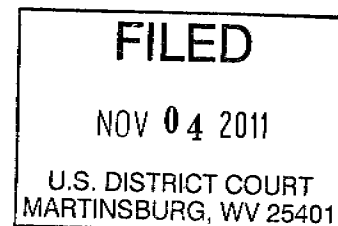


**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

**JEFFERSON COUNTY COMMISSION,
PATRICIA NOLAND, *as an individual and behalf
of all others similarly situated*, and DALE MANUEL,
*as an individual and behalf of all others similarly
situated*,**



Plaintiffs,

v.

Civil Action No. 3:11-CV- 96

**REQUEST FOR A
THREE JUDGE PANEL**

**NATALIE TENNANT, *in her capacity as
the Secretary of State*, EARL RAY TOMBLIN,
*in his capacity as the Chief Executive Officer of the
State of West Virginia*, JEFFREY KESSLER, *in his
capacity as the Acting President of the Senate of the West
Virginia Legislature*, and RICHARD THOMPSON, *in his
Capacity as the Speaker of the House of Delegates of the
West Virginia Legislature*,**

Defendants.

COMPLAINT

The Plaintiffs, by and through their undersigned counsel, state as follows:

PARTIES

1. The first named Plaintiff is the County Commission of Jefferson County, West Virginia, organized under the laws of the State of West Virginia, with its principal place of business at 124 East Washington Street, Charles Town, West Virginia, 25414.

2. The Plaintiff Patricia Noland is a citizen and resident of Jefferson County, West Virginia.

3. The Plaintiff Dale Manuel is a citizen and resident of Jefferson County, West Virginia.

4. The Defendant Natalie Tennant is sued in her capacity as the Secretary of State of the State of West Virginia. *See* W.Va. Const. Art. VII, §1.

5. The Defendant Earl Ray Tomblin is sued in his capacity as the Chief Executive Officer of the State of West Virginia. *See* W.Va. Const. Art. VII, §5.

6. The Defendant Jeffrey Kessler is sued in his capacity as the Acting President of the Senate of the West Virginia Legislature. *See* W.Va. Code §6A-1-4.

7. The Defendant Richard Thompson is sued in his capacity as the Speaker of the House of Delegates of the West Virginia Legislature. *See* W.Va. Code §6A-1-4.

8. Defendants Tennant, Tomblin, Kessler, and Thompson, have duties under state law to ensure that the Constitution and laws of the State of West Virginia are faithfully executed, including the right under Art. I, §4 of the Constitution of West Virginia, to the election of representatives to the United States Congress from districts that “shall be formed of contiguous counties, and be compact and . . . contain as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the Constitution of the United States.”

JURISDICTION AND VENUE

9. Jurisdiction in this action is proper pursuant to 28 U.S.C §§1331, 1343(a)(3-4), 2201, and 2202.

10. Venue is proper in this Court under 28 U.S.C. §1391(b)(2) because the shift in population resulting in the violations complained of herein occurred in this district.

11. Plaintiffs request a three-judge district court pursuant to 28 U.S.C. §2284(a) which states “a district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts . . .”

ALLEGATIONS OF FACT

12. During its First Extraordinary Session, 2011, the West Virginia Legislature had the task of reapportioning congressional districts for the State’s delegation to the U.S. House of Representatives based on the results of the 2010 U.S. Census.

13. According to the 2010 Census, West Virginia has a total population of 1,852,994 and was given three seats in the U.S. House of Representatives in accordance with Article I, §2 and the Fourteenth Amendment of the United States Constitution.

14. The West Virginia State Senate created a Task Force of Redistricting to develop a new congressional plan for the state. (Exhibit A, Testimony of the Honorable John R. Unger).

15. The Constitution of West Virginia, Art. I, §4 requires

For the election of representatives to Congress, the State shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain as nearly as may be, an equal number of population to be determined according to the rule prescribed in the Constitution.

16. The Committee originated a bill, S.B. 1008, that provided for three congressional districts of equal proportion comprising contiguous counties and compact districts with populations as follows:

- a. First Congressional District – 617,665;
- b. Second Congressional District – 617,665; and,
- c. Third Congressional District – 617,664.

(Exhibit A).

17. In this plan, the population variance from the least to the most populated district was 0.0% (Relative Overall Range). (Exhibit A).

18. In August 2011, the Legislature convened in an extraordinary session to adopt plans for redistricting.

19. Four different amendments to S.B. 1008 were proposed and debated.

20. A floor amendment proposed by Senator Herb Snyder on the last day of the Extraordinary Session would have divided the congressional Districts as follows:

- a. First Congressional District – 618,555;
- b. Second Congressional District – 618,298; and,
- c. Third Congressional District – 616,141.

21. In this plan, the population variance from least to most populated district was 0.39 (Relative Overall Range), or 2,414 persons. (Exhibit A).

22. Ultimately, on August 5, 2011, the West Virginia State Senate voted to pass Senate Bill No. 1008, Reapportioning congressional districts with an amendment.

(Exhibit C, Senate Journal, Eightieth Legislature, First Extraordinary Session, 2011).

The amended bill moved Mason County from the current Second Congressional District into the current Third Congressional District.

23. As enacted, the final bill provided for three congressional districts as follows:

- a. First Congressional District – 615,991;
- b. Second Congressional District – 620,862; and,
- c. Third Congressional District – 616,141.

24. Under the newly enacted law, the counties of West Virginia are divided into the following congressional districts:

- a. First Congressional District - Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, and Wood.
- b. Second Congressional District – Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur, and Wirt.
- c. Third Congressional District – Boone, Cabell, Fayette, Greenbrier, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocohontas, Raleigh, Summers, Wayne, Webster, and Wyoming.

25. The Second Congressional District is the most populous of the State's three congressional districts.

26. Under the legislation as enacted, Jefferson County, where Plaintiffs reside, is in the Second Congressional District.

27. Where S.B. 1008, as originated, provided for a variance of 0.0% (Relative Overall Range) between the most populated and least populated district, the law as enacted creates a variance of 0.79% (Relative Overall Range) – a difference of 4,871 people.

28. The 0.79% variance was the second highest population variance of the four amendments proposed to the originated bill.

29. The Senate Record contains no legitimate objective for why the plan with the higher variance was selected. (*See* Exhibit B, Remarks from the Floor; Exhibit C).

30. The vote for the bill in the Senate was 27 to 4.

31. The West Virginia House of Delegates never debated the amended S.B. 1008, but simply voted for it.

COUNT ONE

U.S. CONSTITUTION, FOURTEENTH AMENDMENT

32. The Plaintiffs re-allege the facts set forth in the preceding paragraphs as if fully set forth herein.

33. The congressional districts, as currently drawn, violate Article I, §2 of the United States Constitution, which guarantees fair and equal opportunity to cast a meaningful ballot for a state's delegation to the U.S. House of Representatives.

34. The congressional districts, as currently drawn, violate the Equal Protection Clause of the Fourteenth Amendment by depriving Plaintiffs and all other citizens in West Virginia's Second Congressional District by placing them in an over-populated congressional district and thus diluting their vote.

35. A redistricting plan in which some legislative districts have a significantly greater population than others discriminates against citizens in the larger districts by diluting those citizens' votes in violation of the Equal Protection Clause of the Fourteenth Amendment. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 558 (1964).

