakota legislature adopted a goal that its legislative plan have an overall population deviation below 10%, and expressed no preference for approaching 0. Indeed, 23 of the 47 legislative districts have a higher population deviation than Plaintiffs' Demonstrative Plan 1.

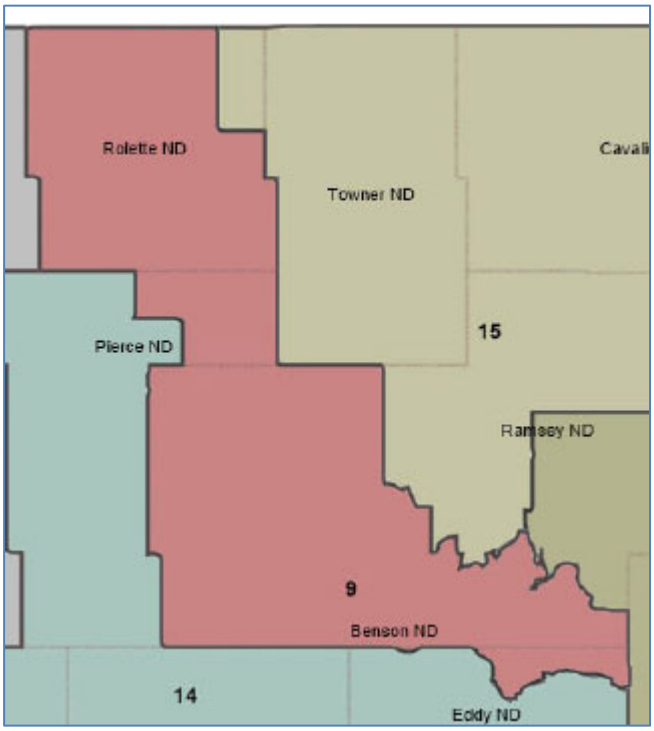
B. Compactness

Dr. Hood reports the compactness score of Plaintiffs' Demonstrative Plan 1 LD-9 for three compactness metrics: Reock (.25), Polsby-Popper (.22) and Schwartzberg-Adjusted (.28). He notes that these scores would rank 45th, 44th, and 45th respectively among North Dakota's 47 state senate legislative districts, and that enacted LD-9 scores higher. Dr. Hood's compactness discussion is flawed for several reasons.

1. The Effect of Water Boundaries

First, he does not account for the effect that natural boundaries, like rivers and lakes, have on compactness scores. Plaintiffs' demonstrative LD-9 contains all of Benson County, which has a squiggly line border along Devil's Lake, as well as the portion of Eddy County that is within the Spirit Lake Reservation—bounded by the Sheyenne River. The district is shown below and the full map is included in Appendix F.

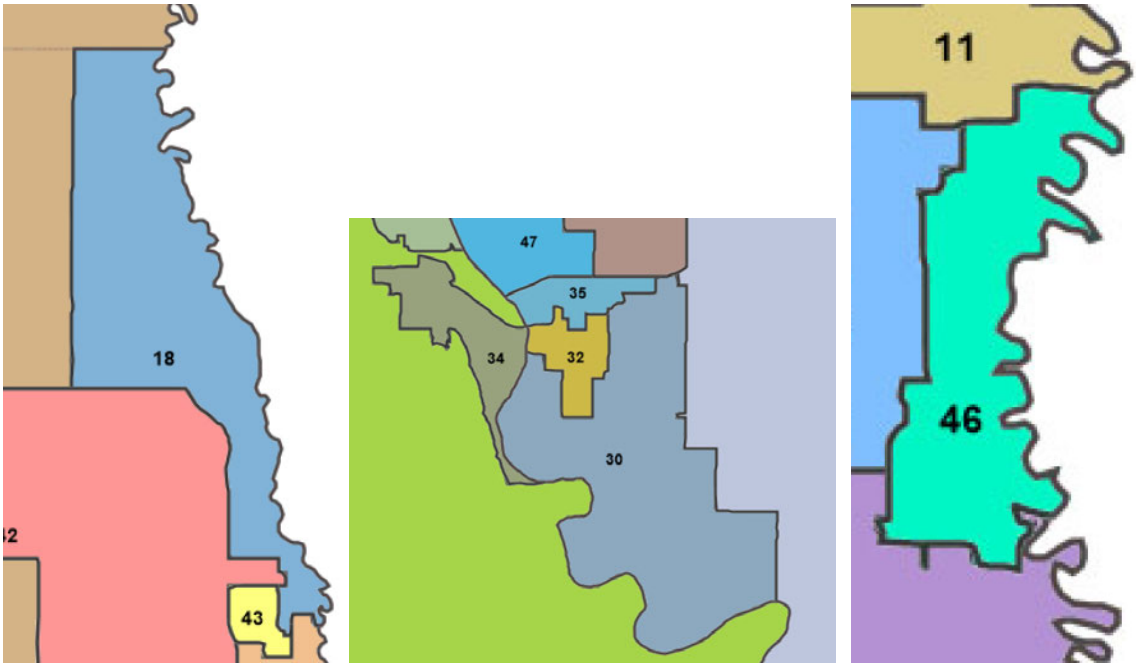
Plaintiffs' Demonstrative Plan 1 LD-9



These types of water boundaries have the effect of depressing mathematical compactness scores, like those reported by Dr. Hood. This is most acutely the case with perimeter-based scores, like the Polsby-Popper and Schwartzberg scores, but also affects the area-based Reock score by reducing the area of the district compared to a straight line.

This is aptly illustrated by the other legislative districts enacted by the legislature that have similar or lower compactness scores than Plaintiffs' demonstrative LD-9. In particular, LD-18 and LD-34 have lower Reock scores than Plaintiffs' Demonstrative Plan 1 LD-9. LD-35 and LD-46 have Reock scores that are 0.01 and 0.02 higher than Plaintiff's district. LD-34 and LD-46 have Polsby-Popper scores that are lower than Plaintiffs' Demonstrative Plan 1 LD-9, while LD-18 has the same Polsby-Popper score as Plaintiffs' LD-9. These districts are shown below, and are attached as Appendix B, C, and D. A statewide map of the enacted plan is attached as Appendix E.

Enacted North Dakota Legislative Plan Districts



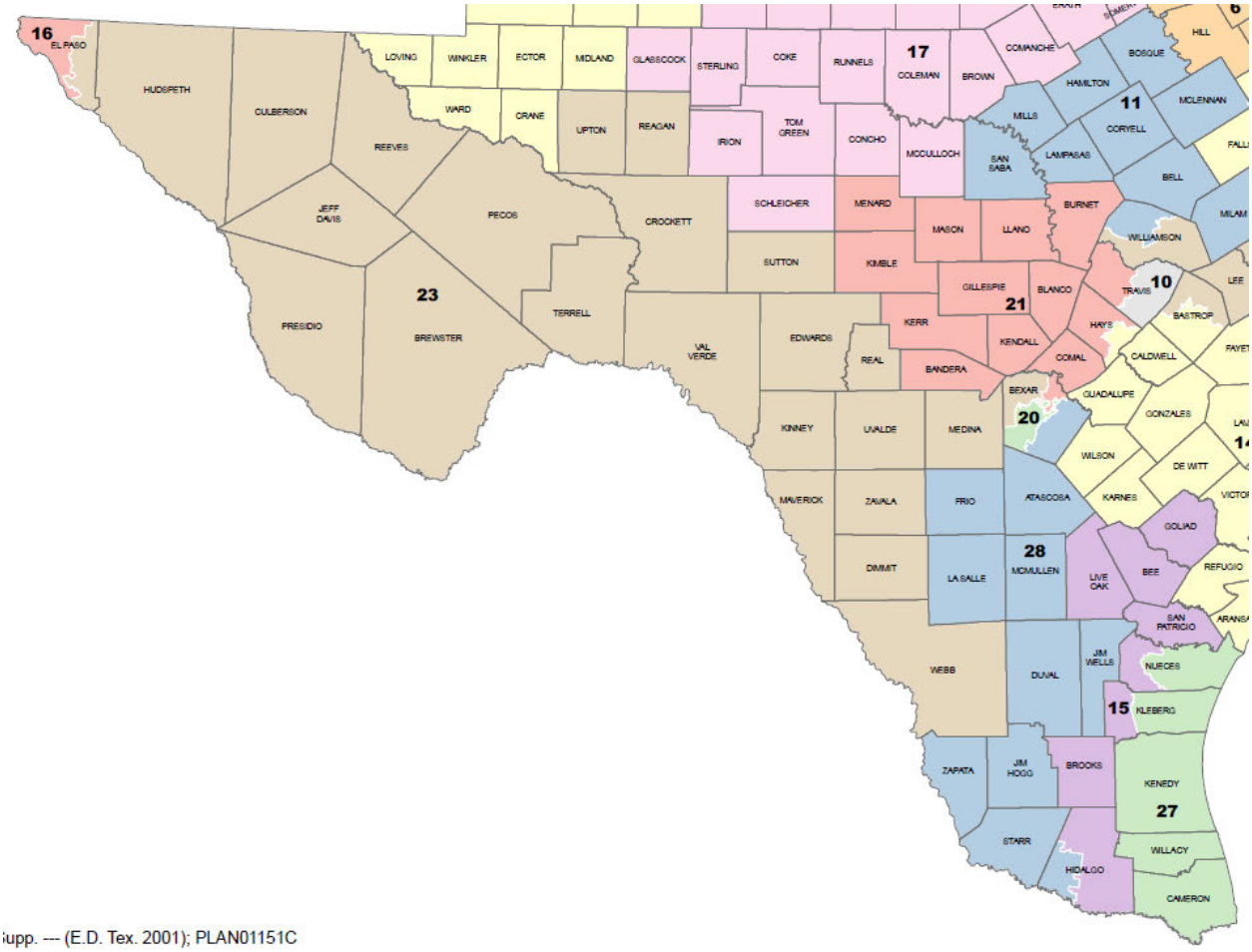
LD-18 in Grand Forks and LD-46 in Fargo are bordered by the Red River of the North and LD-34 is bordered by the Missouri River. While LD-35 is not bordered by water, it has a nearly equal Reock score to Plaintiffs' Demonstrative Plan 1 LD-9. In his deposition, Dr. Hood acknowledged that all these districts were reasonably or sufficiently compact, and one can tell from these images that relying on mathematical compactness scores alone for districts bounded by water—the adherence to which is itself a traditional districting criteria—can obscure their compactness.