COUNT TWO

CONSTITUTION OF WEST VIRGINIA, ART. I, §4

36. The Plaintiffs re-allege the facts set forth in the preceding paragraphs as if fully set forth herein.

37. Article I, §4 of the Constitution of West Virginia requires that each congressional district be contiguous, compact, and “contain as nearly as may be, an equal number of population.”

38. As enacted, the current statute results in an unconstitutionally high variance between the highest and lowest populated congressional districts.

COUNT THREE

CONSTITUTION OF WEST VIRGINIA, ART. I, §4

39. The Plaintiffs re-allege the facts set forth in the preceding paragraphs as if fully set forth herein.

40. Article I, §4 of the Constitution of West Virginia requires that each congressional district “shall be formed of contiguous counties, and be compact.”

41. As enacted, the current statute creates a non-compact Congressional District 2 that runs the entire width of the State from Jefferson County, in the tip of the Eastern Panhandle to Jackson County, on the Ohio River.


PRAYER FOR RELIEF

Plaintiffs therefore respectfully request that this Court:

- A. Convene a three-judge panel pursuant to 28 U.S.C. §2284 so that a court with the authority to establish any necessary redistricting plan(s) is constituted in a timely manner;

- B. Enter a declaratory judgment that the existing congressional districts violate Plaintiffs' rights under federal law and are therefore null and void;
- C. Enter a declaratory judgment that the existing congressional districts violate Plaintiffs' rights under state law and are therefore null and void;
- D. Enjoin Defendants from using the existing congressional districts in any future primary or general election(s);
- E. Enter an Order adopting a plan offered in the West Virginia Legislature that is most compact and has the least variance in population;
- F. Enter an order granting Plaintiffs their reasonable attorney's fees and costs in this action, including all fees, costs, and expenses recoverable pursuant to 42 U.S.C. §1988(b); and,
- G. Provide such other relief as the Court may deem proper.

JEFFERSON COUNTY COMMISSION
PATRICIA NOLAND and
DALE MANUEL
By Counsel


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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Jefferson County Commission, et al.

(b) County of Residence of First Listed Plaintiff Jefferson

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Stephen G. Skinner, Esquire

Skinner Law Firm, P.O. Box 487, Charles Town, WV 25414

DEFENDANTS

Natalie Tennant, in her capacity as the Secretary of State, et al.

County of Residence of First Listed Defendant Kanawha

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

NOV 04 2011

U.S. DISTRICT COURT

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(For Diversity Cases Only)

Citizen of This State

PTF ☐ 1 DEF ☐ 1

Incorporated or Principal Place of Business In This State

PTF ☐ 4 DEF ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6**IV. NATURE OF SUIT**

(Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input checked="" type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 530 General			<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty			<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other			<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 2284 (a)

Brief description of cause:

Challenge of Congressional Redistricting in West Virginia

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Injunctive relief

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Appendix--Vote Explanation

Relating to composition of congressional districts

(Passage of Engrossed Senate Bill No. 1008)

VOTE EXPLANATION OF

HONORABLE

JOHN R. UNGER II

Friday, August 5, 2011

I voted against Senate Bill No. 1008 (hereinafter "SB 1008") because it fails to comply with the established legal principles governing congressional redistricting and apportionment as derived from the United States and the West Virginia State constitutions. Since 1962, in the seminal case of *Baker v. Carr*, the federal courts have had jurisdiction to consider constitutional challenges to redistricting plans (369 U. S. 186 (1962)). Subsequent federal cases interpreting the United States Constitution established the "one person, one vote" standard. (See e.g. *Gray v. Sanders*, 372 U. S. 368 (1963)). Accordingly, congressional districts must be redrawn so that "as nearly as is practicable one man's vote in a congressional election is . . . worth as much as another's". (See e.g. *Wesberry v. Sanders*, 376 U. S. 1 (1964)). The West Virginia Constitution further requires that congressional districts shall be formed of contiguous counties and be compact. (See W. Va. Const. Article I, Section 4). SB 1008 ignores the "one person, one vote" standard, provides no legislative findings for its deviation from strict equality and its districts are not compact districts. Therefore, I voted against SB 1008 because it is unconstitutional and for

EXHIBIT

A

reasons including, but not limited to, the following:

(1) Nearly 150 years ago, western Virginia felt that they were underrepresented in the political system of the State of Virginia. Although slaves could not vote, they were counted as three fifths of a person for purposes of apportioning representation. It resulted in slave regions having greater representation than nonslave regions. Since most of the people in western Virginia were opposed to slavery, this region was underrepresented and disenfranchised in governmental affairs. It was this lack of representation and the anti-slavery passion that triggered western Virginia to secede from Virginia. On June 20, 1863, West Virginia would officially become a state.

(2) According to the 2010 Census, West Virginia has a total population of 1,852,994. In accordance with Article I, Section 2 and the Fourteenth Amendment of the United States Constitution, West Virginia's congressional delegation to be elected in 2012 will consist of three members. Ideally, two congressional districts would encompass 617,665 persons and one congressional district population would encompass 617,664 persons.

(3) The Senate created a Task Force on Redistricting which I chaired. Public hearings were held at 12 locations throughout the state where interested individuals spoke.

(4) The redistricting process continued during the first extraordinary session of the Legislature in August, 2011, during which the Senate appointed a Select Committee on Redistricting to develop a new congressional plan. On Wednesday August 3, 2011, the committee moved to originate a congressional redistricting bill that complied with Article I, Section 2 and the Fourteenth Amendment of the United States Constitution and Article I, Section 4 of the West Virginia Constitution. At the committee meetings, members heard explanations of applicable law together with written comments by Kenneth C. Martis,

Professor of Geography, West Virginia University, respecting the current noncompact configuration of the West Virginia Second Congressional District. Albeit the West Virginia Constitution does not define compactness, it imposes upon the Legislature the obligation to consider it as a principal factor in apportioning congressional districts.

(5) Before amendments, the originating bill amended and reenacted West Virginia Code § 1-2-3 and provided for three congressional districts of equal population, comprising contiguous counties and compact districts. The First Congressional District had a population of 617,665, the Second Congressional District had a population of 617,665 and the Third Congressional District 617,664. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of one person. This calculates to a deviation of 0.0% (Relative Overall Range) from the ideal district population.

(6) On August 4, 2011, the committee had debate on the merits of four separate amendments to the originating congressional plan. All proposed amendments to the originating plan had substantial deviation from the ideal district population and were generally less compact.

(7) The first amendment (Senator Prezioso Congressional #1) provided for three congressional districts of unequal population and comparatively less compact districts. Under the plan, the First Congressional District had a population of 614,672, the Second Congressional District had a population of 622,181 and the Third Congressional District 616,141. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of 7,509 persons (Absolute Overall Range). This calculates to a deviation of 1.22% (Relative Overall Range) from the

ideal district population. The amendment was not adopted.

(8) The second amendment (Senator Prezioso Congressional #2) provided for three congressional districts of unequal population and comparatively less compact districts. Under this plan, the First Congressional District had a population of 617,980, the Second Congressional District had a population of 618,873 and the Third Congressional District 616,141. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of 2,732 persons (Absolute Overall Range). This calculates to a deviation of 0.44% (Relative Overall Range) from the ideal district population. The amendment was not adopted.

(9) The third amendment (Senator D. Facemire Congressional #1) provided for three congressional districts of unequal population and comparatively less compact districts. Under this plan, the First Congressional District had a population of 618,100, the Second Congressional District had a population of 618,753 and the Third Congressional District 616,141. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of 2,612 persons (Absolute Overall Range). This calculates to a deviation of 0.42% (Relative Overall Range) from the ideal district population. The amendment was not adopted.

(10) The fourth amendment (Senator Barnes Congressional #1) provided for three congressional districts of unequal population and comparatively less compact districts. The First Congressional District had a population of 615,991, the Second Congressional District had a population of 620,862 and the Third Congressional District 616,141. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of 4,871 persons (Absolute Overall Range).

This calculates to a deviation of 0.79% (Relative Overall Range) from the ideal district population. This is the second highest deviation of all the plans considered by the Senate.

The amendment was adopted.

(11) Pursuant to the fourth amendment as adopted (Senator Barnes Congressional #1), all of the counties comprising the three current congressional districts remain the same except that Mason County flops from the current Second Congressional District into the new Third Congressional District. Under the amendment, the new Second Congressional District is elongated (as opposed to compact as required by the West Virginia Constitution).

Further, the quantitative measures of compactness indicate that the new Second Congressional District scores low in compactness, especially in comparison to the originating plan that was both compact and provided for three congressional districts of equal population.

(12) According to the written report of Kenneth C. Martis submitted to the committee, “[t]he current configuration of the West Virginia 2nd Congressional District is not in compliance with the ‘compact’ requirement of the West Virginia Constitution, Article I Section 1-4. The plan to remove Mason County from the 2nd District does not alter its current non compliance status.” Further, the quantitative models of compactness show the low compactness calculations of the new Second Congressional District. (See the “Measures of Compactness” reports as submitted to the Select Committee on Redistricting and included in the committee records). The constitutional requirements of contiguous counties and compactness as enumerated in the West Virginia Constitution are measures to minimize political and racial gerrymandering.

(13) The committee reviewed historical maps as contained in the Kenneth C. Martis

report as well as the West Virginia Blue Books which demonstrate that the Second Congressional District historically has comprised eastern panhandle counties, mountain counties and some north central counties. It was not until the redistricting of 1991 that the Second Congressional District assumed an extreme elongated shape stretching from Jefferson County to the Ohio River. Pursuant to the fourth amendment as adopted (Senator Barnes Congressional #1), little is changed as the new Second Congressional District still stretches from Jefferson County across the width of the state to the Ohio River, making it one of the longest districts east of the Mississippi.

(14) In 1991 when West Virginia lost a congressional representative, the State Senate, led by the Senate President, gerrymandered the congressional districts by splitting the congressional district in the northeast region of the state among the three remaining congressional districts in order to give the other three incumbent congressmen the political advantage. At no time in the history of the state did the Eastern Panhandle region ever connect with the Kanawha Valley region in a congressional or other district. Other than being West Virginians, there are no other common interests or similarities between these two regions. The 1991 political gerrymandering has brought on the people of the Eastern Panhandle strong sentiments of underrepresentation and disenfranchisement. The continued malapportionment and the lack of compactness have kept this region from fully realizing the equal representation and equal protection enshrined in both the United States Constitution and West Virginia Constitution. Over the past two decades, this disproportionate representation was made even more disproportionate by continuing to overpopulate the second congressional district and maintaining disjointed regions in order to maintain political power and control in Charleston. It was evident from the debates and

discussions during this special session that it was the full intent of the Kanawha County delegation to keep the Eastern Panhandle region divided for political control. This was done by overpopulating even more the region (violating the United States Constitution's "one person, one vote" requirement) and preserving the chain of single contiguous counties (violating the West Virginia Constitution's compactness requirement) so its dominance in the second congressional district was maintained. This translates into the Eastern Panhandle region being underrepresented on various state boards, committees and commissions which are appointed according to congressional district.

(15) The principle evidence in support of the fourth amendment as adopted (Senator Barnes Congressional #1) was the general assertion that it kept intact the current districts thereby preserving the status of incumbent representatives to Congress. However, the burden is on the state to show with some specificity that a particular objective required the specific deviation in the plan, not just general assertions. Further, the showing required to justify the population deviations depends, in part, on the size of the deviation. (See *Karcher v. Daggett*, 462 U. S. 725 (1983)).

(16) On Friday, August 5, 2011, the committee reported an originating bill (SB 1008) comprising the county components of the fourth committee amendment as adopted (Senator Barnes Congressional #1). SB 1008 did not include any legislative findings regarding the plan's failure to achieve precise mathematical equality between and among the congressional districts or the Second Congressional District's lack of compactness. Meanwhile, this plan has a relative overall deviation of .79%, substantially greater than West Virginia's 1991 congressional plan's 0.09% variance reviewed by a federal court in *Stone v. Hechler* (782 F. Supp. 1116) or the 0.6984% variance of *Karcher*.

(17) During floor considerations on Friday, August 5, 2011, Senator Snyder offered a floor amendment to SB 1008. The floor amendment (Senator Snyder #1) provided for three congressional districts with populations substantially closer to mathematical equality and comprising more compact districts than SB 1008, while preserving the core of the current congressional districts. Under the Snyder #1 amendment plan, the First Congressional District had a population of 618,555, the Second Congressional District had a population of 618,298 and the Third Congressional District 616,141. Thus, between the district with the highest population and the district with the lowest population there was a maximum population deviation of 2,414 persons. This calculates to a deviation of 0.39% (Relative Overall Range) from the ideal congressional district population. The floor amendment was not adopted.

(18) On Friday, August 5, 2011, SB 1008 completed legislative action without further amendment to the congressional districts or the inclusion of any legislative findings articulating any substantive justification of the 0.79% population variance. Instead, proponents of SB 1008 expressed that they wanted to do the easy thing since they were tired and desirous of heading home or so that legislators and staff could attend an out-of-state conference beginning on Sunday, August 7, 2011.

(19) By comparison, most other states during the 2000 redistricting cycle, including West Virginia, had significantly less population deviation than SB 1008 (See attached NCSL "Redistricting 2000 Population Deviation Table"). From the information provided by NCSL and shared with all senators before the passage of SB 1008, already this year, other states have adopted plans with significantly less population deviation than West Virginia.

(20) While the trend in other states is heading to strict population equality, West

Virginia, during the last three redistricting cycles, has progressively increased from a deviation of 0.09% in 1991, to a population deviation of 0.22% in 2001 (the current congressional districts) and now to a population deviation of 0.79% in SB 1008.

In sum, other plans considered by the Senate Select Committee on Redistricting and the Legislature had lower population variances and were more compact. The population differences in SB 1008 were not the result of a good faith effort to achieve equality. The population differences could have been eliminated altogether or substantially reduced while at the same time meeting the state's constitutional requirement that districts be compact. However, the primary goal of the reapportionment of the congressional districts in SB 1008 was for the protection of the incumbents, with population and compactness (required constitutional components) being secondary considerations or not considered at all.

The Senate was aware of both the federal and state requirements and yet failed to adequately demonstrate that it kept the concepts of population equality and compactness as principal goals of its redistricting efforts. In fact, when Professor Robert Bastress, special counsel to the Senate Select Committee on Redistricting, was asked during the committee meeting whether the amendment offered by Senator Barnes was constitutional, counsel refused to opine an answer saying that he did not want his testimony used against him if this congressional plan was challenged in court. However, he did go on to say that unlike the relatively light burden imposed on the state to justify the 0.09% population difference in the 1991 court challenge (*Stone v. Hechler*), the burden on the state is correspondingly greater to justify the significant .79% deviation in SB 1008. SB 1008 has not met that burden. In fact, SB 1008 denies equal protection of the laws as guaranteed by

the United States Constitution to the citizens, taxpayers and qualified voters of West Virginia.