2. Plaintiffs' Demonstrative Plans Are Reasonably Compact Compared to Districts Deemed Reasonably Compact for VRA Purposes by the Supreme Court.

To assess whether a proposed district is reasonably compact for purposes of Gingles I, it is useful to consider districts that the U.S. Supreme Court has deemed to be compact for purposes of Gingles I. In the 2006 case *LULAC v. Perry* the Supreme Court ruled that the congressional redistricting plan for Texas's 2002 elections ("Plan 1151C") contained six "reasonably compact" Latino opportunity districts in south and west Texas.

This region of Texas in Plan 1151C is shown below. The six "reasonably compact" Latino opportunity districts the Supreme Court considered were Districts 15, 16, 20, 23, 27, and 28.

Texas Plan 1151C



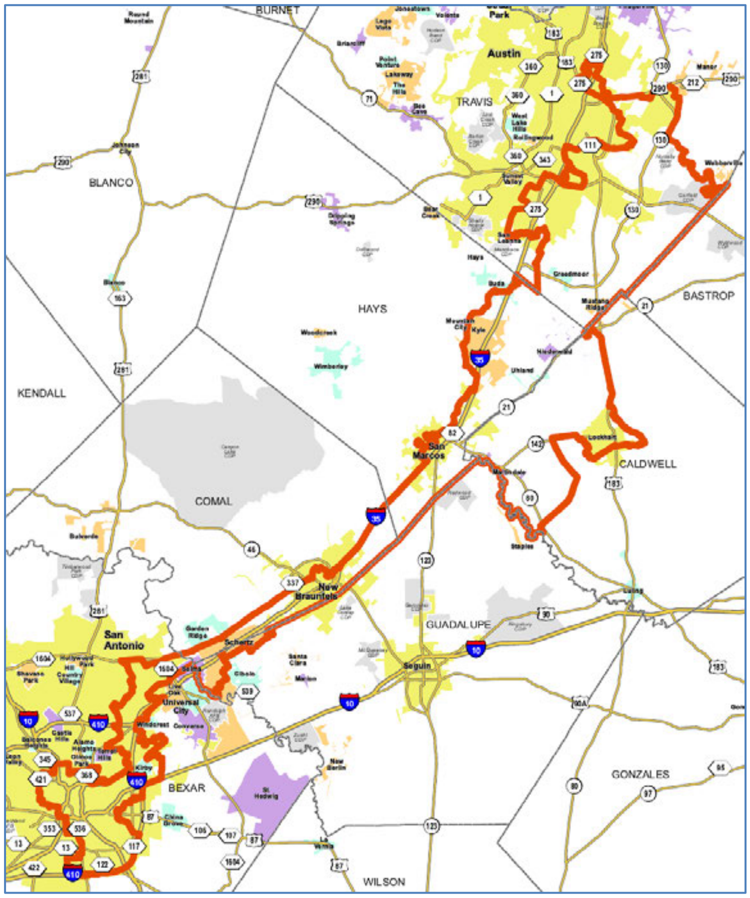
Supp. --- (E.D. Tex. 2001); PLAN01151C

In this Plan, District 15 had a Reock score of .20 and a Polsby-Popper score of .12, District 16 had a Reock score of .34 and a Polsby-Popper score of .26, District 20 had a Reock score of .35 and a Polsby-Popper score of .12, District 23 had a Reock score of .23 and a Polsby-Popper score of .16, District 27 had a Reock score of .33 and a Polsby-Popper score of .23, and District 28 had a Reock score of .27 and a Polsby-Popper score of .18.

Of these Texas districts deemed by the Supreme Court to be reasonably compact for purposes of the VRA, Districts 15 and 23 have lower Reock scores than Plaintiffs' Demonstrative Plan 1 LD-9 and Districts 15, 20, 23, and 28 have Polsby-Popper scores lower than Plaintiffs' Demonstrative Plan 1 LD-9.

More recently, the Supreme Court ruled in 2018 in the case *Abbott v. Perez* that Texas had not engaged in racial gerrymandering with respect to the version of congressional district 35 it enacted in 2013 (Plan C235) because the legislature had good reasons to believe Section 2 of the VRA required a Latino opportunity district stretching along I-35, with Latino populations on either end of the district in San Antonio and Austin. That district is shown below.

Texas Plan C235 District 35

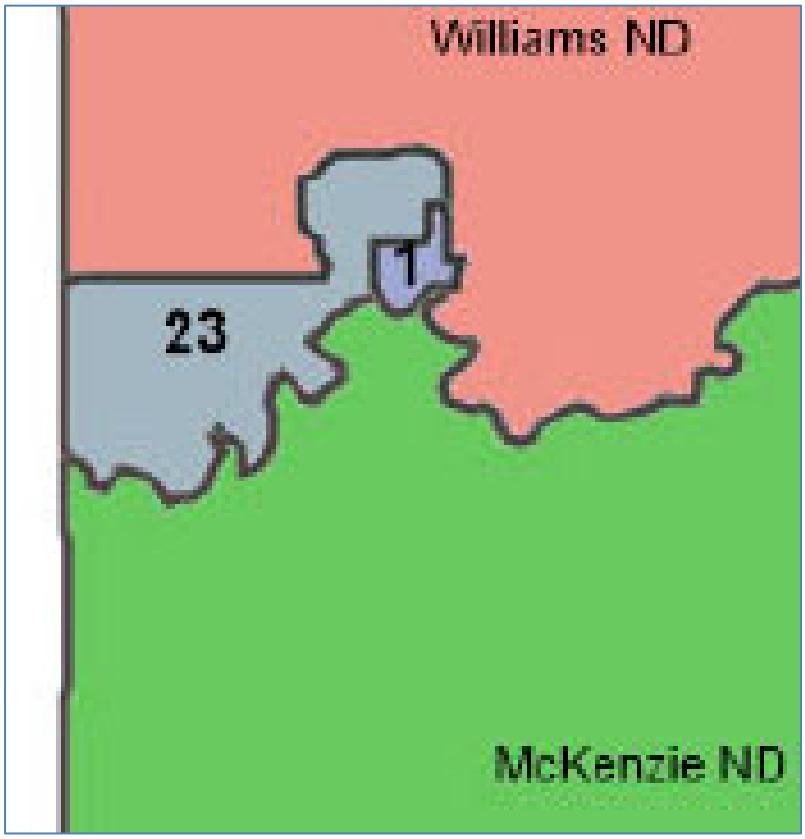


District 35 had a Reock score of .10 and a Polsby-Popper score of .05, substantially lower than Plaintiffs Demonstrative Plan 1 LD-9.

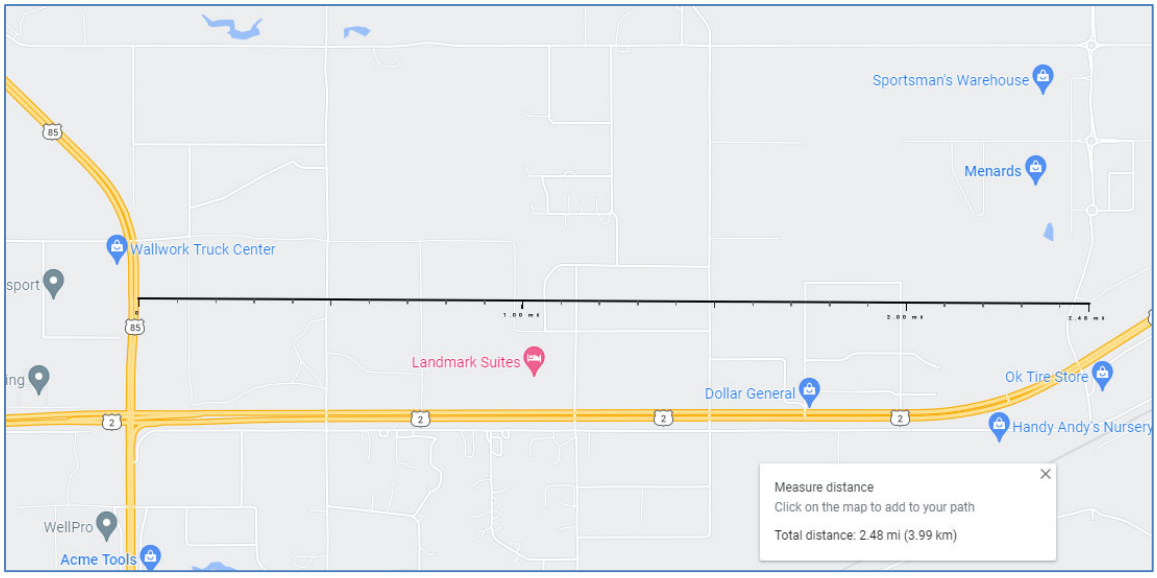
3. "Land Bridge"