This injustice occurred in the 1991 redistricting with a Democratic legislature appeasing three of the four Democratic congressmen and a similar injustice continues in 2011. It is a geographical and regional issue where the principles of equal representation, equal protection and compactness were not upheld in SB 1008 in order to undermine a region of people. This congressional plan was not done in the best interest of the people, but instead it was done solely in the best interest of our elected congressional delegation (comprising one Democrat and two Republicans). I firmly believe that this injustice flies in the face of not only the principles our country was established on, but also the principle on which our state was founded nearly 150 years ago. Where the Legislature has failed to right this wrong, I hope the courts will address this injustice.

For these reasons, among others, I cannot support SB 1008 as it does not meet the requirements of the United States or West Virginia constitutions.

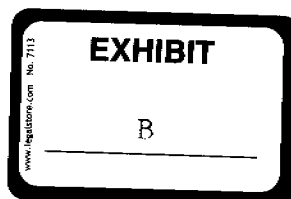
REMARKS OF
HONORABLE
HERB SNYDER

Thursday, August 4, 2011

SENATOR SNYDER: I think today is a good day now that the Redistricting committee has finished its work on the congressional bill. As most of you know, I've been quite interested in it for some period of time, actually a year, and I've put in a lot of effort. Hopefully, I've acted in a very professional manner through all of that.

But I want to make it clear to the body what my major intent there was. I talked with the Minority Leader and assured him and other minority members that my intent was never partisan, never partisan. I think I'm not a real partisan person. I learned that at home. My father was a Republican and my mother was a Democrat. I guess I never wanted to get into the middle of that, Mr. President. It's a pretty good nature. Maybe I ought to go to D. C. They need a little bit of that.

But I want to be perfectly clear that my motives were for the eastern part of the state, my home, not just Jefferson County, not just Berkeley County and Morgan County--I used to have all three counties--but the entire eastern part of the state. On the other side of the mountains, starting into the Shenandoah Valley, it's a



different, beautiful part of the state. We're quite blessed in many respects to have the growth that we have over there. It's a lot. I wish, I deeply wish, I could share that growth with every one of the counties that have lost growth.

I took no glee whatsoever in seeing the decisions, the painful decisions, that the members had to make here that lost population. I took no satisfaction at all in that. My Senate district grew by 36,000 people. That's a lot, Mr. President. That was 85 percent of the growth that West Virginia sustained over 10 years. Eighty-five percent was in my Senate district and it will continue.

I want to be perfectly clear that my interests and my involvement in this congressional redistricting was to do what I could for the economy of the eastern part of the state. Not just my district, but the entire eastern part of the state.

Now, although we've almost finished congressional redistricting for another ten years, my efforts will not cease, Mr. President.

I love West Virginia. I feel it's an incumbent responsibility for me to represent and do what I can and do what I feel is right for the eastern part of the state. What I attempted to do, I truly in my heart felt, was the right thing to do: To start patching back together what happened in 1991. It probably generated some hard feelings. That was tough, too. That was, maybe, one of the toughest redistricting issues in many, many decades when we were

losing a congressman. That's tough. It may not be personal for anyone in this body but it's still tough because you have to make those decisions to decide which congressman is going to go--who's going to get to file in the district.

I hope that through all this I have acted professionally and put forth what many of you thought was a really good map but just couldn't support it--and that's fine. The Senator from Randolph--he said it in the committee today--he commended me for the work that I had done. I appreciate that, Senator, very much.

But, again, it's another day. We've got a lot of work to do and I'll continue to advocate. I just wanted to go on the record today that, Mr. President, that it's an honor to serve in this body and an honor to be a senator from the great eastern part of the great State of West Virginia.

Thank you, Mr. President.

Reapportioning congressional districts

(Adoption of Senator Snyder's amendment

to Senate Bill No. 1008)

REMARKS OF

HONORABLE

HERB SNYDER

Friday, August 5, 2011

SENATOR SNYDER: What you have before you and I believe you all have been furnished, we're dragging here today at 5:30 so everyone has had all afternoon to take a look at this. I believe you're familiar with it.

What passed out of the Senate Redistricting committee was what's commonly referred to as the "Mason County Only Plan". I won't disparage it by calling it the "Flop Plan" just switching Mason County into the current district so that we keep the current district.

In addition, as you all know, I presented a plan that had a variance that totally reconfigured and changed cores of congressional districts. I listened to all of that debate in committee. And I appreciate the work of the committee but they did not accept it. Fine.

But what this amendment does is move three counties in the

Eastern Panhandle and puts them in to make the panhandle whole. That was my goal--to make the Eastern Panhandle whole. And in doing that, by moving roughly 47,000 or 48,000 people, they had to then go over and take some people off the other end of the district. My intention was to fill in the panhandle and to make the panhandle whole for regional issues and regional representation. Where would I pick up population to put in the First when you take Mineral County, Grant County and Tucker County and put it in to make the panhandle whole?

You all have the map on your desk. I had to go clear down to the end of the district. Some call it the "tapeworm" of cobbled together counties that end up down at Kanawha with the counties above it. You couldn't stop anywhere else because they're single counties end to end. I had no other choice if I was going to make the panhandle whole but to take it from the other end of the district. The district, by the way, that still, probably, is one of the longest congressional districts this side of the Mississippi River. One has to ask: Is that necessary?

What this amendment does is to take, to put back in the Second, enough citizens of West Virginia in those counties to be within the variance. We've lowered the variance and I've moved Jackson County, Roane County and Wirt County into the First District to make up for the loss.

Lo and behold, in an attempt to do that to see if there was

some other way to do it after listening in the committee today, the numbers came out with a lower deviation than any amendment in the Senate Redistricting committee.

It has a lower variance than the .79 plan that is the bill before us, the "Mason County Switch Only Plan". Mine is versus .79. This has a .39 percent variance--that is half. We have the opportunity here to vote for a lower variance that is half the variance of the .79. That's important, Mr. President.

The federal courts have said that's important. This is done with modern computer technology these days. We're not doing this by hand any more or hand calculated; it has to be calculated. This is all done by sophisticated redistricting software. The amendment before you is .39 versus .79. One should consider that.

But what have you done geographically? Have you changed the cores of the district that was heavily debated yesterday? No. The cores of the districts remain the same. Have you moved one of the sitting congressmen into another district? No. All of those things were important yesterday and I can appreciate those things.

Is it more compact? We talked about compactness. I would say that it certainly makes the Eastern Panhandle compact. The current district that is before you, without this amendment, the Eastern Panhandle is split. The Eastern Panhandle, the neck of the horse head in the Eastern Panhandle is split in half between two congressional districts--the First and the Second running up the

length of the panhandle.

Well, certainly, my plan, the amendment before you, makes the Eastern Panhandle compact. It makes it whole. That was my goal-- to and behold at a lower variance. What's it do for the First to come down the Mason-Dixon line, the north-south line, a nice square line in the State of West Virginia comes down into the Eastern Panhandle and branches off.

Suddenly, you don't have that hook that was arbitrarily created by the legislative body in 1991. It's a nice hook but it's not necessary. And I would say it disenfranchises the citizens of Mineral and Grant counties to separate them from Hampshire and Hardy. So it does that. It makes that geographic configuration of the First District better and, certainly, more compact without that hook. If we have the opportunity to eliminate a hook like that in congressional districts we should.

Our state, Mr. President, has two unique features that everyone sees on refrigerator magnets and our state maps and every place. It's unique. The Northern Panhandle and the Eastern Panhandle make our state a unique shape. That's how we were created. That's who we are.

Now, it was the committee's desire to put out the map that is the bill before us now. I'm asking to make some positive changes that do not change the congressional cores, do not make any of the congressmen run against each other. But it still fills in the

Eastern Panhandle by moving those three counties into the Second and three counties into the First and out of the Second. And, that is, lo and behold, a .39 versus .79 percent variance--range of variance. This is range of variance by percentage. The highest positive number added with the lowest positive number .39. That's pretty low.

This map also keeps counties whole. Now that's not a mandate by our Constitution, although compactness is. Article I, Section 4 of our West Virginia Constitution says that they shall be contiguous, the counties shall be contiguous, and be compact.

The federal standard for compactness is just one of the factors. And, I will tell you that a controlling factor here in the State of West Virginia is compactness. It is one of the primary standards.

Federal law has driven us on variation. That's well settled and becoming more precise every day. And 15 states now have it in their state election laws. It has to be zero or as close to as possible. Some states have a deviation of one person. But we're moving toward that.

And, I agree with the committee. They did not want to split counties and that clearly is the objective of this Senate in working with that. And I agree with that and I have done that. It is a very long-standing tradition of not splitting counties. So you know when you are in a county who your congressman is. I have

upheld that. Someday, we may have to go to a zero standard but not this year.

You have before you, in my amendment, the opportunity to take the Eastern Panhandle and make it whole. That is my objective. This map has a lower range of variation and I will tell you it not only makes the Second District more compact but it also makes the First District more compact.

Thank you, Mr. President. And, I ask for the opportunity to close.

SENATOR SNYDER: Mr. President, thank you. For the record, I deny that this is partisan. I have given you, and they are clear on their face when you look at this map, this is putting the Eastern Panhandle back together. It does, to my understanding, very slightly, less than one percent, change the historic vote. That was not my goal and, quite frankly, I wish it didn't. Because that's not my goal here.

Some of the other senators, the Senior from the Seventeenth, mentioned he admires my passion for the Eastern Panhandle. Thank you, Senator. But my passion is surpassed by that today. My passion to get this right. Let's get this right. You have a lower deviation with a perfection amendment to the bill that's before us. This is a perfection amendment. Each in his own mind has to ask why we would like that or not like that. But the controlling

factor is we're getting closer to zero variation. I was actually surprised when I generated this map last night that it was that close. I thought it would be so far off you would have never seen this map today because I worked on Snyder 1 and Snyder 1B. I was very open. I sent congressional maps to all the Redistricting committee members. Snyder 1, you might remember, where Randolph County went into the Third District and not Mason. And when a few people got it, they said try that switch of Mason County. I did. And, lo and behold, the variance was lower. So I immediately changed the map because it is a better map. So, then I concentrated on getting support for what I thought was a superior map. The Redistricting committee, Mr. President, rejected that idea. I can appreciate that. The reason this district is still cobbled together end-to-end counties, close to 400 miles long--I think we shortened it a little; it won't seem like much less of a drive if you are driving from the Eastern Panhandle--but at the same time it is a perfection amendment. And certainly, I believe, everyone saw Map 1B because I sent out letters that were delivered to your offices, to every single member of the Legislature, and the Governor's Office. Here is Snyder 1B. It had the counties all attached, the data, the variance all calculated. While we're thinking about what we're doing, I wanted to get it out there. I hadn't seen any other proposals. In fact, I had never seen even the printed map for the one that is the bill before us from the

committee until I went to the Redistricting committee meeting. In fact, I took one for comparison. I hadn't seen anyone create that yet.

So, the comment that suddenly here you're having this land on your desk and you've got to consider it does not hold. I want to point out that in the Redistricting committee, that meeting lasted approximately an hour. I'm not on that committee for the record. I appeared before it and spoke in support of my plan that I brought forward. There were four amendments. Four amendments and the originating bill. No one had seen the originating bill. I don't know that anyone other than a few members that did the maps saw any of those four other than mine. The whole committee had gotten it a good week before and then every member of the Legislature got it that day, of course, and I mailed that letter with 1B so everyone would know what they were voting on. The map that was adopted won out. There were several amendments offered by the Senator from Marion. All in one hour.

The order that the Chairman took them in was to vote on two offered by the Senator from Marion, then one from Snyder, Snyder 1B--these are all amendments--then the final Mason County only amendment. That's what's before you today in the bill. One hour. For the record we've had this floor amendment; you've seen this. It was filed earlier this morning. You've had seven hours. Seven hours! Versus one hour to look at four plans. No, five plans!

I'm sorry, five plans. You've got to include the originating bill. So, the argument that we don't have time to look at this does not hold.

I think what's probably controlling this debate, and I'll use the comments of why not adopt this amendment. It's important. When you've got the Karcher case at 0.64 percent that the federal court said: Not close enough. And they rejected the state's plan. Perfection is important. Deviations are important. I am a chemist. I understand it; it's important. And that's what we are doing here today. You have a .79 percent deviation in the bill. The amendment is .39. We've talked about the map that was adopted in 1991 that is embodied in this long district with the congressional cores and so forth. It preserves the last 20 years of history and everyone's seat. I certainly am not proposing that configuration; that's what the committee came out with. There seemed to be an overwhelming will to keep that configuration in one form or another. I'm simply trying to perfect it. Some would say it's inconvenient to move one county. We talked to them. Well, we don't have any choice; it's got to be one county. But that's not the standard. The standard is perfection, to get this as low as we can. Is it inconvenient to move seven counties and cut the deviation in half and still maintain the cores of communities of interest to get that variation lower? I think deviation matters. I think it very much matters.

But, in addition, the Minority Leader stated, and I realize as he said, "It's late in the game." "We've been here for five days; everyone wants to go home. Hopefully, tonight." You don't have to go home tonight. We could come back on the 15th; we could come back in September if we wanted to do this. So, is the controlling factor that it's late in the game, the last hour? If we pass this, the Minority Leader said, "we'll be here for a while", quote, unquote.

I don't think that's a controlling factor. I think perfection is the controlling factor. Again, in 1991 (often compared in committee and compared here) the deviation on that '91 map was 0.09. It was litigated right away in court and the courts upheld it with that low deviation. But, again, the choice is clear on its face, what we're doing. My intent was to put the Eastern Panhandle back together, work within the bill, the map that we have that came from committee, and that's what I have attempted to do. But my goal was perfection.

I ask for your support of the amendment, Mr. President.

Thank you.

Reapportioning congressional districts

(Adoption of Senator Snyder's amendment

to Senate Bill No. 1008)

REMARKS OF

HONORABLE

MIKE HALL

Friday, August 5, 2011

SENATOR HALL: Mr. President, just briefly, two or three responding comments. First of all, I absolutely commend the Senator from Jefferson for all of his passion and work on this particular issue.