Dr. Hood also says that Plaintiffs' Demonstrative Plan 1 LD-9 contains a "land bridge"—the portion of Pierce County contained in the district between Rolette and Benson Counties. The "land bridge" to which Dr. Hood refers is a whole voting precinct from Pierce County. That Pierce County precinct is larger than a number of other districts' connecting features across the state (as well as Texas CD35 shown above and approved by the Supreme Court). Indeed, the Pierce County precinct at issue spans 180 square miles and is itself larger than a majority of other districts in the plan (24 of the 45 non sub-district districts = 53%). For example, LD-23 in northwestern North Dakota has two sections connected by a much narrower "land bridge" that is just 2.5 miles wide and that split a then-existing Williams County precinct:

North Dakota LD-23

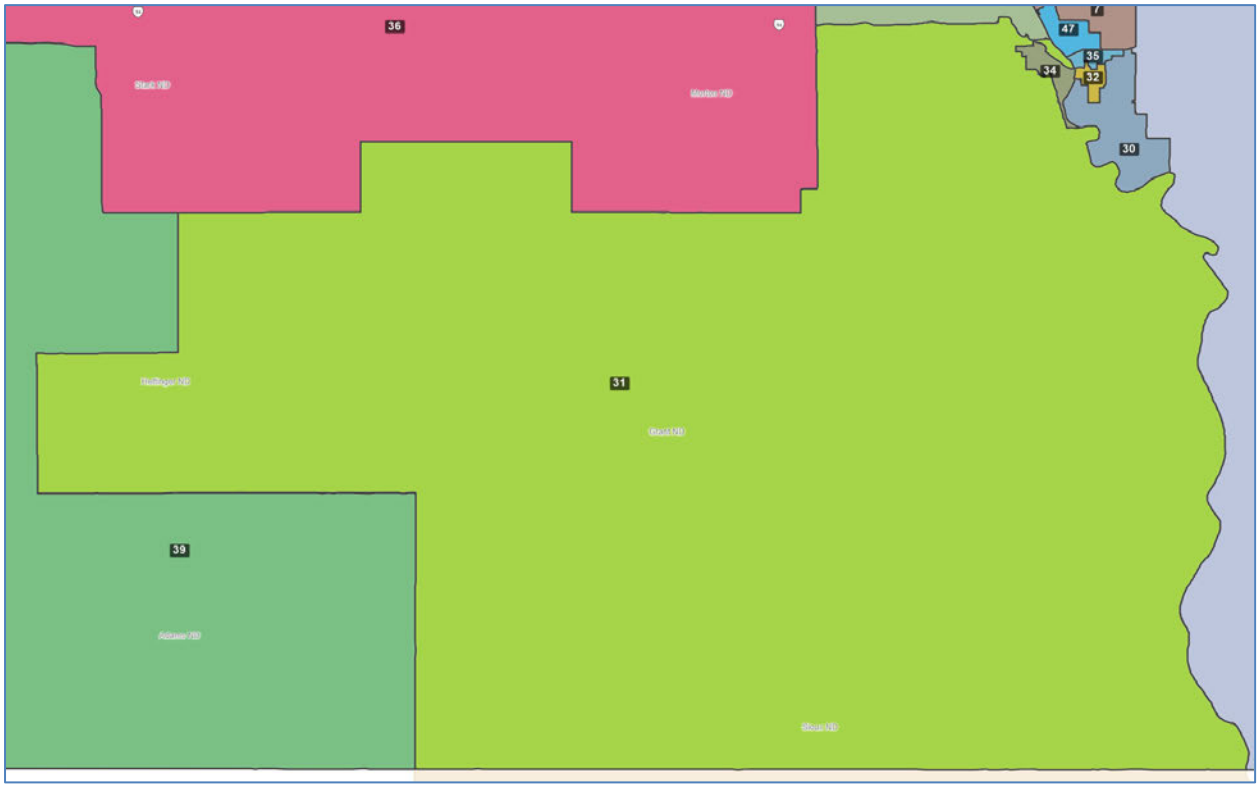


Distance Across LD-23 "Land Bridge"

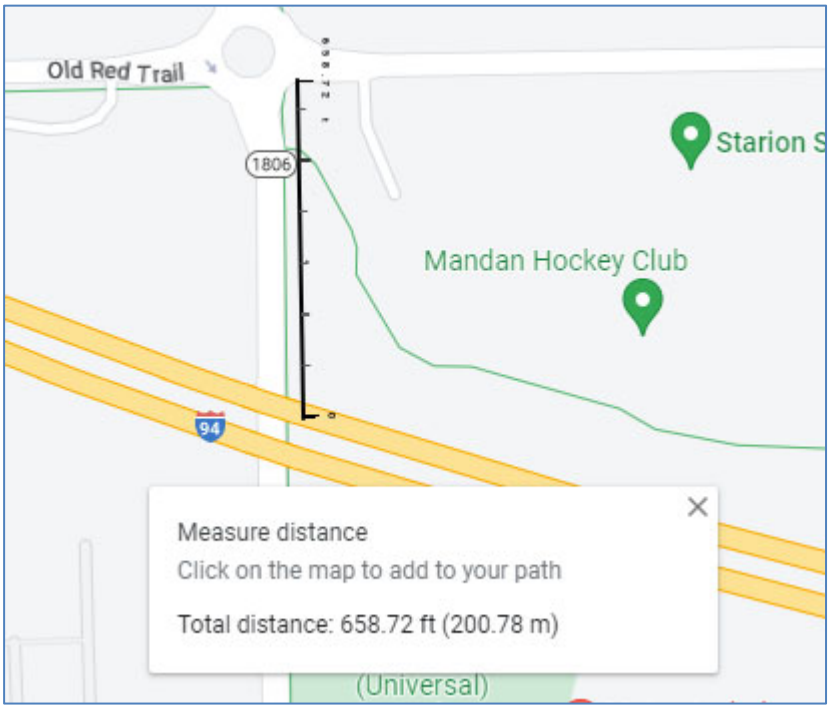


District 31, shown below, is a larger district that stretches from Mandan to the South Dakota border, but includes a narrow incursion through Mandan to the Missouri River that is just 659 feet across and likewise involved splitting then-existing voting precincts:

North Dakota Enacted LD-31



District 31 "Land Bridge" Distance



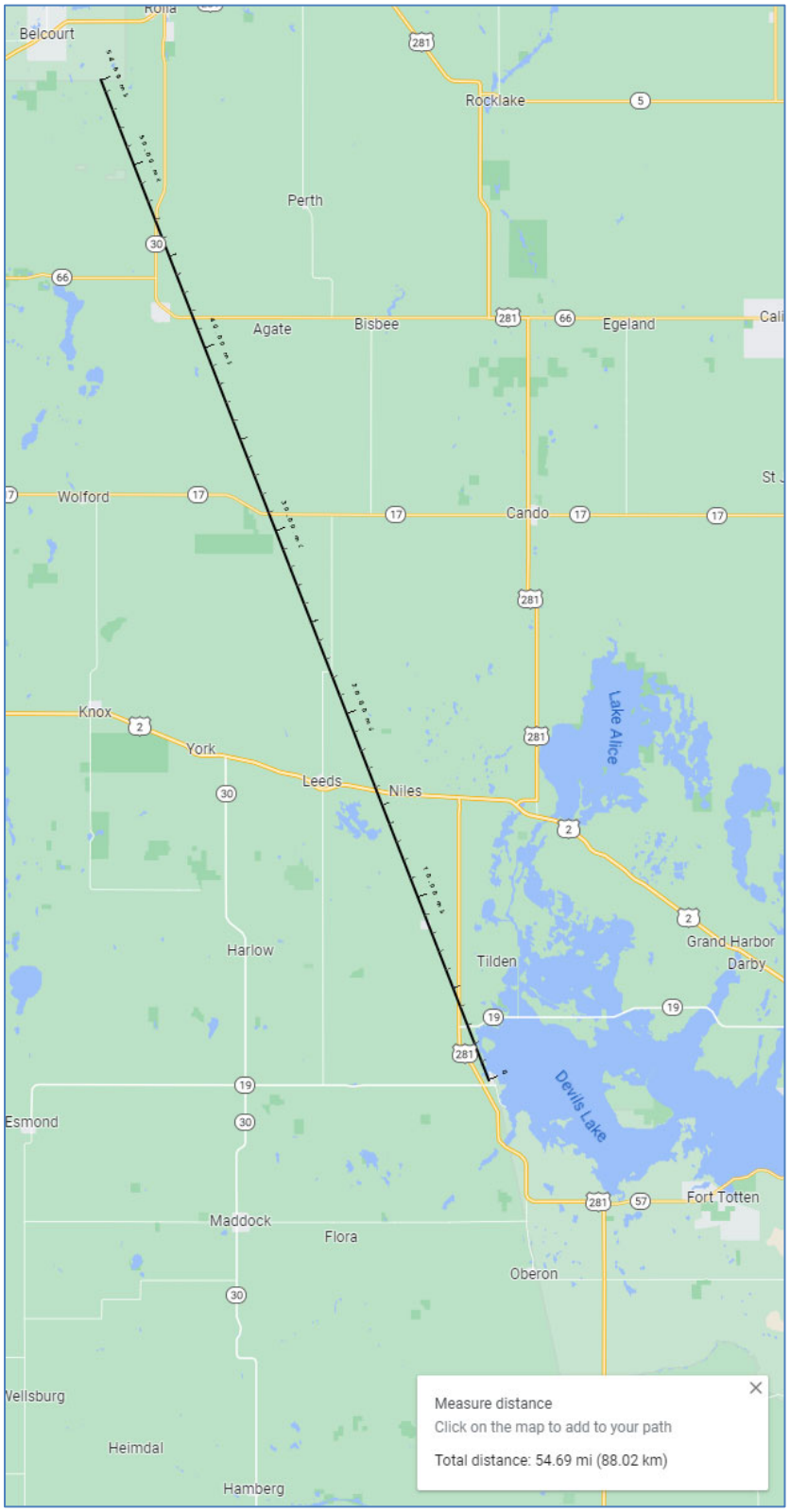
Notably, adherence to voting precincts is a generally acknowledged traditional districting criteria, and Plaintiffs' Demonstrative Plan 1 contains no split precincts.

4. Distance

Dr. Hood observes that Plaintiffs' Demonstrative Plan 1 LD-9 includes two Native American reservations that are 77 miles apart "[c]entroid to centroid" (Hood Report at 10). But because of significant population dispersion in rural North Dakota, geographically large districts are a necessity.

First, the centroid-to-centroid measurement overstates the distance. The two reservations are 55 miles apart, as shown below:

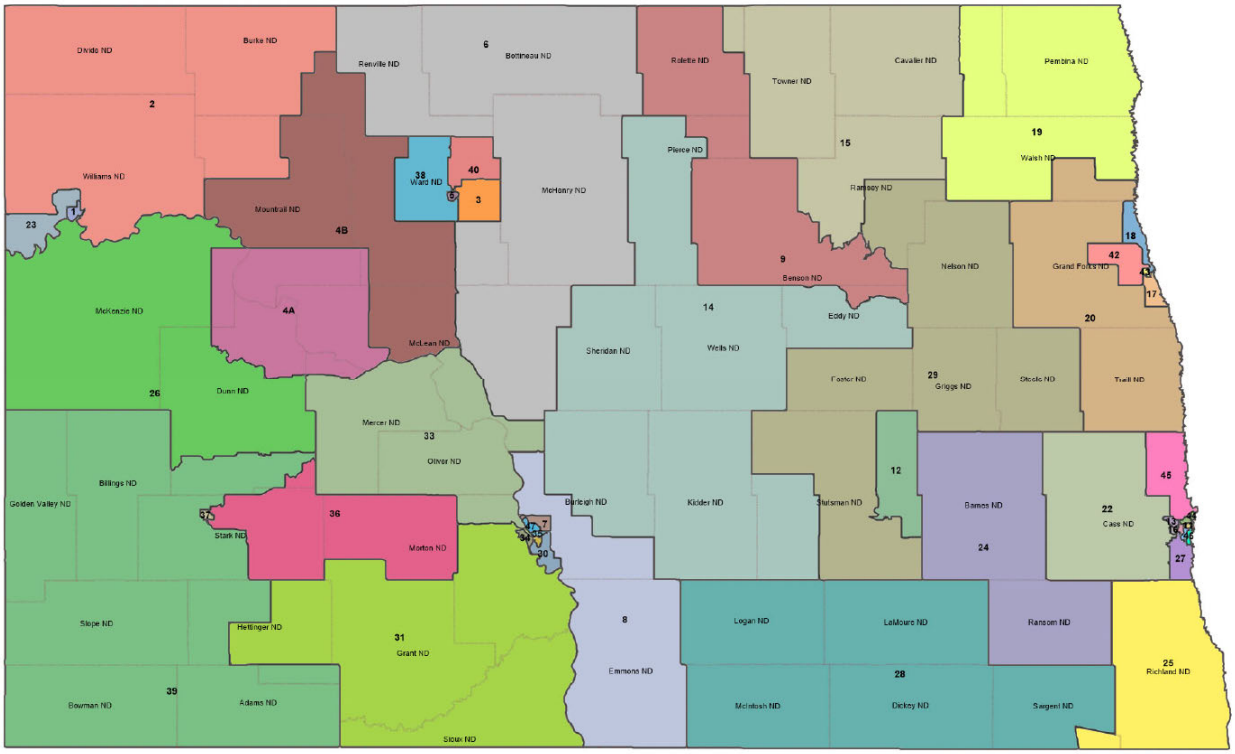
Distance Between Turtle Mountain and Spirit Lake Reservations



Second, enacted LD-9 spans a similar distance east to west as Plaintiffs' demonstrative LD-9 does north to south. Indeed, Rolette County is closer to Benson County (which Plaintiffs' demonstrative plan pairs with it) than it is to Cavalier County (which the enacted plan reaches to include in LD-9).

Moreover, as the statewide map of Plaintiffs' Demonstrative Plan 1 shows, a number of the enacted plan's districts are larger in geographic size than Plaintiffs' demonstrative LD-9:

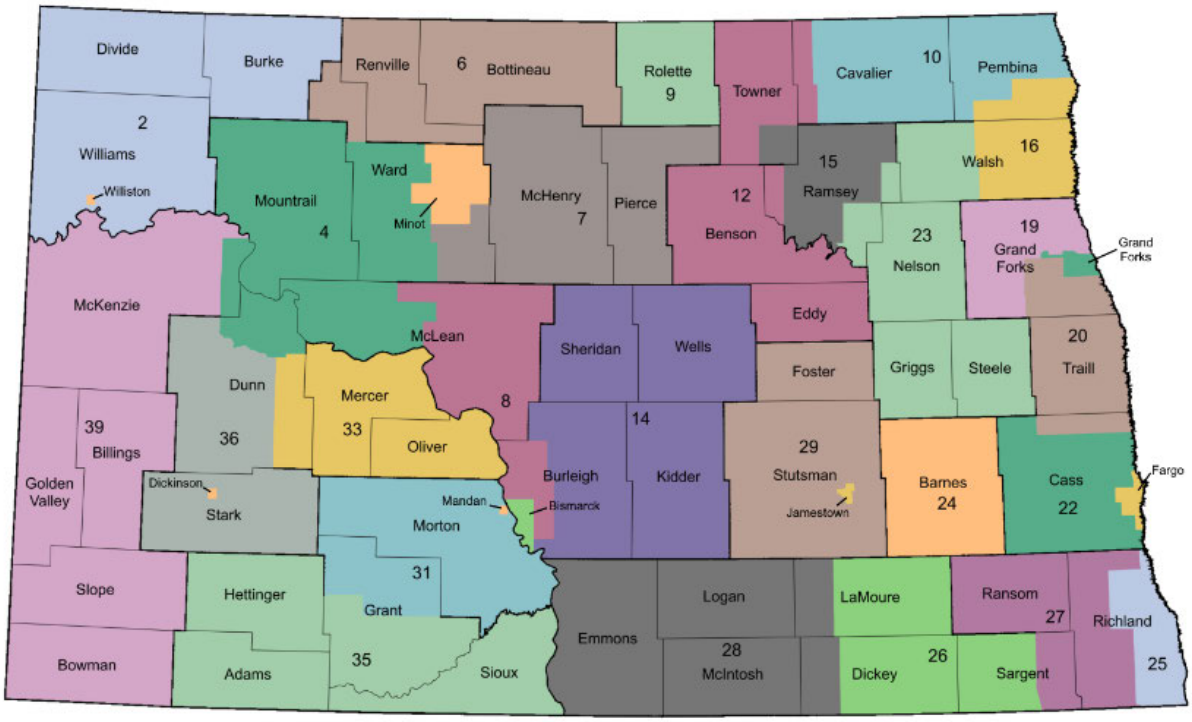
Plaintiffs' Demonstrative Plan 1



Finally, it is noteworthy that Plaintiffs' Demonstrative Plan 1 LD-9 is similar in its configuration to the 1993-2002 version of LD-12, shown below.[6] That district's northern section is essentially the mirror image of Plaintiffs' proposed district, and illustrates the legislature's prior approval and the history of the type of north-south district configuration in this region proposed by Plaintiffs in this case.

[6] N.D. Legislature, Historical Districts, https://www.ndlegis.gov/districts/1993-2002.