I also wanted to speak positively about the process that we have proceeded with in the Senate when it came to our particular redistricting issues. You held task force meetings around the state. I happened to be on that task force and was not able to attend all of those meetings but did get to attend some of them.

One of them, Mr. President, was up in your area. As we went in to listen to the conversation about redistricting, we heard a whole lot about this congressional race. And, as I have had pointed out to me, in that particular meeting there were numerous people there who said we want to do this Mason County flip.

The public was aware of the issue at hand. And, I even made

the comment, I've been reminded that, as a representative of Mason County, that simply moving them to fix the problem without consulting with them may be offensive to them. And I have checked with the leadership over there and, you know, they're really not that happy about losing their current congresswoman but at the same time they understand what's going on. I haven't had a lot of push back.

As a matter of fact, most of my e-mails have been for that particular change. Notwithstanding some of the points that have been made by the Senator from Jefferson, this plan that we have before us did come out by a unanimous voice vote, I believe, out of the committee. There is a difference in variance which we could fix by an amendment--there are two amendments but they would divide counties--but we could fix the variance issue like the perfect plan did. We could do that.

But it does have a higher variance. I listened to Professor Bastress' explanation the other day that one percent threshold is the point of danger. The court battles in the past, the one that was brought to the court in Pennsylvania, I believe because of a .6, was really over a municipal issue. It would be nice to have this plan before the committee, to have him comment, but we're not at that point. We're here today. But I don't think this plan would be successfully challenged.

I would just like to further expand on the fact of the

openness of this process. At the Wheeling hearing and other places, a lot of the public out there believed that we had settled this question. I don't compute anybody's motives, its just the nature of our process from our perspective, but from the public's perspective, you know, this comes up. It's been known about for four or five hours. I understand there's probably been a lot of discussion among the members today as to whether to vote for it or not. So it's kind of late to the game. And I would not want it to seem that suddenly something happened at the last hour. I believe the public had settled, at least the public talking to me on where we were. And that's one of the main reasons I do believe that the plan that's before us, unamended, would withstand the court challenge. There may be, as obviously has been pointed out in the numbers, a difference in variance which could be fixed.

But I would encourage the members to stay where we are. We've heard from the public on this. If we pass this amendment, we're probably going to be here a few days more to get it through the process. I don't know where it would be in the House. We'll probably have to be another 24 hours here to get input to the senators on this plan. But generally I would say that the citizenry that has communicated to me who are affected in these districts are satisfied with what we have done already.

I think we should just proceed forward, defeat this amendment and send it over to our fellow legislators in the House. The

version that we have up there, the product of an open process, the product of the committee work and two or three hours of hearings. And I commend the Majority Leader for his work on this. It's probably been the most open in the history of the state. And we have that product up there; and, I think we ought to stick with it. So, those would be my comments. And I would ask you to reject the Senator's amendment.

Reapportioning congressional districts
(Adoption of Senator Snyder's amendment
to Senate Bill No. 1008)

REMARKS OF

HONORABLE

BROOKS F. MCCABE, JR.

Friday, August 5, 2011

SENATOR MCCABE: Mr. President, I was not going to comment on this amendment, but there have been a number of discussions today about the key role that Kanawha County plays and how we should look at the redistricting. I want to assure the Senate that Senators from the Eighth and Seventeenth Districts have paid a lot of attention. I have really unqualified respect for the Senator from Jefferson. I absolutely understand his motivation, why he is proposing the amendment and I believe in my heart that he is doing good work--especially for the members of his district.

I would like to make a few comments so the Senate, as a whole, can have a better understanding of why we in the Eighth and Seventeenth Districts here in Kanawha County are hesitant to go with this amendment. Or, at least, I personally am. We're talking about moving 47,000 to 52,000 people from one district to another. The 52,000 people that are in Jackson and Roane, particularly, and

Wirt are important to Kanawha County. We, in my home county, need to look at that. We understand the importance of creating a unified Eastern Panhandle; we also understand the importance of a unified economy around which our district operates. And Jackson County, Putnam County and Roane County are key to how we, as an economy, operate. We are talking about moving Jackson and Roane counties as well as Wirt to the district to the north of us, to the First District and acquiring three other counties in the bottom of the Eastern Panhandle in the Second District. That has an effect on how we view the world, how our economy and how our counties interact immediately around us. I would like to just suggest that is one of the concerns that we have.

We are looking at the plan that was approved yesterday and is before us and here trying to be amended. The plan that was approved yesterday requires one county to be moved from one congressional district to another. This particular amendment requires seven counties to be moved from one district to another. We have heard that this is like a long string, this unbelievably long district. As best I can tell, the amendment before us in no way affects the length of the district. It still runs from Putnam County all the way up to Jefferson County. So, we still have a long district. In fact, the action that was taken yesterday by moving Mason County reduced the length of the district.

In summary, I have to thank the Acting Senate President for

allowing us several hours this afternoon to visit with some of our constituents to find out better how those of us in Kanawha County might look at this. It gave us a clear opportunity to examine the proposed amendment. We availed ourselves to talk to some people within the county. Without exception, it is being suggested to us that the amendment before us probably should not have our support even though we understand it is extremely important to the Senator from Jefferson. We understand his issues; we understand what he is trying to accomplish. We applaud him for his action and his diligence. But as we look at the big picture, the amendment does not work with moving seven counties between districts and having a significant population shift from our immediate economic area to another part of the state that is more distant and less interactive with us. We in Kanawha County, or more correctly, myself as a Senior Senator from the Seventeenth will not be able to support the amendment.

Thank you, Mr. President.

Reapportioning congressional districts
(Adoption of Senator Snyder's amendment
to Senate Bill No. 1008)

REMARKS OF

HONORABLE

KAREN L. FACEMYER

Friday, August 5, 2011

SENATOR K. FACEMYER: Thank you, Mr. President.

I rise in opposition to the amendment. And I do commend the gentleman from Jefferson for his passion for his district--no different than me standing here right now for the passion for my district--Jackson and Mason counties, Roane County. You know, when we first started this discussion and we were talking about flipping Mason County, I said, "No. I really don't want that." But when you got down to the brass tacks of it, it made the most sense. It was the easiest switch that we could have done, so I stepped back and said, "That's for the best of the state. That's for the best of what we are doing here." But then to come in this morning and have this thrown before us, it kind of took me back.

Jackson County and Roane County like their Congresswoman. Like the person it is. So, with some of the arguments I heard this morning, and even a couple that were made by the Senator from

Jefferson earlier, I just have to wonder: The past maps from 1991 when supposedly the district in the Eastern Panhandle was split apart somewhat, that was three Democratic congressman that got that done--to help them oust the Republican congressman from the Eastern Panhandle.

Well, that stood true through this past year and now we have two Republican congressman. So, I have to wonder how much partisanship is playing into it. You know, these Republicans were elected from something that the Democrats controlled. Democrats controlled the Senate when they did it back in '91--it wasn't Republicans--they gerrymandered and got people out.

Now, I hope most of you all know, maybe some of the new ones don't; but I have been one of the least partisan people on this floor most anytime in the last ten years, eleven years now. I have voted with the other side probably more than I have my side. So, I am not coming at this from a partisan viewpoint. And I'm hoping that you all wouldn't either, but it's kind of starting to flap in our face that it is.

How can you have the argument of compacting an area in the Eastern Panhandle together when it pretty much is--there's a couple counties that will make the switch--and tear up the western side of the state. And we talk about growth in the Eastern Panhandle and that's all well and good--and that's for the good of the state. But you're tearing apart another growth area of the state. Mason,

Jackson and Roane counties all grew this last census. Maybe not by as much as the Eastern Panhandle, but they grew. And they need to stay together. And they need to stay in with the delegation that is there now. Some of the conversations that went offside of this floor were: We need the population up here; we need to shift this so that the Eastern Panhandle has more voice in Charleston. We need to equal the votes and stuff coming out of Charleston.

And I know there has been a cry from many people along the way, because of boards and commissions that are appointed by the congressional districts. People in the second congressional district, from the Eastern Panhandle to the Ohio River, tend to come out of the Kanawha County area. Well, there's a simple solution. You know, if somebody wants to serve on a board or a commission, all they have to do is say they will and nine chances out of ten their representative--whether it be in the House of Delegates or the Senate--can speak to the Governor and make sure that gets done.

I know I go often and say I've got this person that's interested in this board or this commission. I know many of you do that too. So, we can handle that. One of the reasons that they come out of Kanawha County is this is the seat of our state government. Sometimes we don't like that when we hear that, you know, offices can't be built in Putnam County or other counties because of the court ruling. But it is because this is the seat of

our state government. So, therefore, a lot of the people on these boards and commissions come from this area because they will show up. And a lot of these boards and commissions--I don't know how many of you all sit on different boards and stuff--but it's really hard to get a quorum to show up for meetings. And, so, you get that by having people close by that will be there when the meetings are held. So, I don't think that is a valid argument.

But I do resent the fact that it seems like we have gone, even though it has not been said on this floor other than by myself--and leave it to me to try to show all the brass tacks here--but it is extremely partisan. And I would hope, because myself being a Republican, and I somewhat jokingly but sincerely mean it: You guys are making me even more Republican every day when I am trying to do what is right here--that we step back and look and do what is right here.

Jackson County, Roane County and, I would assume--I don't represent Wirt so I haven't had contact with them--but I would assume they like the district they're in.

But the other problem we have here, as we sit here, and whether it be the Senate map, or on the House side the House map and now this congressional map, we're trying to gerrymander it out to help certain senators or help certain Congress people or people wanting to run for Congress that have been down here lobbying all week. We're trying to help them out and the problem is not here.

The problem is you need to get your people out to vote. How can we sit back and allow 13 or 17 percent of the people determine who sits in these seats, who sits in the Governor's seat. That's the problem. But all we're doing is aggravating it and making people understand that they want nothing to do with us. People don't want to vote because of what we are doing right here. And that's carving up districts that don't want to be carved up.

With that, Mr. President, I would ask people to reject the amendment. Thank you.

West Virginia Legislature

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WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTIETH LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2011

FOURTH DAY

Charleston, W. Va., Thursday, August 4, 2011

The Senate met at 5 p.m.

(Senator Kessler, Acting President, in the Chair.)

Prayer was offered by the Reverend Dick Corbin, Director of Church Relations, Union Mission of West Virginia, Charleston, West Virginia.

Pending the reading of the Journal of Wednesday, August 3, 2011,

On motion of Senator Edgell, the Journal was approved and the further reading thereof dispensed with.

Senator Kessler (Acting President) presented a communication from the Board of Occupational Therapy, submitting its biennial report for fiscal years 2010 and 2011 as required by chapter thirty, article one, section twelve of the code of West Virginia.

Which communication and report were received and filed with the Clerk.

The Senate proceeded to the fifth order of business.

Senator Unger, from the Select Committee on Redistricting, submitted the following report, which was received:

Your Select Committee on Redistricting has had under consideration

Senate Bill No. 1008 (originating in the Select Committee on Redistricting)-- A Bill to amend and reenact §1-2-2b and §1-2-3 of the Code of West Virginia, 1931, as amended, all relating to the composition of congressional districts; providing for congressional districts; and requiring incidental precinct boundary changes.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

John R. Unger II,

Chair.

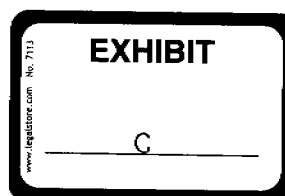
At the request of Senator Unger, unanimous consent being granted, the bill (S. B. No. 1008) contained in the preceding report from the Select Committee on Redistricting was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Snyder.

Thereafter, at the request of Senator Stollings, and by unanimous consent, the remarks by Senator Snyder were ordered printed in the Appendix to the Journal.

The Senate next proceeded to the thirteenth order of business.



At the respective requests of Senators Fanning, Tucker and Helmick, unanimous consent being granted, it was ordered that the Journal show had Senators Fanning, Tucker and Helmick been present in the chamber on yesterday, Wednesday, August 3, 2011, each would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill No. 1001, Engrossed Committee Substitute for Senate Bill No. 1002, Engrossed Senate Bill No. 1003, Engrossed Senate Bill No. 1004, Engrossed Senate Bill No. 1005 and Engrossed Senate Bill No. 1007.

Senator Unger then moved that the Senate adjourn until tomorrow, Friday, August 5, 2011, at 11 a.m.

The question being on the adoption of Senator Unger's aforesated motion, and on this question, Senator Unger demanded the yeas and nays.


The roll being taken, the yeas were: Barnes, Beach, Boley, Browning, Edgell, D. Facemire, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Miller, Minard, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills, Yost and Kessler--30.

The nays were: None.

Absent: Chafin, K. Facemyer, Wells and Tomblin (Mr. President)--4.

So, a majority of those present and voting having voted in the affirmative, the Acting President declared Senator Unger's motion had prevailed.

In accordance with the foregoing motion, the Senate adjourned until tomorrow, Friday, August 5, 2011, at 11 a.m.



West Virginia Legislature

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WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTIETH LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2011

FIFTH DAY

Charleston, W. Va., Friday, August 5, 2011

The Senate met at 11 a.m.

(Senator Kessler, Acting President, in the Chair.)

Prayer was offered by the Reverend Jerry Kliner, Cross of Grace Lutheran Church, Hurricane, West Virginia.

Pending the reading of the Journal of Thursday, August 4, 2011,

On motion of Senator Plymale, the Journal was approved and the further reading thereof dispensed with.

Senator Unger then moved that the Senate recess until 4 p.m. today.

The question being on the adoption of Senator Unger's aforesaid motion, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Barnes, Beach, Boley, Browning, Chafin, Edgell, D. Facemire, K. Facemyer, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Miller, Minard, Nohe, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills, Yost and Kessler (Acting President)—31.

The nays were: None.

Absent: Fanning, Wells and Tomblin (Mr. President)—3.

So, a majority of those present and voting having voted in the affirmative, the Acting President declared Senator Unger's motion had prevailed.

In accordance with the foregoing motion, the Senate recessed until 4 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

Senate Bill No. 1008, Reapportioning congressional districts.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Snyder, the following amendment to the bill was reported by the Clerk:

On page two, section three, by striking out all of lines eleven through seventeen and inserting in lieu thereof the following:

First District: Barbour, Brooke, Doddridge, Gilmer, Hancock, Harrison, Jackson, Marion, Marshall, Monongalia, Ohio, Pleasants, Preston, Ritchie, Roane, Taylor, Tyler, Wetzel, Wirt and Wood.