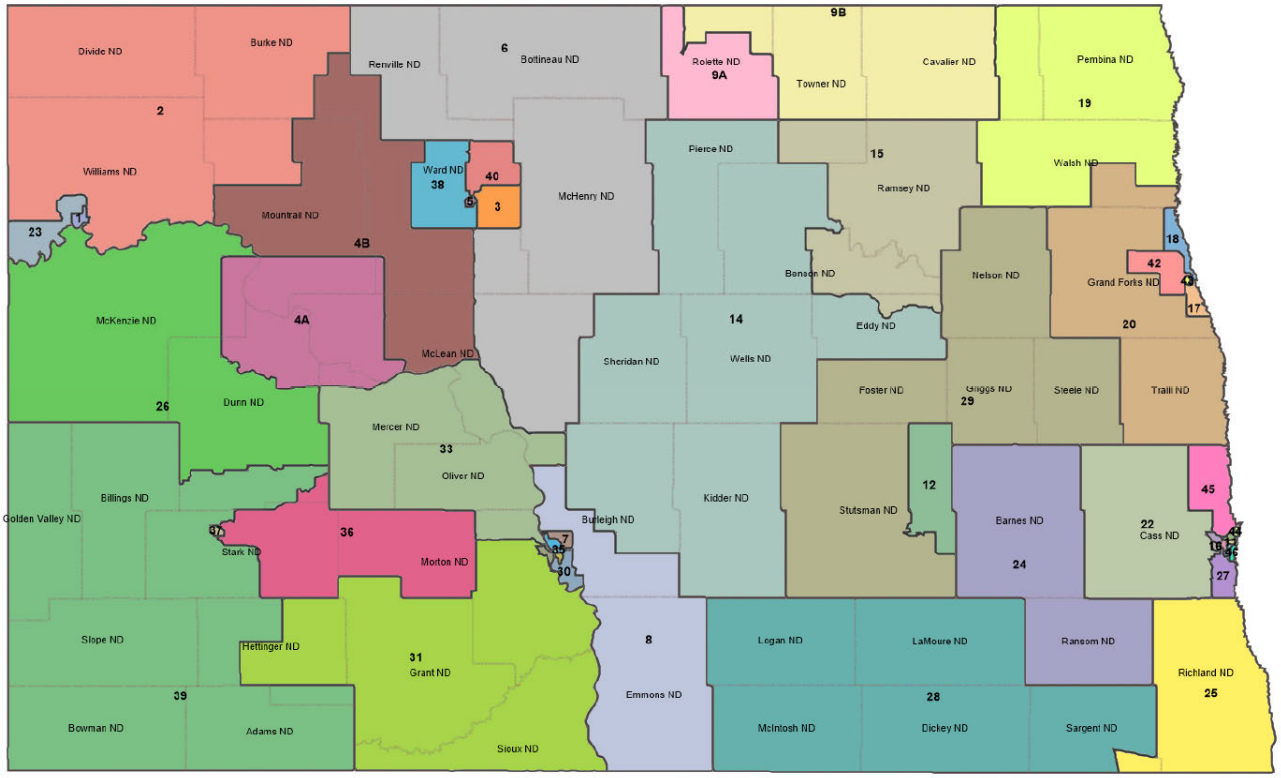
1993-2002 North Dakota Legislative Plan



C. Communities of Interest

Dr. Hood next discusses communities of interest, but narrowly addresses that concept to discuss only county splits. He reports that enacted LD-9 has just one county split. But that's not true. As the map below shows, the senate version of LD-9 splits two counties (Towner and Cavalier), while the state house version splits three counties (Rolette, Towner, and Cavalier). The enacted legislative map shown below is included as Appendix E.

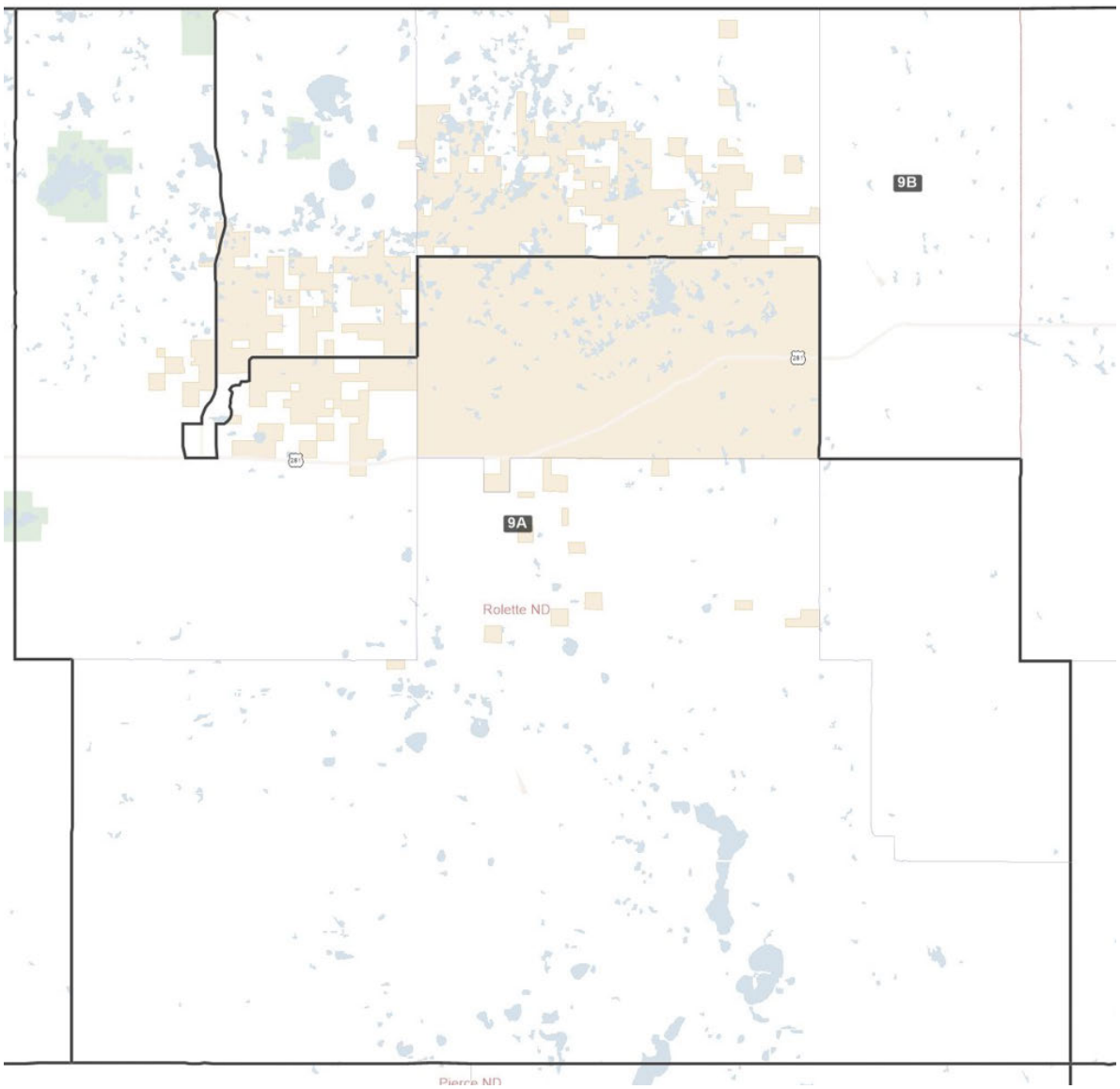
2021 Enacted North Dakota Legislative Plan



Dr. Hood correctly notes that Plaintiffs' Demonstrative Plan 1 contains 1 whole county (Benson) and three partial counties (Rolette, Pierce, and Eddy). But he fails to note that this is the exact same number of whole and partial counties as enacted LD-15, which Plaintiffs also challenge (Ramsey County whole, and parts of Benson, Eddy, and Towner Counties). Moreover, he fails to note that Plaintiffs' demonstrative LD-9 only splits Eddy County to adhere to the border of the Spirit Lake reservation—one of the legislature's stated redistricting criteria—and the same exact Eddy County split that enacted LD-15 makes.

Dr. Hood's narrow focus on county splits for communities of interest ignores other communities of interest. For example, the legislature recognizes the importance of tribal boundaries as political and governmental units. Enacted LD-9 splits the Turtle Mountain reservation from much of its off-reservation trust lands—which Plaintiffs' demonstrative Plan LD-9 does not do—as shown below.

Enacted LD-9 Split of Turtle Mountain Reservation and Trust Lands

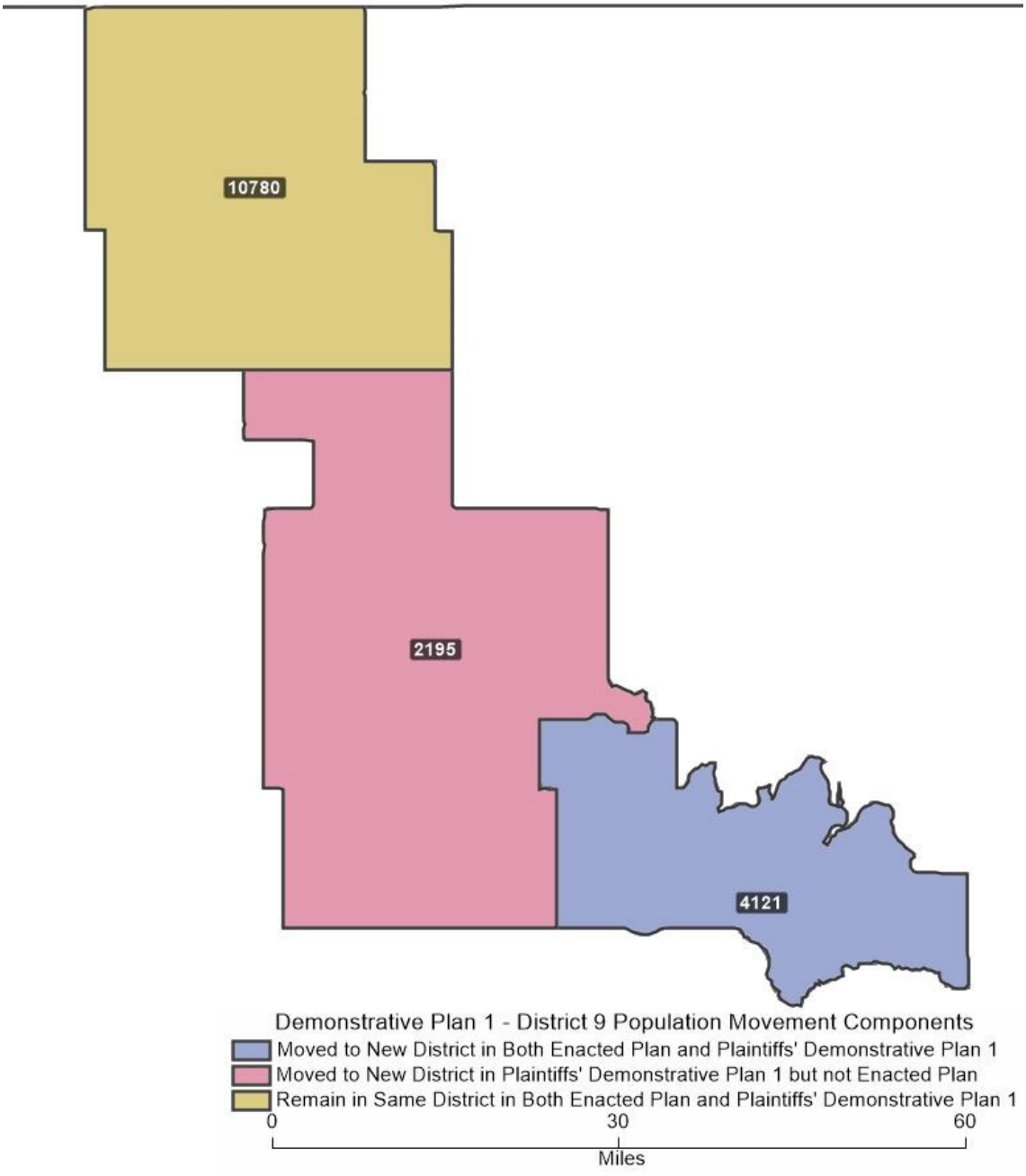


D. Core Retention

Dr. Hood notes that in enacted LD-9, 75% of its population comes from the prior decade's version of LD-9, while in Plaintiffs' Demonstrative Plan 1 LD-9, that figure is 63%. But 63% core retention is not particularly low. Indeed, that would place its core retention higher than 8 other districts in the enacted plan. Moreover, this is an overly simplistic calculation. The more salient question is how much additional disturbance to actual voters would Plaintiffs' demonstrative plan cause compared to the enacted plan. The map below shows the total population of three segments of Plaintiffs' Demonstrative Plan 1 LD-9: (1) 10,780 residents of Rolette County (shown in yellow) who were in LD-9 in the 2011-2020 plan and remain in LD-9 in Plaintiffs' demonstrative plan, (2) 2,195 Pierce and Benson County residents shown in pink who remained in their same district (LD-14) in both the enacted and the 2011-2020 plan, and (3) 4,121 Benson and Eddy County residents who were

moved to a new district in the state's enacted plan (LD-23 to LD-15) and would be moved to a new district (LD-9) in Plaintiffs' demonstrative plan.

Population Movement and Stasis in Plaintiffs' Demonstrative Plan 1 LD-9



As this map illustrates, of the 17,096 people in Plaintiffs' Demonstrative Plan 1 LD-9, only 13% would be newly moved in the plan compared to the enacted plan's alterations. On the

other hand, 87% of the people in Plaintiffs' demonstrative LD-9 either remain in the same district or were themselves moved to a new district by the legislature's enacted plan.

Moreover, Dr. Hood notes that having a higher "core retention" figure is an indicator of incumbency protection, which he labels a traditional districting criteria. It is noteworthy, therefore, that the incumbent Native American state senator, Richard Marcellais, lost reelection.

Conclusion

In the most probative elections—the endogenous, the most recent, and those involving Native American candidates—there is a clear pattern of white bloc voting usually defeating Native American preferred candidates. When Dr. Hood's analysis is adjusted to focus on the correct districts—even without properly weighing according to probative value—there is a clear Gingles III pattern. Moreover, there is striking data supporting the exclusion or granting of little weight to the 2018 elections.

Dr. Hood's conclusion that LD-15 fails to satisfy Gingles 1 misapprehends to the purpose of Gingles I, which focuses on an alternative possible district. Plaintiffs' demonstration plans satisfy Gingles I.

Dr. Hood's analysis of traditional districting principles is flawed. A comparison of Plaintiffs' Demonstrative Plan I LD-9 to other districts in the enacted plan and to other districts the Supreme Court has approved as reasonably compact easily demonstrates that Plaintiffs' demonstrative plans satisfy traditional redistricting principles and the demonstrative LD-9 is reasonably compact.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Loren Collingwood, 2/16/2023

References

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M.V. Hood III, Peter A. Morrison, & Thomas M. Bryan, *From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analysis*, Social Science Quarterly, Vol. 99, No. 2 (2018).

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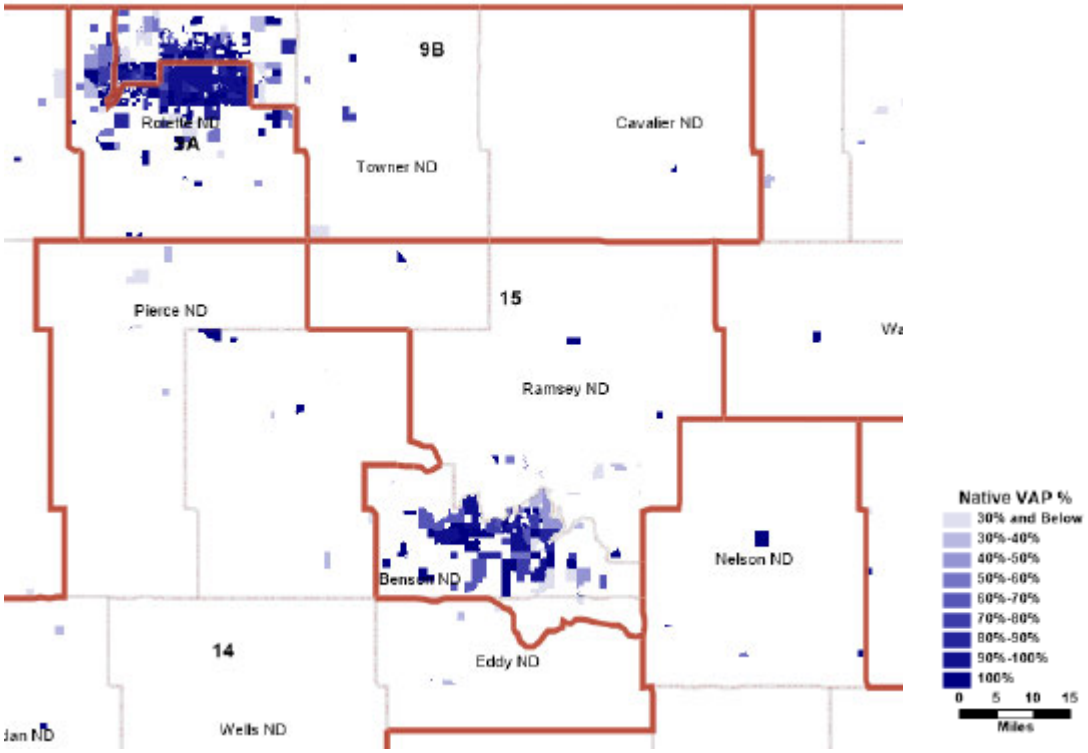
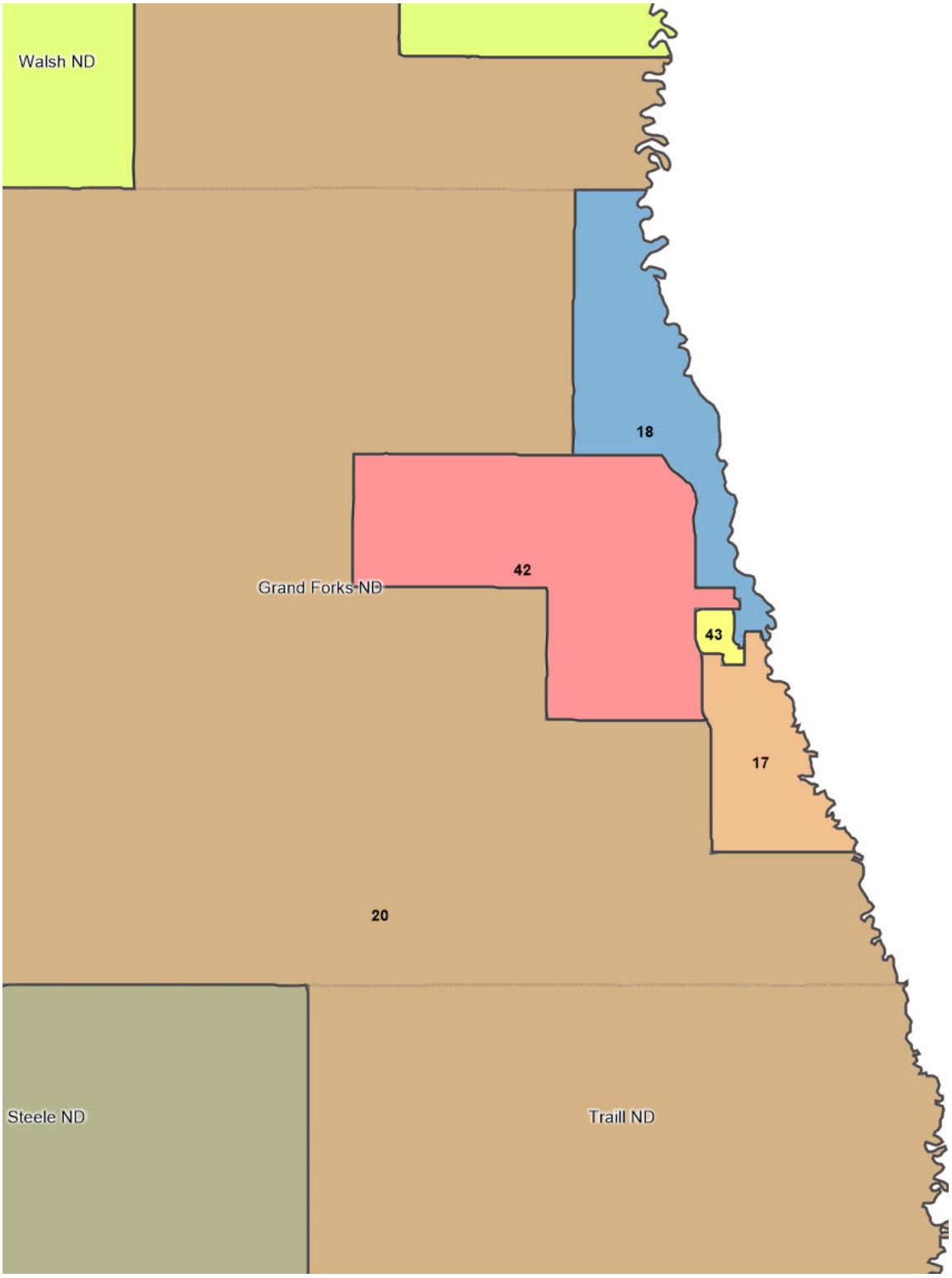
APPENDIX A