Second District: Berkeley, Braxton, Calhoun, Clay, Grant, Hampshire, Hardy, Jefferson, Kanawha, Lewis, Mineral, Morgan, Pendleton, Putnam, Randolph, Tucker and Upshur.

Following extended discussion,

The question being on the adoption of Senator Snyder's amendment to the bill (S. B. No. 1008), and on

this question, Senator Barnes demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Browning, Edgell, D. Facemire, Laird, Miller, Prezioso, Snyder, Stollings, Unger, Williams, Wills, Yost and Kessler (Acting President)--14.

The nays were: Barnes, Boley, Chafin, K. Facemyer, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, McCabe, Minard, Nohe, Palumbo, Sypolt and Tucker--17.

Absent: Plymale, Wells and Tomblin (Mr. President)--3.

So, a majority of those present and voting not having voted in the affirmative, the Acting President declared Senator Snyder's amendment to the bill (S. B. No. 1008) rejected.

Thereafter, at the request of Senator Browning, and by unanimous consent, the remarks by Senators Snyder and Unger regarding the adoption of Senator Snyder's amendment to Senate Bill No. 1008 were ordered printed in the Appendix to the Journal.

At the request of Senator Barnes, unanimous consent being granted, the remarks by Senators Hall, McCabe and K. Facemyer regarding the adoption of Senator Snyder's amendment to Senate Bill No. 1008 were ordered printed in the Appendix to the Journal.

The bill (S. B. No. 1008) was then ordered to engrossment and third reading.

On motion of Senator Unger, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Barnes, Beach, Boley, Browning, Chafin, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Miller, Minard, Nohe, Palumbo, Prezioso, Stollings, Sypolt, Tucker, Unger, Williams, Wills, Yost and Kessler (Acting President)--30.

The nays were: Snyder--1.

Absent: Plymale, Wells and Tomblin (Mr. President)--3.

Engrossed Senate Bill No. 1008 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Senate Bill No. 1008 pass?"

On the passage of the bill, the yeas were: Barnes, Boley, Browning, Chafin, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Minard, Nohe, Palumbo, Prezioso, Stollings, Sypolt, Tucker, Williams, Wills, Yost and Kessler (Acting President)--27.

The nays were: Beach, Miller, Snyder and Unger--4.

Absent: Plymale, Wells and Tomblin (Mr. President)--3.

So, a majority of all the members present and voting having voted in the affirmative, the Acting President declared the bill (Eng. S. B. No. 1008) passed with its title.

Senator Unger moved that the bill take effect from passage.

On this question, the yeas were: Barnes, Boley, Browning, Chafin, Edgell, D. Facemire, K. Facemyer, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Minard, Nohe, Palumbo, Prezioso, Stollings, Sypolt, Tucker, Williams, Wills, Yost and Kessler (Acting President)--27.

The nays were: Beach, Miller, Snyder and Unger--4.

Absent: Plymale, Wells and Tomblin (Mr. President)--3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the Acting President declared the bill (Eng. S. B. No. 1008) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

In accordance with rule number forty-four of the Rules of the Senate, Senator Unger will file a written vote explanation as to the passage of Engrossed Senate Bill No. 1008, which vote explanation will be printed in the Appendix to the Journal.

At the request of Senator Browning, and by unanimous consent, the remarks by Senator Unger regarding the passage of Engrossed Senate Bill No. 1008 were ordered printed in the Appendix to the Journal.

At the request of Senator Unger, unanimous consent being granted, it was ordered that the following be printed in the Appendix to the Journal: A transcript of the August 4, 2011, meeting of the Select Committee on Redistricting; Population Summary Report, Plan Components Report and Measures of Compactness of the various congressional plans considered by the Select Committee; and an article by Kenneth C. Martis, Ph.D., Professor of Geography, West Virginia University, entitled "West Virginia Congressional Redistricting, Mason

County Flop Plan".

On motion of Senator Unger, the Senate recessed until 7 p.m. tonight.

Night Session

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

Eng. House Bill No. 106--A Bill to amend and reenact §1-2-2 and §1-2-2b of the Code of West Virginia, 1931, as amended, all relating to the apportionment of membership of the House of Delegates.

At the request of Senator Unger, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Unger, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Beach, Boley, Browning, Edgell, D. Facemire, Fanning, Foster, Green, Hall, Helmick, Jenkins, Klempa, Laird, McCabe, Miller, Nohe, Palumbo, Prezioso, Snyder, Stollings, Sypolt, Tucker, Unger, Williams, Wills, Yost and Kessler (Acting President)--27.

The nays were: Barnes--1.

Absent: Chafin, K. Facemyer, Minard, Plymale, Wells and Tomblin (Mr. President)--6.

The bill (Eng. H. B. No. 106) was then read a second time.

On motion of Senator Sypolt, the following amendment to the bill was reported by the Clerk:

In section two, subsection (b), by striking out all of subdivisions (53), (54) and (55) and inserting in lieu thereof three new subdivisions, designated subdivisions (53), (54) and (55), to read as follows:

(53) The Fifty-third Delegate District is entitled to one delegate and consists of:

(A) Grant County;

(B) The following areas of Mineral County:

(i) Blocks 540570105003068, 540570105003069, 540570105003070, 540570105003071, 540570105003072, 540570105003073, 540570105003074, 540570105003075, 540570105003076, 540570105003077, 540570105003078, 540570105003079, 540570105003080, 540570105003081, 540570105003082, 540570105003083, 540570105003088, 540570105003091, 540570105004002, 540570105004003, 540570105004005, 540570105004008, 540570105004010, 540570105004016, 540570105004017, 540570105004018, 540570105004019, 540570105004020, 540570105004021, 540570105004022, 540570105004023, 540570105004024, 540570105004025, 540570105004026, 540570105004027, 540570105004028, 540570105004029, 540570105004030, 540570105004031, 540570105004032, 540570105004033, 540570105004034, 540570105004035, 540570105004036, 540570105004037, 540570105004038, 540570105004039, 540570105004040, 540570105004042, 540570105004045, 540570105004049 and 540570105004050 of voting district 27;

(ii) Voting districts 28, 29, 3, 30 and 33;

(iii) Blocks 540570104003000, 540570104003001, 540570104003002, 540570104003003, 540570104003004, 540570104003005, 540570104003006, 540570104003007, 540570104003008, 540570104003009, 540570104003021, 540570104003022, 540570104003023, 540570104003060, 540570104003061, 540570104003062, 540570104003063, 540570104003064, 540570104003065, 540570104003066, 540570104003067, 540570104003068, 540570104003069, 540570104003070, 540570104003071, 540570104003072, 540570104003073, 540570104003074, 540570104003075, 540570104003076, 540570104003077, 540570104003078, 540570104003079, 540570104003080, 540570104003081, 540570104003082, 540570104003083, 540570104003084, 540570104003085, 540570104003086, 540570104003087, 540570104003088, 540570104003089, 540570104003090, 540570104003091, 540570104003092, 540570104003093, 540570104003094, 540570104003095, 540570104003099, 540570104003105, 540570104003106, 540570104003107, 540570104003108, 540570104003110, 540570104003111, 540570104003112, 540570104003113, 540570104003114, 540570104003115, 540570104003116, 540570104003117, 540570104003118, 540570104003119, 540570104003120, 540570104003121, 540570104003122, 540570104003132, 540570104003133,