2021 Enacted Plan – Northeastern North Dakota
Native American VAP Shading



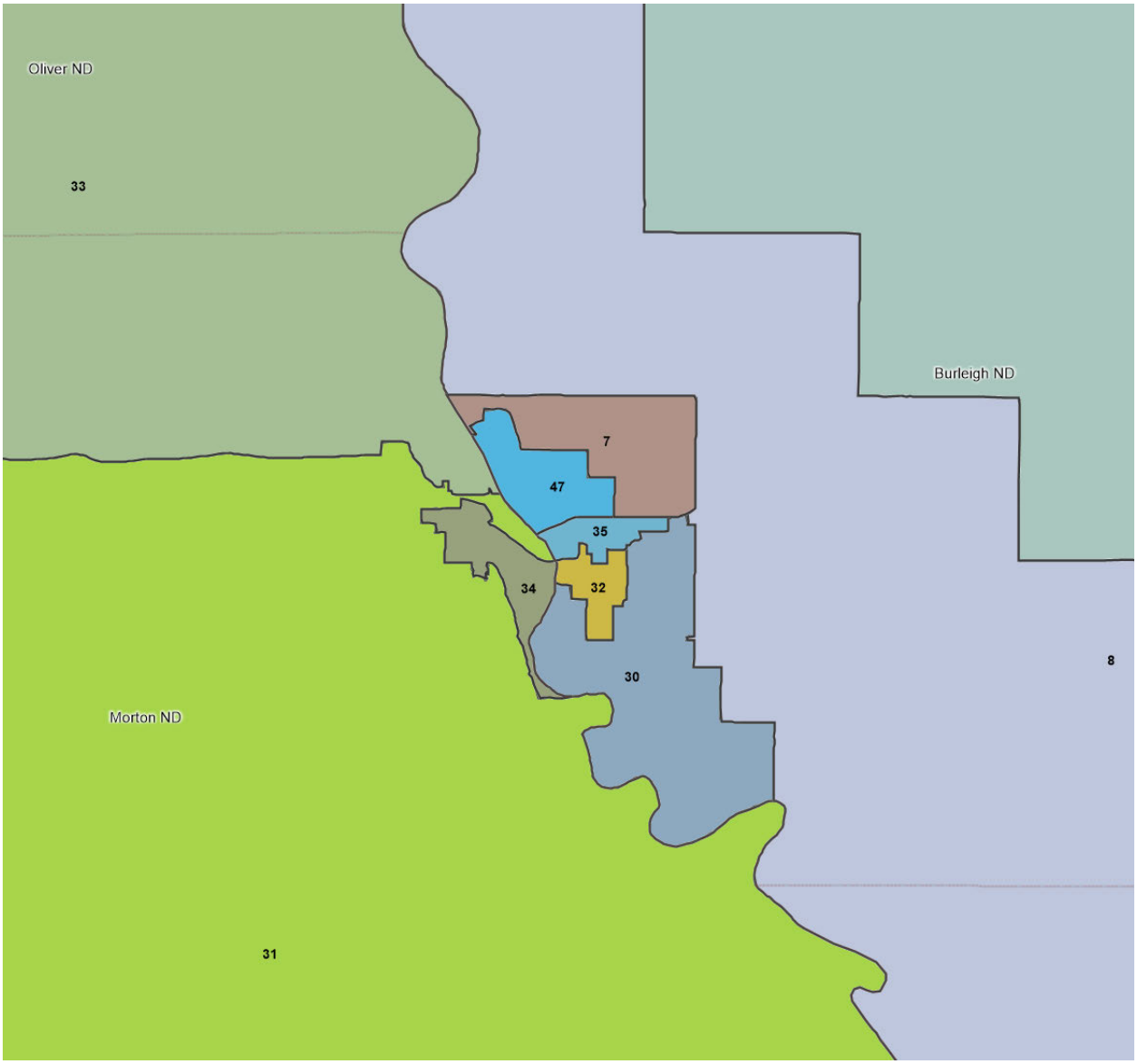
APPENDIX B

2021 ENACTED ND LEGISLATIVE PLAN
GRAND FORKS CLOSE-UP VIEW



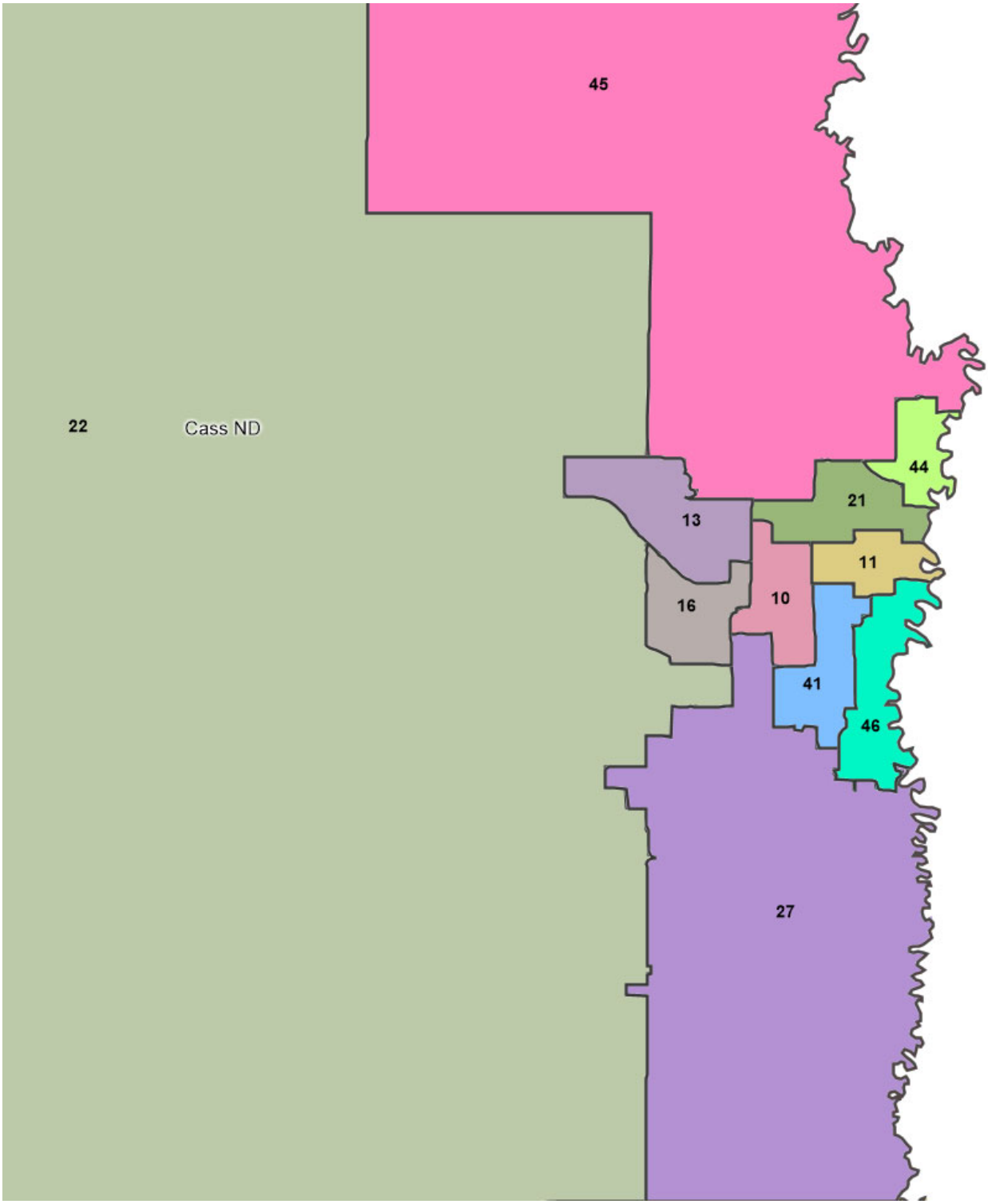
APPENDIX C

2021 ENACTED ND LEGISLATIVE PLAN
BISMARCK AREA CLOSE-UP VIEW



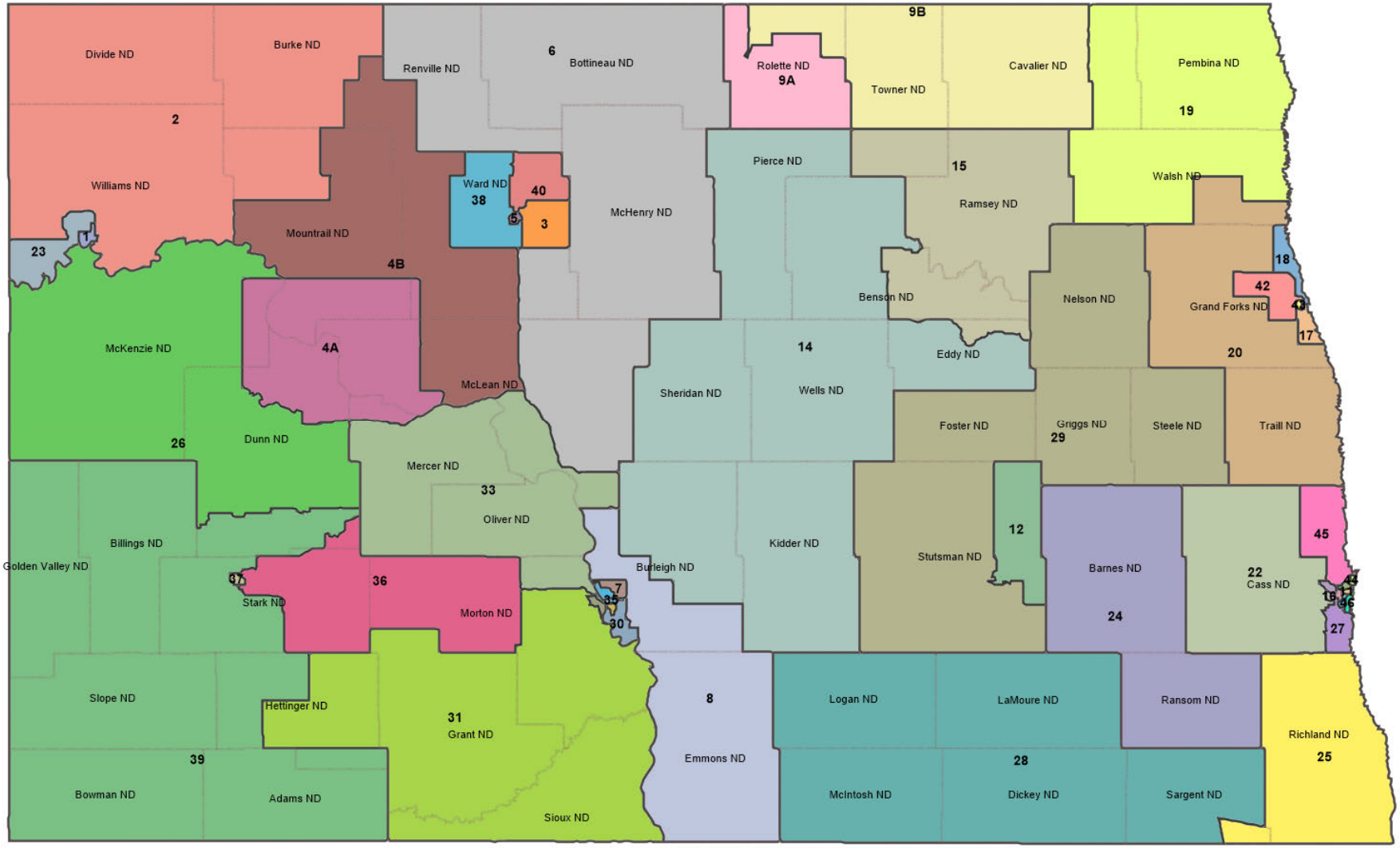
APPENDIX D

2021 ENACTED ND LEGISLATIVE PLAN
FARGO CLOSE-UP VIEW



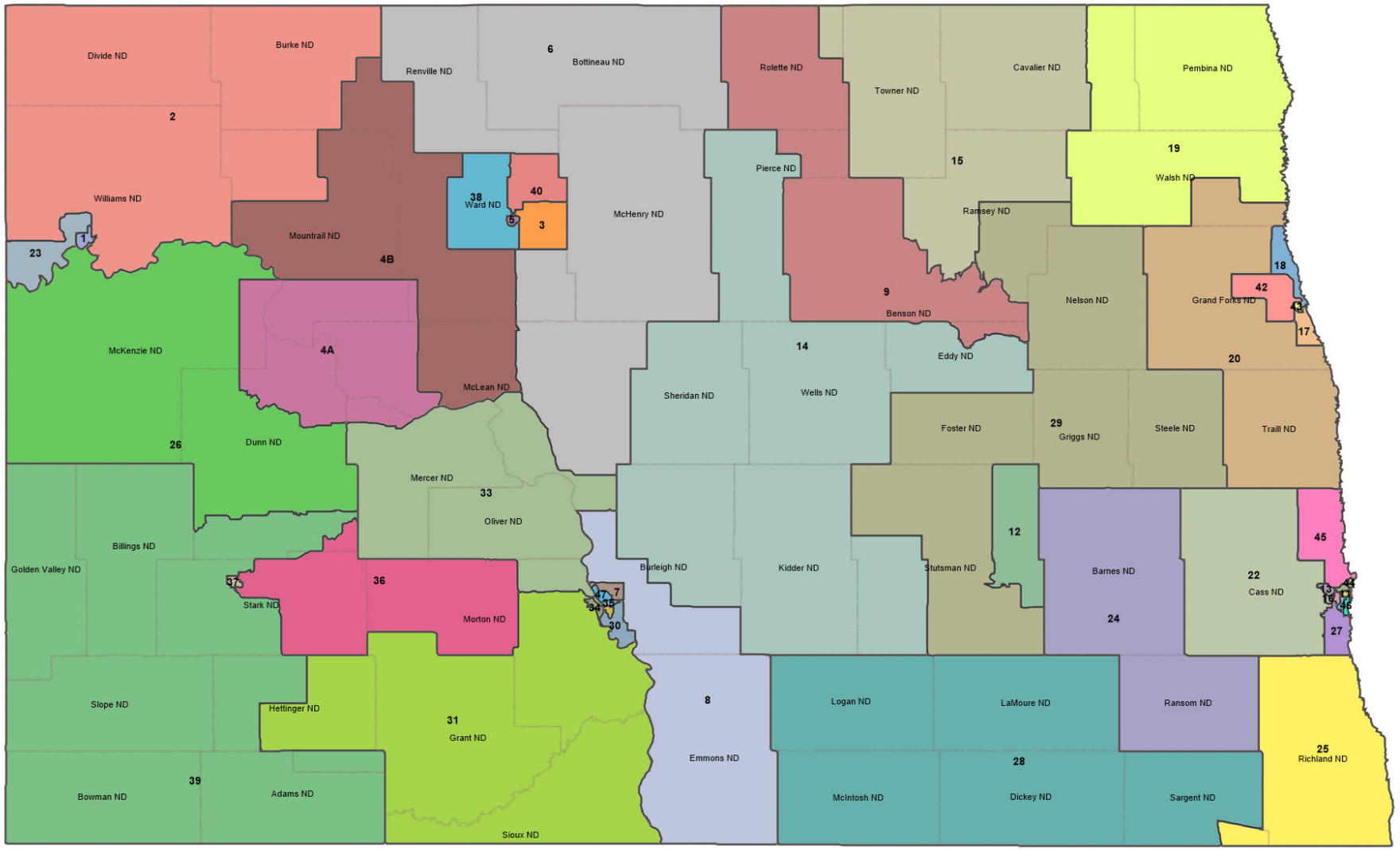
APPENDIX E

2021 ENACTED STATE LEGISLATIVE PLAN



APPENDIX F

PLAINTIFFS' DEMONSTRATIVE PLAN 1



APPENDIX G

2012-2020 LEGISLATIVE PLAN